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# Appendix N

## DEIS Comments

*THIS APPENDIX IS NEW FOR THE FEIS*





# *Resolution*

*of the* MANHATTAN BOROUGH BOARD

WHEREAS, the Department of City Planning (DCP) seeks a text amendment to the Zoning Resolution (N 170186 ZRM and C 170187 ZMM) and a zoning map amendment to establish the East Midtown Subdistrict ("Subdistrict") in Manhattan Community Boards 5 and 6, and ensure that the area continues as a world class central business district; and

WHEREAS, the proposed text amendment establishing the Subdistrict would cover an approximately 78 block area bounded generally by East 39<sup>th</sup> Street to the south, the east side of Third Avenue to the East, East 57<sup>th</sup> Street to the north and the west side of Madison Avenue to the west; and

WHEREAS, the proposed text amendment seeks to balance the need for additional commercial density to facilitate the development of new office space with the preservation of landmark buildings and the provision of much needed transit and other above-ground public realm improvements; and

WHEREAS, to accomplish this, the proposed text amendment would provide for increased floor area ratios (FARs) in the Subdistrict of between 18 and 27 which could be achieved as of right, but only through the provision of specific transit improvements set forth in the application; through the purchase of development rights from landmark buildings which would be able to sell those rights district-wide; or through the rebuilding of over-built buildings; and

WHEREAS, the maximum allowable FARs would be based on locational factors with the highest allowable densities achievable in the area immediately surrounding Grand Central Terminal, and proximity to other transit nodes and frontage on avenues and wide streets making higher densities achievable; and

WHEREAS, to ensure non-transit related public realm improvements, the proposed text amendment provides that (1) in the case of development right transfers from landmark buildings the greater of 20 percent of the sale price or a minimum established contribution per square foot (the "floor price"), be contributed to a Public Realm Improvement Fund; and (2) in the case of the rebuilding of an overbuilt building an amount equal to the number of square feet to be rebuilt that exceeds the maximum allowable square footage times the floor price per square foot be contributed to the Public Realm Improvement Fund; and

WHEREAS, the application also seeks a zoning map change to include the lots currently comprising Pfizer's corporate headquarters into the Subdistrict by rezoning the area bounded to the north by East 43<sup>rd</sup>

Street, to the west by a line 200 feet easterly of Third Avenue, to the South by East 42<sup>nd</sup> Street and to the east by Second Avenue from a C5-2 district (10 FAR) to a C5-3 district (15 FAR) and incorporating it into both the Special Midtown and new East Midtown Subdistricts; and

WHEREAS, the application is based, to a large extent, on the work done by the East Midtown Steering Committee, chaired by Borough President Brewer and Council Member Garodnick with representatives of Community Boards 5 and 6, property owners, landmark groups and unions, which met almost 20 times over the course of almost a year and heard from experts and had input from all the relevant agencies; and

WHEREAS, the steering committee recommended that in order to best balance the needs for additional commercial density with the preservation of the district's iconic landmarks and the need for improved public transit and above-ground public realm, any final proposal should provide for a largely as of right system in which: (1) additional commercial FAR is permitted based upon frontage on avenues or wide streets, proximity to transit hubs and adjacency to major landmarks; (2) that the additional FAR be "earned" through a combination of enumerated below-ground subway improvements and the purchase of landmark development rights; (3) that landmarks be able to transfer development rights district wide; (4) that overbuilt buildings be permitted to rebuild to their existing FAR; (5) that in return for district-wide transfer of development rights for landmarks and the ability of over-built buildings to rebuild, significant contributions be required into a Public Realm Improvement Fund to ensure the creation of above ground public realm improvements; and

WHEREAS, on March 8, 2017 Manhattan Community Board 6 (CB6) voted by a vote of 43 in the affirmative, none in the negative no abstentions to approve a resolution recommending denial of the application unless certain conditions were met including the following: (1) that DCP make plazas, covered pedestrian spaces and other privately owned public spaces as of right; (2) that transit improvements be prioritized to favor those that benefit the Greater East Midtown Subdistrict; (3) that the text be modified to limit additional height on the midblocks of narrow streets; (4) that the eastern boundary of the Subdistrict be moved to the center of Third Avenue from 43<sup>rd</sup> Street to 56<sup>th</sup> Street; (5) that the current height and setback regulations be maintained to preserve light and air; and (6) that the rezoning of the site of the Pfizer headquarters trigger a payment into the Public Realm Improvement Fund based upon the additional increase in density (from 10 FAR to 15 FAR); and

WHEREAS, on March 9, 2017 Manhattan Community Board 5 (CB5) voted by a vote of 32 in the affirmative, none in the negative and one abstention to approve a resolution recommending denial of the application unless certain conditions were met including the following: (1) there is a creation of new public space on every redeveloped site that takes advantage of the Greater East Midtown's transfer of development rights framework; (2) Actions by the Governing Group which will determine public realm improvements require at least one non-Mayoral appointee to ensure some level of consensus; (3) The percentage of the value of the transferred development rights to be deposited into the Public Realm Improvement Fund be increased to 30 percent and a minimum contribution price be maintained; (4) The City funds some of the Department of Transportation-identified public realm improvements prior to the adoption of the proposed zoning text; and (5) a prohibition on conversion of more than 12 FAR to residential use be included and a special permit be required for all other residential conversions; and

WHEREAS, both the CB5 and the CB6 Resolutions concluded that the conditional denials were to be interpreted as conditional approvals if, on or before March 13, 2017, the Administration communicates in writing that "The EIS will consider an alternative that requires redeveloped sites to include either outdoor

plaza space or a covered pedestrian space;” underscoring the importance to the communities of a more definitive commitment by the City to non-transit, above-ground public realm improvements; and

WHEREAS, the East Midtown Steering Committee recognized both the importance and difficulty of ensuring non-transit related public realm improvements and stated its commitment to making sure public realm projects were sufficiently identified and that the process for implementing these projects was set forth sufficiently in advance, so that this component of the plan would not be in doubt; and

WHEREAS, Borough President Brewer and Council Member Garodnick wrote the Deputy Mayor on February 24, 2017 requesting that a public realm project be piloted in the upcoming fiscal year and requesting that some type of as of right mechanism for public plazas or covered pedestrian spaces be studied in the Environmental Impact Statement; and

WHEREAS, The Department of City Planning has committed to study in the Environmental Impact Statement a requirement for the creation of privately owned public spaces subject to criteria decided by DCP, which criteria include that the lot size be a minimum of 40,000 square feet and which would result in the site earning one FAR for the creation of an outdoor public space and three FAR for the creation of an indoor public space; and

WHEREAS, the East Midtown Steering Committee struggled and failed to come to a consensus on the eastern boundary of the proposed Subdistrict and recommended that more outreach with the business community and Manhattan Community Board 6 occur before a decision was made whether to include the east side of Third Avenue between East 48th Street and midway between East 54th and East 55th Streets in the proposed Subdistrict; and

WHEREAS, the Borough Board recognizes that this eastern boundary is contentious and that of the 20 speakers at its public hearing, half spoke on the inclusion or exclusion of Third Avenue from the Subdistrict and believes that the Department of City Planning should take the remaining time to work with the community and review every option to limit any adverse impacts on the more residential neighborhoods to the east;

WHEREAS, there appears to be significant support from the community and stakeholders that in order to maintain the commercial character of East Midtown, that restrictions on residential conversions be implemented as part of the text amendment; and

WHEREAS, the East Midtown Steering Committee agreed that a payment equal to at least 20 percent of the value of transferred development rights from landmark buildings should be paid into a Public Realm Improvement Fund and that in order to ensure that the public receive an amount sufficient to address the neighborhood’s public realm concerns there be a Floor Price paid into such fund; but we recognize that in addition to a mechanism that allows those involved in potential transactions to question and reassess the minimum contribution, additional information is also needed to ensure that the minimum contribution amount is determined in a manner that does not overstate the value of the development rights; and

WHEREAS, there is also substantial community concern over the adverse impacts that shadows from new buildings and structures may pose, especially on existing public open spaces such as Central Park and Greenacre Park; and

WHEREAS, the East Midtown Steering Committee aimed toward building standards that go beyond current code requirements to make this business district a truly 21<sup>st</sup> Century commercial district; now

THEREFORE, the Manhattan Borough Board recommends approval of ULURP numbers N 170186 ZRM and C 170187 ZMM only if the following conditions are met:

- (1) In addition to the commitment to study in the EIS criteria for a requirement for the creation of outdoor and indoor privately owned public spaces that DCP has agreed to undertake, the City commits to undertake above-grade public realm pilot projects and provide seed money for the Public Realm Improvement Fund in the upcoming budget so that other such projects can begin and to underscore the City's commitment to the above- grade public realm;
- (2) That changes be made to the limitations on uses of the Public Realm Improvement Fund to ensure that above-grade public realm improvements are further prioritized;
- (3) That Department of City Planning and the Department of Transportation work with the relevant Borough Board members to adequately define the "Concept Plan" for above-grade public realm in the zoning text and develop a draft concept plan in a reasonable time frame; and
- (4) That DCP work with the relevant Borough Board members on changes to the composition and/or functioning of the governing board in accordance with recommendations of the East Midtown Steering Committee Report to ensure sufficient community participation;
- (5) That DCP work with relevant Borough Board members over the next several weeks to review every option for limitations on the east side of Third Avenue – including changes to the eastern border – with the goal of reducing adverse impacts to residential neighborhoods bordering the eastern side of the Subdistrict;
- (6) That serious consideration be given to amending the text to limit residential conversions, including proposals advanced by the Steering Committee and CB5 to prohibit conversion of space to residential in excess of 12 FAR as well as limiting residential conversions on the avenues;
- (7) That DCP work with the relevant Borough Board members to ensure that the language on environmental standards in the text is sufficient to support the achievement of the steering committee's goal of achieving an environmental standard of LEED Gold or its equivalent;
- (8) That the DCP work with the relevant community stakeholders to explore mechanisms that can prevent or limit incremental shadow impacts, especially on existing parks and open spaces;
- (9) That DCP work with the relevant community stakeholders to ensure the accuracy of a floor price and that the floor price does not become an obstacle to the contemplated transfer of development rights; and
- (10) That the Department of City Planning work with the affected Community Boards to address their other concerns laid out in their respective resolutions prior to the end of the ULURP period.



Gale A. Brewer

Manhattan Borough President  
Chair of the Manhattan Borough Board

March 16, 2017



DEPARTMENT OF CITY PLANNING  
CITY OF NEW YORK

MANHATTAN BOROUGH OFFICE

March 16, 2017

Hon. Gale A. Brewer  
Manhattan Borough President  
1 Centre Street 19th floor  
New York, NY 10007

Re: Applications N 170186 ZRM and C 170187 ZMM (Greater East Midtown)

Dear Borough President Brewer,

The plan to re-zone Greater East Midtown is currently at the Borough Board for public review. It creates capacity for new, modern office buildings linked to mechanisms for major transit improvements, public realm investments, and preservation of some of East Midtown's most iconic landmarks. I want to thank you and Councilmember Daniel Garodnick for your joint leadership of the East Midtown Steering Committee, which not only identified planning priorities for this critical area, but also forged a consensus-driven, solution-oriented vision for the future. This proposed 78-block East Midtown sub-district would enable the development of new Class-A commercial towers, solidifying East Midtown as a world-class business district that offers modern amenities and a range of office types. Buildings would be able to achieve higher density provided the developments support enhancements to the area's public realm by providing transit improvements and/or purchasing unused floor area from the district's landmarks. The proposed zoning would provide a predictable framework for the area property owners and the public.

The Department of City Planning understands that you and Council Member Garodnick feel strongly about the need for further study in the East Midtown Environmental Impact Statement (EIS) that will evaluate the impact of a Privately Owned Public Space (POPS) requirement, subject to certain site criteria. The Department has preliminarily determined that such a study is feasible and is committed to including such a study in the EIS.

The Administration looks forward to continuing to work with you on this important re-zoning as it advances through public review.

Sincerely,

Edith Hsu-Chen  
Director, Borough of Manhattan

CC: Councilmember Daniel R. Garodnick

Edith Hsu-Chen, Director  
Department of City Planning  
Manhattan Borough Office  
120 Broadway – 31st Floor, New York, N.Y. 10271-0001  
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# Borough President Recommendation

**City Planning Commission**  
22 Reade Street, New York, NY 10007  
Fax # (212) 720-3356

## INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Docket Description: N 170187 ZMM, N 170186A ZRM

**IN THE MATTER OF** an application submitted by NYC Department of City Planning pursuant to Section 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 8d:

1. changing from a C5-2 District to a C5-3 District property bounded by East 43rd Street, Second Avenue, East Forty-Second Street, and a line 200 feet easterly of the Third Avenue; and
2. establishing a Special Midtown District (MiD) bounded by East 43rd Street, Second Avenue, East Forty-Second Street, and a line 200 feet easterly of the Third Avenue, as shown on a diagram (for illustrative purposes only) dated January 3, 2017.

**IN THE MATTER OF** an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment to Article VIII, Chapter 1 (Special Midtown District) of the Zoning Resolution of the City of New York, concerning the establishment of the East Midtown Subdistrict.

COMMUNITY BOARD NO: 5, 6, and 8

BOROUGH: Manhattan

## RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)
- EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

*John A. Brewer*

April 12, 2017

\_\_\_\_\_  
BOROUGH PRESIDENT

\_\_\_\_\_  
DATE



OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
THE CITY OF NEW YORK

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Gale A. Brewer, Borough President

April 12, 2017

**Recommendation on  
ULURP Application Nos. N 170186A ZRM and N 170187 ZMM –  
Greater East Midtown  
by The New York City Department of City Planning**

**PROPOSED ACTIONS**

The New York City Department of City Planning (“DCP”) seeks approval of a **text amendment** to modify Section 81 (Special Midtown District) of the Zoning Resolution (“ZR”) to establish the East Midtown Subdistrict (the “Subdistrict”) within an approximately 78-block area in Manhattan Community District 5 and Manhattan Community District 6. The proposed Subdistrict would supersede the existing Grand Central Subdistrict, and would allow for increased floor area ratios (FARs) between 18.0 and 27.0. The text amendment would also create two new special permits that would enable additional floor area bonuses through the provision of public concourses and transit improvements, one special permit that would allow for new or enlarged hotels, and one City Planning Commission (“CPC”) Authorization that would allow for enlargements to make use of the Subdistrict’s increased FAR framework.

Additionally, DCP seeks an **amendment to the Zoning Map** pursuant to Section 197-c of the New York City Charter to replace an existing C5-2 district (bounded by East 43<sup>rd</sup> Street to the north, East 42<sup>nd</sup> Street to the south, Second Avenue to the east, and a line 200 feet easterly of Third Avenue to the west) with a C5-3 district, and to include it within the proposed East Midtown Subdistrict. The Special Midtown District would also be extended to encompass this proposed C5-3 district.

In evaluating the text amendment, this office must consider if the proposed language meets the underlying premise of the Zoning Resolution of promoting the general health, safety and welfare of the city and whether the developments it will facilitate would be appropriate to the neighborhood. Any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough.

**Goals of the Proposed Actions**

The goals of the proposed text amendment and zoning map amendment, as stated by DCP, are to develop a predictable, largely as-of-right framework that:



- (1) Protects and strengthens East Midtown as a regional job center and premier central business district by seeding the area with new modern and sustainable office buildings;
- (2) Helps preserve and maintain landmarked buildings by permitting their unused development rights to transfer within the Subdistrict's boundary;
- (3) Permits overbuilt buildings to retain their non-complying floor area as part of a new development;
- (4) Upgrades the area's public realm through improvements that create pedestrian friendly public spaces and that facilitate safer, more pleasant pedestrian circulation within the transit stations and the street network; and
- (5) Maintains and enhances key characteristics of the area's built environment such as access to light and air, active retail corridors, and the iconic street wall character in the area surrounding Grand Central Terminal.

DCP anticipates that the enactment of the proposed actions would lead to the development of approximately 16 new buildings, predominantly for office use. These buildings would be located throughout the Subdistrict, but with concentrations along Madison Avenue between East 39th and 46th Streets, and around the Lexington Avenue-51st/53rd Streets subway station. More limited developments are projected along Park Avenue and east of Grand Central Terminal.

DCP anticipates that this construction would utilize all of the unused floor area from the Subdistrict's landmarked sites, and provide for significant improvements to the above- and below-grade public realm. DCP projects building heights to range from 482 to 846 feet, and the newly permitted construction to represent an increase of less than 6.5 percent of the approximately 90 million square feet of total space currently in the Subdistrict.

## **PROJECT DESCRIPTION**

The affected area of the proposed actions is generally bounded by East 57<sup>th</sup> Street to the north, East 39<sup>th</sup> Street to the south, a line generally between 150 and 200 feet easterly of Third Avenue and a line 250 feet westerly of Madison Avenue. The broad purposes of the proposed actions are to reinforce the area's status as a premier central business district, support the preservation of landmarked buildings, and provide for public realm improvements.

### **Background**

East Midtown plays an integral role in the economy of the New York metropolitan region. According to DCP, the area between Second and Fifth Avenues and East 39<sup>th</sup> and East 57<sup>th</sup> Streets contains more than 60 million square feet of office space, more than a quarter million jobs, and numerous Fortune 500 companies. In addition to its importance as a business center, East Midtown is also world-renowned for its iconic architecture, significant civic spaces, and extensive transportation system, all of which are exemplified by Grand Central Terminal at the

heart of the Subdistrict. Major infrastructure projects underway in the form of East Side Access and the Second Avenue subway will permit new options for commuters to access the region while hopefully alleviating congestion on the Lexington Avenue line.

East Midtown's strengths have historically attracted financial institutions and law firms as office tenants, and the area is home to headquarters for many major corporations drawn by easy access to the Grand Central 42<sup>nd</sup> Street subway station and the Metro-North Railroad. Since the economic downturn beginning in 2008, the area has also developed a more diverse set of tenants, including non-profits, technology, and media firms.

### *Challenges Affecting East Midtown*

Despite its longtime advantages, the East Midtown area has seen little new office development. According to DCP, only five office buildings have been constructed in East Midtown since 2001, representing a significant drop from preceding decades. Of the almost 60 million square feet of office space currently in the area, less than three percent was constructed within the last two decades.

Meanwhile, the aging building stock is becoming increasingly outdated in relation to tenant needs. Of the approximately 475 buildings in the area, over 300 are more than 50 years old, and the average age of office buildings is approximately 75 years. Most are considered to be Class B or Class C office space, and the older buildings have notably higher vacancy rates and lower rents. Some of the shortcomings in terms of technology and amenities may be ameliorated through renovations, but overcoming major structural challenges such as column placement and low floor-to-floor heights would require complete redevelopment.

DCP is concerned that East Midtown's existing building stock can no longer compete for the occupants who have typified the East Midtown area. Instead, DCP believes that in the long term the outdated office buildings may begin to convert to other uses such as residential buildings and hotels. Given the area's concentration of rail public transit infrastructure and major projects already underway, this outcome does not align with the city's long-term economic goals. Although there have been many other initiatives over the last decade to accommodate new office construction at Hudson Yards, Downtown Brooklyn, Long Island City, and other areas, all of these were predicated on East Midtown remaining a premier center for office jobs.

However, East Midtown faces some particular barriers to office redevelopment. The area is highly built up and contains few remaining soft sites, and of the possible sites that do exist, even fewer would be able to accommodate a major modern office building. Besides site assembly, prospective developers would likely need to vacate existing tenants, who are often on different leases with varying lengths. Perhaps most importantly, the opportunity cost of redevelopment also stands as a significant challenge, as the developer would essentially be demolishing a large, revenue-generating building just to build and lease up a new building of roughly comparable size. The increment between a building's maximum permitted FAR and built FAR is a driving factor in whether redevelopment is feasible; the higher the increment, the more feasible redevelopment becomes. Thus, DCP has identified the permitted density under the existing zoning framework as a major challenge.

Meanwhile, East Midtown's landmarked properties hold approximately 3.5 million square feet of unused development rights, with Grand Central Terminal, St. Patrick's Cathedral, and St. Bartholomew's Episcopal Church each holding between 850,000 and 1.2 million square feet. Under the existing as-of-right zoning framework, granting sites can only transfer development rights to contiguous receiving sites via a zoning lot merger. Under a special permit pursuant to ZR Section 74-79, landmarked properties may also transfer unused development rights to receiving sites that are adjacent or across the street in exchange for greater flexibility with the bulk requirements of the Special Midtown District. In 1992, the establishment of the Grand Central Subdistrict permitted the transfer of development rights from Grand Central Terminal and other nearby landmarks to a wider range of surrounding developments. However, despite these options, the special permit transfer of development rights from landmarks have been extremely rare, and there continues to be limited prospects of transfer for the majority of the area's unused landmark development rights.

The public realm of East Midtown, both above-grade and below-grade, is an important and unique asset. However, it also presents its own set of challenges for the continued flourishing of the area. The Grand Central 42nd Street subway station is the second busiest station in the system, with almost half a million daily users. Along with other stations in the area, it faces significant circulation constraints, platform crowding, and long dwell times. Above ground, the area's sidewalks and pedestrian spaces can be crowded during the work week, especially on the narrower widths of Madison Avenue and Lexington Avenue. Vehicular congestion exacerbates the negative conditions of the public realm experience. Worst of all, given the area's built density, there is a severe lack of open spaces or public spaces, and very limited opportunities for adding more.

DCP believes that failing to adequately address these challenges facing East Midtown would result in a long-term decline in the health and diversity of the area as a premier business district and economic engine. The loss of competitiveness for a certain sector of tenants would affect the full range of tenants, as it would lead to the weakening of important business clusters in the area, and Class B and C buildings may become ripe for conversion to other uses. Overall, East Midtown would fail to maximize its infrastructure advantages and investments, and lose its place as a prominent economic, historical, architectural, and civic center for the city.

### *2013 East Midtown Proposal*

In recognition of the challenges above, the city created a proposal for East Midtown in 2013 (N 130247 (A) ZRM et al) to reinforce the area's standing as a premier business district. The proposal would have modified zoning regulations for a 73-block area, which would have superseded the Grand Central Subdistrict. The proposal would have focused development around Grand Central Terminal. New developments that met certain lot size criteria in the area around the Terminal would have been eligible to achieve the highest permitted as-of-right density of 24.0 FAR. In addition, sites around the Terminal, including the Vanderbilt Corridor, would have been able to utilize a special permit for Superior Development in order to achieve a maximum density of 30.0 FAR. The proposal would have created a mechanism to fund infrastructure improvements. In order to achieve the new, higher densities, developers would have needed to

contribute to a District Improvement Fund. Development rights at a cost of \$250 per square foot as determined by an appraisal contracted by the City, were to be sold by the City. Finally, the proposal created a broader process for the transfer of landmark air rights.

During the Uniform Land Use Review Procedure (ULURP) for the 2013 proposal, a plethora of concerns were raised. There was widespread discussion at the time over whether the proposed mechanisms were the most appropriate for the area. While there was broad agreement that the neighborhood was in need of public realm improvements and new Class A office space, there was significant concern over the use of the District Improvement Bonus and Fund to achieve these goals. Many also raised concerns over the sale of air rights by the City, and whether the City was unfairly competing with landmarks for the sale of those air rights. Additionally, the money raised by the air rights would have been allocated to transportation and public realm projects, but at the time no transparent process had been set for the disbursement of that funding. Thus, there was uncertainty over what above- and below-grade improvements the public could expect. Furthermore, the plan would have allowed new development in advance of any improvements funded in association with that development. Finally, concern was raised over the as-of-right nature of the new densities, and whether more public review should be required for large buildings. Though the City Planning Commission approved the project, it was withdrawn during City Council review.

#### *Vanderbilt Corridor*

In 2014, DCP sought to address some of the challenges of East Midtown in a more targeted, five-block area along the west side of Vanderbilt Avenue between East 42nd and East 47th Streets. This Vanderbilt Corridor was the subject of a 2015 zoning text amendment (N 150127 ZRM), which created mechanisms to increase density in exchange for substantial public realm improvements, and permitted transfer of unused landmark development rights in order to allow them to be a primary driver of growth. Sites in the corridor could apply for one or a combination of both special permits to achieve a maximum of 30.0 FAR. Alongside the text amendment was also a City Map amendment (C 140440 MMM) that designated the portion of Vanderbilt Avenue between East 42nd and East 43rd Streets as a “public place” dedicated to pedestrian uses, partly in response to the severe public realm challenges in the area.

The Vanderbilt Corridor plan created a special permit mechanism that linked new commercial development with significant transit and public realm improvements in the Grand Central area. In particular, this facilitated the development of One Vanderbilt Avenue, a 30 FAR, 1.3 million square foot commercial tower currently under construction that received a special permit floor area bonus for the provision of approximately \$225 million in improvements. The redevelopment of 343 Madison Avenue is also being contemplated under the Vanderbilt Corridor zoning text, which would contribute to the goal of improving public circulation and transit access in the area around Grand Central Terminal. While the Vanderbilt Corridor area is included in the proposed East Midtown Subdistrict, this application does not contemplate any modifications to the provisions currently applicable in the corridor.

#### *East Midtown Steering Committee*

This application under consideration is based, to a large extent, on the work done by the East Midtown Steering Committee (“Steering Committee”). In May 2014 Mayor Bill de Blasio asked Manhattan Borough President Gale A. Brewer and Council Member Daniel R. Garodnick, District 4, to chair a committee to develop a planning framework for the future of East Midtown. The Steering Committee, in addition to the co-chairs, was comprised of representatives of Community Boards 5 and 6, property owners and businesses, landmark groups and unions. The Steering Committee met almost 20 times over the course of almost a year and heard from experts and had input from all relevant agencies including the Department of City Planning, the Department of Transportation, the Landmarks Preservation Commission and the Metropolitan Transportation Authority.

In October, 2015 the Steering Committee issued its final report and recommendations (<http://manhattanbp.nyc.gov/downloads/pdf/East%20Midtown%20Report%2010-13-15.pdf>). The prelude to its recommendations stated that the Steering Committee:

supports invigorating the East Midtown office district by encouraging as-of-right, higher density and modernized office development in appropriate locations if accompanied by both (1) significant, timely and assured upgrades to transportation networks and public open spaces..., in accordance with an adopted concept plan and an ongoing, consultative planning process; and (2) preservation of important local historic resources. The Steering Committee believes that any rezoning should provide more certainty as to both the development permitted as-of-right and the public realm improvements that would accompany any increase in density. (Steering Committee Report at 2)

The Steering Committee recommended that in order to best balance the needs for additional commercial density with the preservation of the district’s iconic landmarks and the need for improved public transit and above-ground public realm, any final proposal should provide for a largely as-of-right system. The Steering Committee in its recommendations outlined a system in which:

- (1) Additional commercial FAR is permitted above a base FAR with maximum potential FAR based upon a site’s frontage on avenues or wide streets, proximity to transit hubs, adjacency to major landmarks and size of the development site;
- (2) Additional FAR above the base FAR (up to the site’s maximum FAR) be “earned” through a combination of enumerated below-ground subway improvements to be set forth in the ULURP application and the purchase of landmark development rights;
- (3) Landmarks be able to transfer development rights district wide and that sufficient receiving sites exist to keep this market balanced and competitive;
- (4) Overbuilt buildings would be permitted to rebuild to their existing FAR;

(5) In return for district-wide transfer of development rights for landmarks and the ability of over-built buildings to rebuild, significant contributions be required into a Public Realm Improvement Fund to ensure the creation of above ground public realm improvements. The Steering Committee recommended that these contributions be “robust” at a rate of 20 to 40 percent of the value of the transferred development rights, and that there be a “floor” or minimum contribution or other mechanism to ensure that the established price is not circumvented;

(6) A new entity or “governing group” with a wider membership than could be achieved by an agency be created with authority over the Public Realm Improvement Fund, to select and fund public realm improvement projects in accordance with a public realm concept plan;

(7) Light and air requirements that have served East Midtown well are adhered to while calling on DCP to explore modification of those requirements so that the system can be as-of-right.

Finally, the Steering Committee decided that discussion with CB6 and other stakeholders concerning the inclusion of the east side of Third Avenue from 48<sup>th</sup> Street to 54<sup>th</sup>/55<sup>th</sup> Streets should continue past the tenure of the Steering Committee.

Deputy Mayor Alicia Glen wrote to the Borough President and Council Member affirming the administration’s conceptual agreement with the Steering Committee’s recommendations, an intent by the Department of City Planning to move forward with a zoning framework reflective of the Steering Committee’s goals, and other work by mayoral agencies in keeping with the broader plans beyond zoning text.

### **Area Context**

The diverse considerations put forth by the participants of the Steering Committee reflect the complexity and the many intertwining strengths and needs of the East Midtown area. In order to plan for redevelopment and additional density, the city would have to address in particular the feasibility and impacts of much-needed improvements to the public realm; the residential and mixed use character of certain parts of the Subdistrict, especially along Third Avenue; and the preservation and continued maintenance of the area’s landmarked buildings.

### *Public Realm*

East Midtown is one of the most transit-rich locations in the city. According to DCP, 80 percent of trips to East Midtown occur via public transit. Commuters, residents, and visitors enter the Subdistrict through a variety of different transit nodes. In addition to the Lexington Avenue 4-5-6 line, the Flushing 7 line, and the Metro-North Railroad at Grand Central Terminal, other major hubs include the E and M stations at Lexington Avenue-51st/53rd Street and Fifth Avenue-53rd Street. Although not within the boundary of the Subdistrict, the B-D-F-M stations at 42nd Street-Bryant Park and 47-50th Streets-Rockefeller Center, and the 4-5-6 at Lexington Avenue-59th Street also play important roles by feeding into different parts of East Midtown. Being so heavily

utilized, these transit hubs are in need of critical upgrades and targeted improvements to the pedestrian circulation and transfer system.

Above ground, the public realm experience is notably affected by the dearth of publicly accessible open space in the area. In the Draft Environmental Impact Statement (DEIS), the open space study area encompasses a significantly greater territory than the Subdistrict itself, incorporating both Bryant Park and a portion of Central Park. However, it still contains only 99 open space resources, comprising 39.33 total acres of open space. Of these 99 resources, 87 are Privately Owned Public Spaces (POPS). Most of the POPS are small outdoor plazas located between the associated building and the sidewalk, and only seven of them are larger than 0.5 acres. Together, the POPS in the study area comprise 19.5 acres of open space, or approximately half of the total publicly accessible open space.

According to the guidelines of the City Environmental Quality Review (CEQR) Technical Manual, the adequacy of open space is first analyzed quantitatively by comparing the ratio of existing passive open space acreage in the study area per 1,000 non-residents with the CEQR benchmark of 0.15 acres of passive open space per 1,000 non-residents. Then, the analysis compares the open space ratio for combined non-residential and residential population in the study area with the weighted benchmark of 0.15 acres per 1,000 non-residents and 0.50 acres per 1,000 residents. According to the DEIS, the East Midtown study area has an existing open space ratio of 0.068 acres per 1,000 non-residents, which is well below the 0.15 benchmark. It also had a combined ratio of 0.062 acres per 1,000 non-residents and residents, which is again well below the 0.183 weighted average benchmark.

#### *Residential and Mixed Use Character*

While the district is predominantly commercial office in character, there are a number of significant institutional buildings, many of which are landmarks, and blocks or street frontages that are more residential in character. Ground floors are punctuated by retail use including national and local retail establishments, restaurants and cafes. This variety gives the district its strength as a vibrant place to work.

Adjacent to the boundaries of the district on Third Avenue, the midblocks between Third and Second Avenues from the north side of East 46<sup>th</sup> Street to the south side of East 54<sup>th</sup> Street are residential in character, with institutional use. The block bounded by East 57<sup>th</sup> Street, Second Avenue, East 56<sup>th</sup> Street, and Third Avenue is also predominantly residential. Meanwhile, Tudor City is a major apartment complex directly to the east of the proposed zoning map change at 42<sup>nd</sup> Street and Second Avenue.

#### *Landmarks*

East Midtown is home to many buildings of iconic stature with remarkable historical and architectural value. The Landmarks Preservation Commission (LPC) surveyed East Midtown numerous times from 1966-2013, and had designated 38 individual landmarks and one historic district in the area. In 2014, as part of its final report, the East Midtown Steering Committee

determined that LPC should calendar and designate as many historic resources as it deems appropriate in advance of the Greater East Midtown application.

LPC undertook a comprehensive study of East Midtown with the goal of preserving the neighborhood's development history through individual designations. The study area consisted of East 39th to East 57th Streets, from Fifth Avenue to Second Avenue. After extensive research, LPC distinguished between buildings from three key eras central to the development of the neighborhood: Pre-Grand Central Terminal (residential and institutional development through the 1910s); Grand Central/Terminal City (buildings constructed in Terminal City or that were spurred by transit improvements); and Post Grand Central (buildings constructed after 1933).

At a public meeting on May 10, 2016, the agency identified 12 buildings that merit designation and contribute to the rich historical and architectural context of the area. From the Pre-Grand Central Terminal era, LPC identified the Minnie E. Young House and the former Martin Erdmann Residence. From the Grand Central/Terminal City era, LPC identified the 18 East 41st Street Building, the Hampton Shops Building, the Yale Club of New York, the Pershing Square Building, the Graybar Building, 400 Madison Avenue, the Shelton Hotel, the Beverly Hotel, and Hotel Lexington. From the Post Grand Central era, LPC identified the former Citicorp Tower at 601 Lexington Avenue.

At public meetings held November 22, 2016 and December 6, 2016, LPC unanimously granted landmark status to the 12 buildings. The designation of the additional 12 properties brings to 50 the number of individual landmarks designated in this area.

### **Proposed Zoning Text Amendment**

The proposed zoning text amendment would establish an East Midtown Subdistrict within the Special Midtown District. New development would be focused on sites that are near transit stations and along wide streets, and the greatest as-of-right density would be around Grand Central Terminal with lesser densities dissipating out from the Grand Central core. Developments generated through the proposed mechanisms would provide greater opportunity for landmarks to transfer unused development rights throughout the Subdistrict and would provide district-wide public realm improvements. The proposed Subdistrict would supersede the existing Grand Central Subdistrict, and most of the existing zoning regulations of the Grand Central Subdistrict would be incorporated into the proposed Amendment.

### *Density Framework to Promote New Development*

The text amendment addresses the limited growth potential and development challenges associated with the special permit process through a primarily as-of-right framework. The amendment would permit additional density by varying degrees based on locational criteria such as proximity to transit and adjacency to wide streets. This would ensure that the densest new developments be appropriately located near transit and along wide streets, and that the predictable as-of-right process and increased permitted densities serve as incentives for developers to undergo the substantial effort associated with redevelopment projects in this area.



The area around Grand Central Terminal is mapped as a C5-3 zoning district on both wide and narrow streets. This designation permits a maximum of 15.0 FAR. The remainder of the area is mapped with C5-3 and C6-6 districts along the avenues, which permit a maximum of 15.0 FAR, and C5-2.5 and C6-4.5 districts along the midblocks, which permit a maximum of 12.0 FAR. The text amendment would enable sites to utilize three as-of-right mechanisms to achieve specific maximum densities in excess of these base FARs.

New as-of-right maximum densities proposed for the Subdistrict range from 18.0 to 27.0 FAR. In general, higher FARs are permitted in locations proximate to transit nodes and along Park Avenue, an especially wide street. In the area immediately surrounding Grand Central Terminal, the as-of-right maximum density would be 27.0 FAR. In the area east and west of the Grand Central core and the area surrounding the Fifth Avenue-53rd Street and Lexington Avenue-51st/53rd Streets subway stations, the as-of-right maximum density would be 23.0 FAR. These areas of the district with a 23.0 or 27.0 FAR are further defined as Transit Improvement Zones, which is explained in detail below. In the area around the Grand Central Transit Improvement Zone, the as-of-right maximum density would be 21.6 FAR for the blocks nearest Grand Central Terminal's below-grade network and 18.0 FAR for blocks further away. Generally, the areas adjacent to the Fifth Avenue-53rd Street and Lexington Avenue-51st/53rd Streets Transit Improvement Zones would have as-of-right maximum densities of 18.0 FAR. The exception is along Park Avenue, where the as-of-right maximum density would be 25.0 FAR.

#### *Qualifying Site Requirements*

Development of new high-quality office space requires appropriate sites. To qualify for the proposed Subdistrict's as-of-right framework, sites must have cleared frontage along a wide street, dedicate no more than 20 percent of the building's floor area for residential use, and comply with environmental standards in order to be considered a Qualifying Site. Qualifying Sites may use three new as-of-right zoning mechanisms to achieve additional floor area: (1) the transfer of landmark development rights, (2) the rebuilding of legally non-compliant floor area, and (3) the completion of direct improvements to below-grade transit infrastructure.

#### *Transfer of Landmark Development Rights*

The text amendment would permit additional flexibility in the transfer of landmark development rights by allowing landmarks the ability to transfer to development sites anywhere in the proposed Subdistrict. This mechanism would allow for the redistribution of unused floor area for the construction of office space, support the restoration and continued maintenance of landmarks, and generate funds for public realm improvements.

As is the procedure under ZR Section 74-79, landmarks that transfer development rights will be required to develop a restoration and continuing maintenance plan that is approved by LPC. The sale of development rights will aid landmark property owners in funding these preservation plans and help ensure that landmarked structures continue their significant contribution to the area's overall character.

Each landmark development rights transfer transaction will generate a contribution to the Public Realm Improvement Fund that will facilitate improvements to the area. The contribution rate will be 20 percent of the sale of each development rights transfer from a landmark, or a minimum contribution of \$78.60 per square foot, whichever is greater. The minimum contribution rate was informed by a market study of the value of development rights in midtown (<https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/greater-east-midtown/market-study.pdf>). The minimum contribution will help ensure that new developments appropriately support public realm improvements. The City Planning Commission will, by rule, review and adjust the floor pursuant to the City Administrative Procedure Act every three to five years.

### *Rebuilding Overbuilt Buildings*

There are a number of pre-1961 buildings in East Midtown that do not comply with current zoning regulations, particularly with regard to the amount of floor area permitted, since they were constructed prior to introduction of FAR regulations in the Zoning Resolution. This text amendment would allow for the amount of floor area that exceeds the base FAR to be utilized as-of-right in a new development on the site and in conjunction with a contribution to the Public Realm Improvement Fund.

The text amendment would eliminate the requirement that 25 percent of a building's structure be retained in order to utilize the building's overbuilt floor area as part of a new development. Instead, it would allow the amount of overbuilt floor area to be utilized in a new development as-of-right, and would permit additional floor area to be attained through a landmark development rights transfer and/or a transit infrastructure project. All floor area would be subject to the amendment's use regulations.

The amount of overbuilt floor area rebuilt on these sites would be subject to a contribution into the Public Realm Improvement Fund. The contribution amount would be the same as the minimum contribution (\$78.60 per square foot and adjusted every three to five years). This will facilitate improvements to the area that are designed to address the increased density generated by these new developments.

### *Pre-identified Transit Improvements*

Under the Proposed Action, developments on Qualifying Sites within a Transit Improvement Zone (TIZ) would be required to undertake one or more pre-identified transit improvements in exchange for increases to their permitted floor area. Development sites located outside of a TIZ would not be required, or permitted, to undertake transit improvements.

The MTA has identified specific improvements that they believe would most benefit East Midtown office workers, visitors, and residents. These projects would address current issues that impact the area's transit network and anticipate potential needs of the area based on future development. The types of projects identified relate to handicap accessibility, improved access within station areas and circulation between platforms, and new points of access into subway stations from street level. To facilitate this requirement, the pre-identified transit improvements

are assigned a standardized amount of floor area. Transit improvements fall into three categories of floor area, based upon project scope and public benefit ranging from 40,000 square feet, 80,000 square feet or 120,000 square feet.

New developments built pursuant to this proposed framework located in the Transit Improvement Zones would be required to generate between 10 and 20 percent of the development's maximum permitted floor area by completing one or more pre-identified transit improvements. For developments in 23.0 FAR districts, this would equate to between 2.3 and 4.6 FAR of transit improvements, and for developments in the 27.0 FAR district this would equate to between 2.7 and 5.4 FAR of transit improvements. All permitted floor area above these amounts would be through the transfer of unused floor area from the area's landmarks. The exception to this would be for any eligible development that undertakes the improvements identified for the Fifth Avenue-53rd Street (E-M) station. It is expected that these improvements need to be completed simultaneously in order to prevent operational complications for NYC Transit in the station. Therefore, a development would be permitted, as-of-right, to increase their additional floor area beyond 20 percent to complete improvements at this station. The Zoning Resolution details how individual developments select transit improvements, with priority given to those improvements closest to the development site.

Projects on the pre-identified transit improvement list will be included in the zoning text, and they include:

- Grand Central 42<sup>nd</sup> Street (4-5-6-7-S): Suites of improvements are contemplated to improve accessibility to and from the Flushing Line platforms, including a new platform staircase to the escalator core serving the upper mezzanine, widening of staircases leading down from the Lexington Avenue Line platforms, and a widening of the platform stair at the east end of the station.
- Lexington Avenue-51<sup>st</sup>/53<sup>rd</sup> Streets (E-M-6): Proposed improvements include widening an escalator at the 53rd Street portion of the station, replacement of an escalator at the 51st Street portion of the station with a wider staircase, and the addition of new street entrance to the uptown Lexington Avenue Line platform at 50th Street.
- Lexington Avenue-59<sup>th</sup> Street (N-Q-R-4-5): Proposed improvements include adding more stair capacity between the N-Q-R and Lexington Avenue Line express platforms and the provision of ADA access.
- Fifth Avenue-53<sup>rd</sup> Street (E-M): Proposed improvements include a new street entrance on the west side of Madison Avenue, a new mezzanine and fare control area, and new vertical circulation elements to the upper and lower platform levels. In addition, a new elevator would make the station fully accessible.
- 47<sup>th</sup>-50<sup>th</sup> Streets-Rockefeller Center (B-D-F-M): Capacity improvements at this station would result from the addition of two new platform stairs and the widening of existing platform stairs.

- 42<sup>nd</sup> Street Bryant Park-Fifth Avenue (B-D-F-M-7): Proposed improvements include a new street entrance to the Flushing Line mezzanine from the north side of West 42nd Street, midblock between Fifth and Sixth Avenues. ADA access would also be provided between the mezzanine level and the Flushing Line platform as well as between the mezzanine level and the Sixth Avenue Line platform.

### *East Midtown Public Realm Improvement Fund, Governing Group and Concept Plan*

The text amendment would establish the East Midtown Public Realm Improvement Fund for the deposit and administration of contributions generated by the transfer of landmark development rights, or the redevelopment of overbuilt buildings with legally non-complying floor area. The Fund would be utilized, at the discretion of a Public Realm Improvement Governing Group (the “Governing Group”), to implement improvements within the proposed Subdistrict, and in its immediate vicinity.

The proposed Governing Group structure consists of nine members: five mayoral appointees from City agencies, a representative of the Office of the Manhattan Borough President, a representative of the New York City Council Member representing Council District 4; a representative of Manhattan Community Board 5; and a representative of Manhattan Community Board 6.

The Governing Group would adopt procedures for the conduct of its activities, which would be consistent with the goals of the proposed Subdistrict. The Governing Group would also adopt and maintain a Concept Plan containing a list of priority above- and below-grade improvements. To inform the initial Concept Plan, a suite of conceptual above- and below-grade public realm improvements have been prepared by DOT and MTA. The MTA improvements are those listed in the previous section. The DOT improvements fall into four general categories: (1) plazas, (2) shared streets, (3) median widenings, and (4) thoroughfare improvements.

The above-grade improvements serve as illustrative examples of the types of projects that could be included in the Concept Plan and where those types of projects might be located. The Governing Group would have the ability to amend, add, or remove projects on the Concept Plan, and to prioritize the funding of projects. All projects must meet a set of criteria outlined in the Zoning Resolution and be a capital project under Section 210 of the New York City Charter.

### *Height and Setback Modifications*

Compliance with the Special Midtown District’s height and setback regulations is based on a calculation of the amount of daylight and openness to the sky made available to pedestrians through the proposed building’s design. Under the ZR Section 74-79 Landmark Transfer Special Permit, as well as permits available in the Grand Central Subdistrict, modifications to these regulations are allowed to accommodate the higher FAR made available through the floor area transfer. To extend a similar flexibility to the as-of-right framework included in the Proposed Action, modifications to underlying height and setback regulations would be granted to Qualifying Sites so as to permit as-of-right development at the levels allowed through the

proposed framework and to better take account of the smaller development sites and higher street walls found in the East Midtown area. Specific modifications would include:

- (1) The requirement that new buildings either meet the existing minimum daylight score for individual Midtown streets (66 percent), or achieve at least the same daylight score of the buildings they replace;
- (2) The removal of unintended penalties for building designs looking to match the area's higher street wall context; provide street wall recesses and at-grade setbacks; or place more of their bulk higher in the air where it has less on-street visual impact; and
- (3) The allowance for buildings along Park Avenue to measure height and setback compliance based on the avenue's actual dimensions. (Current regulations do not recognize Park Avenue's width.)

#### *Other Modifications Affecting Qualifying Sites*

Environmental Standards – In order to ensure that new office construction supports the City's goals for reducing greenhouse gas emissions and achieves a high standard for energy efficiency, all developments on Qualifying Sites shall meet one of the following two requirements. New developments must either (1) utilize a district steam system for the building's heating and hot water systems; or (2), if it does not use district steam, the building's core and shell must exceed the stringent energy efficiency standards of the 2016 New York City Energy Conservation Code (NYCECC) by at least three percent. The CPC may update this standard by rule to keep pace with evolving codes and building practices.

Stacking Rules – In order to enliven the program of future buildings, the 'stacking' rules will be relaxed. Under the existing 'stacking' rules, non-residential uses, such as restaurants, observation decks, and other similar uses, are not permitted above or on the same story as residential uses, limiting the ability to develop such uses in mixed-use buildings with residential uses. In order to permit these active uses, the text amendment would allow these uses to be developed above residential uses as-of-right, provided that the residential and non-residential uses above are not accessible to each other on floors above the ground level.

Urban Design – The Special Midtown District contains a series of requirements tailored to the unique conditions of the area. These include special street wall, pedestrian circulation space, and loading requirements. These requirements would be modified to ensure appropriate as-of-right development in the East Midtown Subdistrict, and would include elements such as sidewalk widening requirements and retail continuity requirements.

#### *Discretionary Actions*

While the majority of the text amendment provides an as-of-right framework to achieve the development and public realm improvements desired for the area, there are limited scenarios in which a discretionary action, subject to a separate public review process, is the most appropriate mechanism. This is the case for projects that would include any of the following improvements

or uses. The following special permit mechanisms and authorization would be created through the text amendment, and would occur only through additional discretionary actions:

Public Concourse Special Permit – To create new opportunities for publicly accessible space on Qualifying Sites, the text amendment includes the creation of a new special permit within the proposed Subdistrict to allow an on-site Public Concourse in exchange for up to 3.0 FAR of additional floor area. A Public Concourse can be an enclosed or unenclosed public space that reflects contemporary best practices in urban design. The 3.0 FAR bonus would be in addition to the proposed as-of-right maximum FAR. Therefore, a Qualifying Site could, through this discretionary action, increase its maximum FAR as follows:

Northern Subarea: 18.0 FAR to 21.0 FAR  
Southern Subarea: 21.6 FAR to 24.6 FAR  
Other Transit Improvement Zone Subarea: 23.0 FAR to 26.0 FAR  
Park Avenue Subarea: 25.0 FAR to 28.0 FAR; and  
Grand Central Transit Improvement Zone Subarea: 27.0 FAR to 30.0 FAR.

Transit Improvement Special Permits – To allow for new opportunities for transit improvements on Qualifying Sites beyond those made possible through the as-of-right framework, the existing Subway Station Improvements bonus, pursuant to ZR Sections 74-634 and 81-292, will be permitted within the Transit Improvement Zones of the proposed Subdistrict. These special permits allow 3.0 FAR increase of the maximum permitted FAR in exchange for improvements to transit infrastructure. This bonus of up to 3.0 FAR would be in addition to the proposed as-of-right maximum FAR. Therefore, a Qualifying Site could, through this discretionary action, increase its maximum FAR as follows:

Other Transit Improvement Zone Subarea: 23.0 FAR to 26.0 FAR  
Grand Central Transit Improvement Zone Subarea: 27.0 FAR to 30.0 FAR.

Special Permit Modification of Subdistrict Regulations – It is anticipated that over the analysis period, some new developments may require modifications to the proposed Subdistrict's regulations in order to utilize the new as-of-right FAR framework, or to realize their maximum permitted floor area within the Subdistrict's as-of-right envelope. This special permit would primarily allow modifications to the proposed Subdistrict's provisions governing height and setback and the definition of a Qualifying Site, and may extend to use and additional bulk regulations as appropriate.

Hotel Special Permit – Hotels in East Midtown must appropriately serve the needs of the business community by providing business-oriented amenities and services, such as conference facilities and advanced telecommunication tools, at a scale proportionate to the needs of the area. To ensure that new floor area for hotel use in the Subdistrict meet these requirements, a special permit similar to that of the Special Permit for Transient Hotels in the Vanderbilt Corridor, would be created within the proposed Subdistrict.

Authorization for Enlargements – The text amendment permits enlargements to use the Qualifying Site provisions by CPC Authorization. Buildings that could not meet the cleared

avenue frontage requirement for a Qualifying Site could utilize this authorization to increase its maximum permitted as-of-right floor area to the equivalent amount for a Qualifying Site in the same subarea. It would achieve this additional floor area through the use of the as-of-right floor area increase mechanisms in the same manner as a Qualifying Site. The enlargement must include significant renovations to the existing building that will bring it up, to the greatest extent possible, to contemporary standards. The authorization may be used in combination with any of the other discretionary actions.

### **Proposed Zoning Map Amendment**

Concurrent with the text amendment, DCP also proposes an amendment to Zoning Map Nos. 8c and 8d to replace an existing C5-2 district (bounded by East 43<sup>rd</sup> Street to the north, East 42<sup>nd</sup> Street to the south, Second Avenue to the east, and a line 200 feet easterly of Third Avenue to the west) with a C5-3 district, and to include it within the proposed East Midtown Subdistrict. The area between Second and Third Avenues along East 42<sup>nd</sup> Street is entirely commercial in character, with a number of existing aging office buildings with potential for redevelopment. The Special Midtown Subdistrict generally follows the boundary of Midtown's commercial areas and thus DCP deems this area to be more appropriate in the Midtown Subdistrict, and additionally as part of the East Midtown Subdistrict. By incorporating the area into Midtown, the Special Subdistrict regulations, including height and setback and streetscape requirements, would become applicable. In order to do this, the rezoning would replace the existing C5-2 district (10.0 FAR) with a C5-3 district (15.0 FAR), and extend the Special Midtown District and the East Midtown Subdistrict over the proposed C5-3 district. As both the existing and proposed designations are C5 districts, they share the same permitted uses.

### **COMMUNITY BOARD RECOMMENDATIONS**

On March 8, 2017 Manhattan Community Board 6 (CB6) voted by a vote of 43 in the affirmative, none in the negative no abstentions to approve a resolution recommending denial of the application unless certain conditions were met. Those conditions included: (1) that DCP make plazas, covered pedestrian spaces and other privately owned public spaces as of right; (2) that transit improvements be prioritized to favor those that benefit the East Midtown Subdistrict; (3) that the text be modified to limit additional height on the midblocks of narrow streets; (4) that the eastern boundary of the Subdistrict be moved to the center of Third Avenue from 43rd Street to 56th Street; (5) that the current height and setback regulations be maintained to preserve light and air; and (6) that the rezoning of the site of the Pfizer headquarters trigger a payment into the Public Realm Improvement Fund based upon the additional increase in density (from 10 FAR to 15 FAR).

On March 9, 2017 Manhattan Community Board 5 (CB5) voted by a vote of 32 in the affirmative, none in the negative and one abstention to approve a resolution recommending denial of the application unless certain conditions were met including the following: (1) there is a creation of new public space on every redeveloped site that takes advantage of the East Midtown's transfer of development rights framework; (2) actions by the Governing Group which will determine public realm improvements require at least one non-Mayoral appointee to ensure

some level of consensus; (3) the percentage of the value of the transferred development rights to be deposited into the Public Realm Improvement Fund be increased to 30 percent and a minimum contribution price be maintained; (4) the City funds some of the Department of Transportation-identified public realm improvements prior to the adoption of the proposed zoning text; and (5) a prohibition on conversion of more than 12 FAR to residential use be included and a special permit be required for all other residential conversions.

