

Law Offices of  
**MARVIN B. MITZNER LLC**

September 6, 2013

VIA HAND AND EMAIL DELIVERY

Hon. Meenakshi Srinivasan, Chair  
And Commissioners  
NYC Board of Standards and Appeals  
250 Broadway, 29<sup>th</sup> Floor  
New York, NY 10007

Re: Block: 401; Lot 56  
515 East 5<sup>th</sup> Street  
Borough of Manhattan

Dear Chair Srinivasan & Commissioners:

On behalf of 515 East 5<sup>th</sup> Street LLC, we are filing a request for a variance from requirements of the Zoning Resolution pursuant to ZR § 72-21. We are submitting checks for the filing fee of \$3,950 and \$460 for the CEQR fee along with the Board application and supporting documents.

Very truly yours,

Ashley Haelen

MBM/pr  
Encl.

cc: Gigi Li, Chairperson Manhattan Community Board 3  
Rosie Mendez, City Council Member  
Scott M. Stringer, Manhattan Borough President  
Joseph Bruno, DOB Manhattan Chief  
Christopher Holme, City Planning Commission, Zoning Division  
Edith Hsu-Chen, City Planning Commission, Manhattan Borough Director



250 Broadway, 29th Floor  
 New York, NY 10007  
 212-386-0009 - Phone  
 646-500-6271 - Fax  
 www.nyc.gov/bsa

**ZONING (BZ) CALENDAR**  
 Application Form

BSA APPLICATION NO. \_\_\_\_\_  
 CEQR NO. \_\_\_\_\_

**Section A**

Applicant/  
 Owner

<b>Law Offices of Marvin B. Mitzner, LLC</b>	<b>515 East 5th Street LLC</b>
NAME OF APPLICANT	OWNER OF RECORD
<b>405 Lexington Avenue 26th Fl</b>	<b>515 East 5th Street</b>
ADDRESS	ADDRESS
<b>New York NY 10174</b>	<b>New York NY 10009</b>
CITY STATE ZIP	CITY STATE ZIP
<b>646 825-3026</b>	
AREA CODE TELEPHONE	LESSEE / CONTRACT VENDEE
AREA CODE FAX	ADDRESS
<b>mbm@mmitznerlaw.com</b>	
EMAIL	CITY STATE ZIP

**Section B**

Site  
 Data

**515 East 5th Street** **10009**  
 STREET ADDRESS (INCLUDE ANY A/K/A) ZIP CODE

**North side of East 5th Street between Avenue A and B**  
 DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS

<b>401</b>	<b>56</b>	<b>Manhattan</b>	<b>3M</b>	<b>n/a</b>
BLOCK	LOT(S)	BOROUGH	COMMUNITY DISTRICT	LANDMARK/HISTORIC DISTRICT
<b>Rosie Mendez</b>	<b>R7B</b>			<b>12c</b>
CITY COUNCIL MEMBER	ZONING DISTRICT (include special district, if any)			ZONING MAP NUMBER

**Section C**

Dept of Building  
 Decision

BSA AUTHORIZING SECTION(S) **ZR 72-21** for  VARIANCE  SPECIAL PERMIT (Including 11-41)

Section(s) of the Zoning Resolution to be varied **23-145**

DOB Decision (Objection/ Denial) date: **August 19, 2013** Acting on Application No: **104368845**

**Section D**

Description

(LEGALIZATION  YES  NO  IN PART)

This application is filed pursuant to Section 72-21 of the Zoning Resolution and requests a variance of ZR 23-145(maximum floor area) to legalize the enlargement of a now six story family dwelling.

**Section E**

BSA History  
 and  
 Related Actions

If "YES" to any of the below questions, please explain in the STATEMENT OF FACTS

	YES	NO
1. Has the premises been the subject of any previous BSA application(s)? ..... PRIOR BSA APPLICATION NO(S): <b>67-07-A, 81-08-A, 245-12-A, 246-12-A</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Are there any applications concerning the premises pending before any other government agency?....	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is the property the subject of any court action?.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Section F**

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.

**Ashley Haelen**  
 Signature of Applicant, Corporate Officer or Other Authorized Representative

**Ashley Haelen**  
 Print Name

**EVENS FRANCOIS**  
 Notary Public, State of New York  
 Qualified in New York County  
 Reg. No. 01FR4981729  
 My Commission Expires 05-20-2015  
 Authorized Representative

SWORN TO ME THIS **6<sup>th</sup>** DAY OF **September** 20**13**

**NOTARY PUBLIC**



Department of Buildings  
 280 Broadway  
 New York, New York 10007  
 (212) 566-5000 | TTY (212) 566-4769  
 nyc.gov/buildings

**X**  
 MANHATTAN (1)  
 280 BROADWAY 3<sup>RD</sup> FLOOR  
 New York, NY 10007

BRONX (2)  
 1932 ARTHUR AVENUE  
 BRONX, NY 10457

BROOKLYN (3)  
 210 JORALEMON STREET  
 BROOKLYN, NY 11201

QUEENS (4)  
 120-55 QUEENS BLVD.  
 QUEENS, NY 11424

STATEN ISLAND (5)  
 BORO HALL- ST. GEORGE  
 STATEN ISLAND, NY 10301

### Notice of Objections

RAMY ISSAC	Date:	July 25, 2013
ISSAC AND STERN ARCHITECTS, P.C.	Job Application #:	104368845-OLT-HAEA- full review of plans
25 WEST 31TH STREET	Application Type:	Alt- 1
NEW YORK NY 10001	Premises Address:	515 East 5th Street
	Zoning District:	R7-2 (New R7-b)
	Block:	401
	Lot:	56
	Doc:	1-4
NYC Department of Buildings Examiner: E. Korkhov		

Examiner's Signature:

To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the Plan Examiner's and your time, please make sure you are prepared to discuss and resolve these objections before arriving for your scheduled plan examination appointment.

Item No.	Section of Code	Objections	Date Resolved	Comments
1.	ZR 23-145	Indicate new zoning district R7B in documents, calculations, and plans. Max FAR is 3.0. Proposed enlargement exceeds maximum permitted.		
2.	ZR 23-692	Proposed enlargement exceeds maximum permitted height.		

**DENIED**

FOR APPEAL TO BOARD OF STANDARDS AND APPEALS

DATE AUG 19 2013

PER   
 Borough Commissioner

**JOSEPH BRUNO**  
 MANHATTAN CHIEF  
 PLAN EXAMINER

CITY OF NEW YORK  
BOARD OF STANDARDS AND APPEALS

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In the Matter of the Application of

515 East 5<sup>th</sup> Street (the "Site")

Premises:      Block: 401; Lots: 56  
                    Borough of Manhattan  
                    Zoning District: R7B

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STATEMENT IN SUPPORT OF APPLICATION

*PRELIMINARY STATEMENT*

This application is filed pursuant to Section 72-21 of the Zoning Resolution of the City of New York, as amended ("ZR"), and requests a variance of ZR §§23-145 (Maximum Floor Area Ratio) to legalize the enlargement of a five-story old law tenement to include a sixth story and one-third penthouse<sup>1</sup> (hereafter the "Building") that is located on the Site. The basis of the application is that the owner of the Building, relying in good faith upon lawfully issued permits completed construction, made substantial expenditures, and made irrevocable financial commitments such that preventing the issuance of a certificate of occupancy for the previously approved alteration by requiring strict compliance with the now-applicable zoning would give rise to practical difficulty and unnecessary hardship.

The hardship for this Site emanates from two distinct Board cases that involved two distinct legal issues, but shared one common component: reversals by the Board of staunchly defended and long-standing Department of Buildings ("DOB") policies.

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<sup>1</sup> The existing Building has a fully constructed penthouse. However, although the owner relied in good faith on DOB's interpretation of the Sliver Law we are not requesting to maintain the penthouse and are proposing to remove it based on the Board's ruling in BSA Cal. No. 217-09-A regarding the buildings at 514-516 East 6<sup>th</sup> Street.

The first Board decision, under Cal. No. 67-07-A, related to interpretations of Z.R. §23-692, also known as the “Sliver Law” (hereinafter this Board case is referred to as the “Sliver Appeal”). DOB, acting as they had in numerous other previous similar situations, allowed the construction of a one-third penthouse on the Building that exceeded the 60’ height limitation of the Sliver Law determining that such penthouse did not violate the height limitation. The DOB continually defended its position classifying a one-third penthouse as construction not covered by the Sliver Law. During the Sliver Appeal, the DOB continued to defend its position, only to ultimately be reversed by the Board. At the time of the Board decision, September 11, 2011, the construction of the penthouse had been completed.

The second Board decision, under Cal. No. 82-08-A, related to the jurisdiction of the DOB to grant waivers of the Multiple Dwelling Law ("MDL")(hereinafter this Board case is referred to as the “MDL Appeal”). As part of the enlargement alteration application, DOB had approved waivers of certain requirements under the MDL, a practice that the DOB had consistently undertaken for many years. During the MDL Appeal filed by objectants to the DOB approvals, DOB again staunchly defended the approvals given and again had its decision reversed by the Board on November 25, 2008. As with the Sliver Appeal, construction of the enlargement pursuant to the MDL waivers had been completed.

The Board in the MDL Appeal determined that the Department of Buildings ("DOB") lacked jurisdiction to grant waivers of the Multiple Dwelling Law ("MDL"), with said waivers being part of the underlying alteration applications, and that only it, the BSA, had such authority pursuant to MDL §310. This decision radically changed a practice that DOB had engaged in for decades with respect to hundreds of buildings in the City.

The consequence was that the owner had to, and has, filed an application pursuant to MDL §310 (hereafter the "310 Application") to obtain from the BSA that which DOB had previously approved and upon which the alteration permits were issued, which application is pending (BSA Cal. No. 245-12-A). Unfortunately, shortly after the decision in the MDL Appeal, the zoning designation of the Site was changed from R7-2 to R7B, which reduced the permitted FAR from 3.44 to 3.0. Thus, even if the Board grants the MDL 310 application, which was filed on August 9, 2012, the DOB has determined that the permits for the enlargement of the Building

cannot be reinstated unless they conform to the new zoning parameters. Coincident with the MDL application, a vested rights application (BSA Cal. No. 256-12-A) was filed to maintain the sixth floor enlargement. The vested rights application is scheduled for decision on September 10, 2013.

In the case of actions such as those of the DOB in interpreting the Sliver Law and MDL in ways retroactively invalidated, on the issue of whether fairness requires allowing an owner to complete its project, equity must be applied. The applicable law is consistent in that where an owner has substantially changed its position in good faith reliance on a building permit, the equitable relief of completing the project (regardless of the later determined validity / invalidity of the permits) must be extended to the property owner; recognizing that permits to perform construction are more than a mere license revocable at will.

Within the ZR, this mandate is reflected in the preamble to §72-21 which requires the Board to grant variances "so that the spirit of the law shall be observed, public safety secured, and substantial justice done." We respectfully submit that the facts of this case demand a finding that the owner were entitled to rely in good faith upon the permits issued to them, that such reliance results in unique conditions that give rise to practical difficulty and unnecessary hardship, and that the requested variance is consistent with, if not called for, by the general mandate of ZR §72-21.

#### *THE SITE AND THE BUILDING LOCATED THEREON*

The Site is located within the East Village neighborhood of Manhattan, within Community Board #3. As shown on the enclosed site plan, the Site is located on the northern side of East 5<sup>th</sup> Street between Avenue A and Avenue B, distant approximately 200 feet from the northeast corner of Avenue A. The Site is designated as 515 East 5<sup>th</sup> Street and identified as Block 401, Lot 56. The Site contains approximately 2,434 square feet of lot area, having a lot width of approximately 25 feet and a lot depth of 97 feet. At the time the DOB permit was issued and the Building was enlarged, the property was located in an R7-2 district. The East Village/Lower East Side Rezoning ("EV/LES Rezoning"), which was adopted on November 19, 2008, rezoned the Site to R7B.

The Site is improved with a multiple dwelling building (with ground floor community facility use). Prior to the completion of the recent enlargement at issue in this application, the building stood at five stories (49') in height, and contained a total of 7,000 square feet of floor area, comprised of 17 apartments.

The Building was enlarged in 2007 to include a sixth floor and rooftop penthouse. The added sixth floor contains a total of 1,400 square feet of floor area (as do the lower floors of the building). The rooftop penthouse comprised 419 square feet in floor area but, consistent with the BSA decision under Cal. No. 217-09-A with regard to the MDL 310 waivers, is now proposed to be eliminated. The enlargement<sup>2</sup> thus increases the total floor area of the Building by 1,675 square feet to 8,675 square feet. The total number of apartments is proposed to remain the same at 17.

#### *DOB REVIEW OF THE PROPOSED ENLARGEMENT*

The history of the application, permitting and construction of the enlargement at issue paints a clear and consistent picture of a property owner and the City working together to arrive at what all parties presumed to be the proper manner in which to enlarge the Building. Throughout their initial review of the project DOB required the owner to make numerous changes to their plans to ensure that the transformation of the dilapidated tenement building into viable housing would not only be performed safely, but would satisfy the intent of the MDL to the fullest extent practicable. Only after this intense process of review, were permits issued to perform the work. The owner then relied in good faith on such permits, which embodied all of DOB's determinations, and substantially changed their position by completing construction, making substantial expenditures, and committing to a course of irrevocable commitments.

Further, the same beneficial owner also obtained permits for similar work to buildings located at 514-516 East 6<sup>th</sup> Street, which further assured the owner that DOB issued the permits validly and not in error. The buildings at 514-516 East 6<sup>th</sup> Street were also granted permits based on plans that proposed a new 6<sup>th</sup> floor and penthouse and were also granted MDL waivers.

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<sup>2</sup> The enlargement, excluding the penthouse, consists of the 1,400 sqft 6<sup>th</sup> floor and a ground floor rear yard extension adding 275 sqft for a total of 1,675.

When the owner acquired the Building, their intention was to renovate and enlarge the rundown Building to create an improved and safe multiple dwelling. The enlargement and the rents to be derived from the new units would make the renovation of the entire building economically feasible. The renovation objective is complete; the Building has been completely rehabilitated including a sprinkler system throughout the Building's apartments and common spaces, at an estimated cost of approximately \$1,139,925.

Since its commencement, the project approval has been heavily scrutinized by the DOB. The formal process of review began with Alt 2 Application 104316063 filed on December 22, 2005 for alteration work; then Alt 1 Enlargement Application 104368845 filed on March 7, 2006; the Alt 2 Application 104397920 for the installation of heavy duty sidewalk bridge filed on April 6, 2006, an Alt 2 Application 104464946 for sprinkler heads and branch lines was filed on June 15, 2006. The Alt 1 enlargement permit had post approval amendments based on numerous audits in June, October, and November of 2006.

Throughout the remainder of 2006 and 2007, the proposed alterations underwent a grueling course of review at DOB. In response to audits and complaints the owner and its architect submitted amended plans, documentation, and any other items required by DOB to secure approval of the project. Notably, it was over the course of these meetings that DOB determined to approve the several fire safety related improvements that would substantially increase the Building's safety in response to several objections raised under the MDL. In short, every aspect of the enlargement and renovation of the Building underwent thorough review by DOB and its highest officials.

Prior to issuing the work permit for the vertical enlargement of this building, DOB had for decades granted MDL waivers and had also permitted penthouses to exceed the Sliver Law's 60' height limit if they were less than 30% of the roof below. DOB never questioned their authority to grant such waivers and penthouses and vigorously defended their decisions to permit the penthouse and MDL waivers.

The permit for the enlargement was issued on March 7, 2006, and work immediately commenced and construction was complete in 2007. Since then a series of related applications, and court actions (discussed below), have prevented the Certificate of Occupancy from being

issued. In light of the project's \$1,139,925 estimated construction cost, it is clear that by this time they could not undo such construction without incurring substantial economic injury.

### *PREVIOUS COURT ACTIONS AND BSA APPLICATIONS*

The Building was first the subject of BSA Cal No. 67-07-A, which considered whether the enlargement of the same was contrary to the Sliver Law. By resolution dated September 11, 2007 the Board reversed the DOB, ruling that the enlargement, as then proposed, did not comply with the Sliver Law. On October 11, 2007, the Board's resolution was appealed to NY Supreme Court. On May 20, 2008, the Supreme Court affirmed the Board's resolution on the Sliver Law. (In the Matter of 515 East 5<sup>th</sup> Street LLC v. NYC Board of Standards and Appeals, 2008 Motion Slip Op 31406 (NY Supreme Court, New York County)).

The question of whether DOB had the authority to vary the strict requirements of the MDL was presented to the Board in BSA Cal No. 82-08-A<sup>3</sup>. By resolution dated November 25, 2008 the Board granted the appeal(s), concluding that only the Board, and not DOB, had authority to waive the provisions of the MDL. On December 25, 2008, the Board's resolution was appealed to NY Supreme Court and the owner was directed to first exhaust its administrative remedies by appealing DOB objections to the BSA. (In the Matter of 515 East 5<sup>th</sup> St LLC, 514 East 6<sup>th</sup> St LLC, 516 East 6<sup>th</sup> St LLC v. NYC Board of Standards and Appeals, 2009 Slip Op 31652 (NY Supreme Court, New York County)),

The owner filed an MDL 310 Application with this Board pursuant to MDL §310 seeking several waivers or modifications of the MDL to get BSA approval in Cal No. 245-12-A. In short, the application sought the same waivers that DOB had previously granted in 2006 so that work according to the original permits could be completed. That application is pending.

In the time since the permits were issued, construction occurred, and the permit was subject to the numerous challenges, the area in which the Site is located (Manhattan's East Village neighborhood) has been rezoned. Specifically, as part of the East Village / Lower East Side Rezoning ("EV/LES Rezoning"; adopted November 19, 2008; see ULURP #C 080397

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<sup>3</sup> A companion application, 81-08-A, was heard concurrently as it dealt with analogous issues about the MDL in a similar building located at 514-516 East 6th Street.

ZMM and N 080398 ZRM) the Site has been rezoned from R7-2 to R7B, which reduces the permitted FAR of the Site from 3.44 to 3.0. As a result of this change, the enlarged building is now overbuilt with respect to floor area; the entire enlargement would need to be removed to create a zoning compliant building. (In essence, restoring the Building to its pre-2006 condition.) Meanwhile, the enlargement of the building was complete by the end of 2007—long before the November 19, 2008 adoption of the EV/LES Rezoning.

### *DOB OBJECTIONS*

On August 19, 2013 DOB issued the following objections:

1. ZR 23-145 – Indicate new zoning district in documents, calculations, and plans. Max FAR is 3.0. Proposed enlargement exceeds maximum permitted.
2. ZR 23-692 – Proposed enlargement exceeds maximum permitted height.

This application seeks a variance relating to the first objection to vary the maximum permitted FAR by permitting an increase in floor area. This application is not seeking a variance for the maximum permitted height because we are proposing to remove the penthouse and therefore the height will be 60 feet, which is permitted in an R7B zoning district.

### *DISCUSSION*

Pursuant to ZR §72-21, this application seeks a variance of the maximum floor area permitted under ZR§23-145 based on the unique conditions peculiar to the Site. These conditions, and the related practical difficulty and unnecessary hardship, result from a change in the zoning of the Site which occurred shortly after this Board determined (in the MDL Appeal) that DOB was not authorized to waive provisions of the MDL. Both the change in zoning, and the Board's decision, occurred after the owner relied in good faith upon DOB precedent, review and permit issuance to complete the proposed enlargement with no knowledge or expectation of either change. As discussed at length above, plans for the enlargement were reviewed on numerous occasions and ultimately approved by DOB and the Building was completed in 2007 in a manner that the owner and DOB believed was compliant.

While the Board determined that DOB's grant of waivers of the MDL was without authority and DOB's interpretation of the Sliver Law was in error, at the time that the

construction at issue was performed, reliance on the permits was reasonable. And, such reliance was undertaken in good faith by the owner.<sup>4</sup>

*FINDINGS PURSUANT TO 72-21 OF THE ZONING RESOLUTION*

**(A) There are unique conditions peculiar to this particular zoning lot, which create practical difficulties and cause unnecessary hardship in strict compliance with the provisions of the Zoning Resolution. These practical difficulties and unnecessary hardship are not due to circumstances created generally by the strict application of the Zoning Resolution to the neighborhood.**

Strict application of the bulk requirements of the newly adopted zoning to the Building results in practical difficulties and unnecessary hardship. The owner constructed the subject enlargement relying in good faith upon the actions and determinations of DOB. DOB reviewed plans for construction of the enlargement extensively, and there was no reason to believe at the time that these plans and the corresponding work permits would be found based upon improper actions of DOB; nor was the rezoning of the area known of or formally proposed at the time construction occurred. The owner and their representatives (in conjunction with DOB) followed long established procedures and interpretations to arrive at the approval of building plans. The DOB itself testified in the Sliver Law Appeal in 2007 and the MDL Appeal in 2008 in defense of their approval, and their long-standing processes.

The Building was also subject to another DOB error before the 2008 Applications and the ruling of DOB's MDL error. The Site was subject to BSA Cal. No. 67-07-A, which considered whether the enlargement of the same was contrary to the Sliver Law. The DOB strongly defended their interpretation of the Sliver Law throughout the proceeding. This shows further review of the plans and that this was not a building that was overlooked. Prior to issuing the work permit for the vertical enlargement of this building, DOB had for decades granted MDL waivers and had also permitted penthouses to exceed the Sliver Law's 60' height limit if they were less than 30% of the roof below. DOB's never questioned their authority to grant such

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<sup>4</sup> Since the Board's decision in the 2008 MDL Appeal (which itself resulted in a policy change at DOB) the owner has applied to this Board for relief under MDL §310.

waivers and penthouses and vigorously defended their decisions to permit the penthouse and MDL waivers.

Reliance on DOB's permit issuance for the enlargement is justified. DOB immediately defended their Sliver Law interpretation when it was first challenged on July 26, 2006 by Borough President Stringer, Council Member Mendez and Community Board 3. DOB defended the permit issuance in their response letter dated August 25, 2006 where they defended the MDL waivers and their Sliver Law interpretation. After further scrutiny of the Building's height, DOB issued another letter on February 15, 2007 stating "it has been the Department's practice to allow building height (which is not a defined term in the Zoning Resolution) of penthouses to exceed the width of the street for buildings covered by the Sliver Law in instances similar to the project in question, particularly in cases such as this where the penthouse is not visible from the street." This letter acted as the final determination by the DOB that the Tenants' Association of 515 East 5<sup>th</sup> Street (Tenants' Association) appealed to the BSA on March 16, 2007 (Cal. No. 67-07-A). DOB continued to defend both their interpretation of the Sliver Law, which was never challenged until this point, and their issuance of the permit throughout the BSA proceeding. DOB submitted supportive letters on July 10, 2007 and August 14, 2007 as well as appearing at the public hearings.<sup>5</sup> The BSA ultimately found DOB's interpretation of the Sliver Law in error.

Similarly, reliance on DOB's permit issuance for the MDL waivers is justified. We note that prior to issuing the work permit for the vertical enlargement, and after over a year of further scrutiny, DOB never questioned their own authority to grant such waivers. This is unsurprising given their consistent practice of granting such waivers to hundreds of buildings over the course of decades, and their vigorous defense of that authority when the permits were eventually challenged. Given the immense amount of time that was spent crafting alternative safety improvements to respond to the requirements of the MDL, the issue of DOB's authority would certainly have surfaced if there were any doubt as to whether the waivers could be granted; the ability to grant the waivers is simply too broad an issue to ignore. If anything, the absence of such uncertainty on DOB's part gave the owner no reason whatsoever to question the validity of their permits. In 2007, after the Building was subject to the scrutiny and review of DOB's

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<sup>5</sup> Submitted herewith is the July 26, 2006 letter from the community representatives, August 25, 2006 DOB letter, February 15, 2007 DOB letter, July 10, 2007 and August 14, 2007 BSA submission letters, and testimony from Senior Counsel Steven Kramer at the July 17, 2007 hearing of BSA Cal. No. 67-07-A.

interpretation of the Sliver Law, Council Member Mendez questioned DOB's MDL waivers. In a letter from Deputy Commissioner Fatma M. Amer dated February 1, 2008, the DOB defended their grant of MDL waivers and explained how the proposed fire safety upgrades maintain the spirit and intent of the MDL. As a follow up to Commissioner Amer's letter, on March 6, 2008 Borough Commissioner Santulli again defended the Department's permit issuance via written letter to Council Member Mendez. This letter served as the DOB's final determination regarding their grant of MDL waivers. The final determination was appealed by the tenants of 515 East 5<sup>th</sup> Street and 514-516 East 6<sup>th</sup> Street to the BSA challenging DOB's authority to grant MDL waivers (Cal No. 82-08-A).<sup>6</sup> DOB continued to defend their position throughout the BSA proceeding in their September 29, 2008 submission letter and by appearing at the public hearing on October 7, 2008. The Board found that the BSA, not DOB, had authority to waive the provisions of the MDL.<sup>7</sup> Thereafter, the Building's permit was revoked.

Relevant case law supports the notion that good faith reliance must be considered in determining whether the owner is entitled to a variance to allow the enlargement to be completed, notwithstanding the post-construction revocation of their building permits. Such good faith reliance gives rise to unique physical conditions on the Site that lead to practical difficulties and unnecessary hardship in complying with now-applicable zoning. Without the relief sought herein, the owner would be required to remove the enlargement, causing great financial hardship.

The controlling case is Pantelidis v. New York City Bd. of Standards and Appeals, 10 N.Y.3d 846, 889 N.E.2d 474, 859 N.Y.S.2d 597, 2008 N.Y. Slip Op. 03996 (2008), which involved the construction of a two-story glass extension at the rear of a property owner's townhouse. In that case, the Board denied a variance to the property owner after the DOB invalidated the permit after construction had been completed. The Court of Appeals affirmed the ruling of the lower court that the property owner had relied in good faith upon the permit issued by DOB, and that the Supreme Court "properly concluded as a matter of law that petitioner had satisfied the criteria set forth in the Zoning Resolution and that the Board of Standards and Appeals should issue the requested variance." As in Pantelidis, the owner in this case relied in

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<sup>6</sup> The same appeal for 514-516 East 6<sup>th</sup> Street was filed simultaneously under BSA Cal. No. 81-08-A.

<sup>7</sup> Submitted herewith is the letter from Deputy Commissioner Fatma M. Amer P.E. dated February 1, 2008, letter from Borough Commissioner Christopher Santulli P.E. dated March 6, 2008, DOB's BSA submission letter from September 29, 2008, and the transcript from October 7, 2008 public hearing.

good faith upon the issuance of a permit by DOB, and this good faith reliance resulted in unique conditions that create practical difficulties and unnecessary hardship in complying with the bulk requirements of the underlying zoning district.

While the Pantelidis case involved a high level of approval and scrutiny by DOB, it pales by comparison to the frequency and intensity of scrutiny and review at the highest level of the DOB in the instant matter. Because of this thorough review, the Owner was confident that the project had been vetted, and were all the more entitled to rely on their permits in good faith.

The Board's determination that the MDL could not be waived by DOB, and DOB's reliance upon that decision in revoking the permit for the enlargement, was not made until after construction was complete, after substantial expenditures had been made, and after the owner had committed themselves to an irrevocable course. However, while the Board's determination in the Pantelidis appeal (which concluded that the two-story extension was not properly termed a "greenhouse") was a singular determination, the Board's decision in the MDL Appeal application marked a sweeping change in the scope of approvals available from DOB. Thus, while the owner or architect in the Pantelidis case should arguably have been aware the extension did not satisfy the definition of a greenhouse, the owner in this case could not, and would not, have suspected that the consistent practice and policy of waiving MDL provisions at the DOB level was improper and would be overturned. To levy this burden on the owner would be absurd. In sum, if good faith reliance existed in Pantelidis, it undoubtedly exists in this case.

In a very recent case, Woods v. Srinivasan, NY Slip Op 04982 (App. Division First Dept July 2013) the Appellate Division found that the petitioner erected a building in good faith reliance upon the permit issued by DOB and overruled the Board's determination denying petitioner's variance application on the ground that he did not rely, in good faith, on DOB's permit. In the Woods case, the owner erected the building on his property after relying on the permits issued by DOB. The owner's architect believed that DOB's interpretation of ZR §23-45 permitted the building to be constructed along the property's side lot line. The plan examiner fully reviewed the plans for compliance with zoning regulations and approved the plans. The construction permits were then issued and the owner erected his building in reliance upon the approved plans and permits. Thereafter, DOB changed its interpretation of the ZR §23-45 and issued a stop work order. The Court found that "DOB, not petitioner was in the best position to

avoid the erroneous issuance of the permits.” The Court annulled the BSA’s determination that the owner did not rely in good faith on DOB’s permit.

Similar to the Woods case, here DOB erred in its interpretation of the Zoning Resolution and granted a permit after “DOB’s plan examiner fully reviewed the plans.” Here, the plans were not only fully reviewed by the plan examiner but they were reviewed by the Deputy Commissioner and the Borough Commissioner. Further, DOB not the Owner was in the best position to avoid the interpretive error because DOB had been interpreting the Sliver Law and the MDL for decades in the manner they issued the subject permit. The Owner was in no position to avoid the error when there was no reason to believe that after the enlargement was fully constructed there would be a change in interpretation resulting in revocation of the permit. Therefore, the Board should find that the owner relied in good faith on the plans that were “fully reviewed” and it was DOB’s interpretive error that caused the permit to be revoked.

Completing construction according to the newly adopted R7B zoning would require nothing less than removing the entire 6th floor of the Building (in addition to removing the penthouse, as called for by the Board's resolution in the MDL waiver application for 514-516 East 6<sup>th</sup> Street Cal. No. 217-09-A). In essence, the Owner would be required to restore the Building to their pre-existing five-story size. This after having spent over a million dollars on improvements, predicated upon the income to be derived from the enlarged Building. Therefore, the owner’s good faith reliance on their building permits lead to unique physical conditions that give rise to practical difficulty and unnecessary hardship in completing the construction in strict conformance with the applicable zoning.

**(B)Due to the physical condition of the subject zoning lot there is no reasonable possibility that the development of the lot in strict conformity with the provisions of the Zoning Resolution will bring the owner a reasonable return.**

As explained in the enclosed financial analysis prepared by Freeman/Frazier Associates (the "Freeman Report") an As-of-Right development would result in a loss of \$1,274,000. In contrast, allowing for the completion of the previously permitted 6<sup>th</sup> floor enlargement would result in a substantially smaller loss of \$122,000.

The As-of-Right development would allow for a building with a maximum FAR of 3.0. Therefore, the currently constructed sixth floor and penthouse would have to be removed. The

As-of- Right development as shown in the attached plan set would be the five-story, pre-2006 building with the ground floor rear-yard enlargement of 275 square feet, which yields an FAR of 2.9. The value of the capitalized net operating income of the As-of-Right development is \$4,100,000, while the construction and developmental costs of the As-of-Right development is \$5,374,000, exceeding the capitalized income. This As-of-Right development contains significantly less value than the total development cost and would not be considered feasible.

The proposed development assumes the penthouse will be removed and the 6th floor will remain. The proposed development has capitalized value of \$4,829,000 and a development cost of \$4,921,000. In sum, the proposed development, believed to be the minimum variance that can be granted, results in a loss of \$122,000.

If required to strictly comply with the now applicable R7B zoning, the penthouse and 6th floor of the Building must be removed. This development would result in a loss of \$1,247,000. The sizeable discrepancy in return is due to the loss of income generating floor area at the sixth floor, and no increase to the number of dwelling units, coupled with the sheer cost of removing the entire 6th floor and penthouse of the Building—estimated to be \$452,073. While still at a loss it is clear from the economic analysis that the proposed development is the minimum variance we can request.

**(C) The variance, if granted, will not alter the essential character of the neighborhood or district in which it is located; and will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.**

The requested variance will permit the constructed enlargement, minus the penthouse, to remain, which is in character with the surrounding neighborhood. The proposed condition of the Building, six-stories in height, is in character with the size of tenement buildings on the subject block and in the surrounding area. Much of the surrounding area consists of similar attached multiple dwellings, mostly constructed around the turn of the 20th century, many of which feature retail use or community facility use at the ground floor. Moreover, the proposed conditions are within the remaining bulk requirements (except for floor area ratio) of the R7B district.

The subject block, East 5<sup>th</sup> Street between Avenues A and B is lined with attached tenement buildings ranging in height from five to six stories.<sup>8</sup> The composition of buildings and uses on the subject block is reflected on the similar blocks to the north and south of the Site within the subject R7B district; East 7<sup>th</sup>, 6<sup>th</sup> and 4<sup>th</sup> Streets between Avenues A and B. The height of the enlarged Building is also typical of the R7B district in which they are located (with its maximum building height of 75 feet). The overall character of the district was aptly summarized by the CPC in the background of its EV/LES rezoning report (C 080397(A) ZMM, dated October 7, 2008): “The widely prevalent four- to seven-story building heights, the wide range of active, ground floor commercial uses and the area’s access to subway and bus service all foster the vibrant street life that has made these neighborhoods such desirable destinations for both visitors and residents.”

The modest waiver of permitted FAR requested by this application—3.56 where 3.0 is permitted—would not affect the character of the district. The district is replete with noncompliant buildings with greater than 3.0 FAR.

Moreover, the enlarged Building is not of the tower-in-plaza class of new construction, developed under the prior R7-2 zoning which the CPC specifically sought to prevent with the EV/LES rezoning. These new developments were described as, “located on mid-block sites as well as sites fronting on major streets, far exceed the heights of existing buildings in the area and disrupt the otherwise consistent street wall character exemplary of these neighborhoods.” By contrast, the Building’s height is typical of the district, and it maintains the continuous streetwall of the block front.

Accordingly, the requested waivers, if granted, will not alter the essential character of the neighborhood or district in which it is located; nor will it substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

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<sup>8</sup> Submitted herewith are photographs of the Site and the block and a 400’ radius map provided by Urban Cartographics, which exhibit that the proposed Site conforms with the surrounding area.

**(D) The practical difficulties and unnecessary hardship affecting the Premises have not been created by the owner of the Premises or the predecessor in title.**

The hardship at issue results from the strict application of the newly adopted R7B zoning of the Site. The Building was completely enlarged and designed under the prior R7-2 zoning, and constructed in good faith reliance on DOB permits believed to be valid and issued under the prior zoning. The current conditions are inherent to the Site and were not caused by the owner or a predecessor in title. Rather, they are the direct result of DOB actions that were relied upon in good faith by the owner (as discussed in full, above).

**(E) Within the intent of the Zoning Resolution, the instant request is the minimum variance necessary to afford relief.**

The requested variance of the FAR is the minimum necessary to afford the owner relief. Though the requested variance would not allow the Owner to recoup its investment in the Building, which have been substantially upgraded to the benefit of all of its residents, it would mitigate the substantial loss that would result absent relief. The subject enlargement is otherwise compliant with all other bulk requirements of the underlying zoning district.

*CONCLUSION*

In consideration of the good faith reliance on lawfully issued permits, believed to be valid, by comparison to the practical difficulty and unnecessary hardship that arise in strictly complying with the new zoning of the Site, and the extremely modest extent of the requested variance, the application meets the required findings of ZR §72-21 and would ensure the spirit of the law is observed, public safety secured, and substantial justice is done. We therefore respectfully request that the Board grant the requested relief.

Respectfully submitted,



Marvin B. Mitzner

**ECONOMIC ANALYSIS REPORT**

**515 EAST FIFTH STREET**

**NEW YORK, NEW YORK**

515 E. 5<sup>th</sup> Street LLC  
September 4, 2013

Freeman/Frazier & Associates, Inc.  
132 Nassau Street, Suite 1220  
New York, New York 10038

## **1.00 Scope of Report**

The purpose of this Report is to analyze the feasibility of two alternatives for the development of a site located at 515 East 5<sup>th</sup> Street, New York, New York. The alternatives considered include: 1) As of Right Development (“As of Right Development”); 2) the Proposed Development (“Proposed Development”). The Proposed Development option requires approval from the Board of Standards and Appeals.

The report includes detailed financial schedules that compare the ability of each development alternative to provide an acceptable return on the investment required to facilitate development. A summary of the economic characteristics of the development alternatives, including projected cash flows, and development costs, may be found on Schedules A and B.

Recent, verifiable community facility rents were reviewed to establish the potential space market in the vicinity of the subject property. A schedule of this review may be found as Schedule C.

Recent, verifiable apartment rents were reviewed to establish the market in the vicinity of the subject property. A schedule of this review may be found as Schedule D.

Financial feasibility, the ability to provide the developer and investor with the return of, and a reasonable return on capital invested, was analyzed for each alternative using actual and estimated costs, for acquisition, hard and soft construction costs and building operating expenses. These assumptions are detailed in subsequent sections of this Report.

### **1.10 Description of Property and Project Area**

The subject property is located at 515 East 5<sup>th</sup> Street (Block 401, Lot 56) with approximately 25 feet of frontage on East 5<sup>th</sup> Street and approximately 97 feet deep. It is located midblock between Avenue A and B in the East Village neighborhood of Manhattan. The site has an area of approximately 2,434 sq.ft. There is currently a six-story plus penthouse building on the site.

The site is located in the East Village section of Manhattan. The neighborhood is composed of a mix of tenements, rental, co-op and condominium apartment buildings, commercial buildings and a variety of ground floor retail and commercial uses along Avenues A and B. There is a mix of new and older construction.

The immediate vicinity of the site along East 5<sup>th</sup> Street is apartment buildings and ground floor retail uses.

### 1.20 Zoning Regulations

The present zoning for the property is R7B.

