

MEMORANDUM

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To: Community Board 3

From: George M. Janes, AICP

**RE: CB3's Two Bridges zoning proposal**

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This memo discusses your Two Bridges zoning proposal in the context of the comments you have received from the Department of City Planning (DCP) and their known biases and preferences. It discusses two possible scenarios going forward that the CB should consider as it contemplates next steps.

**Background on zoning changes**

While anyone can apply for a zoning change in New York City, the ULURP process allows the City Planning Commission (CPC) to vote down a proposal prior to it getting to City Council. If the CPC votes the proposal down, ULURP ends and the proposal is rejected. Although it is very rare for the CPC to vote down an application, generally, it is because they don't review applications they plan to vote down.

Before an application enters ULURP, the Department of City Planning (DCP) must certify that the application is complete. In the prior administration, DCP never certified an application without tacit approval from the Chair of the CPC. In effect, DCP would "slow walk" the application, never certify it as complete, and so ULURP would never start.

When Carl Weisbrod became CPC Chair, he announced that this practice would end. He stated that it wasn't DCP's job to stop applications they didn't like from reaching the CPC. Rather, he said that DCP would certify an application when it was complete, not when DCP approved,<sup>1</sup> which is what the City Charter requires. Since Carl Weisbrod is no longer CPC Chair, it is unclear if this policy is still in place. Under Marisa Lago, applications that reach the CPC are rarely, if ever, voted down. The fact that some of the comments you received on your Reasonable Worst Case Development Scenario (RWCDS) Memo were unrelated to completeness, rather some related to DCP priorities, evidence that this policy may no longer be in place. You will find a full discussion of these comments below. All that said, even if DCP will certify an application that will likely be voted down, there is a very real question if the application is worth the effort.

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<sup>1</sup> An article about Weisbrod's announcement appeared in Crains in 2014: [https://www.crainsnewyork.com/article/20140611/REAL\\_ESTATE/140619991/city-speeding-up-building-approval-process](https://www.crainsnewyork.com/article/20140611/REAL_ESTATE/140619991/city-speeding-up-building-approval-process)

In other words, if you know the CPC will vote down your application, should you spend the energy, time and money to prepare it? For most applicants, that answer is no. However, a Community Board is not a typical applicant. There may be some benefits for completing an application that will fail. There may also be benefits to changing an application so that it is more likely to pass. This memo discusses two possible ways forward to help inform your Community Board on strategies regarding the Two Bridges application.

### **Possible ways forward**

DCP is opinionated about zoning and has enormous power in the ULURP process. If you have a zoning proposal that does not align with DCP priorities, they can kill the proposal with the “slow walk,” as described above. Even if you spend the time and money to get through the slow walk process, DCP will eventually present your application to the CPC. At this stage, DCP staff will explain to the CPC why the CPC should reject the application. If you want CPC approval, DCP’s tacit approval is necessary.

The letter you received from Edith Hsu-Chen in response to your RWCDs memo is devastating. This letter is a red flag indicating that your application will fail, if not during the pre-application process, then later during the ULURP process.

This memo discusses two different courses of action:

1. You can continue forward with your application unchanged, with the understanding that even if DCP certifies your application, CPC will likely vote it down. I call this, the “Onward!” scenario.
2. You negotiate with DCP and incorporate changes that DCP requires, while still keeping the essential elements of your plan. I call this the “Let’s make a deal” scenario.

Each of these is played out below:

#### **Scenario 1: The “Onward!” strategy**

When DCP leads a rezoning, their approach is top-down, with some lip service paid to community engagement. If you believe in community planning, the main problem with their approach is that DCP doesn’t work for the community; they work for the administration and the goals of the community and the administration are often at odds. The result is that DCP’s community engagement is often not very meaningful, with plans and rezonings that are not reflective of community values.

Your application, on the other hand, is the result of a community-driven plan and process. You’ve brought together a disparate group of stakeholders and forged a consensus on a broad community vision over years and countless hours of discussion and engagement. Not only do you believe in the substance of your planning process, plan and zoning proposal, you believe it should be held up as a model for how New York City neighborhoods should be making their own planning and zoning decisions.