Both the CB5 and the CB6 Resolutions concluded that the conditional denials were to be interpreted as conditional approvals if, on or before March 13, 2017, the Administration communicated in writing that “The EIS will consider an alternative that requires redeveloped sites to include either outdoor plaza space or a covered pedestrian space,” underscoring the importance to the communities of a more definitive commitment by the City to non-transit, above-ground public realm improvements.

### **BOROUGH BOARD PUBLIC HEARING**

On March 2, 2017, the Manhattan Borough Board and Borough President conducted a public hearing on the application at which approximately 100 people attended and 20 people presented testimony. Additional testimony from 15 people and organizations was submitted after the public hearing. The three issues addressed by the largest numbers of people were: (1) Public realm improvements; (2) the eastern boundary of the proposed Subdistrict; and (3) the minimum required contribution per square foot of development right transfers that would be required to be paid into the Public Realm Improvement Fund.

At the hearing, seven speakers addressed the need for greater emphasis on public open space, while two representatives of property owners cautioned that owners of affected properties must be involved in the selection and implementation of non-transit public realm projects. Six speakers spoke on the need to include the east side of Third Avenue in the proposed Subdistrict and four speakers spoke in opposition to its inclusion based upon impacts to the residential communities east of Third Avenue. Five speakers testified that the proposed minimum contribution of \$393 per square foot of transferred development rights to the Public Realm Improvement Fund was excessive and would impede the transfer of development rights by landmarks in the Subdistrict.

Other issues addressed included the need to adhere more closely to current height and setback requirements; opposition to proposed changes in the calculation of the daylight score; the need for more comprehensive traffic studies; and issues concerning the Second Avenue subway. The additional submitted testimony echoed the concerns of speakers at the hearing.

### **BOROUGH BOARD RESOLUTION**

The Manhattan Borough Board met March 16, 2017 to consider a resolution on the application. The day before the Borough Board meeting, DCP had made a commitment to the Borough President and Council Member that it would study in the Environmental Impact Statement (EIS)



a requirement for the creation of privately owned public spaces subject to criteria decided by DCP, which would include that the lot size be a minimum of 40,000 square feet. At the time DCP stated the requirement would likely apply to six or seven development sites in the Subdistrict and result in the sites earning one FAR for the creation of an outdoor public space and three FAR for the creation of an indoor public space.

Having received a commitment from DCP to address a significant concern regarding the lack of concrete proposals for new public open space in the Subdistrict, the Manhattan Borough Board adopted a resolution recommending approval of the application with conditions. Those conditions were as follows:

- (1) That the City commit to undertake above-grade public realm pilot projects and provide seed money for the Public Realm Improvement Fund in the upcoming budget so that other such projects can begin and to underscore the City's commitment to the above-grade public realm;
- (2) That changes be made to the limitations on uses of the Public Realm Improvement Fund to ensure that above-grade public realm improvements are further prioritized;
- (3) That DCP and the Department of Transportation work to adequately define the "Concept Plan" for above-grade public realm in the zoning text and develop a draft concept plan in a reasonable time frame;
- (4) That changes be made to the composition and/or functioning of the governing board in accordance with recommendations of the East Midtown Steering Committee Report to ensure sufficient community participation;
- (5) That every option for limitations on the east side of Third Avenue – including changes to the eastern border – be reviewed, with the goal of reducing adverse impacts to residential neighborhoods bordering the eastern side of the Subdistrict;
- (6) That serious consideration be given to amending the text to limit residential conversions;
- (7) That the language on environmental standards in the text is sufficient to support the achievement of the steering committee's goal of achieving an environmental standard of LEED Gold or its equivalent;
- (8) That mechanisms that can prevent or limit incremental shadow impacts, especially on existing parks and open spaces, be explored;
- (9) That an accurate floor price be set that will not become an obstacle to the contemplated transfer of development rights; and
- (10) That DCP work with the affected Community Boards to address their other concerns laid out in their respective resolutions prior to the end of the ULURP period.

The Chairs of Community Boards 5 and 6 stated that they had been expecting to vote against any resolution to recommend approval of the application primarily because of the lack of any requirement that redeveloped sites include either outdoor plaza space or a covered pedestrian space. While acknowledging the progress made with DCP's commitment, they stated that they could not fully support the resolution but would abstain rather than vote against it. The Borough Board voted to approve the resolution recommending approval with conditions of the East Midtown application by a vote of eight in the affirmative, none in the negative and two abstentions.

For a full list of speakers and list of those who submitted testimony, please refer to the appendix following the Borough President Recommendation.

### **BOROUGH PRESIDENT'S COMMENTS**

DCP's application for the redevelopment of East Midtown has been derived from the work done by the Steering Committee and represents a significant improvement upon its predecessor application put forth by the prior administration in 2013. The general goal set forth by the Steering Committee was to enable our city's central business district to develop into a modern world-class business district through an as-of-right plan that would allow the development of new Class A office space, preserve iconic landmarks throughout the district, guarantee significant below ground transit improvements essential to move people in and out of the district as well as above ground public realm improvements necessary to make the district a place where people (and therefore businesses) want to be.

Both the Steering Committee and DCP's proposal seek to guarantee that the creation of new, higher-density, Class-A office space occurs only in conjunction with essential mass transit upgrades in the Transit Improvement Zones. Unlike in the 2013 proposal, these upgrades have been set forth by the MTA in the application with an amount of additional floor area to be unlocked by each improvement. This ensures a predictability and consistency between additional density and the mass transit improvements needed to accommodate that density.

Through the work of the LPC in designating 12 additional landmarks and the ability for new development to earn additional FAR (up to a maximum) through the purchase of landmark development rights from any landmark in the Subdistrict, the Steering Committee and the proposal provide security and a mechanism for support for the landmarks which I believe are so critical to the Subdistrict. The as-of-right proposal ensures that the Subdistrict's landmarks, now 50 in total, will be preserved and will continue to be an essential part of the district's character. To do this the Steering Committee was conscious of the need to provide an adequate number of receiving sites for the 3.5 million square feet of landmark development rights in the Subdistrict in order to create a fair market for their sale.

Finally, the Steering Committee and the proposal seek to emphasize the importance of the above-grade public realm in the creation of a desirable business district through the creation of a Public Realm Improvement Fund funded through payments constituting a percentage of the price of

transferred development rights from landmarks and FAR used in excess of maximums in the redevelopment of overbuilt buildings. These payments would be significant, would go toward projects developed by a separate Governing Body, and the projects would be selected pursuant to types and criteria for projects outlined in a concept plan. The Public Realm Improvement Fund would also be available to use for below-grade improvements.

While coming up with a solid framework for East Midtown, the Steering Committee did not resolve all of the difficult questions it faced. It recognized the need for sufficient receiving sites for landmark development rights, but at the same time understood how the eastern boundary of the proposed Subdistrict was viewed differently by different stakeholders, and recommended more discussion on whether the eastern boundary should be the east or west side of Third Avenue from 48th to 56th Streets. It recognized the need for a robust contribution to the Public Realm Improvement Fund but supplied a range from 20 percent to 40 percent of the value of the development rights transferred. It stated that its goal was to maintain the light and air frameworks currently existing in the area but requested that DCP study slight modifications to accommodate the greater densities. Finally, the Steering Committee struggled with the importance it placed on improving the above grade public realm as we bumped up against the realities of a dense area with little room for new public spaces.

To make this proposal one that is as good as it can be, we need to improve upon certain of these areas before this application is finalized.

### *Public Realm*

Throughout this process, the question has been whether we are doing enough to address the three pillars of this plan that we found crucial to support the additional densities required by modern office space in this Subdistrict: (1) mass transit improvements; (2) landmarks; and (3) above-grade public realm improvements. The Steering Committee concluded that:

the public realm of East Midtown -- inclusive of transit, plazas, sidewalks and other public spaces - needs to be meaningfully improved, not just to accommodate more development in the district, but also to address the present intensity of land use and keep the district competitive. Planning, funding and project management for such improvements should go in advance of or, at the latest, hand-in-hand with added development (Steering Committee Report at 50)

I strongly believe one should never have to choose between landmarks and public transit improvements, and the work to date has reflected a balance there. However, as made clear by the discussions at the community boards, the Borough Board, and Borough Board public hearing, the proposal did not quite hit the mark in terms of the above-grade public realm. This tension was also evident in the Steering Committee: we insisted upon the importance of above-grade public realm and the need to develop a list of possible projects, but recognized the need for a significant, ongoing process that went far beyond merely tasking an agency with making a list.

To ensure the development of quality above-grade public space while not jeopardizing the stability of our other two pillars – landmarks and mass transit – I believe that the approved

zoning text by the CPC and City Council must include language that makes the provision of indoor or outdoor public space a requirement, not an option. This is most appropriate for larger assemblages that have the most to gain under the new proposed as-of-right framework and would not be exceptionally burdened or suffer any setbacks to reasonable financial expectations for those sites.

The inclusion of the full block from Third Avenue to Second Avenue with frontage along 42<sup>nd</sup> Street (the “Pfizer site”) is appropriate given the prominence of 42<sup>nd</sup> Street in East Midtown and Midtown as a whole, the array of transit infrastructure below it, and its commercial character. However, this block will gain in greater proportion than other sites. It is also a rare site that fulfills the qualifying requirements for an outdoor public space. As such it is appropriate to require an outdoor plaza at this site without the provision of an additional floor area bonus.

As a result of discussions between this office, the Councilmember’s office, and DCP, the Final Environmental Impact Statement (FEIS) will study an alternative that mandates an indoor or outdoor public space on Qualifying Sites of 40,000 square feet or more. Assumptions for dimensional requirements and placement of these required public spaces will be informed by current provisions in the Zoning Resolution as follows:

- i. Minimum size to be studied for an outdoor space will be 2,000 square feet, consistent with public plaza regulations, and an indoor space will be 3,000 square feet, consistent with covered pedestrian space regulations. The FEIS alternative will analyze an outdoor space on Projected Site 15 – the Pfizer site.
- ii. Locational restrictions for outdoor spaces will also be consistent with public plaza regulations. These spaces will not be permitted to be within 175 feet of another DCP regulated plaza or Department of Parks and Recreation park and orientation requirements will favor south-facing spaces while prohibiting spaces that would solely be north-facing.
- iii. District plan regulations will apply consistent with the provisions specific to the Special Midtown District. These include street wall continuity requirements and a prohibition of outdoor POPS within the Grand Central Terminal Subarea.

DCP is reviewing these assumptions to determine their applicability to this proposal in preparation for further discussions. They are also contemplating the requirement that the Pfizer site specifically provide an outdoor public space.

In addition to a mechanism that requires the development of new public spaces, I have also called for more certainty about the above-ground public realm improvements that will actually happen. Unlike the pre-identified below-grade transit improvements, these above-ground improvements will not be written into the zoning text. Furthermore, they will not be immediately realized, as they too will go through their own public outreach and comment process.

In a letter to Deputy Mayor Alicia Glen dated February 24, 2017, the Councilmember and I requested that a public realm project be piloted in the upcoming fiscal year in order to help establish the feasibility of the proposals and demonstrate solutions for any potential problems

that may arise. Furthermore, the Borough Board resolution called for the provision of seed money for the Public Realm Improvement Fund to demonstrate the city's commitment to the above-grade proposals.

In response, DCP has committed upfront funding for the following purposes (see attached "Commitment Letter" from the Deputy Mayor to the Manhattan Borough President dated April 12, 2017 for these and other commitments referenced herein):

- i. **East 53rd Street Corridor Improvements:** The City will complete streetscape improvements along five blocks of East 53rd Street between Second Avenue and Fifth Avenue. Projects will include comprehensive corridor enhancements such as circulation, seating, and greenery improvements. Specific projects will depend on partner participation, which the City will seek to maximize over the course of the ULURP process in order to deliver the highest-quality and highest-impact improvements.
- ii. **Upgrade Pershing Square East:** With BID partnership, formally designate Pershing Square East as a pedestrian plaza with regulation signage, and seed upgrades that include expanded geometry with a new gravel surface, improved amenities including planters, moveable cafe tables and chairs, and umbrellas.
- iii. **Piloting a Shared Street:** A shared street is a roadway designed for slow travel speeds where pedestrians, cyclists, and motorists all share the right of way. This would take place at a to-be-determined location in East Midtown, pending discussions with relevant stakeholders (including property owners and BIDs) and taking into account access to buildings and loading docks, sanitation, deliveries, pick-up and drop-offs, parking and overall circulation.
- iv. **Improve vehicular patterns on Park Avenue:** Implementing street markings to test new vehicular patterns along Park Avenue will help enhance pedestrian safety by reducing crossing distances. Creating optimal pedestrian spaces on Park Avenue, however, can only occur through a full capital project, which is reliant upon coordination with Metro North's capital plans. The City will commit to engaging with the community and Metro North to determine the future feasibility of these pedestrian improvements.

Of particular interest is the proposal for Park Avenue, which would rationalize the traffic but eventually seek to widen the median on this extra-wide avenue and thus free up more space to be devoted for public uses. While it would certainly be a complex undertaking, Park Avenue stretches throughout the Subdistrict, and the possibility of the project is big and intriguing. Of course, the proper organizations and stakeholders must be properly consulted and closely involved throughout the process; however, that is the purpose of upfront commitments to the public realm. It is an opportunity to do proper engagement in advance of unforeseen problems, and to gain a practical understanding of what can or cannot be done in the Subdistrict. In this way, seed funding for a pilot program and the beginnings of other improvement programs will get us closer to a public realm that is as good as it can be.

The text concerning the operation of the Governing Group and the Public Improvement Fund should be strengthened to ensure the breadth of view, transparency, and accountability envisioned by the Steering Committee.

The Steering Committee determined that the responsibility for public realm planning, project management, and control over the Public Realm Improvement Fund should be vested in an independent board constituting a public/private partnership. This Governing Group would work with the various agencies to select, coordinate and implement improvements to the public realm which would occur “in advance of or simultaneous with development” (Steering Committee Report at 52). The functioning of the Governing Group would be transparent and it would be responsible for outreach, and be accountable to stakeholders as well as government.

The DCP proposed text creates a Public Realm Improvement Fund and a Governing Group consisting of nine members, six appointed by the Mayor, to administer it. Improvements can be made to this text in order to ensure the independence, range of input, transparency and accountability that the Steering Committee contemplated. In addition, some adjustments should be made to satisfy the communities that above-grade public realm will remain a priority.

To ensure the breadth of viewpoint and public/private nature of the entity, the Governing Group should have a representative of a citywide civic organization which has a mission inclusive of urban design and public space. In addition, the voting structure of the group should require the vote of at least one non-mayoral appointee – at least for purposes of approving or prioritizing projects.<sup>1</sup> This will help ensure that the fund is not used to supplement agency budgets for projects they may wish to accomplish, but rather to serve the goals of greater public spaces for this district to maintain its competitiveness and vitality. This change will require the group to go from nine to eleven members so that the mayor still has a majority of appointees and to include the addition of the civic organization representative.

The zoning text should be amended to ensure full transparency and accountability in the conduct of the Governing Group. Language should be added to state that the procedures for the conduct of business shall be publicly available and include rules on reporting and transparency functions, including but not limited to the following: procedures on the adoption and amendment of the concept plan, requirements to provide a transcript or recording of all public meetings and hearings; and transparency and reporting requirements concerning deposits and expenditures from the fund. In addition, because outreach to stakeholders is so important, the Governing Group should be required to have a minimum of one annual public hearing at which members of the public may appear and be heard.

The text should also reflect that above grade improvements are the primary driver for the Concept Plan and expenditures. While worthy below-grade improvements should still be considered, language that explicitly prohibits the use funds for above-grade improvements outside of the district should be included and language prioritizing large above-grade projects should be considered. The text must plainly state that all funds are for use in the Borough of

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<sup>1</sup> The City’s Franchise Concession Review Committee has six voting members for purposes of any action, four of which are Mayoral appointees, but five votes are required to approve a franchise. See NYC Charter section 373.

Manhattan only and consultation with the affected property owners should be a criteria for improvement selection.

### *Third Avenue and Subdistrict Boundaries*

The true character of Third Avenue has been under discussion since the Steering Committee was formed, and a land use map does not always tell an accurate or full picture. This office believes in the power of site visits and in listening to the community. The zoning framework for this plan will not work without adequate landing sites and future development sites. However, it is clear that there is a significant presence of residential buildings on the blocks in question, and that Third Avenue functions to some extent as a buffer to more residential areas to the east. The coming of the Second Avenue Subway will place further pressures on the residential character of the neighborhoods to the east of this district, and immediate pressure on the midblock structures between Third and Second Avenues.

At a minimum, all existing residential buildings from the east side of Third Avenue must be removed. This removal would not have a significant impact on achieving the goals of the Greater East Midtown Plan and should actually reduce or eliminate displacement of residents on those sites. In addition, the removal of these sites would eliminate a number of split lot conditions under the proposed framework. Discussions with the community stakeholders should continue to determine if further change is required or further steps to mitigate any adverse effects.

With the removal of all residential buildings on the east side of Third Avenue, if needed, the City can study further adjustment of the boundaries to include additional commercial sites for potential redevelopment, such as the American Jewish Committee site on East 56<sup>th</sup> Street, which is within the C6-6 zone of the rest of the Third Avenue corridor, but not included in the Subdistrict.

### *Minimum Contribution Rate*

The East Midtown Steering Committee Report is clear that a mechanism like a minimum contribution rate and a set minimum valuation for the transfer of development rights is desirable to ensure a baseline of transparency for transactions and a sense of predictability for monies to the Public Realm Improvement Fund. This recommendation reflects the perception of asymmetrical information for public decision makers when it comes to the private transactions of real estate in the City of New York. While a number of documents do eventually become matters of public record, it is considered a science to properly analyze the value of these transactions.

I believe that the implementation of a minimum contribution rate is a sensible solution for transparency and predictability concerns. However, the current minimum valuation of \$393 per square foot and its corresponding contribution rate of \$78.60 per square foot, based on analysis by Landauer Valuation & Advisory, have been under consistent criticism. In particular, in letters dated February 7, 2017 and April 5, 2017, Cushman and Wakefield, Inc. has provided estimations of the minimum valuation and contribution that are significantly lower.

In the 2013 proposal, the City was to sell development rights at a cost of \$250 per square foot, as determined by an appraisal contracted by the City. Other more recent valuations of TDRs, such as those done for the Hudson River Park Trust, also arrived at numbers that gave us doubts about the \$393 per square foot valuation.

Given the potential for different office rents and land values in the different corridors of East Midtown, it seems interesting that actual sales for development rights remained relatively stable in the ten-year period in the Landauer report. This may point to transfers as a more fixed cost, or as a value more separate from land value. In order to establish a fair market value for TDRs in Greater East Midtown, it may be more sensible to peg the market value to the actual sale of TDR transactions, not land sales.

Cushman & Wakefield is a respected, dependable appraiser that the City has retained as a third-party appraiser for other projects, including at Hudson Yards. Given that the City has explicated a mechanism by which the minimum contribution rate can be adjusted through third-party appraisals, and given the massive disparity between the rate calculated by Landauer and by Cushman & Wakefield, we believe a lowering of the rate is reasonable. In the spirit of establishing the minimum contribution rate as a *minimum* so as to not impede redevelopment, and seeing as this is a disagreement between two reputable companies, and further seeing that there is a limited number of comparables from which to derive this very important number, we believe it is prudent to err on the side of the lower number and give more room for the market to determine the appropriate price.

Thus, this office believes that the minimum valuation should be closer to the lower of the two appraisals, in the vicinity of the \$250 per square foot number of the Cushman & Wakefield analysis. We simply have no evidence that points to why we should favor the analysis of one of these companies over the other. It is my hope that a new number can be agreed upon that is sensible to experts from all sides. However, the valuation that is ultimately chosen must be a fair, lower-bound valuation, otherwise all the aspirations we have for public realm are for naught. If such valuation cannot be reached, we may be forced to look for another option to address the transparency and predictability concerns of the Public Realm Improvement Fund.

### *Daylighting and Shadows on Open Space*

How much sunlight does an office worker require? Advances in technology have only lengthened our working hours, and arguably we spend more time at work than at home or play. So the quality of that work environment matters. It is why even our less-than-ideal POPS are filled to the brim. It is why we need to protect special places like Greenacre Park, and why a number of speakers at the Borough Board/Borough President hearing on this matter reacted strongly to a 12 percent reduction in the passing score, from 75 to 66, for the daylight evaluation requirements for qualifying sites. The daylight evaluation diagrams in the text look otherworldly, and the analysis framework is understood by few. But everyone understands that bigger buildings block more light. So the question remains, how much sunlight is appropriate in a predominantly commercial district?



The East Midtown Steering Committee made a judgment call based on months of discussion that the bulk requirements for this neighborhood would need to be adjusted in order to accommodate the greater amount of density that would result in tangible public goods: investments in mass transit, the protection and viability of significant landmarks, and funds for a public realm Governing Group to disburse to improve the quality of life of workers and residents in the district. What was unresolved was the question of how much would need to be adjusted, or tweaked. The Department of City Planning has given us its best educated guess, and it is a guess, since we lack the modelling for every potential building and every existing building, to truly understand how much light we are losing on a tangible basis. For what is the true felt impact of a score of 75, or 74, or 70, or even 66? I struggled with this question for One Vanderbilt, and eventually landed on the side that less light, while not ideal, is an acceptable trade-off for significant investment in the rest of the public realm. And since I am conditioning this approval on the inclusion of mandated public space at current design standards at the larger of those sites blocking light, which DCP has committed to study, I am again willing to accept that trade.

One part of the daylighting proposal requires greater scrutiny: the option for new buildings to either meet the existing minimum daylight score for individual Midtown streets (66 percent), or achieve at least the same daylight score of the buildings they replace. The allowance for new buildings to match the scores of the previous building on the site is meant to give some small degree of flexibility in redevelopment. However, we are wary of buildings with egregious, failing scores being able to replicate that failure – especially as we do not have enough information about the existence or prevalence of such buildings. Thus, there should be a sensible minimum score that redeveloped buildings must meet, regardless of the scores of the buildings they replace.

Finally, there is the matter of potential shadow impacts to Greenacre Park, a truly exceptional piece of sunlight, greenery and air in an area that sorely needs high-quality public space. The DEIS concludes that the loss of 1.5 hours of afternoon sunlight would not be a significant adverse impact. However, I do consider it significant, especially given the park's small size, flourishing of vegetation, and potential shadow impacts from future development on Second Avenue. Thus, I urge the City to continue working with Greenacre Park to explore all options to avoid shadow impacts from new buildings.

### *Residential Conversions*

A recurring concern throughout discussions on East Midtown is the potential unintended consequence of residential conversions in an area intended for important commercial activity. While the current proposal imposes limits on residential uses in new development that make use of the new density framework, it does not restrict existing buildings to convert to residential.

The City's primary objective through the Greater East Midtown proposal is the redevelopment of underperforming office stock into state-of-the-art office buildings. However, it also continues to support mixed-use neighborhoods as a general principle. The City has cited the following as reasons for not regulating residential conversions as part of the proposal:

- i. **Mixed-use neighborhoods** | The revitalization of office stock in East Midtown and the production of residential units are complementary goals. Additional residential units within new buildings using the East Midtown framework (20% maximum), through as-of-right development, or through conversion of existing buildings should not be considered anathema to the success of East Midtown. The combination of workers and residents contributes to the continued vibrant, mixed-use character of the neighborhood.
- ii. **A stronger commercial ecosystem** | This proposal incentivizes redevelopment of antiquated commercial buildings into buildings that are predominately Class A commercial in nature. The tenants attracted to these new Class A spaces attract other business that tenant in Class B and C office spaces. This, in turn, drives down commercial vacancy rates and sustains an economically viable business district where the financial inducement to convert office space to another use is countered.
- iii. **Residential conversion history** | A look at residential conversions of pre-1961 office or manufacturing buildings within the proposed Subdistrict since 2000 indicates that this is not a pervasive condition. DCP's research found no residential conversions, however, a more thorough analysis in conjunction with DOB would be necessary to verify this finding. The lack of conversions is in part due to East Midtown's built fabric being less suited to residential conversion than other areas such as the Flatiron District, Chelsea, and Downtown Manhattan (refer to building typology below). Since this study period includes one of the largest housing booms in U.S. history, there is no expectation that residential conversions would rise sharply in the future.
- iv. **Conversion building typography** | Commercial buildings that lend themselves to residential conversion tend to be pre-war buildings with towers. While the bases of these buildings often consist of large floor plates that don't conform with the legal window requirements for residential units, the tower portion of the building generally provides suitable floor plates for apartment or condo layouts. Buildings with this typology may convert only the tower to residential use while retaining the wider base for office uses. An example of this is the Woolworth Building, which is now a mixed residential-commercial building. The other building typology that lends itself to residential conversion is that of hotels. This again is due to floor plate layouts and window requirements. The Waldorf Astoria is proposed to convert in part to residential use, and is the only commercial building within the Subdistrict that was identified as undertaking a residential conversion. Examples of other buildings within East Midtown with a slender tower or hotel building typology are the General Electric Building (570 Lexington Avenue), the Beverly Hotel (557 Lexington Avenue), the Shelton Hotel (525 Lexington Avenue), and the Lincoln Building (56 East 42nd Street).

I believe in the value of mixed-use neighborhoods, and I can also see that there is some value to preservation in not regulating the option to convert to residential. There are many buildings in the area that do not have the protection of landmark status, but are of significant historical and architectural value to me. In these cases, I can see how the option to convert to residential may allow the building to be preserved rather than to be demolished for a new development.

The primary goal of the proposal is to bolster East Midtown's status as a world-class central business district. It would be a very undesirable outcome if this goal is undermined by more residential conversions than is expected in the City's analysis. In discussions with DCP, it was made clear that if a significant increase in conversions were to occur, a text amendment can be enacted to stop such practices. I believe it is imperative to act swiftly should the situation arise, and that the City must take the appropriate measures to monitor such possibilities and report on the prevalence of conversions to the community and local elected officials. In its Commitment Letter, DCP agreed to report to my office and the City Council on residential conversions in the Subdistrict – a monitoring of the situation that could be useful. However, the Administration only consented to a report after five years, at which point a significant trend of conversions could already be underway. This unreasonable delay renders what could be a useful and conservative tool to protect against a perhaps unlikely, but nevertheless undesirable, occurrence virtually meaningless. I ask the CPC and the City Council to require meaningful reporting from DCP.

### **BOROUGH PRESIDENT'S RECOMMENDATION**

**Therefore, the Manhattan Borough President recommends approval of Application Nos. C 170187 ZMM and N 170186 (A) ZRM on the following conditions:**

(1) The approved zoning text by the CPC and City Council must include language that makes the provision of indoor or outdoor public space a requirement, not an option, on large assemblages of 40,000 square feet or greater and that the newly incorporated site at 42nd Street and Second Avenue be required to provide an outdoor public space;

(2) The Administration funds and begins to implement its open space commitments set forth in the Commitment Letter dated April 12, 2017 from Deputy Mayor Alicia Glen to the Manhattan Borough President concerning:

- East 53rd street Corridor Streetscape improvements;
- Designation of Pershing Square East as a pedestrian plaza with accompanying upgrades;
- A piloted shared street chosen and implemented in conjunction with all relevant stakeholders;
- Improved vehicular patterns on Park Avenue and commencement of stakeholder outreach and study to determine the feasibility of further pedestrian improvements.

(3) Expansion of the Governing Group to include a representative of a Citywide civic organization with a mission that includes urban design and public space, and consider requiring one non-mayoral appointee action on the approval of projects;

(4) Inclusion in the final text of language, as agreed to in the Commitment Letter, to increase transparency and accountability of the Public Realm Improvement Fund and Governing Group. This should include procedures on the adoption and amendment of the concept plan, requirements to provide a transcript or recording of all public meetings and hearings; and transparency and reporting requirements concerning deposits and expenditures from the fund. The Governing Group should be required to have a minimum of one annual public hearing at which members of the public may also appear and be heard.

(5) At a minimum, removal of all existing residential buildings from the east side of Third Avenue to reduce or eliminate displacement of residents on those sites, and discussions with the community stakeholders should continue to determine if further change is required or further steps to mitigate any adverse effects on the residential areas bordering the eastern boundary of the Subdistrict.

(6) Re-evaluation and lowering of the valuation of transferred development rights to ensure that it is truly fair, and acts as a minimum or floor. It is essential that we err, if at all, on the side that will not choke off the transactions upon which a significant pillar of this proposal is based and if the City cannot come up with a re-evaluation that inspires more confidence it may have to search for another mechanism to address the transparency and predictability concerns of the Public Realm Improvement Fund;

(7) The final text includes a minimum score for daylight below which a redeveloped building cannot score, regardless of the score of the building it replaces;

(8) The City continues working with Greenacre Park to explore all options to avoid shadow impacts from new buildings on the park;

(9) The Administration be required to report to the Borough President, affected Council Member and Community Boards annually on residential conversions in the Subdistrict with a view toward quickly acting to curtail them in the event of a significant uptick in such activity.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer  
Manhattan Borough President

List 1. Speaker Order for the Manhattan Borough Board/Borough President East Midtown  
Hearing:

1. Duane Roggendorff, Grand Central Partnership
2. Rob Brynes, President, East Midtown Partnership
3. Michael Slattery, Senior Vice President, Real Estate Board of New York
4. Andrea Goldwyn, Director, Public Policy, New York Landmarks Conservancy
5. Michael Greeley, Manhattan Community Board 5
6. Tom Devaney, Senior Director, Land Use and Planning, Municipal Art Society,
7. Ian Dunford, Hotel Trades Council
8. Joseph Rosenberg, Executive Director, Catholic Community Relations Council
9. Kathy Thompson, Turtle Bay neighborhood resident
10. Lois Cremmins, Executive Director, Greenacre Park
11. Marcia Caban, Executive Director, Central Synagogue
12. John West, City Club
13. Pooya Amin Javaheri, self, architect
14. Kathleen Kelly, self, resident
15. Simeon Bankoff, Executive Director, Historic Districts Council
16. Neil Hohmann, Yale Club\*
17. Richard Bass, Akerman LLP on behalf of American Jewish Committee
18. Joan Boyle, self, Tudor City resident
19. Barry Shapiro, self, resident
20. Pierina Sanchez, Director, New York, Regional Plan Association

List 2: Additional submitted testimony to the Office of the Manhattan Borough President:  
Alphabetically by organization or name:

1. Aimee Lee Ball, self
2. James Collins, self
3. Central Labor Council
4. Rev. Dr. Donna Schaper, Judson Memorial Church, Bricks and Mortals Working Group
5. Hidrock Properties
6. John Edward Putnam, self
7. John West, self
8. Kristin McMahon Kligerman, self
9. Lawrence W. Scheyer, self, Community Board 6 member
10. Leo Korein, COO, Omniperspective Management
11. Municipal Art Society re Greenacre Park
12. Michael Kwartler, self
13. REBNY Greater East Midtown Task Force submission
14. Seaver Realty
15. Turtle Bay Association



OFFICE OF THE MAYOR  
THE CITY OF NEW YORK

ALICIA K. GLEN  
DEPUTY MAYOR FOR HOUSING AND  
ECONOMIC DEVELOPMENT

April 12, 2017

Hon. Gale A. Brewer  
Manhattan Borough President  
1 Centre Street 19th floor  
New York, NY 10007

Re: Applications N 170186 ZRM and C 170187 ZMM (Greater East Midtown)

Dear Borough President Brewer,

The plan to re-zone Greater East Midtown creates capacity for new, modern office buildings linked to mechanisms for major transit improvements, public realm investments, and preservation of some of East Midtown's most iconic landmarks. I want to thank you and Councilmember Daniel Garodnick for your joint leadership of the East Midtown Steering Committee, which not only identified planning priorities for this critical area, but also forged a consensus-driven, solution-oriented vision for the future. The proposal will support enhancements to the area's public realm through development.

With regards to public realm improvements, the City is prepared to make the following commitments:

**Improve vehicular patterns on Park Avenue:** Implementing street markings to test new vehicular patterns along Park Avenue will help enhance pedestrian safety by reducing crossing distances. Creating optimal pedestrian spaces on Park Avenue, however, can only occur through a full capital project, which is reliant upon coordination with Metro North's capital plans. The City will commit to engaging with the community and Metro North to determine the future feasibility of these pedestrian improvements.

**Piloting a Shared Street:** A shared street is a roadway designed for slow travel speeds where pedestrians, cyclists, and motorists all share the right of way. This would take place at a to-be-determined location in East Midtown, pending discussions with relevant stakeholders (including property owners and BIDs) and taking into account access to buildings and loading docks, sanitation, deliveries, pick-up and drop-offs, parking and overall circulation.

**Seed East 53rd Street Improvements:** The City will complete streetscape improvements along five blocks of East 53rd Street between Second Avenue and Fifth Avenue. Projects will include comprehensive corridor enhancements such as circulation, seating, and greenery improvements. Specific projects will depend on partner participation, which the City will seek to maximize over the course of the ULURP process in order to deliver the highest-quality and highest-impact improvements. The Administration welcomes your assistance and collaboration in community engagement efforts associated with this initiative. Support from stakeholders will be critical to implementing and making this a success.

**Upgrade Pershing Square East:** With BID partnership, formally designate Pershing Square East as a pedestrian plaza with regulation signage, and seed upgrades that include expanded geometry with a new gravel surface, improved amenities including planters, moveable cafe tables and chairs, and umbrellas.

You have advocated for improvements to the proposed Governing Group that will determine which projects are funded. In response to your concerns, the City supports the ability of the Governing Group to prioritize above-grade improvements and that the Governing Group's conduct follows the norms and laws of other city entities with respect to reporting and transparency. We are also amenable to adding a civic organization to the Governing Group, in conjunction with an additional mayoral appointee. We continue to maintain, however, that a mayoral majority is needed to approve projects, as these projects impact city and state infrastructure and the right-of-way.

You have also expressed concerns about residential conversions. The City's primary objective through the Greater East Midtown proposal continues to be the redevelopment of underperforming office stock into state-of-the-art office buildings. We have not seen evidence that the ability for owners to convert their properties to residential uses as-of-right poses any issues for this area. In response to your concern that our policy on residential conversions could undermine the success of this district, DCP will report back to the Manhattan Borough President's Office and the City Council on the prevalence of residential conversions and any associated impacts in the re-zoning boundaries, as appropriate, in five years at the Borough President or Council's request.

Lastly, we understand that you are concerned that the minimum contribution may be too high. We continue to support a minimum contribution to the Public Realm Improvement Fund to ensure public benefits as development occurs and market conditions change; however, we take very seriously the feedback that the current minimum contribution amount could pose an impediment to development. While eliminating the concept of a minimum contribution in its entirety would undermine an integral component of the zoning proposal, namely a mechanism that confers mutual benefits to all stakeholders – developers, landmarks, and the public – at a level that is appropriate, we are continuing to evaluate whether our data set, which is constrained by limited sales activity in East Midtown, adequately addresses the variability in values of receiving sites in East Midtown. Our goal is not to impede development, and we are therefore committed to revisiting our methodology in response to new feedback that we just received from REBNY and the Archdiocese and modifying our approach if necessary.

The Administration looks forward to continuing to work with you on this important re-zoning as it advances through public review.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alicia Glen".

Alicia Glen  
Deputy Mayor for Housing and Economic Development





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**Gale A. Brewer, Borough President**

April 26, 2017

**Testimony of Manhattan Borough President Gale A. Brewer  
to the City Planning Commission  
ULURP Application Nos. N 170186A ZRM and N 170187 ZMM –  
Greater East Midtown**

Good morning Chair Lago and Commissioners. I am Manhattan Borough President Gale A. Brewer to speak in favor of the New York City Department of City Planning (“DCP”) Greater East Midtown zoning changes, as modified by the A-text and with the conditions enumerated in my recommendation.

In evaluating DCP’s proposal, my primary consideration was whether this work reflected that of the East Midtown Steering Committee. The recommendations of the Committee were the result of over 20 meetings and almost a year of work. The Committee was chaired by Council Member Daniel R. Garodnick and me, and comprised of representatives of Community Boards 5 and 6, property owners and businesses, landmark groups and unions. The principal areas of concern were to reinforce the area’s status as a premier central business district, while supporting the preservation of landmarked buildings, and providing for necessary transit and above grade public realm improvements.

While coming up with a solid framework for East Midtown, the Steering Committee did not resolve all of the difficult questions it faced. It left the question of the Eastern boundary open, gave a range for the robust contribution to the Public Realm Improvement Fund, called for maintaining the light and air frameworks currently existing in the area while asking DCP to study slight modifications to accommodate the greater densities. Finally, the Steering Committee struggled with the importance it placed on improving the above grade public realm as we bumped up against the realities of a dense area with little room for new public spaces.

To make this proposal one that is as good as it can be, we need to improve upon certain of these areas before this application is finalized.

*Public Realm*

To ensure the development of quality above-grade public space, I believe the final text must include language that makes the provision of indoor or outdoor public space a requirement, not an option. City Planning committed to us to study such a requirement for Qualifying Sites of 40,000 square feet or more. This requirement should be included, and on the large, easternmost

site in the district – currently occupied by Pfizer, an outdoor plaza should be required, also without the provision of an additional floor area bonus.

I have also called for more certainty about the above-ground public realm improvements that will actually happen. Unlike the pre-identified below-grade transit improvements, these above-ground improvements will not be written into the zoning text.

I am looking forward to immediately begin work on those public realm improvements which DCP has committed to immediately fund and pursue. Those are: (1) East 53<sup>rd</sup> street Corridor Improvements with seating and plantings along this street; (2) the designation and upgrading of Pershing Square East as a pedestrian plaza; (3) the piloting of a shared street selected with input from stakeholders and the relevant BID; and (4) the improvement of vehicular patterns on Park Avenue with subsequent engagement with stakeholders to determine the feasibility of pedestrian improvements as well.

### *Third Avenue*

The eastern Third Avenue boundary continues to be controversial just as it was in the Steering Committee. The zoning framework for this plan will not work without adequate landing sites and future development sites. However, it is clear that there is a significant presence of residential buildings on the blocks in question, and that Third Avenue functions to some extent as a buffer to more residential areas to the east.

I walked this area and spent a lot of time on the concerns of residents east of Third Avenue. I concluded that at a minimum, all existing residential buildings from the east side of Third Avenue must be removed. This removal would not have a significant impact on achieving the goals of the Greater East Midtown Plan and should actually reduce or eliminate displacement of residents on those sites. Discussions with the community stakeholders should continue to determine if further change is required or further steps to mitigate any adverse effects.

### *Minimum Contribution Rate*

The East Midtown Steering Committee Report is clear that a mechanism like a minimum contribution rate and a set minimum valuation for the transfer of development rights is desirable to ensure a baseline of transparency for transactions and a sense of predictability for funding the Public Realm Improvement Fund.

I believe that a minimum contribution rate is a sensible solution. But I have a very hard time with the current minimum valuation of \$393 per square foot and its corresponding contribution rate of \$78.60 per square foot. While I am certainly not the expert, to accept a valuation that is so significantly higher than others and 40 percent higher than the anticipated sale price of development rights under the Bloomberg Plan just seems to be asking for trouble. This is a floor. If we pick a price that's a little low we can all live with that. If we pick one too high we could undermine all our efforts.

### *Residential Conversions*

My initial instincts were that residential conversions should be limited. However, after discussions with DCP, I was somewhat swayed by the arguments focusing on the value of mixed-use neighborhoods, and that residential conversion could be an option for a limited number of buildings in the area that do not have the protection of landmark status, but are of significant historical and architectural value to me. In these cases, I can see how the option to convert to residential may allow the building to be preserved rather than to be demolished for a new development.

In discussions with DCP, it was made clear that if a significant increase in conversions were to occur, a text amendment can be enacted to stop such practices. I believe it is imperative to act swiftly should the situation arise, and that the City must take the appropriate measures to monitor such possibilities and report on the prevalence of conversions to the community and local elected officials. I must confess I was a bit incensed that in its Commitment Letter, DCP would only agree to report to my office and the City Council on residential conversions *after five years*. At this point not only will I not be here, but a significant trend of conversions could already be underway. This commitment is wholly inadequate and I ask the Commission and the Council to require an annual report.

### *Daylight and Shadows*

While these calculations are so abstract that they defy comprehension by lay people, it is important to make sure that the changes to these calculations and to the height and setback requirements are just slight modifications and not changes that will allow buildings to block out all light and air. I urge that the final text include a minimum score for daylight below which a redeveloped building cannot score, regardless of the score of the building it replaces I also strongly urge the City to continue working with Greenacre Park to explore all options to avoid shadow impacts from new buildings on this beautiful park.

Finally I have laid out a number of conditions on bolstering the transparency and functioning of the Governing Group and the Public Realm Improvement Fund, many of which DCP has agreed to. These include expansion of the Governing Group to include a representative of a Citywide civic organization and inclusion in the final text of language to increase transparency and accountability. I also think you should consider requiring a non-mayoral appointee to support the selection of public realm improvement projects.

**Testimony of Alicia Glen, Deputy Mayor for Housing & Economic Development**  
**City Planning Commission**  
**April 26, 2017**

Thank you Madam Chair. And thank you commissioners.

I will keep my remarks brief so that you can benefit from the perspective of the members of the public here today.

The last time I testified before the Commission was at last year's hearing on Mandatory Inclusionary Housing (MIH) and Zoning for Quality and Affordability (ZQA). Those were foundational policies to help us confront the biggest crisis facing New Yorkers: the cost of housing.

I'm here today to talk about the best business address in the world – East Midtown – and our plan to keep it that way.

Greater East Midtown is the City's premier central business district dependent on two key pillars of our built environment – access to mass transit and vertical density. Even with the creation of Hudson Yards, a renewed World Trade Center Lower Manhattan district, and the development of Downtown Brooklyn and Long Island City into office districts, nothing on the map remotely compares to East Midtown in size or economic value. The area currently generates 10% of the City's real estate taxes, contains over 60 million square feet of office space, is responsible for over 250,000 jobs, and is home to several Fortune 500 companies.

However, a quick trip to London, Shanghai or Hong Kong will make the challenges facing the district clear. Our transit infrastructure isn't just old—it's reached capacity at some of its most critical segments. The average age of East Midtown's buildings is 70 years old, so new construction is necessary to deliver Class A office space, accommodate the tenants of today and the future, and solidify East Midtown's position as a premier 21st Century office district. New York is the financial capital of the world, but we must be proactive to stay competitive on a global scale.

The proposal before you seeks to address that challenge of long-term, global competitiveness and supporting economic growth. I want to commend Borough President Brewer, Council Member Garodnick and the stakeholders who have devoted years to informing our zoning proposal. The level of collaboration has been remarkable.

As a result, the chief elements of this plan—designated improvements to public transit, investments in streetscapes, protection of landmarks, and incentives to modernize outdated office buildings and increase density where appropriate—have achieved a remarkable degree of consensus.

Behind all this is a principle and mechanism very similar to what we established under MIH: We believe that growth is necessary to keep New York City affordable and

competitive, but we also believe that allowing increased density and economic value for the private sector should yield commensurate public benefit.

So just as MIH compels market-rate residential development to deliver affordable housing in real time, the East Midtown plan requires development sites benefiting from greater as-of-right density to finance specific transit improvements, facilitate the preservation of landmarks that have been unable to monetize landlocked development rights, and invest in the area's pedestrian realm. We also estimate the proposed action could also create up to 28,000 new permanent high paying jobs and over 23,000 construction jobs in the next two decades.

These goals will be achieved without using precious public dollars while also increasing tax revenue to the City through the provision of greater development capacity. This plan is a departure from traditional economic development strategies, as there will be no tax breaks or subsidy supporting the plan.

The plan also requires that real-time improvements are paid for and complete in order for builders to get the Certificates of Occupancy they need to take advantage of increased density. And we know this mechanism works, that the deals still "pencil", because we tested it on the Vanderbilt Corridor, which enabled the development of One Vanderbilt, a 57-story office tower across from Grand Central Terminal that is contributing more than \$220 million in transit and pedestrian enhancements. Walk through Grand Central's subway station, and you can already see the investments to the entrances, mezzanines and platforms.

Key to achieving the goals of the Greater East Midtown plan is determining an appropriately sized contribution to the Public Realm Improvement fund. I appreciate the feedback we've received from all sides on this, and I know there is agreement in principle of where we need to end up: the contribution must neither be too high that it inhibits development and therefore the ability to actually provide the public realm improvements, nor so low that development does not deliver the funding on which upgrades depend. That is why we undertook such a thorough analysis for this proposal and why we continue to evaluate our methodology. We recognize that the limited number of recent transactions within the district poses challenges to concluding the market value of unused development rights district-wide, and we are re-evaluating our approach to ensure we get it right.

In this period of global political uncertainty and structural change, this plan is now more important than ever to secure East Midtown's place as a premier business district. We look forward to that future: its subway stations renovated to ease overcrowding and delay, its spectacular landmarks undertaking major restoration projects, its public realm upgraded giving pedestrians much needed room to commute and recreate, and new class A office buildings rising to anchor the City's economic base.

Thank you for the time, energy and thoughtfulness you have contributed to this public review. I know the product will be something of which we can all be proud.

**STATE SENATOR  
BRAD HOYLMAN**  
322 Eighth Avenue, Suite 1700  
New York, NY 10001  
212-633-8052



**STATE SENATOR  
LIZ KRUEGER**  
211 East 43rd Street, Suite 1201  
New York, NY 10017  
212-490-9535

**TESTIMONY TO THE NEW YORK CITY PLANNING COMMISSION OF  
NEW YORK STATE SENATORS BRAD HOYLMAN AND LIZ KRUEGER  
ON THE PROPOSED GREATER EAST MIDTOWN REZONING**

**May 8, 2017**

Thank you for the opportunity to comment on the Department of City Planning's proposed text and zoning map amendments for a rezoning of the Greater East Midtown area. We applaud Mayor Bill de Blasio and the Department of City Planning, in close conjunction with Manhattan Borough President Gale Brewer, Council Member Dan Garodnick, and Community Boards 5 and 6, for their diligent efforts to make serious improvements to the plan to rezone East Midtown that was originally introduced under the Bloomberg administration.

While office facilities are expanded and modernized through new development in other parts of our city, East Midtown remains outdated and poorly equipped to handle the demands of modern-day business. East Midtown, once New York City's premier business district, urgently needs better building stock, as well as transit and public realm improvements. We are grateful to DCP for coming back to the drawing board to achieve a zoning plan that will serve the business district in a rational, comprehensive, and community-minded way.

The importance of community input on a project of this scale cannot be overstated. Steering Committee members met for countless meetings where detailed and meticulous evaluation was undertaken and smart recommendations were made. We commend the Steering Committee, as well as Council Member Dan Garodnick and Manhattan Borough President Gale Brewer, for taking on the tough questions our colleagues in government, the community, and advocates have been asking.

We are grateful that the proposed rezoning incorporates many of those recommendations. However, a number of Steering Committee priorities remain omitted, particularly a required open space contribution. We strongly support the goals of the proposed rezoning plan but have a number of remaining concerns that must be addressed in the final proposal.

We ask DCP and the City Planning Commission to closely consider the following in the final stages of the Uniform Land Use Review Process (ULURP).

### **Open Space**

We are disappointed that DCP has not seriously integrated any of the Steering Committee's recommendations regarding public space, particularly their reasonable recommendation of a 2 FAR incentive for developers to create privately owned public spaces. The proposed zoning prioritizes other public benefits and discourages on-site open spaces through a new special permit for "public concourse" rather than allow public space to serve as a component of the toolkit for bonus floor area. Developers must expend all possible transit benefits and landmarks air rights transfers before they can apply for the public concourse permit. While the emphasis on transit improvements and landmark protections is appreciated, we do not believe that public space should be excluded from this equation.

Particularly given the dearth of public space in East Midtown, we urge DCP to make open space a priority on equal footing with the proposed as-of-right public benefit mechanisms. We hope that DCP will increase the existing plaza bonus in East Midtown from 1.0 FAR to 2.0 or 3.0 FAR. We also emphasize the necessity of making public spaces available for approval via certification rather than through special permits. The lack of open space available in East Midtown today will only be exacerbated by the anticipated increase in commercial square footage and commercial tenants. Just as this zoning proposal takes seriously the proportional needs of our transit system for a growing workforce, we urge DCP to seriously integrate the necessity for open space within the district for this same increased population.

We also note the importance of protecting the existing open space in East Midtown, particularly Green Acre Park on East 51st Street. We urge DCP to consider how this park can maintain access to light and air and protect it from the shadows of incoming developments.

### **Transit Improvements**

We remain concerned about relying upon a local rezoning and subsequent development to fund transit infrastructure improvements that benefit the entire region. For this reason, we reiterate the request we made in our testimony on the Draft Scope of Work and ask that DCP and the MTA provide a timeline for when transit improvements will take place and how projects will be prioritized. We also ask, again, how the City plans to divorce the funds for transit improvements from a developer's schedule. Urgently needed improvements must be made and funds must be secured before we put more pressure on Grand Central Terminal and local subway stations that cannot safely sustain existing ridership, let alone that which would result from new development.

Moreover, we are unconvinced that the minimum contribution rate of \$78.60 per square foot, or 20% the value of a transaction, is set at an appropriate level. Because of the relative dormancy in East Midtown real estate and air rights transactions, we understand that the City cannot report an exact value for development rights in this area. However, we would like to see an evaluation of how the transit improvements and other public benefits justify the additional floor area gained by developers. With direct transit improvements only accounting for 10-20% of additional FAR for new developments in transit improvement zones, will the predicted funds adequately cover the necessary transit work? Without an accurate comparison of the estimated value of additional floor area gained by developers to the estimated value of the respective transit benefits, we are unable to determine whether a proper balance has been struck between boosting development and ensuring the public receives its fair share.

We would like to reiterate our request for a study that clearly analyzes the minimum contribution rate and its proportional impact on development transfers and on transit, landmark, and public realm benefits.

### **Public Realm Improvements**

We are grateful to DOT for its innovative proposals for public realm improvements, particularly its emphasis on a new “shared streets” model. DOT’s proposed improvements take seriously the fact that East Midtown has some of the most congested sidewalks in the city, with pedestrians frequently forced into the streets during rush hour. We believe that these projects will greatly ameliorate existing conditions and help to accommodate the additional pedestrian traffic that will come with increased density.

However, we remain concerned about when these improvements will take place and how projects will be prioritized. Unlike the MTA’s transit improvements, the public realm improvements are not written into the zoning text. We hope the city will make an initial funding commitment to ensure that these improvements can be enacted. These are desperately needed improvements that cannot wait on a developer to pay for extra floor area. Similar to our concern regarding the MTA’s much needed improvements, how will the City divorce the funds for these public realm improvements from a developer’s schedule?

Additionally, we find that an increase of 5 FAR on the Pfizer site, tied to no public realm benefit, is inconsistent with the rest of the proposal and amounts to “spot zoning.” This site should be required to contribute to the public realm in the same way as any other overbuilt building in the rezoning area.

### **Landmarks**

We appreciate that this zoning proposal makes efforts to protect our districts’ historic and cultural resources through a mechanism that allows landmarks to transfer their air rights to any location in the district. We thank DCP for including a requirement for landmarks



to work with the LPC to develop a restoration and continuing maintenance plan to manage incoming funds for transferred development rights. We are also grateful that the Landmarks Preservation Commission expeditiously considered and approved 12 sites for landmarking prior to the certification of this plan. However, at least eight additional sites warrant further consideration, and we would be remiss if we did not express our concern about development on these sites, including the Vanderbilt Concourse Building, Roosevelt Hotel, Lincoln Building, Postum Building, Hotel Intercontinental, and Chemists Club. Unless the LPC is willing to see these historic sites demolished for incoming development, it should assure their survival with landmark designations.

We reiterate our concern regarding the minimum contribution rate. We urge DCP to consider how a minimum floor price may potentially disadvantage landmarks, including an examination of more cautious proposals for a minimum floor price that will ensure landmarks receive the necessary support and funding from incoming development.

### **Daylight Evaluation**

DCP recently implemented changes to the daylight evaluation scoring system that measures the impact of height and setback and the degree of “sky exposure” left by a building, including how much daylight can reach the street. The Steering Committee recommended that the passing score be reduced from 75 to 66, under the scoring system of the Special Midtown District. We believe that this is a reasonable compromise and urge DCP to reassess the newly adopted daylight evaluation methodology. We would also like to see an analysis of the scoring system alterations and the impacts on the rezoning in East Midtown. How will increased FAR be balanced with existing daylight evaluations?

