

GEORGE M.
JANES &
ASSOCIATES

May 11, 2018

250 EAST 87TH STREET
NEW YORK, NY 10128

www.georgejanes.com

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

Rick D. Chandler, P.E., Commissioner
Department of Buildings
280 Broadway
New York, NY 10007

RE: Community Appeal
249 East 62nd Street
Block 1417, Lot: 22
Job No: 122975995

Dear Commissioner Chandler:

On April 26, 2018, the Department partially accepted our Zoning Challenge and posted the results in an Intent to Revoke. This is a Community Appeal to the Department's response to our November 3, 2017 Zoning Challenge.

We are filing a community appeal even though it is unclear when this appeal is due. There is no due date shown on BIS under "Appeal Status," and on 1558 Third Avenue, another Zoning Challenge that was partially accepted, the Department informed the challengers that a community appeal could only be filed 15 days after a resulting Intent to Revoke was rescinded. On 200 Amsterdam, another Zoning Challenge that was partially accepted, the Borough Commissioner Martin Rebholz informed the challengers that a community appeal could be filed within 15 days, but only on the portion of that challenge that was denied.

On April 30, May 4 and May 10, I tried to get clarification from the Department on when the community appeal is due but I received no replies. Consequently, instead of letting 15 days pass without appealing the portions of our Zoning Challenge that were denied, I am filing this community appeal on behalf of Friends of the Upper East Side. If your position is that it has been filed too early, we respectfully request that you inform us of that fact in a timely fashion.

Issues being appealed

Our zoning challenge was reviewed by Borough Commissioner Scott Pavan. The Department summarized our challenge in their response. This appeal follows the departmental summary found in the Intent to Revoke.

Issue 1: The interbuilding void

The proposed building has what is generically referred to as an "interbuilding void," which means a large empty area that may be nominally used for accessory building mechanical purposes, but which is mostly empty space not intended for human habitation. The Department denied this portion of the Challenge because

the Zoning Resolution does not prohibit these spaces within buildings, nor are they counted as floor area.

Interbuilding voids are a new construction technique that is not well addressed in the Zoning Resolution. While we understand Mr. Pavan's conservative read of the zoning text, just because voids are not well addressed in the Zoning Resolution does not mean the Department should grant an approval. Since this is a new building technique over which the Fire Department of the City of New York (FDNY) has expressed safety concerns, BC §28-103.8 is clear:

Any matter or requirement essential for the fire or structural safety of a new or existing building or essential for the safety or health of the occupants or users thereof or the public, **and which is not covered by the provisions of this code or other applicable laws and regulations, shall be subject to determination and requirements by the commissioner in specific cases.**

[**Emphasis** added]

In 2017, I brought the concept of interbuilding voids to the attention of the FDNY. At that time, the Bureau of Operations - Office of City Planning was unfamiliar with this new building technique. I provided drawings hoping that they could examine them with a consideration for both fire safety and fire operations.

On May 3, 2018, just eight days ago, and seven days *after* the Department posted Mr. Pavan's response to the Zoning Challenge, the FDNY's Bureau of Operations issued the following concerns related to this building:

The Bureau of Operations has the following concerns in regards to the proposed construction @ 249 East 62 street ("dumbell tower"):

- Access for FDNY to blind elevator shafts... will there be access doors from the fire stairs.
- Ability of FDNY personnel and occupants to cross over from one egress stair to another within the shaft in the event that one of the stairs becomes untenable.
- Will the void space be protected by a sprinkler as a "concealed space."
- Will there be provisions for smoke control/smoke exhaust within the void space.
- Void space that contain mechanical equipment... how would FDNY access those areas for operations.

These concerns and questions appear informal because they were sent out as an email rather than a formal memorandum from the FDNY. I contacted the Bureau of Operations to confirm their accuracy, which that office did.

I acknowledge that many issues brought in zoning challenges can be esoteric and difficult to understand. These issues from the FDNY, however, are not. Interbuilding voids may be an issue of public safety and at minimum, they require more study and time to develop plans for emergency actions within them. For example, as I understand it, the FDNY does not have a good plan on how they would rescue people stuck in an elevator if it stops between floors in a large interbuilding void. That is a serious and terrifying unanswered problem.

Just because zoning does not address a new building technique well, does not mean that the Department must grant an approval. BC §28-103.8 anticipates these situations and provides the Commissioner the ability--and I would say obligation--to make a determination on this construction technique as an issue of public safety.

Outside the Department of Buildings, the City of New York has recognized interbuilding voids are a serious problem. On January 17, 2018, in answering a question about 249 East 62nd Street at a Town Hall, the Mayor stated that interbuilding voids were a problem and that his office was working with the Department of Buildings and the Department of City Planning (DCP) to find a solution.¹ On May 8, 2018, I personally met with the head of the Manhattan office of DCP and her staff to discuss the void problem, what exactly it was, and where these new building techniques became problematic from an urban design and bulk perspective. All agreed that East 62nd Street was the most problematic in its use of interbuilding voids.