The best plans come from the bottom up, like yours. While there is often a role for professional staff to play, especially on the more technical aspects of a proposal, the vision for a land use plan needs to come from the community and zoning is one of the main tools for implementation of a land use plan. Your effort had extensive buy-in throughout the process, and, as a result, your coalition is not interested in changing *any* substantive aspect of your proposal.

Therefore, you continue to prepare your application, you keep addressing every technical point DCP raises, while refusing to address any of their concerns regarding the substance of your proposal. Once you are sure your application is complete, you can force certification with the threat of legal action, if necessary, so the application can start ULURP, just as the former Chair promised DCP would do. This will allow the Community Board to hold a hearing, hear from the people, make a recommendation, and allow the Borough President to make their recommendation. This process will create a record detailing community support for the proposal before the proposal comes before the CPC.

An application that includes broad support should be difficult for the CPC to turn down, regardless of what DCP says to the Commissioners during the CPC phase of ULURP and their discussions of the rezoning proposal. Even if CPC goes against the will of the community and votes down your application, the Community Board will have a completed application that the next administration -- and the new CPC members they will appoint -- will be able to hear. Since the application will have already been certified as complete, the pre-application process will be short.

A “No” vote from the CPC would not be the end; it would be simply be a delay, a kind of dress rehearsal for resubmission in 2022. Since the costs of a CPC “No” vote is relatively minor, there should be no compromises.

***But shouldn't we be concerned about development if the special district isn't adopted?***

While it is possible that development would occur on the Edison site under existing zoning, that zoning has been in place since 1961 and the owner has not stated an intention to change the use of the site. Historically, most community led rezoning efforts are started in response to a developer's proposal, and the community rezoning must “race the clock” to get a zoning change before the developer vests their development, a race they nearly always lose because of the complexity and uncertainty of the ULURP process.

Your proposal is proactive, in response to community needs, not a developer proposal. That means you have the luxury of not compromising, of waiting for a better political environment to accept your proposal, if necessary. Your proposal is important, but not urgent because of an impending development.

Finally, a more likely development scenario is that Edison pursues their own rezoning to allow for a residential tower instead of the office building they can do as-of-right. Such a proposal would have to go through ULURP, which announces

their intention, and gives you time to react with opposition and your own proposal. You have the rare luxury of time.

### **Scenario 2: The “Let’s Make a Deal” scenario**

While DCP and the CPC hold the cards in this process, they can be engaged in a process of negotiation, a dialogue where the goals of the plan are discussed and the implementation of those goals through zoning are negotiated. In this scenario, while your coalition stands firm on goals, the zoning tools used to implement those goals may be discussed to find solutions that are true to the spirit of the plan, while also meeting the expectations of DCP. To start to develop such a scenario, you have to understand the goals and biases of DCP in planning and zoning.

#### ***DCP biases***

DCP is not secretive about what its goals, priorities and framework. They openly discuss what elements of a zoning action they believe are positive and which are negative. Generally, they have been fairly consistent during this administration. Underlying all of their biases is that most development is good, scale doesn’t matter much, certainly not as much as good design. They believe upzonings are critical because that’s how zoning can produce permanently affordable housing in the era of Mandatory Inclusionary Housing (MIH). DCP biases relevant to your proposal are discussed below:

#### ***DCP on up- or downzonings***

Generally, under the current administration, DCP is highly discouraging of downzonings, especially of net downzonings. They might consider a small downzoning combined with a significant upzoning, when considered together makes for a net upzoning. DCP will not consider net downzonings because they believe development is inherently good and more of it, not less of it, produces the benefits they want to see. More importantly, Mandatory Inclusionary Housing (MIH) is only triggered when there is an upzoning. Since this administration is focused on meeting affordable housing goals, with MIH as the major zoning tool that produces affordable housing, they are always looking for opportunities to upzone.

#### ***DCP on Inclusionary Housing***

The City and its Law Department have been clear since MIH was adopted: they believe that a requirement for affordable housing in private developments that does not also include a significant upzoning constitutes an unconstitutional taking.<sup>2</sup> While the City has been worryingly vague as far as what constitutes a “significant” upzoning, the state of the practice is at least a 25% increase in residential Floor Area Ratio (FAR) will trigger MIH. From DCP’s perspective,

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<sup>2</sup> I understand that there are many people who would disagree, including a few on this Community Board, but the City and its Law Department has been clear and unwavering on their position.

the terms and conditions of MIH and when it is applied are absolutely non-negotiable.