With a significant anticipated net height increase of a number of structures in the proposed rezoning area, we urge DCP to consider how the plan can mitigate increases in large shadows cast by buildings onto already sunlight-sensitive resources. One step that would help to fulfill this request would be the lowering of the daylight evaluation passing score to the level recommended by the Steering Committee.

### **East Side of Third Avenue**

We reiterate CB6’s request to omit the area east of Third Avenue from the rezoning area. Any development in this area should be built in context with the nearby residential neighborhoods Turtle Bay and Tudor City. Implementing a 20% limit on residential use for “qualifying sites” here contradicts Third Avenue’s role as a mixed-use area that transitions the streetscape from its commercial uses to the west into more residential areas to the east.

Moreover, until the Second Avenue Subway can be extended farther south, this area does not have the capacity for the increased density possible under the proposed rezoning. The rezoning proposal only excludes the east side of Third Avenue on the midblock between 47th and 48th Streets and does not meaningfully address the conflict between

increased residential use in the area and the proposed rezoning's focus on commercial uses.

### **Reasonable Worst-Case Development Scenario**

We continue to question some of the criteria used in the DEIS to exclude sites from the Reasonable Worst-Case Development Scenario. The DEIS, like the scoping document, excludes all condominium, co-op, and rental buildings with more than six rent regulated units from the list of projected and potential development sites. In recent years, we have seen developers in our districts manage to buy out all the owners and/or rent regulated tenants in buildings to be able to redevelop the sites. We believe that these buildings will be vulnerable to development and should be evaluated as part of the Reasonable Worst-Case Development Scenario.

### **Socioeconomic Conditions**

Finally, we hope that a final proposal will comprehensively analyze any potential for direct or indirect business and residential displacement, as well as how the modernization of building stock will diversify the existing commercial tenants in the area. We also emphasize the importance of ensuring the incoming development pays mind to existing commercial building service worker jobs and sustains a steady stream of jobs in the business service industry.

Thank you for your time and consideration of our comments.

RICHARD EGGERS  
CHAIR

CLAUDE L. WINFIELD, FIRST VICE CHAIR  
MOLLY HOLLISTER, SECOND VICE CHAIR



JESÚS PÉREZ  
DISTRICT MANAGER

BEATRICE DISMAN, TREASURER  
BRIAN VAN NIEUWENHOVEN, ASST. TREASURER  
KATHY THOMPSON, SECRETARY  
AARON HUMPHREY, ASST. SECRETARY

THE CITY OF NEW YORK  
MANHATTAN COMMUNITY BOARD SIX  
866 UNITED NATIONS PLAZA, SUITE 308  
NEW YORK, NY 10017

March 10, 2017

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

Hon. Gale A. Brewer  
Manhattan Borough President  
1 Centre Street, 19<sup>th</sup> Floor South  
New York, NY 10007

**RE: DCP applications N170186 ZRM and 170187 ZMM - Proposal for Greater East Midtown Rezoning**

Dear Chair Lago and Borough President Brewer:

At the March 8, 2017 Full Board meeting of Manhattan Community Board Six, the Board adopted the following resolution:

**Whereas**, the New York City Department of Planning (DCP) has completed a DEIS as part of the Uniform Land Use Review Procedure certification (Applications N 170187 ZMM & C 170186 ZRM) for Greater East Midtown; and

**Whereas**, Manhattan Community Board Six has participated in the process as a member of the East Midtown Steering Committee, by holding public hearings and engaging an urban planner, among other avenues; and

**Whereas**, the East Midtown Steering Committee recommended several public benefits for East Midtown to counterbalance the effects of new, denser development:

- Improvement of the public realm including the better use of streets and the provision of more and better on-site open space,
- Improvement of subway stations serving East Midtown, including ADA compliance,
- Designation of additional landmarks and the more liberal transfer of air rights from landmarks; and

**Whereas**, there remain many unresolved issues in a number of major categories (open space, MTA improvements, internal and external boundaries, above ground public realm enhancements, and impacts of air and light reductions), which this resolution seeks to highlight and present those solutions preferred by the community; and

**Whereas**, instead of treating on-site public open space, subway station improvements, and transfers of air rights equally the City’s proposed zoning text places on-site public open space as the lowest priority in three key ways:

- Requiring that a development site use subway station bonus floor area and transferred air rights before applying for a special permit for on-site public open space, and
- Requiring a special permit for public concourses; while subway station improvements and air rights transfers can be as-of-right by certification; and
- Removing the as-of-right plaza bonus on qualifying sites; and

**Whereas**, as a result of these constraints, the Draft EIS for East Midtown predicts that only two of the 16 projected development sites will apply for a special permit for a “public concourse”; and

**Whereas**, the Draft EIS for East Midtown finds “the Proposed Action would result in a significant adverse impact on open space due to reduced total and passive open space ratios”, and given the great and increasing need for public open space in East Midtown and the extreme challenges of developing new open space; and

**Whereas**, the creation of pedestrian circulation maps illustrating the specifics of above-ground open space improvements—such as plazas, other privately-owned public spaces (POPS) and shared streets or other thoroughfare improvements—would provide predictability for developers, the MTA, the city and the public and, critically, a better ability to value such improvements; and

**Whereas**, the proposed zoning mechanism to determine and prioritize transit and public realm improvements is based on a “Priority Improvement List for Qualifying Sites,” which would be managed and updated by a nine-member governing group, including representation from the Community Board; and

**Whereas**, the MTA has already identified 24 improvements at six subway stations serving East Midtown, none of which are included in the current MTA capital plan, and these improvements provide benefits outside the East Midtown Subdistrict, and in fact promote as well as theoretically alleviate overcrowding; and

**Whereas**, these transit improvements rely upon public funding for maintenance, repair and replacement; and

**Whereas**, East Midtown was up-zoned in the 1961 Zoning Resolution in major part predicated on the Second Avenue Subway replacing the demolished Second and Third Avenue Els; and

**Whereas**, the MTA & NYC DOT developed a concept plan for public realm improvements ranging from public plazas to bus bulb-outs; and

**Whereas**, above-ground public realm improvements may never materialize without a clearly defined mechanism or minimum contribution rate to ensure that public realm improvements are created; and

**Whereas**, East Midtown Steering Committee recommendations, decades of DCP and CPC zoning policy direction, and accepted urban planning design principles all concur that midblocks that front narrow streets should have lower FAR and street walls, thus protecting the scale and character of the area, as well as light and air; and

**Whereas**, the proposed zoning text for “qualifying sites” in East Midtown allows greater amounts of FAR to be transferred from landmark buildings to sites in the lower density midblock districts than to the higher density wide street and avenue districts, and removes the incentive for lower street walls on narrow streets; and

**Whereas**, the DEIS for East Midtown does not specifically address the impacts of such higher FARs and street walls on midblock sites, and

**Whereas**, the proposed East Midtown Subdistrict is drawn to include the east side of Third Avenue north of 47<sup>th</sup> Street, and would allow commercial buildings of up to 26 FAR to directly abut on an FAR R8B district; and

**Whereas**, it appears that the Department of City Planning is rezoning specific areas based on buildings already identified for redevelopment and not giving due consideration to residents’ reasonable concerns about access to air and light and the quality-of-life problems concomitant with large construction projects; and

**Whereas**, the DEIS for East Midtown shows that 116 of 119 intersections studied will experience significant adverse impacts, demonstrating the unprecedented levels of traffic and congestion the rezoning will bring, even to areas outside the proposed East Midtown Subdistrict; and

**Whereas**, neighborhood residents’ concerns that including the east side of Third Avenue in the East Midtown Subdistrict will turn the Turtle Bay neighborhood into a commercial district have not been given the same consideration as commercial real estate interests; and

**Whereas**, currently existing public spaces and parks must be protected from shadows and adverse conditions that new buildings and structures may pose; and

**Whereas**, the East Midtown Steering Committee recommended the existing height and setback regulations for the Special Midtown District be retained in East Midtown to protect light and air from being blocked by the larger new buildings that the zoning would encourage, and

**Whereas**, the City’s proposed zoning text would substantially change the existing height and setback rules for “qualifying sites” in East Midtown by:

- Decreasing the passing score for Daylight Evaluation from 75 to 66,
- Not counting daylight blockage below 150 feet above street level, even on narrow streets in Daylight Evaluation,

- Eliminating the penalty for blockage on the street side of the profile line in Daylight Evaluation, and

**Whereas**, One Vanderbilt scored negative 62.10 under the existing Daylight Evaluation rules and would score positive 20.45 under the proposed changes – a large difference, and

**Whereas**, the Draft EIS for East Midtown neither discloses nor discusses the proposed changes to the scoring system for Daylight Evaluation, and

**Whereas**, diminishing light and air in streets and other public spaces, narrowing views along streets, and reducing the space between buildings, constraining their light, air, and views is inconsistent with the stated goal of maintaining East Midtown as a premier business address; and

**Whereas**, the DEIS does not adequately address sustainability concerns; and

**Whereas**, The existing Midtown Special District has provisions to preserve daylight reaching the street, benefiting the community's few open spaces available for the public's health and enjoyment, in spaces such as Greenacre Park and other parks that would be undermined by shadow, but those provisions are weakened by the proposed East Midtown Subdistrict;

**Therefore be it**

**Resolved**, because of the desperate need for public open space in East Midtown that is not cast in excessive shadow through most of the year, Manhattan Community Board Six, objects to the proposed Greater East Midtown Rezoning unless the following stipulations are addressed; and be it further

**Resolved**, that DCP provide design guidance making plazas, covered pedestrian spaces, and other POPS as-of-right by certification and require that the first additional FAR earned by any site be for on-site public open space including on-site transit access improvements; and be it further

**Resolved**, that DCP should require the publication of pedestrian circulation maps which illustrate the specific and demonstrable public value of open space that would provide FAR benefits to the developer; and be it further

**Resolved**, that in planning transit improvements a high priority should be given to both focusing on improvements that will benefit the Greater East Midtown Subdistrict while consideration of the multimodal use of both above and below ground transit and public space and relieving the existing overcrowding and connections with the #7 subway line and the future Second Avenue Subway; and be it further

**Resolved**, that Manhattan Community Board Six strongly recommends that the proposed zoning text for East Midtown be modified to protect the midblocks of narrow streets by limiting the floor area that may be added to the midblock districts, and maintaining the incentives of the current height and setback rules for lower street walls on narrow streets; and be it further

**Resolved**, that Manhattan Community Board Six maintains that the boundary of the East Midtown Subdistrict be moved to the center of Third Avenue from 43rd Street to 56th Street; and be it further

**Resolved**, the increase of the FAR on the Pfizer site from C5-2 (10 FAR) to C5-3 (15 FAR) should require the owner to contribute to public realm improvements just as any other owner of an overbuilt building would be required to do; and be it further

**Resolved**, that CB6 endorses high-performance building and sustainability goals as outlined in the East Midtown Steering Committee report, and be it further

**Resolved**, that Manhattan Community Board Six, because light and air is essential to the continued attractiveness of East Midtown, strongly recommends that the proposed zoning text for the East Midtown Subdistrict be modified to retain the existing height and setback regulations of the Special Midtown District ;and be it further

**Resolved**, The words "objects to" and "unless" in the first resolved clause shall be interpreted as "approves" and "conditional upon" respectively if, on or before March 13th, 2017, the New York City Mayor's Office or the New York City Department of City Planning communicates the following to Manhattan Community Boards Five and Six in writing: The EIS will consider an alternative that requires redeveloped sites to include either outdoor plaza space or a covered pedestrian space.

Yours truly,



Jesús Pérez  
District Manager

CC: Manhattan Borough Board

Hon. Dan Garodnick, New York City Council

Hon. Ben Kallos, New York City Council

Hon. Rosie Mendez, New York City Council

Bob Tuttle, Department of City Planning

Luis Sanchez, Department of Transportation

Sandro Sherrod, Manhattan Community Board Six

## Manhattan Community Board Five

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Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109  
New York, NY 10123-2199  
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

March 13, 2017

Hon. Marisa Lago  
Chair of the City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: Application # N170186 ZRM and N170187 ZMM - Department of City Planning application for zoning changes in the Greater East Midtown area. The changes would enable higher density commercial development and permit district-wide transfers of unused air rights from landmarks in exchange for key transit and public realm improvements and the preservation of historic landmarks.**

Dear Chair Lago:

At the regularly scheduled monthly Community Board Five meeting on Thursday, March 09, 2017, the following resolution passed with a vote of 32 in favor; 0 opposed; 1 abstaining:

WHEREAS, Mayor de Blasio established the East Midtown Steering Committee in May 2014 to develop a new planning framework that would inform rezoning, capital commitments, funding mechanisms and other policy decisions affecting East Midtown's commercial core; and

WHEREAS, The East Midtown Steering Committee's first meeting was held on September 30, 2014 and during the following nine months, the East Midtown Steering Committee met 19 times to inform itself of the issues, hear from outside stakeholders and subject matter experts, consider planning proposals; and

WHEREAS, Meetings lasted two to three hours and always had representation from Community Board Five; and

WHEREAS, The East Midtown Steering Committee Report's policies do not represent the position of every member group on every issue but instead reflect a consensus view that, on balance, the framework of policies would properly reflect the overlapping goals that the Committee was asked to advance; and

WHEREAS, Community Board Five agreed to participate in the East Midtown Steering Committee because it was informed that the product of the collaborative effort, absent



unforeseen legal or technical issues, would become the planning framework for East Midtown; and

WHEREAS, Community Board Five is disappointed that Mayor de Blasio's Greater East Midtown proposal deviates substantially from the East Midtown Steering Committee Report; and

WHEREAS, Community Board Five's core objective throughout the process was to ensure that the Greater East Midtown planning effort resulted in an improvement to the public realm; and

WHEREAS, East Midtown has minimal public space and any increase in built density in East Midtown facilitated by a change to the Zoning Resolution must be coupled with an increase in the absolute amount of public space; and

WHEREAS, Although Community Board Five strongly prefers the creation of new outdoor public space in East Midtown because such space better mitigates some of the adverse impacts tied to new construction, it believes the creation of indoor public space is preferable to the creation of no new public space on a redeveloped site; and

WHEREAS, Page 2 of the East Midtown Steering Committee Report, in the Executive Summary of Recommendations section, reads:

“The East Midtown Steering Committee supports invigorating the East Midtown office district by encouraging as-of-right, higher density and modernized office development in appropriate locations if accompanied by both: (1) significant, timely and assured upgrades to transportation networks and public realm spaces (the “public realm”) in accordance with an adopted concept plan and an ongoing, consultative implementation process; and (2) preservation of important local historic resources. The Steering Committee believes that any rezoning should provide more certainty as to both the development of permitted as-of-right and the public realm improvements that would accompany any increase in density.”; and

WHEREAS, Page 50 of the East Midtown Steering Committee Report reads:

“The East Midtown Steering Committee emphatically concludes that the public realm of East Midtown - inclusive of transit, plazas, sidewalks and other public spaces - needs to be meaningfully improved, not just to accommodate more development in the district, but also to address the present intensity of land use and keep the district competitive. Planning, funding and project management for such improvements should go in advance of or, at the latest, hand-in-hand with added development.”; and

WHEREAS, Page 64 of the East Midtown Steering Committee report reads, “Open space is a needed amenity throughout the district”; and

WHEREAS, Although page 65 of the East Midtown Steering Committee Report includes policy “C23,” which calls on the city to change policy in East Midtown to ensure that there is an increase in the number of privately owned public spaces, the Department of City Planning has

taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Although page 65 of the East Midtown Steering Committee Report includes policy “C24,” which calls on the Department of City Planning to “improve the current plaza guidelines with regard to indoor plazas,” the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Although page 65 of the East Midtown Steering Committee Report includes policy “C25,” which calls on the Department of City Planning to create a mechanism for off-site location of privately owned public spaces, the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Although page 66 of the East Midtown Steering Committee Report includes policy “C26,” which calls on the Department of City Planning to create a “streamlined process and incentives for private owners to renew their POPS and plazas,” the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Community Board Five believes that the Greater East Midtown proposal of 2016-2017, if approved as currently proposed, would likely result in a worse public realm in the Grand Central area than what would have been achieved under Mayor Bloomberg’s 2012-2013 East Midtown Rezoning proposal because developers proposing projects on redevelopment sites surrounding Grand Central Terminal would have likely offered to build high quality, privately owned public space in order to earn a special permit granting 6 additional FAR under the Bloomberg plan, but will likely will forgo the special permit if the current proposal is adopted because the present proposal would only permit an additional 3 FAR through a special permit; and

WHEREAS, There is a long history of building owners who manage POPS flouting their agreements with the City, over which the Department of City Planning has no enforcement power, which causes DCP to be reluctant to create new POPS, and

WHEREAS, The best answer to this problem is for a new unit to be created within DCP which will have singular authority over POPS, allowing for oversight and enforcement at the same agency where these initial agreements are made; and

WHEREAS, We commend DOT for its efforts to envision public realm improvements on existing streets, but do not believe the city has a mechanism in place to ensure that any of these improvements will happen; and

WHEREAS, We ask for at least some up-front investment in the DOT improvements; and

WHEREAS, It is critical for there to be a minimum contribution rate for the transfer of development rights within East Midtown so that the Governing Group is able to receive sufficient funds to invest in the development and operation of improvements for the public realm; and

WHEREAS, It is important that the minimum contribution rate is based on reasonable assumptions that do not, for instance, use development rights transactions for 100% residential developments without making proper adjustments, and

WHEREAS, The Governing Group should be required, by the Zoning Resolution, to record every meeting by video and have a word-for-word transcription of each meeting that shall be made accessible by the Office of the Manhattan Borough President and either the Mayor's Office or the Department of City Planning; and

WHEREAS, The Governing Group should be empowered to act, according to the Zoning Resolution, only if at least one non-Mayoral appointee votes for an action so as to ensure that the Governing Group is not a rubber stamp for the Mayor; and

WHEREAS, Although page 27 of the East Midtown Steering Committee Report includes policy "C6," which states that "The Governing Group's membership should balance Mayoral authority with significant input from other elected officials, as well as balance government and highly qualified outside voice," the Department of City Planning's proposal would permit Mayoral appointees to simply dictate all action of the Governing Group even if the Council Member, Borough President, and community boards all jointly objected to a proposal before the Governing Group; and

WHEREAS, We are troubled that the proposed zoning text amendment allows the possibility for developers to build a public elevator from street-level to a station mezzanine without building an additional elevator from the mezzanine to the platform-level; and

WHEREAS, According to Center for an Urban Future "Scale Up New York Report" from November 2016, NYC has lost more than 1.6 million square feet of Class B and C office space since 2000; and

WHEREAS, Dozens of properties have an incentive to convert from Class B office space unless the city prohibits the as-of-right conversion of more than 12 FAR of a building from non-residential use to residential use in East Midtown; and

WHEREAS, The local public schools serving the students of Community District Five do not have capacity to absorb the conversion of dozens of East Midtown buildings from Class B office to residential use; and

WHEREAS, Although page 27 of the East Midtown Steering Committee Report includes policy "B6," which calls on the Department of City Planning to put forth a zoning text amendment that would place a 12 FAR cap on the conversion of non-residential floor area to residential floor area in East Midtown so as to protect the commercial character of East Midtown, protect the

businesses and workers in Class B office buildings, and ensure that our overcrowded schools do not face further crowding absent additional investment in school capacity, the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy of the East Midtown Steering Committee Report; and

WHEREAS, The Regional Plan Association, in regards to the policy B6 on conversions, testified on February 6, 2017:

“Residential conversions & Affordable Housing Require special permit for residential conversions, and require affordable housing in any residential development enabled: East Midtown is first and foremost a business district and to that end, RPA recommends residential uses be discouraged. In order to utilize the zoning framework proposed in this rezoning, the City’s proposal requires that development have clear frontage along a wide street, exceed environmental performance standards, and that residential floor area be no more than 20 percent of the development. RPA applauds this last provision, and furthermore recommends that if this rezoning will encourage additional residential capacity, either by design or as a side-effect, two conditions apply: residential conversions must be approved through special permit and any additional residential should be mixed-income.”; and

WHEREAS, The Municipal Art Society, in regards to the policy B6 on conversions, testified on February 6, 2017:

“Residential Conversion Since 1981, the Zoning Resolution has allowed commercial buildings to be converted to residential without regard to generally applicable bulk regulations if they meet certain criteria. Over a hundred buildings, representing millions of square feet within the proposed rezoning area, would be eligible for residential conversion (built in 1961 or earlier, exceed 12 FAR, and have zero residential floor area). As such action would be contrary to the stated goals of the proposal, MAS urges the city to explore mechanisms that would restrict conversions within the project area.”; and

WHEREAS, The Service Employees International Union, Local 32B, in regards to the policy B6 on conversions, testified on February 6, 2017:

“Further, to protect the integrity of the sub-district as a hub of high quality jobs and commercial activity, we urge the city to limit the conversions of office buildings into residential buildings, which is currently permitted as-of-right, provided by Article I Chapter 5 of the Zoning Resolution. This city can do this by amending the rezoning proposal to require a special permit for commercial-to-residential conversions. By subjecting conversions to public review, we can limit residential development to the instances where it serves the goals of the district and ensure it does not undermine efforts to uphold East Midtown as a competitive commercial hub....we ask the City to require special permits for commercial-to-residential conversions.”; and

WHEREAS, While the policy behind the Greater East Midtown proposal is an “earned as-of-right” framework where there is no increase in permitted floor area under base zoning regulations, the Department of City Planning has made one glaring exception, amounting to a “spot zoning” to grant 5 FAR—tied to no landmark benefit, public realm improvement, or transit benefit—to the Pfizer site; and

WHEREAS, The proposed rezoning will cause additional shadows to be cast onto Central Park, a vital light sensitive resource of CB5 and of the city as a whole; and

WHEREAS, Although the EIS identifies Central Park as a light sensitive resource, the proposed rezoning does not include any mitigating mechanism to prevent or at the very least limit the amount of incremental shadows cast onto Central Park; and

WHEREAS, The EIS does not study or assess the specific shadow impact that the redevelopments will have on Central Park, failing to address and protect one of the most important natural resources in a densely-built environment—the EIS should carefully assess this and consider mitigations; and

WHEREAS, Since 2013, Community Board Five has expressed grave concerns over shadows on Central Park and has advocated for mitigating factors to protect access to air and light to Central Park from incremental shadows but, to this day, the Department of City Planning and the Mayor’s Office have refused to allow for the serious study of building envelope reconfiguration to protect our vital public resources, let alone acknowledge that incremental shadows are even an issue; and

WHEREAS, The proposed rezoning will relax the Midtown Subdistrict requirement for sky plane exposure and daylight scores, darkening the streets and avenues at ground level, while providing no mitigation; and

WHEREAS, Community Board Five believes that the proposed zoning changes will diminish the environmental quality of Midtown streets and the pedestrian’s experience; and

WHEREAS, Midtown zoning’s performance-based Height and Setback regulations, with their daylight standards, have served the City well for almost 35 years resulting in as-of- right development which has added to the environmental quality of Midtown; and

WHEREAS, The City should maintain daylight standards and when they cannot be met for a particular site, the public should be provided with concrete reasons as to why a development cannot feasibly apply the daylight standards—balancing the environmental quality of Midtown with other perceived “goods”; and

WHEREAS, CB5 strongly believes the goal of the rezoning should be to create and preserve a diversity of high quality commercial jobs and therefore strongly encourages developers, contractors and tenants to take steps to protect the hundreds of building service workers who are earning family-sustaining prevailing wages and benefits and may be displaced by the redevelopment of qualifying sites as result of the East Midtown rezoning, and to commit to

creating high service jobs that pay all building service workers the industry standard prevailing wage in the new development sites; therefore be it

**RESOLVED**, Community Board Five **recommends denial** of the Greater East Midtown zoning application **unless**:

1. There is a creation of new public space on every redeveloped site that takes advantage of the Greater East Midtown's transfer of development rights framework; and
2. The Governing Group should be empowered to act, according to the Zoning Resolution, only if at least one non-Mayoral appointee votes for an action so as to ensure that the Governing Group is not a rubber stamp for the Mayor; and
3. 30 percent of the value of the transferred development rights will be deposited into the improvement fund and the Greater East Midtown proposal **MUST** maintain the minimum contribution price so as to ensure that all parties pay their fair share; and
4. The City invests in at least some of the Department of Transportation-identified improvements prior to the adoption of the proposed zoning text; and
5. There is some mechanism for community board review (even if not ULURP) for developments that would exceed 24 FAR; and
6. There is a prohibition on the as-of-right conversion of more than 12 FAR from non-residential use to residential use and a special permit mechanism created to permit such conversions on a discretionary basis; and be it further

**RESOLVED**, Community Board Five asks for the following:

1. There shall be no increase in base permitted floor area approved as part of the Greater East Midtown rezoning; and
2. The Concept Plan of identified improvements should be written into the Zoning Resolution so as to ensure that the Governing Group is obligated, based on the Zoning Resolution, to first carefully consider implementing these improvements even if it ultimately decides not to; and
3. The Governing Group should be empowered to fund operation of a closed or shared street so that the local business improvement district shall not have *de facto* veto power over the creation of new pedestrian space on a Department of Transportation-controlled street; and
4. The Governing Group should be required, by the Zoning Resolution, to record every meeting by video and have a word-for-word transcription of each meeting that shall be made accessible by the Office of the Manhattan Borough President and either the Mayor's Office of the Department of City Planning; and
5. Any improvement related to the installation of an elevator tied to an as-of-right FAR bonus must only occur if the improvement results in full elevator access from the platform to the street level; and
6. A new unit will be created within DCP that would be charged with the sole oversight and enforcement of all POPS; and
7. There should be additional connections from 4/5/6 to the 7 Train at Grand Central Terminal; and

8. Daylighting standards shall only be lessened pursuant to careful public review on a project-by-project basis that ensures that such modifications are truly necessary to facilitate Class A office development; and
9. DCP devises building massing regulations that eliminate or drastically limit the amount of shadow cast onto Central Park and other light sensitive resources of our district; and be it further

**RESOLVED**, The words "denied" and "unless" in the first resolved clause shall be interpreted as "approval" and "conditional upon," respectively, if, on or before March 13th, 2017, the New York City Mayor's Office or the New York City Department of City Planning communicates the following to Community Boards Five and Six in writing: The EIS will consider an alternative that requires redeveloped sites to include either outdoor plaza space or a covered pedestrian space.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero  
Chair



Eric Stern  
Chair, Land Use, Housing and Zoning Committee



Richard Bass, AICP, PP  
Senior Planning and Development  
Consultant

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April 26, 2017

Greater East Midtown Testimony before NYC City Planning Commission

RE: 165 East 56<sup>th</sup> Street, Block 1311 Lot 33 (the "Site")

Good Morning:

I am Richard Bass, Senior Planning & Development Consultant with Akerman LLP. Thank you for holding this hearing for the Greater East Midtown planning proposal. I am speaking in favor of the proposed special subdistrict, but suggesting a minor map amendment to include the NW corner of East 56<sup>th</sup> Street and Third Avenue.

I represent the American Jewish Committee ("AJC"), the not-for profit owner of 165 East 56<sup>th</sup> Street, which is located on the NW corner of Third Avenue and East 56<sup>th</sup> Street. The Site is located within a C6-6 zoning district, in the Special Midtown District. The Site is reportedly built to approximately 59,000 square feet or 8.0 FAR. The ground floor is occupied by retail; the AJC occupies the rest of the 8-story building.

As identified by the NYC Department of City Planning and East Midtown Task Force, there is a concern that the existing commercial office stock may not offer the kinds of spaces and amenities the market place demands, which can only be provided through new construction. As a result, the area faces challenges that may compromise long-term competitiveness, including an aging building stock, limited recent office development and an existing zoning framework that hinders new office development. We support the inclusive planning effort that resulted in the proposed Greater East Midtown subdistrict. However, we urge the Commission to make a minor map amendment to include the C6-6 portion of the NW corner of East 56<sup>th</sup> Street and Third Avenue.

[akerman.com](http://akerman.com)

{40634321;2}

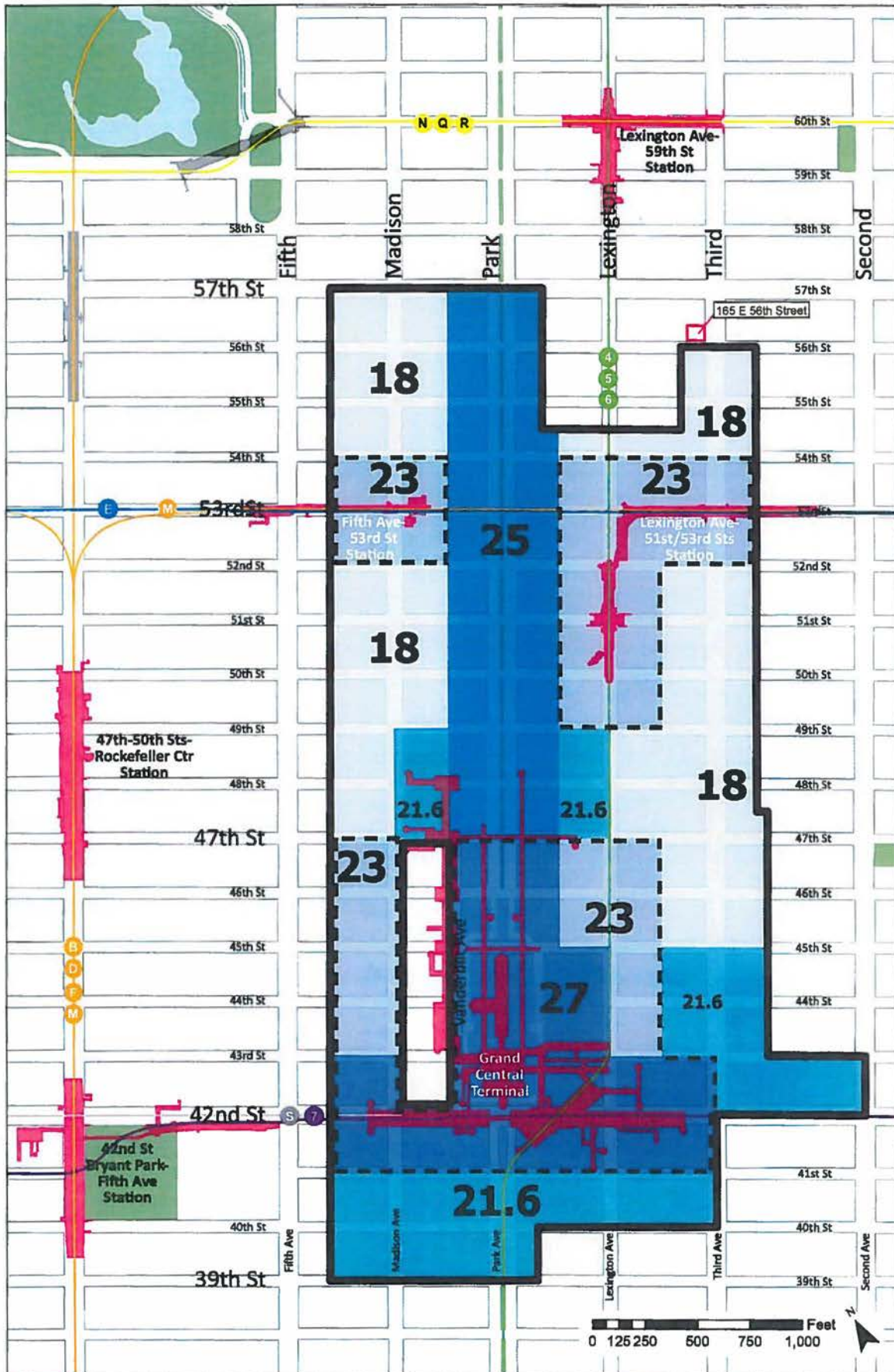


Let me explain:

- The existing C6-6/Special District zoning permits a maximum 15.0 FAR for commercial or mixed use development. Extending the proposed Greater East Midtown would permit an 18.0 FAR.
- The existing building is 60 years old and underbuilt to the existing zoning. The small contiguous building, 940 Third Avenue (Block 1311 Lot 36), is 97 years old and built to 5.8 FAR. Both buildings clearly meet the criteria and concerns articulated by City Planning and the Task Force.
- If this corner is left out of the proposed Greater East Midtown zoning, these buildings will not be redeveloped because they would be competing with 18.0 FAR development sites across 56<sup>th</sup> Street and elsewhere in the proposed subdistrict. Instead of a potential approximately 300,000 square feet office development, the existing built condition will remain.

As you know, zoning regulates use, intensity of that use and the shape of that use. Zoning is also a tool to implement public policy. The stated public policy for the proposed Greater East Midtown is to encourage redevelopment of existing older office buildings to better position East Midtown to compete in New York City, the region, nationally and globally. We believe extending the proposed northern boundary of the subdistrict 100' to be consistent with this public policy. Therefore, we ask the Board to approve the proposed subdistrict with the 100' extension, to include the NW corner of East 56<sup>th</sup> Street and Third Avenue.

# Greater East Midtown Densities + Transit Zones



Eligible Subway Station

Transit Improvement Zone

Rezoning Area

December 2016





REAL ESTATE DIVISION  
ARCHDIOCESE OF NEW YORK

April 7, 2017

Honorable Marisa Lago  
Director, Department of City Planning  
City of New York  
120 Broadway, 31st Floor  
New York, NY 10038

Dear Director Lago,

Thank you most sincerely for your letter to the Archdiocese and the Real Estate Board of New York, dated March 22, 2017. On behalf of the Archdiocese, I want to express our appreciation for the extensive effort that has gone into formulating the rezoning proposal for Greater East Midtown, and the time that you and the City Planning Department staff have taken to address our comments.

Revitalization of East Midtown is an initiative supported by the Archdiocese, particularly as the proposed plan permits landmarks such as St. Patrick's Cathedral to be a source of development rights for new construction. However, we continue to be greatly concerned that a requirement for landmarks to set aside a minimum amount from each transfer -- regardless of the sale price -- will have a chilling effect on transfers. Consequently, there will be less development, less funding available for landmark preservation, and less funding for public realm improvements.

We have seen no evidence of a need for this minimum set-aside. Taxes for every other real estate transaction in the City are based upon the actual consideration for the transfer, as verified through transfer tax filings with the Department of Finance. To treat owners of landmarks in a disparate manner has no rational basis and we are unable to support this aspect of the proposal.

Embedded within this concept of a minimum required contribution is the establishment of a "floor price". We acknowledge the Department's attempt to set a floor price based on transactions that, at first, appear comparable to those in East Midtown. We continue, however, to take serious issue with the City's assumptions, as most recently explained in studies prepared by Landauer. Attached is a response from Cushman & Wakefield which provides further details as to how the City's methodology significantly overstates the potential market value of TDRs in East Midtown.

We look forward to continuing to work with you as the rezoning proposal is considered by the City Planning Commission in the coming months.

Sincerely,



David S. Brown  
Executive Director of Real Estate

cc: Ms. Alicia Glen  
Ms. Purnima Kapur  
Ms. Anita Laremont  
Ms. Edith Hsu-Chen  
Ms. Eleonora Bershadskaya  
Mr. John Banks

**Brian R. Corcoran, MAI, CRE, FRICS**  
Executive Vice President  
Valuation & Advisory



**Cushman & Wakefield, Inc.**  
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April 5, 2017

Mr. David S. Brown  
Director of Real Estate  
Archdiocese of New York  
1011 First Avenue, Room 1616  
New York, NY 10022

**Re: Counter-Response to Critique of East Midtown Landmark TDR  
Contribution Rate Market Study  
Prepared for New York City Economic Development Corporation  
by Landauer Valuation and Advisory**

Dear Mr. Brown:

You have provided us with a copy of the Response to Critique of East Midtown Landmark TDR Contribution Rate Market Study (the "Landauer Response"), dated March 20, 2017, prepared by Landauer Valuation & Advisory ("Landauer"). The Landauer Response was written as a response to the critique prepared by the undersigned, dated February 7, 2017 (the "C&W Response"). The C&W Response was written in reference to the market study entitled "East Midtown Landmark TDR Contribution Rate Study" (the "Landauer Market Study"), prepared by Landauer and dated December 22, 2016. You have also provided us with a copy of a letter addressed to you by Marisa Lago, Director of City Planning ("DCP"), City of New York, dated March 22, 2017 (the "DCP Letter").

In connection with the City's proposal to rezone Greater East Midtown, it is our understanding that the Landauer studies have been used to establish the minimum contribution rate for sales of transferable development rights by owners of landmarked buildings. According to the DCP Letter (and supported by the Landauer Market Study), the minimum contribution rate of \$78.60 per square foot is derived from an underlying market value of \$393 per square foot for development rights, established to reflect the lower level of market pricing for this asset class. As we have previously stated, and reinforce with our analysis below, a figure of \$393 per square foot for commercial-use air rights in East Midtown vastly overstates the fair market value of this real property interest. Simply stated, there is no credible market-based data to support this conclusion. In fact, there exists ample data, particularly air rights sales, to support a much lower value.

Our comments to the Landauer Response and DCP Letter are as follows:

Mr. David S. Brown  
Archdiocese of New York

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April 5, 2017

► The Landauer Response provides no justification or market evidence for the significantly above market growth rates applied to the comparable transactions analyzed. The growth rates are single-handedly the most important input utilized in the analysis, and certainly one that should be thoroughly supported. A more appropriate indicator of growth for land values intended for office use would be the change in asking rents over the analyzed time period. The revenue achievable in a proposed office building is the single most important factor considered by developers in assessing whether a potential development is financially viable. The following chart presents the change in Class A office asking rents in Midtown from 2005 through 2016.

Midtown Class A Office Rents			
Year	Annual Rent Per Square Foot	Annual Change	Monthly Change
2005	\$52.87		
2006	\$66.58	25.92%	2.16%
2007	\$83.40	25.27%	2.11%
2008	\$86.40	3.60%	0.30%
2009	\$65.61	-24.06%	-2.01%
2010	\$67.27	2.53%	0.21%
2011	\$71.22	5.87%	0.49%
2012	\$72.54	1.85%	0.15%
2013	\$74.12	2.18%	0.18%
2014	\$80.22	8.23%	0.69%
2015	\$81.67	1.81%	0.15%
2016	\$83.61	2.38%	0.20%

Source: Cushman & Wakefield, Inc.

It is erroneous to automatically assume that buyers would transact at Landauer's indicated 2015 prices given that office rents have not grown at levels indicated by Landauer over the time period.

► Page 4 of the DCP Letter presents details of 10 land transactions located both within and outside of the East Midtown Study Area from which DCP draws a conclusion of TDR values. Our comments to these comparables are as follows:

#### Sales Within the East Midtown Study Area

- **36 East 51<sup>st</sup> Street:** This transaction, located within the East Midtown Study Area meets the criteria of a land transaction within East Midtown intended for office development. However, consideration must be given to the boutique nature of the property developed on the site. The 20-story building was completed in 2015 and is reported to have just under 75,000 square feet of rentable area. Per CoStar, Inc., this property is less than 30 percent occupied as of the date of this letter.

Mr. David S. Brown  
Archdiocese of New York

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April 5, 2017

- **51 East 42<sup>nd</sup> Street:** This was the final piece of the assemblage by SL Green for the development of the office tower known as One Vanderbilt. The completion of the assemblage afforded SL Green the ability to construct a 1,400-foot tall office tower consisting of approximately 2 million square feet of rentable area. Furthermore, the tower will contain an observation deck which is projected to generate over \$40 million in annual revenue<sup>1</sup>. These factors contributed to the price paid for the last piece of the land assemblage. In our opinion, this is not a valid comparable, as new developments in East Midtown will not consist of the same size nor additional revenue generating features of One Vanderbilt.

#### Sales Outside the East Midtown Study Area

- **315 East 46<sup>th</sup> Street and 318 East 48<sup>th</sup> Street:** These comparable transactions were purchased by the governments of the United Arab Emirates and Singapore, respectively. These sites were purchased for owner-occupancy (as compared to a commercial, for-profit development). Furthermore, the proximity to the United Nations was a primary factor in these transactions. For these reasons, these sales are simply not comparable. Furthermore, the sale date of August 31, 2007 noted in the DCP Letter for 315 East 46<sup>th</sup> Street is incorrect. The transaction date listed on the deed filed in public records was November 2<sup>nd</sup>, 2009.
  - **507 West 33<sup>rd</sup> Street, 532 West 30<sup>th</sup> Street, 517 West 35<sup>th</sup> Street, 501 West 34<sup>th</sup> Street, and 427 Tenth Avenue:** These transactions are located within the Hudson Yards Special District. Land transactions in Hudson Yards are simply not comparable to any parcel of land outside of that district without examining all the benefits afforded to property owners within the Hudson Yards Special District. These benefits include 1) the ability to purchase a District Improvement Bonus (DIB) at a current price of \$125.49 per square foot; 2) the ability to purchase development rights from the Eastern Rail Yard at a discount to market value; 3) real estate tax abatements; and 4) an exemption from mortgage recording tax. Presenting HY land sales without discussing and analyzing the impact of these benefits is misleading. These benefits permit owners to average their land costs down, in some cases by more than half.
  - **104-106 West 56<sup>th</sup> Street:** This recent transaction consists of a 5,021-square-foot lot, and the purchaser (Savanna) intends to develop a boutique office building consisting of 27 stories with approximately 90,000 square feet of rentable area. While this is a recent transaction intended for office development, consideration must be given to the boutique nature of the property.
- After analyzing the land sales presented, the chart in the DCP Letter results in two comparable transactions for office development to analyze, not nearly enough to represent a reasonable comparable data set to price development rights in a district consisting of 73 blocks. Further, the DCP Letter only presented and analyzed land transactions to set the floor price of the development rights. Common market practice leads to the analysis of sales of actual development rights, should the sales exist. In this instance, these sales do exist and lead to a conclusion significantly lower than the \$393 per square foot price concluded in the DCP Letter. Exhibit 1 of this letter presents details of TDR transactions for large scale office development.

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<sup>1</sup> SL Green presentation



Mr. David S. Brown  
Archdiocese of New York

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April 5, 2017

These transactions have been trended to January 2016 utilizing the growth rates presented in the C&W Response. The prices indicate a tight range from which to draw a conclusion. (Upon further review, we agree that the One Vanderbilt transaction should be excluded.)

Given our analysis of the comparables, and the understanding that each site within East Midtown has its own unique features, we reiterate our believe that the air rights should be priced based on the location of the receiving site within the East Midtown district. Our opinion of TDR values by corridor are presented on the following table.

Corridor/Area	TDR value (per SF)
Madison Avenue, below 42 <sup>nd</sup> Street	\$250
Madison Avenue, above 42 <sup>nd</sup> Street	\$300
Park Avenue, below 42 <sup>nd</sup> Street	\$275
Park Avenue, 46th to 57th	\$325
Lexington Avenue, below 42nd	\$225
Lexington Avenue, above 46th	\$250
Third Avenue	\$200
Side street	\$200

Sincerely,  
CUSHMAN & WAKEFIELD, INC.



Brian R. Corcoran, MAI, CRE, FRICS  
Executive Vice President  
Valuation & Advisory

cc: Marc J. Nakleh, MAI  
Christopher C. Sauvigne, CPA

### Exhibit 1

SUMMARY OF TRANSFERABLE DEVELOPMENT RIGHTS (TDRs) Sales - OFFICE NEW YORK CITY									
No.	LOCATION (RECEIVING SITE)	DATE	CONSIDERATION	TRANSFEROR	TRANSFeree	TDRs (SF)	PRICE / ZFA	Intended Use	Price/ ZFA in Dollars as of January 2016
1	7 Bryant Park	December-2010	\$12,190,923	104 West 40th Street Property Investors LLC	Pacolet Milliken Enterprises, Inc.	67,454	\$180.73	Office	\$217.36
2	50 West 47th Street (Gem Tower)	October-2008	\$3,500,000	Lumig Enterprises Corporation	Extell Diamond Tower LLC	12,637	\$276.96	Office	\$333.10
3	50 West 47th Street (Gem Tower)	March-2008	\$1,318,801	21 West 46th Street LLC	Extell Diamond Tower LLC	5,774	\$228.40	Office	\$192.28
4	50 West 47th Street (Gem Tower)	February-2008	\$3,436,181	28 West 47th LLC	Extell Diamond Tower LLC	16,927	\$203.00	Office	\$170.90
5	250 West 55th Street	January-2008	\$33,310,560	Shubert and Booth Theater, LLC	Gladden Properties, LLC	157,636	\$211.31	Office	\$177.90
6	50 West 47th Street (Gem Tower)	May-2007	\$10,000,000	Wentworth Hotel Company	Extell Diamond Tower LLC	50,575	\$197.73	Office	\$171.50
7	50 West 47th Street (Gem Tower)	March-2007	\$2,975,000	37 West 46th Street Realty Corp.	Extell Diamond Tower LLC	14,600	\$203.77	Office	\$180.29
8	510 Madison Avenue	November-2006	\$6,439,967	The Laboratory Institute of Merchandising, Inc.	53d Street and Madison Tower Development LLC	30,667	\$122.50	Office	\$112.79
<b>Statistics (all Transactions)</b>									
<b>Low</b>		November-2006	\$1,318,801			5,774	\$122.50		\$112.79
<b>High</b>		December-2010	\$33,310,560			157,636	\$276.96		\$333.10
<b>Average</b>			\$9,146,429			44,534	\$203.05		\$194.51
<b>Statistics (Excluding One Vanderbilt)</b>									
<b>Low</b>		November-2006	\$1,318,801			5,774	\$122.50		\$112.79
<b>High</b>		December-2010	\$33,310,560			157,636	\$276.96		\$333.10
<b>Average</b>			\$9,146,429			44,534	\$203.05		\$194.51



875 Third Avenue, Mezzanine \* New York, NY 10022  
212-813-0030 \* [www.EastMidtown.org](http://www.EastMidtown.org)

## **Statement to the City Planning Commission**

**by Rob Byrnes, President**

**April 26, 2017**


The East Midtown Partnership is a Business Improvement District covering all or part of 48 blocks of Midtown Manhattan and more than 28 million square feet of commercial space, including the northernmost section of the proposed East Midtown Subdistrict. It is imperative that this area continues to be the commercial center of New York City, but, to do so, the Greater East Midtown Rezoning Proposal must be approved to allow for the development of new Class A buildings better suited to meet the needs of today's businesses and technology.

As a member of the Steering Committee that helped set the parameters for the Greater East Midtown Rezoning Proposal, the East Midtown Partnership is grateful to the Department of City Planning, Manhattan Borough President Gale Brewer, and City Council Member Dan Garodnick for the opportunity to participate in this important effort. As the proposal moves through the ULURP process, we have three remaining areas of concern which we respectfully present for your consideration:

### **1. East Side of Third Avenue.**

As we have stated repeatedly in the past, including throughout the Steering Committee process, we feel it is imperative that the east side of Third Avenue south of East 56<sup>th</sup> Street remain within the Subdistrict boundaries.

We appreciate and respect the concerns of some representatives from neighboring areas east of Third Avenue, who fear prospective redevelopment of these properties might further encroach on the largely residential nature of their communities. However, it is already a fact that the east side of Third Avenue has uniformly housed high-rise commercial buildings – some containing well over one million square feet – for several decades.



It should also be noted that most of this area would have a maximum as-of-right FAR of 18, which – while greater than currently allowed – is far less than the maximums allowed along Park Avenue and closer to Grand Central Terminal. (The exceptions would be the buildings at 875 and 885 Third Avenue, which are connected to a series of subway entrances and platforms in dire need of improvement.)

We are comfortable with Manhattan Borough President Brewer’s recommendation that residential properties on the east side of Third Avenue be considered for removal from the Subdistrict, as well as her recommendation that consideration be given to residential concerns, but feel strongly that the impact of the Rezoning Proposal would be significantly weakened if commercial properties on the east side of Third Avenue were to be removed altogether.

### **2. Public Outreach on Public Realm Improvements**

Although potential improvements to the above-ground public areas of the district are still largely on the drawing board and subject to further discussion, it is extremely important that stakeholders have input in the development stage. This is especially true of property and building owners, who may have very practical concerns unseen or unknowable to governmental representatives.

In general, we are sympathetic to and supportive of the efforts of Community Boards 5 and 6 to identify public realm improvements, given the lack of public space throughout the Subdistrict. However, we recognize that many future enhancements to the public realm will be subject to new development, which cannot be fully predicted in advance. In the meantime, the interests of immediately affected stakeholders when planning any public realm improvements must be given weight.

### **3. TDR Floor Prices**

Finally, we believe there should be a greater reliance on market forces to determine floor prices for Transferrable Development Rights from landmarked properties. Higher prices will work against transactions, essentially thwarting one key element of the proposal. We are pleased to see support from the Borough President and Deputy Mayor Glen to revisit the initial recommendation, and urge the City Planning Commission to do likewise.

Thank you for the opportunity to discuss this extremely important proposal. We look forward to the near future and a stronger, more vibrant East Midtown Manhattan.

## TESTIMONY BEFORE NYC PLANNING COMMISSION

Madame Chair and Members of the Commission:

I am Deirdre Carson, of the firm of Greenberg Traurig, which represents 1248 Associates LLC, the owner-developer of the hotel property located at 12-14 East 48<sup>th</sup> Street. We are not here today to express opposition to the generally salutary proposals embodied in the Greater East Midtown text or even to express opposition to the requirement that new hotels obtain special permits. Rather, we are here to support our client in its request that the Commission add a provision that would deem a property owner's right to proceed with construction of a new hotel vested, if the owner had obtained a building permit for the building and commenced construction under that permit by the date of enactment.

As legal counsel to the developer, we can confirm that this hotel has been in the planning and pre-construction phases of development for

at least three years. During that time, our client has not only purchased development rights from adjacent property owners, but also undertaken financial and contractual obligations to third parties, including its operator, lender and contractor. These commitments all predated the certification of the East Midtown text into ULURP.

The text change proposed by the Commission would alter the status of hotel uses in midtown Manhattan, making this use, which has been as-of-right at this location since the City first enacted zoning more than a hundred years ago, discretionary for the first time. This is a major change.

When making major changes in zoning text in the past, the Commission has adopted special vesting rules to protect developers who have expended material time and resources in planning and starting a project but who will be unable to ensure foundation completion (or, in the case of other construction, total completion) by

the enactment date of major zoning changes. These provisions may be found, for example, in Sections 11-281, 11-333 to 11-338 of the Zoning Resolution, or Section 111-20(d)(4) with respect to an instance in which an individual obtained a bulk variance from BSA prior to enactment of a change.

In this instance, although our client is confident it would prevail if forced to go to the BSA after enactment, the time and expense required to obtain BSA relief pursuant to ZR 11-322 could jeopardize its outstanding contractual commitments. Thus, there is a need for the textual relief we are seeking.

In our conversations with the community board, borough president and local Councilmember we have not been met with opposition to our proposal, but we have been asked to make this request to you.

We therefore now respectfully request your favorable action on an amendment of the text to add a special vesting provision to Article I,

Chapter 1 of the Zoning Resolution, vesting the rights under current zoning of projects for new hotels that had obtained building permits and commenced construction prior to enactment of the new text.

Thank you for this opportunity to speak.



**From:** JG Collins <[JGCollins@stuysquare.com](mailto:JGCollins@stuysquare.com)>  
**Date:** April 29, 2017 at 2:13:51 PM EDT  
**To:** <[ManhattanComments\\_DL@planning.nyc.gov](mailto:ManhattanComments_DL@planning.nyc.gov)>  
**Subject: Comments on Greater East Midtown Zoning Proposal**

To Whom it May Concern:

I have attached herewith my comments with respect to the captioned proposal, as addressed originally to the Manhattan Borough President, Gale Brewer, on March 9<sup>th</sup>. Please consider these comments as submitted anew to the DCP. A duplicate of these comments have been submitted into the DCP public commentary portal for ease of archiving.

Thank you for your kind consideration.

Very truly yours,

J.G Collins, Managing Director

**J.G. COLLINS**  
201 EAST 17<sup>TH</sup> STREET  
NEW YORK NY 10003  
(212)473-0740

March 9, 2017

BY E-MAIL

Manhattan Borough President Gale A. Brewer  
1 Centre Street, 19th Floor  
New York, NY 10007

RE: Greater East Midtown Planning Proposal

Dear Borough President Brewer:

I am writing to opine on the captioned matter.