While only Commissioner Chandler can act under BC §28-103.8, it appears that such action would be welcomed by the FDNY, DCP and the Mayor's office. We have also been in communication with Council Member Powers and Borough President Brewer and both have voiced their concern about this technique. This new building technique does nothing to improve the quality or amount of housing in the City: it just devotes resources to empty spaces without any concern for the safety of residents, neighbors or first responders who may find themselves in or near this building. Our codes give Commissioner Chandler the authority to act to protect their safety, and act he must.

Issue 2: Arithmetic and other factual errors in the ZD1 & PW1

Mr. Pavan neither denied nor accepted this challenge, responding that “[n]o zoning section was cited. The applicant will be advised to correct any arithmetic errors in the ZD1 and the PW1.” Indeed, the Zoning Resolution has no section that instructs how to sum a list of numbers or correctly calculate a quotient. Such

¹ https://www.youtube.com/watch?v=nbQrAWaY_AE @ minute 36:30

knowledge is nevertheless foundational to the use of the Zoning Resolution and I assume that since the applicant will be instructed to correct the errors that this challenge was accepted. We look forward to reviewing an amended ZD1 (ZD1A) where all of these errors are corrected and compliance is demonstrated.

Issue 3: The proposed building is overbuilt at 12 FAR

In perhaps what is the most puzzling finding, Mr. Pavan denied the challenge that the project is overbuilt at 12 FAR, but agreed that this site is limited to 11.54 FAR. The ZD1 clearly states that the project is 12 FAR:

Floor Number	Building Code Gross Floor Area (sq. ft.)	Use Group	Zoning Floor Area (sq. ft.)				FAR
			Residential	Community Facility	Commercial	Manufacturing	
Totals	152,370		98,526	0	2,588	0	12.0
Total Zoning Floor Area						101,114	

The challenge confirmed this error, referencing the PW1, which also states that the project is built at 12 FAR:

12 Zoning Characteristics	
12A District(s) C2-8	12B Street legal width: 100 ft.
Overlay(s)	Street Status: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private
Special Dist.(s)	<i>If the zoning lot includes multiple tax lots, list all tax lots here ►</i>
Map Number 8c	
12C Proposed: Use*	Proposed Lot Details:
RESIDENTIAL 98,526 sq. ft. C2-8 11.97	Lot Type: <input type="checkbox"/> Corner <input checked="" type="checkbox"/> Interior <input type="checkbox"/> Through
COMMERCIAL 2,588 sq. ft. C2-8 0.03	Lot Coverage 82.97 %
	Lot Area 8765 sq. ft.
	Lot Width 75 ft.
	Proposed Other Details:
	Enclosed Parking? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<i>If yes, no. of parking spaces:</i> _____
Proposed Totals 101,114 sq. ft. 12.0	Perimeter Wall Height 100 ft.
Existing Total	
<i>*Use can be one of the following: residential, commercial, manufacturing, or community facility. List only one</i>	

Instead, Mr. Pavan states, “[t]he application records indicate a proposed FAR of 11.54.” The application records also indicate a proposed FAR of 12, and so the FAR of the proposed building remains a problem. I believe that Mr. Pavan and we agree that there are errors in this application, since he states, “[t]he applicant will be advised to correct the ZD1 diagram to reflect the proposed FAR.”

The reviewer of this appeal is reminded that the Department’s own instructions² for completing ZD1s states that “Complete and accurate information is required for all applications.” The ZD1 is not accurate. Mr. Pavan acknowledges this, yet denies the Challenge.

² https://www1.nyc.gov/assets/buildings/pdf/zd1_guide.pdf

Perhaps “the application records” to which Mr. Pavan refers is a Post Approval Amendment that was processed in February 2018. The department is reminded that its instructions for ZD1s state: “If changes are made that affect the initial ZD1, a new ZD1 must be submitted with subsequent applications or Post Approval Amendments (PAAs).” [Emphasis added.]

BIS shows a “**POST APPROVAL AMENDMENT FOR DOC 01**” that was processed in February with the following comment:

RESPECTFULLY REQUESTING TO AMEND THE SCH A AS PER REVISED PLAN FILED HERewith. ALSO NEED TO UPDATE THE FLOORS AND SECTIONS 12 & 13 ON THE PW1 FOR CLARIFICATION WE ARE INDICATING ALL THREE FAR CALCULATIONS AND INCLUDING ALL DISTRICTS AS SHOWN BELOW.
 COMMERCIAL-2267 SQ.FT; DISTRICT C2-8; FAR .26
 RESIDENTIAL- 98,133 SQ FT;DISTRICT C2-8; FAR 11.20
 RESIDENTIAL - 632 SQ FT; DISTRICT R8B; FAR .07
 PROPOSED TOTAL 101,103SQ FT; FAR 11.53

No new or amended ZD1 was filed. We all agree that the project needs a new ZD1 that accurately describes the project. We look forward to reviewing that document when it is filed.