### ***DCP on open space***

DCP does not value publicly accessible open spaces on private developments as much as many residents do. This is because of the mixed results in the quality and maintenance of these spaces. In addition, DCP holds that these spaces sometimes have a negative impact on the urban design of the area. Further, if a development does get a FAR zoning bonus, this administration would much prefer affordable housing over plaza bonuses. While not always true, outside the Central Business Districts (CBDs), DCP will favor private open spaces that are maintained as building amenities over publicly accessible open spaces, especially when they are located on roof decks off the ground floor so that ground floor continuity is not broken. They will not categorically reject these spaces, but they are certainly not as valued as they once were.

### ***DCP on Enhanced Commercial District-like restrictions***

About 10 years ago, the City started mapping Enhanced Commercial Districts (EHDs), which is a special purpose zoning district that layers on a series of regulations for the uses and configurations of ground floors. There are some elements of ECDs that DCP favors, while there are other elements DCP discourages. Generally, the more prescriptive ECDs on the Upper West Side that regulate types of commercial uses and their size and the requirement for smaller commercial spaces are not favored. On the other hand, DCP will be favorably disposed to required ground floor commercial uses, transparency, limitations on the size of residential lobbies, limitations on automobile parking and curb cuts and similar regulations that enhance the ground floor pedestrian experience while not being overly prescriptive.

### ***DCP on height limits***

In high density tower districts, DCP has made clear that it does not want to see fixed height limits. It also wants to see streetwalls at or near the streetline with active uses in the ground floor. It wants building envelopes to allow for substantial floor-to-floor height at the ground floor and enough space in the envelope to provide for modern expectations of floor-to-floor (FTF) heights throughout the building. It wants room for building amenities, such as outdoor roof decks, and interior recreation spaces. Zoning and its associated building envelope dictates, in part, the quality of the building, and, according to DCP, a building envelope that produces a compressed building with floor-to-floor heights less than the current standard is bad zoning.

### ***DCP on building form in high density areas***

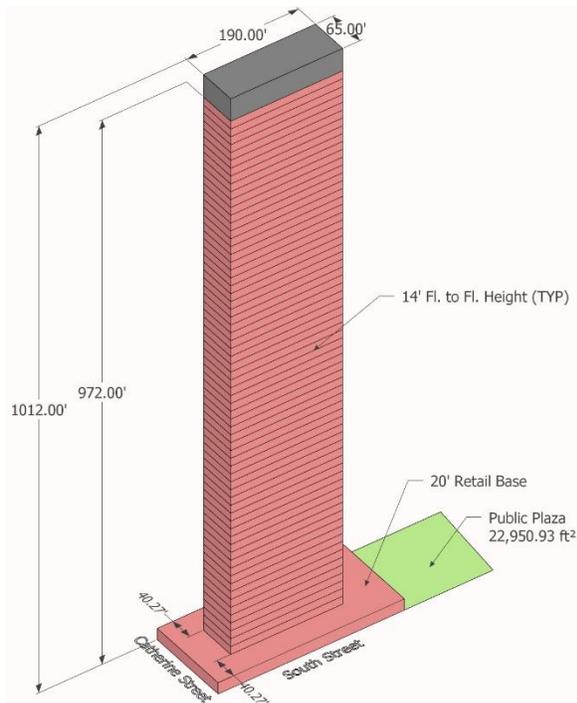
In high density tower districts outside CBDs, DCP favors the tower-on-a-base building form. This is the form adopted in the recent Sutton Place rezoning. A customized tower-on-a-base form was adopted in portions of the East Harlem rezoning. First developed in the early 1990s, it has an established track record on

the Upper East Side, Lincoln Square, and other areas with R10 equivalent districts.