The current Floor Area Ratio (F.A.R.) permitted by Zoning for this district is 3.0 for residential. The maximum developable square footage permitted by R7B regulations for this site is 3.0 x 2,434 sq. ft. (total site area), which yields an allowable zoning floor area of 7,302 sq.ft.

Under the Proposed Development, the gross building area, not including the cellar would be 8,400 sq.ft. The proposed development requires approval by the Board of Standards and Appeals.

### 1.30 Property Ownership

515 East 5<sup>th</sup> Street LLC owns the subject property.

The property is tentatively assessed in the 2013/14-tax year as follows:

	<u>Land</u>	<u>Total</u>
Target	\$58,950	\$300,150
Transitional	\$58,950	\$416,700

At a Class 2 tax rate of 13.181%, taxes on the property are \$39,563 as per the NYC Department of Finance website.

The applicant in this BSA case is Law Office of Marvin Mitzner LLC for 515 E. 5th Street LLC.

### 1.40 Development Alternatives

The alternatives analyzed include the As of Right Development and Proposed Development.

#### 1.41 As of Right Development

The As of Right Development would consist of retroactively modifying the existing six-story plus penthouse building into a five-story building with community facility on the ground floor and residential on floors ground through five.

The gross built area of the cellar and ground floor community facility area would be 2,226 sq.ft.

The gross built area of the residential area would be 5,906 sq.ft. There would be a ground floor lobby and a total of 13 apartments. There would be 1 two bedroom apartments, 3 one bedroom apartments, and 9 studio apartments.

The total gross built area would be 7,275 sq.ft. The zoning floor area would be 7,275 sq.ft.

This development program is referred to as the "As of Right Development".

#### 1.42 Proposed Development

The Proposed Development would consist of retroactively modifying the existing six-story plus penthouse building into a six-story building. The Proposed Development would have community facility on the ground floor and residential apartments on floors ground through six. There would be a roof deck accessible only to the residents of the sixth floor.

The gross built area of the community facility on the ground floor would be 2,226 sq.ft.

The gross built area of the residential portion would be 7,306 sq.ft. There would be a total of 17 apartments. There would be 1 two bedroom apartments, 3 one bedroom apartments and 13 studio apartments.

The gross built area of the Proposed Development would be 8,675 sq.ft. The zoning floor area would be 8,675 sq.ft.

This development program would require a Variance from the Board of Standards and Appeals and is referred to as the "Proposed Development".

## **2.00 Methodology**

### 2.10 Value of the Property As Is

In this instance a comparable sales approach is not appropriate. There are few if any existing buildings with similar physical, occupancy, and income characteristics. It would be impossible to determine comparable value based on sales approach. Therefore, an alternative appropriate methodology for value determination needs to be applied. The “residual value approach” is a suitable appraisal method for this analysis. The residual value of a property is determined by taking the difference between the capitalized value of the net operating income and the total development costs associated with the renovation. The remaining amount is the residual value of the property as is.

At the time the subject property was purchased the permitted zoning floor area allowed for an anticipated addition of the sixth floor and penthouse for a total of 16 residential units. Therefore, the value of the building was estimated based on the allowable as of right development utilizing the potential income of the renovated and expanded building.

Using the assumptions as described herein, and as shown in Schedule A1, the capitalized value of the net operating income for this alternative, using a 7.00% capitalization rate, is \$4,586,000.

As shown in the attached Schedule A1, the total development cost, including hard construction costs and soft costs, for the Original Development is estimated to be \$1,858,000.

The difference between the value of the capitalized net operating income of \$4,586,000 and the development cost of \$1,858,000 is \$2,728,000. This remaining amount is the residual value of the property as is. This amount is approximately \$309/sq.ft. of built area.

## **3.00 Economic Assumptions**

An economic analysis of the two development alternatives was undertaken. As part of this analysis, a review of comparable recent rentals was performed. Schedule A2 of this Report identifies and compares the ability of each alternative to provide acceptable income to justify the capital investments required.

### 3.10 Development Cost Assumptions

Development Costs consist of Acquisition Costs, as described in Section 2.00, above; Holding and Preparation Costs; Hard Construction Costs for specific improvements; and Soft Costs including construction loan interest, professional and other fees, property and other taxes and miscellaneous development related expenses incurred during the construction period.

Development related soft costs for the alternatives were estimated based on typical expenses incurred for similar types of development.

The architectural firm, Leder-Luis has provided plans for each development alternative and construction cost estimates have been provided by McQuilkin and Associates. The construction cost estimates are attached as Exhibit A to this Report.

The estimated hard construction cost for the As of Right Development is \$1,591,998. This consists of the original cost of \$1,139,925 (which included the cost to construct the sixth floor and penthouse plus costs for code compliance and building improvements) plus the cost of \$329,930 for the sixth floor plus the cost of \$122,143 to remove the penthouse. The construction cost includes core and shell, electrical, and mechanical systems. Apartment interiors include kitchen appliances, bathrooms and mid-grade finishes.

The estimated hard construction cost for the Proposed Development is \$1,262,068. This consists of the original cost of \$1,139,925 (which included the cost to construct the sixth floor and penthouse plus costs for code compliance and building improvements) plus the cost of \$122,143 for removal of the penthouse. The construction cost includes core and shell, electrical, and mechanical systems. Apartment interiors include kitchen appliances, bathrooms and mid-grade finishes.

Based on our review, the cost estimates provided by McQuilkin and Associates can be considered within the reasonable range for comparable construction and finishes for this type of project, taking into account the cost premiums resulting from the property's unique physical conditions.

### 3.20 Financing Assumptions

Typically, construction loan interest rates are indexed to the Prime Rate, at a variable index related to the type of project and its inherent risks. As of the Report's date, the Prime Rate was an unusually low 3.25%, which cannot be reasonably assumed to remain in effect during the development's projected timeframe. Therefore, 5.25% was used as the construction loan rate for the analysis.

### 3.30 Real Estate Tax Assumptions

Current taxes were assumed as a base for the construction and rent up periods for the development alternatives.

### 3.40 Expense Assumptions

Operating characteristics for similar projects were reviewed. Expenses for the residential units are consistent with expenses for similar properties.

### 3.50 Community Facility Rents

Based on our market review there is a good market for retail space in the East village, especially along the Avenues. The retail on the side streets is not as consistent. The area immediately around the site has limited community facility activity.

The rents adjusted for location and other factors, ranged from \$32 to \$42/sq.ft. with an average of \$36/sq.ft. as found in Schedule C. Therefore \$35/sq.ft. was used for the ground floor community facility rents and \$17.50/sq.ft. was used for the cellar community facility rents.

### 3.60 Apartment Rents

A review of apartments in the East Village neighborhood of Manhattan were reviewed. Comparable apartments have been used, and appropriate adjustments made to account for their location and other pertinent factors. In estimating the potential rental prices for the development alternatives, adjustments to rental rates were made for time, building location and location of unit within the building, size and level of finish.

Attached as Schedule D, are comparable recent apartment rents, within the East village market. Appropriate adjustments were made to the comparable apartment rents to account for their location and other pertinent factors. The comparables for studio apartments range in the \$1,995/month to \$2,921/month with an average of \$2,604; the comparables for one bedroom apartments range in the \$2,993/month to \$5,035/month with an average of \$3,634; and the comparables for two bedroom apartments range in the \$3,392/month to \$4,085/month with an average of \$3,673.

Pricing for each unit in the development alternatives was estimated based on the adjusted comparable rentals contained in Schedule D. The attached Schedules D1, D2 and D3 identify these estimated rental prices.

## **4.00 Consideration**

### 4.10 Property Acquisition

Based on our market review, the estimated price is within the observed market range, taking into account the special features and conditions regarding the subject property as noted in Section 2.10. Economic feasibility issues regarding the project are not, therefore, a result of the estimated value of the property.

### 4.20 Unique Site Conditions

The unique character of the existing building has a significant impact on the economic feasibility of complying development for several reasons.

There is currently a non-complying building on the site, which was acquired based on the assumed compliance with the zoning at the time and built with permits that the owner received in good faith reliance on the New York City Department of Buildings review and approvals.

In order to comply with current regulations, the building would require significant costly changes, which negatively impact economic feasibility. There is an extended time period to the retroactively modify the building, which also results in additional costs.

It is estimated that the construction hard cost to create a complying building from the existing building is approximately \$452,073, as seen in Exhibit C prepared by McQuilkin Associates. Development soft costs related to the retrofit of the existing building to create a complying building are also significant. There is an additional soft cost premium in the amount of approximately \$228,000 resulting from the uniqueness of the site. The unique site related total cost premium, which is the sum of the construction hard cost premium and the soft cost premium therefore, would be approximately \$680,073.

At the time the subject property was acquired and permitted, it was assumed that it would be allowed to build and occupy the permitted zoning floor area for an anticipated addition of the sixth floor and penthouse for a total of 16 residential units. These units have a net operating income of approximately \$321,000. In the As of Right Development there are 13 residential units with a net operating income of approximately \$287,000. The difference in income is approximately \$34,000. The capitalized value of the net operating income of the difference in income is approximately \$486,000.

#### 4.30 Feasibility Analysis

We have used the capitalization of income method to determine the value of the development alternatives. This method capitalizes the net operating income, which is the rent less commission and expenses. For purposes of the analyses contained in this Report, a capitalization rate of 7.00% has been utilized for the development alternatives. This capitalization rate used is based on a survey of lenders and investors taken by RealtyRates.com in the 2<sup>nd</sup> quarter of 2013, and includes both lender and investor expectations, attached as Exhibit B.

The feasibility of the development is determined by comparing the value created by capitalizing the net operating income with the cost of development, including land acquisition, holding and preparation costs, hard construction cost and development related soft costs. When the capitalized value is approximately equal to the project cost then the project is feasible. When the capitalized value is significantly less than the total development cost, it is not a feasible project.

A project value which is equal to or not significantly more or less than the total development cost would meet the minimum acceptable return on investment generally acceptable as the minimum variance standard of the Board of Standards and Appeals.

#### 4.40 As of Right Development

As shown in the attached Schedule A, the capitalized value determined by the analysis for the As of Right Development is \$4,100,000.

As shown in the attached Schedule A, the total development cost, including estimated property value, hard construction costs and soft costs, for the As of Right Development is estimated to be \$5,374,000.

As shown in the attached Schedule A, the difference between the value of the capitalized net operating income of \$4,100,000 and the development cost of \$5,374,000 is (\$1,274,000). The As of Right Development contains significantly less value than the total development cost and would not be considered feasible.

#### 4.50 Proposed Development

As shown in the attached Schedule A, the capitalized value determined by the analysis for the Proposed Development is \$4,829,000.

As shown in the attached Schedule A, the total development cost, including estimated property value, hard construction costs and soft costs, for the Proposed Development is estimated to be \$4,951,000.

As shown in the attached Schedule A, the difference between the value of the capitalized net operating income of \$4,829,000 and the development cost of \$4,951,000 is (\$122,000). This capital loss is a result of the additional costs necessary to create the Proposed Development project from the previously constructed development and the lesser income from the reduced size of project.

## **5.00 Conclusion**

The reduced income in the Proposed Development yields a lower value than the As of Right Development. The Proposed Development also has a higher total development cost. The resulting capital loss is somewhat below the typical threshold of economic feasibility. Taking into account the current investment in the property and limited alternative development opportunities, this development would be undertaken since it is an improvement when compared to the significant capital loss of the As of Right Development.

## **6.00 Professional Qualifications**

A statement of my professional qualifications is attached. Please note that I am independent of the subject property's owner and have no legal or financial interest in the subject property.

**SCHEDULE A1: ACQUISITION COST**

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BUILDING AREA (SQ.FT.)

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BUILT RESIDENTIAL AREA	7,725
COMMUNITY FACILITY AREA	2,226
TOTAL AREA	9,094

CAPITAL INVESTMENT SUMMARY

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ACQUISITION COST	\$2,728,000
HOLDING & PREP. COSTS	\$0
BASE CONSTRUCTION COSTS	\$1,029,000
SOFT CONSTRUCTION COSTS	\$829,000
	-----
	\$1,858,000

=====

INCOME AND EXPENSES

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RESIDENTIAL	\$562,000
COMMUNITY FACILITY	\$63,000
	-----
GROSS INCOME	\$625,000
(less)VACANCY (@ 10% )	(\$34,000)
	-----
EFFECTIVE INCOME	\$591,000
(less)M&O EXPENSES	(\$150,000)
(less)WATER & SEWER	(\$5,000)
(less)R.E. TAXES	(\$115,000)
	-----
NET OPERATING INCOME	\$321,000
CAPITALIZED VALUE OF NOI @ 7.00%	\$4,586,000

**FEASIBILITY ANALYSIS**

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PROJECT VALUE @ CAP RATE = 7.00%	\$4,586,000
PROJECT DEVELOPMENT COST (SCHEDULE B2)	\$1,858,000
	-----
RESIDUAL PROPERTY VALUE	\$2,728,000

NOTE : ALL \$ FIGURES ROUNDED TO NEAREST THOUSAND

**SCHEDULE A2: ANALYSIS SUMMARY**

	AS OF RIGHT RESIDENTIAL	PROPOSED RESIDENTIAL
BUILDING AREA (SQ.FT.)		
BUILT RESIDENTIAL AREA	5,906	7,306
COMMUNITY FACILITY	1,369	1,369
TOTAL AREA	7,275	8,675

**CAPITAL INVESTMENT SUMMARY**

ACQUISITION COST	\$2,728,000	\$2,728,000
HOLDING & PREP. COSTS	\$0	\$0
BASE CONSTRUCTION COSTS	\$1,592,000	\$1,262,000
SOFT CONSTRUCTION COSTS	\$1,054,000	\$961,000
	\$5,374,000	\$4,951,000

**INCOME AND EXPENSES**

RESIDENTIAL	\$452,000	\$583,000
COMMUNITY FACILITY	\$63,000	\$63,000
GROSS INCOME	\$515,000	\$646,000
(less)VACANCY	(\$15,000)	(\$35,000)
EFFECTIVE INCOME	\$500,000	\$611,000
(less)M&O EXPENSES	(\$115,000)	(\$149,000)
(less)WATER & SEWER	(\$4,000)	(\$5,000)
(less)R.E. TAXES	(\$94,000)	(\$119,000)
NET OPERATING INCOME	\$287,000	\$338,000

**FEASIBILITY ANALYSIS**

PROJECT VALUE @ CAP RATE =	7.00%	\$4,100,000	\$4,829,000
PROJECT DEVELOPMENT COST (SCHEDULE B2)		\$5,374,000	\$4,951,000
PROJECT VALUE (less) PROJECT DEVELOPMENT COST		(\$1,274,000)	(\$122,000)

NOTE : ALL \$ FIGURES ROUNDED TO NEAREST THOUSAND

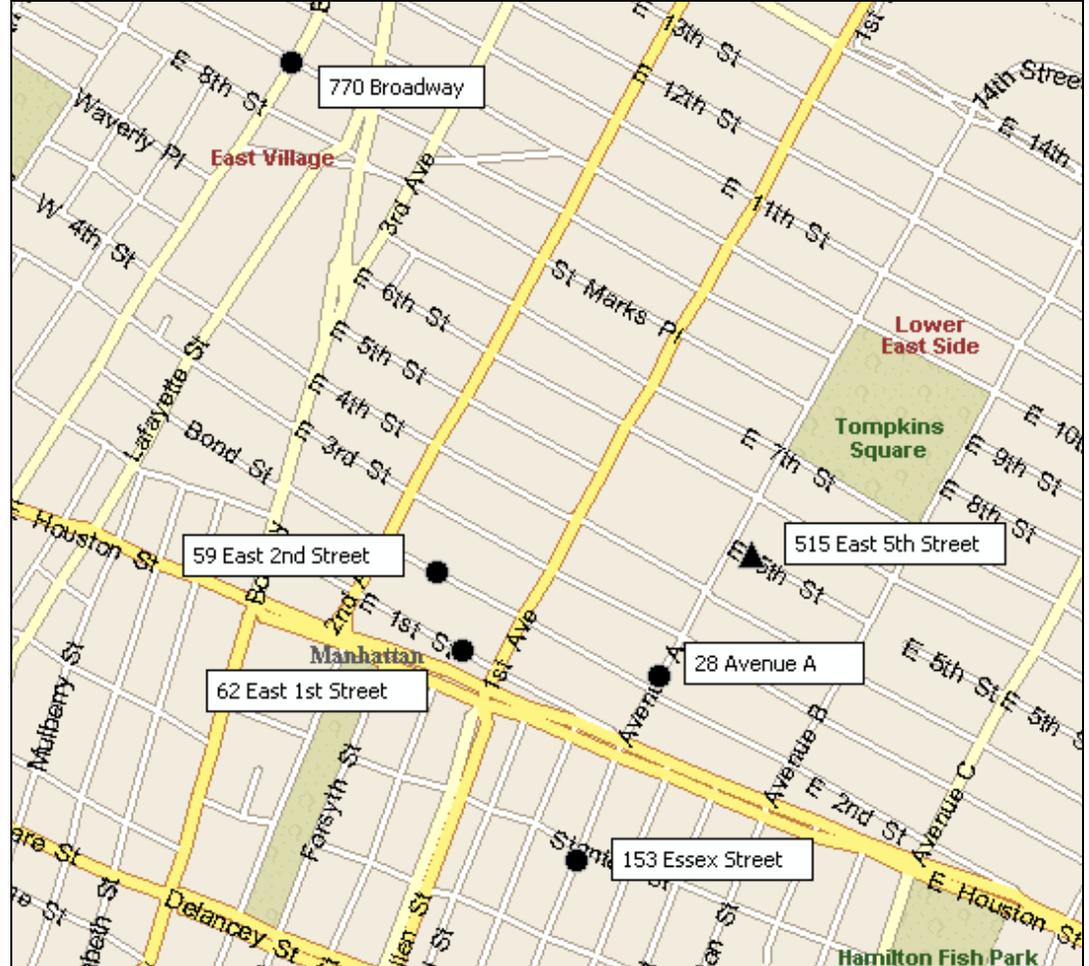
**SCHEDULE B : DEVELOPMENT COSTS**

		AS OF RIGHT RESIDENTIAL	PROPOSED RESIDENTIAL
<b>DEVELOPMENT COST SUMMARY</b>			
ACQUISITION COSTS		\$2,728,000	\$2,728,000
HOLDING & PREP. COSTS:		\$0	\$0
BASE CONSTRUCTION COSTS		\$1,592,000	\$1,262,000
EST.SOFT COSTS		\$1,054,000	\$961,000
<b>EST. TOTAL DEV.COSTS</b>		<b>\$5,374,000</b>	<b>\$4,951,000</b>
<b>ACQUISITION COSTS :</b>			
Estimated Land Value		\$2,728,000	\$2,728,000
<b>TOTAL LAND VALUE</b>		<b>\$2,728,000</b>	<b>\$2,728,000</b>
<b>HOLDING &amp; PREP. COSTS:</b>		<b>\$0</b>	<b>\$0</b>
<b>BASE CONSTRUCTION COSTS :</b>		<b>\$1,592,000</b>	<b>\$1,262,000</b>
<b>EST.CONST.LOAN AMOUNT :</b>		<b>\$4,031,000</b>	<b>\$3,713,000</b>
<b>EST.CONST.PERIOD(MOS) :</b>		<b>24</b>	<b>18</b>
<b>EST. SOFT COSTS :</b>			
Builder's Fee/Developer's Profit	2.00%	\$107,000	\$99,000
Archit.& Engin. Fees	6.00%	\$110,000	\$76,000
Bank Inspect.Engin.		\$26,000	\$21,000
Inspections, Borings & Surveys			
Laboratory Fees	LS	\$5,000	\$5,000
Soil Investigation	LS	\$10,000	\$10,000
Preliminary Surveys	LS	\$5,000	\$5,000
Ongoing Surveys	LS	\$18,000	\$15,000
Environmental Surveys/Reports	LS	\$2,000	\$2,000
Controlled Inspection Fees	LS	\$75,000	\$45,000
Legal Fees			
Dev.Legal Fees		\$25,000	\$80,000
Con.Lender Legal		\$8,000	\$7,000
End Loan Legal		\$3,000	\$3,000
Permits & Approvals			
D.O.B. Fees	25.53%	\$2,000	\$2,000
Other		\$5,000	\$5,000
Accounting Fees		\$5,000	\$5,000
Appraisal Fees		\$8,000	\$8,000
Marketing/Pre-Opening Expenses			
Rental Commissions	25.00%	\$16,000	\$16,000
Financing and Other Charges			
Con.Loan Int. @ Loan Rate =	5.25%	\$212,000	\$146,000
Rent-up Loan Int. @ Loan Rate =	5.25%	\$37,000	\$44,000
Con.Lender Fees	1.00%	\$40,000	\$37,000
End Loan Fee	1.00%	\$28,000	\$33,000
Construction Real Estate Tax		\$88,000	\$88,000
Rent-up Real Estate Tax		\$24,000	\$30,000
Rent-up Operating Expenses		\$29,000	\$37,000
Title Insurance	0.33%	\$18,000	\$16,000
Mtge.Rec.Tax	2.75%	\$111,000	\$102,000
Construction Insurance	1.00%	\$32,000	\$19,000
Water and Sewer		\$5,000	\$5,000
Other		\$0	\$0
<b>TOTAL EST.SOFT COSTS</b>		<b>\$1,054,000</b>	<b>\$961,000</b>

NOTE : ALL \$ FIGURES ROUNDED TO NEAREST THOUSAND



Schedule C: Comparable Community Facility Rents



Schedule C: Comparable Community Facility Rents

1. 59 East 2<sup>nd</sup> Street

This is a 2,500 sq.ft. community facility for rent in the east village neighborhood of Manhattan. Located between First and Second Avenues it is approximately four blocks away from the subject property. A -5% adjustment was made for the superior location, and a -5% adjustment was made for the large size. An additional -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time or zoning.

2. 153 Essex Street

This is a 2,150 sq.ft. community facility for rent in the Lower East Side neighborhood of Manhattan. Located between Rivington and Stanton Streets, it is approximately five blocks away from the subject property. A -5% adjustment was made for the superior location and a -5% adjustment was made for the large size. An additional -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time or zoning.

3. 770 Broadway

This is an 800 sq.ft. community facility for rent in the Noho neighborhood of Manhattan. Located between East 8<sup>th</sup> and East 9<sup>th</sup> Streets, it is approximately three blocks away from the subject property. A -5% adjustment was made for the superior location and a -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

4. 28-30 Avenue A

This is a 5,280 sq.ft. community facility for rent in the East Village neighborhood of Manhattan. Located between East 2<sup>nd</sup> and East 3<sup>rd</sup> Street, it is approximately three blocks from the subject property. A -5% adjustment was made for the superior location and a -5% adjustment was made for the large size. An additional -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time or zoning.

Schedule C: Comparable Retail Rents

5. 62 East 1<sup>st</sup> Street

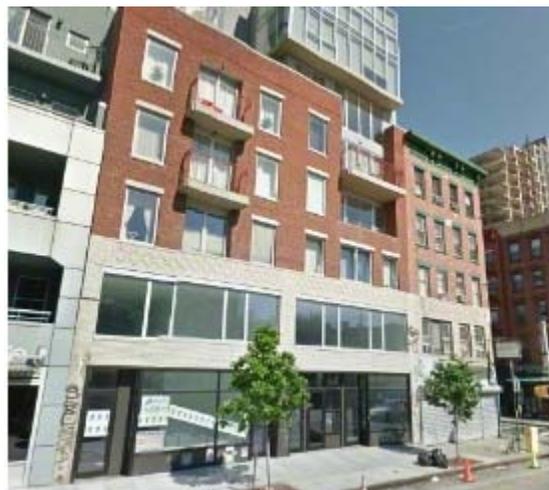
This is a 1,464 sq.ft. community facility for rent in the East Vilalge neighborhood of Manhattan. Located between 1<sup>st</sup> and 2<sup>nd</sup> Avenues, it is approximately six blocks from the subject property. A -5% adjustment was made for the superior location and a -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, size or zoning.

Schedule C: Comparable Community Facility Rents

1. 59 East 2<sup>nd</sup> Street



2. 153 Essex Street



Schedule C: Comparable Community Facility Rents

3. 770 Broadway



4. 28-30 Avenue A



Schedule C: Comparable Community Facility Rents

5. 62 East 1<sup>st</sup> Street





Freeman/Frazier & Associates, Inc.

Date : September 4, 2013

Property : 515 East 5th Street

Block : 401 Lot 56

Total Land Area : 2,434 sq.ft.

Zone : R7B

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Schedule D1: As of Right Apartment Pricing

<u>Floor</u>	<u>Unit</u>	<u>\$/Month</u>	<u>\$/Year</u>	<u>Type</u>
One	D	\$ 3,400	\$ 40,800	one bedroom
Two	E	\$ 3,500	\$ 42,000	one bedroom
	F	\$ 2,525	\$ 30,300	studio
	G	\$ 2,525	\$ 30,300	studio
Three	H	\$ 2,575	\$ 30,900	studio
	I	\$ 2,575	\$ 30,900	studio
	J	\$ 2,575	\$ 30,900	studio
3/4 duplex	L	\$ 3,800	\$ 45,600	2bd duplex
Four	M	\$ 2,625	\$ 31,500	studio
	N	\$ 2,625	\$ 31,500	studio
Five	O	\$ 3,600	\$ 43,200	one bedroom
	P	\$ 2,675	\$ 32,100	studio
	Q	\$ 2,675	\$ 32,100	studio
<hr/>				
Subtotal	13	\$37,675	\$452,100	

Freeman/Frazier & Associates, Inc.

Date : September 4, 2013

Property : 515 East 5th Street

Block : 401 Lot 56

Total Land Area : 2,434 sq.ft.

Zone : R7B

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Schedule D2: Proposed Development Apartment Pricing

<u>Floor</u>	<u>Unit</u>	<u>\$/Month</u>	<u>\$/Year</u>	<u>Type</u>
One	D	\$ 3,400	\$ 40,800	one bedroom
Two	E	\$ 3,500	\$ 42,000	one bedroom
	F	\$ 2,525	\$ 30,300	studio
	G	\$ 2,525	\$ 30,300	studio
Three	H	\$ 2,575	\$ 30,900	studio
	I	\$ 2,575	\$ 30,900	studio
	J	\$ 2,575	\$ 30,900	studio
3/4 duplex	L	\$ 3,800	\$ 45,600	2bd duplex
Four	M	\$ 2,625	\$ 31,500	studio
	N	\$ 2,625	\$ 31,500	studio
Five	O	\$ 3,600	\$ 43,200	one bedroom
	P	\$ 2,675	\$ 32,100	studio
	Q	\$ 2,675	\$ 32,100	studio
Six	R	\$ 2,725	\$ 32,700	studio
	S	\$ 2,725	\$ 32,700	studio
	T	\$ 2,725	\$ 32,700	studio
	U	\$ 2,725	\$ 32,700	studio
<b>Total</b>		<b>17 \$</b>	<b>48,575 \$</b>	<b>582,900</b>

Freeman/Frazier & Associates, Inc.

Date : September 4, 2013

Property : 515 East 5th Street

Block : 401 Lot 56

Total Land Area : 2,434 sq.ft.

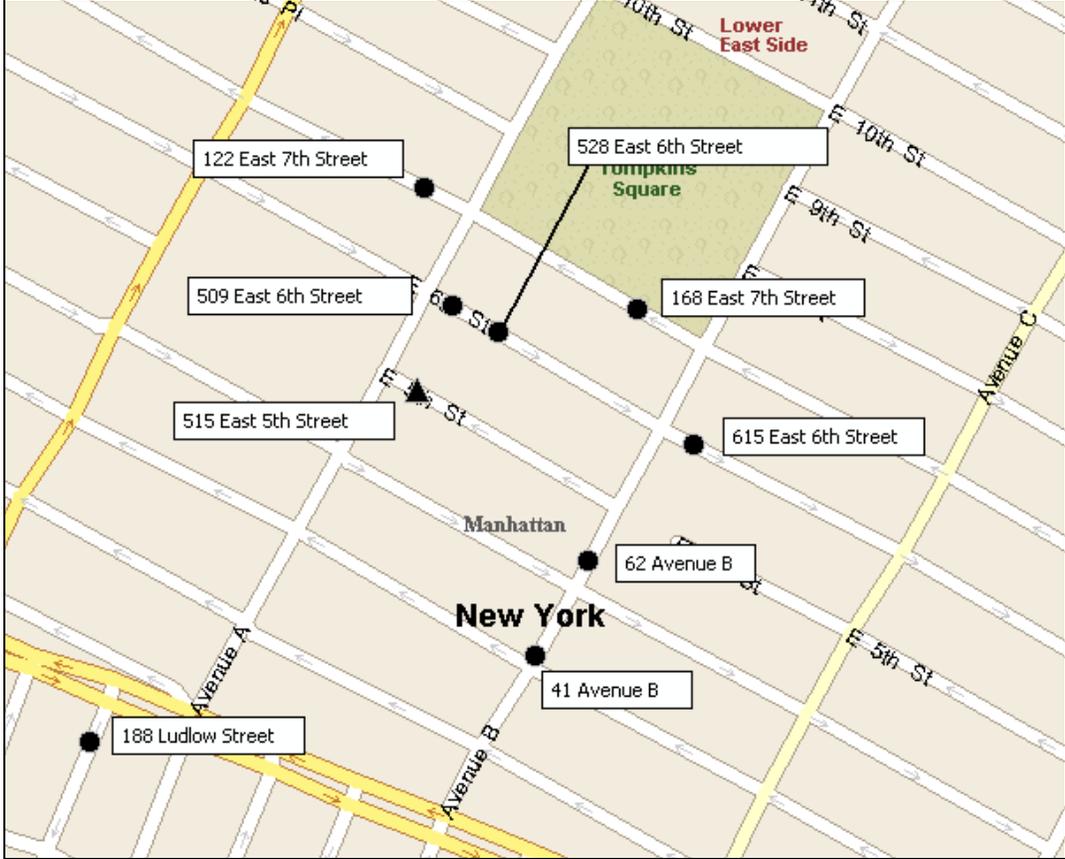
Zone : R7B

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Schedule D3: Original Development Apartment Pricing

<u>Floor</u>	<u>Unit</u>	<u>\$/Month</u>	<u>\$/Year</u>	<u>Type</u>
One	D	\$ 3,000	\$ 36,000	one bedroom
Two	E	\$ 3,100	\$ 37,200	one bedroom
	F	\$ 2,250	\$ 27,000	studio
	G	\$ 2,250	\$ 27,000	studio
Three	H	\$ 2,300	\$ 27,600	studio
	I	\$ 2,300	\$ 27,600	studio
	J	\$ 2,300	\$ 27,600	studio
3/4 duplex	L	\$ 3,425	\$ 41,100	2bd duplex
Four	M	\$ 2,350	\$ 28,200	studio
	N	\$ 2,350	\$ 28,200	studio
Five	O	\$ 3,200	\$ 38,400	one bedroom
	P	\$ 2,400	\$ 28,800	studio
	Q	\$ 2,400	\$ 28,800	studio
Six & PH	R	\$ 3,300	\$ 39,600	Studio with Sunroom
	S	\$ 3,300	\$ 39,600	Studio with Sunroom
	T	\$ 3,300	\$ 39,600	Studio with Sunroom
	U	\$ 3,300	\$ 39,600	Studio with Sunroom
Total		17 \$ 46,825	\$ 561,900	

Schedule D: Comparable Apartment Rents



Schedule D: Comparable Apartment Rents

1. 509 East 6<sup>th</sup> Street

This is a studio apartment for rent in the East Village neighborhood of Manhattan. Located between Avenues A and B it is approximately two blocks away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

2. 168 East 7<sup>th</sup> Street

This is a studio apartment for rent in the East Village neighborhood of Manhattan. Located between Avenues A and B, it is approximately three blocks away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

3. 122 East 7<sup>th</sup> Street

This is a studio apartment for rent in the East Village neighborhood of Manhattan. Located between First Avenue and Avenue A, it is approximately three blocks away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

4. 188 Ludlow Street

This is a studio apartment for rent in the Lower East Side neighborhood of Manhattan. Located between Stanton and East Houston Street, it is approximately five blocks from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

5. 528 East 6<sup>th</sup> Street

This is a one bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between Avenues A and B, it is approximately two blocks from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

Schedule D: Comparable Apartment Rents

6. 62 Avenue B

This is a one bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between East 4<sup>th</sup> and East 5<sup>th</sup> Streets, it is approximately one block from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

7. 509 East 6<sup>th</sup> Street

This is a one bedroom one bathroom penthouse apartment for rent in the East Village neighborhood of Manhattan. Located between Avenues A and B it is approximately two blocks away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

8. 528 East 5<sup>th</sup> Street

This is a one bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between Avenues A and B, it is approximately two blocks from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

9. 41 Avenue B

This is a two bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between East 3<sup>rd</sup> and East 4<sup>th</sup> Streets, it is approximately two blocks away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

10. 62 Avenue B

This is a two bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between East 4<sup>th</sup> and East 5<sup>th</sup> Streets, it is approximately one block away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

Schedule D: Comparable Apartment Rents

11. 62 Avenue B

This is a two bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between East 4<sup>th</sup> and East 5<sup>th</sup> Streets, it is approximately one block away from the subject property. A -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, location, size or zoning.

12. 615 East 6<sup>th</sup> Street

This is a two bedroom one bathroom apartment for rent in the East Village neighborhood of Manhattan. Located between Avenue B and Avenue C, it is approximately two blocks away from the subject property. A +5% adjustment was made for the inferior location, and a -5% other adjustment was made for the current “asking” status of the space. No adjustments were made for time, size or zoning.

Schedule D: Comparable Apartment Rents

1. 509 East 6<sup>th</sup> Street



2. 168 East 7<sup>th</sup> Street



Schedule D: Comparable Apartment Rents

3. 122 East 7<sup>th</sup> Street



4. 188 Ludlow Street



Schedule D: Comparable Apartment Rents

5. 528 East 6<sup>th</sup> Street



6. 62 Avenue B



Schedule D: Comparable Apartment Rents

7. 509 East 6<sup>th</sup> Street



8. 528 East 5<sup>th</sup> Street



Schedule D: Comparable Apartment Rents

9. 41 Avenue B



10. 62 Avenue B



Schedule D: Comparable Apartment Rents

11. 62 Avenue B



12. 615 East 6<sup>th</sup> Street



**EXHIBIT A : CONSTRUCTION COST ESTIMATE**

### Summary of Expenditures<sup>1</sup>

TYPE OF WORK	VENDOR NAME	TOTAL AMOUNT SPENT	TOTAL AMOUNT ALLOCATED TO ENLARGEMENT <sup>2</sup>
<b>CARPENTRY</b>	AKJ GROUP BAY RESTORATION BECKY DRYWALL BROADWAY KITCHEN & BATH C MCCORMACK CERTIFIED LUMBER FIVE STAR FINISHES NY CONSTRUCTION & RENOVATION QUALITY CONTRACTING REAL METROPOLITAN HARDWARE RED STAR CABINET RELD CORPORATION SANELLE WOOD PRODUCTS WANG'S CONSTRUCTION / L.I.A.N.	\$449,406	\$396,518
<b>DOORS / WINDOWS</b>	AJA CONSTRUCTION CRYSTAL WALL SYSTEMS LONG ISLAND FIREPROOF	\$26,571	\$26,571
<b>ELECTRICAL</b>	LENDY ELECTRIC LJM CONTRACTORS	\$60,337	\$30,025
<b>METALS</b>	E&N CONSTRUCTION KJS	\$56,500	\$56,500
<b>MISCELLANEOUS</b>	M. SCHAMES NYC GLASS RBD LOCK BEYOND SIGNS	\$16,945	\$5,403

<sup>1</sup> Data is derived from the Owner's register kept in the ordinary course of its business.

<sup>2</sup> The allocation of costs spent on the enlargement is derived from applying percentages of enlargement-related work to each vendor listed. This estimation is necessary since certain vendors did work for both the enlargement and the base building.