Issues 4, 5 and 6: The side yard

Mr. Pavan denies the challenge’s finding that the three foot gap between the proposed building and the lot line is a non-complying side yard. The solar shading device as a permitted obstruction into the yard, combined with the seismic gap allows this condition to occur.

This finding is the result of one of the many 2012 “zone green” text amendments shown to have consequences that were not disclosed during public review. I have recently learned that the FDNY is unaware that zoning now commonly allows these small gaps at the lot line under these conditions. One of the reasons we require side yards to be at least eight feet is because such widths provide easy access to these spaces. Spaces that are just 12 or 24 inches constitute small, confined spaces that first responders cannot easily access, but a child might. I believe that Mr. Pavan is correct that a literal read of zoning now allows these spaces, but I ask the Department to consult with other City agencies, especially the FDNY, about this interpretation and if it creates spaces that are safety concerns, especially when they reach to the ground-level. If they do, the Department should determine actions necessary to safeguard public safety.

Issue 7: Tower Coverage

The response states: “This portion of the challenge is accepted and appropriate measures will be taken.” I hope that whatever appropriate measures that are taken includes a new ZD1 or ZD1A that is complete and accurate.

Final thoughts

While I am appreciative of the review of the challenge and the acknowledgment of the applicant's errors in both zoning and arithmetic, I am troubled by the Department's response to Issue 3. There are many clear errors in this ZD1, which Mr. Pavan acknowledges. But if the Z-series plans are correct and the ZD1 is wrong, the ZD1 is still wrong. We are following the Department's challenge process and we are challenging the ZD1. The Z-series plans are not available on the website and the Department has no process to challenge them. The ZD1 and the PW1 and other forms that the Department posts on-line are what the public sees of the approval and permitting process. These obvious errors are damaging to the public's confidence in the DOB's process. This confidence has been further eroded by the safety concerns the FDNY put into writing after the Department has provided this building an approval. Perhaps the Department might wish to consider involving the FDNY earlier.

It has been over *six months* since our challenge pointed out these arithmetic and calculation errors in the ZD1. Yet, the original ZD1 is the only one recorded, un-amended, even though a PAA has been filed, which according to the Department's own rules, should have triggered a new ZD1. The Department's own forms recognize the importance of accuracy as they include the following statement:

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

This is serious business, yet the Department's response seems to minimize the errors. By stating that other records, not easily available to the public, are correct, so it hardly matters that there is obviously incorrect information in the ZD1. Since the public is supposed to challenge the ZD1, it should be the primary document used to evaluate the challenge, not the Z-series plans.

If this application were unique I might not be so troubled, but in the two years that I have been filing zoning challenges, I have discovered that these simple errors are widespread and are found on the majority of the ZD1s I have reviewed.

Why is this true? And what might be done to stop the filing and approval of documents with obvious errors? I encourage you to work with your team, and perhaps to bring in outside professionals to examine your internal processes with the goal of eliminating errors introduced by applicants and approved by the Department, so that we all can have more faith in the accuracy and legality of Departmental approvals.

Thank you for your efforts to make New York City a better place. If you have any questions, please contact me at george@georgejanes.com. Also, if the Department has determined that this appeal has been filed too early, please let me know.

Sincerely,



George M. Janes, AICP, George M. Janes & Associates

For



Rachel Levy, Friends of the Upper East Side Historic Districts

Attachments: INR1-SC620116808 2018_04_26 10_39_05

CC: Bill de Blasio, New York City Mayor
 Keith Powers, New York City Council Member
 Benjamin Kallos, New York City Council Member
 Gale Brewer, Manhattan Borough President
 Liz Krueger, New York State Senator
 Rebecca Seawright, New York Assembly Member
 Beth Lebowitz, Director, Zoning Division, DCP
 Erik Botsford, Deputy Director, Manhattan, DCP
 Captain Simon Ressler, Fire Department City of New York
 Raju Mann, Director, Land Use, New York City Council
 Alida Camp, Chair, Community Board 8
 Julianne Bertagna, Treadwell Farm Historic District Association
 Barry Schneider, East Sixties Neighborhood Association
 Valerie Mason, East 72nd Street Neighborhood Association
 Betty Cooper Wallerstein, East 79th Street Neighborhood Association
 Elizabeth Ashby, Defends of the Historic Upper East Side
 Lo van der Valk, Carnegie Hill Neighbors
 Alan Kersh, East River Fifties Alliance
 Alexander Adams, CIVITAS
 Sean Khorsandi, Landmark West!
 Elizabeth Goldstein, Municipal Art Society of New York
 Peg Breen, New York Landmarks Conservancy
 Simeon Bankoff, Historic Districts Council
 Andrew Berman, Greenwich Village Society for Historic Preservation
 Olive Freud, Committee for Environmentally Sound Development