These comments are mine as an individual, as informed by nearly 20 years of experience on the and Land Use Committee of Manhattan Community Board Six, meetings on the subject proposal, reviews of pertinent documents, my own research, discussions and meetings with my Community Board Six colleagues, and by my work compiling the public comments that were received by the board at, and subsequent to, its public hearing on February 1, 2016. Nevertheless, the board speaks only through its resolutions, which you have or should have shortly, and my comments here should be taken only as my own.

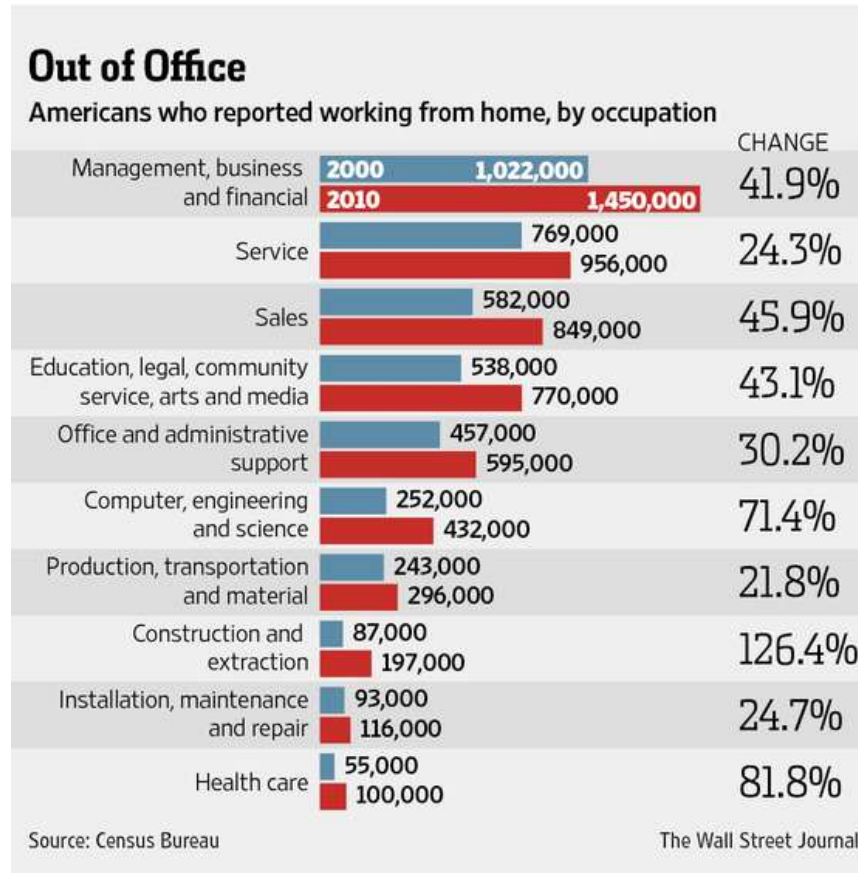
**1. The Proposed Plan Addresses the Needs of the 21st Century Economy but assumes the Economy of the Last Century.**

Like André Maginot, who conceived a line of fixed fortifications to defend World War II France from the German tactics of World War I twenty years earlier, the Department of City Planning (DCP) is building additional floor area ratio (FAR) for an economy of 20 years ago. Maginot ignored developments in mobile warfare; DCP is ignoring developments in collaborative mobile productivity.

Improvements in hand-held and laptop mobile, collaborative, products and software now allow teleconferencing, remote presentations, virtual meetings and multiple users to collaborate from widespread remote locations, and multiple levels of review, without any "in person" meetings. Collectively, they will likely end the concept of "Big Office" within the next twenty years.

Even today, professional services firms like consulting, auditing, and even some law firms are engaging in "hoteling" where even the most senior executives book office space, *ad hoc*, for a day or two or for client meetings. Most of their work is performed at their clients' workspaces (which are most often in suburban office parks) or in their homes offices. The notion of the types of office suites with scores or hundreds of employees working for large multinationals that once existed along the office buildings of Park Avenue, has been gone since about 1985.

As you can see from the chart from 2013, below, remote work is skyrocketing as a business practice. It will likely continue to do so given the aforementioned improvements in remote and collaborative working technologies and software and the personal preferences of the “Millennial” workforce.



Persons Working at Least One Day per Week from Home (2013)

A decade before the advent of Wi-Fi, companies, universities and residential buildings spent hundreds of millions of dollars to wire offices, dormitories, and apartment buildings, respectively, to the internet. Those costly investments were made obsolete by Wi-Fi. I fear that DCP is engaging in the same erroneous planning for East Midtown.

Collaborative, in-person, spaces are required for only a few industries like fashion design, advertising, and other artistically-oriented businesses. The financial sector and most professional services firms can act from remote locations; they do not need office space, particularly when having it exposes them to the onerous tax costs and regulatory burdens of one of the least commerce-friendly urban governments in the United States.

The companies in New York that are engaging in the innovation and development that will likely propel large profits and large capitalization companies in the 21st century are working at shared space, low- end, low-cost office environments like “We Work” or office lofts and warehouses built nearly a hundred years ago.

The “Class A” office space contemplated by the proposal is vastly overrated. New York City long ago lost the large manufacturers and conglomerates that once occupied Midtown to suburban office parks and campuses, chased out by the highest marginal effective state and local tax rate in the country, onerous regulations, and the desire of senior executives to avoid the former NYC “commuter tax” on seven and eight-figure salaries. Even if they had stayed, office productivity software and management practices like TQM, Lean, Six Sigma, Zero Base Budgeting and “right-sizing” would have decimated the huge corporate staffs we see in the “Mad Men” era of New York of decades ago. Those office staffs are not coming back.

To borrow a line from Hollywood, “If you build it, they will not come.” The tech-savvy, independent, workforce born since 1990 that will assume responsibilities in leading companies in the next twenty years will not be tethered to the offices and cubicles of their parents and grandparents; they will insist on working from remote locations and their employers, seeing the cost savings from not maintaining office space, will let them.<sup>1</sup>

So, I must question precisely what market DCP sees for this vast increase in East Midtown office space. Where is the economic, demographic, and market analysis that supports the DCP assumptions that such additional space is necessary?

## **2. Public Realm Improvements Near Grand Central Station Should Favor Portals and Connections to Multiple Modes of Transport Over Public Realm Improvements, Such as Plazas or Atriums.**

Anyone arriving at or Grand Central should have nearly seamless, ready, and efficient connections to other means of mass transportation, including all nearby airports and the East and Hudson River ferry services.

The demise of the former East Side Airlines Terminal in the early 1980’s has left those bus services that serve airport commuters an afterthought of Manhattan mass transit. Airline passengers are left on East 41st Street in all kinds of weather, with their luggage, exposed to the elements while airport shuttle buses queue up curbside.

Passengers should be able to check their baggage directly through to their flight at a city center terminal, leaving the check-in lines at airports far less crowded and less vulnerable to the type of mass casualty terror attack that occurred at Ataturk Airport in June of 2016.

Travelers traveling to or from Grand Central with luggage, as well as people with disabilities, should have ready access to elevators within the station and airport-style “Smart Carts” to move their belongings.

Travel by mass transit to and from Metro North destinations to all additional points of travel, including ferry boats, should be seamless and convenient to ensure commuters have options to travel throughout the region to their destination or to an additional connections without need of an automobile.

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<sup>1</sup> While it is beyond the scope of these comments, the eventual decline of “Big Office” will also, at some point, create an enormous fiscal strain on the NYC budget. Inklings of this future trend can be seen in the suburbs, where failed and failing retail malls that provided much of the municipal tax base are beginning to strain local budgets.

**3. The DCP proposal for Transit Improvements Comes Perilously Close to “Zoning for Dollars” and Should be Ameliorated by Requiring Developers to Maintain, Repair and Replace Transit Improvements Associated with Their Bonused FAR.**

Zoning should be dictated by the public good and not the vagaries of capital budgets of city agencies.

Incentive zoning has been described as having an “inherent dependence on a philosophy of sanctioned bribery, abiding a private sector that can ‘buy’ its way out of legal restrictions.”<sup>2</sup>

While incentive zoning amenities like public plazas, atriums and adjacent subway station improvements provide public goods in exchange for, and with a direct nexus to, the bonused FAR, the transit Improvements in the proposal contemplate no such nexus; amounts paid for the improvement amount to a veritable “sale” of additional FAR in exchange for an in-kind payment to the Metropolitan Transportation Authority (MTA) capital budget in the form of a transit capital improvement.

This violation of fundamental principles of good zoning is further exacerbated because the proposal makes no provision for maintenance, repair, and replacement (MR&R) of the capital improvement. Developers seeking bonused FAR might as well simply tell the MTA to “send us the bill”; the only difference between a direct sale of the bonus FAR by the city for cash is that the contractor who builds the transit improvement is a “cut out” who receives the payment instead of the city.

The “one-shot”, in-kind, payment for bonus FAR - a veritable sale of zoning rights - is further obviated by the distinction between the costs for the MR&R of a plaza or atrium and the cost of a transit improvement.

The MR&R costs of “above ground”, associated, public realm amenities annexed to the development falls on the developer; they are part of his property. There is no such requirement for the developer gaining bonus FAR to pay for the MR&R of transit improvements in this plan.

But if the transit improvement has a discernible nexus to the FAR bonus (because, for example, it is said to be essential to accommodate additional transit passengers who will occupy the bonused FAR), then the cost of both the transit improvement and its MR&R should fall upon the developer, not taxpayers.

While I understand that, under existing rules, the cost of MR&R for even adjacent transit improvements are not required to be borne by the developer, this seems more due to administrative shortsightedness and a lack of a viable enforcement mechanism than good public

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<sup>2</sup> Jerold S. Kayden, *Zoning for Dollars: New Rules for an Old Game? Comments on the Municipal Art Society and Nollan Cases*, 39 Wash. U. J. Urb. & Contemp. L. 3 at 7. (1991) Available at: [http://openscholarship.wustl.edu/law\\_urbanlaw/vol39/iss1/2](http://openscholarship.wustl.edu/law_urbanlaw/vol39/iss1/2) (Accessed 6 Mar 2017).

policy.<sup>3</sup> It could, and should, be cured, prospectively, under the proposed plan so as to avoid the taint of “zoning for dollars.”

I would suggest that the DCP, in conjunction with the Department of Finance and the Department of Buildings, create some mechanism of enforcement that ties the costs of MR&R of public realm improvements to a separate certificate of occupancy (COO) of the bonused FAR, so that the COO of the bonus FAR is contingent on the developer paying the costs of the MR&R of the public realm improvement.

**4. Landmark Buildings Designated by the Landmarks Conservancy, The Municipal Art Society and the Historic Districts Council Should Be Considered by the Landmarks Preservation Commission on an Expedited Basis Before the Final Environmental Impact Statement is Approved**

According to correspondence from the Landmarks Conservancy, there are buildings within the subject area that are eligible for inclusion on the National Historic Landmarks Register. Once lost, those buildings and sites are irreplaceable. They deserve a hearing before the subject proposal is adopted.

The Landmarks Preservation Commission should add the designated sites to its calendar as quickly as possible and before the environmental impact statement is completed.

**5. FAR from Landmark Transferable Development Rights (TDR) and Public Realm Improvements Should be Limited First, to the East Midtown District; then, to the Community District Where the Landmark or Improvement is Located**

The city has rigidly enforced community district boundaries in virtually all of its “fair share” considerations of NYC Law §203(a)(2), which requires “the fair distribution among communities of the burdens and benefits associated with city facilities, consistent with community needs for services and efficient and cost effective delivery of services and with due regard for the social and economic impacts of such facilities upon the areas surrounding the sites.”

The need for the up-zoning of Midtown East is presumed to be necessary for the entire city’s economic well-being and should, therefore, be considered in the same context as city facilities to ensure that the burden of the up-zoning is fairly distributed. Thus, public realm improvements built on Avenue of the Americas should not be associated with FAR up-zoning for a building on Third Avenue. A sale of TDR from St. Patrick’s Cathedral should not affect an up-zoning of a parcel on Third Avenue in the low East 40’s.

**6. The Boundary of the Proposed Map Should be Kept at the West Side of Third Avenue**

The “notch” on the proposed map at East 42nd Street (i.e., “the Pfizer Block”) implicates longer-term zoning considerations involving the planned Second Avenue Subway line, adjacent subway improvements, and pedestrian circulation that are included in the existing zoning

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<sup>3</sup> I understand from a representative of DCP that the MR&R costs for adjacent subway improvements granted for additional FAR are not covered by the developer because “they just don’t do it.”

regulation. It should be addressed in that context as a separate matter apart from the subject proposal.

The “up-zoning” of the Pfizer Block in the subject proposal should not be approved as part of the subject proposal.

**7. A Special Permit Should be Required to Change Buildings in the Proposed Map from Office Space to Residential Space**

As discussed more thoroughly in comment “1.”, above, there is likely to be less, not more, demand for Class A office space in Midtown in coming years.

That leads to the possibility that the up-zoned buildings will be used for luxury residential buildings, not office space, once they are built. If the market for office space declines even more precipitously, before new buildings can be erected, they will be built as luxury residential buildings.

A change in purpose of the buildings from office to residential space will have a tremendous effect on East Midtown. Accordingly, it is appropriate that such a conversion only be allowed by means of a special permit.

I have attached for your information and consideration the public commentaries of institutions, individuals, property owners that my board colleagues and I summarized that were available as Friday, February 3rd.

Thank you for your kind attention to these comments. I am happy to address any issues raised here further should you require additional information.

Very truly yours,

/s/ James Collins  
James Collins

cc (w/att) via e-mail:

Hon. Bill de Blasio, Mayor  
Hon. Scott Stringer, Comptroller  
Hon. Marisa Lago, Chair, Department of City Planning  
Hon. Dan Garodnick, Councilmember, District 4  
Hon. Vikki Babero, Chair, Community Board Five  
Hon. Rick Eggers, Chair, Manhattan Community Board Six  
Hon. James Clynes, Chair, Manhattan Community Board Eight

**April 26, 2017 Comments by Lois Cremmins on Behalf of the Greenacre Foundation  
Regarding Greater East Midtown Rezoning**

MY NAME IS LOIS CREMMINS. I AM THE EXECUTIVE DIRECTOR OF GREENACRE FOUNDATION. I WOULD LIKE TO THANK THE CITY PLANNING COMMISSION FOR HOLDING THIS VERY IMPORTANT HEARING ON THE GREATER EAST MIDTOWN REZONING PROPOSAL AS PUT FORTH BY THE CITY OF NEW YORK. I AM HERE TODAY TO RAISE SERIOUS CONCERNS ABOUT SHADOW IMPACTS ON GREENACRE PARK.

ABBY ROCKEFELLER MAUZE CREATED THE GREENACRE FOUNDATION IN 1968 WITH THE INTENT TO BUILD A VEST POCKET PARK ON EAST 51ST STREET (BETWEEN 2ND AND 3RD AVENUE) AS A GIFT TO THE CITIZENS OF NEW YORK CITY. ACCLAIMED LANDSCAPE ARCHITECTURE FIRM SASAKI ASSOCIATES PREPARED THE FINAL DESIGN AND THE FOUNDATION OPENED IT IN 1971. MRS. MAUZE GIFTED AN ENDOWMENT TO THE FOUNDATION TO ENSURE THAT THE PARK WOULD BE MAINTAINED AT A HIGH STANDARD IN PERPETUITY. THE PARK IS A VITAL COMMUNITY ASSET AND THE FOUNDATION IS IN THE PROCESS OF HAVING THE PARK RECOGNIZED AS ELIGIBLE FOR LISTING ON THE STATE AND NATIONAL REGISTERS OF HISTORIC PLACES.

MS MAUZE'S FAMILY CONTINUE TO BE ACTIVE MEMBERS OF THE GREENACRE FOUNDATION BOARD. BUT THE ENDOWMENT DOESN'T JUST MAINTAIN THIS PARK. THE FOUNDATION HAS SUPPORTED OVER A HUNDRED PARKS, COMMUNITY GARDENS AND ORGANIZATIONS INVOLVED IN GREEN SPACE IN MANHATTAN.

THE PARK PROVIDES A SMALL BUT IMPORTANT GREEN SPACE FOR A COMMUNITY WITH A SCARCE AMOUNT OF PARKLAND. THE PARK SITS IN CITY COUNCIL DISTRICT 4. ACCORDING TO NEW YORKERS FOR PARKS' CITY COUNCIL DISTRICT 4 PROFILES, THE DISTRICT ONLY HAS 2 PERCENT OF ITS TOTAL ACREAGE DEDICATED TO PARKLAND THOUGH THE CITY AVERAGE IS 19 PERCENT. THE PROFILE FURTHER NOTES THAT DISTRICT 4 RANKS 49TH OUT OF 51 COUNCIL DISTRICTS FOR PARKS AND PLAYGROUNDS PER 1000 RESIDENTS.

ACCORDING TO RECENT SHADOW MODELS COMMISSIONED BY THE FOUNDATION, THE PROPOSED REZONING WILL RESULT IN 6 DEVELOPMENT SITES PLACING ADDITIONAL SHADE ON THE PARK AND THUS CAUSING SIGNIFICANT ADVERSE IMPACTS TO THE PARK. AFTERNOON SUN WILL VIRTUALLY BE ELIMINATED.

COMMUNITY BOARD 6 AND BOROUGH PRESIDENT BREWER HAVE ALREADY ECHOED THESE CONCERNS AND ASKED THE CITY PLANNING COMMISSION TO



**Greenacre IT Foundation**

ROOM 2500 • ONE ROCKEFELLER PLAZA • NEW YORK, N Y 10020

ACT. WE WILL BE SUBMITTING A MORE DETAILED COMMENT LETTER SHORTLY THAT OUTLINES OUR CONCERNS, OBJECTIONS TO THIS DEIS AND MITIGATION MEASURES. PLEASE ACT ON THEM.

The Municipal Art Society of New York  
**MASNYC**

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FREDERICK ISEMAN

PRESIDENT  
ELIZABETH GOLDSTEIN

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HELEN S. TUCKER

**MAS Comments for New York City Planning Commission on the Greater East Midtown Proposal, ULURP No. 170186 ZRM Manhattan, NY**

April 26, 2017

**Background**

The Municipal Art Society of New York (MAS) has played an active role in the rezoning of East Midtown. In 2012, MAS engaged planning, preservation, and development practitioners to explore ways to maintain East Midtown as not only the city's premier business district, but as a vital, working neighborhood. This effort culminated in the report, *East Midtown: A Bold Vision for the Future*, issued by MAS in February 2013, which laid out a framework for reinvigorating the area's public realm, improving transit infrastructure, encouraging a vibrant mix of uses, protecting the area's valuable historic resources, and fostering forward thinking sustainable design.

MAS and many other stakeholders found the 2013 East Midtown rezoning proposal to be deficient in achieving critical goals, and it was later withdrawn. Mayor de Blasio then formed the East Midtown Steering Committee, including MAS, to spearhead a stakeholder-driven effort. In October 2015, the Steering Committee issued its Final Report which included recommendations that frame the current Greater East Midtown Proposal with a few critical exceptions.

MAS recognizes that the primary goal of the current proposal is to incentivize significant expansion of commercial office space to improve the area's viability as New York's premier business district. We also acknowledge the effort made by the city to foster and incorporate stakeholder input.

**Position**

MAS generally supports this proposal. However, we remain steadfast that a number of critical issues need to be addressed and urge the city to incorporate our recommendations in the following areas:

**Public Realm Improvements**

Mindful of the congestion in the area's public transit stations and sidewalks, the limited open space in the area, and the incremental 28,000 workers expected under the plan, we find the proposed improvements under the Public Realm Improvement Concept Plan to be fundamentally deficient. MAS is also concerned about the role the Public Realm Improvement Fund Governing Group will play and that Privately Owned Public Space (POPS) have largely been ignored under the plan.

*Public Realm Improvement Concept Plan*

The current plan proposes over 300,000 square feet (sf) of ROW improvements under the Public Realm Improvement Plan, including, but not limited to, pedestrian plazas near GCT (i.e., Pershing Square, Park Ave West, East 43<sup>rd</sup> Street), pedestrian improvements along the Park Avenue median, and the inclusion of shared streets within the district. However, at present, unlike the proposed transit infrastructure improvements, these measures are not codified into the text amendment. Without including these improvements in the zoning text, there is little assurance that they will be implemented.

#### *Public Realm Improvement Fund*

Central to the proposed amendment is the Public Realm Improvement Fund, into which contributions would be made from a portion of each transferred landmark development right or when developments on qualifying sites seek to exceed the proposed maximum floor area ratio. The public realm improvement fund floor price has been set at 20 percent of each TDR sale, or a minimum contribution of \$78.60 per square foot. The floor price will be evaluated by qualified professionals and will be reviewed and adjusted by CPC at least once every three years.

MAS strongly urges the city to work with the Steering Committee to establish firm criteria for a floor price that is sufficiently flexible to adjust to potential fluctuations in the real estate market and ensures the availability of funds for the necessary public realm improvements under the proposal.

#### *Additional Funding Sources*

MAS questions whether the Public Realm Improvement Fund, which draws from contributions from the additional floor area for the reconstruction of overbuilt buildings and a portion of transferred development rights from landmarks, is sufficient to address the transit infrastructure improvements identified by the MTA. MAS suggests exploring additional funding sources beyond the improvement fund, including the MTA capital budget, tax increment financing, PILOT financing (Payment in Lieu of Taxes), equitable road pricing, and Transit Assessment District benefits.

#### *Public Realm Improvement Fund Governing Group*

Under the current proposal, the Public Realm Improvement Fund will be managed by a nine-member governing group, five of whom will be selected by the Mayor. We understand the City is amenable to adding a member from a civic organization, while keeping a majority of mayoral appointees. The group has the responsibility of prioritizing improvements to be funded under the Concept Plan and would address the future public realm needs of the Subdistrict. MAS asks the City to provide the precedent by which the group framework was conceived, particularly with regard to efficacy in executing and allocating funding, which is critical to the success of the proposal.

#### *Privately Owned Public Space (POPS)*

POPS account for 50 percent of the area's approximately 39 acres of public open space. Although they serve as important retreats for area workers and visitors, POPS have not been considered in the current proposal. MAS remains steadfast in our view that POPS are a viable option for increasing and improving open space in the project area. We ask the city to study the following recommendations:

- Reevaluate the 1.0 FAR bonus under current zoning
- Reconsider requiring developers to exhaust all other options for increasing commercial density before the FAR bonus for POPS can be utilized
- Explore offsite bonus opportunities
- Establish guidelines for improving existing and future indoor and outdoor POPS
- Provide incentives for renewing POPS

#### *Additional Public Realm Recommendations*

MAS urges the city to explore mechanism for improving the public realm through temporary and permanent art installations in existing and new public spaces in the district, including POPS.

While we recognize that current proposal relaxes certain stacking rules which will permit non-residential uses such as restaurants and observation decks in new buildings, we also urge the city to explore ways of utilizing floor area on second and third levels of existing and proposed buildings for public space, gardens, and art displays.

### **Sustainability**

One of the city's stated primary goals for the proposal is to incentivize state of the art development and "to facilitate modern and sustainable buildings." Under the current proposal, qualifying sites would be required to either utilize the area's steam network or exceed the Core and Shell 2016 Energy Code Standards by three percent. Seeing that the build year for proposed development under the plan is 2036, MAS questions whether the sustainability and energy efficiency goals of the project go far enough.

As outlined in the Steering Committee recommendations, new developments should achieve LEED Gold™ standard for the core and shell of the buildings. Alternatively, developments should achieve more than three percent energy efficiency—MAS recommends 15 percent—above the City's Energy Conservation Code (NYCECC) standard.

In addition, since the proposal would likely result in wholesale demolition of pre-1961 buildings, we recommend that the city explore sustainable practices, guided by LEED or equivalent standards, regarding the reuse of demolition and construction materials.

### **Promoting Mix of Uses**

MAS recommended a variety of retail uses throughout the 78-block project area. However, the proposal calls for an incremental increase of only 139,000 gross square feet (gsf) of retail space, in comparison to 6.6 million gsf for commercial office space. As such, MAS recommends that the text amendment include provisions for a mix of retail, restaurants, and entertainment venues to increase the vibrancy of the area.

### **Residential Conversion**

Since 1981, the Zoning Resolution has allowed commercial buildings to be converted to residential without regard to generally applicable bulk regulations if certain criteria are met (e.g., built in 1961 or earlier, exceed 12 FAR, and have zero residential floor area). Based on this criteria, over a hundred buildings, representing millions of square feet, would be eligible for residential conversion in the project area (see Figure 1). Because this would be contrary to the stated goals of the proposal, MAS urges the city to explore mechanisms that would restrict residential conversions.

### **Historic Preservation**

Although Landmarks Preservation Commission designated 16 buildings prior to the project's certification for ULURP, eight additional buildings recommended by MAS remain unprotected.

MAS also urges the city to develop bulk controls to protect important view corridors to historic buildings within the rezoning area. As shown in the photosimulations in the Draft Environmental Impact Statement (DEIS) "Chapter 7: Urban Design and Visual Resources", certain proposed new development would result in adverse impacts on many view corridors, particularly those of the Chrysler Building, Chanin Building, and Waldorf Astoria Hotel, despite the conclusions to the contrary in the document.

### **Daylight Evaluation**

MAS believes that the modifications to the daylight evaluation methodology proposed under Section 81-663 of the text amendment that lower the scoring standards for qualifying sites and would allow more encroachment from larger and taller buildings would be highly detrimental to the preservation of light and air on the public realm. The daylight evaluation methodology embedded in the Special Midtown District zoning height and setback regulations in 1982 draws from decades of combined effects of as-of-right building bulk regulations. We find that the current proposal ignores rules that were based on a reliable record of community expectations about the sunlight that reaches our public realm and potential impacts from developments in Midtown to allow taller buildings.<sup>1</sup>

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<sup>1</sup> Michael Kwartler and Raymon Masters, *Daylight as a Zoning Device for Midtown*, (New York City, 1984).

Therefore, MAS concurs with the recommendations in the 2015 East Midtown Steering Committee Report that the existing height and setback regulations should generally remain in place. Furthermore, if a project cannot be completed in conformance with these regulations, a Special Permit should be required.

MAS urges the city work with the Steering Committee to reexamine potential height and setback modifications and study proposed changes to the daylighting methodology.

#### **East Midtown Subdistrict Boundary Recommendation**

Third Avenue is a transition in both land use and between the high-rise business district to the west and the low-scale residential communities of Turtle Bay and Tudor City to the east. MAS has identified 13 properties with less than 50 percent of their lot surface within the proposed East Midtown Subdistrict, eight of which are on the eastern boundary, adjacent to lower density development in Community Board 6 (see Figure 2).

Under the current bulk regulations, these properties hold approximately 214,000 sf of unused development rights. If they remain in the proposed East Midtown Subdistrict, the amount of potential transferable development rights could increase significantly.

In order to protect this important transition area, MAS believes that the rules for the proposed Subdistrict should not apply to these 13 sites, and that the proposed East Midtown Subdistrict boundary and text amendment should be revised to exclude them.

#### **Environmental Review**

Our comments below pertain to key areas in the DEIS that MAS finds deficient and require additional analysis:

- The DEIS does not include a list of projects for the No-Build Development Scenario. This is particularly important for the shadow analysis, since it is not clear which buildings have been included in the baseline condition used for the analysis.
- Shadows – The DEIS evaluated shadow impacts of proposed and projected developments on open space and historic resources in the project area. Although the evaluations show new incremental shadows they do not indicate from which sites they would come from, nor does it include the height of the buildings used in the analysis. Therefore, we expect that the FEIS will be revised to include these two important components of the analysis.

MAS is greatly concerned about the shadow impacts on Greenacre Park, one of only three vest pocket parks in the city. Despite the conclusion in the DEIS that incremental shadows from developments under the proposal would not affect vegetation or the public's enjoyment of the park, MAS believes substantive mitigation measures, including, but not limited to, height and bulk limitations, should be implemented to reduce shadow impacts on Greenacre Park from projected and potential development sites 7, 10, 11, C, D, and J.

In addition, the DEIS identified adverse shadows on St. Bartholomew's Church and Community House and recommended as potential mitigation the installation of artificial lighting on the exterior of the building. MAS questions the validity of this approach and strongly urges that the EIS include an evaluation of potential bulk regulation changes that would reduce shadow impacts on this historic resource, as indicated in Chapter 22: Unavoidable Adverse Impacts.

- Open Space – The DEIS concludes that because the CEQR threshold for evaluating open space impacts has been exceeded based on existing conditions (ratio of daily worker population to available passive open space),

no quantitative analysis would be conducted since the project would not be able to achieve the city's goals of 0.15 acres of passive open space per 1,000 non-residential users.

Although MAS understands that CEQR regulations hold that if thresholds are exceeded under existing conditions, no further quantitative analysis is required, we are duly mindful of the incremental 28,000 new workers anticipated under the proposal and the additional open space these numbers would demand. We argue that this condition further underscores the need for POPS to be explored thoroughly as part of the overall proposal as a way to increase and improve open space in the project area.

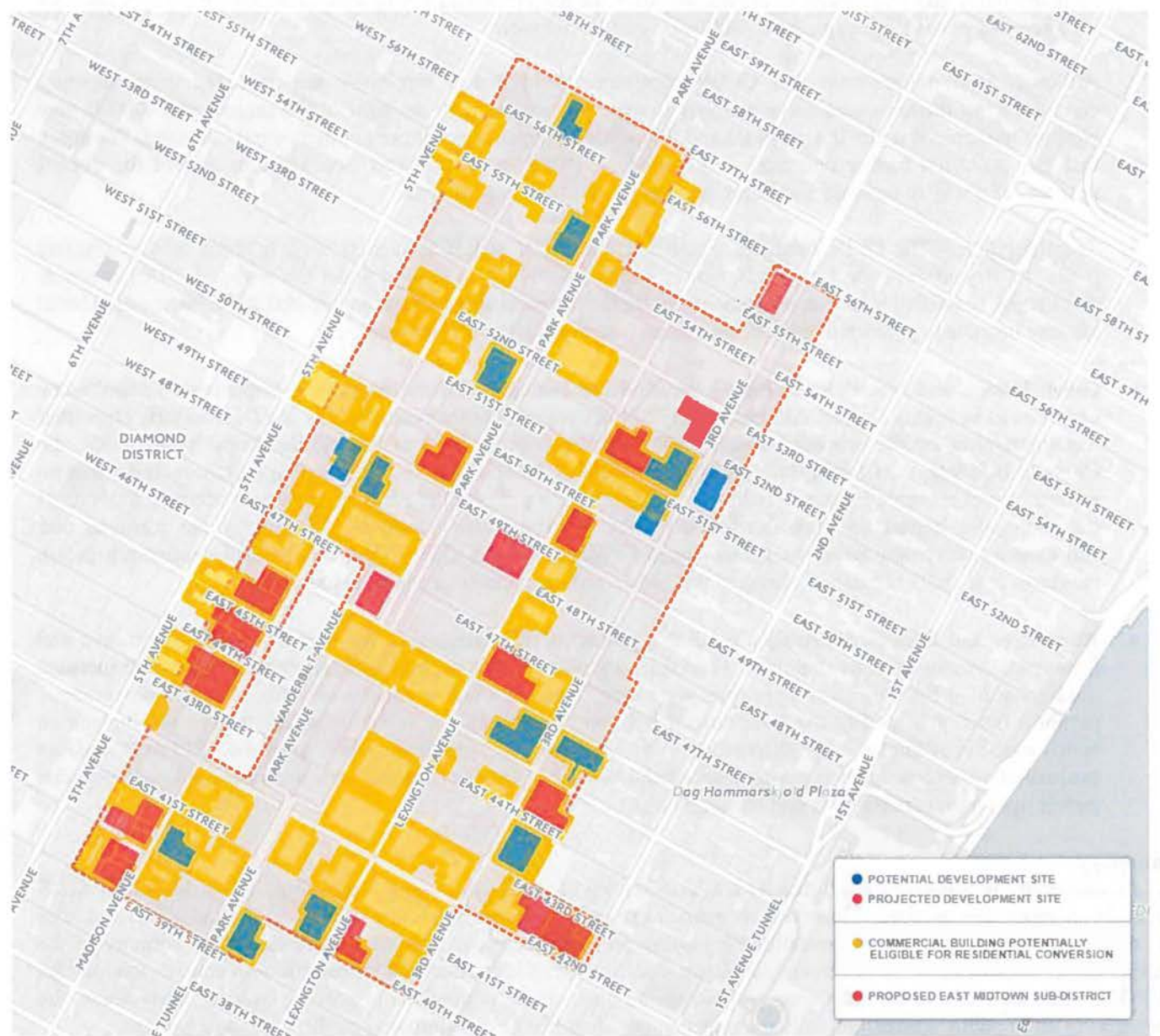
- **Transportation** – The DEIS identifies significant impacts at pedestrian access ways at three subway stations (GCT, 42-Bryant Park and Lex-53rd), two of which would be unmitigated under the proposal. MAS contends that the pre-identified transit improvements under the proposal should have anticipated and addressed potential adverse impacts to pedestrian circulation at transit stations in the project area.
- **Urban Design and Visual Resources** – We find the evaluation of the proposal's impacts on critical view corridors to be highly flawed. Although many of the photosimulations contained in the DEIS clearly show that development under the proposed action would obscure critical views of historic buildings, in particular, the Chrysler Building, the Chanin Building, and the Waldorf Astoria New York Hotel, the DEIS concludes that no adverse visual resource impacts would occur. Therefore, we expect the FEIS to include an accurate analysis of the proposal's impact on view corridors, particularly those that would be affected by the rezoning and subsequent redevelopment of the Pfizer World Headquarters site (235 42<sup>nd</sup> Street) and substantive mitigation measures (e.g., bulk regulation changes) that would reduce impacts on visual resources.
- **Alternative and Conceptual Analyses** – For a project of this magnitude we find the DEIS Alternative and Conceptual Analyses to be deficient. The DEIS discusses which qualifying development sites could increase density by a 3.0 FAR by utilizing special permits to construct a public concourse, make transit improvements, permit a hotel, and modify the Subdistrict's bulk and qualifying site regulations, but it does not include an actual analysis of this or other alternatives to the proposal. At a minimum, we expect the FEIS to include an evaluation of shadow impacts on open space and historic resources from the sites that could utilize the special permit option to increase FAR and building height.

### **Summary**

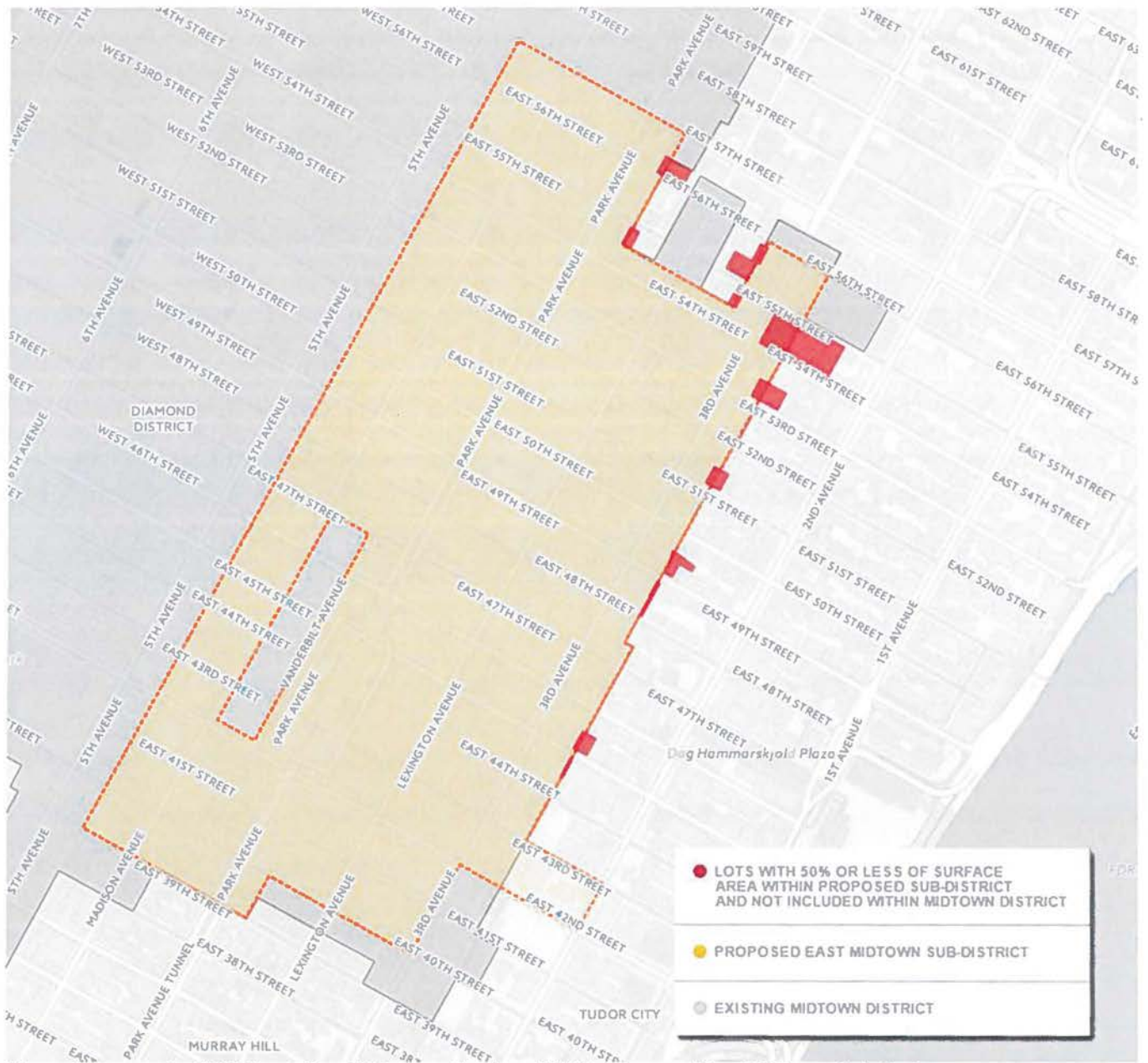
As a member of the Steering Committee with a long history of involvement in the rezoning of East Midtown, MAS generally supports this proposal. However, we remain extremely concerned about a number of critical issues and urge the city to incorporate our recommendations regarding proposed public realm improvements, further scrutiny of the Public Realm Improvement Fund Governing Group, codification of identified public realm improvements, exploration of POPS as a viable option for enhancing and increasing open space, regulations to prevent housing conversions, the inclusion of art in public spaces, and utilizing upper floors of buildings for additional public space and gardens.

We also strongly recommend that the city revise the eastern boundary of the proposed Subdistrict to protect the critical transition area between the business district and smaller scale residential areas. We respectfully ask that the city work with the East Midtown Steering Committee to arrive at a daylighting evaluation methodology that truly protects our public realm from further impacts on light and air.

Thank you for the opportunity to comment on this critical project.



**Figure 1: Buildings eligible for residential conversion in the project area**  
 The list of these properties and additional information can also be seen by visiting our online [CARTO map](#)



**Figure 2: Properties With Less Than 50 Percent Lot Area Within Proposed East Midtown Subdistrict**  
 The list of these properties and additional information can also be seen by visiting our online [CARTO map](#)



# Greater East Madison's Regoning

## CITY PLANNING COMMISSION HEARING - APRIL 26, 2017

One of the reasons given for supporting this proposal is that we cannot compete with other cities around the world for new businesses.. My argument is, do we really need more? do we really need to crowd in more buildings in an already over crowded area? Does Manhattan have to be #1 in everything. At present, Manhattan is the center for finance, fashion, entertainment- theater, movies , , art- galleries and museums, tourism, health- hospitals and research and technology .

Paris is the most visited city in the world. After the mega Tour Montparnasse was erected, there was such an outcry that all future tower construction was situated at La Defense away from the center of the city.

*Other Paris skyscrapers*

Do we really have to replicate the dark and gloomy canyons of Wall St. throughout the city with more banks and Duane Reades anchoring the projects? By constructing more glass behemoths, are we making the city more attractive or are we destroying that which makes the city the destination of so many visitors.

Madison and Lexington Avenues were service streets situated midway between the major avenues -Fifth, Park and Third. - and they were narrower. Do we really need another 6th ave. squeezed in these narrow spaces. Does the Mayor think higher density will attract business from Tokyo and Shanghai? At present, the current infrastructure does not support the traffic that already exists. Larger buildings mean even more people crowding into an already overburdened system First thing first- be concerned with re-building mass transit before adding to the problem

The city received (I believe) 200 million dollars to improve the subway at Grand Central. In return, the developer was allowed to build a 67 story structure. at 42nd St and Vanderbilt Ave . Window dressing may be proposed for the entrance to the station and the entrance to the subway but you cannot widen the platforms. Narrowing the staircases, removing the sheathing around supporting columns may add inches - that may add up to a foot or so- certainly not enough to compensate for the additional usage this building or any other development in the area would require. Are all the new workers in the area going to ride their bicycles to work? I feel we are being scammed and that those who were in a position to allow the

construction of such a tall building were aware of it, too.

What about the lives of the people who live and work here? Aren't their daily experiences important? As it is, they sacrifice a lot. Thirty people, waiting at a bus stop because the service was cut back when the attenuated buses come into service. Subway platforms, dangerously overcrowded with escalators that are invariably out of service. With more people, there will be even greater crowding and we'll need packers who push the passengers on to the trains the way they do in Japan. With super tall buildings going up and casting huge shadows, will we all have to go to Central park to get a little sunlight (but not in the winter months where the towers on 57th St cast shadows up to 72nd St in the park))

Right now, the fastest growing business is technology. It seems they prefer large, horizontal floor space as opposed to high risers which entail getting around by elevators.. Google's recent development on the Westside is a perfect example of adaptive re-use—purchasing an older building and outfitting it for current use.

What are our priorities? Do we have the money to do everything? If we are thinking about the future in terms of attracting more business only, then we are being shortsighted. What are we doing to protect the city against the next Sandy? The airports are all on the water. Manhattan is surrounded by water. With global warming, we know that water levels will rise. We know that Sandy is not an anomaly. Shouldn't we be addressing these issues first? Storm barriers which will cost billions, sidewalks that can absorb water, strengthening the coast, developing marsh lands. Mustn't we look to save the city first?

33,000 school children living in shelters

Churches- reaping millions from the sale of air rights (in the real estate business-but not paying taxes)

Same handful of developers who seem to own the city -changing it forever- is it greed- power or "mine is bigger than yours" being played out at our loss

ELINORFINE@GMAIL.COM

235 E 57<sup>th</sup> St. - 9B  
NYC 10022



April 27, 2017

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BY HAND

Honorable Marisa Lago  
Chair  
New York City Planning Commission  
120 Broadway  
New York, NY 10271

Dear Chair Lago:

This firm represents the Yale Club of New York City (the "Club"), which is located at 50 Vanderbilt Avenue, in connection with the proposed Greater East Midtown Text Amendments (the "Text Amendments").

At the New York City Planning Commission public hearing on April 26, 2017, Dev Gandhi, President of the Club, presented the attached testimony, which is supportive of the Text Amendments but raises serious concerns about the possible implementation of the Department of Transportation's Shared Streets program on Vanderbilt Avenue. When Mr. Gandhi filled out his speaker's card at the hearing, he mistakenly indicated that the Club is opposed to the proposed Text Amendments, rather than in favor. I am writing to request that the record be corrected to reflect the Club's support for the Text Amendments. As set forth in the attached testimony, the Club's opposition is limited to the implementation of the Shared Streets program on Vanderbilt Avenue without careful consideration and stakeholder involvement.

Sincerely,

  
Judith M. Gallent

Enclosure

cc: Edith Hsu-Chen (w/encl.)  
Jackie Harris (w/encl.)

I am Dev Gandhi, President of the Yale Club of New York City, which owns and occupies the building located at 50 Vanderbilt Avenue, between East 44<sup>th</sup> and 45<sup>th</sup> Streets.

The Club is adamantly opposed to the implementation of the Shared Streets Program on Vanderbilt Avenue as proposed by the Department of Transportation in connection with the zoning proposal for Greater East Midtown.

The Club is the largest university club in the world. The 22-story Clubhouse includes 138 guest rooms, three restaurants, athletic facilities, and meeting and banquet rooms that can accommodate up to 350 guests. It employs more than 250 people and on any given day, over 1,000 people come in and out of the Club, including many elderly people and people with disabilities. The Club was designated a New York City Landmark on November 22, 2016.

The East Midtown Proposal provides for a Public Realm Improvement Fund, which would be funded by contributions generated by landmark development rights transfers and would facilitate improvements to the public realm in the area. The Proposal contemplates that the Fund would be administered by a Governing Group, which would adopt and maintain a Concept Plan containing a list of priority improvements. To inform the initial Concept Plan, a suite of conceptual public realm improvements has been prepared by the New York City Department of Transportation. One such improvement identified by DOT, without any consultation with the Club or other stakeholders, is the implementation of its Shared Streets program along Vanderbilt Avenue, which would make pedestrians the primary users of the street, with vehicles allowed as “invited guests” subject to a speed limit of no more than 5 miles per hour.

In a letter to Manhattan Borough President Gale Brewer, dated April 12, 2017, Deputy Mayor Alicia Glen announced the City's commitment to piloting a Shared Street on a street to be determined in the Greater East Midtown district.

While the details of the Shared Streets program are not included in the DEIS or DOT's presentation materials, applying it to Vanderbilt Avenue could essentially landlock the Club by severely limiting or precluding vehicular access to its only public entrance, which is located on Vanderbilt Avenue between 44th and 45th Streets. This could result in unacceptable increased response times for first responders and other emergency vehicles, which require immediate access with as few obstructions as possible. It could also make access to the Club very difficult for the Club's members, many of whom are seniors and people with disabilities.

Moreover, the Shared Streets program is largely untested in New York City, with the exception of one Shared Street in Jamaica, Queens, and entirely untested in Manhattan. The notion of pedestrians and cars sharing a street without curbs seems ill-advised on Vanderbilt Avenue given the traffic associated with Grand Central and businesses on Vanderbilt Avenue itself.

We commend the City Planning Commission, Borough President, Community Boards and our elected officials for their hard work in connection with this thoughtful rezoning. Though the Club largely supports the proposal, it strongly urges the City Planning Commission and the Administration to rethink the implementation of the Shared Streets concept on Vanderbilt Avenue and insure proper vehicular access, safety for pedestrians, and vitality for the Club and other businesses on the block. We look forward to working with you to find a reasonable alternative to this conceptual plan.

**Thank you.**

## TESTIMONY BEFORE NYC PLANNING COMMISSION

Madame Chair and Members of the Commission:

My name is Joseph Ginex and I am the Managing Director of Development for the sponsor that owns 1248 Associates LLC, located at 12-14 East 48<sup>th</sup> Street, within the boundaries of the East Midtown Rezoning Area. We are here today to request that the Commission add an amendment to the proposed text that would deem a property owner's right to proceed with construction of a new hotel vested, if the owner had, by the date of enactment, obtained a complete building permit and commenced construction under that permit.

At 12-14 East 48<sup>th</sup> Street, my company is building a new 32-story hotel that has been in the planning and pre-construction phases of development for over three years. Our company has undertaken obligations to third parties, including our operator, lender and

contractor, all of which predated the certification of the East Midtown text into ULURP. While we have begun site excavation and foundations, we are not confident our foundations will be complete by mid-July, when the East Midtown Rezoning, including the new text requiring the developers of new hotels to obtain special permits, may be enacted.

If the project is halted because the foundation is not complete by that time, we will be forced to file an application at the BSA for an extension of time to complete construction. While we are confident we would prevail in such a proceeding, the time lost –which could be as much as six months --would have extremely harmful consequences, both financially and in terms of our ability to perform our obligations to our operator and lender. Furthermore, we may lose contractors and laborers whose work is stopped by the DOB while we pursue our remedies at the BSA. It would be a difficult transition to remobilize those workers once the BSA case is concluded.



We are advised by counsel that the Commission has, in other instances, approved special vesting rules for cases as to which a new law will make substantial changes. Substantial change is happening here, where a use that has been as-of-right in Midtown Manhattan since 1961, is being made discretionary.

For these reasons, we ask that the Commission amend the proposed text to add a special vesting provision to Article I, Chapter 1 of the Zoning Resolution, vesting the rights of projects for new hotels that had obtained any building permits and commenced construction prior to the enactment date, to continue construction under those permits without seeking a special permit.

Thank you for this opportunity to speak.

**THE NEW YORK  
LANDMARKS  
CONSERVANCY**

April 26, 2017

**STATEMENT OF THE NEW YORK LANDMARKS CONSERVANCY AT A HEARING OF THE NYC CITY PLANNING COMMISSION REGARDING THE PROPOSED REZONING OF GREATER EAST MIDTOWN**

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

We were pleased to be a member of the East Midtown Steering Committee and appreciate that the Department of City Planning incorporated many of the Steering Committee's recommendations into this proposal.

Some four years ago we testified against the previous rezoning plan, which almost entirely ignored the significant architecture in this section of the City. Our main focus then and now is the protection of Midtown East's historic buildings. Through the Steering Committee and inter-agency processes, landmarks have taken a much more central role. The Landmarks Commission designated 12 individual landmarks last year. The current proposal significantly expands the ability of landmarks to transfer their unused development rights.

We are delighted with these 12 landmarks, but there is more to do. Our priority list for designation includes sites such as the Hotel Intercontinental and Postum Building, which are eligible for listing on the National Register of Historic Places. They are now labeled as projected development sites. We urge the LPC to bring them to a public hearing.

Regarding the landmark TDR program, we're pleased to see that "landlocked" landmarks will have the opportunity to sell their development rights across the rezoning area. As you know, the original intent of the 74-79 transfer provision in the Zoning Resolution was to provide building owners significant relief from the cost of maintaining landmark buildings and to assist in their overall preservation. The proposed 20% assessment on transfers is at the low end of the range that the Steering Committee recommended, and should ensure that this intent can be realized.

We oppose the floor price, which would disadvantage landmarks. The market is unpredictable and the three- to five-year schedule of evaluation is insufficient; as we've seen, a lot can change in a few years. With the floor price, the City will be creating a set stream of revenue for itself, while the landmark owners have no such guarantee. It's not necessary and it's not fair.

Once the assessment is collected, the proposal should provide better guidance is how it is to be used, to ensure that it truly benefits the Midtown East community. A list of non-transit public realm improvements should be memorialized within the zoning text; and it should be clear the improvements go beyond standard upgrades, such as left turn lanes, that DOT typically funds in other neighborhoods across the City. The list of MTA improvements is extensive, and as two-thirds of them are outside of the rezoning area, one could conclude that the MTA could add to list indefinitely, using all of the funds before any above ground work is undertaken.

This plan will bring substantial new development to Midtown East. It has been successful in creating certainty for developers, and has surpassed its predecessor in what it gives the public, but that job is not complete. Thank you for the opportunity to express The Landmarks Conservancy's views.



Statement of Michael Gruen  
To City Planning Commission  
April 26, 2017

Greater East Midtown, C170187ZMM, N170186ZRM, N170186(A)ZRM

When East Midtown zoning was last under consideration in 2013, the City Club urged that the proposal then on the table was unconstitutional because it was built on the sale of zoning rights.

This time around, the Planning Department has clearly taken our warning into account. But it has not cured the problem.

The applicable rule has been stated by the Supreme Court in a series of cases: any governmental demand that an owner pay, or otherwise provide a quid pro quo, for a land use permit is invalid unless it meets two specifications – “nexus” and “rough proportionality.”<sup>1</sup> These cannot be evaded by characterizing the owner’s acquiescence as “voluntary.”<sup>2</sup>

“Nexus” refers to the relationship between between the quid and the quo. There must be some harm that that the proposed owner action would impose on the public; and what government “exacts” for the permit must directly alleviate that harm. For example, in principle, zoning may allow for extra FAR if the owner provides a plaza where the additional worker population of an office building can congregate for lunch instead of burdening the sidewalks.

Second, the quid must be roughly proportional to the quo. Government runs into trouble if it demands that one owner create a plaza enormous enough not only to ameliorate the burden created by extra FAR in his own building, but also to ease existing overcrowding resulting from nearby buildings.

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<sup>1</sup> Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994).

<sup>2</sup> Koontz v. St. Johns River Water Management District, 133 S. Ct. 2586 (2013).