<b>PLUMBING / HEATING / HVAC</b>	DEMAR PLUMBING EASTMOND BOILER GLOBAL DESIGN GR CONSTRUCTION HAMPTON AIR MANHATTAN MASTER PLUMBING PRONTO GAS HEATING SUPPLIES SHEDAN INC.	\$194,052	\$90,506
<b>SITE WORK</b>	ALLSTATE INTERIOR DEMOLITION ARSENAL SCAFFOLDING CORNELL ENVIRONMENTAL SOLUTIONS	\$31,853	\$10,633
<b>SOFT COSTS</b>	ALFREDO FIGUEROA BLANK ROME COZEN O'CONNER ISAAC & STERN ARCHITECTS NYC DEPT. OF BUILDINGS SOHO REPRO GRAPHICS RITE ONE EXPEDITING YOLANDA AVILES SELIGSON ROTHMAN USI NORTHEAST INC	\$110,813	\$75,953
<b>STONE / TILE / FLOORING</b>	(AMERICAN EXPRESS) HK MARBLE & TILE CORP. INTER CITY STONE J&M HARDWOOD FLOOR KCC STONE TRADING NATURAL STONE WAREHOUSE, INC.	\$81,697	\$22,739
<b>WATERPROOFING / MASONRY / ROOFING</b>	KINGDOM ASSOCIATES NY CONSTRUCTION & RENOVATION	\$111,750	\$111,750
<b>TOTALS</b>		<b>\$1,139,925</b>	<b>\$826,599</b>

<b>TOTAL COST OF PROJECT</b>	<b>\$1,139,925</b>
<b>TOTAL COST OF ENLARGEMENT*</b>	<b>\$826,599</b>
<b>PERCENTAGE OF COST OF ENLARGEMENT SPENT</b>	<b>100%</b>

**515 East 5th Street**

*New York, NY*

Sixth Floor Removal

July 31, 2012

**McQuilkin Associates, LLC**  
**Construction Consultants**

---

**500 Morris Avenue**  
**Springfield, NJ 07081**  
**Tel: 973-218-1600**  
**Fax: 973-218-1700**

MC QUILKIN ASSOCIATES, LLC  
 PROJ: 515 EAST 5TH STREET  
 LOC: NEW YORK, NY

DATE: 7/31/12  
 REV:

ITEM	SIXTH FLOOR REMOVAL	TOTAL COST
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02200	SELECTIVE DEMOLITION		152,774
03000	SUPERSTRUCTURE		6,600
07500	ROOFING		28,800
08900	EXTERIOR FAÇADE		68,125
09000	INTERIOR CONSTRUCTION		7,565
15000	MECHANICAL		7,320
16000	ELECTRICAL		2,050
		SUB-TOTAL	<u>273,234</u>
	GENERAL CONDITIONS	15%	<u>40,985</u>
		SUB-TOTAL	<u>314,219</u>
	CM FEE	5%	<u>15,711</u>
		TOTAL	<u>329,930</u>

**515 East 5th Street**

*New York, NY*

Penthouse Removal

July 31, 2012

**McQuilkin Associates, LLC**  
**Construction Consultants**

---

**500 Morris Avenue**  
**Springfield, NJ 07081**  
**Tel: 973-218-1600**  
**Fax: 973-218-1700**

MC QUILKIN ASSOCIATES, LLC  
 PROJ: 515 EAST 5TH STREET  
 LOC: NEW YORK, NY

DATE: 7/31/12  
 REV: 1

ITEM	PENTHOUSE REMOVAL	TOTAL COST
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02200	SELECTIVE DEMOLITION		37,619
05500	MISCELLANEOUS IRON		4,700
06100	ROUGH CARPENTRY		10,285
07500	ROOFING		23,500
07900	JOINT SEALANTS		500
08900	EXTERIOR FAÇADE		11,550
09000	INTERIOR CONSTRUCTION		6,000
15500	HVAC		6,000
16000	ELECTRICAL		1,000
		SUB-TOTAL	<u>101,154</u>
	General Conditions	15%	<u>15,173</u>
		SUB-TOTAL	<u>116,327</u>
	CM Fee	5%	<u>5,816</u>
		TOTAL	<u>122,143</u>

**EXHIBIT B : REALTY RATES RESEARCH**

**RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2013\***

**APARTMENTS - ALL TYPES**

Item	Input					DAR
<b>Minimum</b>						
Spread Over 10-Year Treasury	0.62%	<b>DCR Technique</b>	1.10	0.040238	0.90	<b>3.98</b>
Debt Coverage Ratio	1.10	<b>Band of Investment Technique</b>				
Interest Rate	2.60%	Mortgage	90%	0.040238	0.036215	
Amortization	40.0	Equity	10%	0.068388	0.006839	
Mortgage Constant	0.040238	OAR				<b>4.31</b>
Loan-to-Value Ratio	90%	<b>Surveyed Rates</b>				<b>4.09</b>
Equity Dividend Rate	6.84%					
<b>Maximum</b>						
Spread Over 10-Year Treasury	6.52%	<b>DCR Technique</b>	1.96	0.118169	0.50	<b>11.58</b>
Debt Coverage Ratio	1.96	<b>Band of Investment Technique</b>				
Interest Rate	8.50%	Mortgage	50%	0.118169	0.059084	
Amortization	15.0	Equity	50%	0.164298	0.082149	
Mortgage Constant	0.118169	OAR				<b>14.12</b>
Loan-to-Value Ratio	50%	<b>Surveyed Rates</b>				<b>13.42</b>
Equity Dividend Rate	16.43%					
<b>Average</b>						
Spread Over 10-Year Treasury	2.70%	<b>DCR Technique</b>	1.43	0.065791	0.73	<b>6.87</b>
Debt Coverage Ratio	1.43	<b>Band of Investment Technique</b>				
Interest Rate	4.68%	Mortgage	73%	0.065791	0.048052	
Amortization	27	Equity	27%	0.121139	0.032662	
Mortgage Constant	0.065791	OAR				<b>8.07</b>
Loan-to-Value Ratio	73.0%	<b>Surveyed Rates</b>				<b>8.80</b>
Equity Dividend Rate	12.11%					

\*1st Quarter 2013 Data

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**EXHIBIT C : PROFESSIONAL QUALIFICATIONS**

## RESUMÉ

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### **JACK FREEMAN**

Jack Freeman is principal of Freeman/Frazier & Associates, Inc. Mr. Freeman's professional background combines real estate finance, development planning, project management and public sector experience to provide comprehensive real estate advisory services to the benefit of his clients.

His development financing background includes several years experience as a Mortgage Officer for The New York City Community Preservation Corporation, responsible for construction and permanent loan origination. The Corporation is a consortium of the New York City Commercial Banks and Savings Institutions, established to provide mortgage financing for multifamily housing rehabilitation and economic development.

Public Sector experience includes the position of Director, New York City Department of City Planning, Zoning Study Group and Senior Staff positions in the Mayor's Office of Development, responsible for management of major commercial and residential projects in Lower Manhattan.

As a developer, Mr. Freeman has been a principal and General Partner in the development of multifamily market rate and affordable housing projects, with a value in excess of \$17 million.

In 1993 Mr Freeman was appointed, and served until 1996, as a Commissioner of the New York City Landmarks Preservation Commission. For three years, Mr. Freeman was a member of the New York State Council of Arts Capital Program Review Panel. He has been a recipient of a National Endowment for the Arts Grant for Architecture and a Progressive Architecture Award for Urban Design.

Mr. Freeman is a Licensed Real Estate Broker, a member of the Real Estate Board of New York, the Urban Land Institute and the American Planning Association. He has taught Real Estate Development as a member of the Graduate Faculty of the City University of New York and has been a regular lecturer in Real Estate Finance at Princeton University.

Mr. Freeman holds a Masters Degree in City Planning from the City University of New York and a Bachelor of Architecture Degree from Cooper Union.

F R E E M A N

F R A Z I E R

& ASSOCIATES, INC.

**Unreported Disposition****(Cite as: 814 N.Y.S.2d 891, 2005 WL 3722913, 2005 N.Y. Slip Op. 52249(U))****H**

This opinion is uncorrected and will not be published in the printed Official Reports.

\*\*\*1 In the Matter of George Pantelidis, Petitioner,  
v.

New York City Board of Standards and Appeals  
and New York City Department of  
Buildings, Respondents, and Joseph E. Sheehan and  
Rose Sheehan, Intervenor-  
Respondents.

**102563/03**

Supreme Court, New York County

Decided on December 23, 2005

CITE TITLE AS: Matter of Pantelidis v New York  
City Bd. of Stds. & Appeals

**ABSTRACT**

Municipal Corporations

Zoning

Variance

*Pantelidis, Matter of, v New York City Bd. of Stds. & Appeals*, 2005 NY Slip Op 52249(U). Municipal Corporations--Zoning--Variance. (Sup Ct, NY County, Dec. 23, 2005, Schlesinger, J.)

**OPINION OF THE COURT**

Alice Schlesinger, J.

In name, this is an Article 78 proceeding by a landowner to annul a decision by the New York City Board of Standards and Appeals (BSA) which denied his application for an area variance. In fact, it is a dispute between two neighbors who reside on the Upper Eastside in Manhattan. The dispute, which has become quite protracted and costly, involves a two-story glass enclosed staircase for petitioner's house which protrudes into his rear yard about 6 feet more than permitted by as-of-right law. This decision is the third by this Court in this pro-

ceeding, but only one of several rendered in this proceeding and related proceedings by various courts extending to the Court of Appeals. The issue being determined herein, after a hearing, is "whether petitioner in erecting the disputed structure acted in good faith reliance' on the application, plans and permit approved by respondent New York City Department of Buildings." *Pantelidis v. New York City Board of Standards and Appeals*, 13 AD3d 342 (1st Dep't 2004). For the reasons stated below, this Court determines the issue in favor of the petitioner.

*Background Facts and Procedural History*

Petitioner George Pantelidis is the owner of a five-story townhouse located at 116 East \*\*\*2 73rd Street in Manhattan. (TR 99). [FN1] The building adjoins the neighboring buildings on both sides, and the westerly building numbered 114 is owned by respondent-intervenors Joseph and Rosa Sheehan. Pantelidis purchased the building in June of 1998 to use in part as a residence for his family, with the balance rented to various tenants. (TR 99-100). The family now occupies the second floor and part of the third. Until the construction at issue was completed, the only means for the Pantelidis family to go from the lower to the upper floor of their home was via the public staircase shared with the tenants and visitors. With the aid of an architect William Savino, Pantelidis applied to the New York City Department of Buildings (DOB) in September of 1998 to construct a glass-enclosed staircase at the rear of the building connecting the two floors for the family's use (Pet. 1). [FN2] According to Pantelidis, the design was inspired by a similar design a few houses down at 110 East 73rd Street (TR 127). Because the enclosure consisted of glass on a steel frame, it was referred to in various documents as a "greenhouse-type structure" or simply as a "greenhouse" (Pet. 3). The plans nevertheless showed, and it was understood by all parties including the Sheehan's architect, that the structure was intended to house a staircase rather than plants. (TR

**Unreported Disposition****(Cite as: 814 N.Y.S.2d 891, 2005 WL 3722913, 2005 N.Y. Slip Op. 52249(U))**

464, 624).

The application and accompanying plans for the glass structure were approved by the DOB on February 3, 1999 (Pet. 4), a permit was issued on March 30, 1999 (Pet. 7), and construction was completed toward the end of 1999. However, throughout that time and continuing today, the family's right to maintain the staircase has been vigorously challenged by the Sheehans. [FN3] The details of that challenge at the DOB level are discussed more fully below in the review of the evidence adduced at the hearing.

The Pantelidis family had been using their staircase for well over a year when the Sheehans took certain steps which ultimately led to this litigation. The time to appeal the DOB's approval having long since expired, the Sheehans urged the DOB to reissue its approval so the statute of limitations would run anew. The Sheehans then could, and did, appeal the DOB approval to the Board of Standards and Appeals (BSA), the body which formally reviews actions by the DOB. The DOB appeared in the BSA proceeding and vigorously defended its approval of the Pantelidis application. In so doing, DOB Assistant General Counsel Mona Sehgal confirmed that the parties would not have been before the BSA but for the Sheehan's insistence and the DOB's acquiescence to their demand to reissue the approval with a new date. Specifically, in her March 20, 2001 letter to the BSA urging the Board to deny the Sheehan's appeal and uphold the DOB approval, Ms. Sehgal stated: "On December 28, 2000, then-Borough Commissioner Livian \*\*\*3 updated his approval without any changes to it for the purpose of enabling appellants [the Sheehans] to file the instant appeal." (Pet. 9).

Despite vigorous opposition by the DOB and Pantelidis, the Sheehans prevailed and the BSA revoked the DOB approval and permit. While the BSA in its decision did discuss the requirements for a "greenhouse", the focus of the decision was on the technical Zoning Resolution requirements relating to the minimum size for "rear yards" and "outer

courts" as applied to the structure. (See BSA Resolution 31-01-A, dated April 27, 2001.) Pantelidis then commenced an Article 78 proceeding against the BSA and DOB, arguing that the revocation decision was arbitrary and capricious, and the Sheehans intervened. (Index No. 110531/01). By decision dated December 26, 2001, Justice Martin Shulman denied the petition and upheld the BSA revocation of the permit.

Now more than two years after the completion of the construction, and anxious to confirm its legality for his family's use, Pantelidis applied to the BSA for an area variance which would allow the glass-enclosed staircase to stand despite the BSA finding of technical noncompliance with certain dimensional requirements in the Zoning Resolution. Pantelidis argued, among other things, that he had relied in good faith on the then-valid permit to complete the construction. Again, the Sheehans intervened and opposed the application. The BSA denied the application by Resolution dated January 14, 2003, finding that it failed to meet the requirements of Zoning Resolution § 72-21, subd.(a), (b) and (d). Specifically, the BSA found that Pantelidis had failed to prove a "unique physical condition", financial hardship in connection with the removal of the staircase, and that any "practical difficulties or unnecessary hardship" were not self-created.

Pantelidis promptly commenced this Article 78 proceeding against the BSA and DOB, asserting that the BSA's denial of the area variance was arbitrary and capricious. Again, the Sheehans intervened. By decision and order dated July 21, 2003, this Court granted the petition to the extent of directing a hearing pursuant to CPLR 7804(h). Citing *Jayne Estates, Inc. v. Raynor*, 22 NY2d 317 (1968), this Court held that a hearing was required to determine whether Pantelidis had relied in good faith on a then-valid permit because the BSA had been required to consider any such good faith reliance when deciding the variance application, but did not.

The Sheehans moved to renew and reargue this Court's decision. The BSA supported the motion,

**Unreported Disposition****(Cite as: 814 N.Y.S.2d 891, 2005 WL 3722913, 2005 N.Y. Slip Op. 52249(U))**

and Pantelidis opposed. By decision dated September 19, 2003, this Court denied the motion. The Sheehans and the BSA appealed to the Appellate Division. By order dated December 21, 2004, the First Department unanimously affirmed both decisions by this Court, stating that:

Consideration of whether petitioner acted in good-faith reliance on a then-valid DOB permit in constructing a glass-enclosed stairwell at the rear of his building was relevant to determining if petitioner was entitled to a variance to allow the structure notwithstanding the post-construction revocation of the building permit (see *Matter of Jayne Estates, Inc. v. Raynor*, 22 NY2d 417 [1968]; *Ellentuck v. Klein*, 51 AD2d 964 [1976], appeal dismissed 39 NY2d 743 [1976], lv denied 39 NY2d 707 [1976]).

13 AD2d 242. The Appellate Division further found that this Court's decision to hold a hearing, rather than remand to the BSA to determine the issue, was "particularly appropriate." \*\*\*413 AD2d at 243. Appellants' motion for leave to appeal to the Court of Appeals was denied. 4 NY3d 809 (2005).

*Pantelidis Relied in Good Faith on the Then-Valid Permit*

A review of the credible evidence adduced at the hearing supports this Court's finding that Pantelidis relied in good faith on a then-valid permit when he constructed the glass-enclosed stairwell at the rear of his building. The hearing spanned three days. In support of his case, Pantelidis testified at length. He called as witnesses the then-DOB Borough Commissioner Ron Livian, DOB Assistant General Counsel Mona Sehgal, and his architect William Savino. The BSA and the Sheehans called James Richardson (Rick) Adams, a construction consultant employed by Hunt Architects who had been retained by the Sheehans to assist in their efforts opposing the Pantelidis construction. In addition, they called Linna Hunt, an architect and the principal of Hunt Architects who had been retained by the Sheehans in the same capacity as Adams, who was her spouse. The Sheehans themselves did not testify at

the hearing.

Ron Livian, the DOB Borough Commissioner during the relevant time, confirmed that the DOB had approved the application and plans for the glass structure on February 3, 1999, with a permit issued March 30, 1999. (TR 17, 20, 30). Throughout the extensive cross-examination by the two counsel for respondents, Livian remained steadfast in his opinion that the approval remained in place from that point in time and continuing throughout the construction in 1999 until the BSA revoked the permit in 2001. Indeed, Livian specifically stated on cross that: "Based on the laws that I'm aware of, yes, he [Pantelidis] was permitted to ... proceed with construction of the two-story greenhouse ... between March 30, 1999 and July 21, 1999," the period when the Sheehans were actively seeking to have the DOB revoke the permit. (TR 96). While the DOB did write a letter and meet with Pantelidis' architect during that period to address certain issues raised by the Sheehan's architect, the issues were consistently resolved to confirm the legality of the construction in the eyes of the DOB, Livian explained. Thus, although Savino was asked to submit a form entitled "Additional Information" (referred to by the parties as a "Reconsideration") specifically addressing the "two-story greenhouse type construction," Livian reviewed it and wrote "OK TO ACCEPT 2 STORY GREENHOUSE..." (TR 39-40, Pet. 3). Similarly, Livian's July 12, 1999 letter, while referred to by the respondents as a "revocation letter", did not revoke the approval. (TR 38, Pet. 5). Rather, it requested revised plans to clarify certain issues raised by the Sheehans (TR 83), which Savino provided to satisfactorily resolve the issues. (TR 46). In sum, while clearly aware that the Sheehans were actively "seeking revocation of the approval" (TR 67), Livian on behalf of the DOB accepted the "greenhouse" concept early on and maintained the approval of the plans for the glass structure ultimately built (TR 55).

Pantelidis then credibly testified as to his understanding of his right to proceed with the glass-

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enclosed staircase from the point of DOB approval in early 1999 and throughout the period of construction. (TR 141-43). He acknowledged that issues had been raised and meetings held with the DOB both before and after the permit was issued, but, like Livian, Pantelidis testified that any issues were addressed to the satisfaction of the DOB so that work could proceed. (See, e.g., TR 159, 162).

Respondents' efforts to undermine Pantelidis' testimony were wholly unsuccessful. For example, despite repeated attempts by both counsel to have Pantelidis acknowledge that he had commenced construction of the "greenhouse" before the DOB had approved the plans, Pantelidis consistently testified to the contrary. For example, although renovations were being completed at the house before the permit was issued on March 30, 1999, that work was for internal work wholly unrelated to the extension and supported by a separate permit. (See, e.g., TR 188, 197). Sheehan's counsel attempted to impeach Pantelidis' credibility on that point via sworn statements in papers in other litigation to the effect that construction was begun in January 1999. (See, e.g. TR 251). However, Pantelidis explained that the referenced work relating to the extension was limited to "probes." (TR 220). Significantly, this testimony was corroborated by the testimony of respondents' witness Rick Adams who repeatedly described the pre-permit work he observed as limited to "prep work." (TR 517, 526, 259, 534-35). Adams himself did not observe "full construction" until well after the permit had been issued. (TR 536).

Also unavailing was respondents' introduction into evidence of a "stop work order" issued by the DOB in an effort to undermine petitioner's credibility or show a lack of good faith. (Resp. B). Pantelidis testified that he understood that the violation issued to one of his contractors was unrelated to the extension. (TR 180-81). Significantly, respondents' witness Rick Adams confirmed that fact. (TR 524). In any event, all issues were addressed promptly and work thereafter was allowed to resume without fur-

ther interruption. (TR 176).

Petitioner's final witness, his architect William Savino, testified in a sincere and straightforward manner as to details wholly consistent with those offered by Livian and Pantelidis. For example, he understood that the DOB plan examiner had approved the application and plans relating to the extension in early 1999 after discussions were had and additional information provided to address routine DOB questions, formally known as "objections". (TR 348, 353, 359, Pet. 2). Savino advised Pantelidis of the approval. (TR 360). He acknowledged having met with both Livian and his deputy Laura Osorio on various occasions to discuss issues raised by the Sheehans, but that Livian "held his ground" in approving the glass structure (TR 370).

On cross-examination Savino expressly corroborated testimony by Pantelidis that no construction on the extension was commenced until after the approval and permit had issued. (TR 392). Further, while various issues were raised during the ensuing months, they were consistently addressed so that the approval of the glass extension was "confirmed" by the DOB, rather than revoked. (TR 393). Wholly unavailing were respondents' efforts to undermine Savino's credibility by raising purported inconsistencies, such as a reference to the "greenhouse" in an October 1998 bill from Savino's office (TR 456) and statements as to why Savino resigned from the job (481-85). Any purported "inconsistency" was on a collateral issue and adequately explained so that the net result was no inconsistency at all.

Respondents' two witnesses, Adams and Hunt, offered nothing to the contrary. Without a doubt they proved that they had made repeated and vigorous efforts on behalf of the Sheehans to gather evidence against Pantelidis and have his permit revoked. Adams even acknowledged that he had entered the Pantelidis building six times without permission. (TR 574). However, as noted above, Adams' testimony, which focused on the progress of the construction, was essentially consistent with that given by Pantelidis.

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Similarly, the testimony offered by the Sheehan's architect Linna Hunt did not contradict that offered by Pantelidis' architect, DOB Commissioner Livian, or Pantelidis himself. On behalf of the Sheehans, Hunt sought to have the Pantelidis permit revoked by repeatedly meeting with \*\*\*6 and writing to DOB Deputy Borough Superintendent Laura Osorio. Hunt raised every possible objection, including those which clearly had no impact on the Sheehans, such as access by one of Pantelidis' tenants to the backyard. (Resp. L). Hunt apparently chose to work through Osorio, rather than her superior Ron Livian, based on their long-standing relationship. So comfortable was the relationship that Ms. Hunt referred to Ms. Osorio by her first name "Laura" in her testimony to the Court. (TR 596). Hunt nevertheless acknowledged that, despite her efforts, the permit for the glass extension was never revoked, but rather, revisions were made which enabled the structure to comply with Code. (TR 599, 601). Hunt also acknowledged that it was "clear" from the plans that the glass structure was a "two-story extension" with "interior stairs," rather than a traditional greenhouse, thereby defeating respondents' earlier suggestion that Pantelidis had acted in bad faith by misleading the DOB as to the true nature of the structure. (TR 624). She further acknowledged that she had not sent to Pantelidis or his architect copies of her three memos addressed to the DOB to alert them to her concerns, thereby defeating respondents' suggestion that Pantelidis could not have proceeded in good faith reliance on a valid permit in the face of the Sheehan's many objections. (TR 619). Instead, Hunt simply made efforts through her contact with Osorio to get the permit revoked. (TR 608).

Thus, while respondents at the hearing sought to suggest that Pantelidis did not rely in good faith on a then-valid permit, the evidence in fact showed the contrary. Both Pantelidis and his architect properly understood from various DOB documents and meetings with DOB Borough Commissioner Ron Livian that the DOB had approved the extension in early 1999 and that the approval remained in full

force and effect throughout the period of construction. Pantelidis relied on the permit to complete the construction for his family at considerable expense, as demonstrated by his credible testimony as to monies paid to various contractors for materials and labor totaling \$150,000 to \$200,000. (TR 154-55, 165-72, Resp. I). Neither Pantelidis' inability to precisely recall the final amount or to fully document his expenses, nor minor discrepancies in statements given by him over the years regarding expenses, is of any moment. As this Court noted in its prior decision, expenditures *may* properly be considered as evidence of reliance. *Ellentuck v Klein*, 51 AD2d 964 (2nd Dep't 1976), *app dismissed* 39 NY2d 743. This Court is satisfied based on the evidence adduced at the hearing and common sense that Pantelidis incurred considerable expense to construct the extension at issue, and that considerable expense and disruption to his family will result should Pantelidis be compelled to remove the extension.

*Pantelidis has Established the Criteria for an Area Variance*

Stated simply, a variance is an authorization for the construction or maintenance of a structure which is technically prohibited by the zoning ordinance. Anderson, Robert M. And Salkin, Patricia, *New York Zoning Law and Practice* §29:02 (4th ed 2002). There are two types of variances. A "use" variance is one which permits a use proscribed by the zoning ordinance, such as residential or commercial. *Id.* at §29:05. In contrast, an "area" variance involves a relaxation of a rule governing dimensional or physical requirements affecting a building or a lot, such as a rule limiting the height of a building or setting the minimum size for a rear yard. *Id.* at §29:06; 29:32.

In the City of New York, variances are governed by §72-21 of the Zoning Resolution of the City of New York, promulgated June 20, 1968. That section begins by aptly stating the \*\*\*7 purpose of a variance as follows.

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When in the course of enforcement of this Resolution, ... there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of [a] provision, the Board of Standards and Appeals may, in accordance with the requirements set forth in this Section, vary or modify the provision so that the spirit of the law shall be observed, public safety secured, and substantial justice done.

Before 1956, the courts routinely addressed variances without distinguishing between use and area variances. To prevent abuse and protect the community's interest in orderly development, the courts strictly limited the power to vary zoning rules, allowing a variance only when the literal enforcement of a regulation would result in "practical difficulties or unnecessary hardship." *Id.* at §27:07-08; see also, *Otto v. Steinhilber*, 282 NY 71 (1939), *rearg. denied* 282 NY 681 (1940). No distinction was made at the time between use and area variances.

The Court of Appeals sharply changed that approach in 1956 in *Village of Bronxville v. Francis*, 1 AD2d 236 (2nd Dep't), *aff'd* 1 NY2d 839 (1956); stating that

"When the variance is one of area only, there is no change in the character of the zoned district ... A change of area may be granted on the ground of practical difficulties alone, without considering whether or not there is an unnecessary hardship. ... [I]n the absence of statutory provision to the contrary, special hardship need not be established as a condition to granting an area variance.

This approach, which significantly lessened the standard for an area variance, was then codified by the Legislature in various statutes, such as [General City Law §81-b](#) and [Town Law §267-b](#). For area variances, the overall approach became one of balancing "the benefit to the applicant versus the detriment to the health, safety and welfare of the neighborhood or community. Anderson at §29:34.

The Court of Appeals has consistently recognized that an "applicant for a use variance bears a heavier

burden of proof than one who desires relaxation of an area limitation." *Village of Fayetteville v. Jarrold*, 53 NY2d 254, 257 (1981), citing *Matter of Consolidated Edison Co. v. Hoffman*, 43 NY2d 598, 606-607 (1978); see also *Sasso v. Osgood*, 86 NY2d 374 (1995) (emphasizing the "balancing test" to be used in the case of an area variance.) Respondents herein urge this Court to essentially disregard the well-recognized distinction between use and area variances. They argue that the plain wording of §72-21 of the Zoning Resolution makes no distinction between the two types of variances, and they argue that the various cases which recognize the distinction are not applicable because they are based on specific sections of the Town Law and the General City Law which do not apply in the City of New York.

This Court disagrees. As noted above, the preamble of §72-21 quoted above mandates that the BSA grant variances "so that the spirit of the law shall be observed, public safety secured, and substantial justice done." Thus, while 72- 21 directs the BSA to make five specific findings, the findings should be made consistent with the general mandate. Indeed, the First Department recognized that very point in the instant case when it held that the BSA should have considered Pantelidis' good faith reliance of a then-valid permit when making its findings, even though no such mandate appears in the express language of 72-21. \*\*\*[8Pantelidis v. NYC Board of Standards and Appeals, et al.](#), 13 AD3d 242 (2004). The First Department supported that holding by citing to the decision by the Court of Appeals in *Jayne Estates, Inc. v. Raynor*, 22 NY2d 417 (1968), even though *Jayne* involved property outside the City of New York not subject to the Zoning Resolution.

In addition, and quite significantly, the First Department, in cases involving Zoning Resolution §72-21, has expressly adopted *Matter of Bronxville* and the lesser standard applicable to area variances. Thus, in upholding the grant of an area variance in *Matter of Envoy Towers Company, et al., v. Klein*,

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*et al.*, the Appellate Division stated as follows:

We must note that a finding of "special hardship" prior to granting a variance is limited to use variances, while a change of area may be granted on the basis of practical difficulties alone (*Matter of Village of Bronxville v. Francis*, 1 AD2d 236, 238, *aff'd* 1 NY2d 839; *Dauernheim, Inc. v. Town Bd. of Hempstead*, 33 NY2d 468, 471). The rationale for greater leniency in the standard of proof required for an area variance is that such a variance does not change the essential character of the zoned district as a use variance would (*Matter of Hoffman v. Harris*, 17 NY2d 138, 144).

51 AD2d 925, 926 (1st Dep't 1976), *lv den.* 39 NY2d 710 (1976); see also *Galín v. Board of Estimate of the City of New York*, 72 AD2d 114 (1st Dep't 1980) (Fein, J.), *aff'd* 52 NY2d 869 (1981).

It is against this backdrop that the Court must review the determination by the BSA in this case which denied Pantelidis' application for an area variance. The BSA reviewed the variance under Zoning Resolution §72-21, which requires findings as follows:

(a) due to "unique physical conditions," strict compliance with the Zoning Resolution will result in "practical difficulties or unnecessary hardship;"

(b) a variance is necessary to "realize a reasonable return;"

a variance "will not alter the essential character of the neighborhood ... substantially impair the appropriate use or development of adjacent property ... or be detrimental to the public welfare;"

(d) the practical difficulties or unnecessary hardship are not self-created; and

(e) the variance is the minimum necessary.

In the case at bar, the BSA found that Pantelidis had failed to establish subdivisions (a), (b) and (d). As to (a) and (b), the Board found that Pantelidis

had failed to establish that "the subject enlargement constitutes a unique physical condition' and that the costs associated with removal of the condition constitute a basis for a financial hardship." [FN4] As to (d), the BSA determined that "the enlargement was a condition created by the applicant."

In light of the prevailing case law and Pantelidis' good faith reliance on a permit, the BSA's findings are arbitrary and capricious. The requirement under subdivision (a) of "uniqueness" may be satisfied under a broad range of circumstances. In *Matter of Commco*, 109 AD2d 794 (2nd Dep't 1985), *app. den.* 65 NY2d 606, the court (citing authority by the Court of \*\*\*9 Appeals) held that uniqueness could be satisfied "by showing that the difficulty complained of relates to existing improvements on the land." In *Matter of Douglaston Civic Ass'n*, 51 NY2d 963, 965 (1980), the Court held that: "Uniqueness does not require that only the parcel of land in question and none other be affected by the condition which creates the hardship..." And in *Jayne Estates*, the Court of Appeals held that a variance should be granted, even absent unique circumstances, if the landowner was proceeding in good faith, the variance had minimal impact and financial hardship was shown. 22 NY2d at 425.

Here the BSA in its Resolution detailed a number of conditions which made the property unique. When Pantelidis purchased the building, it had an extension on its easterly side which caused non-compliance with the rear yard requirements and which also created a non-complying outer (side) court to the west. The new glass extension occupies a part of the outer court and does not extend into the rear yard more than the existing extension. [FN5] Considering these facts, it was arbitrary for the BSA to deny the variance in reliance on subdivision (a), particularly under *Jayne*.

In addition, Pantelidis established practical difficulties and economic hardship based on the need to connect the two floors for the family's appropriate use of their home, the expense of construction, and the cost and impact of the removal of the newly

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constructed extension. The cases cited by the respondents are readily distinguishable. Not only is each case particular to its facts, but here Pantelidis built the most minimal extension, housing a necessary staircase rather than multiple additional rooms to simply enlarge his home. Thus, the denial of the variance under subdivision (b) was arbitrary.

Similarly arbitrary was the BSA finding of self-created hardship under subdivision (d). Although Pantelidis did create the extension, he did so in good faith reliance on a then-valid permit. This good faith precludes a finding of self-created hardship. As the Court of Appeals stated in *Jayne* (22 NY2d at 423):

If Jayne is held to have created its own difficulty by relying on the [DOB permit], procured in good faith, there may never be hardship within the meaning of the statute when a building permit is subsequently held invalid.

Respondents argue that, notwithstanding the Court's findings as to subdivisions (a), (b) and (d), the matter must be remitted to the BSA for findings as to subdivisions (c) and (e). The Court disagrees. First, had the BSA found a failure of proof, or had it declined to address the points as academic, it presumably would have so stated. The fact that it did not strongly suggests that the BSA concluded that those subdivisions had been satisfied.

And they have. The two-story glass enclosed staircase, similar to one a few houses down, was completed with a minimal variance having no impact on the neighborhood and not detrimental to the public welfare. The minimal nature of the area variance supports its approval, as the smaller the magnitude the less chance of its impact. *See, e.g., \*\*\*10Consol v. Hoffman*, 43 NY2d 598, 606 (1978). It cannot be over-emphasized that the variance at issue here sought to modify the minimum rear yard requirements by only 6 feet, a condition which already existed on the easterly side of the lot opposite from the Sheehans. Further, the extension is a see-through glass structure which begins one-story

above grade and encompasses only two stories of the five-story building. The BSA noted in its Resolution denying the variance that it considered the Sheehan's complaints. But pressure from landowners, standing alone, does not establish adverse impact. *See Matter of Greenfield*, 21 AD3d 556 (2nd Dep't 2005). This point is particularly true where, as here, the Sheehans presented a host of objections, none of which demonstrated a negative impact on the community.

In light of these findings, nothing remains for the BSA to consider, and a remittal is in order solely for the purpose of directing the BSA to issue the requested variance. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Article 78 petition is granted, the January 14, 2003 BSA Resolution is annulled, and the BSA is directed to issue the variance.

This constitutes the decision and judgment of the Court.

Dated: December 23, 2005

ENTER:

\_\_\_\_\_  
J.S.C.

**FOOTNOTES**

**FN1.** "TR" refers to the transcript of the hearing. The floors described by the Court in its earlier decision differ by one due to alternate methods of designation.

**FN2.** "Pet" refers to Exhibits offered at the hearing by the petitioner, and "Resp" refers to Exhibits offered by the respondents.

**FN3.** The Sheehans also commenced a separate plenary action against Pantelidis seeking monetary compensation for alleged damage to their house and possessions from noise, dust and unlivable condi-

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tions purportedly caused by renovations at the Pantelidis house. *See, Sheehan v. Pantelidis, et al.*, 6 AD3d 251 (1st Dep't 2004).

**FN4.** Significantly, the BSA made no mention of the express criterion in (b) of "reasonable rate of return," as that criterion has no application to an area variance for a private home. Instead, the BSA examined potential financial hardship.

**FN5.** DOB Commissioner Livian approved the extension on the ground that it reduced the non-complying outer court. The BSA did not disagree, but held that the protrusion into the rear yard remained a problem.

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N.Y.Sup. 2005.

Matter of Pantelidis v New York City Bd. of Stds. & Appeals

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2013 NY Slip Op 04982

**IN RE JAMES WOODS, Petitioner-Appellant,**  
**v.**  
**MEENAKSHI SRINIVASAN, ETC., ET AL., Respondents-Respondents.**

10515, 260541/10.

**Appellate Division of the Supreme Court of New York, First Department.**

Decided July 2, 2013.

Rothkrug Rothkrug & Spector, LLP, Great Neck (Simon H. Rothkrug of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Drake A. Colley of counsel), for respondents.

Before: Friedman, J.P., Sweeny, DeGrasse, Richter, Feinman, JJ.

Judgment, Supreme Court, Bronx County (Fernando Tapia, J.), entered October 6, 2011, denying the petition and dismissing the proceeding, brought pursuant to CPLR Article 78, to annul a determination by respondent Board of Standards and Appeals of the City of New York (**BSA**), dated July 13, 2010, which denied petitioner's zoning variance application, unanimously reversed, on the law, without costs, and the matter remanded to respondent **BSA** for reconsideration of petitioner's application.

The evidence presented at the hearing establishes that petitioner erected a building on his property in good faith reliance upon a construction permit issued by respondent DOB, which DOB invalidated only after the building's substantial completion (*see Matter of Pantelidis v New York City Bd. of Stds. & Appeals*, 10 Misc 3d 1077(A) [Sup Ct, NY County 2005], *affd* 43 AD3d 314 [1st Dept 2007], *affd* 10 NY3d 846 [2008]; *Jayne Estates, Inc. v Raynor*, 22 NY2d 417, 422 [1968]).

Petitioner's architect understood that DOB's interpretation of ZR § 23-49 permitted the building to be constructed along the property's side lot line, and DOB's plan examiner fully reviewed petitioner's plans for compliance with zoning regulations and approved them. Thereafter, DOB issued construction permits and petitioner erected his building in reliance upon the approved plans and permits. DOB subsequently changed its interpretation of the ZR § 23-49 and issued a stop work order.

Contrary to the motion court's finding, DOB, not petitioner, was in the best position to avoid the erroneous issuance of the permit. **BSA's** determination denying petitioner's variance application on the ground that he did not rely, in good faith, on DOB's permit, must be annulled, and the matter remanded to **BSA** to consider whether petitioner satisfied the remaining elements required for a variance (*see* ZR § 72-21).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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M. STRINGER  
PRESIDENT

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July 26, 2006

Christopher Santulli  
Manhattan Borough Commissioner  
Department of Buildings  
230 Broadway  
New York, NY 10007

Re: 515 East 5<sup>th</sup> Street

Dear Commissioner Santulli:

Thank you for responding to our previous objections regarding the aforementioned building. We appreciate your attention to our concerns as the owner of this building has had multiple problems in the community including one collapse.

As you know, after a stop work order was issued for this building on June 15, the building architect answered the City's objections and construction resumed. Our offices have examined the new building plans and concluded that they appear not to conform to the City's Zoning Resolution (ZR), the State's Multiple Dwelling Law (MDL), and Local Law 58/87. Specifically:

- 1. According to the plans, the number of stories has been increased from 5 to 6 stories with a penthouse. The plans are being examined under the old code. MDL §4(36) defines a "story" as the "space between the level of one finished floor and the level of the next higher floor...or the top of the highest roof beams." This indicates the "penthouse" is actually considered a story and therefore the plans are for a 7-story building, not a 6-story building. A 7-story building would not conform to MDL §211(1) which states that a tenement can only be enlarged from 5 stories to a maximum of 6 stories.
- 2. The development is also limited to 60 feet by the Zoning Resolution. ZR §23-692(b), the "sliver law," prohibits narrow buildings such as this one from being extended higher than a height equal to the width of the abutting street (60 feet) or the lowest abutting building (5 stories).
- 3. ZR §24-36 requires that back yards must be at least 30 feet deep, minus any permitted obstructions. The plans show a 1-story addition into the rear yard, which makes the yard

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Sanulli  
July 26, 2006  
Page 2 of 2

only 22 feet deep. Four feet of obstruction is due to the legally permissible "step" obstruction. However, the additional four feet is due to an obstruction that appears not to be permitted by the Zoning Resolution. ZR §24-33(b) states that the enclosed one-story structure in the back yard can only be considered a legal obstruction if the ground floor community facility is a "school, house of worship, college or university, or hospital and related facilities." From the plans, it does not appear that the space is designed to accommodate these facilities. The floor plan lacks the ability to hold a congregation, classes, or hospital facilities. In fact, the layout of the space appears to be a studio apartment without a full kitchen. If community facility uses cannot occupy the space, the backyard obstruction is illegal.