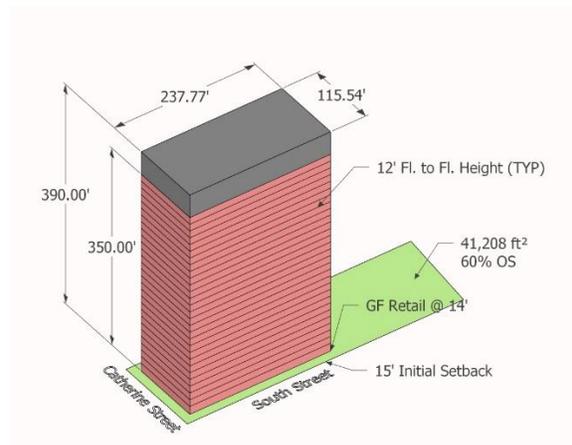
Tower-on-a-base zoning does not limit the height of towers with a hard height limit. It uses a combination of other rules to produce towers of about 30 stories and 300 feet. In more recent years, the height of tower-on-a-base buildings have increased to closer to 350 feet in market-rate buildings because of the demand for larger floor-to-floor heights. These buildings are generally still around 30 stories, but the lack of a hard height limit has allowed them to get taller. DCP would say that this flexibility is a sign of good zoning, allowing the building envelope to stretch in response to demand, while still keeping the same number of stories. At the same time, tower-on-a-base requires a streetwall at or near most of the streetline. This usually requires active uses in the base when they are paired with commercial districts, which is also a priority of DCP.

### DCP biases and the bulk component of your zoning proposal

The impact of many of these biases can be understood when looking at the proposal in massing form. As a part of updating the RWCDS memo, we have updated the massings found therein. The left shows RWCDS massing allowed by current zoning. On the right, we have RWCDS massing as allowed by your zoning proposal. Both of these use the as-of-right plaza bonus, which provides up to 2 FAR for the provision of a public plaza.<sup>3</sup>



As-of-right massing



Your proposal

<sup>3</sup> The RWCDS omitted this as-of-right bonus and showed buildings that were only 10 FAR.

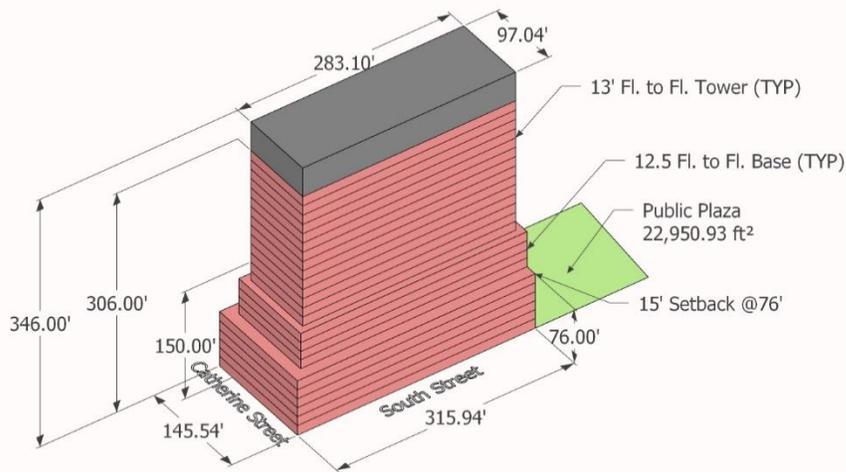
As-Of-Right (Single Tower)						Proposed Zoning with SLES & CWD					
Story	Height	GFA/FL	Tot. GFA	Running Tot. GFA	USE	Story	Height	GFA/FL	Tot. GFA	Running Tot. GFA	USE
GF	20'	45,981.91	45,981.91	45,981.91	Retail / Office Lobby	GF	14'	27,472.00	27,472.00	27,472.00	Retail / Office Lobby
2-69	972'	12,350.00	839,800.00	885,781.91	Commercial / Office	2-29	350'	27,472.00	769,216.00	796,688.00	Commercial / Office
Lot 1 Area		67,870				Lot 1 Area		67,870			
Lot 41 Area		810				Lot 41 Area		810			
Tower Coverage		18%				Tower Coverage		40%			
Max FAR w/Bonus		12				Max FAR w/Bonus		12			
Max ZFA		824,160				Max ZFA		824,160			
Non ZFA / ZFA %		7.5%				Unused FA		67,306			* with 5% mechanical deduction
						Built FAR		11.02			* with 5% mechanical deduction