I'll address only a couple of the many choices the rezoning proposal offers to potential buyers of zoning rights, some of them quite bizarre like offering extra FAR to an owner at 54<sup>th</sup> and Lexington if he will improve a subway stop well over a mile away at Bryant Park.

One provision allows an owner to completely replace his non-conforming building if he pays a fee for the FAR exceeding the current base limit. Current law allows him to do that anyway, and without any governmental charge, so long as he retains 25% of the original structure. Either way, the end result is exactly the same in terms of total amount of FAR and resultant burden on surrounding public realm. The owner does no harm. Charging him a fee may serve some useful purpose, but not one that has a nexus to permitting him to rebuild.

A second provision is much the same. Under current law, the owner of a landmark may use or sell his transferable development rights by merging zoning lots or by selling the TDRs to neighboring owners. The new zoning would offer him the opportunity to sell the TDRs to a more distant lot, but he or the buyer would have to pay for that privilege. What is the difference between the existing and prospective arrangements in terms of burden being imposed on the public? None. It's the same amount of FAR either way. It will be used to add employees and customers to the public traffic either way. The only difference is that government has gained leverage to charge because the buyer may be a few feet farther away from the landmark.

These examples appear to be illegal on their face. There is simply no "nexus." We expect to file a memorandum with the Commission showing that most, if not all, of the other options this plan offers are also illegal.

The problem here is more than illegality. It is that the DCP has taken on the role of the Department of Finance. Instead of zoning to carry out legitimate land use objectives, it has compromised its own professional principles and its credibility by turning zoning into a fund-raising mechanism. To maintain its own well-earned stature, the Commission should reject that inappropriate role.



**HERRICK**

**Mitchell A. Korbey**  
Partner  
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May 8, 2017

Hon. Marisa Lago  
Chair  
New York City Planning Commission  
And Members of the New York City Planning Commission  
120 Broadway  
New York, NY 10271

**Re: Public Hearing for East Midtown Rezoning; ULURP C170187 ZMM; N 170186 ZRM  
("East Midtown Rezoning")**

Dear Chair Lago and Commissioners:

As representative for the ownership of 250 Park Avenue, I am herewith providing written testimony re: the East Midtown Rezoning.

As you may know, we have engaged in a lengthy and productive dialogue with the staff of the Department of City Planning concerning several critical issues that significantly affect the potential re-development of 250 Park Avenue. 250 Park is located at a vital "pivot point" and transition from Vanderbilt Avenue to Park Avenue, presenting a unique opportunity to create a design which provides a ground floor visual and physical link between these critical corridors. The site and existing building itself has been called the "poster child" for the East Midtown rezoning initiative: its low floor heights, dense column spacing, awkward core location and configuration combine to create inefficient layouts and difficult, dark interior spaces. It is precisely the nature and type of office building that is poised to benefit from the East Midtown incentives to redevelopment. Our concept plan for the site, prepared by FXFOWLE Architects (see attached), provides for significant ground floor transparency and a pedestrian and visual connection from Vanderbilt Avenue to Park Avenue on the south-facing 46<sup>th</sup> Street side of the site. This plan has been viewed favorably by the Manhattan Borough President and Council Member Garodnick - who have both recognized the ground floor plan and amenities as particularly advantageous. The design scheme's open plaza and ground floor porosity approach has been embraced by the larger community as well.

Unfortunately, certain technical aspects of the rezoning, as proposed, create challenges for our redevelopment approach. We believe that with some minor changes that these imperfections can be eliminated or mitigated, allowing an as-of-right 27 FAR building of the design we envision. Among our most important concerns with the current zoning text are the issues outlined detailed below. Additional issues are noted in the attached illustrations and have been discussed with the Manhattan planning staff.

**Street Wall Continuity (see page 5 of attached)**

As per ZR 81-671, Street Wall Continuity is required within 10' from the street line. This requirement greatly affects our concept plan because it would prohibit the proposed public open space at ground level. We urge that new provisions to this section be included to allow for more openness for the public realm at street level.

May 8, 2017  
Page 2

**Curb Cuts and Loading Berths (see page 7)**

As per ZR 81-44, curb cuts are not permitted on all avenues in Midtown - unless the DOB Commissioner approves or the City Planning Commission authorizes. And, as per ZR 81-675, curb cuts are not allowed on E. 47<sup>th</sup> Street between Park Avenue and Madison Avenue. Taken together with loading berth requirements that mandate head-in and head-out truck movements, these limitations force a loading berth to be placed only on E. 46<sup>th</sup> Street - in lieu of a south-facing open space. This would massively disrupt the ground floor area and any open space connections.

**Lobby Location and Retail Frontage (see pages 8 and 9)**

As per 81-674 (b), a lobby must have entrances on two street frontages and as per 81-674 (c), a minimum of 50% of a building's ground floor level street wall frontage along a narrow street is limited to retail use. These rules significantly constrain 250 Park's building layout and planning options - given that the building has 125' frontage on two narrow streets. Flexibility is needed with as-of-right exceptions for sites with frontage less than 150' on a narrow street and when a building fronts on two narrow streets.

We would greatly appreciate your consideration of these issues and hope that you will make appropriate adjustments so that our concept plan for an as-of-right 27 FAR development with ground floor transparency, retail and public open space amenities can be fully realized.

Respectfully submitted,



Mitchell A. Korbey



# 250 PARK AVENUE



FX FOWLE

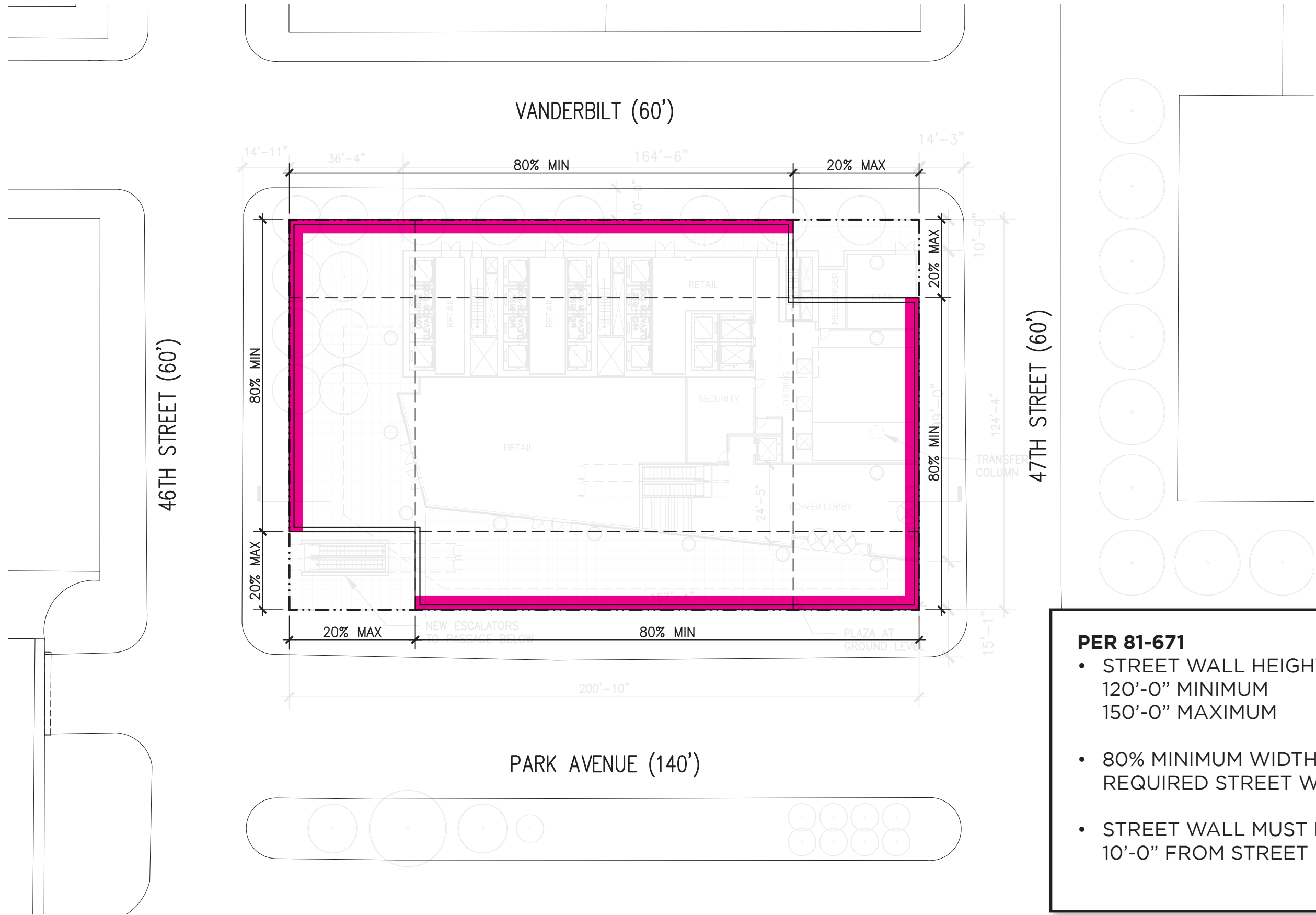
# SUMMARY OF ISSUES

TOPIC	DIAGRAM LOCATION	PROVISIONS	SUMMARY
Daylight Evaluation Method	NA	<p><b>Per 81-663 (4):</b> The provisions of section <b>81-274 (i)</b> are modified to require an overall passing score of &gt;66%.</p> <p>For sites with existing buildings with non-complying floor area to be reconstructed pursuant to the provisions of section <b>81-643</b>, the overall passing score of the existing building may be used as the passing score baseline for the new proposed development.</p>	<ul style="list-style-type: none"> <li>• <i>Add provisions to reduce individual street frontage scores to &gt;60% while maintaining an overall score of &gt;66%, and increase the available daylight below the 70 degree line from 0.3 to 1.0 to encourage more openness for the public realm at street level.</i></li> <li>• <i>Confirm that the existing building's score can be used as the passing score if the new development's floor area exceeds the non-complying floor area of the existing building.</i></li> </ul>
Street Wall Continuity	Pg. 5	<p><b>Per 81-671:</b> Street Wall continuity is required within 10' from the street line with a minimum height of 120', maximum height of 150', and a minimum 80% length of the front lot line.</p>	<ul style="list-style-type: none"> <li>• <i>This requirement greatly affects the previous design which provided a large public open space.</i></li> <li>• <i>Add provisions to relax Street Wall Continuity requirements to encourage more openness for the public realm at street level.</i></li> </ul>
Sidewalk Widening	Pg. 6	<p><b>81-676</b> Requires pedestrian circulation requirements as outlined in 81-45, but also limits sidewalk widenings in section <b>81-672</b>.</p>	<ul style="list-style-type: none"> <li>• <i>Confirm that providing a 10 foot wide sidewalk widening along the entire length of Park Avenue would fully satisfy the pedestrian circulation requirement.</i></li> </ul>
Curb Cuts & Loading Berths	Pg. 7	<p><b>Per 81-44:</b> Curb cuts or loading berths are not permitted along all avenues in Midtown. Unless (a) the Commissioner of Buildings approves; or (b) the City Planning Commission authorizes.</p> <p><b>Per 81-675:</b> Curb cuts are not permitted on 47th Street between Park and Madison Ave. Loading Berth Requirements for through lots, the required loading berth shall be arranged as to permit head in-head out truck movements to and from the zoning lot.</p>	<ul style="list-style-type: none"> <li>• <i>Because of the curb cut restrictions, loading berths are forced to be on 46th Street. Head in-head out truck movements are infeasible.</i></li> <li>• <i>Add provisions for commissioner of buildings to allow a curb cut on 47th and to waive head in-head out truck movements for the loading berths due to site constraints.</i></li> </ul>
Lobby Location & Retail Street Frontage	Pg. 8-9	<p><b>Per 81-674 (b):</b> Lobby is required to have entrances on two street frontages.</p> <p><b>Per 81-674 (c):</b> A minimum of 50% of a building's ground floor level street wall frontage along a <i>Narrow Street</i> shall be limited to retail, personal service or amusement uses.</p>	<ul style="list-style-type: none"> <li>• <i>Provide flexibility and as of right framework exceptions to the ground floor use provisions outlined in 81-674 for sites with frontage of less than 150' on a narrow street, and when a building fronts on two narrow streets. Because 250 Park has a reduced street frontage of about 125' along two narrow streets, the ground floor use provisions outlined in 81-674 put significant constraints on building layout/ planning options.</i></li> </ul>



## **GROUND FLOOR DISCUSSION**



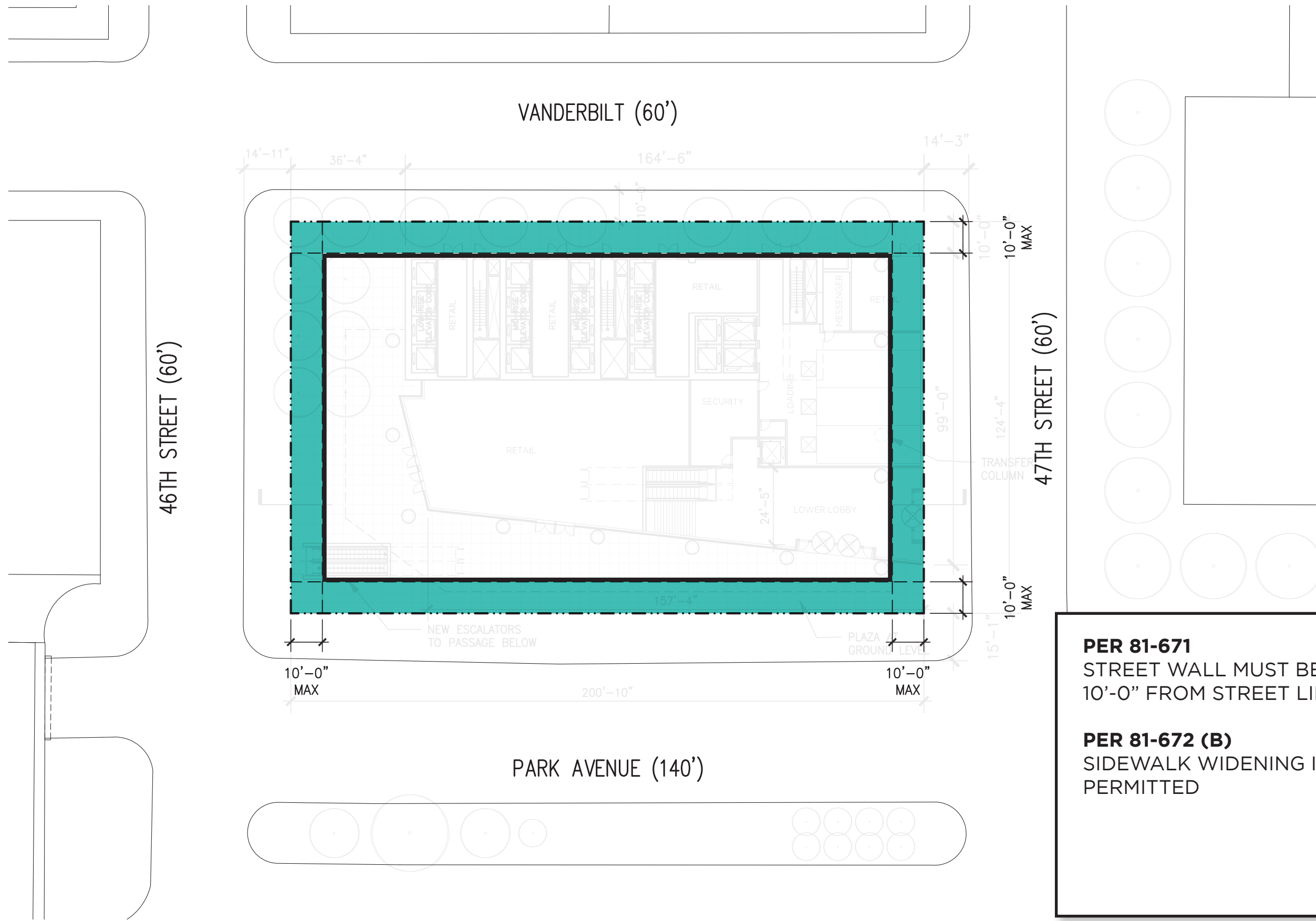


**PER 81-671**

- STREET WALL HEIGHT:  
120'-0" MINIMUM  
150'-0" MAXIMUM
- 80% MINIMUM WIDTH OF  
REQUIRED STREET WALL
- STREET WALL MUST BE WITHIN  
10'-0" FROM STREET LINE

**STREET WALL CONTINUITY LIMITATIONS**

SCALE 1/32" = 1'  
24 APRIL 2017

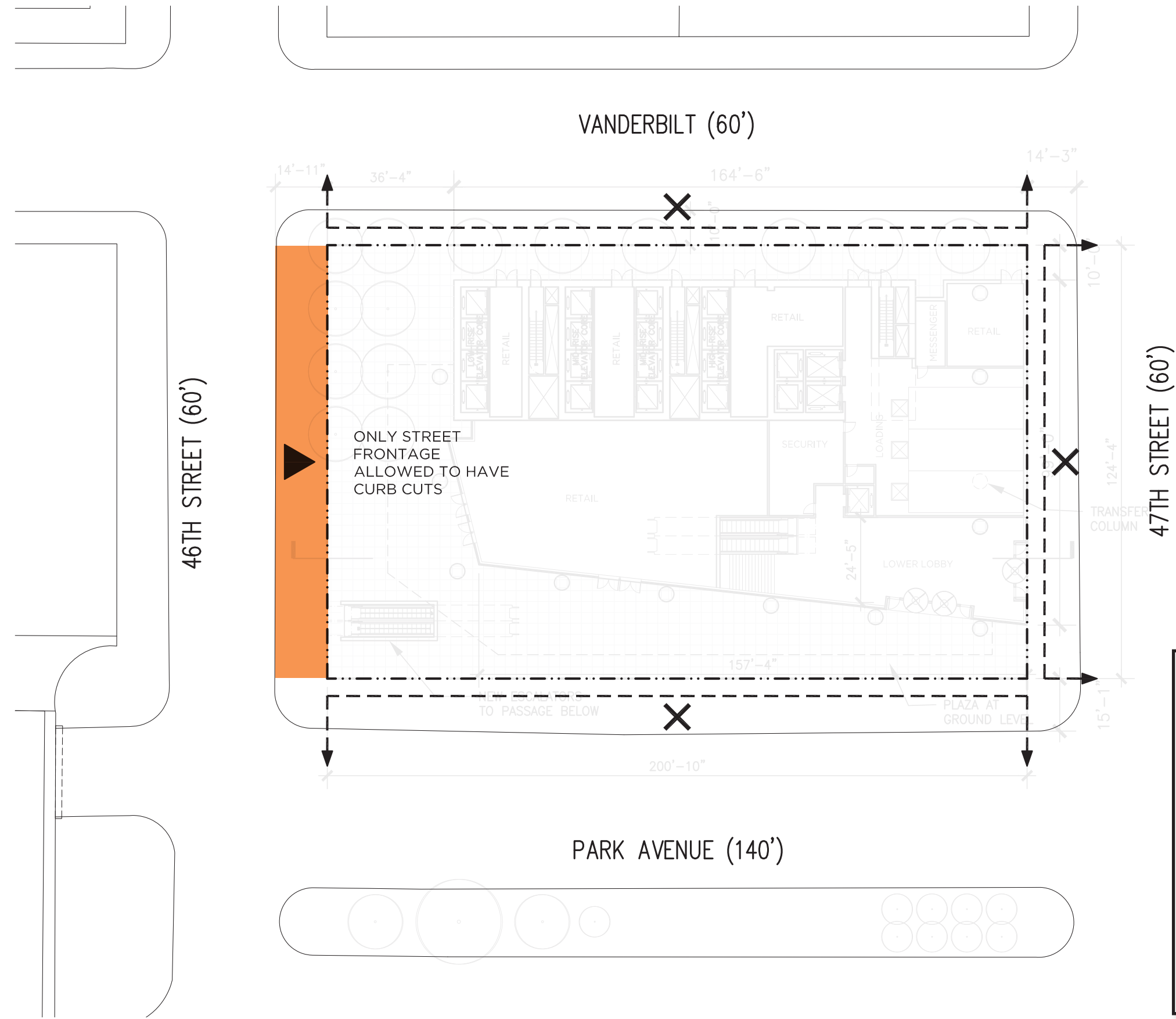


**PER 81-671**  
STREET WALL MUST BE WITHIN  
10'-0" FROM STREET LINE

**PER 81-672 (B)**  
SIDEWALK WIDENING IS  
PERMITTED

**SIDEWALK WIDENING / STREET WALL CONTINUITY LIMITATIONS**

SCALE 1/32" = 1'  
24 APRIL 2017



**PER 81-44**  
 NO CURB CUTS ALLOWED ALONG AVENUES UNLESS:

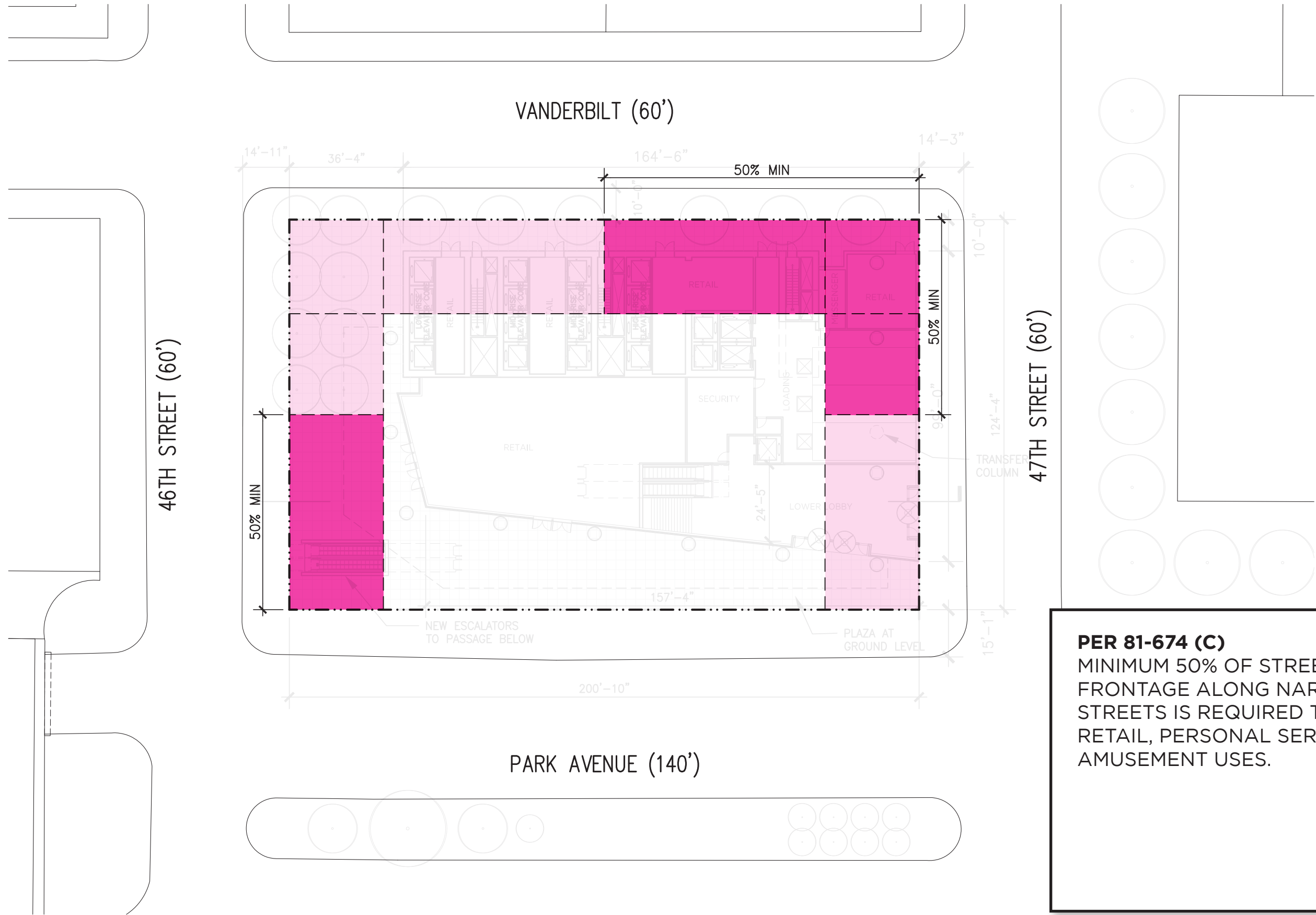
- (A) COMMISSIONER OF BUILDINGS APPROVES
- (B) CITY PLANNING COMMISSION AUTHORIZES

**PER 81-675 (B)**  
 NO CURB CUTS ALLOWED ON 47TH STREET BETWEEN PARK AND MADISON AVENUES

**LOADING CURB CUT LIMITATIONS**

SCALE 1/32" = 1'  
 24 APRIL 2017





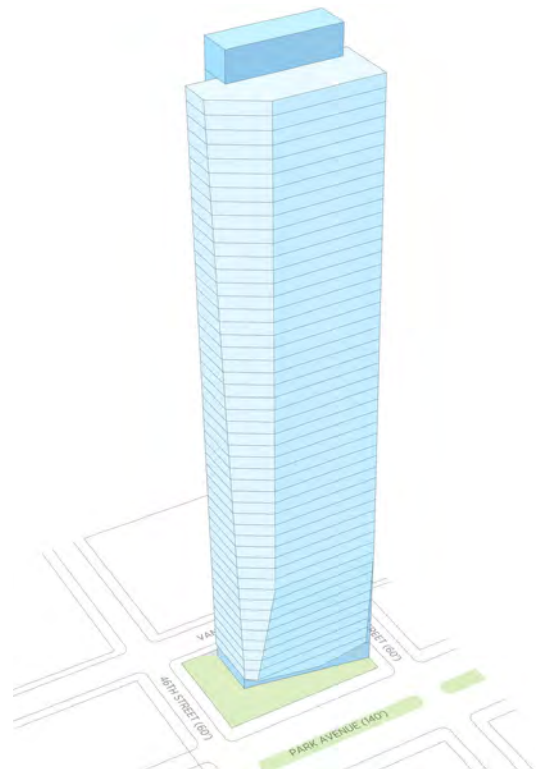
**PER 81-674 (C)**  
 MINIMUM 50% OF STREET WALL FRONTAGE ALONG NARROW STREETS IS REQUIRED TO BE RETAIL, PERSONAL SERVICE, OR AMUSEMENT USES.

**RETAIL STREET FRONTAGE LIMITATIONS**

SCALE 1/32" = 1'  
 24 APRIL 2017

# MASSING UPDATES





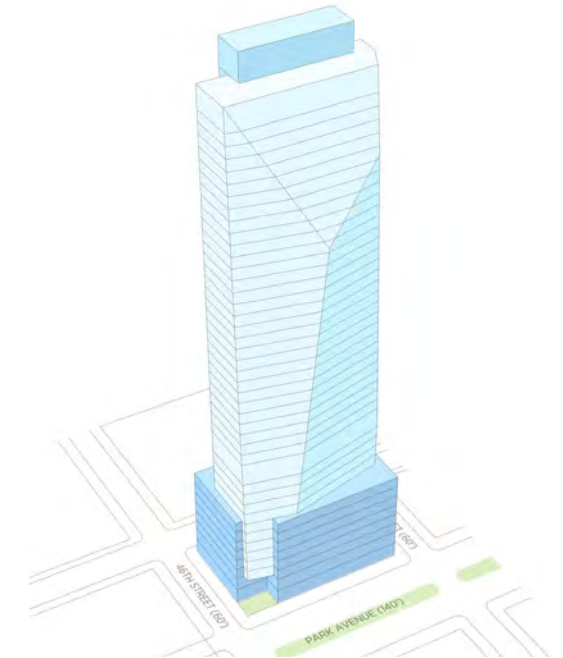
**OPT. A**

Preferred Design



**OPT. B**

Street Wall (Compliance)\*



**OPT. C**

Street Wall (Relaxed)\*

**Option**

**Typical Floor-To-Floor**

**Public Open Space**

**Street Wall Continuity**

**Daylight Evaluation Compliance**

14'-3"

Yes

Does Not Comply

Complies, but does not meet Street Wall Continuity zoning regulations

14'-0"

No

Complies

Complies

\* Ground Floor to be developed per Requirements For Pedestrian Circulation Space

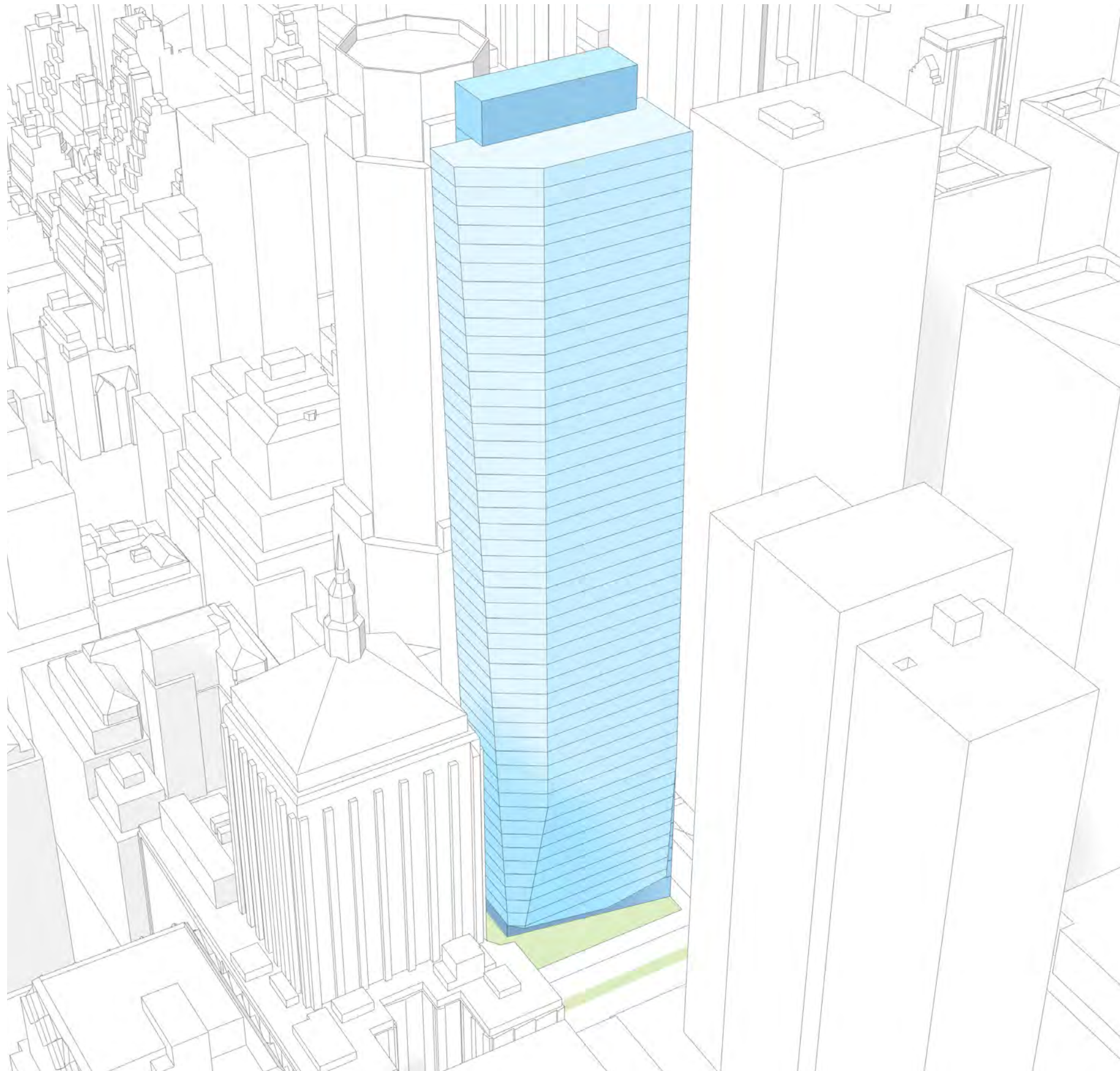
14'-3"

No

Complies

Complies, by using a comparison of existing building daylight score as a baseline

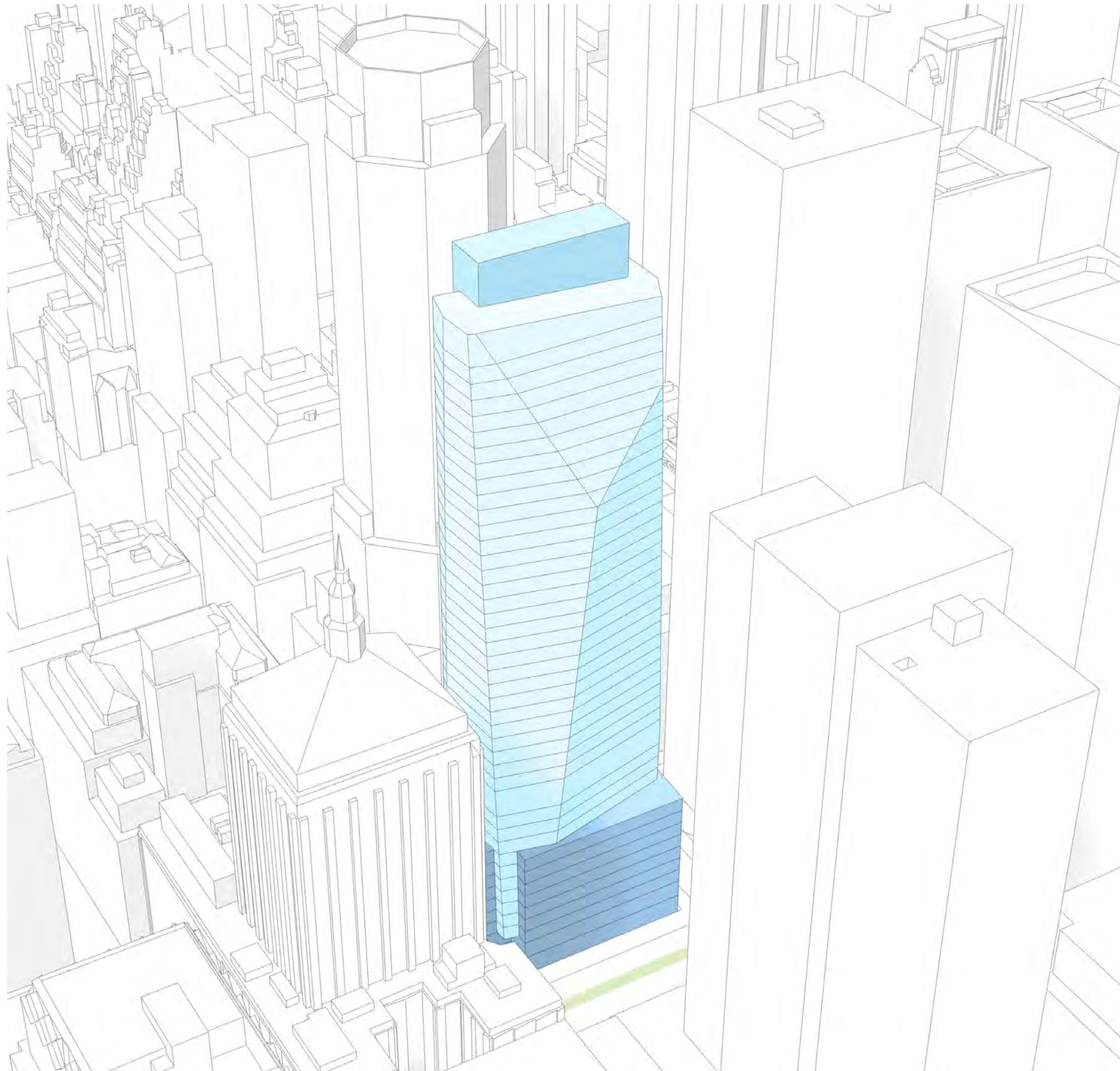
\* Ground Floor to be developed per Requirements For Pedestrian Circulation Space



**BUILDING MASSING - OPT. A - PREFERRED DESIGN**

OPT. A - PREFERRED DESIGN			Total Area		RENTABLE				
Floor	Height	Elevation	GSF	ZSF(1)	REBNY DEDUCT.	REBNY USABLE	RENTABLE 27%	RETAIL	
		742.75							
	BLKHD	35.00	707.75						
	46	14.25	693.50	14,223	13,370	1,395	12,828	17,573	
	45	14.25	679.25	14,305	13,447	1,395	12,910	17,685	
	44	14.25	665.00	14,386	13,523	1,395	12,991	17,797	
	43	14.25	650.75	14,468	13,600	1,395	13,073	17,908	
	42	14.25	636.50	14,548	13,676	1,395	13,153	18,018	
	41	14.25	622.25	14,629	13,751	1,395	13,234	18,129	
	40	14.25	608.00	14,709	13,827	1,395	13,314	18,238	
	39	14.25	593.75	14,789	13,902	1,395	13,394	18,348	
	38	14.25	579.50	14,868	13,976	1,395	13,473	18,457	
	37	14.25	565.25	14,947	14,051	1,395	13,552	18,565	
	36	14.25	551.00	15,026	14,125	1,395	13,631	18,673	
	35 MECH	28.50	536.75	15,183	0	0	0	-	
	34	14.25	508.25	15,260	14,345	2,000	13,260	18,165	
	33	14.25	494.00	15,338	14,418	2,000	13,338	18,271	
	32	14.25	479.75	15,415	14,490	2,000	13,415	18,377	
	31	14.25	465.50	15,492	14,562	2,000	13,492	18,482	
	30	14.25	451.25	15,568	14,634	2,000	13,568	18,586	
	29	14.25	437.00	15,644	14,705	2,000	13,644	18,690	
	28	14.25	422.75	15,720	14,776	2,000	13,720	18,794	
	27	14.25	408.50	15,795	14,847	2,000	13,795	18,897	
	26	14.25	394.25	15,870	14,918	2,000	13,870	19,000	
	25	14.25	380.00	15,945	14,988	2,000	13,945	19,102	
	24	14.25	365.75	16,019	15,058	2,000	14,019	19,204	
	23	14.25	351.50	16,093	15,127	2,000	14,093	19,305	
	22	14.25	337.25	16,167	15,197	2,000	14,167	19,406	
	21	14.25	323.00	16,240	15,265	2,000	14,240	19,507	
	20	14.25	308.75	16,313	15,334	2,000	14,313	19,607	
	19	14.25	294.50	16,385	15,402	2,000	14,385	19,706	
	18	14.25	280.25	16,458	15,470	2,000	14,458	19,805	
	17	14.25	266.00	16,530	15,538	2,000	14,530	19,903	
	16	14.25	251.75	16,601	15,605	2,000	14,601	20,001	
	15	14.25	237.50	16,672	15,672	2,000	14,672	20,099	
	14	14.25	223.25	16,743	15,739	2,000	14,743	20,196	
	13 MECH	28.50	194.75	16,814	0	0	0	-	
	12	14.25	180.50	16,815	15,806	2,000	14,815	20,295	
	11	14.25	166.25	16,748	15,743	2,345	14,403	19,730	
	10	14.25	152.00	16,679	15,678	2,345	14,334	19,636	
	9	14.25	137.75	18,103	17,017	2,345	15,758	21,586	
	8	14.25	123.50	18,030	16,948	2,345	15,685	21,486	
	7	14.25	109.25	17,955	16,878	2,345	15,610	21,384	
	6	14.25	95.00	17,879	16,807	2,345	15,534	21,280	
	5	14.25	80.75	17,803	16,735	2,345	15,458	21,175	
	4	14.25	66.50	17,725	16,662	2,345	15,380	21,069	
	3	14.25	52.25	17,646	16,588	2,345	15,301	20,961	
	2	14.25	38.00	17,567	16,513	2,345	15,222	20,852	
	SKY LOBBY	18	20.00	12,387	11,644	-	-	-	
	1	20	0.00	14,692	13,811	-	-	-	
	ABOVE GRADE TOTAL			749,192	674,164	82,795	607,321	831,946	5,965
	CELLAR								
	TOTAL			749,192	674,164	82,795	607,321	831,946	5,965

LOT SIZE	24,969			<b>TOTAL RENTABLE</b>	<b>837,911</b>
TARGET FAR	27	674,163			

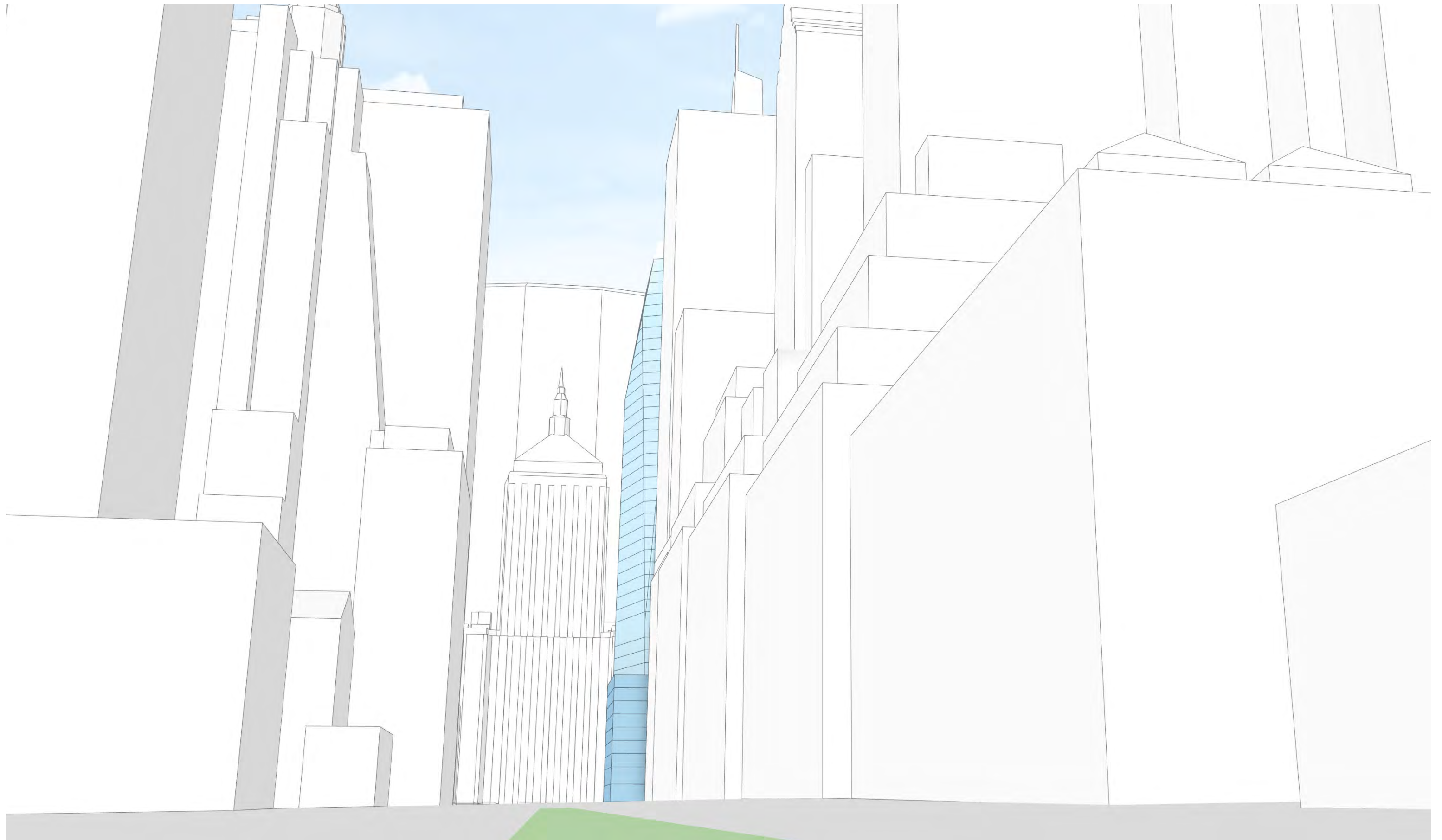


Opt. B - STREET WALL (COMPLIANCE)			Total Area		RENTABLE			
Floor	Height	Elevation	GSF	ZSF(1)	REB NY DEDUCT.	REB NY USABLE	RENTABLE 27%	RETAIL
		675.00						
	BLKHD	35.00	640.00					
42	MECH	28.00	612.00	14,066	0	0	0	-
41		14.00	598.00	14,393	13,530	1,395	12,998	17,806
40		14.00	584.00	14,705	13,823	1,395	13,310	18,233
39		14.00	570.00	15,002	14,102	1,395	13,607	18,640
38		14.00	556.00	15,284	14,367	1,395	13,889	19,026
37		14.00	542.00	15,536	14,603	1,395	14,141	19,371
36		14.00	528.00	15,744	14,799	1,395	14,349	19,656
35		14.00	514.00	15,909	14,954	1,395	14,514	19,882
34		14.00	500.00	16,031	15,069	2,000	14,031	19,220
33		14.00	486.00	16,109	15,143	2,000	14,109	19,328
32		14.00	472.00	16,144	15,176	2,000	14,144	19,376
31		14.00	458.00	16,152	15,183	2,000	14,152	19,387
30		14.00	444.00	16,157	15,188	2,000	14,157	19,394
29		14.00	430.00	16,160	15,190	2,000	14,160	19,397
28		14.00	416.00	16,160	15,191	2,000	14,160	19,398
27		14.00	402.00	16,158	15,188	2,000	14,158	19,394
26		14.00	388.00	16,153	15,184	2,000	14,153	19,388
25		14.00	374.00	16,146	15,177	2,000	14,146	19,378
24		14.00	360.00	16,136	15,168	2,000	14,136	19,365
23		14.00	346.00	16,124	15,157	2,000	14,124	19,348
22		14.00	332.00	16,109	15,143	2,000	14,109	19,328
21		14.00	318.00	16,092	15,127	2,000	14,092	19,304
20		14.00	304.00	16,073	15,108	2,000	14,073	19,278
19		14.00	290.00	16,051	15,088	2,000	14,051	19,247
18		14.00	276.00	16,026	15,064	2,000	14,026	19,214
17		14.00	262.00	15,999	15,039	2,000	13,999	19,177
16		14.00	248.00	15,970	15,011	2,000	13,970	19,136
15		14.00	234.00	15,938	14,981	2,000	13,938	19,093
14		14.00	220.00	15,903	14,949	2,000	13,903	19,045
13	MECH	28.00	192.00	15,866	0	0	0	-
12		14.00	178.00	15,786	14,839	2,000	13,786	18,885
11		14.00	164.00	15,743	14,798	2,345	13,398	18,353
10		14.00	150.00	15,699	14,757	2,345	13,354	18,293
9		14.00	136.00	15,653	14,714	2,345	13,308	18,230
8		14.00	122.00	23,621	22,204	2,345	21,276	29,145
7		14.00	108.00	23,624	22,207	2,345	21,279	29,149
6		14.00	94.00	23,627	22,209	2,345	21,282	29,153
5		14.00	80.00	23,630	22,212	2,345	21,285	29,157
4		14.00	66.00	23,632	22,214	2,345	21,287	29,160
3		14.00	52.00	23,634	22,216	2,345	21,289	29,163
2		14.00	38.00	23,636	22,218	2,345	21,291	29,166
	SKY LOBBY	18	20.00	21,083	19,818	-	-	-
1		20	0.00	23,460	22,053	-	-	5,965
ABOVE GRADE TOTAL			747,124	674,161	77,215	595,434	815,662	5,965
CELLAR								
<b>TOTAL</b>			<b>747,124</b>	<b>674,161</b>	<b>77,215</b>	<b>595,434</b>	<b>815,662</b>	<b>5,965</b>

LOT SIZE	24,969		<b>TOTAL RENTABLE</b>	<b>821,627</b>
TARGET FAR	27	674,163		

**BUILDING MASSING - OPT. B - STREET WALL (COMPLIANCE)**

24 APRIL 2017



**OPT. B - STREET WALL (COMPLIANCE) - VIEW FROM PARK AVE**

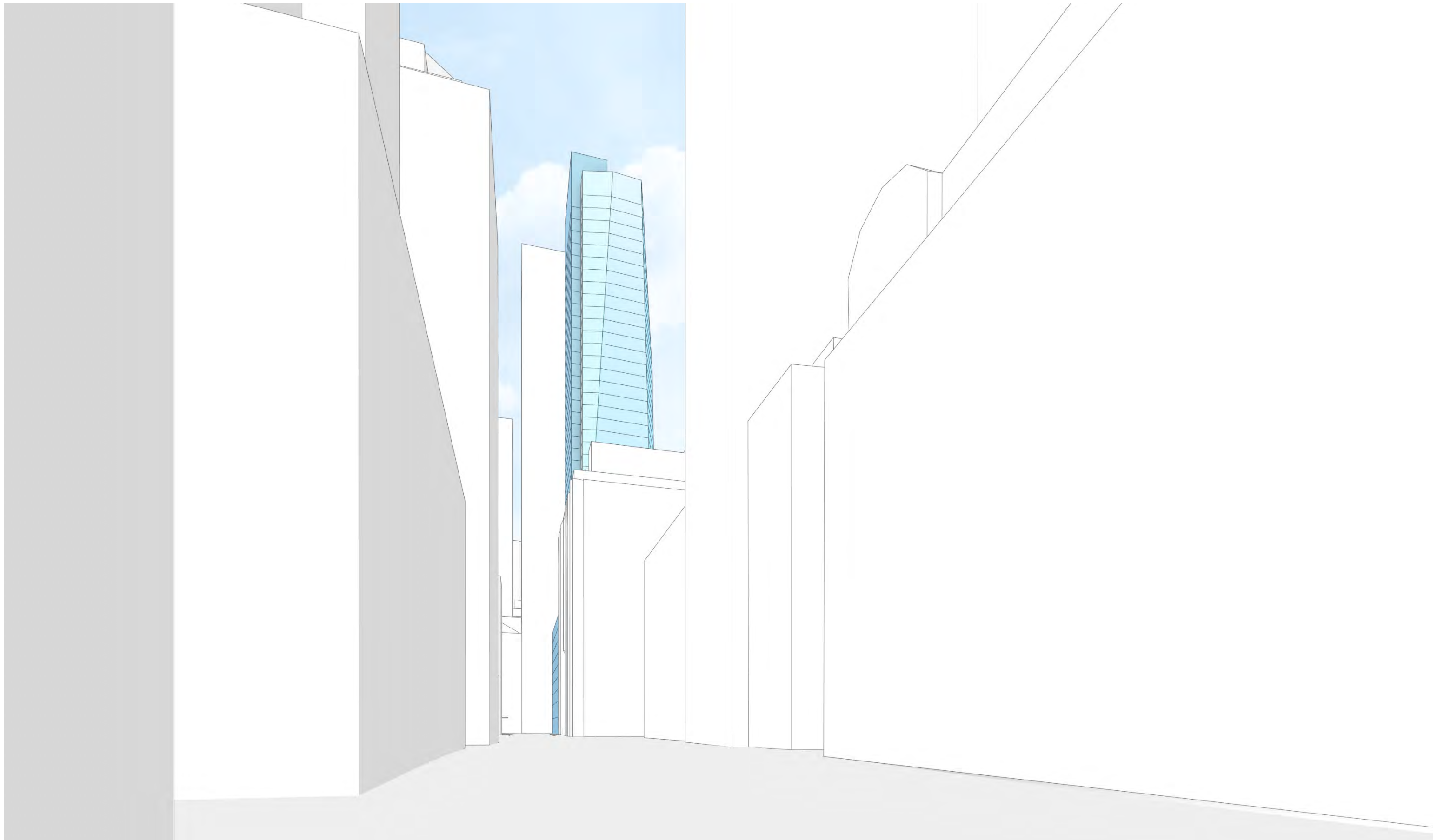
24 APRIL 2017

250 PARK AVENUE

16025.L00

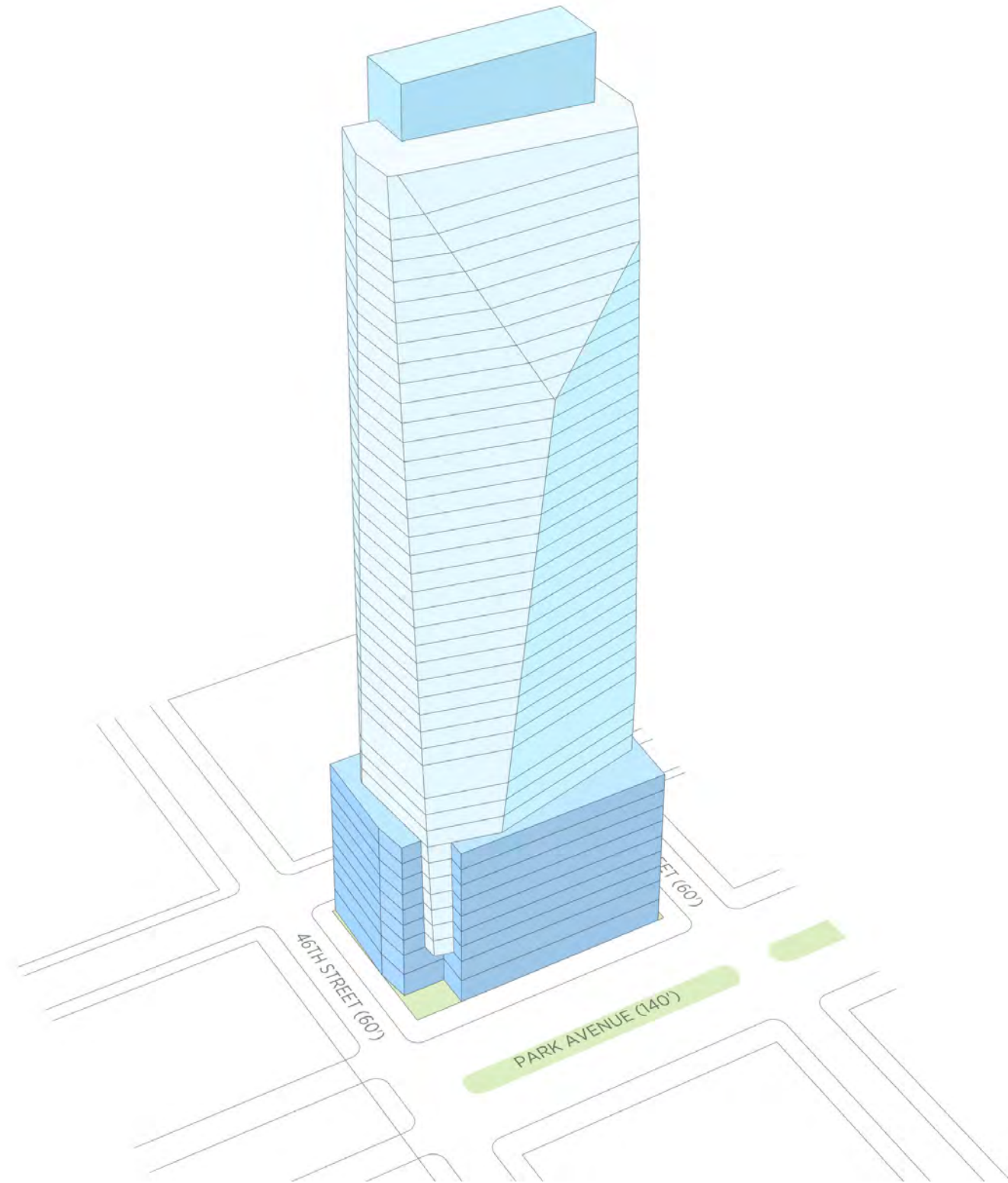


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**OPT. B - STREET WALL (COMPLIANCE) - VIEW FROM VANDERBILT AVE**

24 APRIL 2017



**81-274 CALCULATION OF DAYLIGHT SCORE**

RELAXED

USING 140' CHART FOR PARK AVE  
 No Profile Penalty  
 150' rule in effect  
 60' for Vanderbilt in effect 15' from prop line