The plans indicate that the majority of the community facility space is in the cellar of the building, which is not accessible to disabled persons. Disabled persons would only be able to access the first floor "waiting room" and one rest room, but not the rooms in which services are actually provided. A new community facility must be fully accessible pursuant to Local Law 58/87 (§27-292.5 of the Building Code).

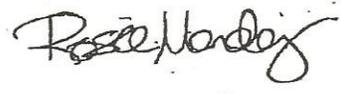
Given these concerns, it appears that the new plans still do not comply with relevant State and local laws. We request that the plans be audited again and a stop work order be reissued until a legal building is proposed. Because construction is currently underway on the site, we respectfully request that you expedite this review as much as possible.

Thank you in advance for your assistance.

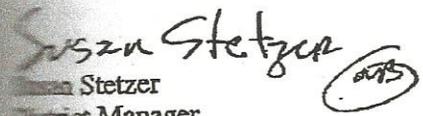
Sincerely,



M. Stringer  
Manhattan Borough President



Rosie Mendez  
City Council Member



Susza Stetzer  
District Manager  
Community Board 3



Department of Buildings  
City Hall, New York, NY 10007

J. Lancaster, FAIA, Commissioner

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Christopher Santulli, P.E.  
Acting Borough Commissioner  
Manhattan Borough Office, 3<sup>rd</sup> Fl.  
Phone: (212) 568-0011  
Fax: (212) 568-5575  
E-mail: christophers@buildings.nyc.gov

August 25, 2006

67 07 A

Mr. Scott M. Stringer  
Manhattan Borough President  
Centre Street, 19th Floor  
New York, NY 10007

Ms. Rosie Mendez  
Council Member, District #2  
171 First Avenue, #504  
New York, NY 10003

Ms. Susan Stetzer, District Manager  
Community Board 3  
East 4<sup>th</sup> Street  
New York, NY 10003

RE: 515 East 5th Street  
Block: 401; Lot: 56  
Alt. App. No. 104368845  
Manhattan

Mr. Borough President Stringer, Council Member Mendez & Ms. Stetzer:

In response to your July 26, 2006 letter in which you expressed concerns over the Department's recent approval of the above-referenced job subsequent to our audit please note the following.

**New Law Tenement Classification**

Your letter describes the subject building's classification as Multiple Dwelling Law ("M.D.L.") Article 7 and you advised that as such, the Department should not have approved the addition of a full house. Doing so, you reasoned, resulted in the impermissible addition of a story in violation of M.D.L. Article 1, Section 4(36), which defines "story" as "the space between the level of one finished floor and the level of the next higher floor ... or the top of the highest roof beams," and M.D.L. Article 7, Section 211(1), which provides that a tenement may only be enlarged from five (5) to six (6) stories.

The Department's approach to construing the applicable M.D.L. provisions differs from yours, while remaining faithful to the safety concerns that were the impetus for the passage of the M.D.L. tenement laws. To begin, it has been the Department's position that, provided the applicant complies with the Life and Safety requirements of M.D.L. Articles 3 and 5, an enlargement is permissible to six stories or 75 feet, per M.D.L. Article 5. If the Department were to accept your recommended change of the definition of "story," any roof structure, without regard to size, would be included as a story. To be sure, this is an untenable position for the Department to take.

Accordingly, the applicant in this case was permitted to add a 6th Floor and a penthouse on condition that egress and safety were upgraded under the provisions of Articles 3 and 5. Specifically, the Department conditioned job approval on the applicant's agreeing to install: 1) a two-hour fireproof interrupted enclosure from the cellar to the roof; 2) a sprinkler system throughout the building; and 3) layers of gypsum board under existing beams. Furthermore, the Department has determined that additional safety upgrades are necessary and has so notified the applicant. See attached Objection Report and Notice of Intent to Revoke.

#### Sliver Law

In your letter, you suggested that the job in question proposed to construct a building that would exceed the permitted height in a district governed by Zoning Resolution ("Z.R.") § 23-692 ("Sliver Law"). In pertinent part, the Sliver Law limits the height of new or enlarged narrow buildings in certain districts to the width of the street fronting the building. In this case, you felt that the proposed penthouse was a "story" and that as such must have been included in calculation of the building's height and also served to render the building noncompliant with Z.R. § 23-692.

Again, the Department has taken a different approach to interpreting the Sliver Law. While the Zoning Resolution places requirements on the permissible heights of buildings, it does not define "building height." Therefore, it has been the practice of the Department in many instances, where the Sliver Law is applicable, to apply Administrative Code ("A.C.") § 27-306(c), which instructs measurement should not include, *inter alia*, a penthouse structure having a footprint of less than thirty-three and one-third percent of the floor below. Applying this practice to the job application at issue, the building will comply with both Z.R. § 23-692 and A.C. § 27-306(c).

#### Community Facility

##### A. Rear Yard Obstruction

In your letter, you were concerned that the approved plans failed to provide a 30 foot rear yard requirement, *see* Z.R. § 24-36, because the applicant failed to demonstrate compliance with an applicable exception. Specifically, under Z.R. § 24-33(b)(3), the rear yard may contain an obstruction that reduces the size the yard when, *inter alia*, the obstruction is a community facility that is used as a school, house of worship, college or university, or hospital and related facilities," and you believed that proof of such use was wanting.

The Department agrees. As you correctly observed, the job application fails to adequately demonstrate that Z.R. § 24-33 applies. The applicant will be required to either submit proof of § 24-33's applicability and clarify the drawing or reduce the size of the obstruction.

##### B. Handicap Accessibility

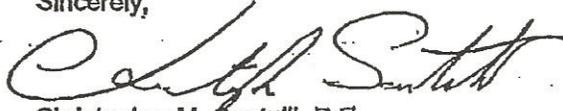
Lastly, you believed that the Department's approval of a new community facility in the cellar without full handicap accessibility violated A.C. § 27-292.5. Again we agree and note that the application needs to be clarified.

Under A.C. § 27-292.5(i)(2), "[a]lterations to [a non-residential building] already existing where the alterations are being made ... to a below-grade story having a total floor area of two thousand square feet or less" are exempt from the A.C. accessibility requirements. However, there is an exception to this exemption. Section 27-292.5(i)(2) further provides, "[f]loor areas frequented by the public for assembly, governmental, public utility or health facility purposes shall not be exempted *unless equivalent accessible facilities are provided on the first story.*" (emphasis added).

Here, the applicant has been approved to construct a one thousand four hundred square foot utility facility in the cellar. Once the use is clarified, the Department will require that equivalent facilities be provided on the first floor or access to the cellar be provided.

Thank you for your efforts in dealing with these complicated issues we face in enforcing the Building Code, Multiple Dwelling Law and Zoning Resolution for the City of New York. The Department will continue to enforce these laws to make the City a better place to live, work and do business. As always, please feel free to contact me directly if you have any further questions or concerns.

Sincerely,



Christopher M. Santulli, P.E.  
Acting Borough Commissioner  
Manhattan

Patricia J. Lancaster, FAIA, Commissioner  
Premises file



Department of Buildings  
Broadway, New York, NY 10007  
Patricia J. Lancaster, FAIA, Commissioner

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Christopher Santulli, P.E.  
Borough Commissioner  
Manhattan Borough Office, 3<sup>rd</sup> Fl.  
Phone: (212) 566-0011  
Fax: (212) 566-5576  
E-mail: [christophers@buildings.nyc.gov](mailto:christophers@buildings.nyc.gov)

January 15, 2007

Honorable Scott M. Stringer  
Manhattan Borough President  
Centre Street, 19<sup>th</sup> Floor  
New York, NY 10007

Honorable Rosie Mendez  
Council Member, District #2  
237 First Avenue, #504  
New York, NY 10003

Ms. Susan Stetzer, District Manager  
Manhattan Community Board No. 3  
69 East 4<sup>th</sup> Street  
New York, NY 10003

Re: 515 East 5th Street, Manhattan  
Block 401, Lot 56  
Alt. App. No. 104368845

6207A

Dear Borough President Stringer, Council Member Mendez and Ms. Stetzer:

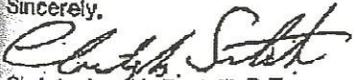
This letter is in reference to your correspondence to me, dated September 18, 2006, regarding the Department's interpretation of NYC Zoning Resolution (ZR) § 23-692 (Sliver Law) in relation to the above referenced alteration application. Specifically, you requested that the Department reconsider, in light of ZR § 11-22, its approval of the applicant's exclusion of a penthouse from the calculation of building height under the Sliver Law.

Although your letter refers to ZR § 11-22 as a provision that provides guidance in the calculation of building height under the Sliver Law, this statutory section is not applicable. Section 11-22 addresses the application of overlapping or contradictory regulations. Here, there is neither overlap nor contradiction.

It has been the Department's practice to allow building height (which is not a defined term in the Zoning Resolution) of penthouses to exceed the width of the street for buildings covered by the Sliver Law in instances similar to the project in question, particularly in cases such as this where the penthouse is not visible from the street. It would be inconsistent with these prior decisions to overturn the approval of the penthouse here. It is the Department's position that the addition of a penthouse at the building in question does not violate the Sliver Law as the continuity of the street wall has been maintained. In accordance with this interpretation, the penthouse, as constructed with a twenty foot setback from the street wall, complies with ZR § 23-692.

Please accept this letter as a final determination by the Department, appealable to the Board of Standards and Appeals.

Sincerely,

  
Christopher M. Santulli, P.E.  
Manhattan Borough Commissioner

Cc: Patricia J. Lancaster FAIA, Commissioner of Buildings



NYC Department of Buildings  
130 Broadway, New York, NY 10007

Patricia J. Lancaster, FAIA, Commissioner

Stephen P. Kramer  
Senior Counsel  
212.566.3540  
[Stephenk@buildings.nyc.gov](mailto:Stephenk@buildings.nyc.gov)

July 10, 2007

Honorable Members of the Board  
Board of Standards and Appeals  
100 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Cal. No. 67-07-A  
515 East 5<sup>th</sup> Street, Manhattan

Honorable Members of the Board:

This case involves the Department of Buildings' permit for a one story penthouse addition on the roof of 515 East 5<sup>th</sup> Street, which petitioner contends was based upon an erroneous application of Section 23-692, the "Sliver Law." Section 23-692 generally limits the height of buildings in certain high density zoning districts to the width of the street or to the height of an abutting structure if the abutting structure is higher than the street is wide. Appellant contends that the erection of this penthouse, which is setback from the front of the building and thus is not visible from the street, exceeds the 60 foot width of the street and is thus not permissible.

Appellant's argument should be rejected. Unlike other provisions of the Zoning Resolution that relate to building height and the size and shape of permissible building envelopes, the drafters of the Sliver Law chose not to define "building height" or otherwise specify the absolute height of each of the elements of the buildings regulated by its provisions. They instead allowed the Department of Buildings to construe and apply the amendment in a practical way that achieves the Resolution's objectives. The Department has done so here in a way that protects both the streetscape that the Planning Commission was intent on preserving and the interest of the property owner in improving property in manner consistent with law. The Department's decision should be affirmed.

## ISSUE PRESENTED

In 1983 the City Planning Commission adopted the amendments to the Zoning Resolution known as the "Sliver Law." In the report accompanying the text of the amendments, annexed hereto as Exhibit A, the Commission wrote that it was greatly concerned with the construction of narrow high rise buildings that were "sometimes four to five times the height of their surrounding low-rise brownstone neighbors. Because of the narrowness and exceptional height," the Commission explained, "these buildings are inconsistent with the scale and character of the existing neighborhoods." Exhibit A, p.2. The Commission stated that "it is important to regulate the construction of "sliver" buildings in the aforementioned districts which are predominantly residential in character in order to ensure a harmonious relationship between these buildings and the existing buildings in the neighborhood." Id.

Accordingly, the Commission stated that it would amend the text of the Zoning Resolution so that "any new building or enlargement of an existing building which has a frontwall width of 45 feet or less will be restricted to a height equivalent to the width of the street on which it fronts in order to conform these new buildings to the scale and character of the area." Exhibit A, p.2. Unlike other zoning provisions that define building height and set three-dimensional envelopes that buildings must be able to fit into, the Commission chose not to define "building height" in the text of the Sliver Law but instead left its day to day application to the Buildings Department.

The issue in this appeal is whether the Sliver Law prohibits the Department from approving penthouses or other structures that are higher than the width of the abutting street or of any adjacent building, even when these structures are set back so that they are not visible from the street. The text of the law, the stated purposes of the City Planning Commission in adopting the Sliver law, and Department precedent all support the Department's practical construction of the Zoning Resolution to allow these structures to be built.

## FACTS

The subject building was, before the construction permitted under the application challenged here, a five-story old law tenement erected in the nineteenth century. In 2005 the owner added a sixth story and a penthouse. Petitioner has conceded for the purposes of this appeal that the sixth story does not exceed a height of 60 feet. Petition, page 2 fn. 3. The penthouse is 9 feet high and is setback approximately 20 feet from the parapet at the front of the building. The penthouse is situated behind a parapet of less than 4 feet in height. The penthouse is not visible from the sidewalk directly across the street, and is barely visible from the sidewalk further east and west on the block. See photographs, Department's Exhibit B.

Manhattan Borough Commissioner Christopher Santulli, P.E., responded in writing to two different inquiries by elected officials with respect to the building in letters dated August 25, 2006 and February 15, 2007. Petitioner's Exhibits 7 and 10. Both of those responses address the same contentions under the Zoning Resolution that petitioner raises here, namely, that the penthouse allegedly violates section 23-62. This appeal ensued.

## DISCUSSION

The City Planning Commission adopted the Sliver Law in 1983 to address a discrete problem: the aesthetic impact on neighborhoods presented by the construction of tall narrow buildings. Overlain on top of floor area, height and setback rules that already governed the development of buildings in the City, the Sliver Law was not designed to reduce population density or the intensity of development in the areas that it covers. Rather, the amendment was designed to address the visual effects that "sliver buildings" – narrow buildings less than 45 feet in width – had on the streetscape.

That the purpose of the Sliver Law was an aesthetic and not a density regulation is clearly shown not only by the Planning Commission's report annexed as Exhibit A, but also by the fact that its provisions do not cover buildings that are wider than 45 feet. Hence a development is not covered by the law if the owner of a building that is less than 45 feet wide merges its zoning lot with the zoning lot of an adjoining building to create a "building" as defined in the Zoning Resolution that is wider than 45 feet. It is also shown by the exception in the Sliver Law that allows a building to be constructed higher than the width of the street as long as the building matches the height of one of its adjacent buildings: on wide streets the new or enlarged building may reach the height of the abutting walls of its taller neighbor, and on narrow streets it may reach the height of the abutting walls of its lower neighbor. Indeed, when the City Planning Commission adopted the Sliver Law, it expressly stated that it was rejecting suggestions that it limit all narrow buildings to a height equivalent to the width of the adjoining street. The Commission wrote: "To limit the height of these "sliver" buildings only to a height equivalent to the width of the adjoining street, as suggested at the public hearing, would be beyond the scope of this amendment. The Commission understands and will consider additional refinements to the proposed amendments which respond to the concerns of the community." Exhibit A, p. 2.

Hence, contrary to petitioner's arguments, because the Sliver Law was plainly designed to address the *visual* impact that tall skinny buildings pose to the streetscape, it is both rational and consistent with the text and import of the Zoning Resolution for the Buildings Department to construe building height in the Sliver Law in a way that has no visual impact on the neighborhood and that also prevents needless constraints on an owner's right to develop property (consistent of course with the applicable floor area, height and setback limits of the underlying district). Unlike other sections of the Zoning Resolution where "building height" is expressly defined (Zoning Resolution § 23-652(b)(2)(ii) (height of building defined as the height of a street wall before setback); see also the various maximum planes and building envelopes that are usually and expressly set forth in § 23-631), the Planning Commission chose not to define building height in the text of § 23-692 or to otherwise impose a rigid envelope governing construction on these lots. Rather, in this section the Commission allowed the Buildings Department to construe the words in a practical way that reflects the underlying intent and purpose of the section.

Appellant also argues that since penthouses are not listed as "permitted obstructions" in ZR §23-62, penthouses cannot exceed the height limits of section 23-692. However this argument assumes that penthouses that are set back from the street wall and are not visible from the street

violate the height limits referenced in section 23-62, in this case section 23-692. If the "obstruction" does not violate section 23-692, it does not need to be found in the list of permitted obstructions in order to be authorized.

Petitioner also contests the Department's decision to use the definition of building height found in Building Code §27-306(c) as a guide in determining Sliver Law compliance. This section provides that in applying the provisions of the Building Code, roof structures and penthouses shall not be included in the height of the building unless they exceed one third of the area of the roof.

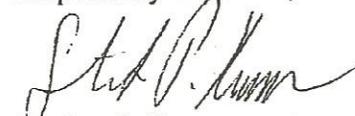
While it is true that this section of the Building Code does not relate to zoning or aesthetic considerations, and was adopted to allow small structures to be built on roofs without triggering the fire protection provisions relating to buildings over a specific height, it was not arbitrary for the Commissioner to use it as a rule of thumb as had been done for many years by the Department. Section 211 of the Multiple Dwelling Law, which has an identical provision and on which section 27-306(c) of the Code was undoubtedly modeled, has an aesthetic component similar to the Zoning Resolution: MDL §211(1) limits the height of enlarged tenements to no more than one and one-half times the width of the street, and MDL §211(3) excludes penthouse structures less than a third of the roof area from its purview. While an argument can be made that penthouses of any size that are not visible are consistent with the Sliver Law (either because they are setback and are not within sightlines or because they are behind bulkheads or other permitted obstructions), the use of the one-third rule here was not arbitrary. Moreover the use of the one-third rule did not adversely affect the appellants in this case.

The Department's construction of the Sliver Law to allow the construction of penthouses is fully consistent with judicial opinions that have construed (and generally upheld) aesthetic limitations in zoning. While zoning for aesthetic purposes is widely accepted in New York and in other jurisdictions (see generally 2 Ziegler, Rathkopf's Law of Zoning and Planning, chapter 16), construction of an aesthetic provision so that it restricts an owner's use of property in a way that does not achieve the drafter's intent should plainly be avoided. See *Allen v. Adami*, 39 NY2d 375 (1976).

## CONCLUSION

The determination should be affirmed.

Respectfully submitted,



Stephen P. Kramer  
Senior Counsel

New York City Board of Standards & Appeals

TRANSCRIPTION OF TAPE

*Case# 67-07-A.*

*515 East 5<sup>th</sup> Street, Borough of Manhattan..*

*7-17-07.*

CHAIR SRINIVASAN: All right. Are there any questions for Mr. Finnegan? All right. Thank you. Mr. Kramer from the Buildings Department.

MR. KRAMER: Good morning. My name is Steven Kramer. I'm a Senior Counsel at the Buildings Department and I, too, was here yesterday and I'm aware of your concerns and I will try to limit my remarks to them.

This case and the companion case on 57<sup>th</sup> Street really present very smaller issues and I won't -- I'm going to try to present the bulk of my case now rather than to repeat it at that time but, of course, if you have additional questions related to the specifics of that, I'll be glad to address them.

First, I think it's --

CHAIR SRINIVASAN: Well, Mr. Kramer, since we're hearing this case separately from the other case, I think just in terms of your references to East 57<sup>th</sup> Street, I would hold off on that until you are called for the second case.

MR. KRAMER: Yes.

CHAIR SRINIVASAN: So, please proceed.

MR. KRAMER: Yes. I think it's important at the outset to note what we're not in disagreement on because the Planning Commission or the Planning Department did submit a letter which I think in some ways was helpful to clarify issues but in some cases perhaps obscured some of the issues.

We are not arguing here that the Building Code should be used in any way to overrule the Zoning Resolution.

92 The are parallel regulatory schemes but they have different -- in general they  
93 have different purposes. I mean, there are a few times when they cross reference one  
94 another but that's not the case here.

95 This is not to say that the Codes have no relationship with one another. If the  
96 Planning Commission is adopting something with knowledge or, obviously, explicit  
97 reference to the Building Code, they should be interpreted together and at times we do try  
98 to accommodate one of them and because they may be addressed to some more problems.

99 Here, though, the original -- I think the Multiple Dwelling Law actually was  
100 addressed to some aesthetic issues when there was a provision there which actually  
101 limited the height of, I think it was, Old Law Tenements, to one and a half times, the  
102 width of the street and I suspect that the Sliver Law was actually modeled on that, on that  
103 regulatory scheme so people were familiar with it.

104 But, that's really the only inner relationship that I see here.

105 Secondly, we're also not in disagreement with the City Planning Commission's  
106 contention that in most cases in the Zoning Resolution, building height refers the distance  
107 between the base plane and the height of the roof, although there are some complex  
108 issues as how you measure the height of the roof in certain situations, particularly where  
109 the roof isn't level as it so often is in Manhattan but there are mansard roofs and other  
110 roofs that are not level.

111 But, there are situations and we think we have one here where that simple  
112 measure of base plane to height of the top of the roof is not appropriate.

113 And, as Mr. Conopsy (Phonetic) acknowledged in the letter that he wrote you and,  
114 indeed, that's the reason why he needed to submit the letter in the first place, building

12 height is not defined in this section of the Zoning Resolution and, indeed, it's not defined  
13 in most sections of the Zoning Resolution where the term is used, although, I think, in  
14 most sections it's pretty clear what it means.

15 In the Sliver Law, which was adopted in 1983, the Planning Commission could  
16 have adopted the Building Height definition that's found, for example, in the preceding  
17 section where it explicitly says it shall be measured to the height of the street wall of the  
18 adjacent building.

19 But, in this case, it didn't do that and it uses, actually, three different height terms  
20 in the section. It uses the height of the street wall. It uses height of the building and it  
21 uses height of the building walls.

22 Those words are not precise terms of art and I think that -- and you can't say that  
23 they are, that they each have the same meaning in the Building Code -- the in the Zoning  
24 Resolution each time they are used. Rather, they are words that have to be understood in  
25 the context in which the Planning Commission was using them and in the context of what  
26 the Planning Commission was attempting to accomplish when it passed the particular law  
27 and that's why, in this case, where a building height was not defined, we looked first as  
28 many Commissioners have looked to the Building Code, which they said I'm not  
29 personally convinced is terribly appropriate here, because it doesn't really relate to the  
30 land use concerns that the Commission was concerned with.

31 But, they did, in the report, they did explain extensively what they were  
32 concerned with.

33 The Commission wrote, and I submitted a copy of it, a three page report in which  
34 they stated what it was trying to do was protect the character of neighborhoods, protect

the streetscape and they explicitly said where you have these tall narrow buildings that tower over their brownstone neighbors, it's offensive aesthetically and it really destroys the character of the neighborhood.

And you can see that even in then in 1983, the Commission was developing contextual concepts for almost contextual buildings; the structures that were to be built under the Sliver Law were to be respectful of their neighbors but they had many exceptions and the most important of which is the neighboring building is taller than the street is wide, you can reach the height of the neighboring building.

And, that wasn't a compromise. That was done specifically for the purpose of contextual -- of buildings, of protecting the way the street looked and they wanted the buildings to be the same height as one another and, indeed, they said if the building next door has setbacks which are higher than the street is wide, the new building or the enlargement of the old building, has to have the same step setbacks; the abutting walls have to be contiguous to the abutting walls of the neighboring building.

And, with this knowledge, the various -- of what the Commission was trying to attempt, various Commissioners in the Building Department who had to apply the Sliver Law over the last 24 years, have attempted to craft solutions to the practical problems of homeowners who've wanted to expand their properties in minor ways but that's respectful of the text of the law and of the purposes of the Sliver Law.

And, we don't have aerial photos but I was shown some from Google Earth, which actually if you look on some of the upper west side and upper east side buildings, you will see a not insignificant number of penthouses that have been constructed but that are not visible from the street; that you would not have any idea that are there.

The Commissioners and, I think, petitioners -- the appellants are absolutely correct that the Commissioners have not been completely consistent on this. Some Commissioners and Deputy Commissioners have taken one position. Others have taken different ones but generally when the matter got to the Deputy Commissioner level at the Buildings Department or the Commissioner level, there was a pretty regular and consistent position of allowing these penthouses to be built.

And, virtually, everyone of the ones that I have seen, I asked for some pictures to send people out to try to find them and they were about as visible as this one is on Fifth Street.

You know, if you stand over to the side of the building or there is an empty lot, you can see the penthouse from the side, maybe just a little bit of the roof of it but it's not -- if you're standing straight in front of the building because these penthouses were built in compliance with the height and setback limitations of the underlying district so there is almost always a requirement of a setback.

And, if there is no requirement of a setback, then there wouldn't be any issue and the Sliver Law is not impacted and there was not, in the past, there were not complaints about these and presumably the reason why there weren't complaints is that the structures had no impact, adverse impact on the streetscape. They weren't ugly and I suspect many of the property owners thought, no, I never can do it. Maybe that means at some point in time, I'd like to do it myself.

So, with this background when the Borough Commissioner of Manhattan was faced with the pressment of these prior decisions, he reviewed the issue with the other Borough Commissioners and with the Deputy Commissioner for Technical Affairs.

And, after a lot of discussion where we were in agreement at the Buildings Department that the Zoning Resolution was not clear on this issue of what building height means in this context and the quite clear import of the Commission's report which was an aesthetic import, that lead to the Department's conclusion and the Commissioner's conclusions to confirm, reaffirm his decision that he made last August and he reaffirmed it in February in this appeal and sued.

And, the basic conclusion was that the intent of the Sliver Law was not to prevent homeowners from developing their properties that do not offend or damage the streetscape.

In this context, I just want to emphasize that not withstanding the legal arguments which have been presented by the very capable counsel for the appellant, we, at the Buildings Department, what we're doing is we're interpreting and applying a Zoning Resolution. It's a thousand page, very dense document which our Commissioners have to apply in a 73,000 construction applications every year.

Interpreting and applying a Zoning Resolution is not an academic or a Talmudic exercise. We can look to the number of times that words are used and try to develop some academic approach as to what's the best meaning of that word for all purposes.

It's a real world application in the constraints of the one million zoning lots and buildings that we have in the city.

And, when the Commissioners are faced on a day-and-day out basis with practical problems of real people, homeowners, who are trying to develop their property, they have to make a practical construction of the law and that's what was done here and that's

generally, indeed, what this Board does as well, whether it be in the many different contexts in which this Board sits.

So, while the counsel of the Planning Commission is absolutely correct that building height is a widely used term in the Zoning Resolution, that doesn't mean that the Planning Commission believes that the Department of Buildings or that this Board should always say that building height means a certain thing and this shall not ever be deviated from.

And, I say here where we're talking about a building height that is set at the back of the building which is virtually invisible from the street but it's not inappropriate to say the guy has got his floor area. He's well within the density limits of the number of housing units and he's well within the floor area (Unintelligible) that are in the underlying zoning. Let him develop it as long as he is not adversely impacting his neighbors.

The Department is, of course, aware that the City is a different place from -- we're aware today from where it was in 1983 and the decisions like this were not popular. I mean, we knew that there was opposition and we knew that there was going to be an appeal. That was why the letter asking us for a reconsideration was given.

But, at the urging of our counsel and the courts, the guidance from the courts, we don't abandon the precedent that we have except when we think the prior decision is plainly wrong.

You know, the Department has made these decisions in the past and if our counsel said you may have made those decisions in the past but they're wrong and I can't defend



New York City Department of Buildings  
280 Broadway, New York, NY 10007-1801

Patricia J. Lancaster, FAIA, Commissioner

Fatma M. Amer, P.E.  
Deputy Commissioner & Chief Code  
Engineer  
Technical Affairs  
(212) 566-3248  
Fax: (212) 566-3796  
famaa@buildings.nyc.gov

February 1, 2008

Honorable Rosie Mendez  
New York City Council  
250 Broadway, Room 1734  
New York, NY 10007

► 82-08-A ◀

Re: 515 East 5<sup>th</sup> St. / 514 & 516 East 6<sup>th</sup> St., Manhattan

Dear Councilwoman Mendez:

This letter is to respond to your concerns expressed to Borough Commissioner Christopher Santulli regarding the Multiple Dwelling Law ("MDL") in relation to the construction at 515 East 5<sup>th</sup> Street and 514/516 East 6<sup>th</sup> Street.

We both share common ground when it comes to protecting the safety of New Yorkers. And I agree with you that the provisions of the MDL provide important fire safety standards for tenement buildings, including those provisions that require certain upgrades when a tenement is increased in height. However, the MDL was enacted in 1929, prior to the widespread use of sprinklers and other advancements in construction materials and techniques designed to enhance fire safety.

Upon careful review of the decisions made by the Manhattan borough office for these buildings, the Department has determined that the applicant's proposed design the upgrades level of fire protection afforded to the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require any sprinklers. Additionally, the Department will be requiring hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so. Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unnecessary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.

Lastly, I would be remiss if I did not point out that, absent these alterations, the existing buildings would remain as unsprinklered, unimproved tenements, essentially frozen in time since 1901. The addition of the sprinklers system and the hardwired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded to them.

This shall be considered a **FINAL DETERMINATION** by the Department on 515 E. 5<sup>th</sup> Street & 514/516 E. 6<sup>th</sup> Street, Manhattan.

**-82-08-A**

Honorable Rosie Mendez  
February 1, 2008  
Page 2

Please feel free to contact Mr. Donald Ranshte, Director, Intergovernmental & Community Affairs at (212) 566-3517 if you have any additional questions or concerns.

Sincerely,



Fatma M. Amer, P.E.  
Deputy Commissioner

cc: Robert LiMandri, First Deputy Commissioner  
Stephen Kramer, Esq., Senior Counsel to Commissioner  
Christopher Santulli, P.E Borough Commissioner - Manhattan  
Donald Ranshte, Director, Intergovernmental & Community Affairs



NYC Department of Buildings  
200 Broadway, New York, NY 10007  
Patricia J. Lancaster, FAIA, Commissioner

Christopher Santulli, P.E.  
Borough Commissioner  
Manhattan Borough Office, 3<sup>rd</sup> FL  
Phone: (212) 508-0011  
Fax: (212) 568-5575  
E-mail: christophers@buildings.nyc.gov

March 6, 2008

82-08-A

Honorable Rosie Mendez  
New York City Council  
250 Broadway, Room 1734  
New York, NY 10007

Re: 515 East 6<sup>th</sup> St.  
514 & 516 East 6<sup>th</sup> St.  
Manhattan

Dear Councilmember Mendez:

This letter is a follow-up to Commissioner Amer's letter of February 1, 2008, regarding the Multiple Dwelling Law ("MDL") in relation to the construction at 515 East 5<sup>th</sup> Street and 514/516 East 6<sup>th</sup> Street.

The Department agrees with you that the provisions of the MDL provide important fire safety standards for tenement buildings, including those provisions that require certain upgrades when a tenement is increased in height. However, the MDL was enacted in 1929, prior to the widespread use of sprinklers and other advancements in construction materials and techniques designed to enhance fire safety.

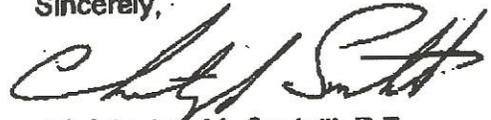
As outlined in Ms. Amer's letter, the Department has determined that the applicant's proposed design upgrades the level of fire protection afforded the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require any sprinklers. Additionally, the Department will require hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so. Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL.

The addition of the sprinkler system and the hard-wired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded them.

This shall be considered a FINAL DETERMINATION by the Department on 515 E. 5<sup>th</sup> St. and 514/516 E. 6<sup>th</sup> St., Manhattan.

Please feel free to contact Mr. Donald Ranshte, Director, Intergovernmental & Community Affairs at (212)566-3517 should you have any additional questions or concerns.

Sincerely,



Christopher M. Santulli, P.E.  
Borough Commissioner  
Manhattan

Cc: Robert LiMandri, First Deputy Commissioner  
Fatma Amer, Deputy Commissioner  
Stephen Kramer, Esq., Sr. Counsel to Commissioner  
Donald Ranshte, Director, Intergovernmental & Community Affairs



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BUILDINGS & APPEALS

2009 SEP 30 A 2:01

NYC Department of Buildings  
280 Broadway, New York, NY 10007

Robert LiMandri, Commissioner-Designate

CAL. NO.

Mark Davis, Esq.  
Assistant General Counsel  
212.566.3969  
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Markd-02@buildings.nyc.gov

September 29, 2008

Honorable Members of the Board  
Board of Standards and Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006.

Re: Cal. No. 81-08-A  
514-516 E. 6<sup>th</sup> St., 515 E. 5<sup>th</sup> St., Manhattan

Dear Honorable Members of the Board:

The New York City Department of Buildings ("Buildings") submits this response to Petitioner's appeal in the above-referenced matter. Petitioner argues that this Board should overturn Buildings' acceptance of jobs 104368845 and 104744877 (the "Jobs") at 515 E. 5<sup>th</sup> St., Manhattan and 514-516 E. 6<sup>th</sup> St., Manhattan, respectively (the "Subject Premises"), because the Jobs are in violation of the New York State Multiple Dwelling Law ("MDL") and New York City Building Code ("Code"). However, such acceptance should stand, as will be further elaborated below.

**I. The Fire Safety Upgrades in the Jobs Maintain the Spirit and Intent of the MDL.**

The bulk of Petitioner's submission in this matter discusses how DOB did not require that the Jobs comply with the strict letter of the MDL's fire upgrade requirements for the proposed tenements' height increase. However, as explained in DOB's final determinations on the Jobs (i.e., the February 1, 2008 letter by DOB Deputy Commissioner & Chief Code Engineer Fatma Amer, P.E., and the March 6, 2008 letter by DOB Manhattan Borough Commissioner Christopher Santulli, P.E. [attached hereto as Exhibits "A" and "B," respectively]), the fire upgrades provided in the plans for the Jobs maintain the spirit and intent of the MDL as well as public health, safety, welfare, and justice, given the practical difficulties and unnecessary hardships that strict application of the MDL would cause in these particular cases.

The fire safety upgrades required by a strict application of the MDL constitute practical difficulties and unnecessary hardship. In her May 21, 2007 letter to Buildings about 514 E. 6<sup>th</sup>

St., Councilwoman Rosie Mendez acknowledged some of the difficulties and hardship that strict compliance with the MDL would entail. In her words,

“compliance with the MDL here would be virtually impossible.... [A] new staircase could not be installed to replace the existing stairs because the existing tenants would have no egress during the installation. Further, it would be impossible to make the existing stairs compliant with the MDL provisions, because it is too narrow, is enclosed by walls of combustible wood joists and plaster lathe, and a public hall or vestibule could not be built without reducing the floor area of the occupied apartments.”

515 E. 5<sup>th</sup> St. requires similar upgrades that entail similar difficulties and hardship.

Given that it is virtually impossible for tenements such as those at issue to comply with the strict letter of the MDL for a height increase, no reasonable tenement owner would construct such an increase. If no such increases are constructed, increased fire safety requirements for such tenements would not be imposed.

By acknowledging the practical difficulties and hardships that the MDL imposes when increasing the height of certain tenements, and by designing an effective alternative method of fire safety improvement, Buildings has fostered incentive for tenement owners to increase the fire safety afforded to tenement residents to a level well above that of the tenements' original condition. For instance, the upgrades that Buildings requires for the Jobs include: 1) sprinklering of the entire building (a protection not required under the MDL); 2) installation of hard-wired smoke detectors in all apartments; 3) increased fire-resistive rating of the stair and entrance hall walls and cellar ceilings; and 4) the construction of fire passages from the back yards. Because no such fire safety upgrades would likely ever have occurred if Buildings did not accept the upgrades at issue as alternatives to strict MDL compliance, Buildings' acceptance of the Jobs clearly maintains the spirit and intent of the MDL as well as public health, safety, welfare, and justice.

## **II. The MDL Does Not Require Elevators to be Installed in the Subject Premises.**

Petitioner's assertion that the Subject Premises require an elevator under New York City Building Code<sup>1</sup> (“Code”) § 27-368 and MDL 51(6), is mistaken.

Firstly, Code § 27-368, by its explicit terms, applies only to “new buildings,” and thus it does not apply to the alterations at issue in this matter.

Secondly, Petitioner's suggestions that elevators are required under MDL § 51(6) because the Subject Premises are over six stories and over 60 feet in height are incorrect according to long-standing Buildings policy, which uses Code § 27-306 to determine whether penthouses

<sup>1</sup> Although the cited Code was superseded by a new building code on July 1, 2008, the referenced Code was in effect at the time that the Jobs were permitted.

constitute height or stories of buildings. Code § 27-306 states that, for purposes of applying height limits, measured in feet as well as stories (see notes for Code Table 4-1), penthouses are not included in the measure of height or stories of a building unless "the aggregate area of such [penthouse] exceeds thirty-three and one-third percent of the area of the roof of the building upon which [it] is erected." Because the penthouses at issue are not more than 33 1/3% of the relevant roof area, they do not count as building height or stories. This interpretive analysis is reasonable in this matter because appurtenant structures less than 1/3 of the relevant roof area do not add significant health/fire hazard/safety concerns relative to larger structures so as to require an elevator. This is particularly so for the Subject Premises because apartments served by the penthouses have entrances below the penthouses on the sixth floor.