Your proposal triggers several of DCP biases:

- It has a height limit of 350 feet
- The streetwall of the building is setback from the street
- It has a 60% open space requirement that leaves much of the block open, but still privately owned
- To use as much floor area as possible, the floor-to-floor heights have been compressed to 12 feet, which is less than standard for a modern office building
- The height limit combined with the open space requirement leaves the lot underbuilt, even with compressed FTF heights

Any one of these issues would cause a serious DCP objection; in this proposal, you have five of them. How can you support the goals of your planning and rezoning process while also addressing DCP's objections?

The following is a possible massing on the same site, using a different set of zoning regulations which DCP would be more likely to support:



Building massing showing a possible compromise

Possible Zoning with Tower-on-a-base					
Story	Height	GFA/FL	Tot. GFA	Running Tot. GFA	USE
GF	13.5'	45,981.91	45,981.91	45,981.91	Retail / Office Lobby
2-6	76'	45,981.91	229,909.55	275,891.46	Office
7-10	125'	34,770.61	139,082.44	414,973.90	Office
11-12	150'	28,305.00	56,610.00	471,583.90	Office
13-26	306'	27,472.00	384,608.00	856,191.90	Office
Lot 1 Area		67,870			
Lot 41 Area		810			
Total Lot Area		68,680			
Tower Coverage		40.0%			
Max FAR w/Bonus		12			
Max ZFA		824,160			
55% of Maz ZFA		453,288			
% of GFA below 150'		55%			
OS coverage		33%			
Built FAR		11.97	* with 4% mechanical deduction		

This scenario shows massing that uses modified tower-on-a-base regulations. There is no hard height limit, but the regulations effectively limit height by requiring tower coverage to be between 30% and 40% of the zoning lot, and that between 55% and 60% of the floor area be located in floors below 150 feet.

These regulations address DCP's biases as follows:

- It has no hard height limit, but the rules will result in a building topping out at around 350 feet
- It cuts the open space by slightly less than half, which is the minimum size necessary to maximize the as-of-right plaza bonus
- Creates a streetwall at the streetline for most of the block
- The form allows for higher FTF heights. Tower floors are shown at 13 feet FTF. They could be taller if the developer wanted more spacious tower floors. Tower floors that were 14 feet FTF would raise the height to 360 feet, which provides design flexibility that DCP would appreciate
- The form allows the building to be built out to ~12 FAR

To be clear, DCP won't necessarily love this proposal. Tower-on-a-base regulations are normally reserved for residential and mixed buildings with at least 75% of their floor area in residential uses. This would be the first application of these rules in a commercial building. They might ask that the standard regulations for tower-on-a-base be loosened for non-residential buildings so that they might build higher floor-to-floor heights throughout the building. This form might also be dependent on use, as the M1-6 district allows for manufacturing uses where this form may be inappropriate.

Nevertheless, a modification of the bulk controls in your zoning proposal could be seen as a starting point for discussion and a way to show DCP that you are interested in finding a solution that can work for everyone. In this scenario, your goal is to effectively transform DCP from a faceless bureaucracy, intent on derailing your proposal, to becoming another constituent interested in the future of this area.

## **DCP biases and non-bulk components of your zoning proposal**

The zoning proposal has components that do not relate to bulk, including affordable housing requirements and a variety of use restrictions, some of which are similar to enhanced commercial district requirements, while others require new special permits.

### ***Affordable housing***

The 50% affordable housing requirement will be DCP's biggest impediment. As stated previously, the City believes placing affordable housing requirements on private developers without a corresponding upzoning is illegal. As a result, DCP would reject this portion of the proposal and, together with the Law Department, they would tell the CPC to reject this application because it is illegal.

This is a central part of your proposal and coming to a compromise that would satisfy your collation and DCP is unlikely. Nevertheless, if your coalition were looking for a solution that would provide more affordable housing, there are at least three possible ways forward.