East 46th Street (60'W)	Lot line length =	142.33
VP 1	62.10%	
VP 2	74.24%	
Average	<b>68.17% PASS as better than existing &amp; &gt;66%</b>	

Park Avenue (140'W)	Lot line length =	200.83
VP 3	65.94%	
VP 4	67.60%	
Average	<b>66.77% PASS as better than existing &amp; &gt;66%</b>	

East 47st Street (60'W)	Lot line length =	142.33
VP 5	75.45%	
VP 6	58.21%	
Average	<b>66.83% Pass as better than Existing &amp; &gt; 66%</b>	

Vanderbilt (60'W)	Lot line length =	200.83
VP 7	100.00% [101.50%]	
VP 8	100.00% [101.39%]	
Average	<b>100.00% PASS Better than existing &amp; &gt; 66%</b>	

**Overall Score** **76.80%** **PASS as better than existing and over 66%**

<b>Existing (Relaxed)</b>	
VP 1	49.77%
VP 2	51.96%
Average	<b>50.87%</b> target

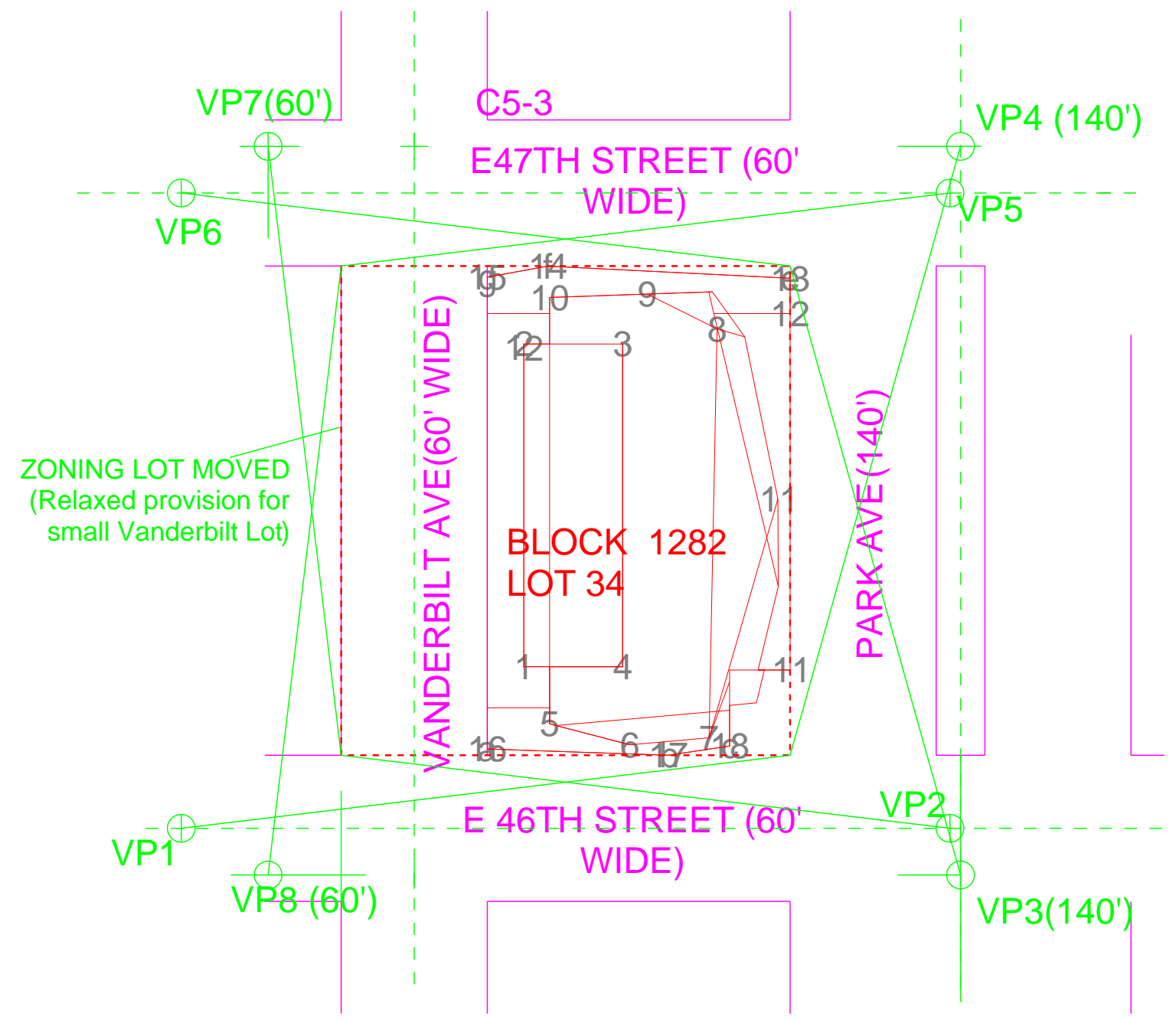
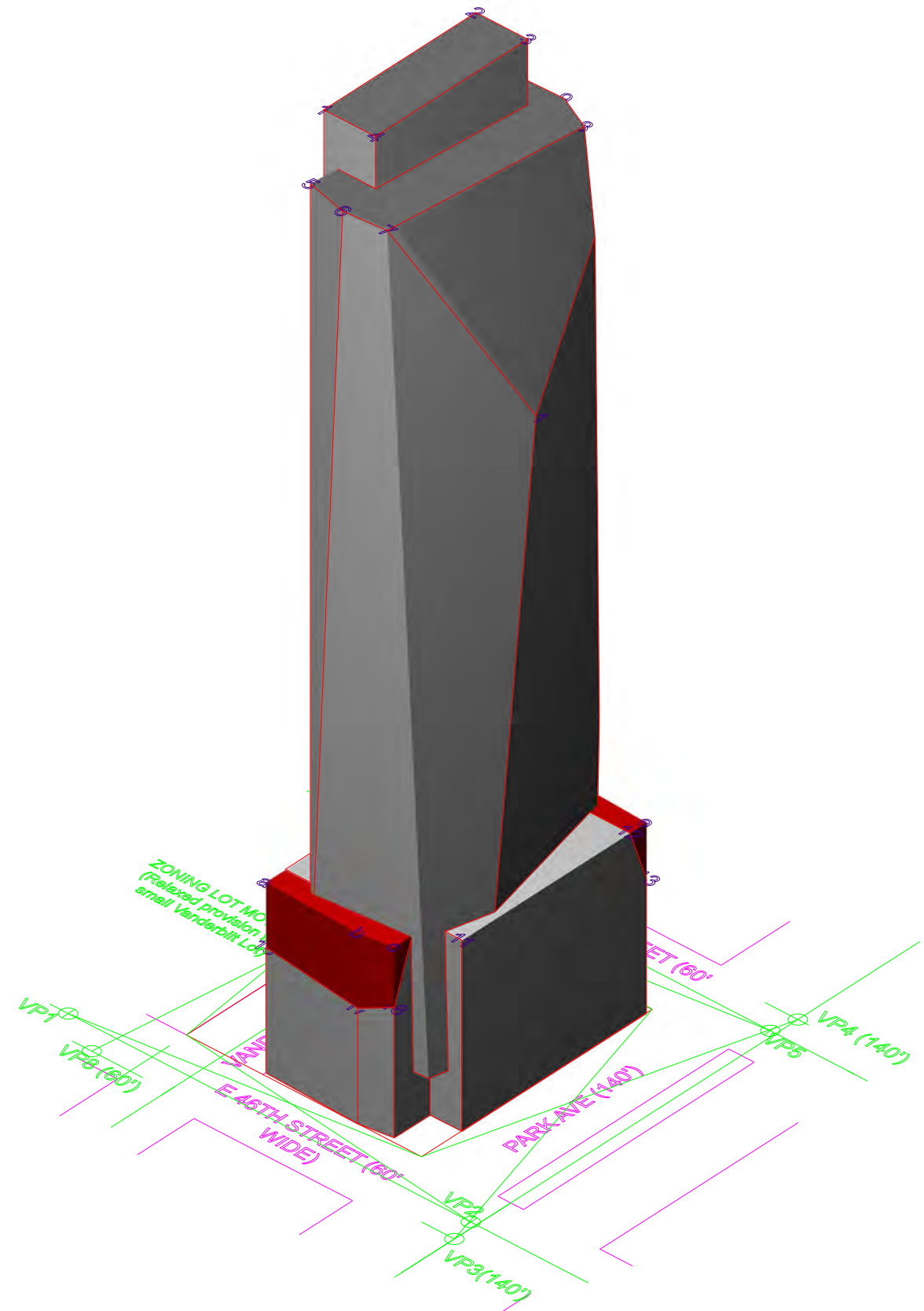
VP 3	96.79%
VP 4	96.79%
Average	<b>96.79%</b> target

VP 5	49.77%
VP 6	51.96%
Average	<b>50.87%</b> target

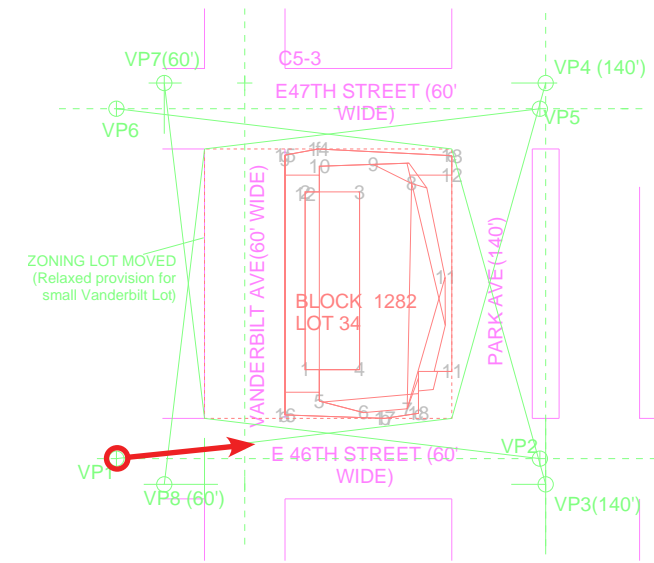
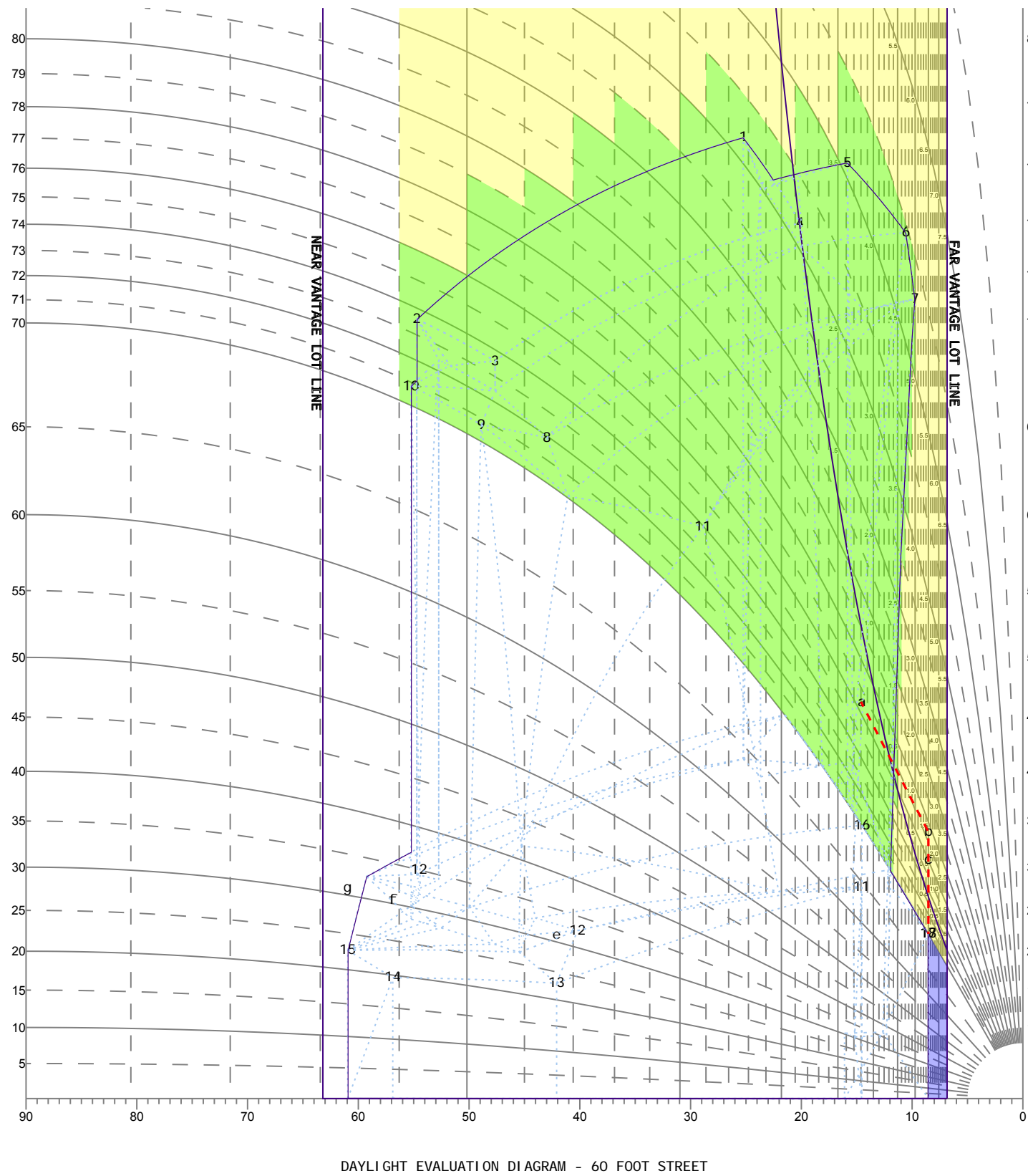
VP 7	35.15%
VP 8	35.15%
Average	<b>35.15%</b> target

**Overall Score** **59.71%**

**OPT. B - STREET WALL (COMPLIANCE) - DAYLIGHT EVALUATION RESULTS**



**DAYLIGHT EVALUATION RESULTS - VIEW POINT REFERENCE**



Scoring Summary  
(Vantage point 1)

Section	Score
81-274(b) Squares above 70°	-39.80
81-274(c) Squares below 70°	4.20
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>-35.60</b>
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	58.34
<b>81-274(g) Daylight Score</b>	<b>62.10%</b>

Section 81-273(d) Street 170123-C-V1.2 VP 1

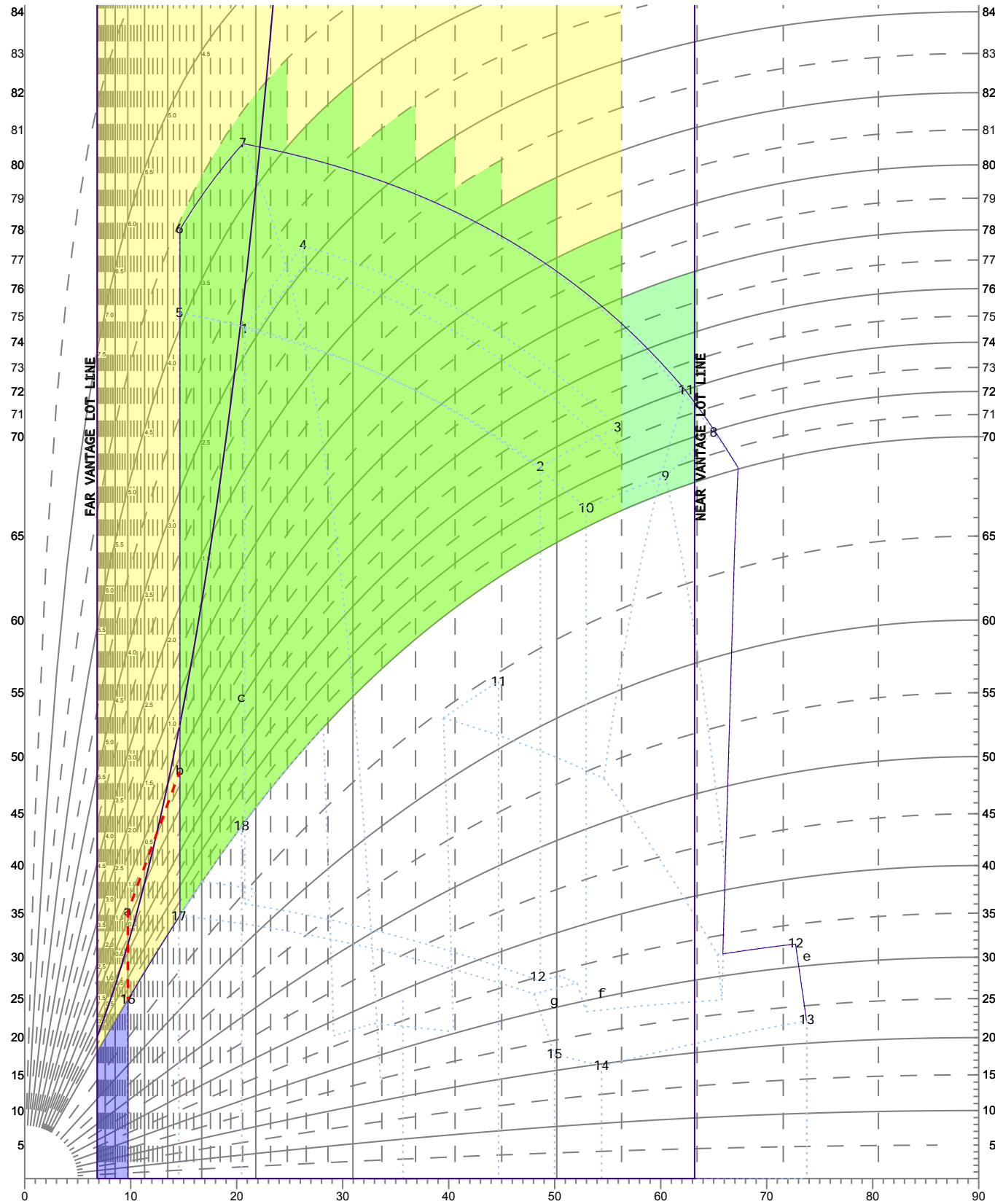
Far Lot Line	-30.00	250.00	-0.12	6.8
Near Lot Line	-130.00	65.67	-1.98	63.2

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	66.34	140.67	0.47	25.2	675.03	66.34	10.18	84.4
2	198.84	140.67	1.41	54.7	675.03	198.84	3.39	73.6
3	198.84	181.25	1.10	47.6	675.03	198.84	3.39	73.6
4	66.34	181.25	0.37	20.1	675.03	66.34	10.18	84.4
5	42.89	151.25	0.28	15.8	639.52	42.89	14.91	86.2
6	34.29	184.23	0.19	10.5	640.13	34.29	18.67	86.9
7	37.15	216.73	0.17	9.7	639.92	37.15	17.22	86.7
8	205.05	220.03	0.93	43.0	628.05	205.05	3.06	71.9
9	219.34	191.35	1.15	48.9	627.03	219.34	2.86	70.7
a	32.57	125.67	0.26	14.5	135.99	32.57	4.17	76.5
b	30.06	200.42	0.15	8.5	135.99	30.06	4.52	77.5
c	33.78	225.16	0.15	8.5	135.99	33.78	4.03	76.1
e	225.84	250.00	0.90	42.1	135.99	225.84	0.60	31.1
f	230.81	150.52	1.53	56.9	135.99	230.81	0.59	30.5
g	226.29	125.67	1.80	61.0	135.77	226.29	0.60	31.0
10	217.95	151.25	1.44	55.2	627.13	217.95	2.88	70.8
11	135.16	245.00	0.55	28.9	470.37	135.16	3.48	74.0
11	65.00	250.00	0.26	14.6	135.99	65.00	2.09	64.5
12	197.24	140.67	1.40	54.5	138.24	197.24	0.70	35.0
12	211.34	250.00	0.85	40.2	135.99	211.34	0.64	32.8
13	225.84	250.00	0.90	42.1	96.16	225.84	0.43	23.1
14	230.81	150.53	1.53	56.9	82.50	230.81	0.36	19.7
15	226.29	125.67	1.80	61.0	94.91	226.29	0.42	22.8
16	32.57	125.67	0.26	14.5	89.50	32.57	2.75	70.0
17	30.00	200.00	0.15	8.5	82.42	30.00	2.75	70.0
18	33.77	225.17	0.15	8.5	92.80	33.77	2.75	70.0

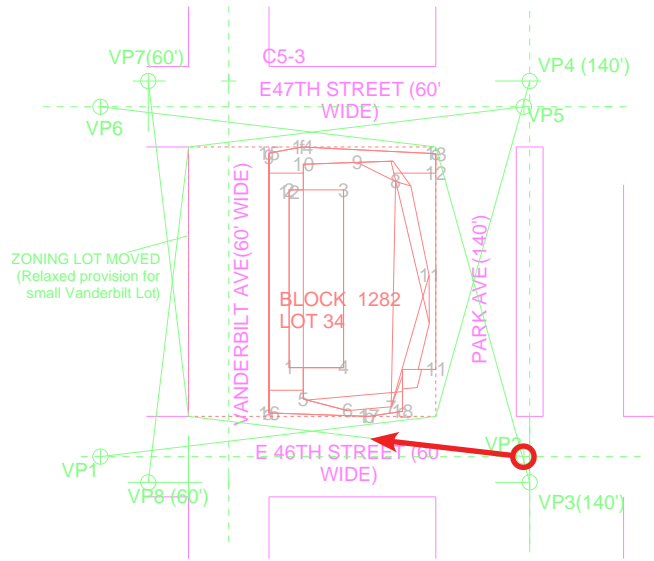
DAYLIGHT EVALUATION RESULTS - VP1 - 46TH ST - VIEW EAST

24 APRIL 2017





DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary (Vantage point 2)

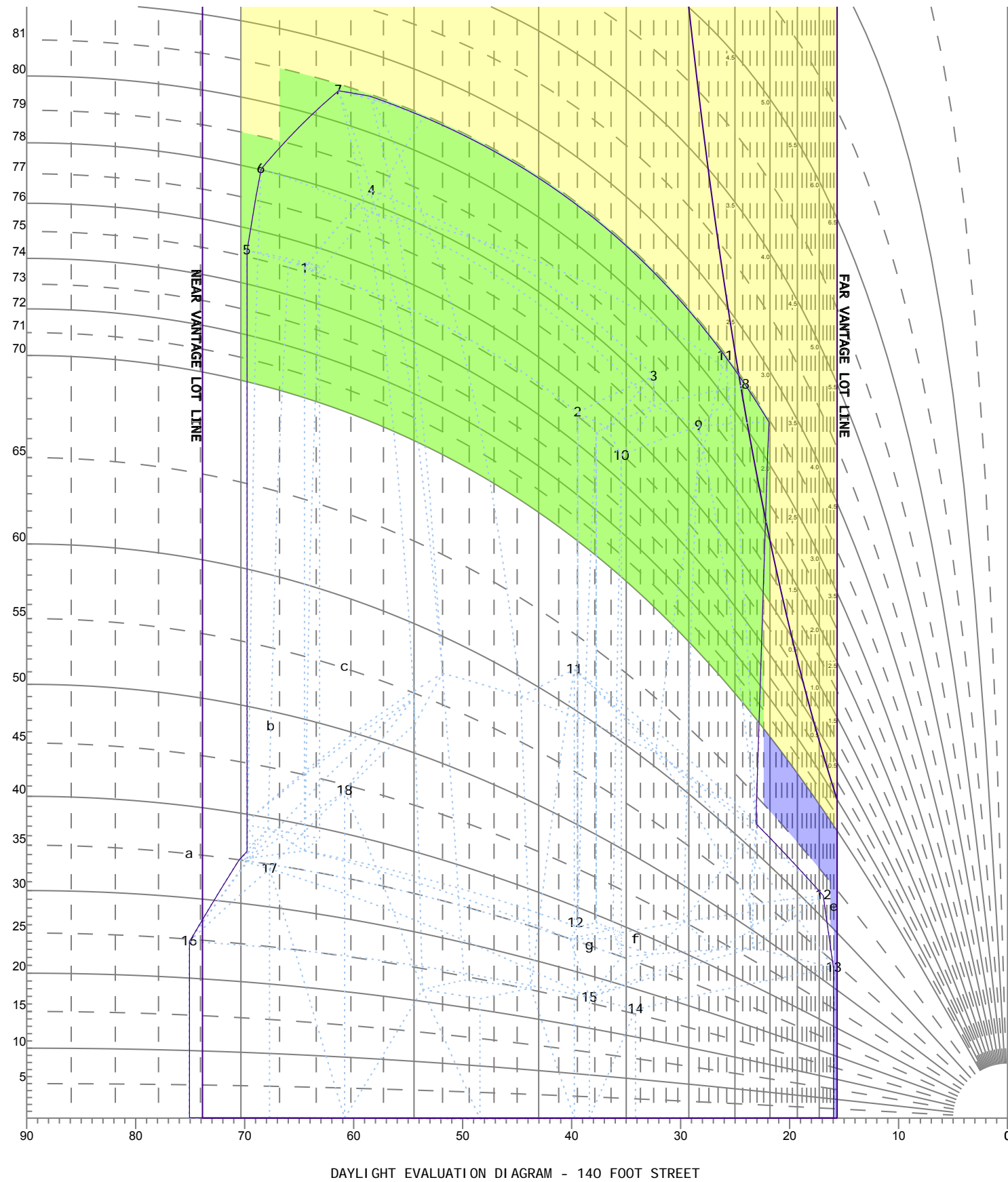
Section	Score
81-274(b) Squares above 70°	-30.50
81-274(c) Squares below 70°	6.30
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>-24.20</b>
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	69.74
<b>81-274(g) Daylight Score</b>	<b>74.24%</b>

Section 81-273(d) Street 170123-C-V2.7 VP 2

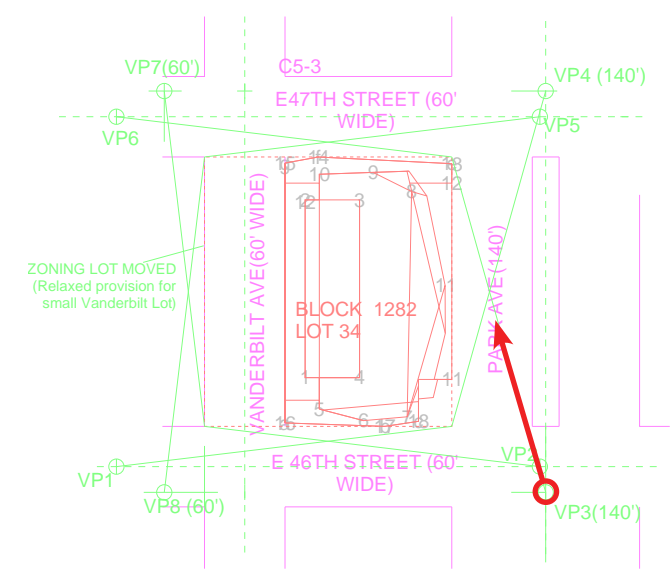
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle [H]	[S]	Tan[H/S]	Angle
1	66.34	175.00	0.38	20.8	675.03	66.34	10.18
2	198.84	175.00	1.14	48.6	675.03	198.84	3.39
3	198.84	134.42	1.48	55.9	675.03	198.84	3.39
4	66.34	134.42	0.49	26.3	675.03	66.34	10.18
5	42.89	164.42	0.26	14.6	639.52	42.89	14.91
6	34.29	131.44	0.26	14.6	640.13	34.29	18.67
7	37.15	98.94	0.38	20.6	639.92	37.15	17.22
8	205.05	95.64	2.14	65.0	628.05	205.05	3.06
9	219.34	124.32	1.76	60.5	627.03	219.34	2.86
a	32.57	190.00	0.17	9.7	135.99	32.57	4.17
b	30.06	115.25	0.26	14.6	135.99	30.06	4.52
c	33.78	90.51	0.37	20.5	135.99	33.78	4.03
e	225.84	65.67	3.44	73.8	135.99	225.84	0.60
f	230.81	165.15	1.40	54.4	135.99	230.81	0.59
g	226.29	190.00	1.19	50.0	135.77	226.29	0.60
10	217.95	164.42	1.33	53.0	627.13	217.95	2.88
11	135.16	70.67	1.91	62.4	470.37	135.16	3.48
11	65.00	65.67	0.99	44.7	135.99	65.00	2.09
12	197.24	175.00	1.13	48.4	138.24	197.24	0.70
12	211.34	65.67	3.22	72.7	135.99	211.34	0.64
13	225.84	65.67	3.44	73.8	96.16	225.84	0.43
14	230.81	165.14	1.40	54.4	82.50	230.81	0.36
15	226.29	190.00	1.19	50.0	94.91	226.29	0.42
16	32.57	190.00	0.17	9.7	89.50	32.57	2.75
17	30.00	115.67	0.26	14.5	82.42	30.00	2.75
18	33.77	90.50	0.37	20.5	92.80	33.77	2.75

# DAYLIGHT EVALUATION RESULTS - VP2 - 46TH ST & PARK AVE - VIEW WEST

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 140 FOOT STREET



Scoring Summary  
(Vantage point 3)

Section	Score
81-274(b) Squares above 70°	-32.20
81-274(c) Squares below 70°	0.90
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>-31.30</b>
81-274(e) Available Daylight Squares	91.90
81-274(f) Remaining daylight	60.60
<b>81-274(g) Daylight Score</b>	<b>65.94%</b>

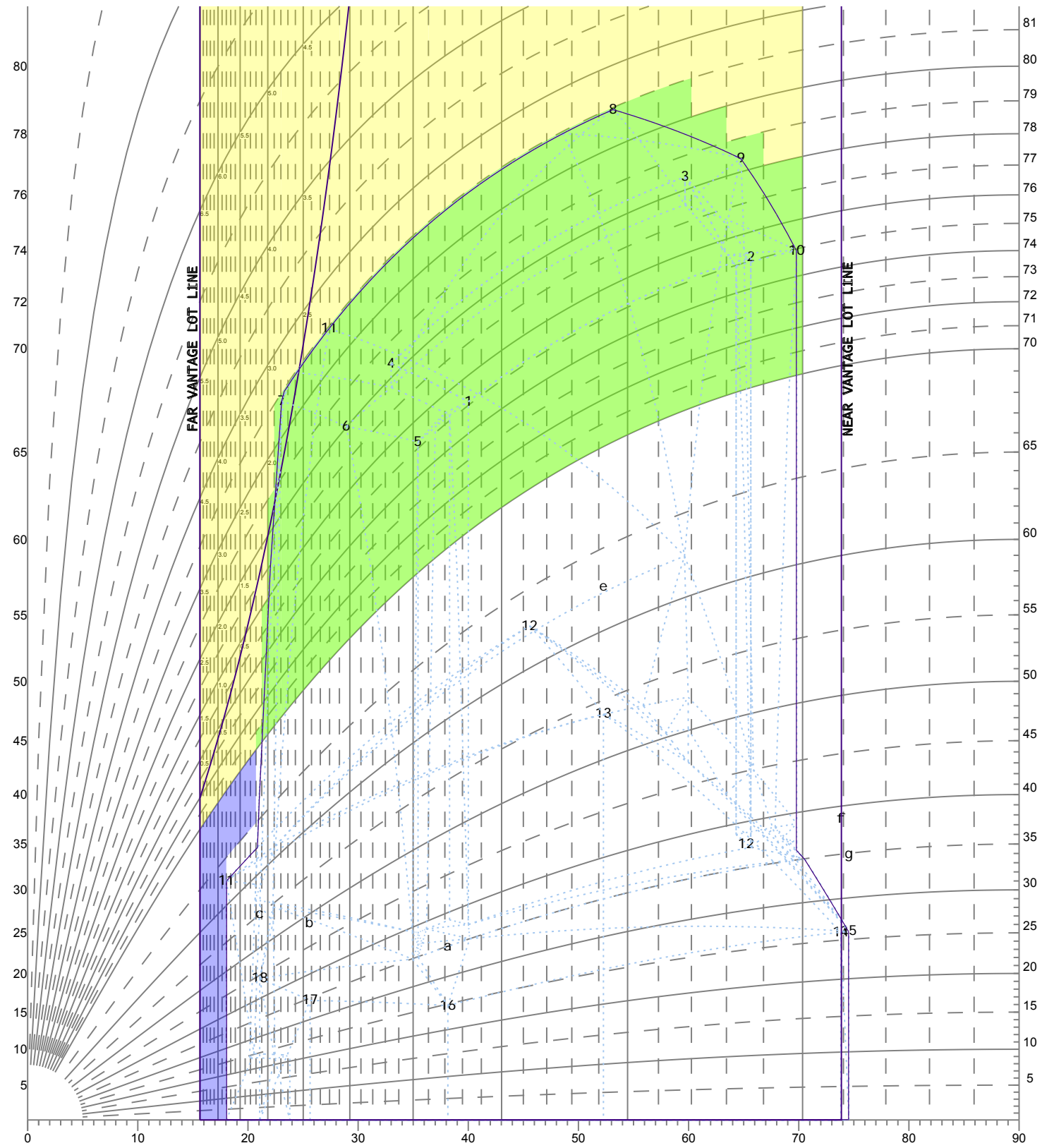
Section 81-273(d) Street 170123-C-V3.1 VP 3

Far Lot Line	-70.00	250.00	-0.28	15.6
Near Lot Line	-170.00	49.16	-3.46	73.9

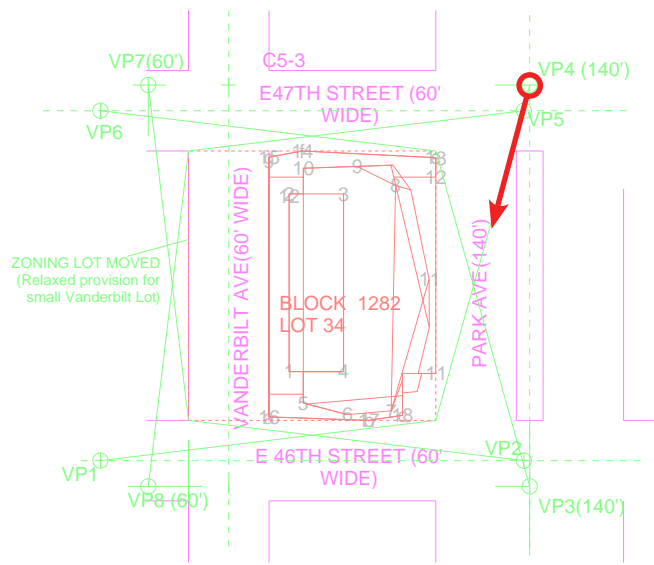
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	179.33	85.50	2.10	64.5	675.03	179.33	3.76	75.1
2	179.33	218.00	0.82	39.4	675.03	179.33	3.76	75.1
3	138.75	218.00	0.64	32.5	675.03	138.75	4.87	78.4
4	138.75	85.50	1.62	58.4	675.03	138.75	4.87	78.4
5	168.75	62.05	2.72	69.8	639.52	168.75	3.79	75.2
6	135.77	53.45	2.54	68.5	640.13	135.77	4.71	78.0
7	103.27	56.31	1.83	61.4	639.92	103.27	6.20	80.8
8	99.97	224.21	0.45	24.0	628.05	99.97	6.28	81.0
9	128.65	238.50	0.54	28.3	627.03	128.65	4.87	78.4
a	194.33	51.73	3.76	75.1	135.99	194.33	0.70	35.0
b	119.58	49.22	2.43	67.6	135.99	119.58	1.14	48.7
c	94.84	52.94	1.79	60.8	135.99	94.84	1.43	55.1
e	70.00	245.00	0.29	15.9	135.99	70.00	1.94	62.8
f	169.48	249.97	0.68	34.1	135.99	169.48	0.80	38.7
g	194.33	245.45	0.79	38.4	135.77	194.33	0.70	34.9
10	168.75	237.11	0.71	35.4	627.13	168.75	3.72	74.9
11	75.00	154.32	0.49	25.9	470.37	75.00	6.27	80.9
11	70.00	84.16	0.83	39.8	135.99	70.00	1.94	62.8
12	179.33	216.40	0.83	39.6	138.24	179.33	0.77	37.6
12	70.00	230.50	0.30	16.9	135.99	70.00	1.94	62.8
13	70.00	245.00	0.29	15.9	96.16	70.00	1.37	53.9
14	169.47	249.97	0.68	34.1	82.50	169.47	0.49	26.0
15	194.33	245.45	0.79	38.4	94.91	194.33	0.49	26.0
16	194.33	51.73	3.76	75.1	89.50	194.33	0.46	24.7
17	120.00	49.16	2.44	67.7	82.42	120.00	0.69	34.5
18	94.83	52.93	1.79	60.8	92.80	94.83	0.98	44.4

# DAYLIGHT EVALUATION RESULTS - VP3 - 46TH ST & PARK AVE - VIEW NORTH

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 140 FOOT STREET



Scoring Summary (Vantage point 4)

Section	Score
81-274(b) Squares above 70°	-32.90
81-274(c) Squares below 70°	3.12
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	-29.78
81-274(e) Available Daylight Squares	91.90
81-274(f) Remaining daylight	62.12
<b>81-274(g) Daylight Score</b>	<b>67.60%</b>

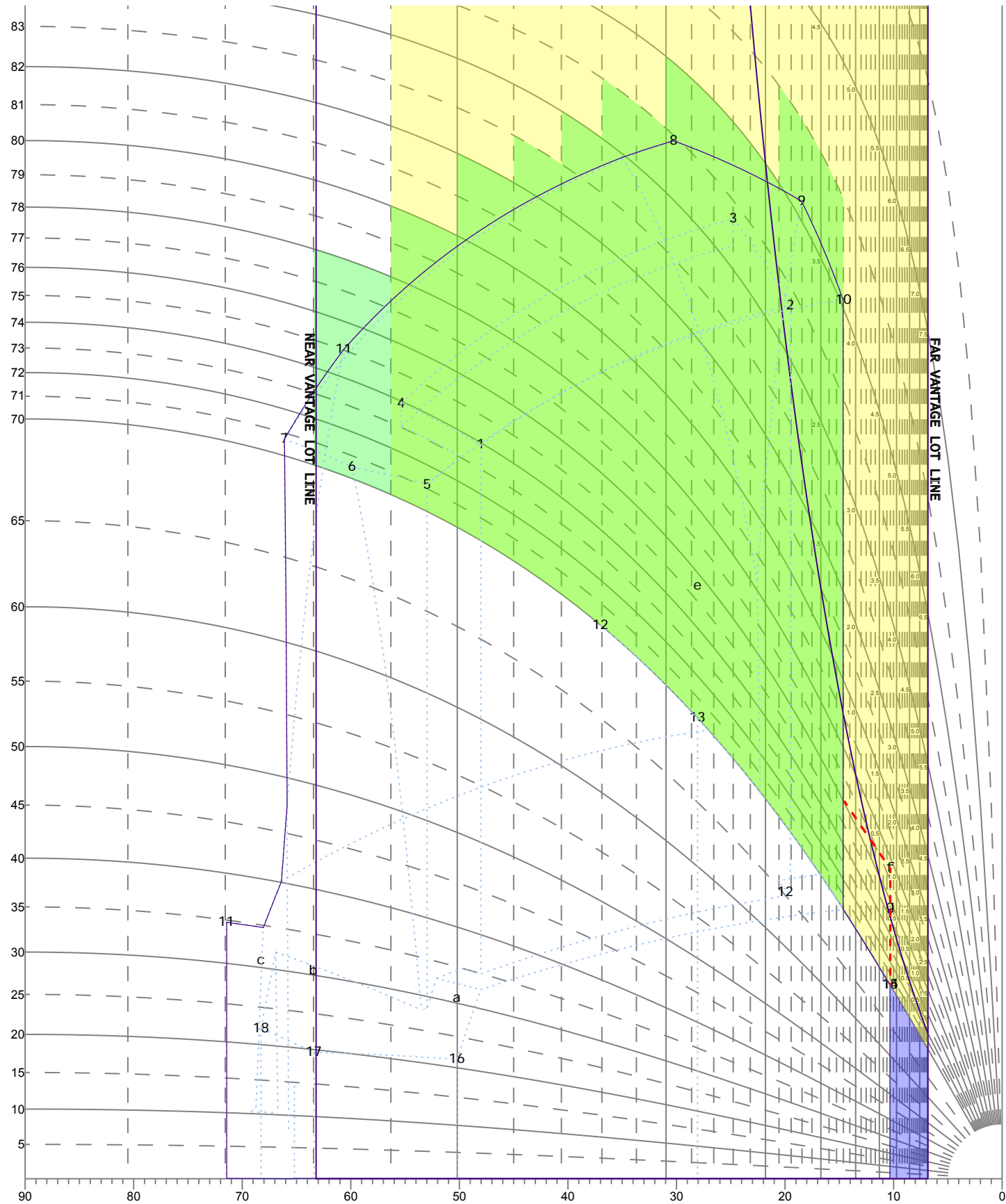
Section 81-273(d) Street 170123-C-V4.1 VP 4

Far Lot Line	70.00	250.00	0.28	15.6
Near Lot Line	170.00	49.16	3.46	73.9

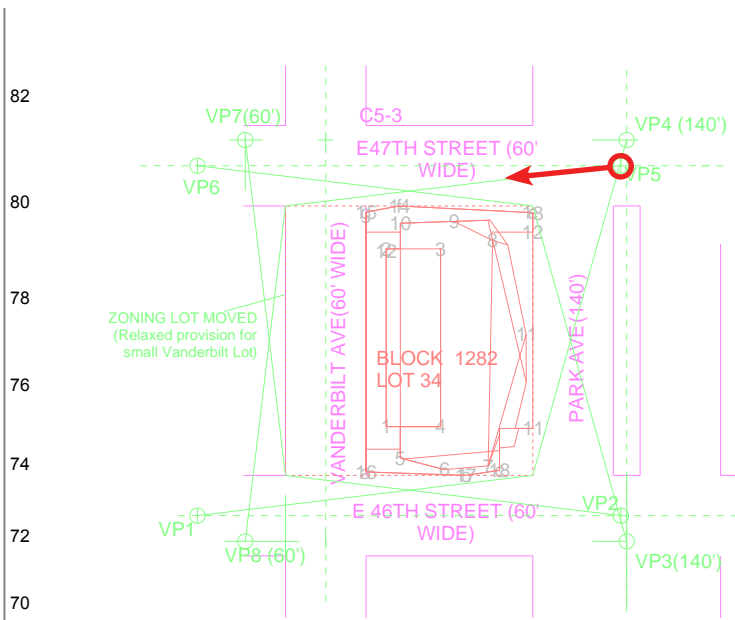
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	179.33	213.66	0.84	40.0	675.03	179.33	3.76	75.1
2	179.33	81.16	2.21	65.6	675.03	179.33	3.76	75.1
3	138.75	81.16	1.71	59.7	675.03	138.75	4.87	78.4
4	138.75	213.66	0.65	33.0	675.03	138.75	4.87	78.4
5	168.75	237.11	0.71	35.4	639.52	168.75	3.79	75.2
6	135.77	245.71	0.55	28.9	640.13	135.77	4.71	78.0
7	103.27	242.85	0.43	23.0	639.92	103.27	6.20	80.8
8	99.97	74.95	1.33	53.1	628.05	99.97	6.28	81.0
9	128.65	60.66	2.12	64.8	627.03	128.65	4.87	78.4
a	194.33	247.43	0.79	38.1	135.99	194.33	0.70	35.0
b	119.58	249.94	0.48	25.6	135.99	119.58	1.14	48.7
c	94.84	246.22	0.39	21.1	135.99	94.84	1.43	55.1
e	70.00	54.16	1.29	52.3	135.99	70.00	1.94	62.8
f	169.48	49.19	3.45	73.8	135.99	169.48	0.80	38.7
g	194.33	53.71	3.62	74.6	135.77	194.33	0.70	34.9
10	168.75	62.05	2.72	69.8	627.13	168.75	3.72	74.9
11	75.00	144.84	0.52	27.4	470.37	75.00	6.27	80.9
11	70.00	215.00	0.33	18.0	135.99	70.00	1.94	62.8
12	179.33	82.76	2.17	65.2	138.24	179.33	0.77	37.6
12	70.00	68.66	1.02	45.6	135.99	70.00	1.94	62.8
13	70.00	54.16	1.29	52.3	96.16	70.00	1.37	53.9
14	169.47	49.19	3.45	73.8	82.50	169.47	0.49	26.0
15	194.33	53.71	3.62	74.6	94.91	194.33	0.49	26.0
16	194.33	247.43	0.79	38.1	89.50	194.33	0.46	24.7
17	120.00	250.00	0.48	25.6	82.42	120.00	0.69	34.5
18	94.83	246.23	0.39	21.1	92.80	94.83	0.98	44.4

DAYLIGHT EVALUATION RESULTS - VP4 - 47TH ST & PARK AVE - VIEW SOUTH

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary  
(Vantage point 5)

Section	Score
81-274(b) Squares above 70°	-30.20
81-274(c) Squares below 70°	7.14
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>-23.06</b>
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	70.88
<b>81-274(g) Daylight Score</b>	<b>75.45%</b>

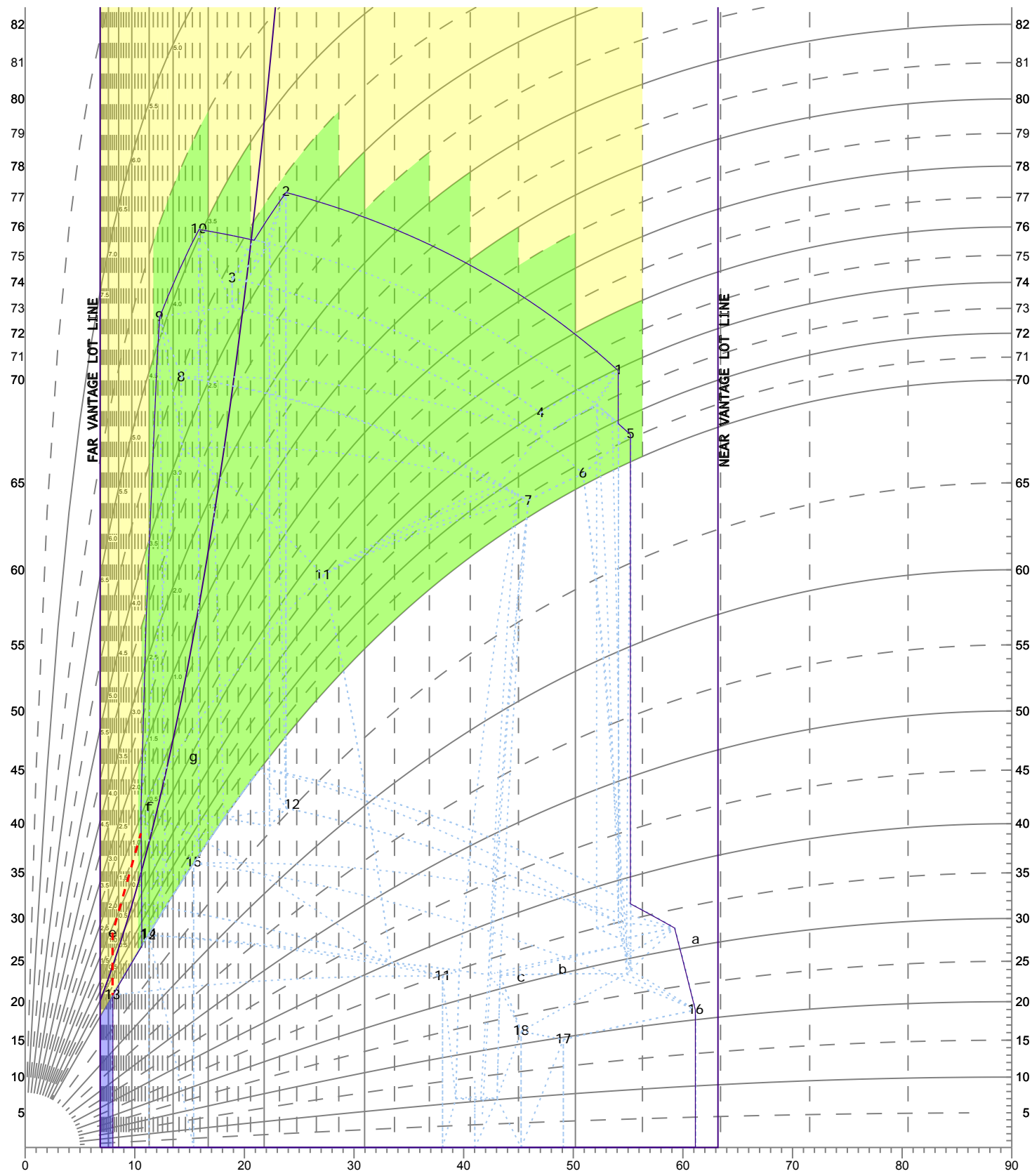
**Section 81-273(d) Street 170123-C-V5.2 VP 5**