Without the extra height and story that Petitioner argues comes from the penthouses of the Subject Premises, neither building is over 60 feet or six stories. Thus, the MDL does not require that elevators be installed.

### III. Conclusion

Based upon the foregoing, Buildings respectfully requests that the BSA uphold Buildings' acceptance of the Jobs.

Respectfully submitted,



Mark Davis  
Assistant General Counsel

Cc: Petitioner  
Robert LiMandri, Commissioner-Designate  
Christopher Santulli, P.E., Borough Commissioner, Manhattan  
Fatma Amer, Deputy Commissioner & Chief Code Engineer  
Mona Sehgal, General Counsel  
Felicia R. Miller, Deputy General Counsel  
David Karnovsky, NYC Department of City Planning  
Councilwoman Rosie Mendez  
Owner

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION OF TAPE

Case # 81-08-A & 82-08-A

514-516 East 6<sup>th</sup> Street, Borough of Manhattan.

10-7-08.

1 determine what the height is and they don't need to look to the Code to find that  
2 definition.

3 They claim there's a long-standing building policy discussed in their papers. That  
4 policy was overturned by the BSA in the Sliver case and, therefore, there's no policy at  
5 all to that effect.

6 CHAIR SRINIVASAN: I would just clarify that it was not  
7 overturned per se but it was a reading that doesn't apply to the Zoning Code. So, it was  
8 in the context of the zoning regulation.

9 MR. EPSTEIN: All right. Thank you:

10 And, the Department of Buildings and owners claim that their fire safety  
11 measures are not required under the Multiple Dwelling Law as well since they would be  
12 impossible to follow. However, that is the law. The owner has a bunch of options. They  
13 can go and change the law. They can go to their legislature and ask that the law be  
14 changed. They can seek a variance. That did not occur here. The Department of  
15 Buildings exceeded its authority and the decision to grant these permits should be  
16 reversed. Thank you.

17 CHAIR SRINIVASAN: Thank you. Are there any  
18 questions? All right, Mr. Epstein. All right, Buildings Department.

19 MR. DAVIS: All right. Good afternoon. Mark Davis, for  
20 the Department of Buildings.

21 As we've explained in our papers, DOB's acceptance of the jobs at issue doesn't  
22 only maintain the spirit of the MDL but it also fosters public health, safety, welfare and  
23 justice given the practical difficulties associated with the strict MDL compliance in this

1 case because no reasonable tenant - - tenement owner would likely ever overcome the  
2 hardships that are attended with - - I mean, increase of the height of the tenement then  
3 these tenement buildings and their tenement residence; would simply be simply be struck  
4 with antiquated fire-safety.

5 As for the elevator provision, you know, I have nothing more to say other than it  
6 has been a long-standing practice of the Department to interpret the height, definition of  
7 height from the Building Code and, as Madam Chair mentioned, the Sliver Law case did  
8 not overrule that interpretation in the context of the Multiple Dwelling Law but only in  
9 zoning and in that particular case.

10 CHAIR SRINIVASAN: All right. We understand and I  
11 think you're not refuting this that these measures are put in place from a policy  
12 prospective.

13 But, just as a matter of law, the Multiple Dwelling Law has to be followed and the  
14 Building's Department cannot waive the Multiple Dwelling Laws as far as we understand  
15 in this context; maybe for lofts but this is not a loft and I don't know if any of your legal  
16 research has indicated something otherwise because while I think the Board understands  
17 that the Building's Department likes to see buildings upgraded, we understand from a  
18 policy prospective that it seems just as a matter of law, the Building's Department has  
19 exceeded its (Unintelligible) authority.

20 MR. DAVIS: Well, the Department did what we thought  
21 the BSA would do under a MDL 310 application.

22 CHAIR SRINIVASAN: I'm sorry. I didn't hear. Can you  
23 say that, again?

1 MR. DAVIS: The Department did what we thought the  
2 BSA would do under a MDL 310 application which grants this Board the authority to  
3 waive MDL provisions.

4 CHAIR SRINIVASAN: All right. There is no MDL  
5 application before us so that's one thing. So, we don't have it as a part of this appeal.  
6 That's something that, yes, a property owner may apply to us and we would review it but  
7 it's not before us so that's one thing.

8 I would just also raise the issue that the Board's power to waive the Multiple  
9 Dwelling Law is limited and it's a matter of - - at least a minimum matter of  
10 interpretation whether we have the ability to waive fire protection. I know we looked at  
11 it internally. It's not clear.

12 So, while egress is identified. I don't know if I necessarily believe that means fire  
13 protection.

14 MR. DAVIS: Madam Commissioner, respectfully, height  
15 requirements are mentioned specifically under 310 and these fire protections are triggered  
16 by the increase in height of the tenement buildings.

17 CHAIR SRINIVASAN: All right. Well, that's not before  
18 us right now and that may happen subsequent but it's not happening before us right now.

19 Just on the issue of the elevator and I understand, again, it's your practice.  
20 However, it's not dissimilar from the zoning case where the Building's Department, by  
21 policy, looks at the Administrative Code or the Building Code to determine height but if  
22 there's a set of regulations that actually defines the height or has a different  
23 understanding that it seems that you should be referring to that particular regulation.

1 CHAIR SRINIVASAN: Based on the standards that  
2 you've identified to us, which is, I believe, practical difficulty and hardship and that you  
3 provide equal and safe measures, there's an equivalency issue there as well.

4 MR. DAVIS: Right. The equivalency issue is not in the  
5 MDL 310 but it is in the Building Code and under the 68 Building Code, we would not  
6 be in a position to support a position that the fire protection provided in the plans at issue  
7 are equivalent to the Building Code.

8 CHAIR SRINIVASAN: Okay. So, that is one reason why  
9 you haven't directed applicants in that way because it would be hard to meet that.

10 In other words, the measures that are put in place for this building are safer than  
11 what you have under an unimproved tenement but not safer if you compare it to what the  
12 Building Code would require you to do.

13 MR. DAVIS: It's not equivalent.

14 CHAIR SRINIVASAN: I understand. All right. Any  
15 questions for Mr. Davis? Okay. All right. Yes. Mr. Mitzner. Maybe you can give us  
16 some legal basis.

17 MR. COSTANZA: I'm sorry. Just state your name.

18 MR. MITZNER: Marvin Mitzner, Blank and Rome, LLP,  
19 representing the owner of both buildings.

20 Yes. I find myself in quite a quandary here representing the owner of these  
21 buildings because what we have are buildings that have been constructed that benefit the  
22 tenants who are taking this appeal to the greatest degree. They are the ones who will be

1 So, in the case of a Multiple Dwelling Law, if they talk about height, there are  
2 definitions of height in the Multiple Dwelling Law and that's what you should be  
3 following. That doesn't overturn the policy when you look at the Building Code.

4 I understand that if the issues that are triggered by height by the Building Code,  
5 then you will refer to the Building Code's definitions of what is considered height and  
6 story and that seems rationale to do.

7 But, I think we're here in a situation where there is no argument; really, before us  
8 as to something to counter the appeal which says the Building's Department went beyond  
9 its authority to waive the Multiple Dwelling Law and it's an unfortunate situation.

10 I do have one question. I know that the 1968 Building Code has - - I guess when  
11 that was adopted, it had a parallel in the Multiple Dwelling Law. People have that  
12 option.

13 Has the Building Department ever thought about looking at that option as a part of  
14 this issue that may come up again which is tenements may want to increase in height but  
15 they can't actually meet the Multiple Dwelling Law because the Building Code, the  
16 Building's Department has the authority to waive.

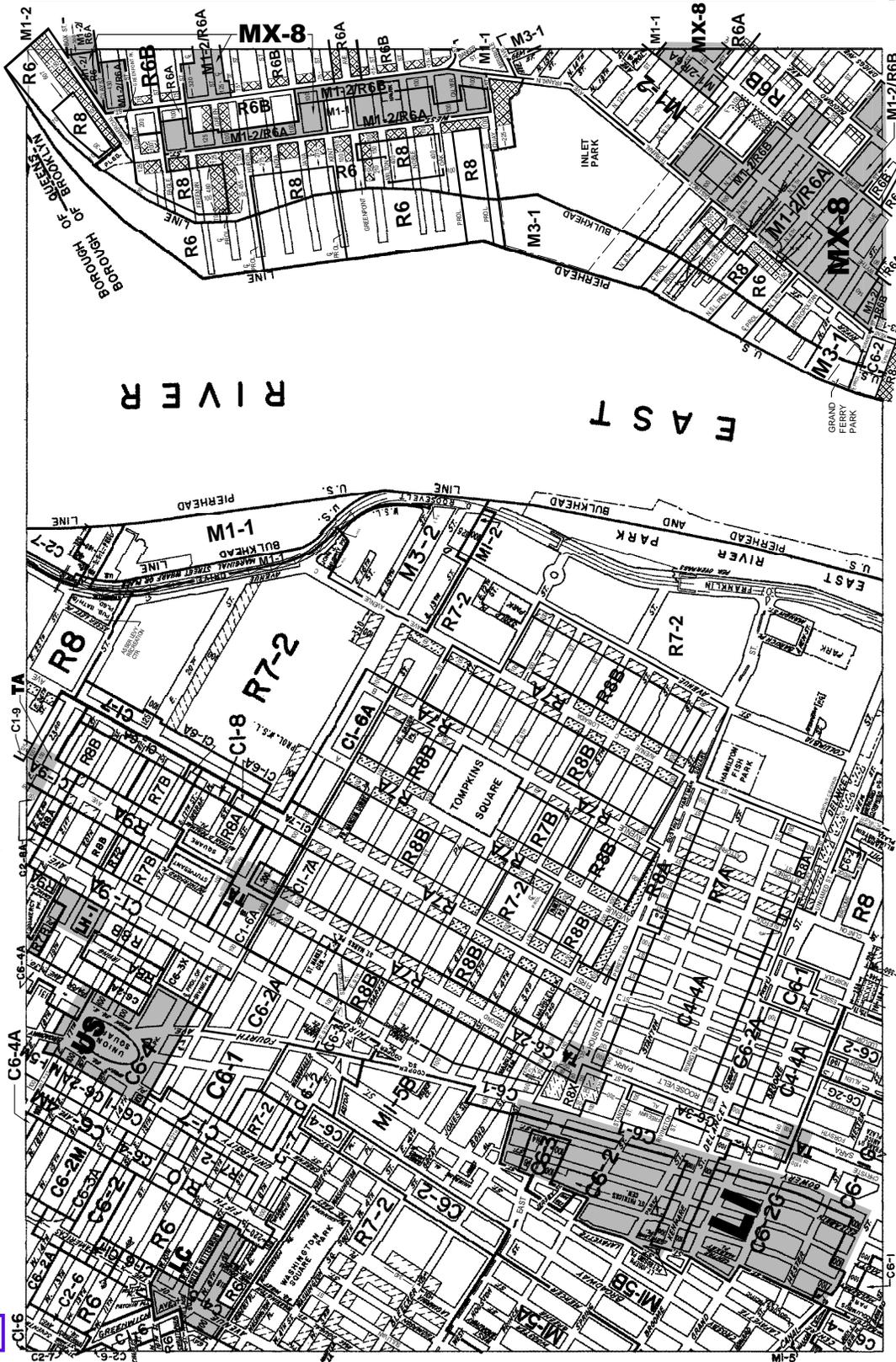
17 MR. DAVIS: I don't know if I understand you correctly.  
18 You're referring to the provision of the Building Code that would allow applicants if they  
19 file under the Building Code to waive certain provisions of the MDL.

20 And, as you mentioned, the Building's Department has the express authority to  
21 vary Building Code provisions.



	Borough Boundary	<b>C50</b>	Condo Flag/Condo Number
	Tax Block Boundary	<b>A50</b>	Air Right Flag/Lot Number
<b>50</b>	Tax Block Number	<b>S50</b>	Subterranean Right Flag/Lot Number
	Tax Lot Boundary	<b>R</b>	REUC Flag
<b>50</b>	Tax Lot Number	-----	Under Water Tax Lot Boundary
<del>50</del>	Condo FKA Tax Lot Number	- - - - -	Other Boundary
50.5	Tax Lot Dimension		Possession Hook
+/-5.5	Approximate Tax Lot Dimension	Misc	Miscellaneous Text
	Condo Units Range Label		Small Tax Lot Dimension
	Building Footprint		Surface Water

Click blue box on map to view sketch map of proposed map change



# ZONING MAP

THE NEW YORK CITY PLANNING COMMISSION

## Major Zoning Classifications:

The number(s) and/or letter(s) that follows on R, C or M District designation indicates use, bulk and other controls as described in the text of the Zoning Resolution.

- R – RESIDENTIAL DISTRICT
- C – COMMERCIAL DISTRICT
- M – MANUFACTURING DISTRICT
- SPECIAL PURPOSE DISTRICT (This area designates the special purpose district as described in the text of the Zoning Resolution.)
- AREA(S) REZONED

## Effective Date(s) of Rezoning:

08-17-2011 C 080491 ZMK

## Special Requirements:

For a list of lots subject to CEQR environmental requirements, see APPENDIX C.  
 For a list of lots subject to "D" restrictive declarations, see APPENDIX D.  
 For Inclusionary Housing designated areas on this map, see APPENDIX F.

## ZONING MAP



MAP KEY

8b	8d	9b
12a	12c	13a
12b	12d	13b

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NOTE: Zoning information as shown on this map is subject to change. For the most up-to-date zoning information for this map, visit the Zoning section of the Department of City Planning website: [www.nyc.gov/go/cplanning](http://www.nyc.gov/go/cplanning) or contact the Zoning Information Desk at (212) 720-9521.

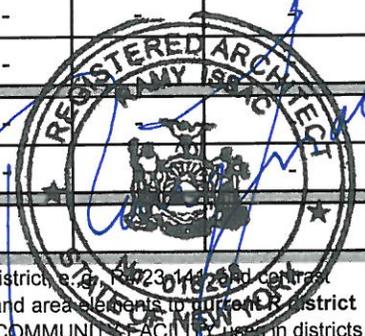
- C1-1
- C1-2
- C1-3
- C1-4
- C1-5
- C2-1
- C2-2
- C2-3
- C2-4
- C2-5

NOTE: Where no dimensions for zoning district boundaries appear on the zoning maps, such dimensions are determined in Article VII, Chapter 6 (Location of District Boundaries) of the Zoning Resolution.



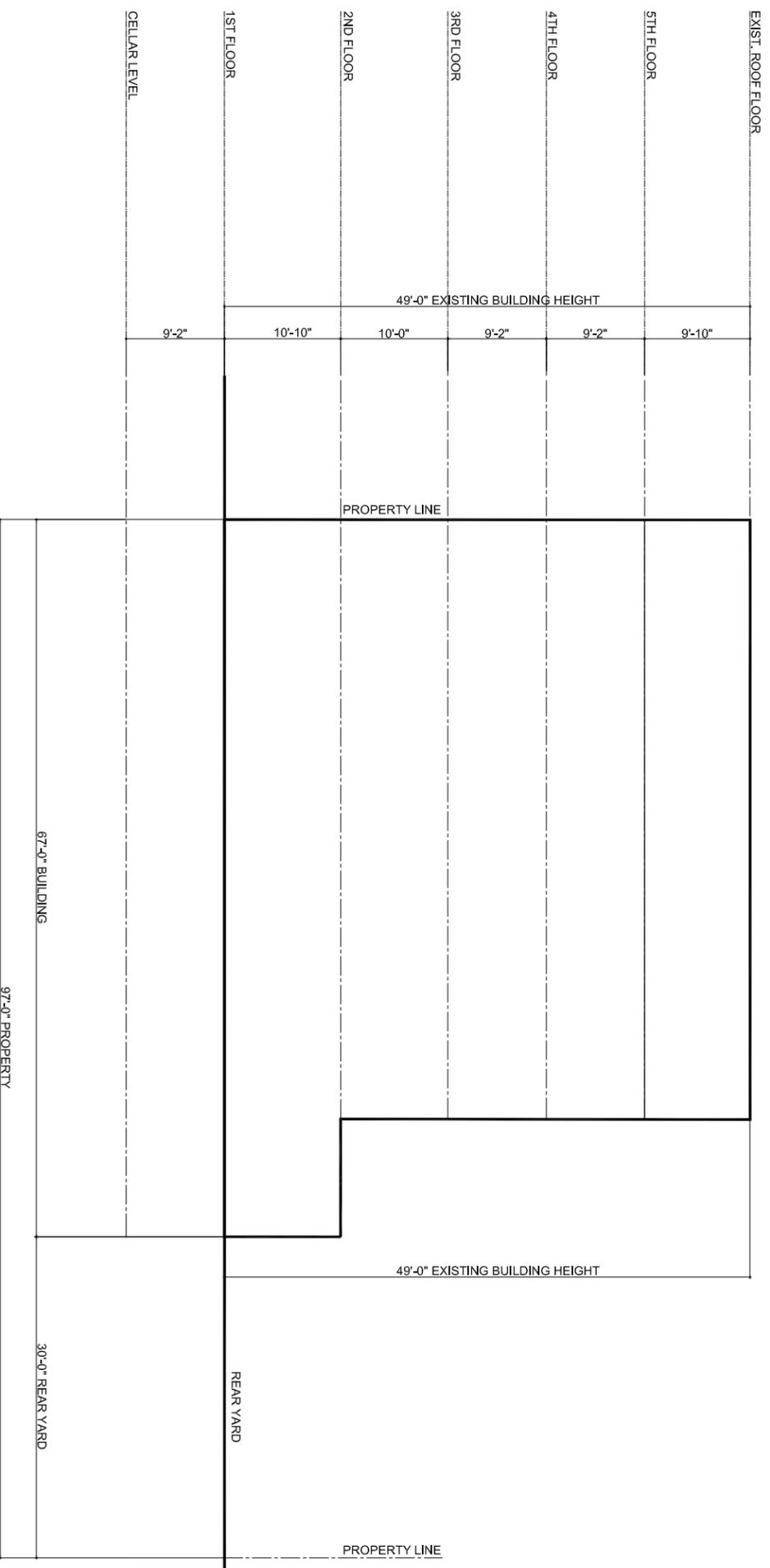
BSA CALENDAR NO. \_\_\_\_\_ BLOCK 401 LOT 56  
 SUBJECT SITE ADDRESS 515 East 5th, Manhattan  
 APPLICANT Law Offices of Marvin B. Mitzner, LLC COMPLIANT: "Y"  
 ZONING DISTRICT R7B PRIOR BSA # 67-07-A,82-08-A,245 & 246-12-A IF NOT: "N" and

	<b>* APPLICABLE</b>	<b>MAXIMUM</b>	<b>MINIMUM</b>	<b>LEGAL PER</b>	<b>EXISTING</b>	<b>PROPOSED</b>	<b>INDICATE AMT</b>
	<b>ZR SECTION</b>	<b>PERMITTED</b>	<b>REQUIRED</b>	<b>C of O or BSA</b>			<b>OVER/UNDER</b>
<b>LOT AREA</b>	23-30		1,700	2,434	2,434	2,434	Y
<b>LOT WIDTH</b>	23-30		18	26'	26'	26'	Y
<b>USE GROUP (S)</b>	22-00	2-4		2, 4	2, 4	2, 4	Y
<b>FA RESIDENTIAL</b>	23-145	7,302		n/a	7,725	7,306	N
<b>FA COMMUNITY FACILITY</b>	23-122	7,302		n/a	1,369	1,369	N
<b>FA COMMERCIAL/INDUST.</b>	n/a	n/a		n/a	-	-	-
<b>FLOOR AREA TOTAL</b>	23-145	7,302		n/a	9,904	8,675	N
<b>FAR RESIDENTIAL</b>	23-145	3.0		n/a	3.17	3.0	Y
<b>FAR COMMUNITY FACILITY</b>	23-122	3.0		n/a	0.56	0.56	N
<b>FAR COMMERCIAL/INDUST.</b>	n/a	n/a		n/a	-	-	-
<b>FAR TOTAL</b>	23-145	3.0		n/a	3.73	3.56	N
<b>OPEN SPACE</b>	-		-	-	-	-	-
<b>OPEN SPACE RATIO</b>	-		-	-	-	-	-
<b>LOT COVERAGE (%)</b>	23-145	65%		n/a	57%	57%	Y
<b>NO. DWELLING UNITS</b>	23-22	24		n/a	17	17	Y
<b>WALL HEIGHT</b>	23-63	60		n/a	60	60	Y
<b>TOTAL HEIGHT</b>	23-63	60		n/a	69	60	Y
<b>NUMBER OF STORIES</b>				n/a	7**	6	Y
<b>FRONT YARD</b>	23-40		-	-	-	-	-
<b>SIDE YARD</b>	23-40		-	-	-	-	-
<b>SIDE YARD</b>	23-40		30'	-	30'	30'	Y
<b>REAR YARD</b>	23-40		30'-0"	n/a	43'-0"	43'-0"	Y
<b>SETBACK (S)</b>	-		-	-	-	-	-
<b>SKY EXP. PLANE (SLOPE)</b>	-		-	-	-	-	-
<b>NO. PARKING SPACES</b>	-		-	-	-	-	-
<b>LOADING BERTH (S)</b>	-		-	-	-	-	-
<b>OTHER:</b>							

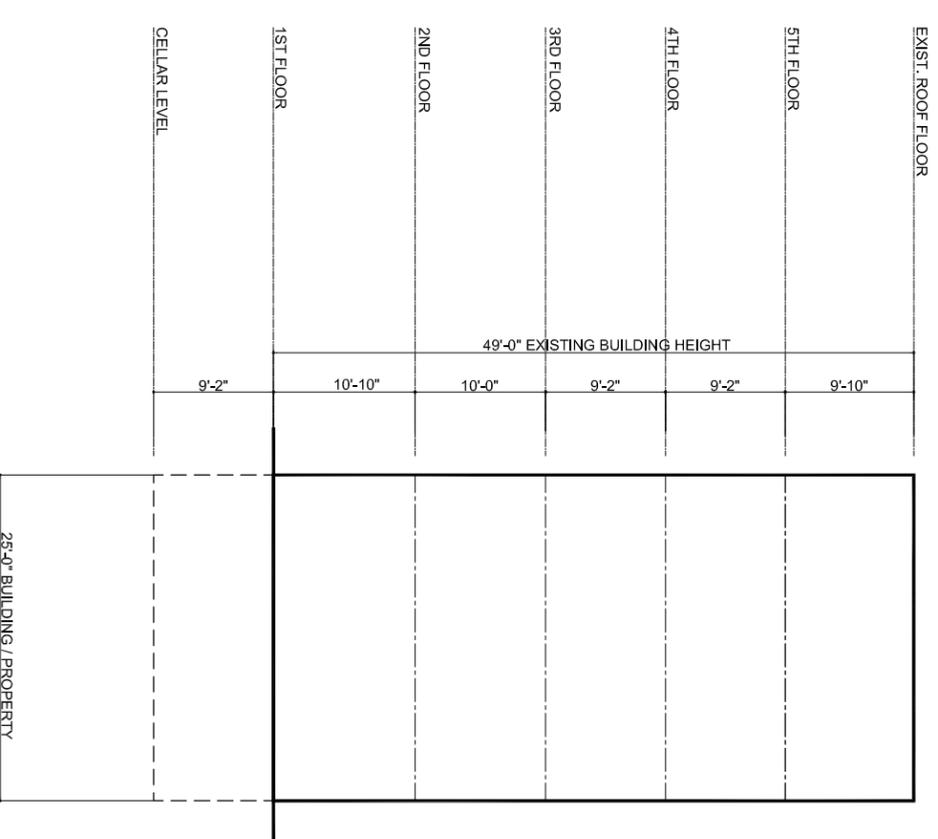


\* In Applicable ZR Section column: For RESIDENTIAL developments in non-residential districts, indicate nearest R district, e.g. R23-014626 and contrast compliance. For COMMERCIAL or MANUFACTURING developments in residential districts, contrast proposed bulk and area elements to current R district requirements, except for parking and loading requirements (contrast to nearest district where use is permitted). For COMMUNITY FACILITY uses in districts where not permitted, contrast to nearest district where permitted. For all applications, attach zoning map and highlight subject site. Be sure that all items noted in the DOB Denial/Objection are included. **NOTES:** At the time of permit issuance the proposed penthouse was believed not

to be a "story" because it was less than 30% of the roof below.



ZONING SECTION



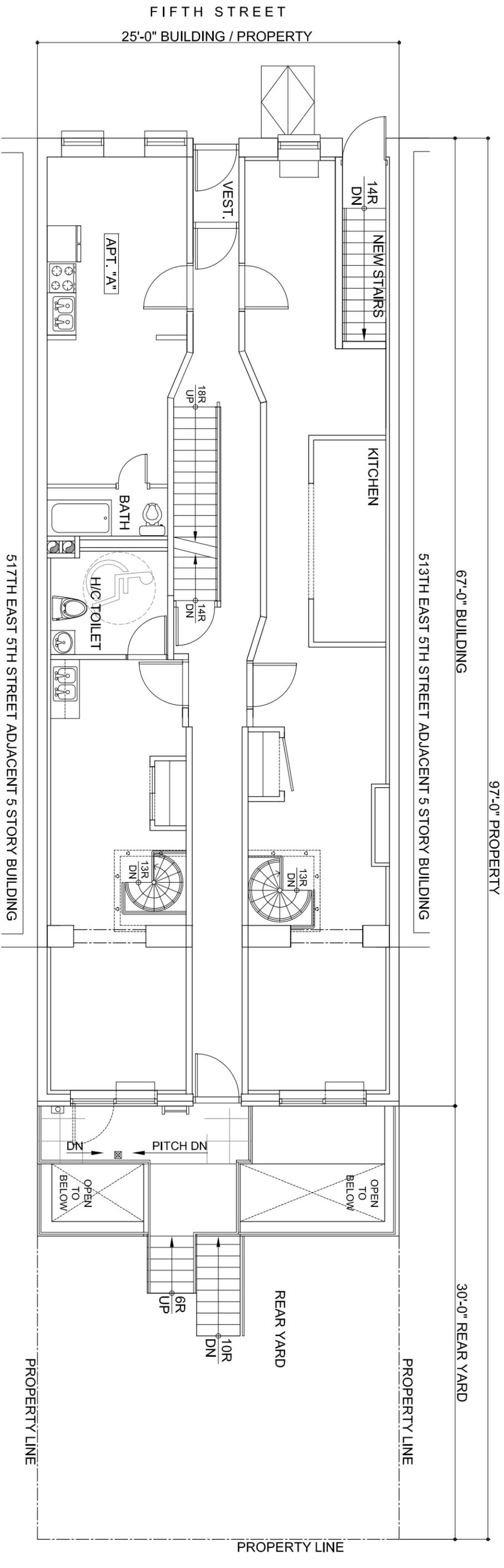
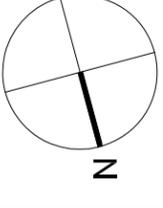
ELEVATION AT EAST 5TH STREET

AS OF RIGHT R7B ZONING SECTION AND ELEVATION

515 EAST 5TH STREET, NEW YORK, NY

A1

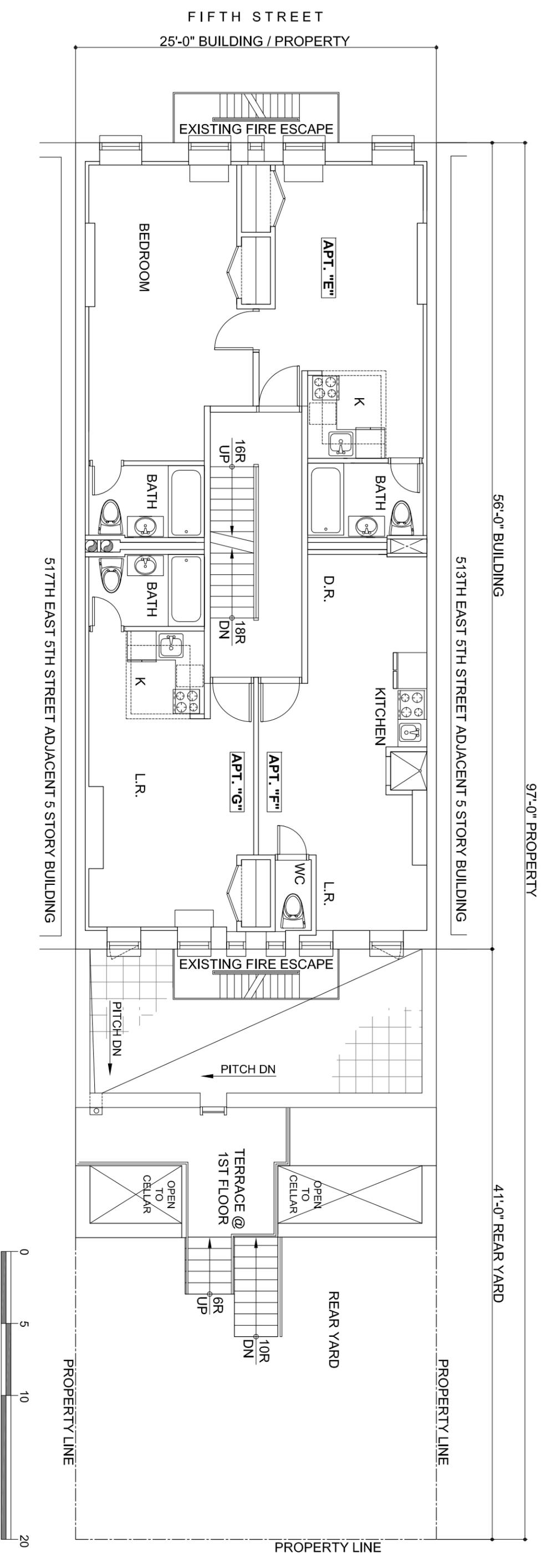
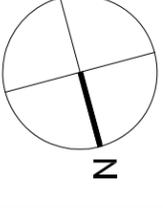




AS OF RIGHT FIRST FLOOR

A3

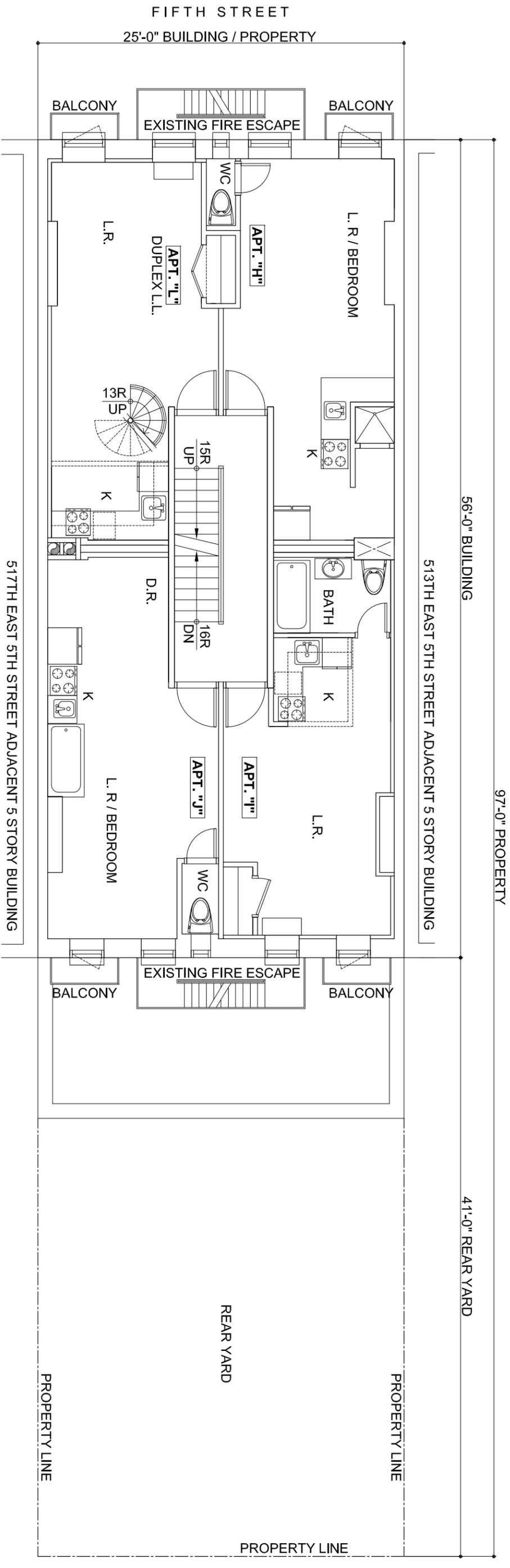
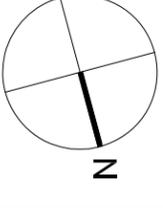
515 EAST 5TH STREET, NEW YORK, NY



AS OF RIGHT SECOND FLOOR

515 EAST 5TH STREET, NEW YORK, NY

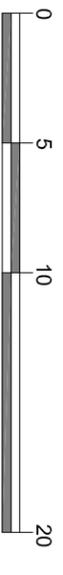
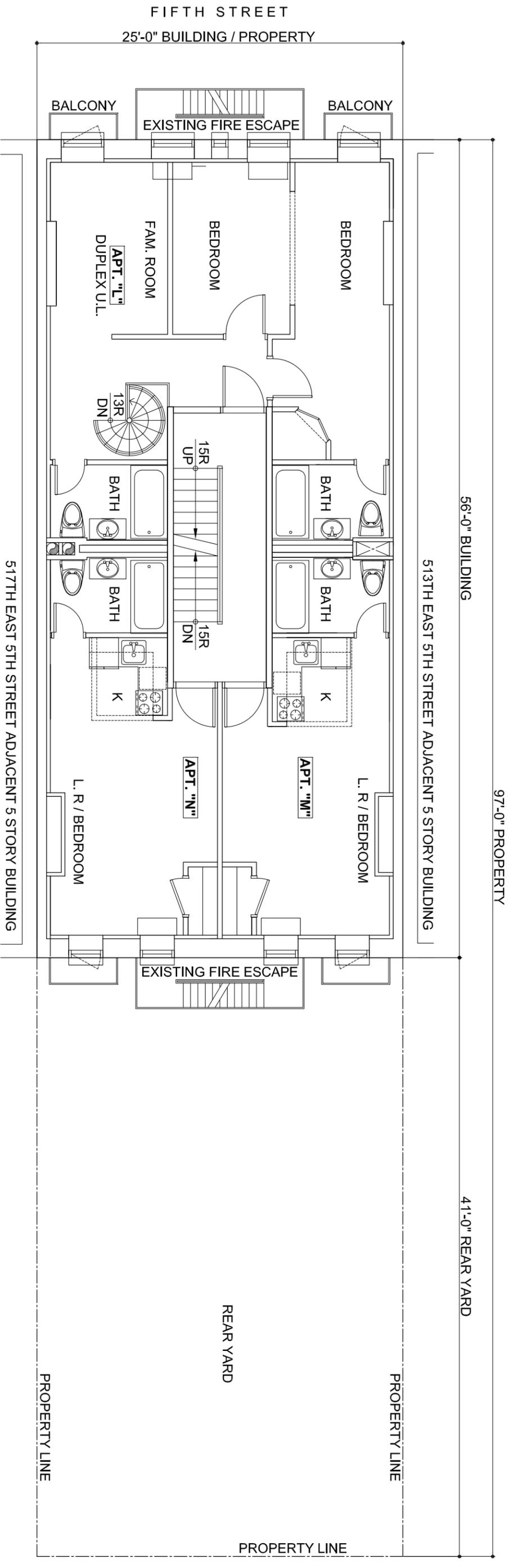
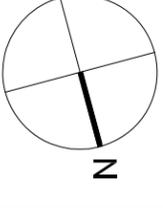
A4



AS OF RIGHT THIRD FLOOR

A5

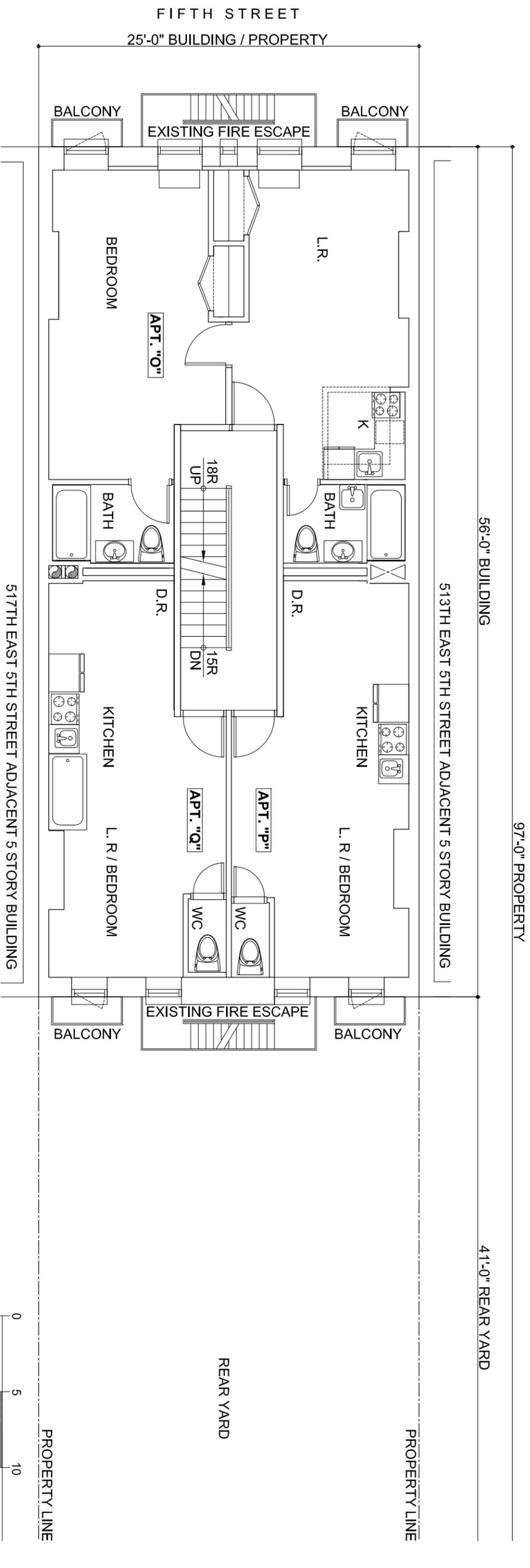
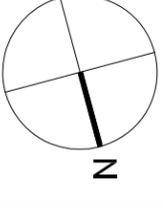
515 EAST 5TH STREET, NEW YORK, NY



AS OF RIGHT FOURTH FLOOR

A6

515 EAST 5TH STREET, NEW YORK, NY



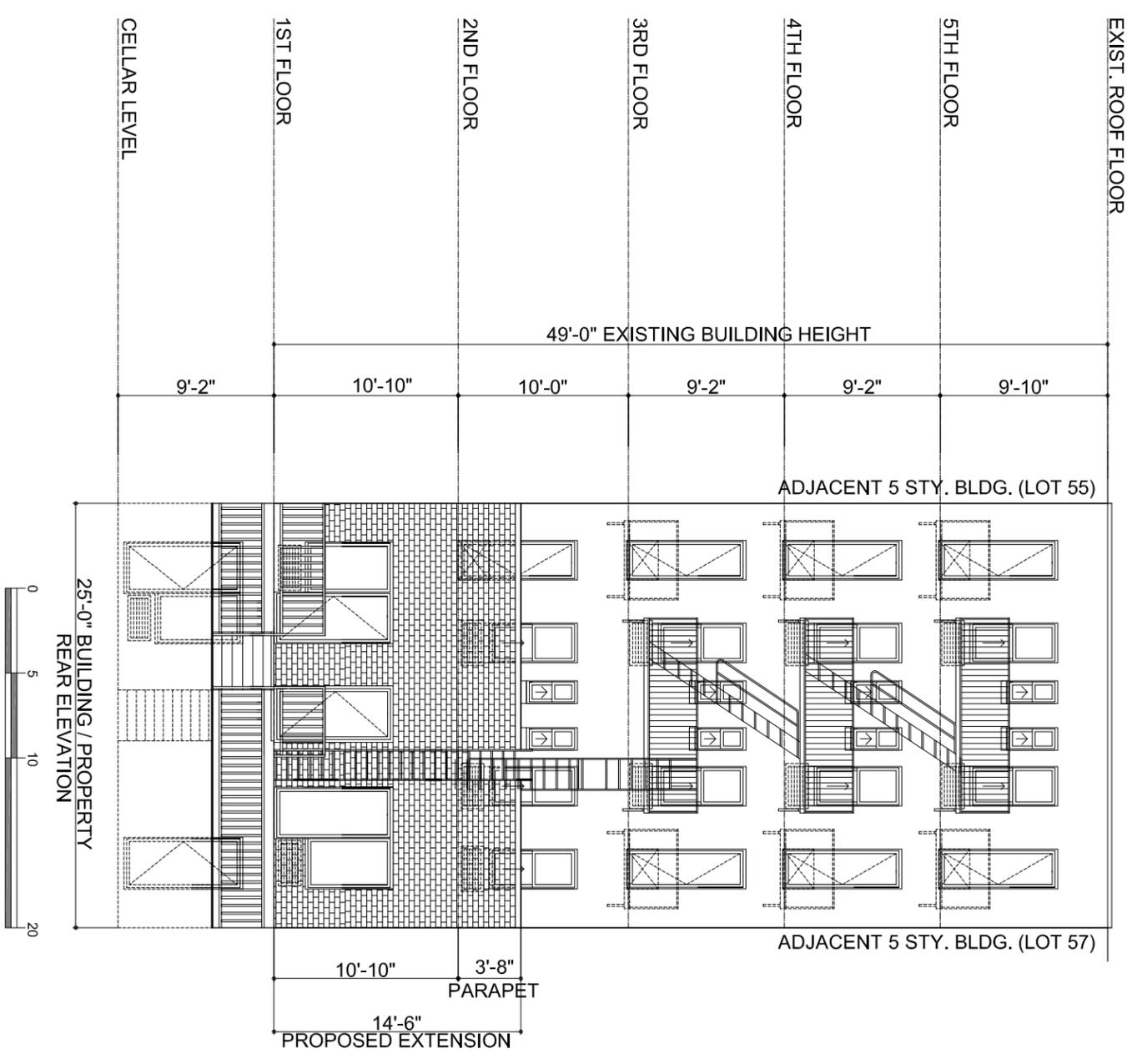
ADDRESS 515 EAST 5TH STREET  
 LOT SIZE 25' x 97'  
 BLOCK 401  
 LOT 56  
 ZONING MAP 12c  
 ZONING DISTRICT R7B  
 MAX FAR 3  
 2,434 S.F.