The first would be to change the zoning proposal to increase residential densities to trigger MIH. For example, the M1-6 district in the rezoning area does not allow for residential uses. If it was changed to an R10 equivalent district, it would allow for residential uses up to 12 FAR and MIH would be triggered. I have been told that there is a separate application that will be doing just this.

Second, are there any possibilities with nearby public land? The City believes that they cannot place affordable housing requirements on private developers without upzonings, but they can support affordable housing on land the City already owns. Parcels being used for other public purposes could be repurposed for affordable housing, and often these are obsolete NYC public school buildings. Using these sites for development can create a new replacement school for the community, and a new residential building with 100% affordable housing. Such arrangements can meet two goals: a modern school better suited for 21<sup>st</sup> century education combined with 100% affordable housing.<sup>4</sup> To be clear, this would not be a part of your zoning application, but it could be a part of a parallel effort that examined other ways the City could support more affordable housing in the area.

Thirdly, prior to the budget crisis due to the pandemic, the City also had substantial funding available for affordable housing. Might it be possible to make more of that funding available to support the mutual goals of the community and HPD?<sup>5</sup>

Such commitments of City resources normally come to support a City-sponsored neighborhood zoning, and not a private application such as this. You would have

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<sup>4</sup> As a part of the East Harlem Rezoning Points of Agreement, the City agreed to do just this on a full block site containing a school that was designed in the 1960s to have no windows.

<sup>5</sup> HPD's first ever neighborhood housing plan was written in 2018 and is being used to direct City resources to affordable housing in East Harlem:

<https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/east-harlem-housing-plan.pdf>

to convince DCP and the administration that your proposal was deserving of such support. Obtaining those financial commitments would not be easy, especially in this budget crisis. But you could start a discussion with DCP and explore ways that the City could support more affordable housing.

To be clear, though, the difference between your proposal and the DCP on this issue is quite wide. While there are smaller steps you can take to meaningfully increase affordable housing opportunities, they are unlikely to get close to the 50% affordable requirement with very low AMI's described in your zoning proposal.

### *Use restrictions*

The use restrictions are a mixed bag: some DCP may support, while others they are less likely to support and some they will categorically reject. The City sees educational and health care facilities as important to the City's long-term economic well-being. Consequently, DCP will reject the proposal's requirement of a special permit for colleges, universities, hospitals, and related uses as hostile to these important industries.

However, requirements for active uses on the ground floor will be welcomed. DCP's main issue will be the level of restrictions placed on active ground floor uses beyond transparent materials. They do not think the ECD restrictions placed on the Upper West Side have been successful because they are not flexible enough to accommodate the demands of retail and service industries that occupy these spaces, and may, in part, be the reason for increases in both costs and vacancies. A likely compromise would include relaxing the restrictions in the zoning proposal to provide some levels of flexibility while still requiring active ground floor uses. Your group would have to decide if such compromises are acceptable.

### **Making a deal or charging onward**

Modifying your proposal into something that preserves your goals and objectives while still being acceptable would not be easy. Your proposal contains many elements, some of which are anathema to DCP and this administration. If your goal is to get something approved by CPC before the next administration, your Board will have to take DCP's letter and comments on your RWCDs at face value and make changes. I expect that making those changes would require serious time and energy, not only in discussion with DCP, but also in discussion with your community partners. Finding common ground with all involved might be very difficult and uncertain, but it also might be a worthwhile planning exercise where you and your partners prioritize elements of your proposal.

The easier way forward is clearly Scenario 1, which requires no negotiation over substance, but you should go into that decision with the knowledge that nothing will happen until 2022 at the earliest, and even then, there may be elements of your proposal that you would have to change for a new administration.

**Final thought**

More community boards should be filing private applications like this. Administrations would rather all CBs react to applications put in front of you rather than act proactively about the future of your community. Your plan, and your process has been excellent, a model for community planning for all in New York City to follow. It is worthwhile to fight for. It is also worthwhile to find implementable solutions that support your goals and objectives. There is no obvious and clear path forward. Both are right, both have costs and benefits. Your Board will need to make your own judgment on the way forward fully informed on the costs and benefits of each decision.

Please let me know if you have questions, comments or follow-up.