Far Lot Line	-30.00	250.00	-0.12	6.8
Near Lot Line	-130.00	65.67	-1.98	63.2

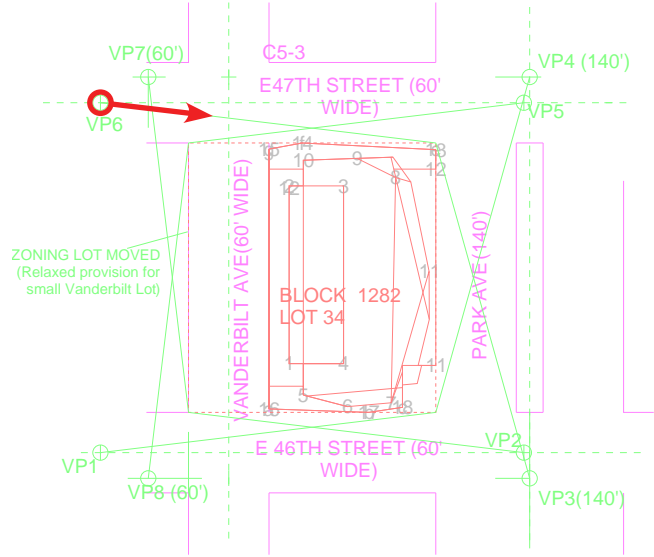
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle [H]	[S]	Tan[H/S]	Angle	
1	194.50	175.00	1.11	48.0	675.03	194.50	3.47	73.9
2	62.00	175.00	0.35	19.5	675.03	62.00	10.89	84.8
3	62.00	134.42	0.46	24.8	675.03	62.00	10.89	84.8
4	194.50	134.42	1.45	55.4	675.03	194.50	3.47	73.9
5	217.95	164.42	1.33	53.0	639.52	217.95	2.93	71.2
6	226.55	131.44	1.72	59.9	640.13	226.55	2.83	70.5
7	223.69	98.94	2.26	66.1	639.92	223.69	2.86	70.7
8	55.79	95.64	0.58	30.3	628.05	55.79	11.26	84.9
9	41.50	124.32	0.33	18.5	627.03	41.50	15.11	86.2
a	228.27	190.00	1.20	50.2	135.99	228.27	0.60	30.8
b	230.78	115.25	2.00	63.5	135.99	230.78	0.59	30.5
c	227.06	90.51	2.51	68.3	135.99	227.06	0.60	30.9
e	35.00	65.67	0.53	28.1	135.99	35.00	3.89	75.6
f	30.03	165.15	0.18	10.3	135.99	30.03	4.53	77.5
g	34.55	190.00	0.18	10.3	135.77	34.55	3.93	75.7
10	42.89	164.42	0.26	14.6	627.13	42.89	14.62	86.1
11	125.68	70.67	1.78	60.7	470.37	125.68	3.74	75.0
11	195.84	65.67	2.98	71.5	135.99	195.84	0.69	34.8
12	63.60	175.00	0.36	20.0	138.24	63.60	2.17	65.3
12	49.50	65.67	0.75	37.0	135.99	49.50	2.75	70.0
13	35.00	65.67	0.53	28.1	96.16	35.00	2.75	70.0
14	30.03	165.14	0.18	10.3	82.50	30.03	2.75	70.0
15	34.55	190.00	0.18	10.3	94.91	34.55	2.75	70.0
16	228.27	190.00	1.20	50.2	89.50	228.27	0.39	21.4
17	230.84	115.67	2.00	63.4	82.42	230.84	0.36	19.6
18	227.07	90.50	2.51	68.3	92.80	227.07	0.41	22.2

**DAYLIGHT EVALUATION RESULTS - VP5 - 47TH ST & PARK AVE - VIEW WEST**

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary (Vantage point 6)

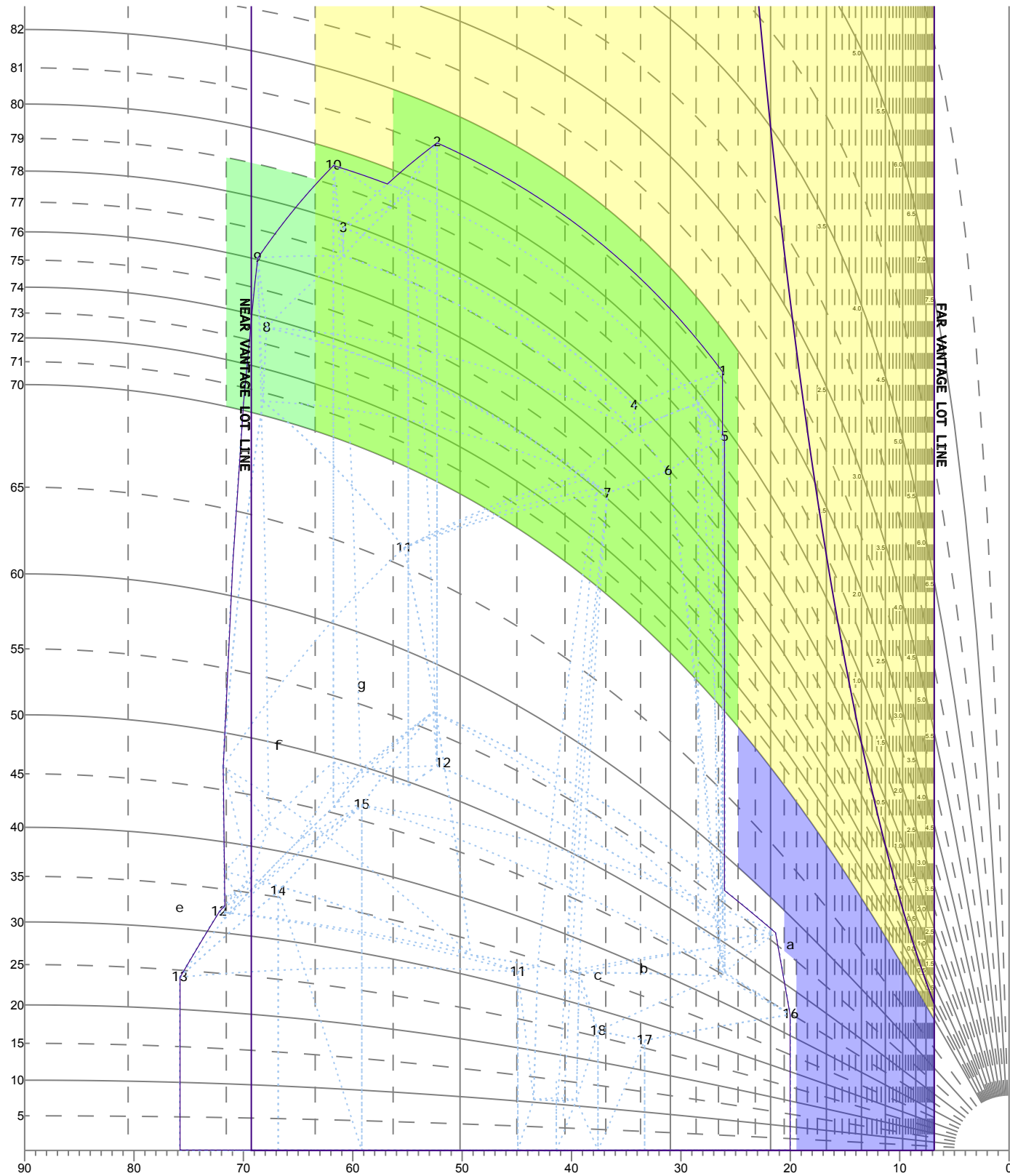
Section	Score
81-274(b) Squares above 70°	-42.20
81-274(c) Squares below 70°	2.94
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	-39.26
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	54.68
<b>81-274(g) Daylight Score</b>	<b>58.21%</b>

Section 81-273(d) Street 170123-C-V6.2 VP 6

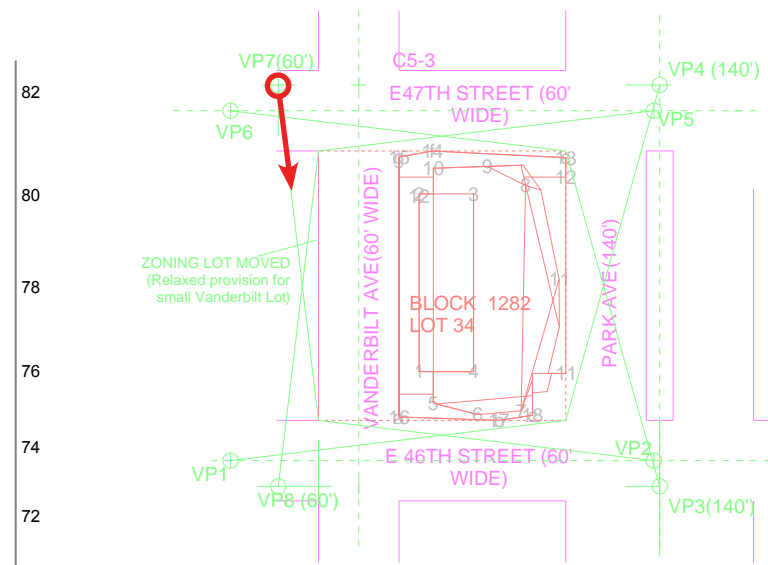
Far Lot Line	30.00	250.00	0.12	6.8
Near Lot Line	130.00	65.67	1.98	63.2

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	194.50	140.67	1.38	54.1	675.03	194.50	3.47	73.9
2	62.00	140.67	0.44	23.8	675.03	62.00	10.89	84.8
3	62.00	181.25	0.34	18.9	675.03	62.00	10.89	84.8
4	194.50	181.25	1.07	47.0	675.03	194.50	3.47	73.9
5	217.95	151.25	1.44	55.2	639.52	217.95	2.93	71.2
6	226.55	184.23	1.23	50.9	640.13	226.55	2.83	70.5
7	223.69	216.73	1.03	45.9	639.92	223.69	2.86	70.7
8	55.79	220.03	0.25	14.2	628.05	55.79	11.26	84.9
9	41.50	191.35	0.22	12.2	627.03	41.50	15.11	86.2
a	228.27	125.67	1.82	61.2	135.99	228.27	0.60	30.8
b	230.78	200.42	1.15	49.0	135.99	230.78	0.59	30.5
c	227.06	225.16	1.01	45.2	135.99	227.06	0.60	30.9
e	35.00	250.00	0.14	8.0	135.99	35.00	3.89	75.6
f	30.03	150.52	0.20	11.3	135.99	30.03	4.53	77.5
g	34.55	125.67	0.27	15.4	135.77	34.55	3.93	75.7
10	42.89	151.25	0.28	15.8	627.13	42.89	14.62	86.1
11	125.68	245.00	0.51	27.2	470.37	125.68	3.74	75.0
11	195.84	250.00	0.78	38.1	135.99	195.84	0.69	34.8
12	63.60	140.67	0.45	24.3	138.24	63.60	2.17	65.3
12	49.50	250.00	0.20	11.2	135.99	49.50	2.75	70.0
13	35.00	250.00	0.14	8.0	96.16	35.00	2.75	70.0
14	30.03	150.53	0.20	11.3	82.50	30.03	2.75	70.0
15	34.55	125.67	0.27	15.4	94.91	34.55	2.75	70.0
16	228.27	125.67	1.82	61.2	89.50	228.27	0.39	21.4
17	230.84	200.00	1.15	49.1	82.42	230.84	0.36	19.6
18	227.07	225.17	1.01	45.2	92.80	227.07	0.41	22.2

# DAYLIGHT EVALUATION RESULTS - VP6 - 47TH ST - VIEW EAST



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary (Vantage point 7)

Section	Score
81-274(b) Squares above 70°	-12.70
81-274(c) Squares below 70°	14.13
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>1.43</b>
81-274(e) Available Daylight Squares	95.46
81-274(f) Remaining daylight	96.89
<b>81-274(g) Daylight Score</b>	<b>101.50%</b>

**Profile Penalties**

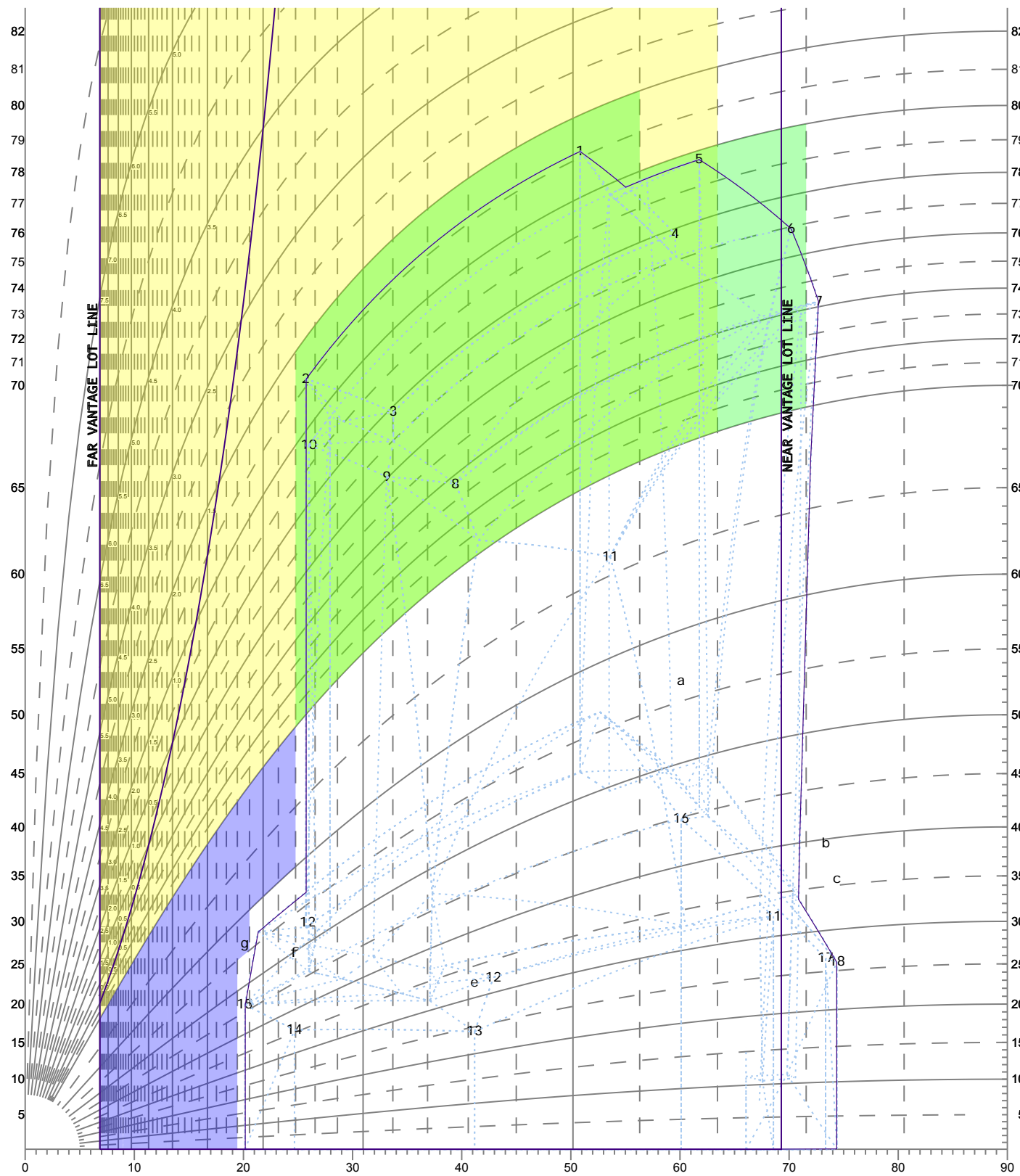
**Section 81-273(d) Street 170123-C-V7 VP 7**

Far Lot Line	-30.00	250.00	-0.12	6.8
Near Lot Line	-130.00	49.19	-2.64	69.3

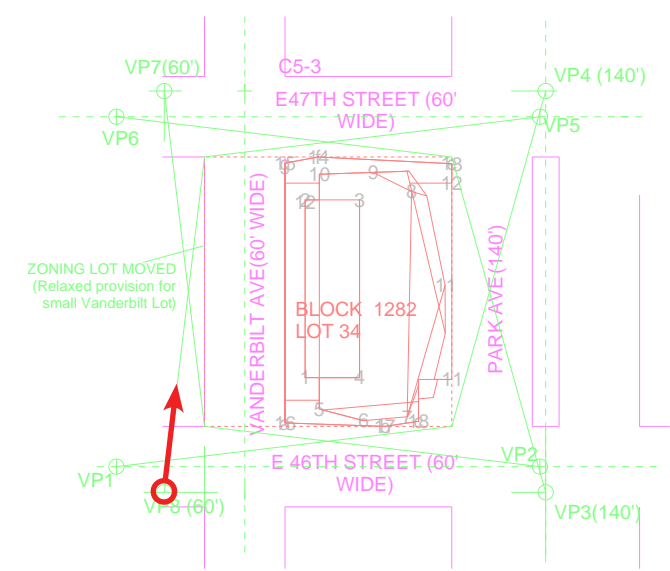
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	105.00	213.66	0.49	26.2	675.03	105.00	6.43	81.2
2	105.00	81.16	1.29	52.3	675.03	105.00	6.43	81.2
3	145.58	81.16	1.79	60.9	675.03	145.58	4.64	77.8
4	145.58	213.66	0.68	34.3	675.03	145.58	4.64	77.8
5	115.58	237.11	0.49	26.0	639.52	115.58	5.53	79.8
6	148.56	245.71	0.60	31.2	640.13	148.56	4.31	76.9
7	181.06	242.85	0.75	36.7	639.92	181.06	3.53	74.2
8	184.36	74.95	2.46	67.9	628.05	184.36	3.41	73.6
9	155.68	60.66	2.57	68.7	627.03	155.68	4.03	76.1
a	90.00	247.43	0.36	20.0	135.99	90.00	1.51	56.5
b	164.75	249.94	0.66	33.4	135.99	164.75	0.83	39.5
c	189.49	246.22	0.77	37.6	135.99	189.49	0.72	35.7
e	214.33	54.16	3.96	75.8	135.99	214.33	0.63	32.4
f	114.85	49.19	2.34	66.8	135.99	114.85	1.18	49.8
g	90.00	53.71	1.68	59.2	135.77	90.00	1.51	56.5
10	115.58	62.05	1.86	61.8	627.13	115.58	5.43	79.6
11	209.33	144.84	1.45	55.3	470.37	209.33	2.25	66.0
11	214.33	215.00	1.00	44.9	135.99	214.33	0.63	32.4
12	105.00	82.76	1.27	51.8	138.24	105.00	1.32	52.8
12	214.33	68.66	3.12	72.2	135.99	214.33	0.63	32.4
13	214.33	54.16	3.96	75.8	96.16	214.33	0.45	24.2
14	114.86	49.19	2.34	66.8	82.50	114.86	0.72	35.7
15	90.00	53.71	1.68	59.2	94.91	90.00	1.05	46.5
16	90.00	247.43	0.36	20.0	89.50	90.00	0.99	44.8
17	164.33	250.00	0.66	33.3	82.42	164.33	0.50	26.6
18	189.50	246.23	0.77	37.6	92.80	189.50	0.49	26.1

**DAYLIGHT EVALUATION RESULTS - VP7 - 47TH ST & VANDERBILT - VIEW SOUTH**

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary (Vantage point 8)

Section	Score
81-274(b) Squares above 70°	-12.80
81-274(c) Squares below 70°	14.13
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>1.33</b>
81-274(e) Available Daylight Squares	95.45
81-274(f) Remaining daylight	96.78
<b>81-274(g) Daylight Score</b>	<b>101.39%</b>

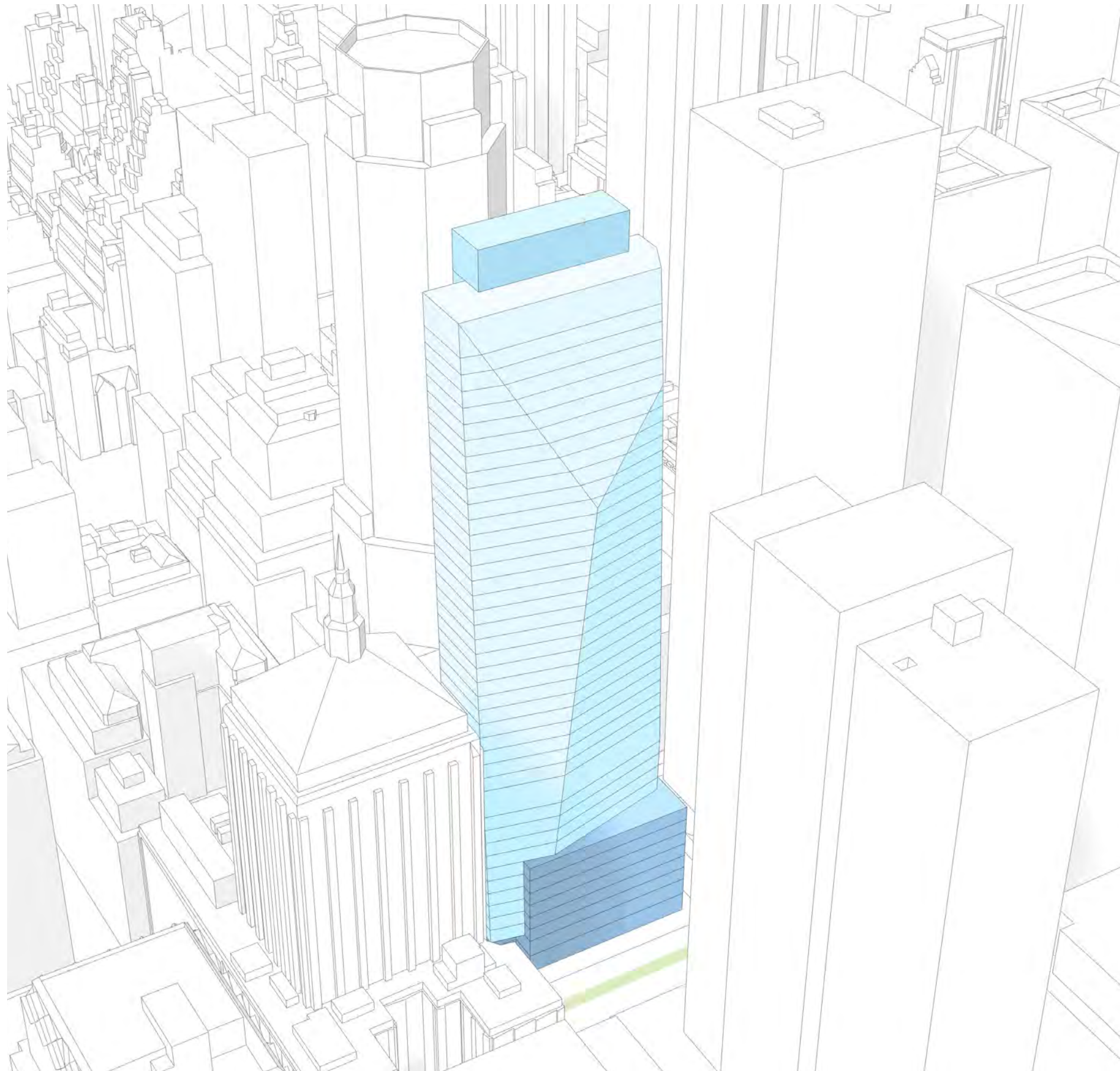
**Profile Penalties**

**Section 81-273(d) Street 170123-C-V8 VP 8**  
 Far Lot Line 30.00 249.97 0.12 6.8  
 Near Lot Line 130.00 49.16 2.64 69.3

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle [H]	[S]	Tan[H/S]	Angle
1	105.00	85.50	1.23	50.8	675.03	105.00	6.43 81.2
2	105.00	218.00	0.48	25.7	675.03	105.00	6.43 81.2
3	145.58	218.00	0.67	33.7	675.03	145.58	4.64 77.8
4	145.58	85.50	1.70	59.6	675.03	145.58	4.64 77.8
5	115.58	62.05	1.86	61.8	639.52	115.58	5.53 79.8
6	148.56	53.45	2.78	70.2	640.13	148.56	4.31 76.9
7	181.06	56.31	3.22	72.7	639.92	181.06	3.53 74.2
8	184.36	224.21	0.82	39.4	628.05	184.36	3.41 73.6
9	155.68	238.50	0.65	33.1	627.03	155.68	4.03 76.1
a	90.00	51.73	1.74	60.1	135.99	90.00	1.51 56.5
b	164.75	49.22	3.35	73.4	135.99	164.75	0.83 39.5
c	189.49	52.94	3.58	74.4	135.99	189.49	0.72 35.7
e	214.33	245.00	0.87	41.2	135.99	214.33	0.63 32.4
f	114.85	249.97	0.46	24.7	135.99	114.85	1.18 49.8
g	90.00	245.45	0.37	20.1	135.77	90.00	1.51 56.5
10	115.58	237.11	0.49	26.0	627.13	115.58	5.43 79.6
11	209.33	154.32	1.36	53.6	470.37	209.33	2.25 66.0
11	214.33	84.16	2.55	68.6	135.99	214.33	0.63 32.4
12	105.00	216.40	0.49	25.9	138.24	105.00	1.32 52.8
12	214.33	230.50	0.93	42.9	135.99	214.33	0.63 32.4
13	214.33	245.00	0.87	41.2	96.16	214.33	0.45 24.2
14	114.86	249.97	0.46	24.7	82.50	114.86	0.72 35.7
15	90.00	245.45	0.37	20.1	94.91	90.00	1.05 46.5
16	90.00	51.73	1.74	60.1	89.50	90.00	0.99 44.8
17	164.33	49.16	3.34	73.3	82.42	164.33	0.50 26.6
18	189.50	52.93	3.58	74.4	92.80	189.50	0.49 26.1

**DAYLIGHT EVALUATION RESULTS - VP8 - 46TH ST & VANDERBILT - VIEW NORTH**

24 APRIL 2017

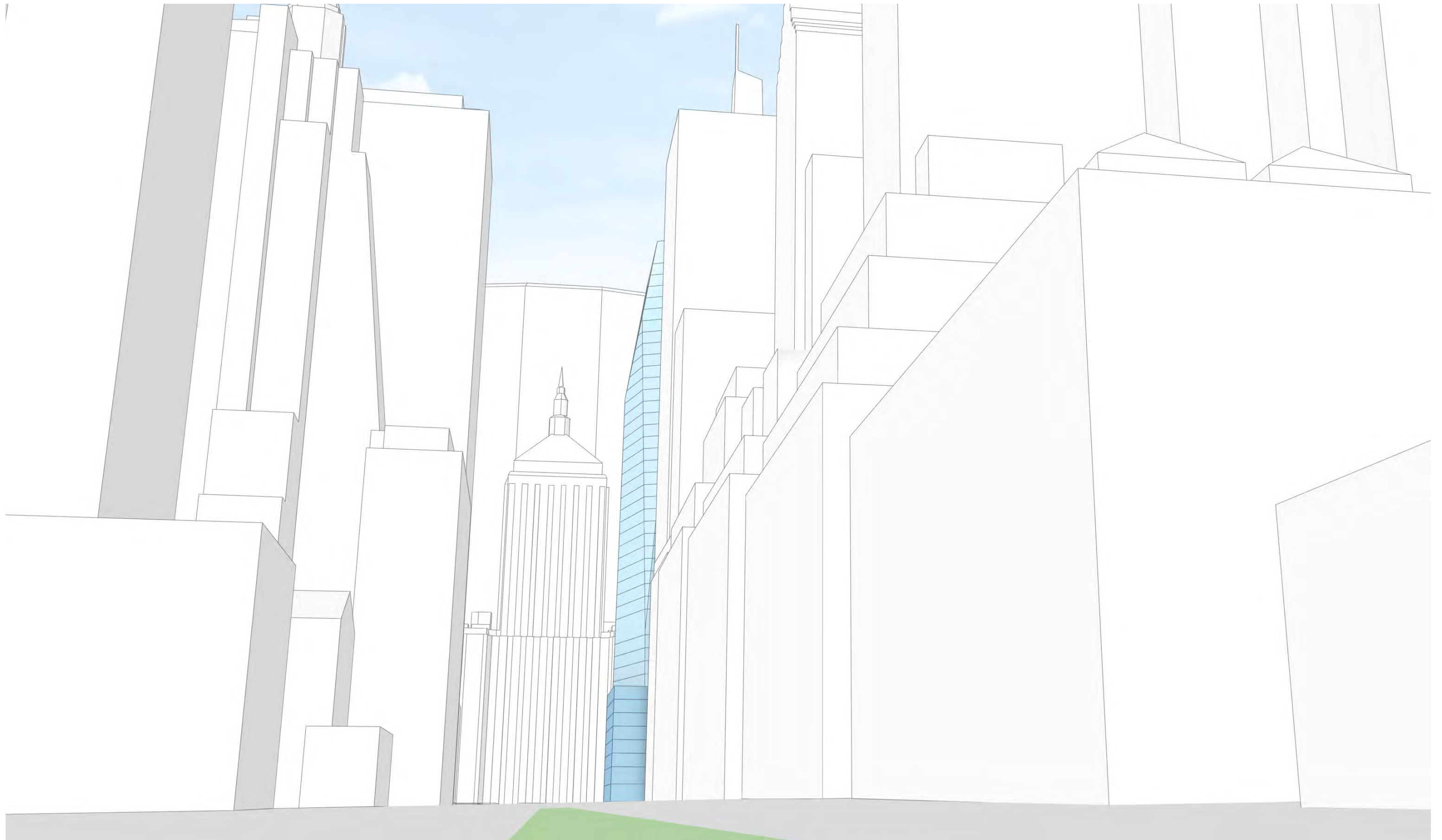


**BUILDING MASSING - OPT. C - STREET WALL (RELAXED)**

Opt. C - STREET WALL (RELAXED)			Total Area		RENTABLE				
Floor	Height Elevation		GSF	ZSF(1)	REBNY DEDUCT.	REBNY USABLE	RENTABLE 27%	RETAIL	
	685.75								
	BLKHD 35.00	650.75							
42 MECH	28.50	622.25	13,861	0	0	0	-		
41	14.25	608.00	14,219	13,365	1,395	12,824	17,566		
40	14.25	593.75	14,559	13,685	1,395	13,164	18,033		
39	14.25	579.50	14,882	13,989	1,395	13,487	18,476		
38	14.25	565.25	15,189	14,278	1,395	13,794	18,896		
37	14.25	551.00	15,477	14,548	1,395	14,082	19,290		
36	14.25	536.75	15,724	14,781	1,395	14,329	19,629		
35	14.25	522.50	15,926	14,971	1,395	14,531	19,906		
34	14.25	508.25	16,083	15,118	2,000	14,083	19,291		
33	14.25	494.00	16,193	15,222	2,000	14,193	19,443		
32	14.25	479.75	16,258	15,283	2,000	14,258	19,531		
31	14.25	465.50	16,280	15,303	2,000	14,280	19,561		
30	14.25	451.25	16,290	15,312	2,000	14,290	19,575		
29	14.25	437.00	16,297	15,319	2,000	14,297	19,585		
28	14.25	422.75	16,303	15,325	2,000	14,303	19,593		
27	14.25	408.50	16,306	15,328	2,000	14,306	19,597		
26	14.25	394.25	16,307	15,329	2,000	14,307	19,599		
25	14.25	380.00	16,306	15,328	2,000	14,306	19,598		
24	14.25	365.75	16,303	15,325	2,000	14,303	19,593		
23	14.25	351.50	16,297	15,320	2,000	14,297	19,586		
22	14.25	337.25	16,290	15,312	2,000	14,290	19,575		
21	14.25	323.00	16,280	15,303	2,000	14,280	19,561		
20	14.25	308.75	16,268	15,292	2,000	14,268	19,545		
19	14.25	294.50	16,254	15,278	2,000	14,254	19,525		
18	14.25	280.25	16,237	15,263	2,000	14,237	19,503		
17	14.25	266.00	16,218	15,245	2,000	14,218	19,477		
16	14.25	251.75	16,197	15,226	2,000	14,197	19,449		
15	14.25	237.50	16,174	15,204	2,000	14,174	19,417		
14	14.25	223.25	16,149	15,180	2,000	14,149	19,382		
13 MECH	28.50	194.75	16,122	0	0	0	-		
12	14.25	180.50	16,060	15,096	2,000	14,060	19,260		
11	14.25	166.25	16,027	15,065	2,345	13,682	18,742		
10	14.25	152.00	15,992	15,032	2,345	13,647	18,695		
9	14.25	137.75	15,956	14,999	2,345	13,611	18,645		
8	14.25	123.50	15,744	14,799	2,345	13,399	18,355		
BASE	7	14.25	109.25	24,130	22,682	2,345	21,785	29,842	
	6	14.25	95.00	24,139	22,691	2,345	21,794	29,855	
	5	14.25	80.75	24,149	22,700	2,345	21,804	29,868	
	4	14.25	66.50	24,158	22,709	2,345	21,813	29,881	
	3	14.25	52.25	24,168	22,718	2,345	21,823	29,894	
	2	14.25	38.00	24,177	22,726	2,345	21,832	29,906	
	SKY LOBBY	18	20.00	21,427	20,141	-	-	-	5,965
		1	20	0.00	23,802	22,374	-	-	5,965
ABOVE GRADE TOTAL			747,177	674,163	77,215	594,750	814,726	5,965	
CELLAR									
<b>TOTAL</b>			<b>747,177</b>	<b>674,163</b>	<b>77,215</b>	<b>594,750</b>	<b>814,726</b>	<b>5,965</b>	

LOT SIZE	24,969		<b>TOTAL RENTABLE</b>	<b>820,691</b>
TARGET FAR	27	674,163		





**OPT. B - STREET WALL (RELAXED) - VIEW FROM PARK AVE**

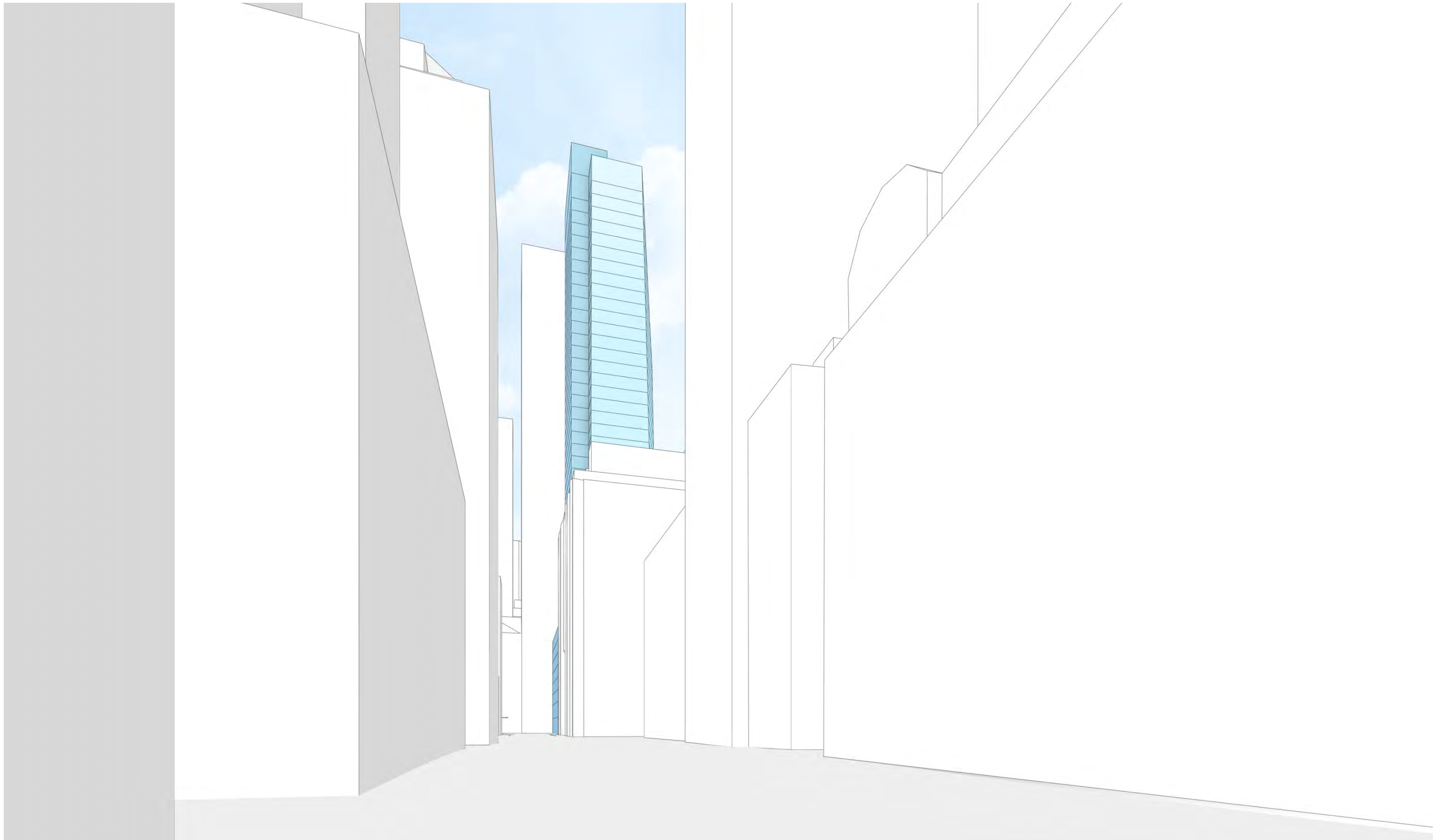
24 APRIL 2017

250 PARK AVENUE

16025.L00

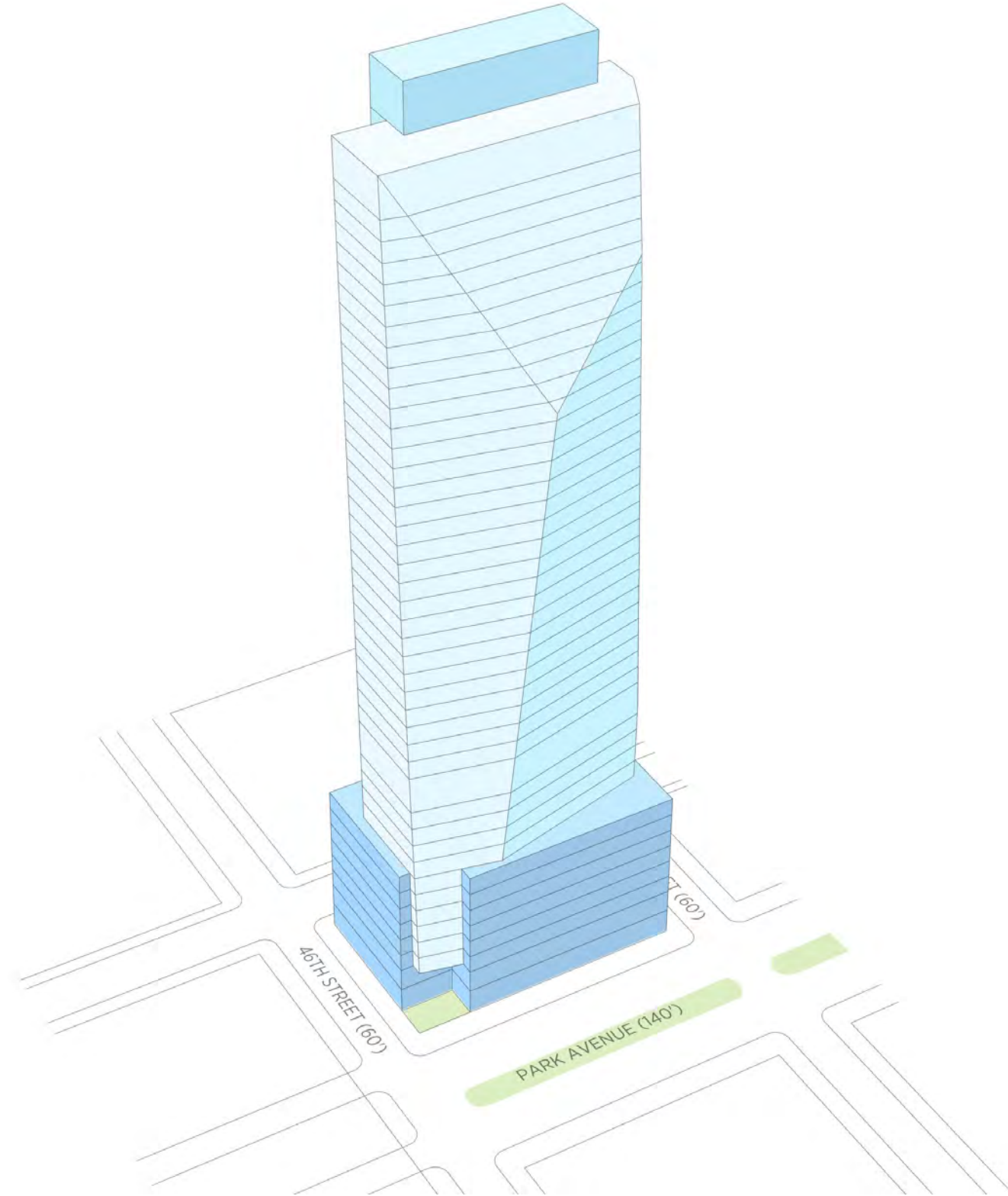


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**OPT. B - STREET WALL (RELAXED) - VIEW FROM VANDERBILT AVE**

24 APRIL 2017



**81-274  
170118-B**

**CALCULATION OF DAYLIGHT SCORE**

RELAXED

USING 140' CHART FOR PARK AVE  
 No Profile Penalty  
 150' rule in effect  
 60' for Vanderbilt in effect 15' from prop line

East 46th Street (60'W)	Lot line length =	142.33
VP 1	43.56%	
VP 2	64.91%	
Average	<b>54.24% PASS as better than existing</b>	

Park Avenue (140'W)	Lot line length =	200.83
VP 3	64.29%	
VP 4	66.68%	
Average	<b>65.49% PASS with Reflectivity Bonus &gt;66%</b>	

East 47st Street (60'W)	Lot line length =	142.33
VP 5	70.85%	
VP 6	54.54%	
Average	<b>62.70% Pass as better than Existing</b>	

Vanderbilt (60'W)	Lot line length =	200.83
VP 7	100.00%	
VP 8	100.00%	
Average	<b>100.00% PASS</b>	

**Overall Score**      **72.67%**      **PASS as better than existing and over 66%**

<b>Existing (Relaxed)</b>	
VP 1	49.77%
VP 2	51.96%
Average	<b>50.87%</b> target

VP 3	96.79%
VP 4	96.79%
Average	<b>96.79%</b> target

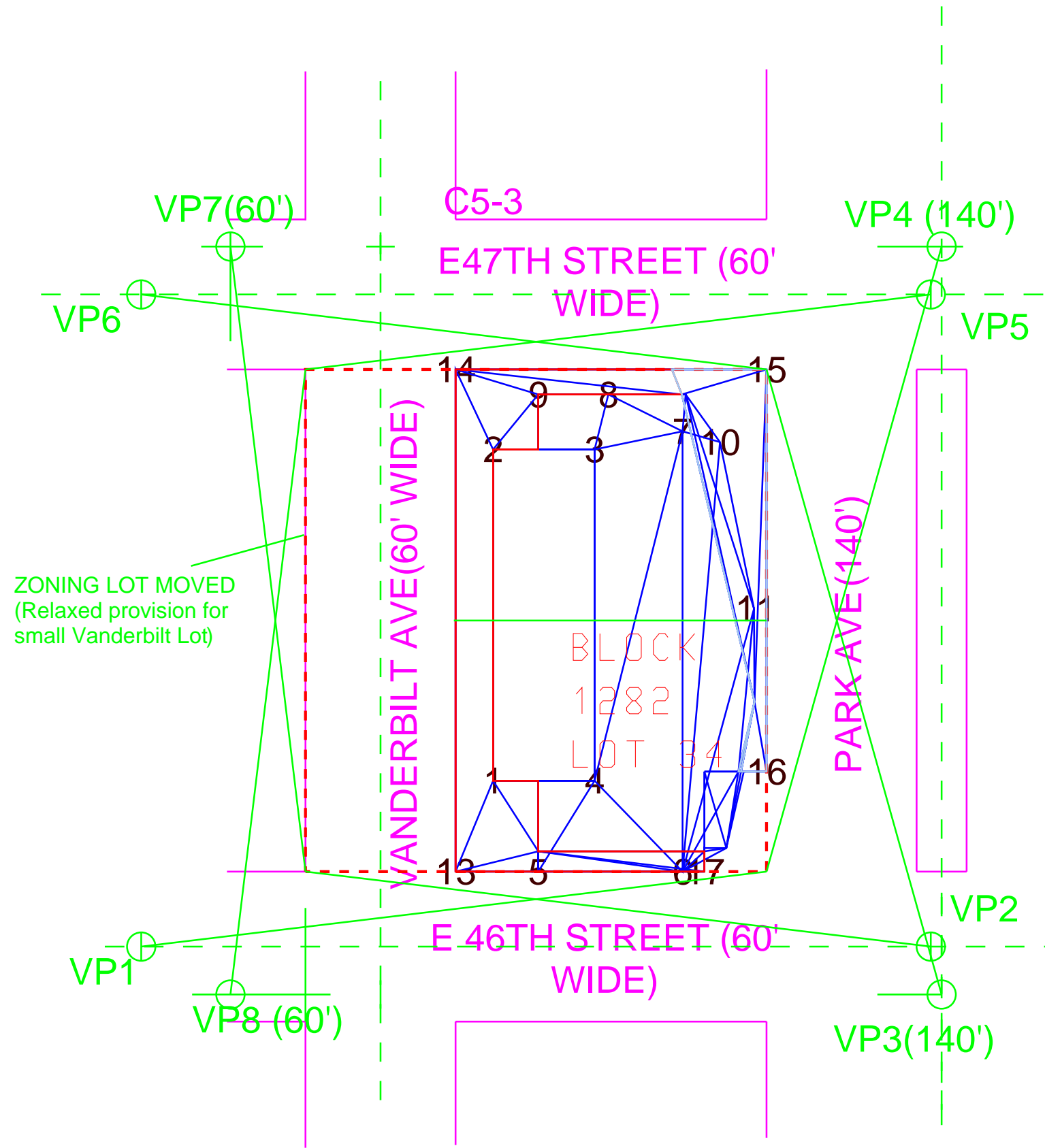
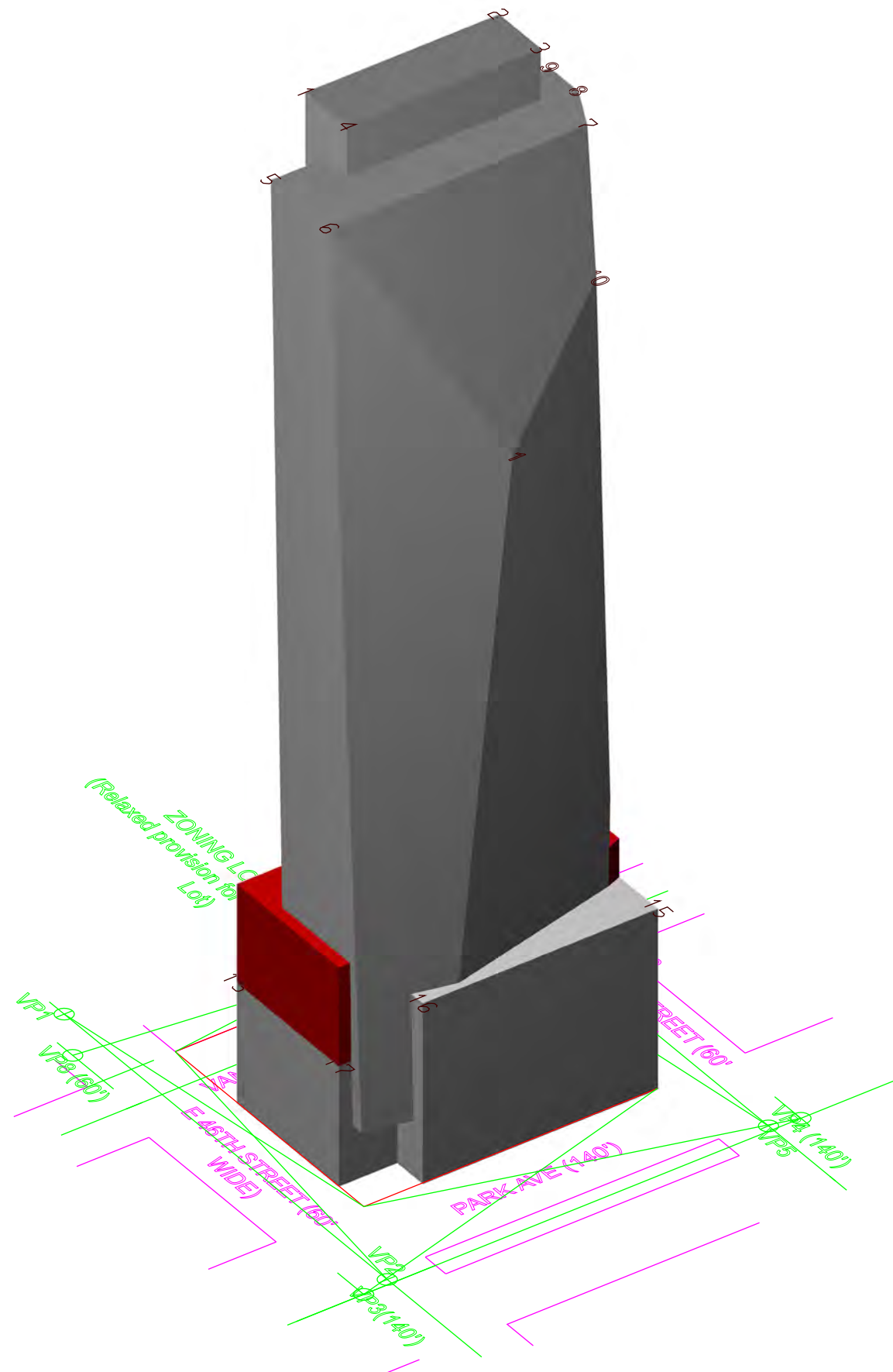
VP 5	49.77%
VP 6	51.96%
Average	<b>50.87%</b> target