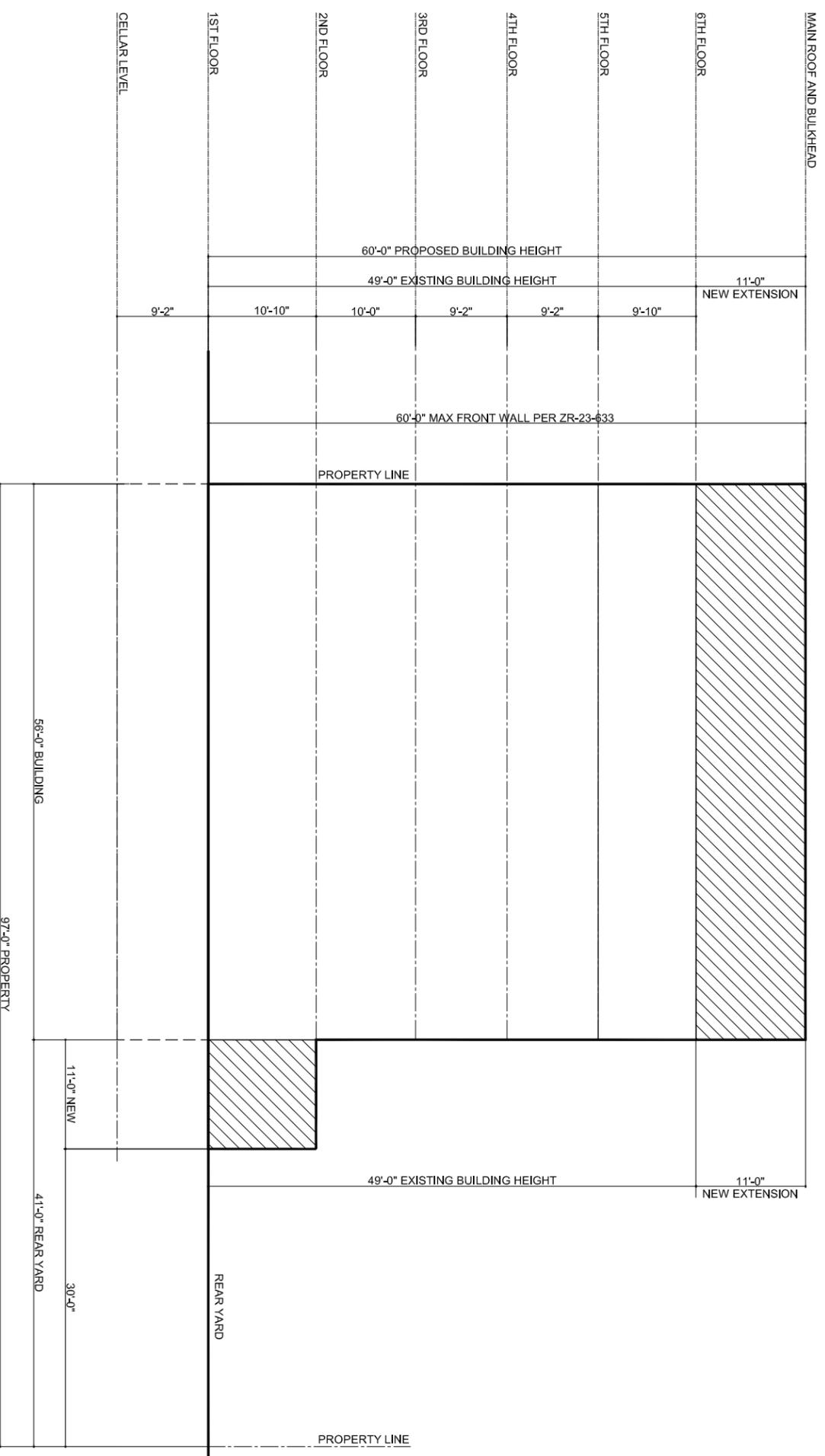
515 EAST 5TH STREET	
AS OF RIGHT AREAS:	
CELLAR	N/A
1ST FLOOR	1,675.0 S.F.
2ND FLOOR	1,400.0 S.F.
3RD FLOOR	1,400.0 S.F.
4TH FLOOR	1,400.0 S.F.
5TH FLOOR	1,400.0 S.F.
TOTAL	7,275.0 S.F.
7,275 / 2,434 = 2.9 AS OF RIGHT FAR	

AS OF RIGHT FIFTH FLOOR

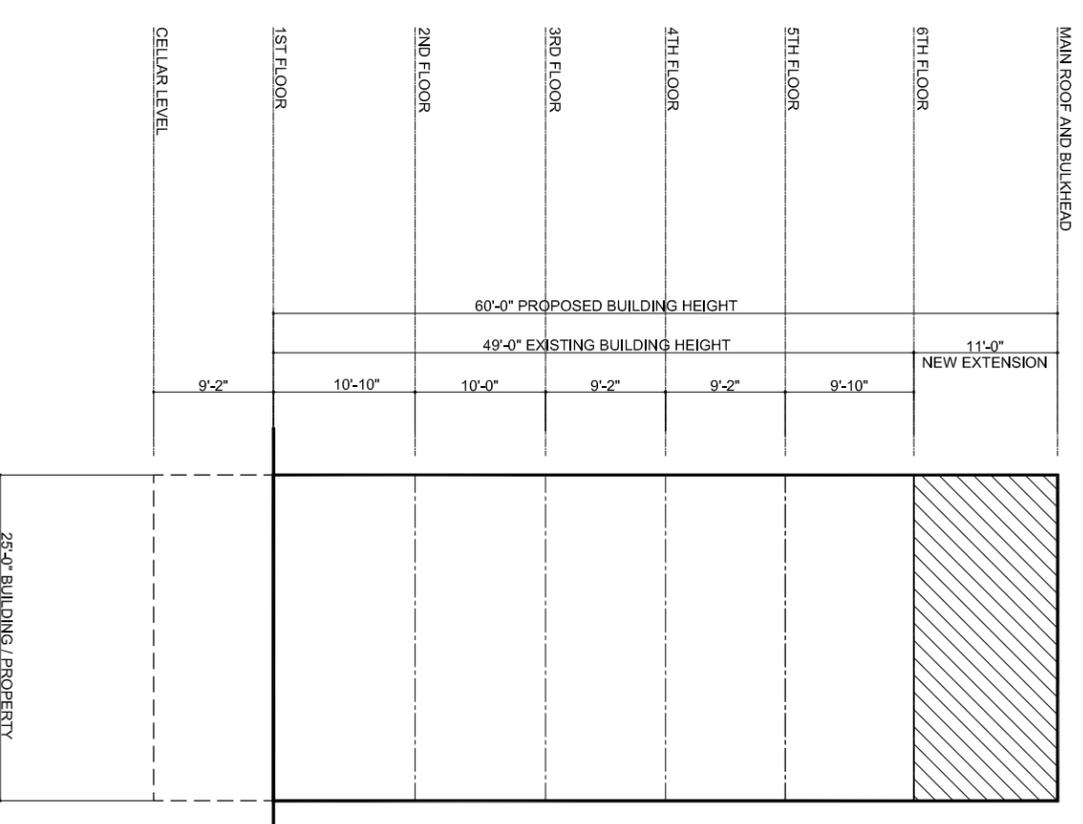


# AS OF RIGHT ELEVATIONS





**ZONING SECTION**  
 NEW ADDITION  
 ROOFTOP STRUCTURES ARE NOT SHOWN ON THESE DRAWINGS. ALL PERMITTED ROOFTOP STRUCTURES WILL BE PROVIDED AS REVIEWED BY DOB.

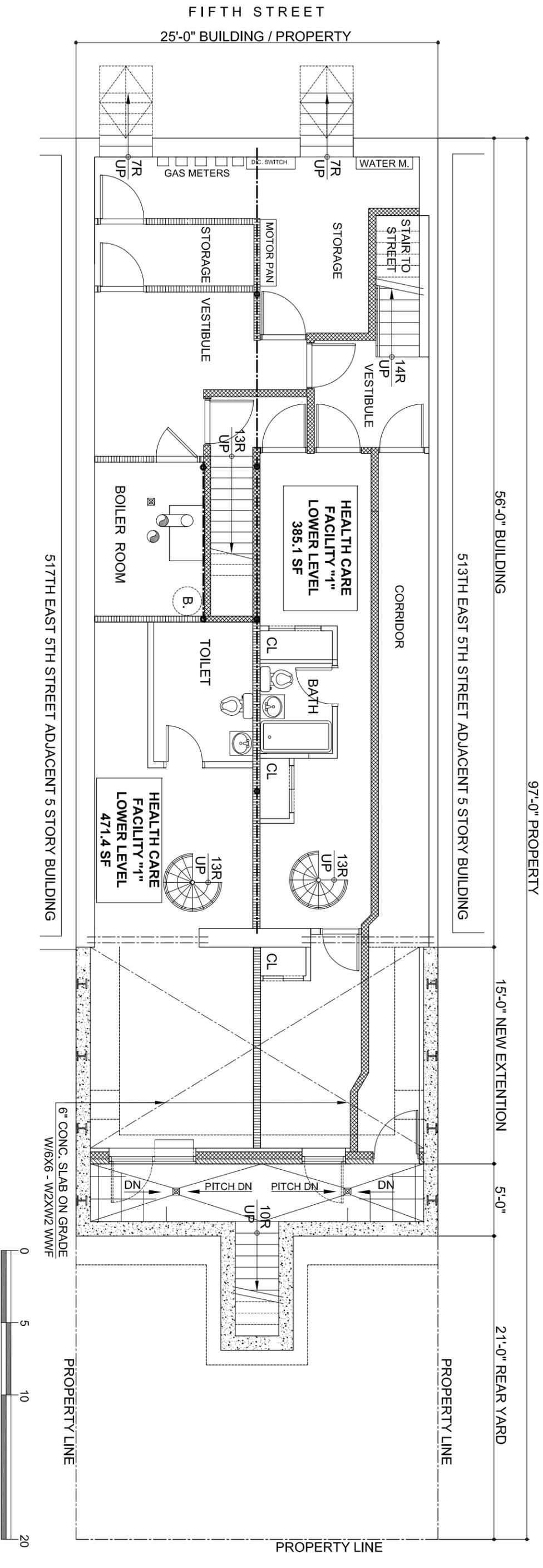
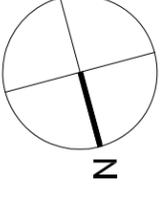


**ELEVATION AT EAST 5TH STREET**  
 NEW ADDITION  
 ROOFTOP STRUCTURES ARE NOT SHOWN ON THESE DRAWINGS. ALL PERMITTED ROOFTOP STRUCTURES WILL BE PROVIDED AS REVIEWED BY DOB.

**PROPOSED ZONING SECTION AND ELEVATION**

515 EAST 5TH STREET, NEW YORK, NY

**P1**



97'-0" PROPERTY

56'-0" BUILDING

513TH EAST 5TH STREET ADJACENT 5 STORY BUILDING

15'-0" NEW EXTENTION

5'-0"

21'-0" REAR YARD

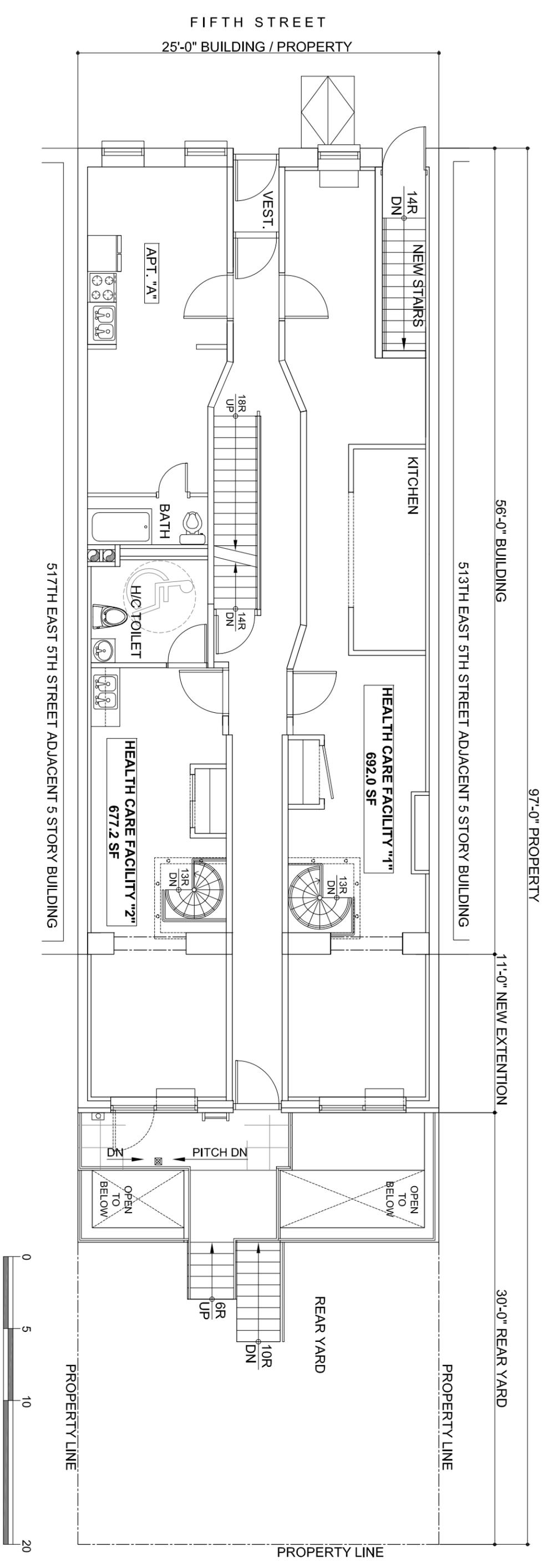
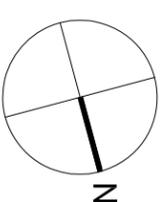
FIFTH STREET  
25'-0" BUILDING / PROPERTY

517TH EAST 5TH STREET ADJACENT 5 STORY BUILDING

**PROPOSED** CELLAR

515 EAST 5TH STREET, NEW YORK, NY

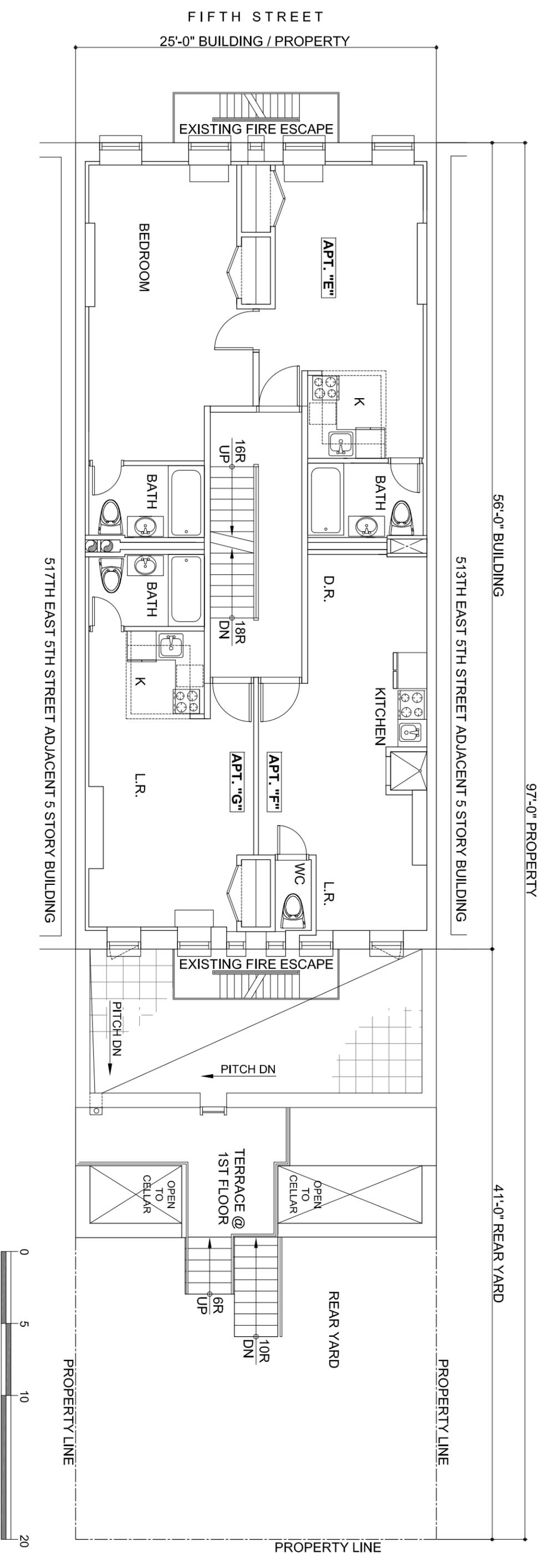
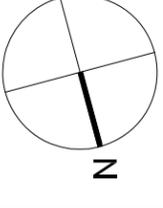
**P2**



**PROPOSED** 1ST FLOOR

**P3**

515 EAST 5TH STREET, NEW YORK, NY



FIFTH STREET  
25'-0" BUILDING / PROPERTY

56'-0" BUILDING

97'-0" PROPERTY

513TH EAST 5TH STREET ADJACENT 5 STORY BUILDING

41'-0" REAR YARD

PROPERTY LINE

PROPERTY LINE

EXISTING FIRE ESCAPE

EXISTING FIRE ESCAPE

APT. "E"

APT. "F"

APT. "G"

BEDROOM

L.R.

L.R.

KITCHEN

K

KITCHEN

L.R.

REAR YARD

TERRACE @  
1ST FLOOR

6R  
UP

10R  
DN

BATH

D.R.

BATH

BATH

WC

OPEN  
TO  
CELLAR

OPEN  
TO  
CELLAR

16R  
UP

18R  
DN

BATH

BATH

K

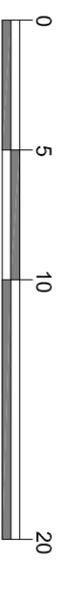
K

PITCH DN

PITCH DN

517TH EAST 5TH STREET ADJACENT 5 STORY BUILDING

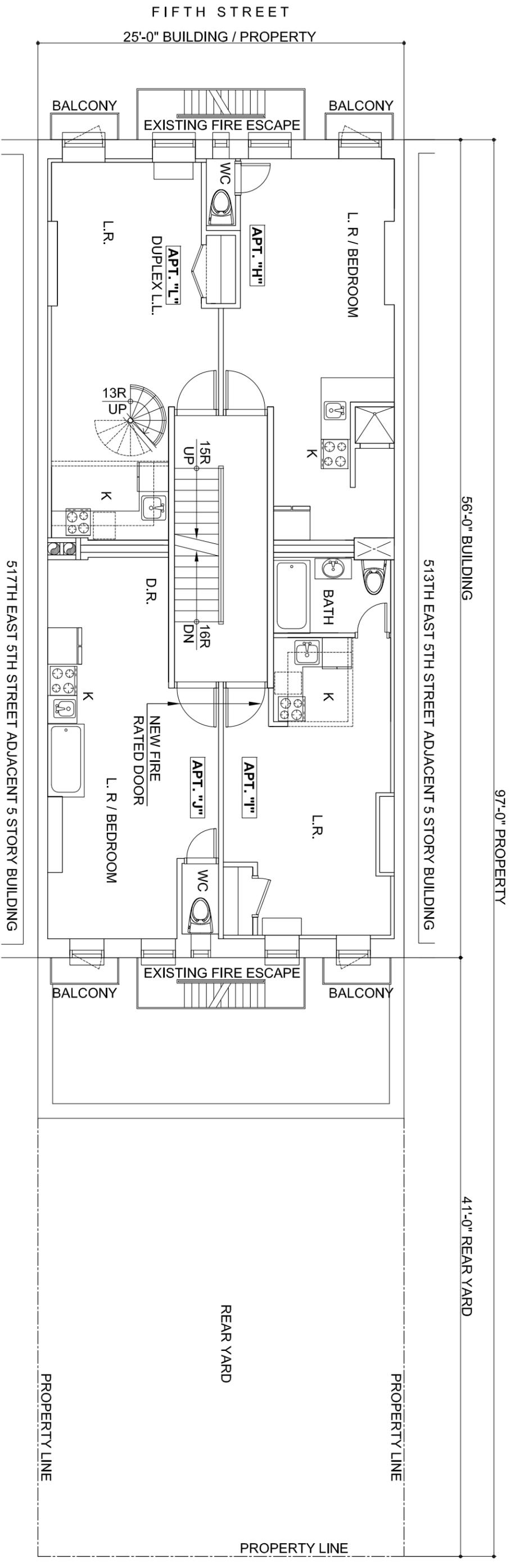
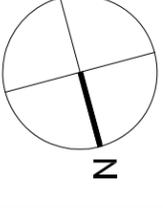
PROPERTY LINE



PROPOSED 2ND FLOOR

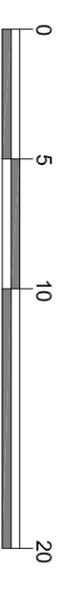
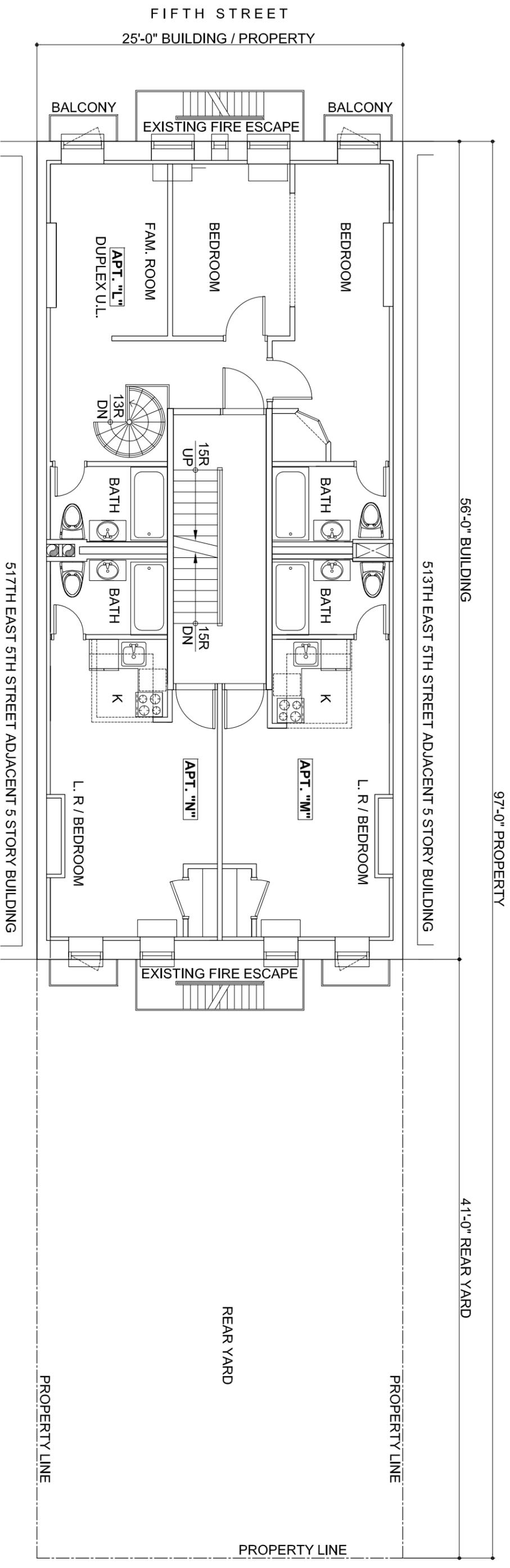
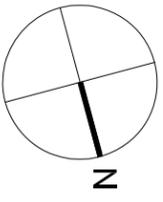
P4

515 EAST 5TH STREET, NEW YORK, NY

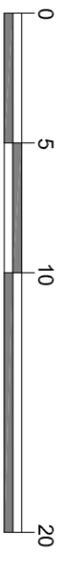
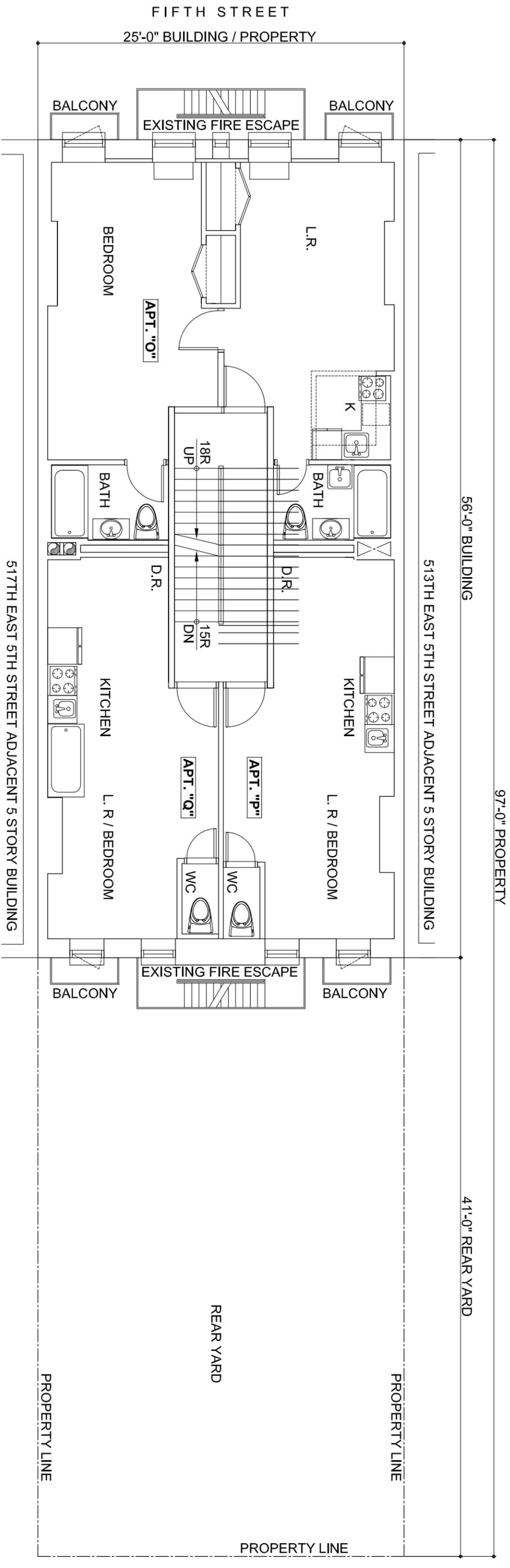
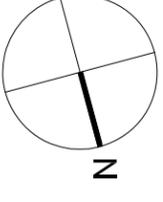


**PROPOSED 3RD FLOOR**

**P5**



**PROPOSED** 4TH FLOOR



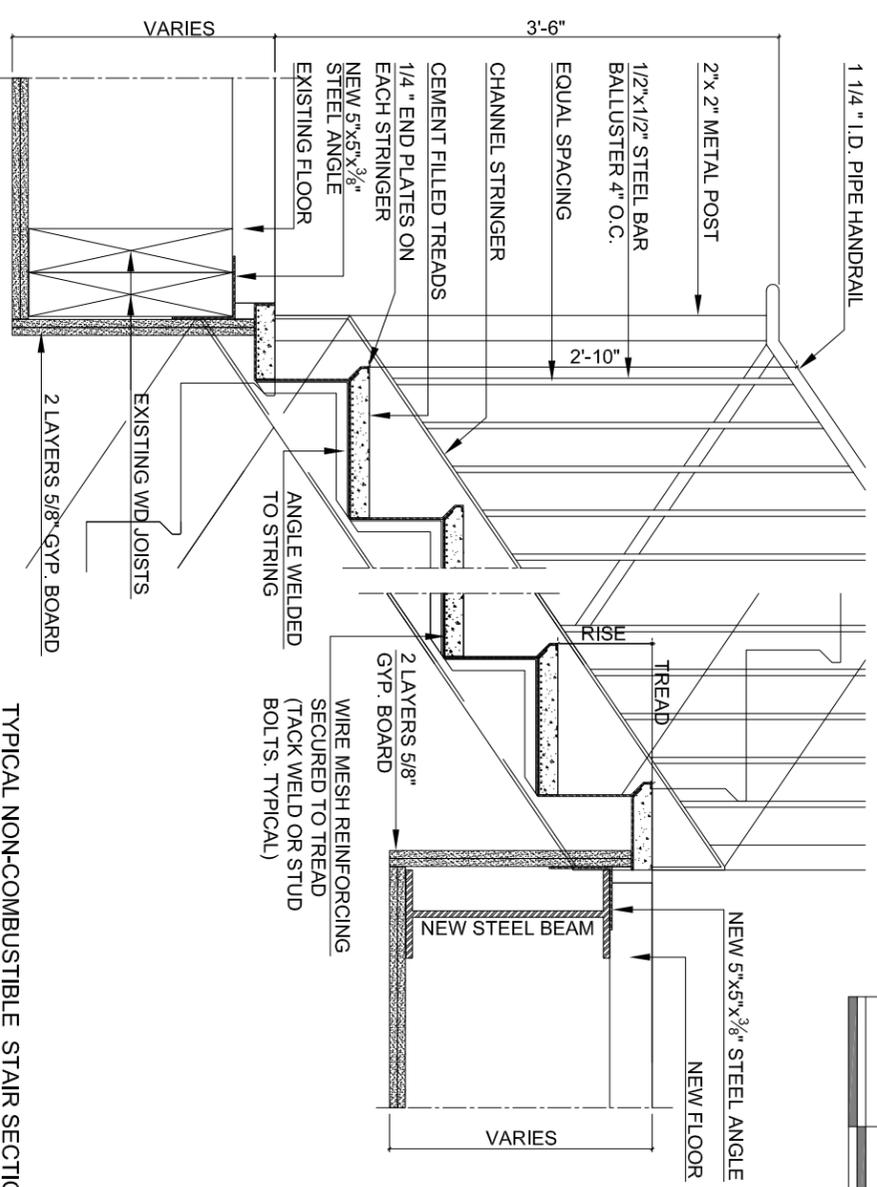
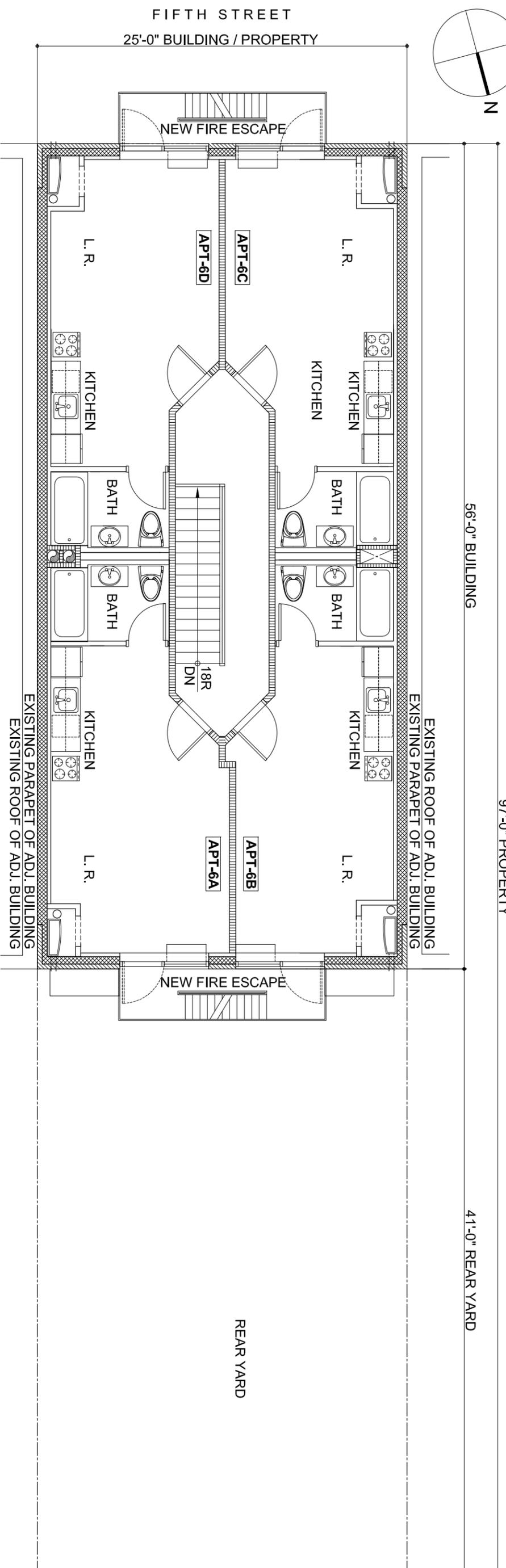
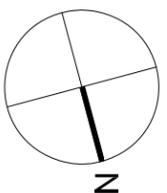
**PROPOSED 5TH FLOOR**

**P7**

97'-0" PROPERTY

56'-0" BUILDING

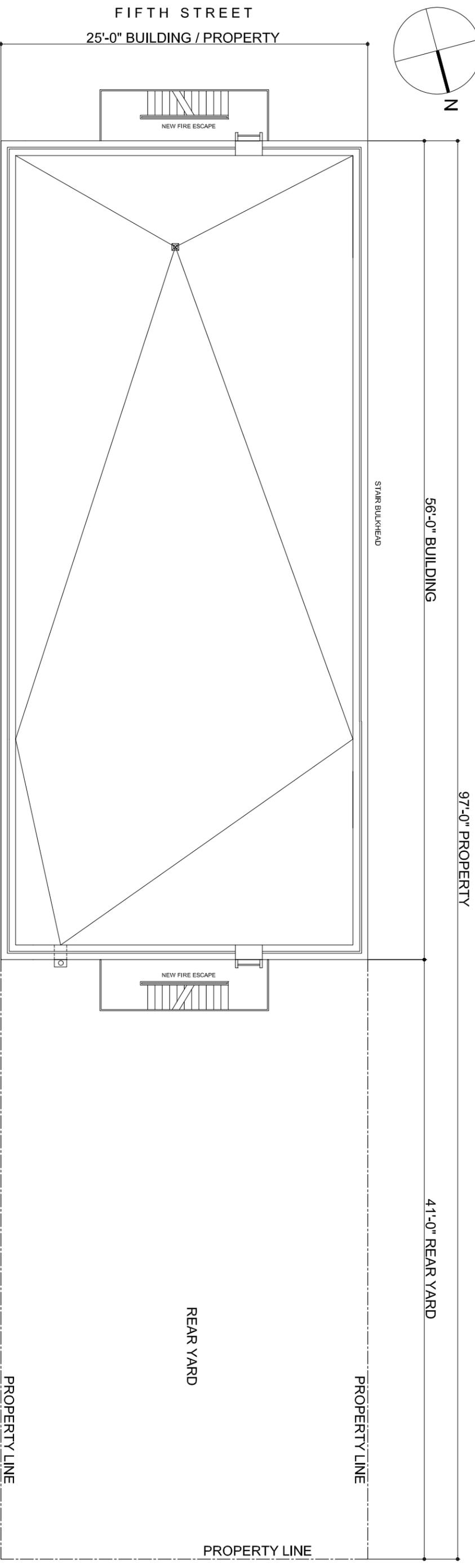
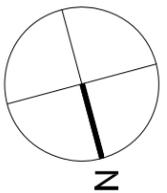
41'-0" REAR YARD



TYPICAL NON-COMBUSTIBLE STAIR SECTION

# PROPOSED 6TH FLOOR

# P8

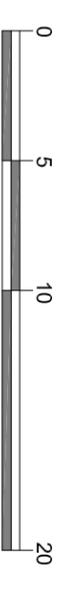


ROOFTOP STRUCTURES ARE NOT SHOWN  
ON THESE DRAWINGS. ALL PERMITTED  
ROOFTOP STRUCTURES WILL BE PROVIDED  
AS REVIEWED BY DOB.

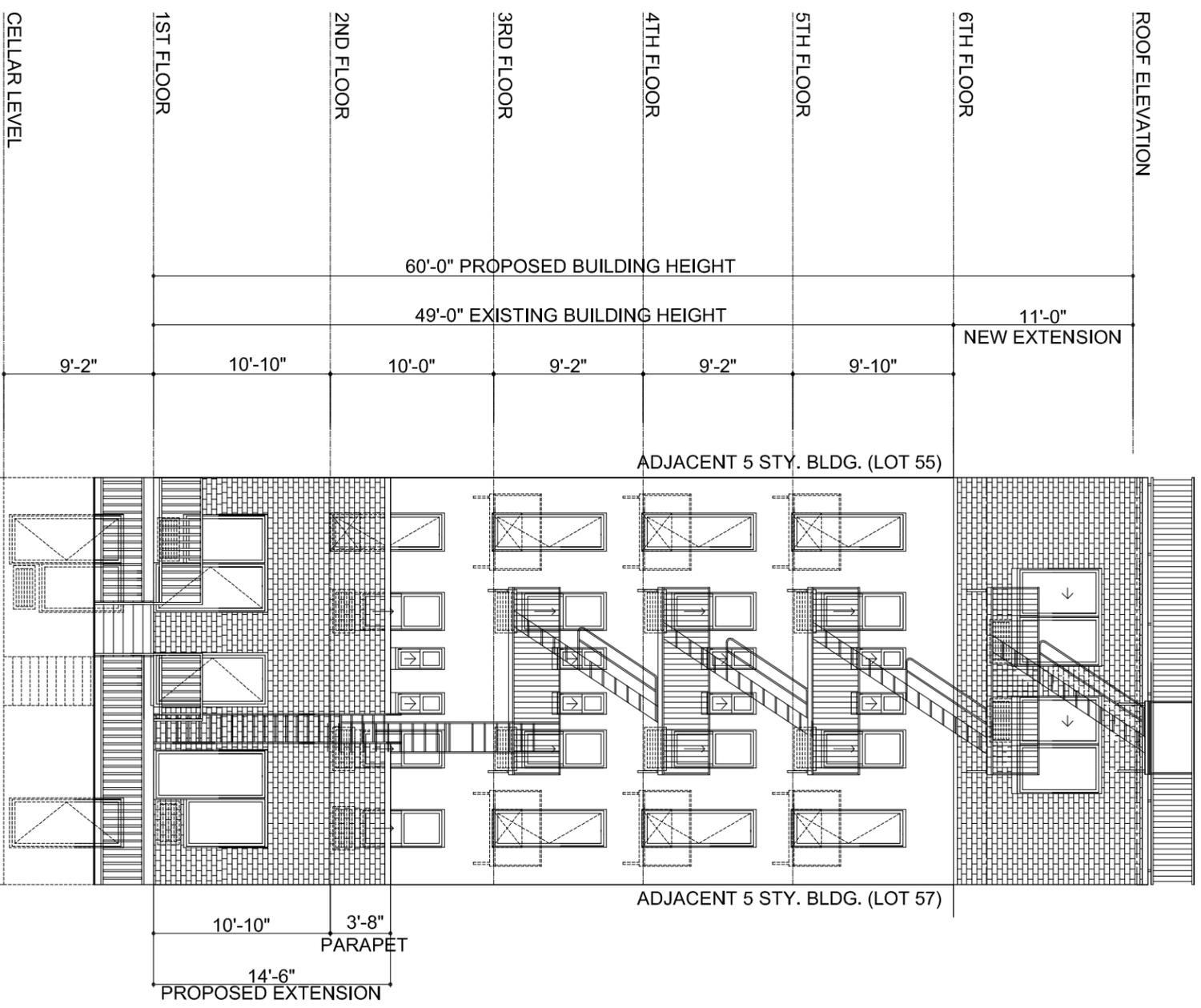
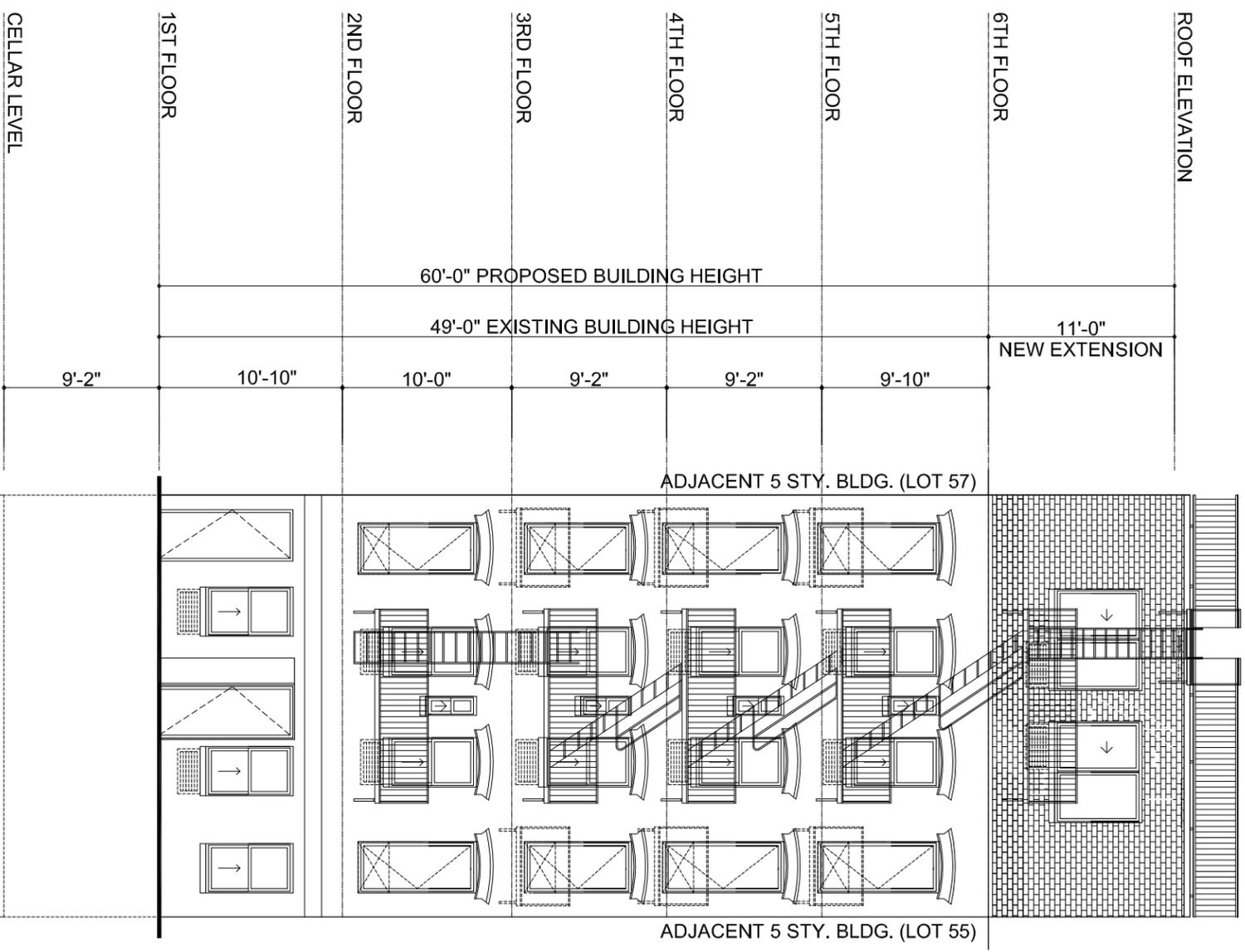
ADDRESS 515 EAST 5TH STREET

LOT SIZE 25' x 97'      2,434 S.F.  
 BLOCK                    401  
 LOT                        56  
 ZONING MAP            12c  
 ZONING DISTRICT      R7B  
 MAX FAR                3

515 EAST 5TH STREET	
PROPOSED:	
CELLAR	N/A
1ST FLOOR	1,675.0 S.F.
2ND FLOOR	1,400.0 S.F.
3RD FLOOR	1,400.0 S.F.
4TH FLOOR	1,400.0 S.F.
5TH FLOOR	1,400.0 S.F.
6TH FLOOR	1,400.0 S.F.
<b>GRAND TOTAL</b>	<b>8,675 S.F.</b>

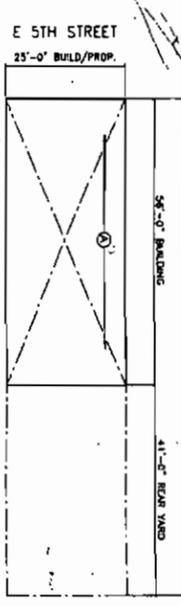
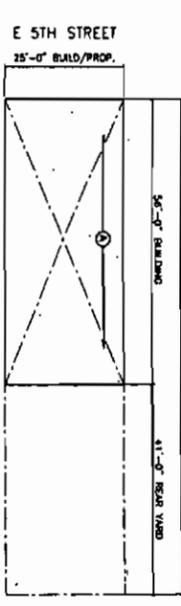
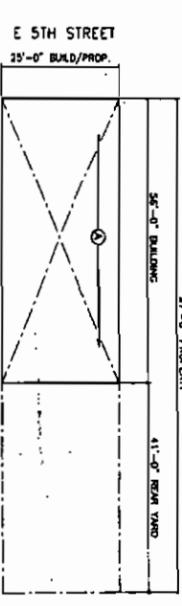
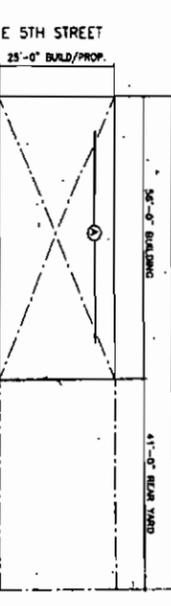
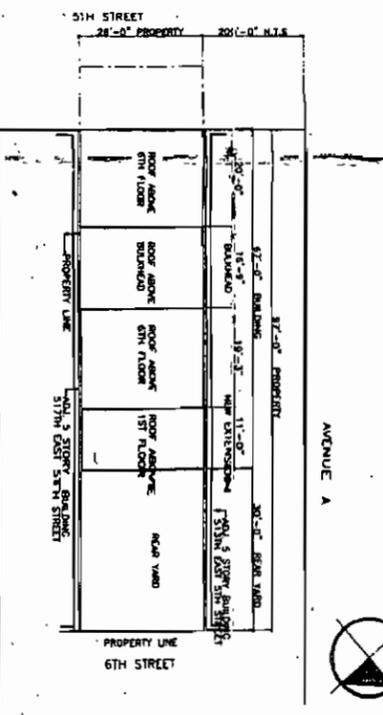
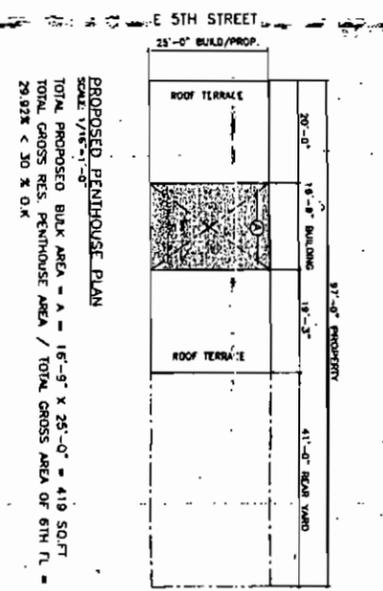
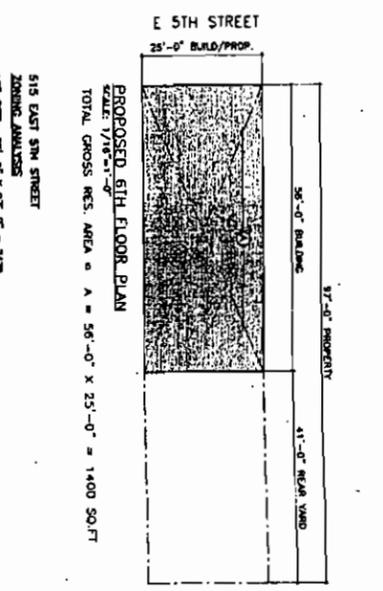
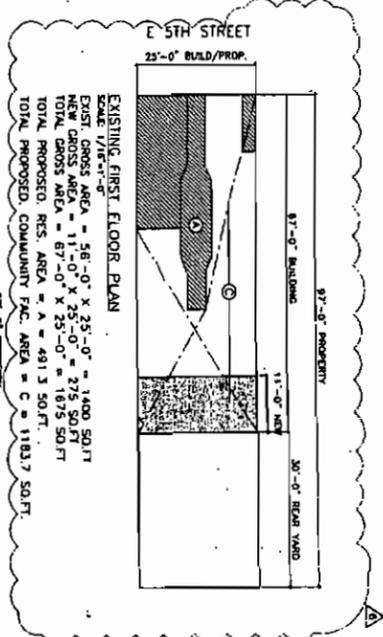


# PROPOSED BULKHEAD AT ROOF



ROOFTOP STRUCTURES ARE NOT SHOWN ON THESE DRAWINGS. ALL PERMITTED ROOFTOP STRUCTURES WILL BE PROVIDED AS REVIEWED BY DOB.

**PROPOSED FRONT AND REAR ELEVATION**



**ZONING ANALYSIS**

2A 23-14B MAX ALLOWED RES. AREA = 1400 SQ. FT. (SEE 2A 23-14B)

2A 23-12B MAX. ALLOWED COMMUNITY FACILITY FLOOR RES. = 1400 SQ. FT. (SEE 2A 23-12B)

2A 23-22 COMMUNITY FACILITY FLOOR AREA = 1400 SQ. FT. (SEE 2A 23-22)

2A 23-16 MAX. LOT COVERAGE = 100% (SEE 2A 23-16)

2A 23-14D VARIOUS REGULATIONS FOR 47 DISTRICT: NO FRONT YARD REQUIRED; REAR YARD REQUIRED = 30'-0\"/>

**QUALITY JOCKING PROGRAM**

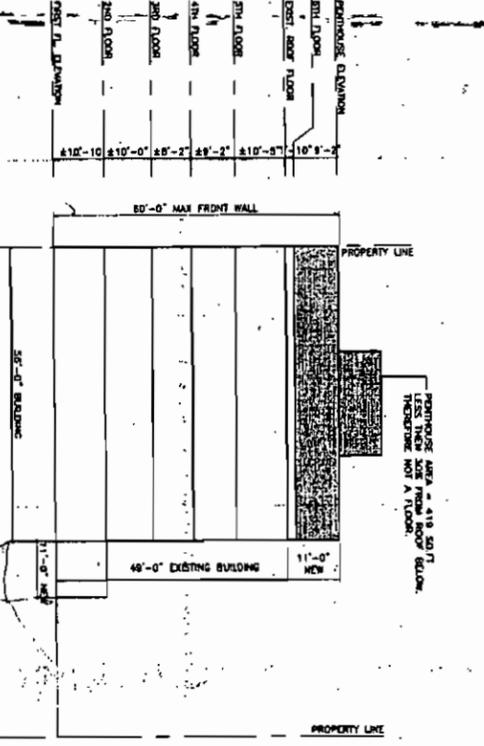
2A 23-12B OVERLAPPER HAS LESS THAN 8' DU. REAR YARD STORMWATER NOT REPORT.

2A 23-24 OVERLAPPER HAS LESS THAN 20' O.U. LUMBER FLOOR NOT REPORT.

2A 23-31 OVERLAPPER HAS LESS THAN 8' O.U. REAR YARD STORMWATER NOT REPORT.

2A 23-33 VARIOUS REGULATIONS COMMUNITY FACILITY

NO FRONT YARD REQUIRED; REAR YARD REQUIRED = 30'-0\"/>



**EXISTING AREA CALCULATION**

FLOOR	RES. AREA	CF AREA	RES. + CF AREA
1ST	1400	0	1400
2ND	1400	0	1400
3RD	1400	0	1400
4TH	1400	0	1400
5TH	1400	0	1400
6TH	1400	0	1400
TOTAL	7000	0	7000

**SCHEDULE OF EXISTING APARTMENTS**

FLOOR	RES.	CF	RES. + CF
1ST	1	1	2
2ND	1	1	2
3RD	1	1	2
4TH	1	1	2
5TH	1	1	2
6TH	1	1	2
TOTAL	6	6	12

**PROPOSED AREA CALCULATION**

FLOOR	RES. AREA	CF AREA	RES. + CF AREA
1ST	1400	0	1400
2ND	1400	0	1400
3RD	1400	0	1400
4TH	1400	0	1400
5TH	1400	0	1400
6TH	1400	0	1400
6TH PENHOUSE	419	0	419
TOTAL	7103	0	7103

**SCHEDULE OF PROPOSED APARTMENTS**

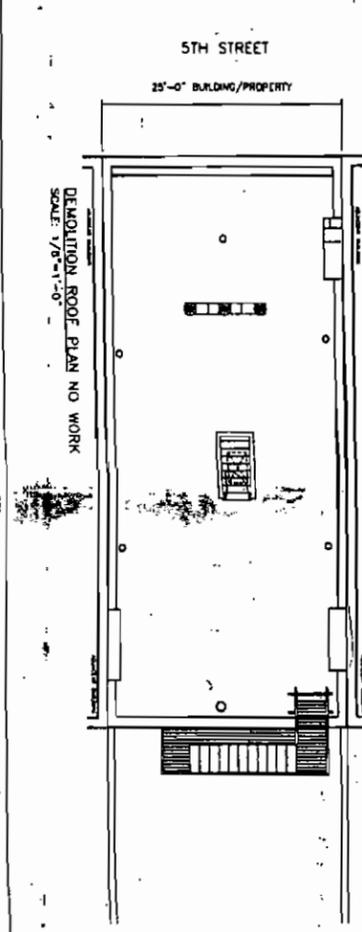
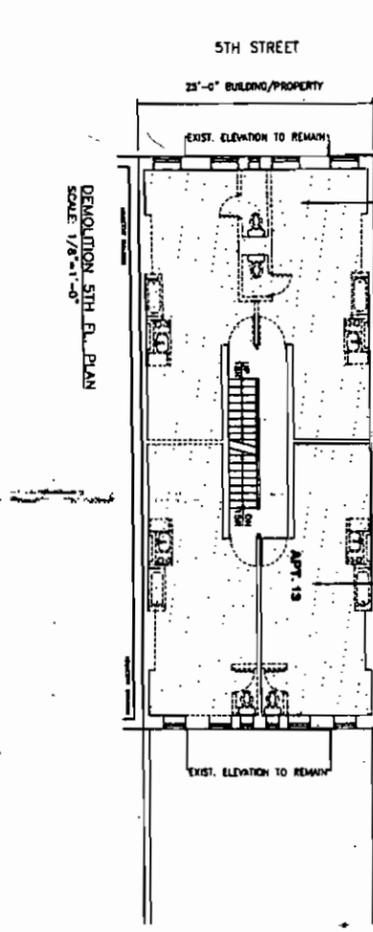
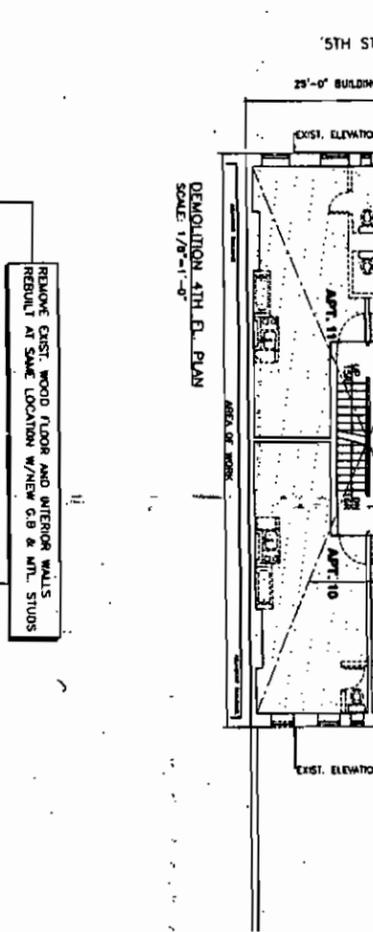
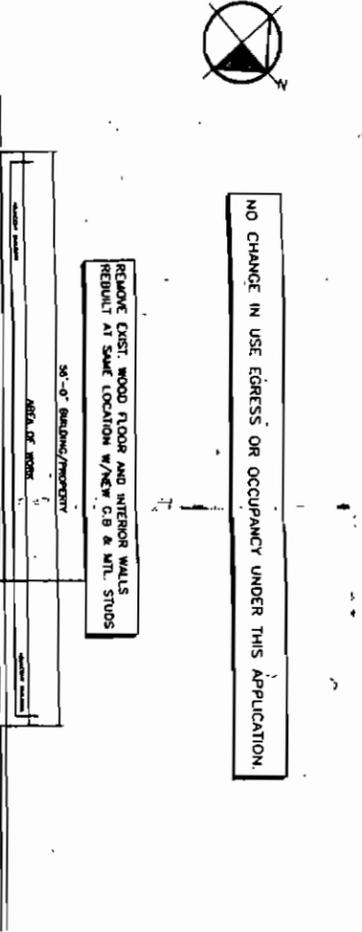
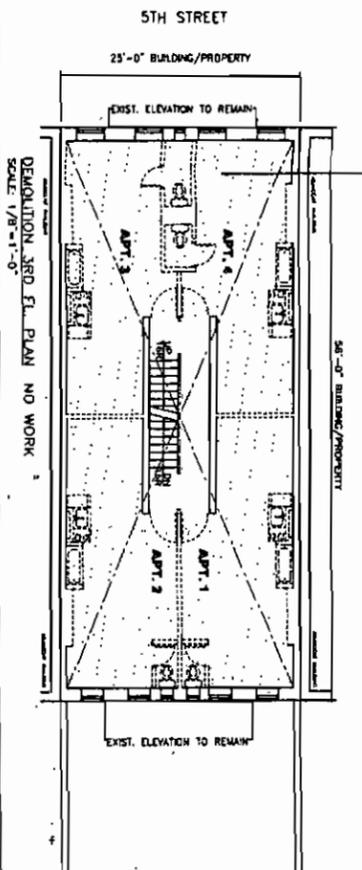
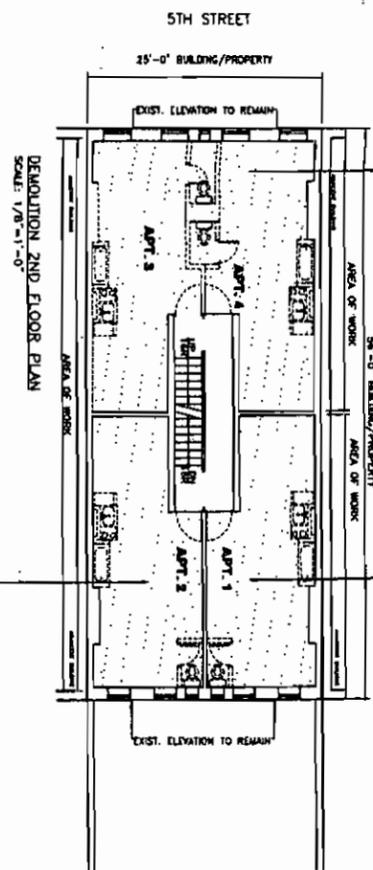
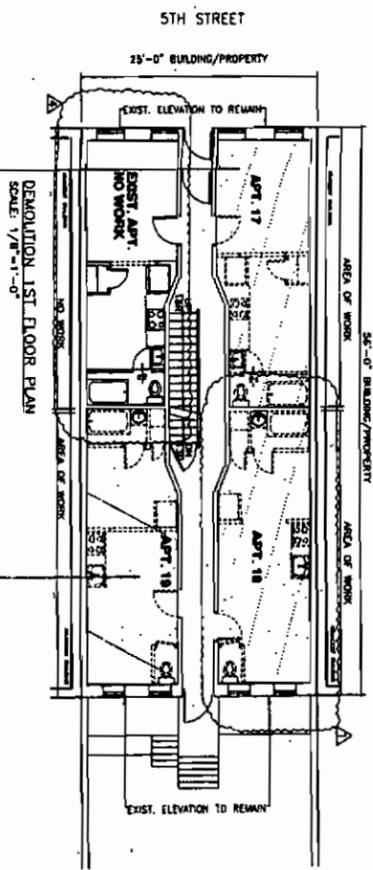
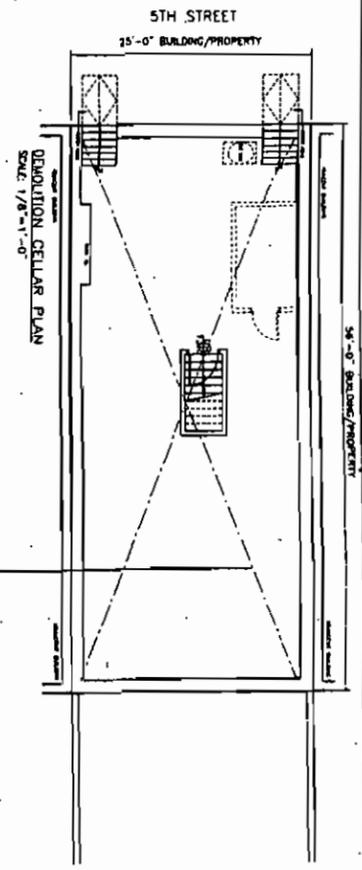
FLOOR	RES.	CF	RES. + CF
1ST	1	1	2
2ND	1	1	2
3RD	1	1	2
4TH	1	1	2
5TH	1	1	2
6TH	1	1	2
6TH PENHOUSE	1	0	1
TOTAL	6	2	8

PROFESSIONAL CERTIFICATION  
 Approved Per URP 11/19/06  
 Professional Certification  
 Manhattan  
 NOV 19 2006

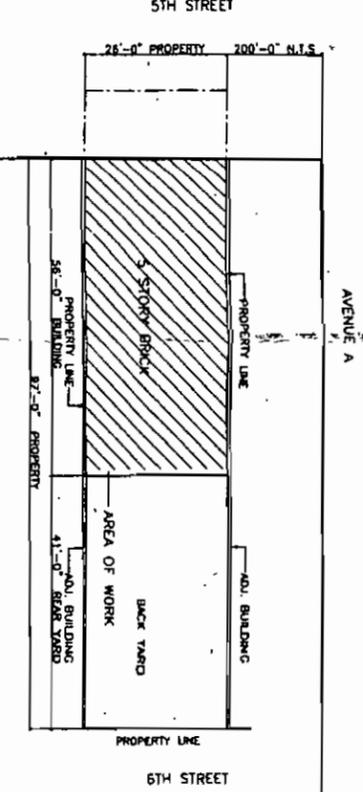


DATE: 01-11-06  
 SCALE: Z1





NO CHANGE IN USE EGRESS OR OCCUPANCY UNDER THIS APPLICATION.



PILOT PLAN N.I.S.  
ZONING INFORMATION  
BLOCK 401  
LOT 515  
MAP 12C  
ZONING R7-2

DEMOLITION NOTES

1. THE CONTRACTOR SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE FEDERAL, STATE AND LOCAL SAFETY AND HEALTH REGULATIONS REGARDING THE DEMOLITION OF STRUCTURES INCLUDING ANSI/NFPA 2411-BUILDING CONSTRUCTION AND DEMOLITION OPERATIONS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO ANY ADJACENT BUILDING TO
3. CONTRACTOR TO NOTIFY THE AGENCY 5, DURING THE COURSE OF DEMOLITION, CONDITIONS ARE DISCOVERED WHICH CONSTITUTE A HAZARD TO THE PUBLIC OR TO THE ENVIRONMENT.
4. DO NOT INTERRUPT EXISTING UTILITIES SERVING OCCUPANTS ON USED FACILITIES EXCEPT WHEN AUTHORIZED IN WRITING BY THE AGENCY'S ENGINEER.
5. CONTRACTOR WILL TAKE ALL PRECAUTIONS TO PROTECT WORKERS, PASSENGERS OR ON ANY OTHER PERSONS FROM FALLING DEBRIS AND OTHER HAZARDS OF DEMOLITION OPERATIONS.
6. CONTRACTOR WILL EXERCISE DUE CARE TO PROTECT ADJACENT BUILDINGS FROM COLLAPSE OR DAMAGE TO REMAIN ADJACENT BUILDINGS WHICH MIGHT OCCUR FROM FALLING DEBRIS OR OTHER CAUSE. DO NOT INTERFERE WITH USE OF ADJACENT OCCUPIED BUILDINGS AND ADJACENT MAINWAY FREE SAFE PASSAGE TO AND FROM OCCUPIED ADJACENT BUILDINGS.
7. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PREVENT DUST AND DEBRIS FROM BEING BLOWN INTO ADJACENT BUILDINGS OR INTO THE MAINWAY.
8. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
9. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
10. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
11. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
12. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
13. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
14. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
15. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
16. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
17. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
18. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
19. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
20. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.

TENANT SAFETY NOTES

1. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE BUILDING CODE OF THE CITY OF NEW YORK AND ALL OTHER APPLICABLE CODES AND REGULATIONS.
2. CONSTRUCTION SHALL BE COMPLETED BY THE DATE SPECIFIED ON THE APPROVED DOCUMENTS AND SHALL BE PERFORMED IN SUCH A MANNER AS TO CAUSE MINIMAL INTERFERENCE TO THE ADJACENT BUILDINGS.
3. DO NOT CONDUCT WORK THAT WILL BE COMPLETED BY THE DATE SPECIFIED ON THE APPROVED DOCUMENTS.
4. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT ADJACENT BUILDINGS FROM COLLAPSE OR DAMAGE TO REMAIN ADJACENT BUILDINGS WHICH MIGHT OCCUR FROM FALLING DEBRIS OR OTHER CAUSE.
5. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
6. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
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19. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.
20. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PROTECT EXISTING UTILITIES FROM DAMAGE BY THE DEMOLITION OPERATIONS.

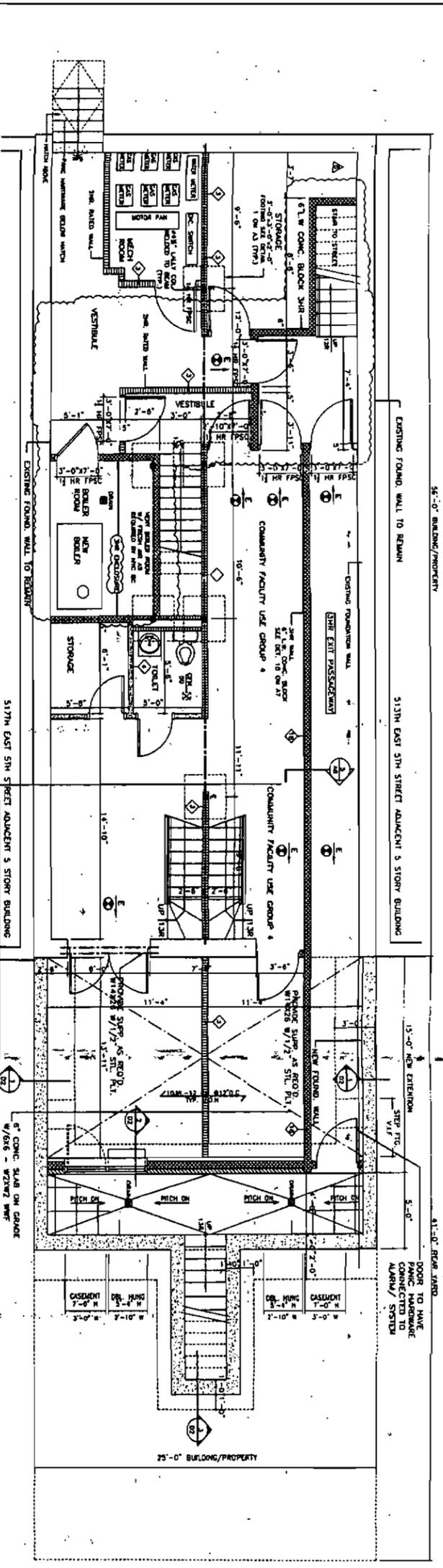
PROFESSIONAL CERTIFICATION  
I, the undersigned, a duly Licensed Professional Engineer in the State of New York, do hereby certify that the above is a true and correct copy of the original drawings and specifications for the above described project.

APPROVED  
AMENDED PLAN  
EAST 5TH STREET  
NEW YORK, NEW YORK

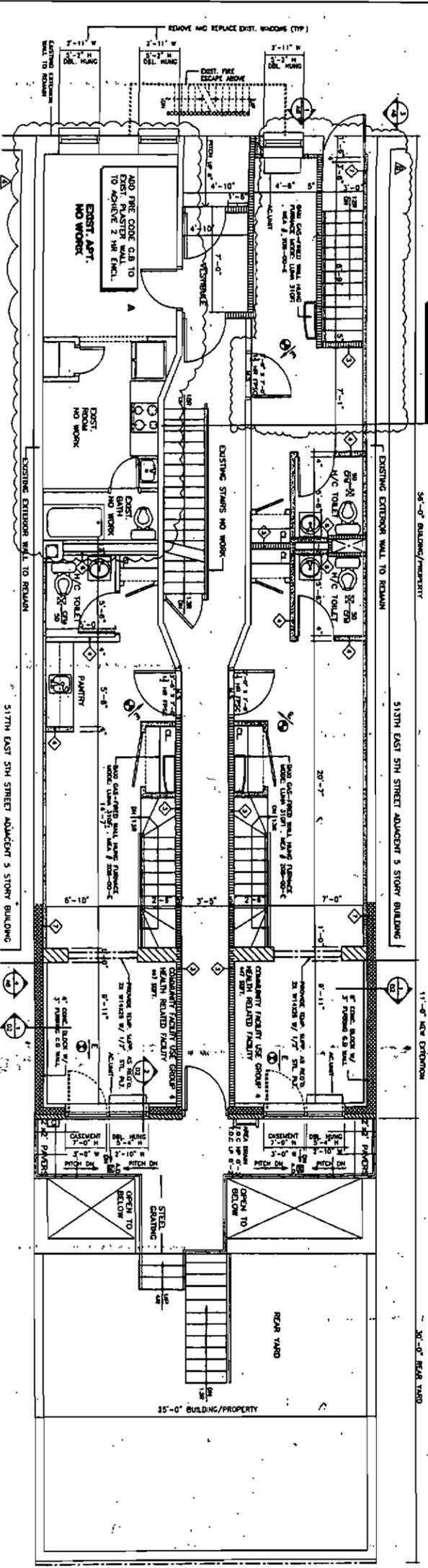
ISSAC & STERN ARCHITECTS, P.C.  
25 West 37th Street, 8th Fl., New York, NY 10018

DEMOLITION PLANS & NOTES

DATE: 07-12-08  
SCALE: DRAWING NO. A2  
REGISTERED PROFESSIONAL ARCHITECT  
NEW YORK STATE  
ARCHITECTS

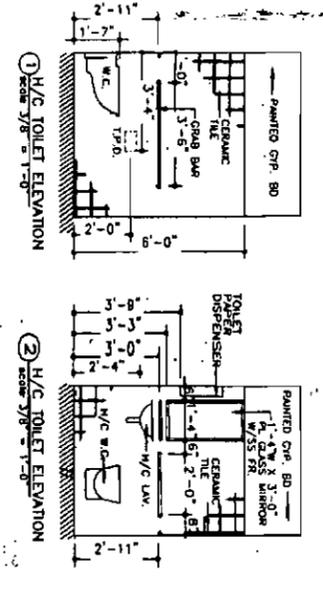


PROPOSED CELLAR FLOOR PLAN TOTAL GROSS AREA 1400 SQ.FT.  
SCALE 1/4"=1'-0"

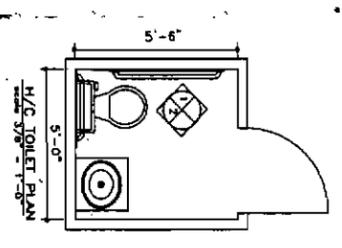


PROPOSED 1ST FLOOR PLAN TOTAL GROSS AREA 1400 SQ.FT.  
SCALE 1/4"=1'-0"

SCOPE OF WORK, 1ST FLOOR  
NEW HARDWOOD FLOORING THRU. OUT  
NEW G8 CEILING W/ACROU. WASK. THRU. OUT  
RELOCATE POWERED ROOM  
REPLACE NEW WINDOWS



COMMERCIAL HANDICAP TOILET DETAILS



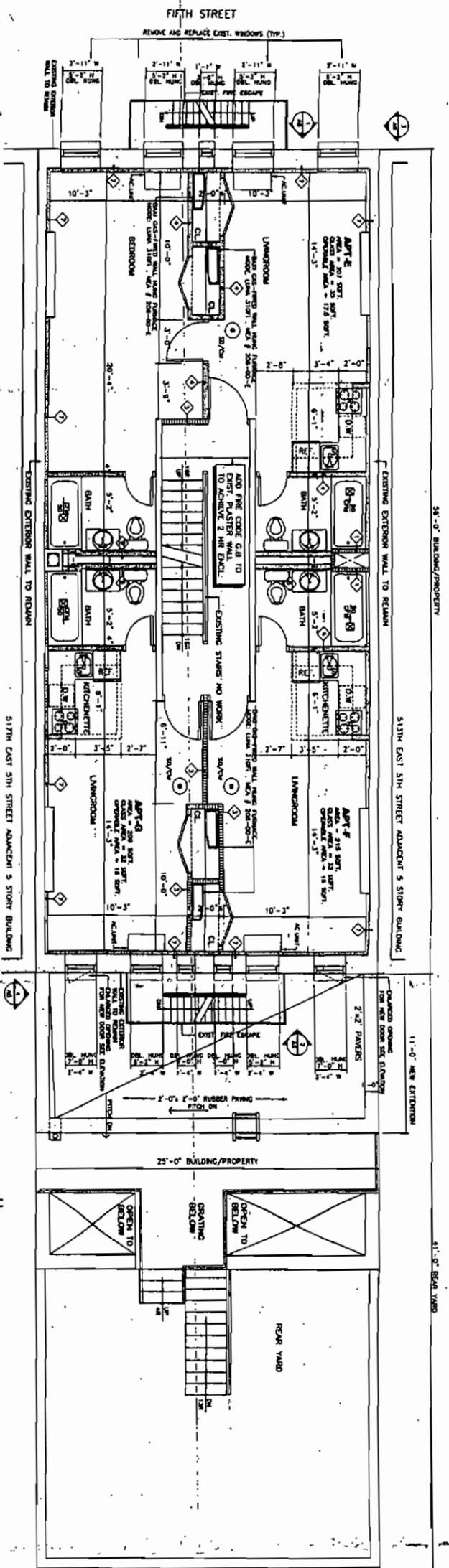
82-08-A

AMENDED  
1/11/06



DATE: 01-11-06  
SCALE: AS SHOWN  
DRAWING NO: A3  
PROJECT TITLE: PROPOSED FLOOR PLANS  
ARCHITECT: ISSAC & STERN ARCHITECTS, P.C.  
25 West 31st Street, 9th Fl. New York, NY 10001  
REVISIONS:  
▲ 10-18-06  
▲ 10-08-06  
▲ 09-21-06  
▲ 09-22-06  
▲ 05-11-06  
▲ 04-28-06  
▲ 04-08-06

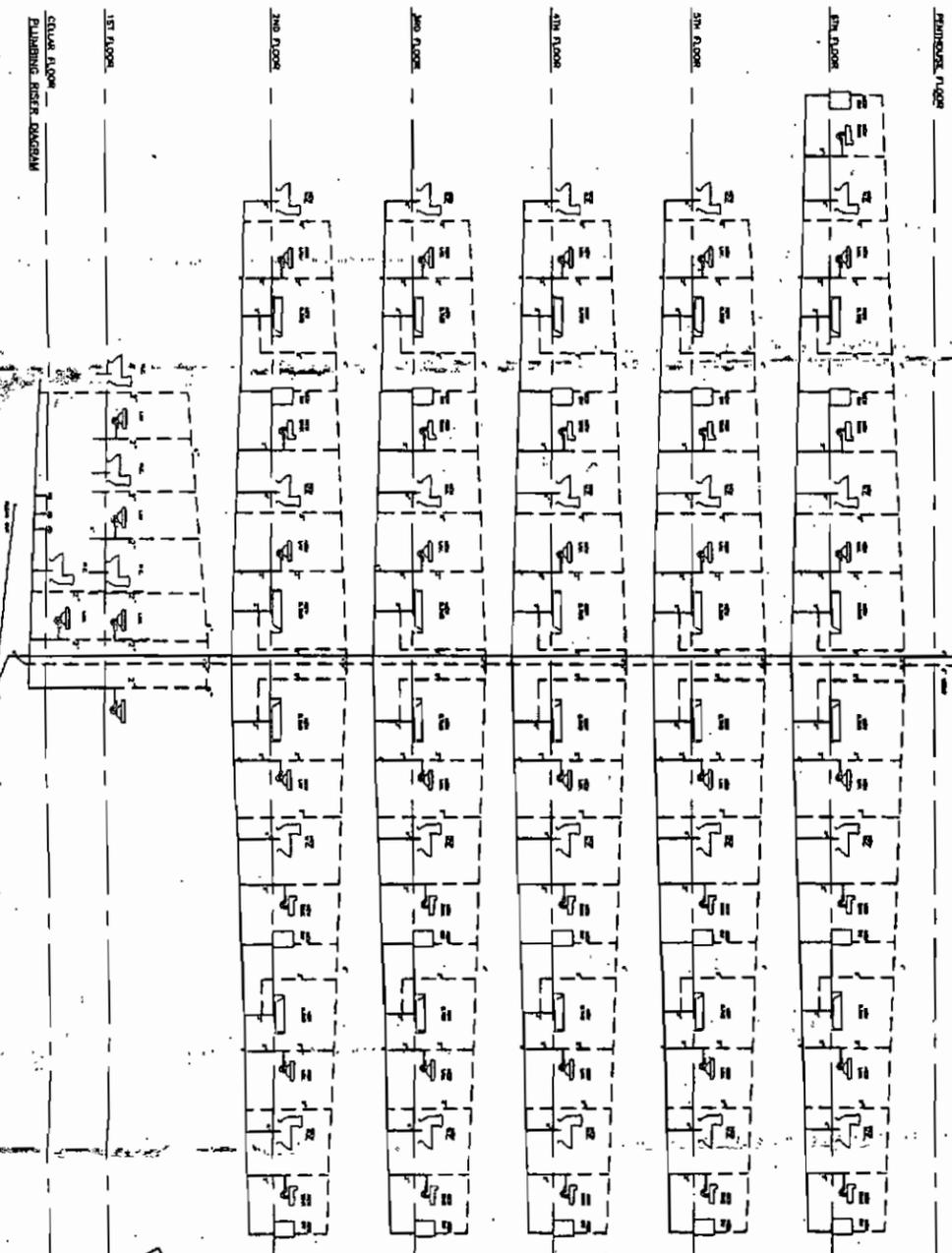




PROPOSED 2ND FLOOR PLAN TOTAL GROSS AREA 1400 SQ. FT.  
 SCALE: 1/4"=1'-0"

**CONSTRUCTION NOTES**

1. ALL DIMENSIONS REFER TO FINISH ELEVATION, UNLESS TOP OF CURB ELEVATION IS INDICATED ON EACH PLAN.
2. FLOOR FINISHES: SCOTCH-BELT, STENCILS AND KEY TO MATERIALS. SEE DRAWING A-1.
3. ALL DIMENSIONS ARE TO FINISHED GYPSUM BOARD PARTITION OR MASONRY.
4. ALL NEW MASONRY UNITS TO HAVE ABSOLUTE STEEL TIES TO STEEL STRUCTURE. SEE ARCHITECTURAL & STRUCTURAL SPECIFICATIONS.
5. ALL COUNTS TO HAVE TWO LAYERS OF GYPSUM BOARD U.S.M. MOUNTED ON REINFORCED CHANNELS AT INTERSECTIONS OF PARTS.
6. ALL APARTMENT FLOORS TO RECEIVE FINISH OVER HARDWOOD FLOORING WITH EXCLUSION OF BATHROOMS AND KITCHENS.
7. PROVIDE 1" X 1" CERAMIC TILE FLOORING IN FRONT OF EACH UTILITY.
8. INSTALL 1" X 1" CERAMIC TILE ON MARBLE (CORNER) W/WORKED ON FLOOR AND WALLS FULL HEIGHT AT BATHS AND 4" HIGH ON OTHER WALLS.
9. PROVIDE 1/2" WEARBOARD UNDER KITCHENS AND BATHROOMS. TURN UP VERTICALLY AT WALL INTERSECTIONS.
10. INSTALL ACoustical INSULATION ABOVE GYPSUM BOARD CEILING IN EACH APARTMENT.
11. PROVIDE THERMAL INSULATION WITH NO LESS R-19 AT ALL PERIMETER WALLS BETWEEN STEEL STUDS. SEE ARCHITECTURAL SPECIFICATIONS.
12. PROVIDE THERMAL INSULATION WITH NO LESS R-30 UNDER MAIN ROOF AND BALCONY. SEE ARCHITECTURAL SPECIFICATIONS.
13. ALL GYPSUM BOARD PARTITIONS AT UTILITY AND BATHROOMS TO BE WATER RESISTANT.
14. PROVIDE 1" FT. DROP GYPSUM BOARD SUFFIT TO SEPARATE BETWEEN KITCHEN AND LIVING AREA.
15. PROVIDE MECHANICAL VENTILATION OF 50 CFM FOR BATHROOM.
16. ALL GARMENT DOORS TO BE 16 GA. N.W. 1 1/2 HR. F.P.S.C. AND TWO HAVE PETIT HOLE AND CHAIN AS PER U.P.I.
17. ALL DOORS TO ROOMS AND CLOSETS TO BE SOLID OAK VENEER, WOOD FLOOR WITH N.W. FINISH. SEE ARCHITECTURAL SPECIFICATIONS.
18. PROVIDE MINIMUM ALLOWANCE OF 60% HUMIDITY SET FOR EACH ROOM.
19. ALL ROOFING MEMBRANE WITH 10 YEARS WARRANTY. SEE SPECIFICATIONS. PROVIDE 1/2" PLASTER, TURN VERTICALLY AT ALL INTERSECTIONS WITH ROOF.
20. PROVIDE CEILING CORNER ABOVE ALL ROOF PARTS AS SHOWN ON DETAILS.
21. INSTALL THERMAL BREAK INSULATED WINDOWS WITH DOUBLE GLAZING AND ALUMINUM PROFILE ANODIZED FRAME. WINDOWS TO BE 1" LESS IN SIZE THAN ROOM MASONRY OPENING AS INDICATED ON PLAN.
22. STORMDOOR GLASS AT DOORWAY LEVEL TO BE 3/4" THERMOPLASTIC GLASS TO PROVIDE ALLOWANCE OF 125 PER YEAR.
23. ALL ROOF EXHAUSTOR TO HAVE VIBRATION SOUND INSULATION.
24. REMOVE PORTLAND OR EXISTING STAIRS THAT HAVE CRACKS, LOOSE MATERIAL, INSTALL NEW CONCRETE STAIRS AND BALANCE AS SHOWN ON DRAWINGS.
25. INSTALL NEW BOILER AND PUMP AT CEILING WITH 3" FRESH AIR VENT.
26. INSTALL GYPSUM BOARD INSULATION UNDER ALL WINDOWS AT EACH BEDROOM.
27. PROVIDE BRACKETS AND LATERAL SUPPORT FOR ALL NEW MASONRY PARTS.
28. ALL KITCHEN AND TUBS TO HAVE 1" H.P. DIAPHRAGM AT EACH FLOOR.
29. REPLACE ALL DETRIMENTAL LOOSE LAMBS AT EXISTING WINDOWS.
30. PROVIDE NEW 3" X 3" 3/8" STEEL ANGLES UNDER ALL NEW MASONRY OPENINGS.
31. ALL PLUMBING FINISHES, MATERIAL STANDARD OR APPROVED EQUAL, WHITE COLOR.



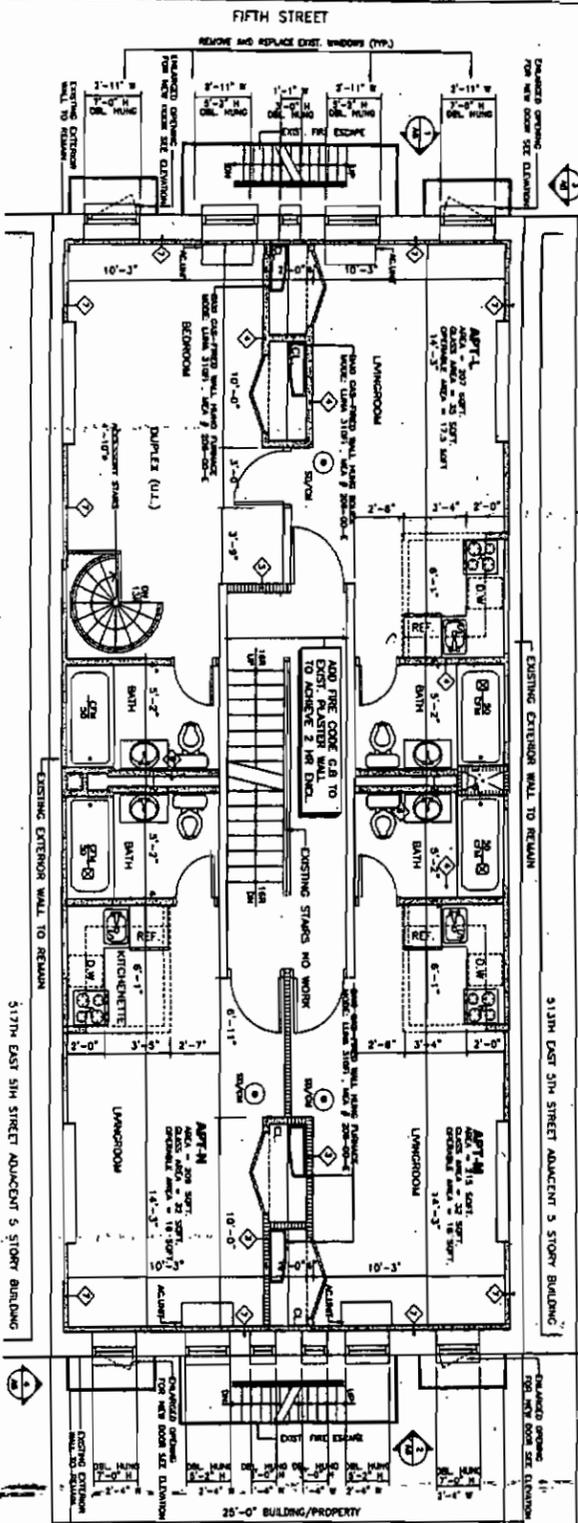
**AMENDED PLAN**

DATE: 01-11-08  
 SCALE: AS SHOWN  
 DRAWING NO: A3.1

515 EAST 5TH STREET  
 New York, New York  
 ARCHITECT:  
 ISSAC & STERN ARCHITECTS, P.C.  
 29 West 31st Street, 5th Fl. New York, NY 10001

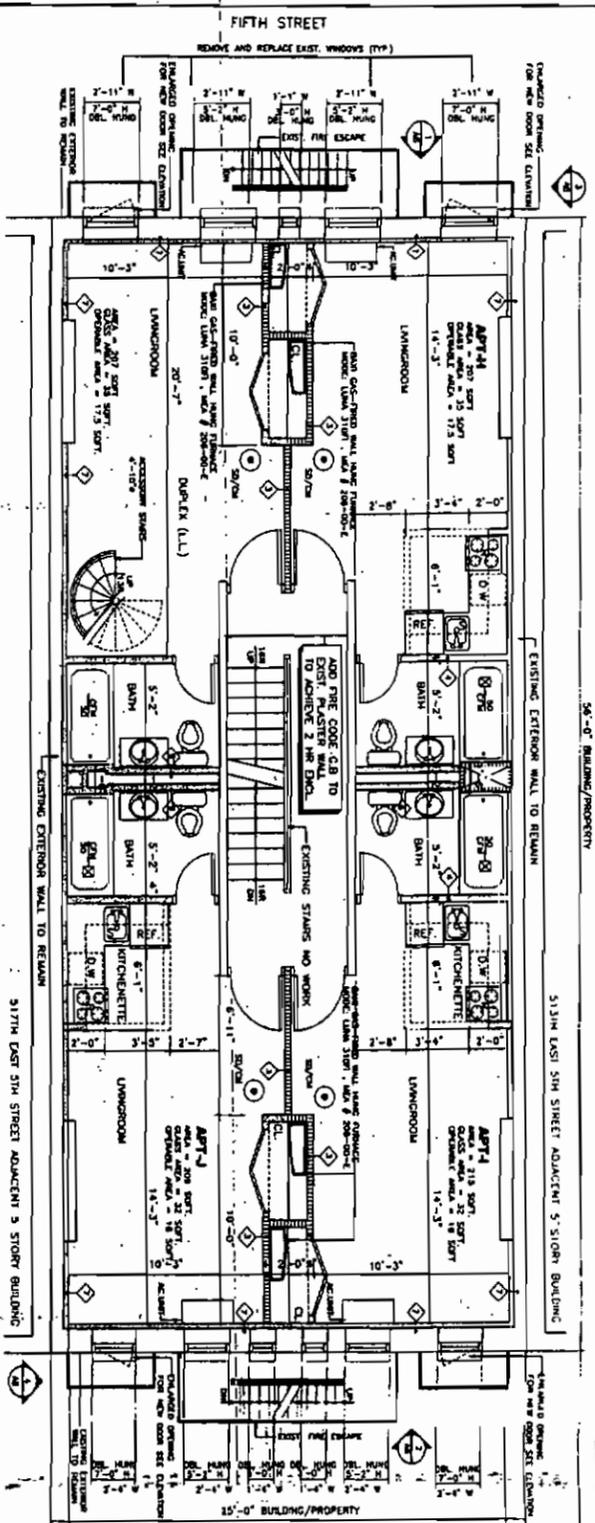
82-08-A





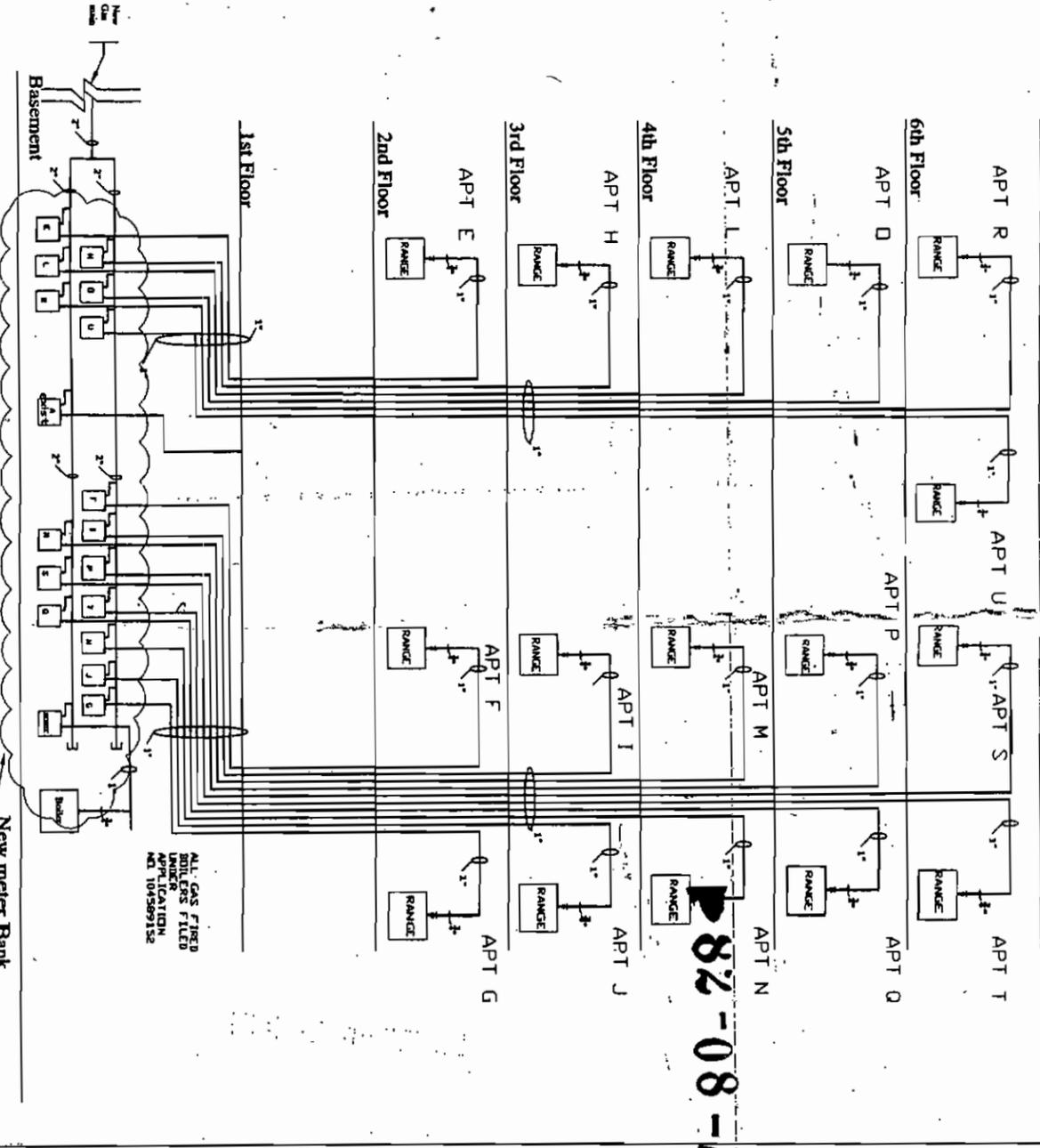
SCOPE OF WORK 3RD FLOOR  
 NEW HARDWOOD FLOORING THRU. OUT  
 NEW GAS CEILING, W/ACCO. INSUL. THRU. OUT  
 NEW C.B. FLOOR, THRU. OUT  
 RELOCATE KITCHEN ON NEW ROUNDING  
 RELOCATE BATHROOM, NEW PLUMBING FINISHES  
 REMOVE NEW WINDOWS

PROPOSED 3RD FLOOR PLAN TOTAL GROSS AREA 1400 SQ.FT.  
 SCALE: 1/8"=1'-0"



SCOPE OF WORK 4TH FLOOR  
 NEW HARDWOOD FLOORING THRU. OUT  
 NEW GAS CEILING, W/ACCO. INSUL. THRU. OUT  
 NEW C.B. FLOOR, THRU. OUT  
 RELOCATE KITCHEN ON NEW ROUNDING  
 RELOCATE BATHROOM, NEW PLUMBING FINISHES  
 REMOVE NEW WINDOWS

PROPOSED 4TH FLOOR PLAN TOTAL GROSS AREA 1400 SQ.FT.  
 SCALE: 1/8"=1'-0"



515 East 5 street

**AMENDED PLAN**

DRAWING TITLE:  
 PROPOSED FLOOR PLANS,  
 RISER DIAGRAM & CONSTRUCTION NOTES

ARCHITECT:  
 ISSAC & STERN ARCHITECTS, P.C.  
 23 WEST 31st STREET, 9th FL. NEW YORK, NY 10001

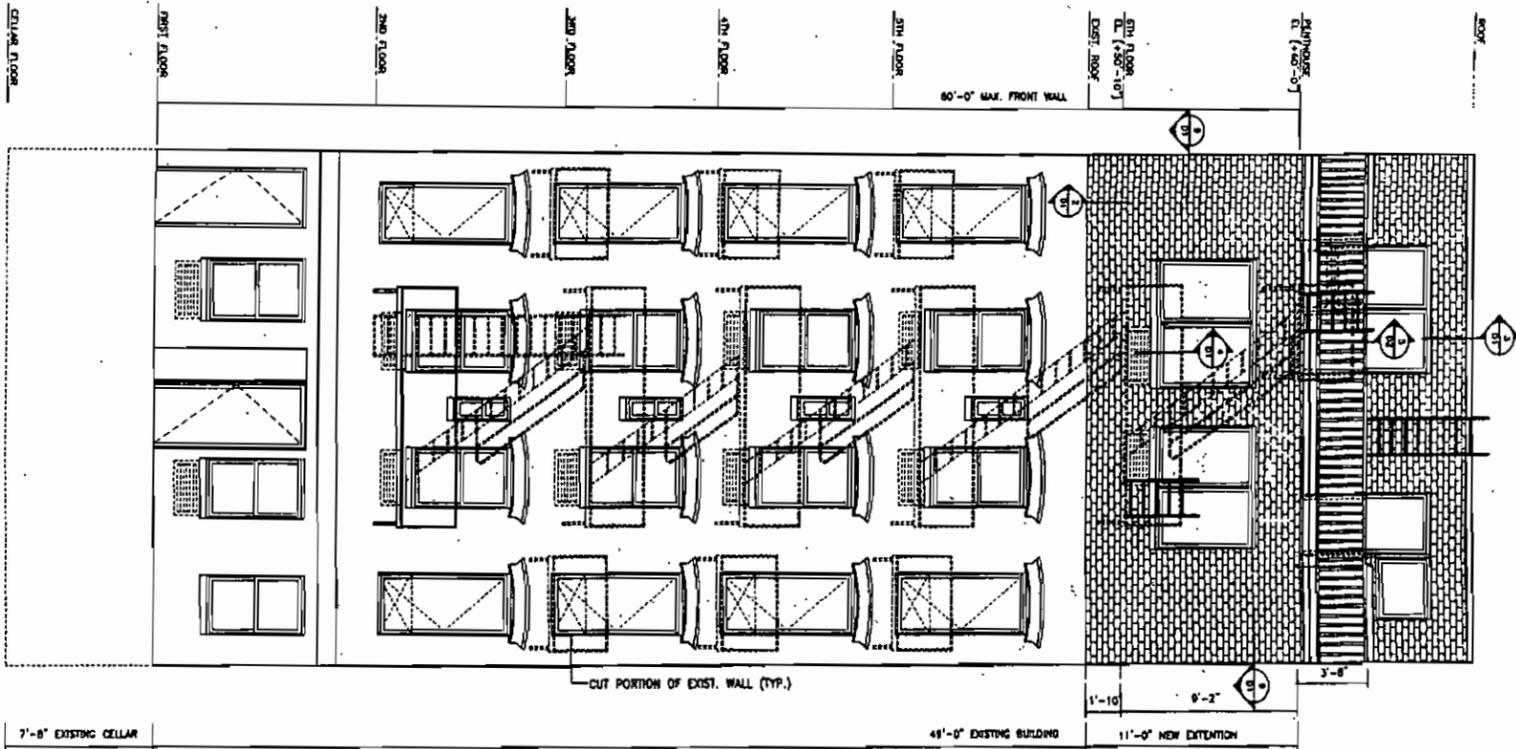
DATE: 11-11-06  
 SCALE: AS SHOWN  
 DRAWING NO: A4



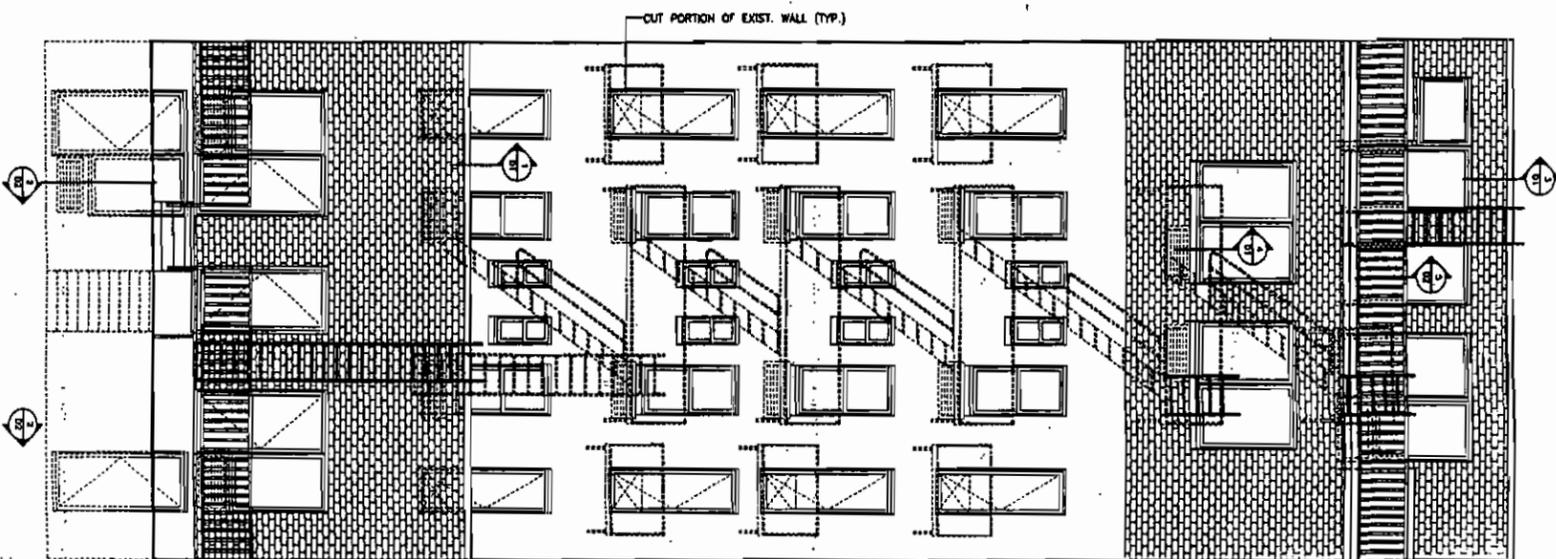
REVISIONS:  
 05-11-06  
 05-23-06  
 06-13-06  
 06-15-06  
 09-13-06  
 10-03-06

82-08-A

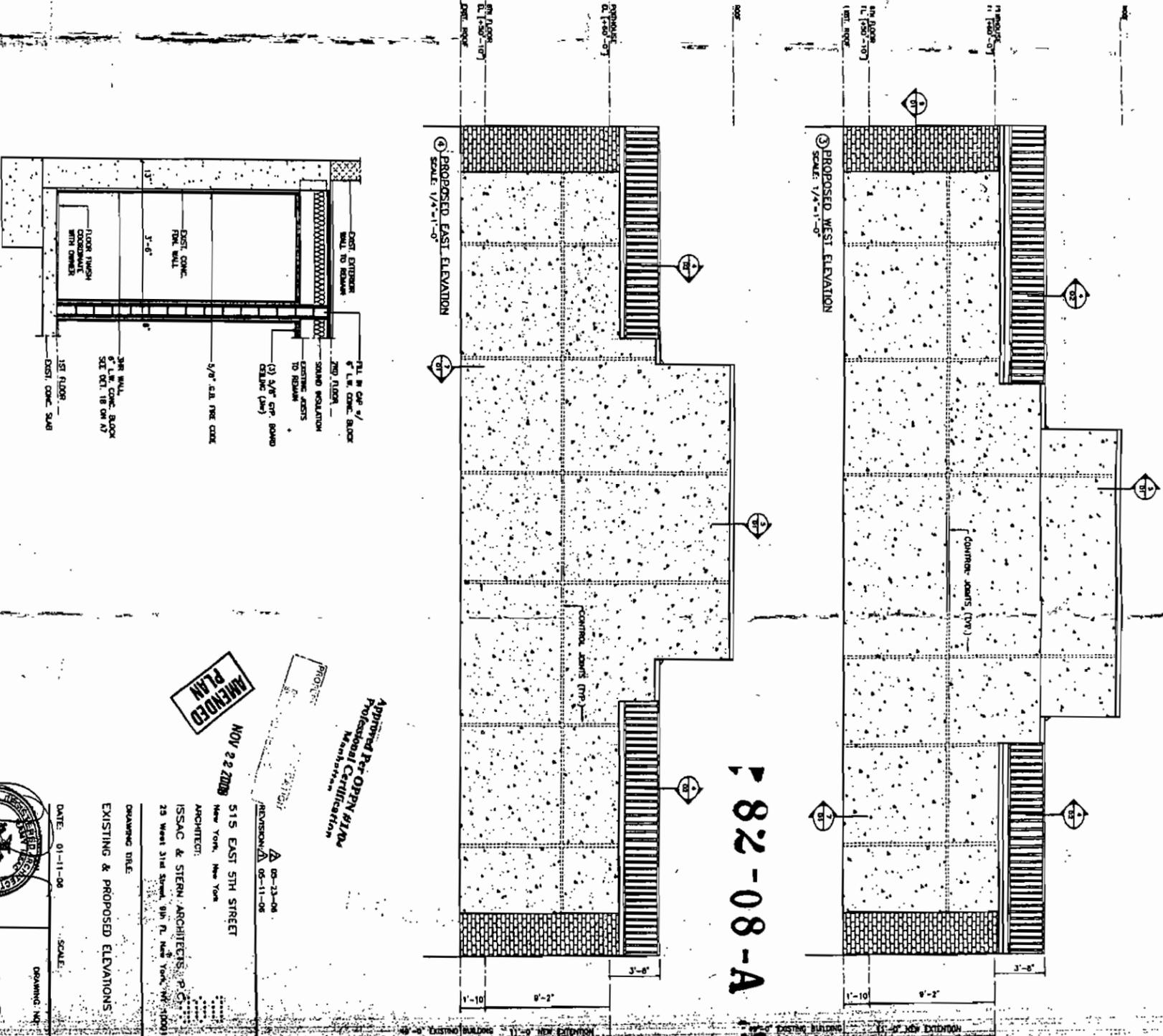




① EXISTING & PROPOSED SOUTH ELEVATION  
SCALE: 1/4"=1'-0"

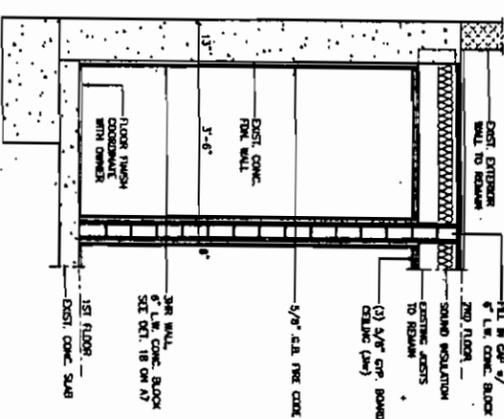


② EXISTING & PROPOSED NORTH ELEVATION  
SCALE: 1/4"=1'-0"



③ PROPOSED WEST ELEVATION  
SCALE: 1/4"=1'-0"

④ PROPOSED EAST ELEVATION  
SCALE: 1/4"=1'-0"



⑤ SECTION @ EXIST. PASSAGE WAY  
SCALE: 1/4"=1'-0"

P 82-08-A

Approved Per-OPPN #1704  
Professional Certification  
MANHATTAN

AMENDED  
PLAN

NOV 22 2008

515 EAST 5TH STREET  
New York, New York  
ARCHITECT:  
ISSAC & STERN ARCHITECTS, P.C.  
29 West 31st Street, 9th Fl. New York, NY 10001

DRAWING TITLE:  
EXISTING & PROPOSED ELEVATIONS

DATE: 01-11-08

DRAWING NO.:



A6

ALT-1