VP 7	35.15%
VP 8	35.15%
Average	<b>35.15%</b> target

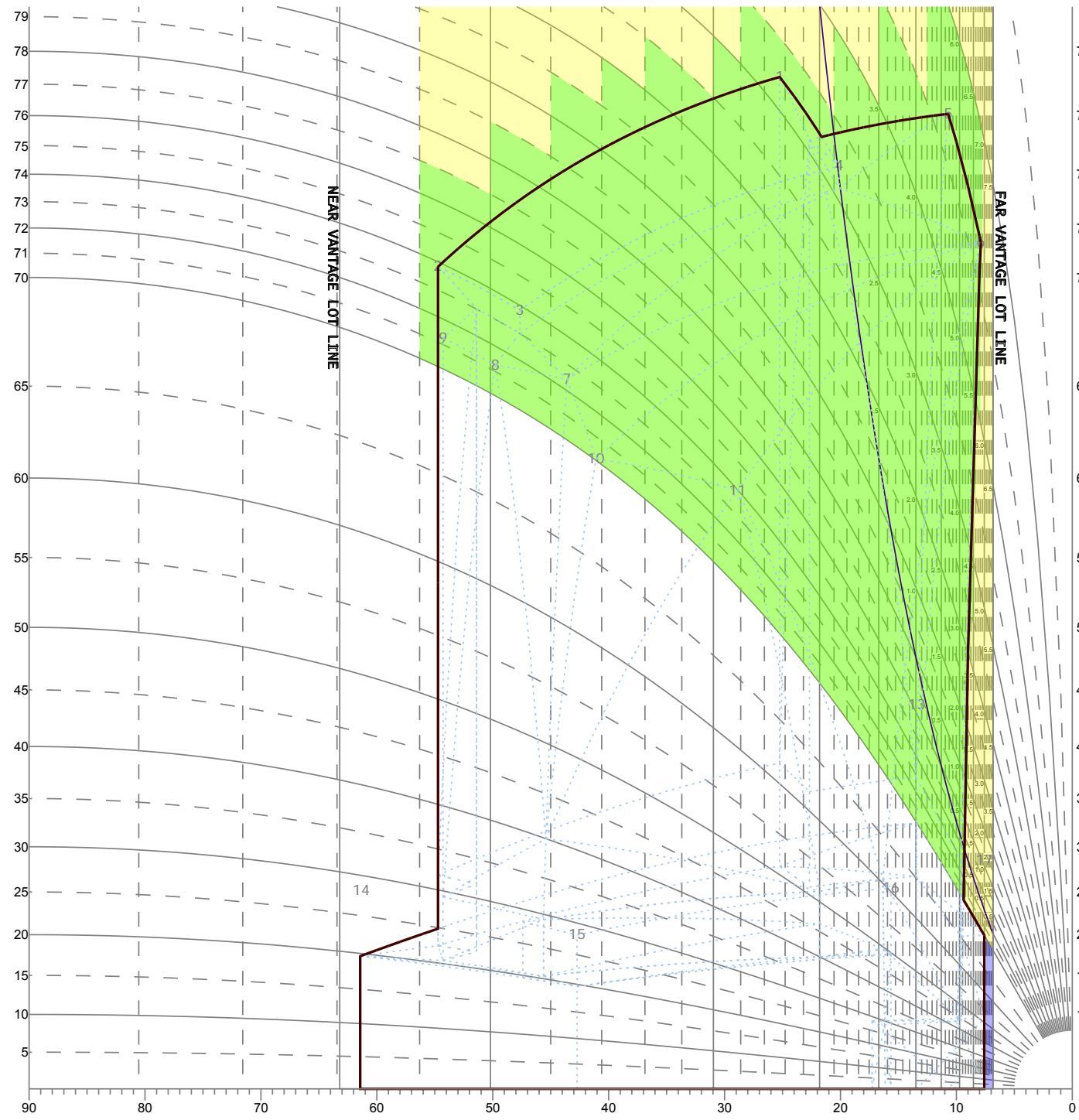
**Overall Score**      **59.71%**

**OPT. B - STREET WALL (RELAXED) - DAYLIGHT EVALUATION RESULTS**

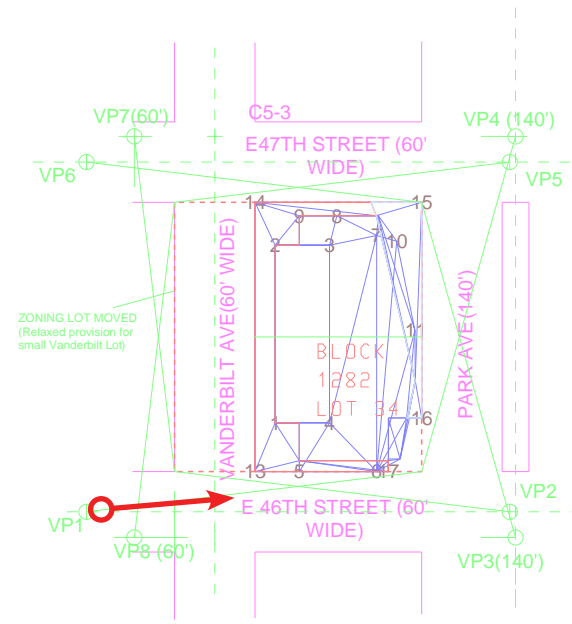
24 APRIL 2017



**DAYLIGHT EVALUATION RESULTS - VIEW POINT REFERENCE**



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary  
(Vantage point 1)

Section	Score
81-274(b) Squares above 70°	-54.70
81-274(c) Squares below 70°	1.68
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>-53.02</b>
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	40.92
<b>81-274(g) Daylight Score</b>	<b>43.56%</b>

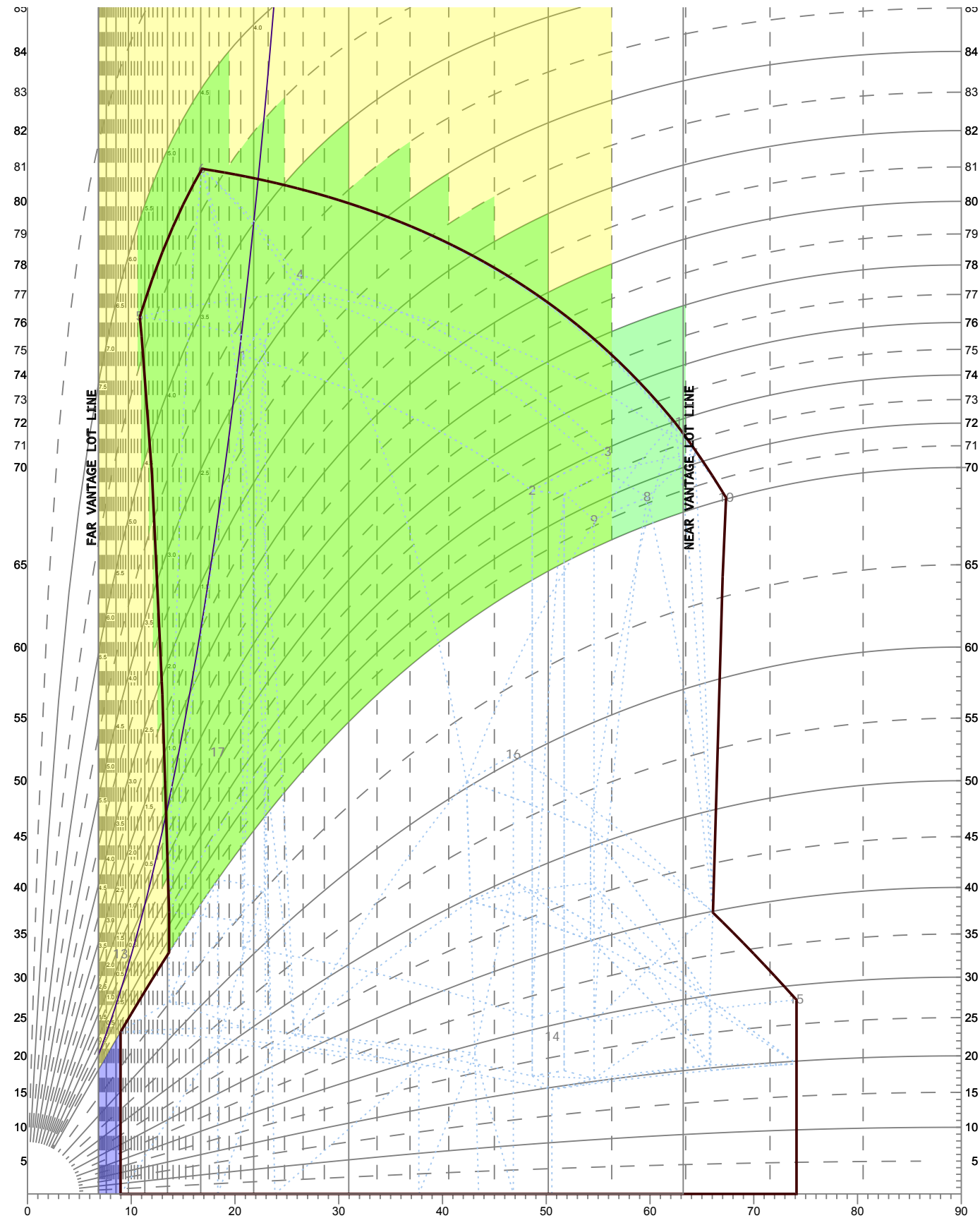
**Section 81-273(d) Street 170118-B-V1 VP 1**

Far Lot Line	-30.00	250.00	-0.12	6.8
Near Lot Line	-130.00	65.67	-1.98	63.2

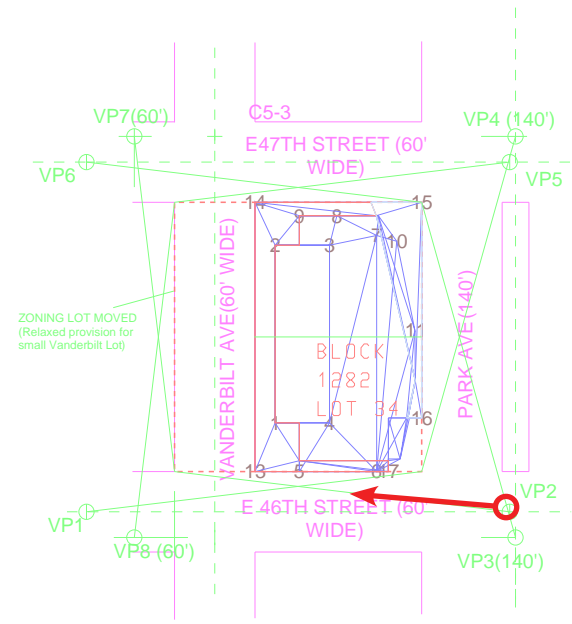
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	66.34	140.67	0.47	25.2	685.78	66.34	10.34	84.5
2	198.84	140.67	1.41	54.7	685.78	198.84	3.45	73.8
3	198.84	181.25	1.10	47.6	685.78	198.84	3.45	73.8
4	66.34	181.25	0.37	20.1	685.78	66.34	10.34	84.5
5	30.00	158.75	0.19	10.7	650.74	30.00	21.69	87.4
6	30.00	216.43	0.14	7.9	650.74	30.00	21.69	87.4
7	206.09	216.43	0.95	43.6	650.74	206.09	3.16	72.4
8	220.84	186.75	1.18	49.8	650.74	220.84	2.95	71.3
9	220.84	158.75	1.39	54.3	650.74	220.84	2.95	71.3
10	201.77	231.39	0.87	41.1	556.31	201.77	2.76	70.1
11	135.16	245.00	0.55	28.9	470.37	135.16	3.48	74.0
13	30.00	125.67	0.24	13.4	123.49	30.00	4.12	76.3
14	230.71	126.11	1.83	61.3	123.49	230.71	0.54	28.2
15	230.84	250.00	0.92	42.7	123.49	230.84	0.53	28.1
16	70.00	250.00	0.28	15.6	123.49	70.00	1.76	60.5
17	30.00	225.17	0.13	7.6	123.49	30.00	4.12	76.3

**OPT. B - STREET WALL (RELAXED) - VP1 - 46TH ST - VIEW EAST**

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary  
(Vantage point 2)

Section	Score
81-274(b) Squares above 70°	-38.00
81-274(c) Squares below 70°	5.04
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	-32.96
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	60.98
<b>81-274(g) Daylight Score</b>	<b>64.91%</b>

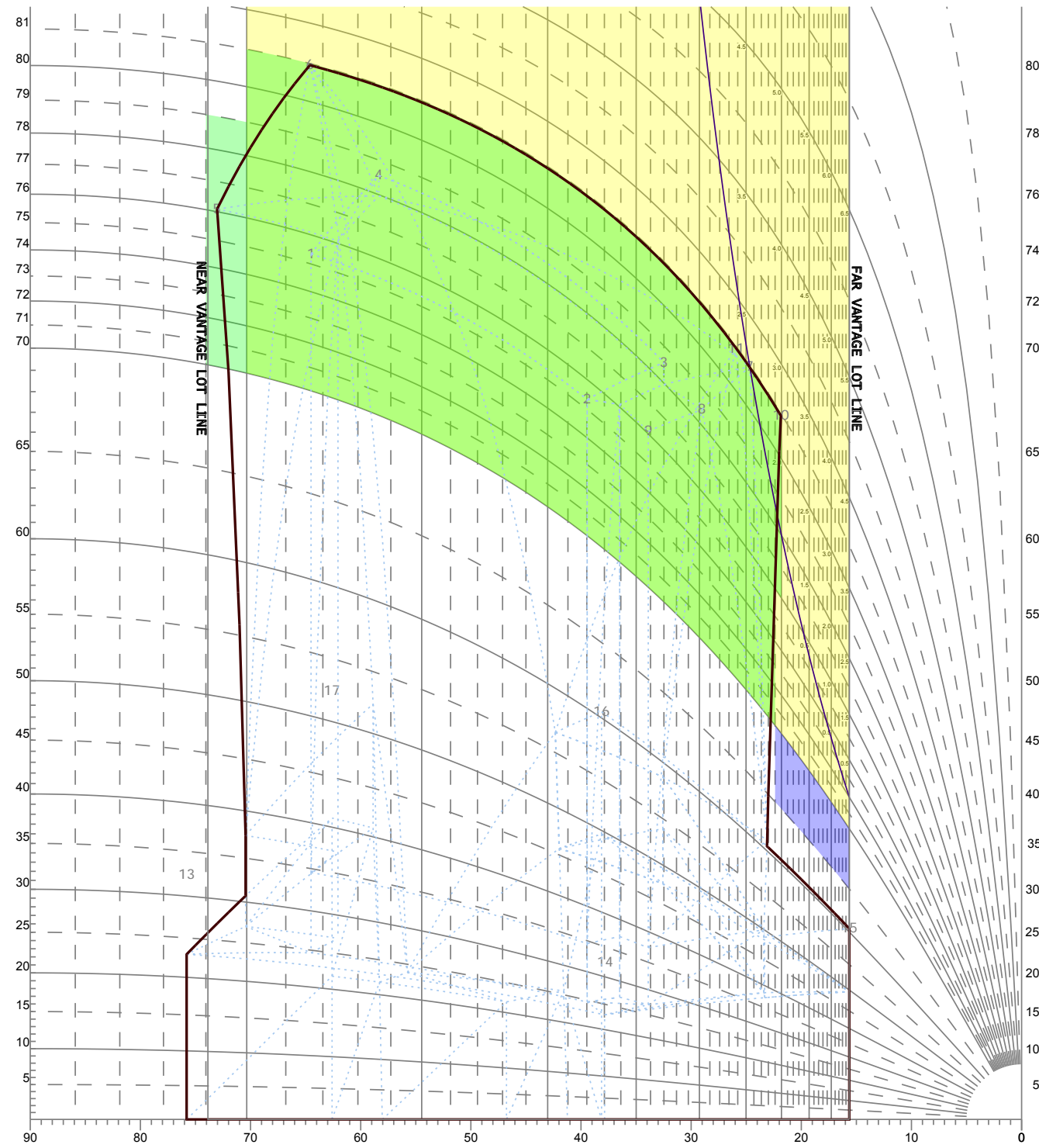
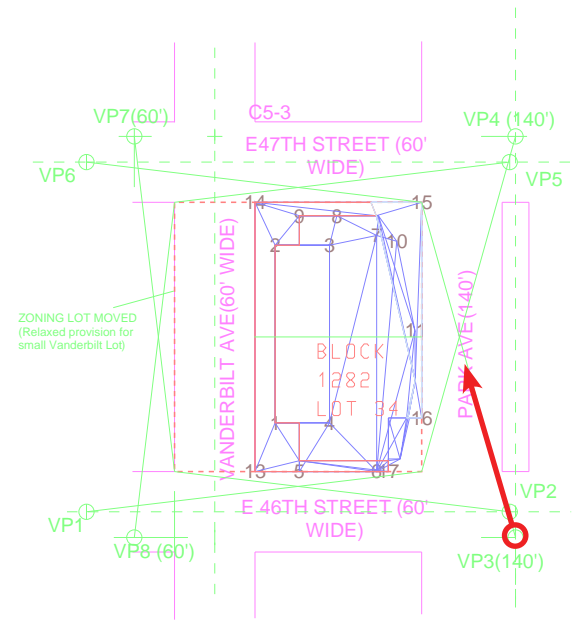
**Section 81-273(d) Street 170118-B-V2 VP 2**

Far Lot Line	30.00	250.00	0.12	6.8
Near Lot Line	130.00	65.67	1.98	63.2

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	66.34	175.00	0.38	20.8	685.78	66.34	10.34	84.5
2	198.84	175.00	1.14	48.6	685.78	198.84	3.45	73.8
3	198.84	134.42	1.48	55.9	685.78	198.84	3.45	73.8
4	66.34	134.42	0.49	26.3	685.78	66.34	10.34	84.5
5	30.00	156.92	0.19	10.8	650.74	30.00	21.69	87.4
6	30.00	99.24	0.30	16.8	650.74	30.00	21.69	87.4
7	206.09	99.24	2.08	64.3	650.74	206.09	3.16	72.4
8	220.84	128.92	1.71	59.7	650.74	220.84	2.95	71.3
9	220.84	156.92	1.41	54.6	650.74	220.84	2.95	71.3
10	201.77	84.28	2.39	67.3	556.31	201.77	2.76	70.1
11	135.16	70.67	1.91	62.4	470.37	135.16	3.48	74.0
13	30.00	190.00	0.16	9.0	123.49	30.00	4.12	76.3
14	230.71	189.56	1.22	50.6	123.49	230.71	0.54	28.2
15	230.84	65.67	3.51	74.1	123.49	230.84	0.53	28.1
16	70.00	65.67	1.07	46.8	123.49	70.00	1.76	60.5
17	30.00	90.50	0.33	18.3	123.49	30.00	4.12	76.3

**OPT. B - STREET WALL (RELAXED) - VP2 - 46TH ST & PARK AVE - VIEW WEST**

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 140 FOOT STREET

Scoring Summary  
(Vantage point 3)

Section	Score
81-274(b) Squares above 70°	-33.30
81-274(c) Squares below 70°	0.48
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	-32.82
81-274(e) Available Daylight Squares	91.90
81-274(f) Remaining daylight	59.08
<b>81-274(g) Daylight Score</b>	<b>64.29%</b>

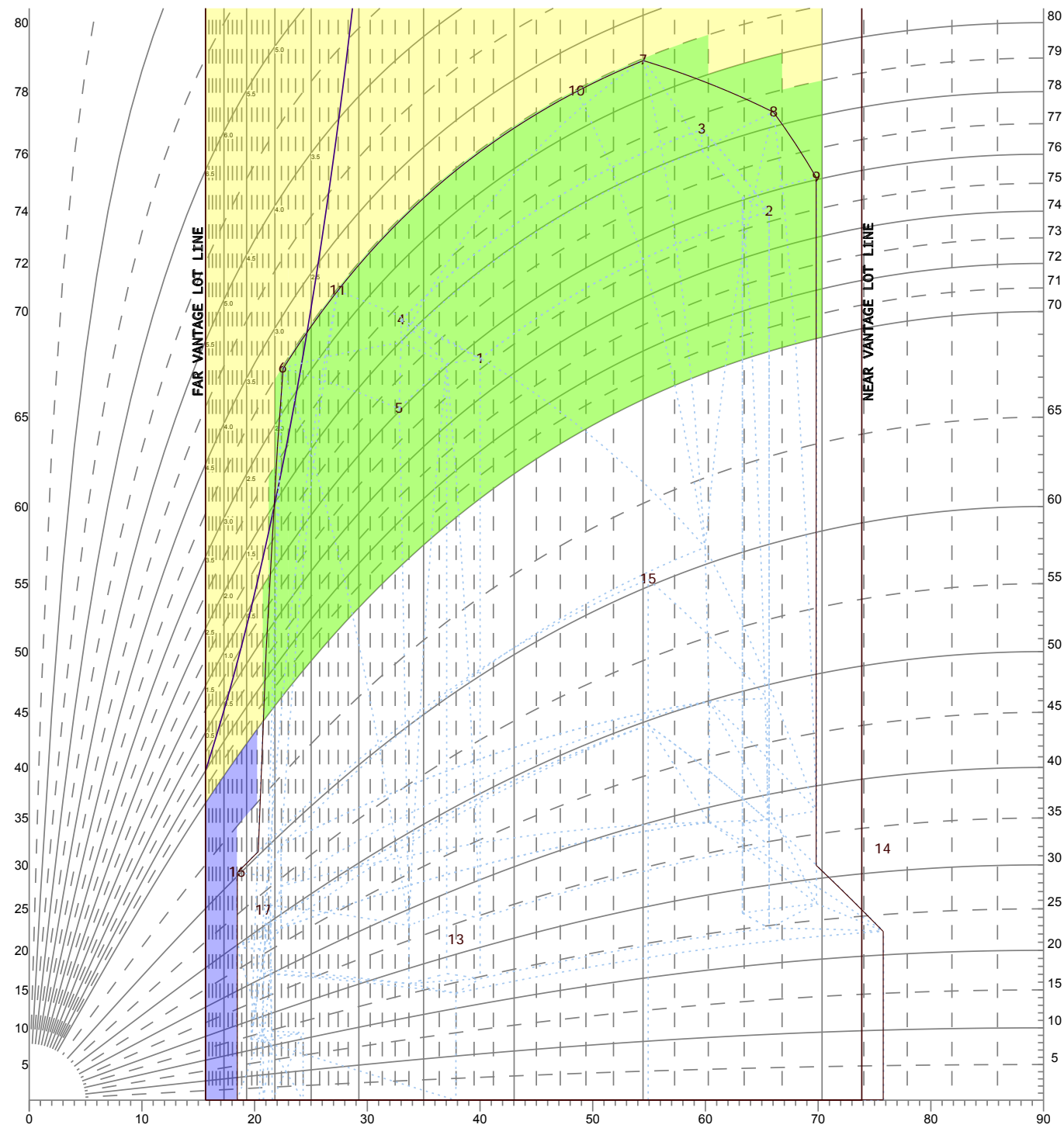
Section 81-273(d) Street 170118-B-V3 VP 3

Far Lot Line	-70.00	250.00	-0.28	15.6
Near Lot Line	-170.00	49.16	-3.46	73.9

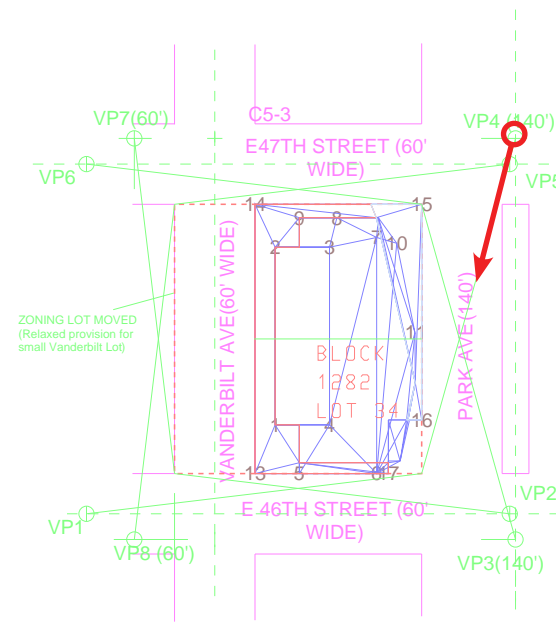
Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	179.33	85.50	2.10	64.5	685.78	179.33	3.82	75.3
2	179.33	218.00	0.82	39.4	685.78	179.33	3.82	75.3
3	138.75	218.00	0.64	32.5	685.78	138.75	4.94	78.6
4	138.75	85.50	1.62	58.4	685.78	138.75	4.94	78.6
5	161.25	49.16	3.28	73.0	650.74	161.25	4.04	76.1
6	103.57	49.16	2.11	64.6	650.74	103.57	6.28	81.0
7	103.57	225.25	0.46	24.7	650.74	103.57	6.28	81.0
8	133.25	240.00	0.56	29.0	650.74	133.25	4.88	78.4
9	161.25	240.00	0.67	33.9	650.74	161.25	4.04	76.1
10	88.61	220.93	0.40	21.9	556.31	88.61	6.28	80.9
11	75.00	154.32	0.49	25.9	470.37	75.00	6.27	80.9
13	194.33	49.16	3.95	75.8	123.49	194.33	0.64	32.4
14	193.89	249.87	0.78	37.8	123.49	193.89	0.64	32.5
15	70.00	250.00	0.28	15.6	123.49	70.00	1.76	60.5
16	70.00	89.16	0.79	38.1	123.49	70.00	1.76	60.5
17	94.83	49.16	1.93	62.6	123.49	94.83	1.30	52.5

OPT. B - STREET WALL (RELAXED) - VP3 - 46TH ST & PARK AVE - VIEW NORTH

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 140 FOOT STREET



Scoring Summary  
(Vantage point 4)

Section	Score
81-274(b) Squares above 70°	-34.10
81-274(c) Squares below 70°	3.48
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	-30.62
81-274(e) Available Daylight Squares	91.90
81-274(f) Remaining daylight	61.28
<b>81-274(g) Daylight Score</b>	<b>66.68%</b>

**Section 81-273(d) Street 170118-B-V4 VP 4**

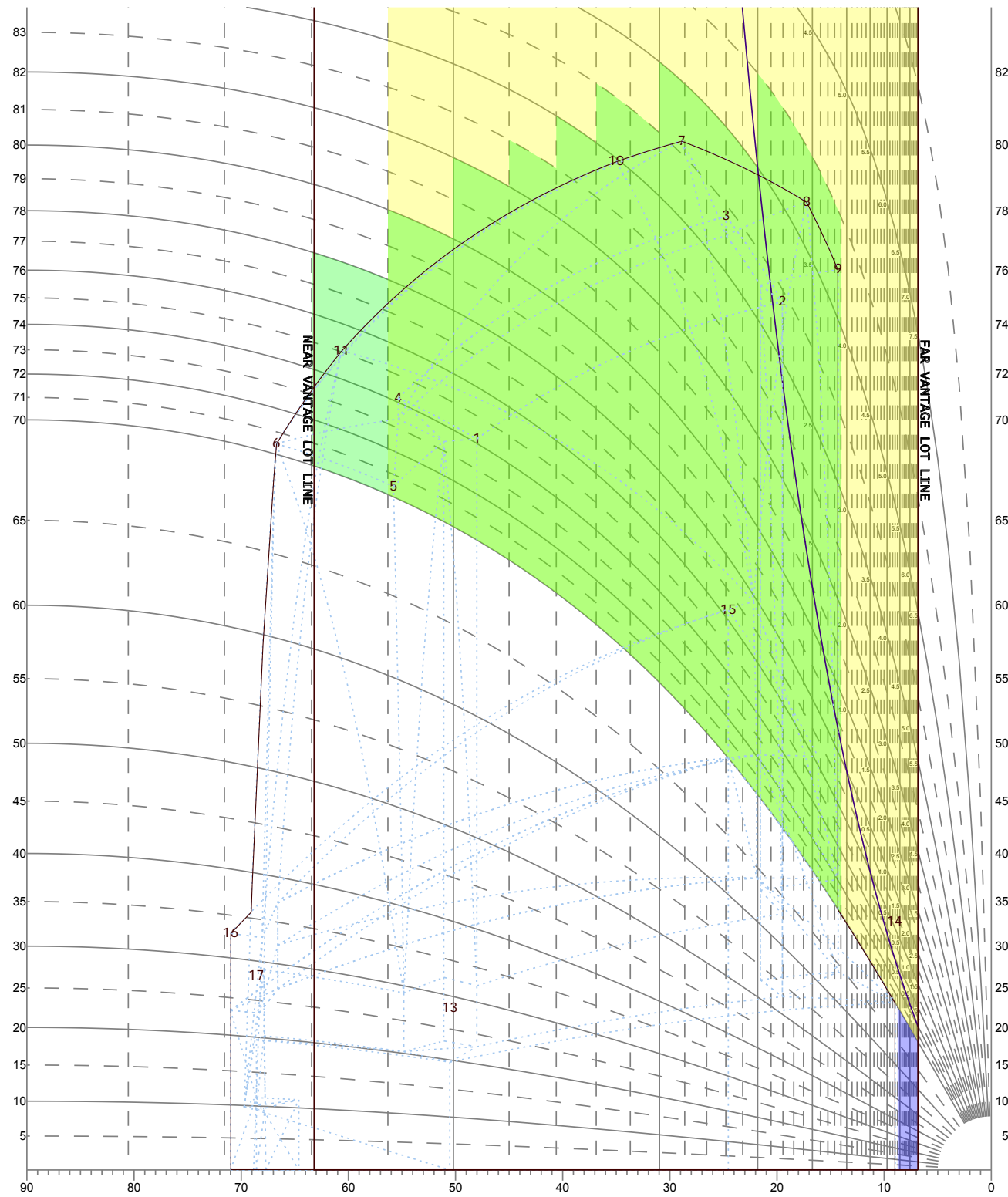
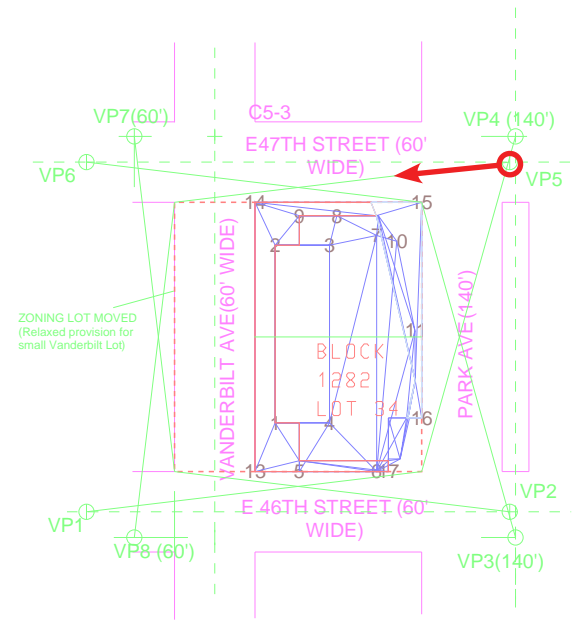
Far Lot Line	70.00	250.00	0.28	15.6
Near Lot Line	170.00	49.16	3.46	73.9

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	179.33	213.66	0.84	40.0	685.78	179.33	3.82	75.3
2	179.33	81.16	2.21	65.6	685.78	179.33	3.82	75.3
3	138.75	81.16	1.71	59.7	685.78	138.75	4.94	78.6
4	138.75	213.66	0.65	33.0	685.78	138.75	4.94	78.6
5	161.25	250.00	0.64	32.8	650.74	161.25	4.04	76.1
6	103.57	250.00	0.41	22.5	650.74	103.57	6.28	81.0
7	103.57	73.91	1.40	54.5	650.74	103.57	6.28	81.0
8	133.25	59.16	2.25	66.1	650.74	133.25	4.88	78.4
9	161.25	59.16	2.73	69.9	650.74	161.25	4.04	76.1
10	88.61	78.23	1.13	48.6	556.31	88.61	6.28	80.9
11	75.00	144.84	0.52	27.4	470.37	75.00	6.27	80.9
13	194.33	250.00	0.78	37.9	123.49	194.33	0.64	32.4
14	193.89	49.29	3.93	75.7	123.49	193.89	0.64	32.5
15	70.00	49.16	1.42	54.9	123.49	70.00	1.76	60.5
16	70.00	210.00	0.33	18.4	123.49	70.00	1.76	60.5
17	94.83	250.00	0.38	20.8	123.49	94.83	1.30	52.5

**OPT. B - STREET WALL (RELAXED) - VP4 - 47TH ST & PARK AVE - VIEW SOUTH**

24 APRIL 2017





DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET

Scoring Summary  
(Vantage point 5)

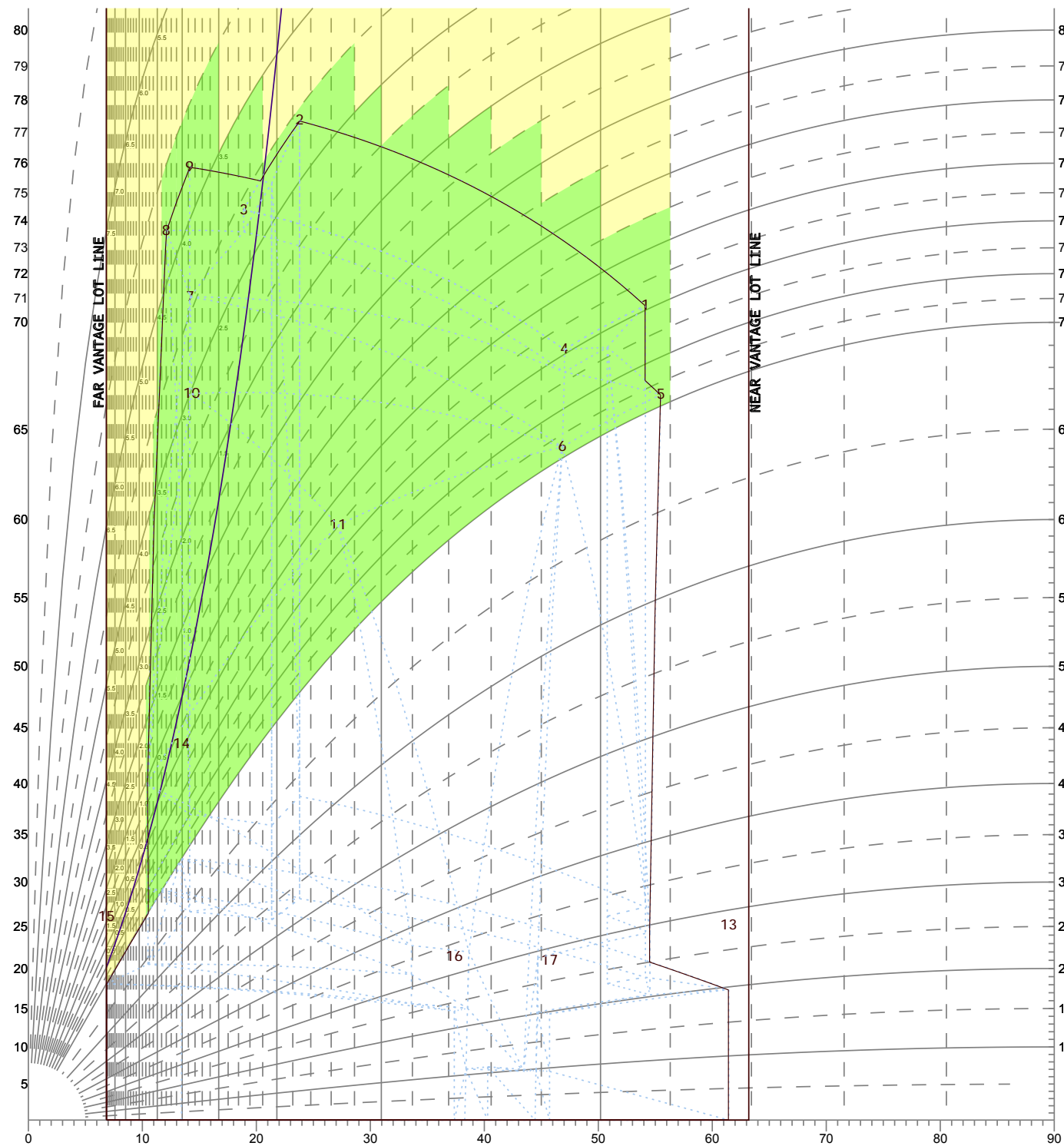
Section	Score
81-274(b) Squares above 70°	-32.00
81-274(c) Squares below 70°	4.62
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	-27.38
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	66.56
<b>81-274(g) Daylight Score</b>	<b><u>70.85%</u></b>

Section 81-273(d) Street 170118-B-V5 VP 5

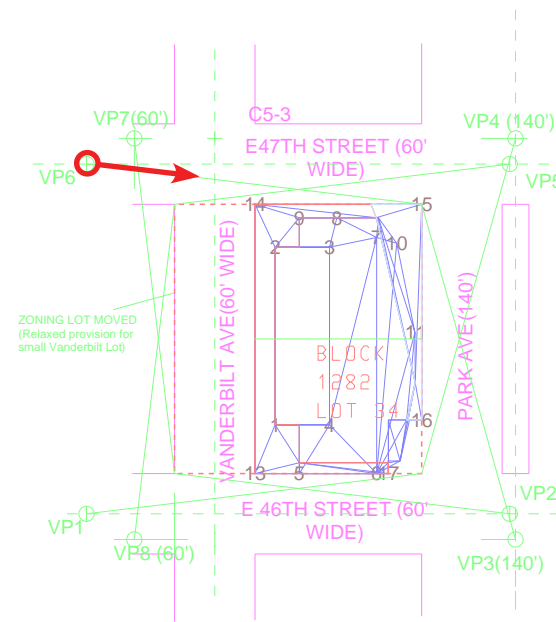
Far Lot Line	-30.00	250.00	-0.12	6.8
Near Lot Line	-130.00	65.67	-1.98	63.2

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	194.47	175.03	1.11	48.0	685.78	194.47	3.53	74.2
2	61.97	175.01	0.35	19.5	685.78	61.97	11.07	84.8
3	61.98	134.43	0.46	24.8	685.78	61.98	11.06	84.8
4	194.48	134.45	1.45	55.3	685.78	194.48	3.53	74.2
5	230.82	156.95	1.47	55.8	650.74	230.82	2.82	70.5
6	230.83	99.28	2.33	66.7	650.74	230.83	2.82	70.5
7	54.74	99.25	0.55	28.9	650.74	54.74	11.89	85.2
8	39.98	128.92	0.31	17.2	650.74	39.98	16.28	86.5
9	39.98	156.92	0.25	14.3	650.74	39.98	16.28	86.5
10	59.06	84.29	0.70	35.0	556.31	59.06	9.42	83.9
11	125.67	70.69	1.78	60.6	470.37	125.67	3.74	75.0
13	230.81	190.03	1.21	50.5	123.49	230.81	0.54	28.1
14	30.10	189.56	0.16	9.0	123.49	30.10	4.10	76.3
15	29.99	65.68	0.46	24.5	123.49	29.99	4.12	76.4
16	190.83	65.70	2.90	71.0	123.49	190.83	0.65	32.9
17	230.83	90.54	2.55	68.6	123.49	230.83	0.54	28.1

OPT. B - STREET WALL (RELAXED) - VP5 - 47TH ST & PARK AVE - VIEW WEST



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary  
(Vantage point 6)

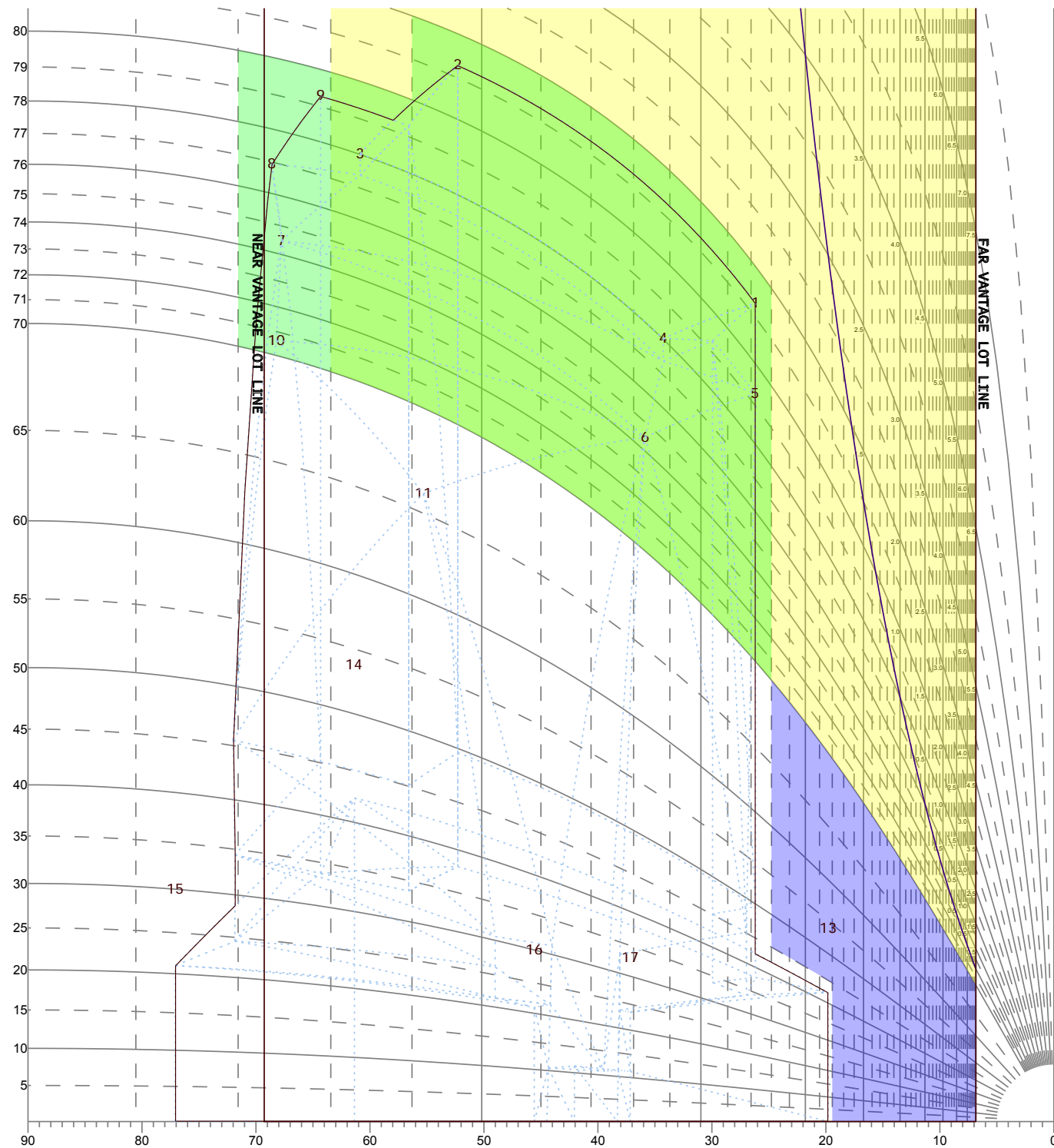
Section	Score
81-274(b) Squares above 70°	-42.70
81-274(c) Squares below 70°	0.00
81-274(d) Profile Encroachment penalty	0.00
<b>Total Blockage</b>	<b>-42.70</b>
81-274(e) Available Daylight Squares	93.94
81-274(f) Remaining daylight	51.24
<b>81-274(g) Daylight Score</b>	<b>54.54%</b>

**Section 81-273(d) Street 170118-B-V6.1 VP 6**

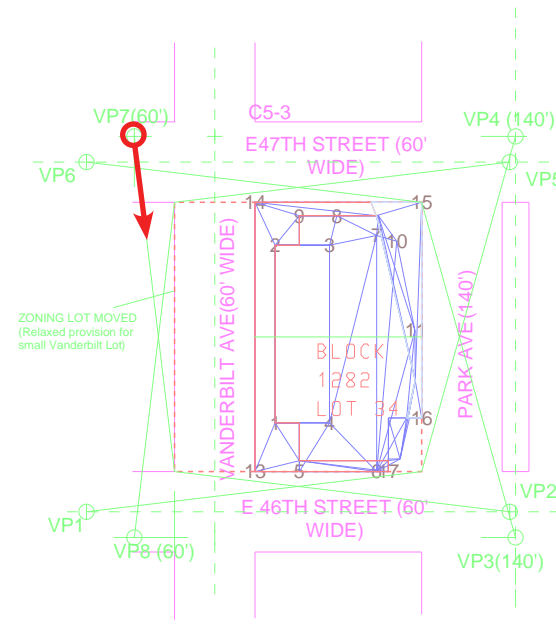
Far Lot Line	30.00	250.00	0.12	6.8
Near Lot Line	130.00	65.67	1.98	63.2

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	194.52	140.64	1.38	54.1	685.78	194.52	3.53	74.2
2	62.02	140.66	0.44	23.8	685.78	62.02	11.06	84.8
3	62.03	181.24	0.34	18.9	685.78	62.03	11.06	84.8
4	194.53	181.22	1.07	47.0	685.78	194.53	3.53	74.2
5	230.86	158.72	1.45	55.5	650.74	230.86	2.82	70.5
6	230.87	216.39	1.07	46.9	650.74	230.87	2.82	70.5
7	54.78	216.42	0.25	14.2	650.74	54.78	11.88	85.2
8	40.03	186.75	0.21	12.1	650.74	40.03	16.26	86.5
9	40.02	158.75	0.25	14.2	650.74	40.02	16.26	86.5
10	59.10	231.38	0.26	14.3	556.31	59.10	9.41	83.9
11	125.72	244.98	0.51	27.2	470.37	125.72	3.74	75.0
13	230.86	125.64	1.84	61.4	123.49	230.86	0.53	28.1
14	30.15	126.11	0.24	13.4	123.49	30.15	4.10	76.3
15	30.04	249.99	0.12	6.9	123.49	30.04	4.11	76.3
16	190.88	249.97	0.76	37.4	123.49	190.88	0.65	32.9
17	230.87	225.13	1.03	45.7	123.49	230.87	0.53	28.1

**OPT. B - STREET WALL (RELAXED) - VP6 - 47TH ST - VIEW EAST**



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET



Scoring Summary  
(Vantage point 7)

Section	Score
81-274(b) Squares above 70°	-12.80
81-274(c) Squares below 70°	14.46
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	1.66
81-274(e) Available Daylight Squares	95.46
81-274(f) Remaining daylight	97.12
<b>81-274(g) Daylight Score</b>	<b><u>101.74%</u></b>

**Profile Penalties**

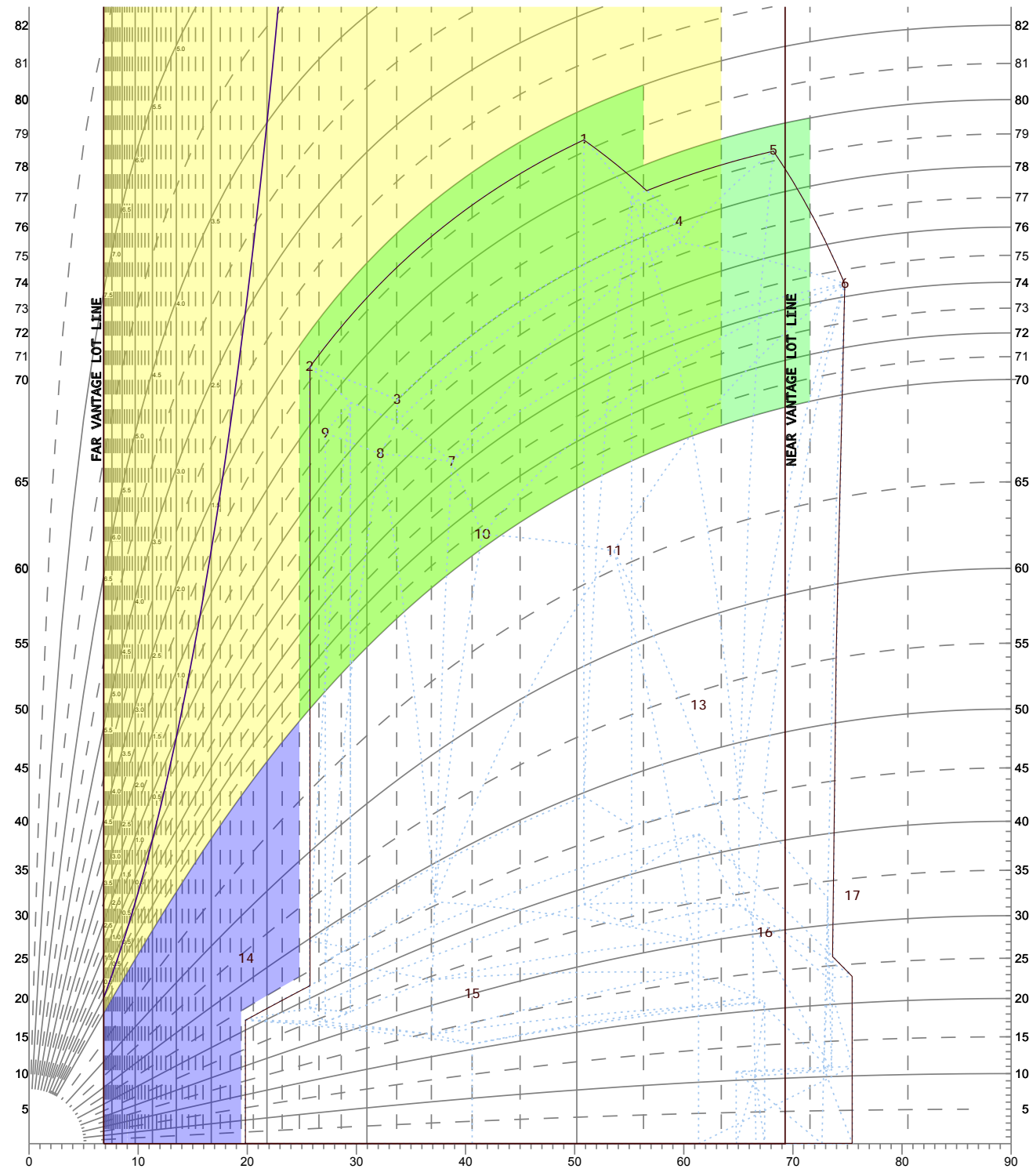
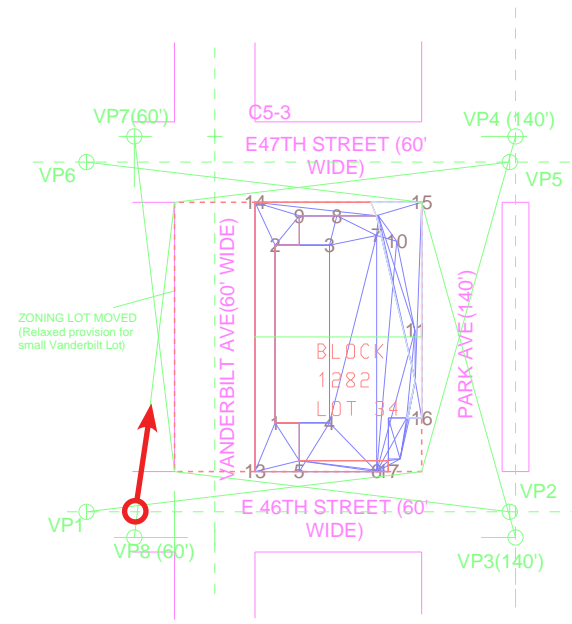
**Section 81-273(d) Street 170118-B-V7 VP 7**

Far Lot Line	-30.00	250.00	-0.12	6.8
Near Lot Line	-130.00	49.19	-2.64	69.3

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle [H]	[S]	Tan[H/S]	Angle
1	105.00	213.66	0.49	26.2	685.78	105.00	6.53 81.3
2	105.00	81.16	1.29	52.3	685.78	105.00	6.53 81.3
3	145.58	81.16	1.79	60.9	685.78	145.58	4.71 78.0
4	145.58	213.66	0.68	34.3	685.78	145.58	4.71 78.0
5	123.08	250.00	0.49	26.2	650.74	123.08	5.29 79.3
6	180.76	250.00	0.72	35.9	650.74	180.76	3.60 74.5
7	180.76	73.91	2.45	67.8	650.74	180.76	3.60 74.5
8	151.08	59.16	2.55	68.6	650.74	151.08	4.31 76.9
9	123.08	59.16	2.08	64.3	650.74	123.08	5.29 79.3
10	195.72	78.23	2.50	68.2	556.31	195.72	2.84 70.6
11	209.33	144.84	1.45	55.3	470.37	209.33	2.25 66.0
13	90.00	250.00	0.36	19.8	123.49	90.00	1.37 53.9
14	90.44	49.29	1.83	61.4	123.49	90.44	1.37 53.8
15	214.33	49.16	4.36	77.1	123.49	214.33	0.58 30.0
16	214.33	210.00	1.02	45.6	123.49	214.33	0.58 29.9
17	189.50	250.00	0.76	37.2	123.49	189.50	0.65 33.1

**OPT. B - STREET WALL (RELAXED) - VP7 - 47TH ST & VANDERBILT - VIEW SOUTH**

24 APRIL 2017



DAYLIGHT EVALUATION DIAGRAM - 60 FOOT STREET

Scoring Summary  
(Vantage point 8)

Section	Score
81-274(b) Squares above 70°	-12.80
81-274(c) Squares below 70°	14.46
81-274(d) Profile Encroachment penalty	0.00
Total Blockage	1.66
81-274(e) Available Daylight Squares	95.45
81-274(f) Remaining daylight	97.11
<b>81-274(g) Daylight Score</b>	<b>101.74%</b>

Profile Penalties

Section 81-273(d) Street 170118-B-V8 VP 8

Far Lot Line	30.00	249.97	0.12	6.8
Near Lot Line	130.00	49.16	2.64	69.3

Pt	Dist[S]	Dist[D]	Tan[S/D]	Angle	[H]	[S]	Tan[H/S]	Angle
1	105.00	85.50	1.23	50.8	685.78	105.00	6.53	81.3
2	105.00	218.00	0.48	25.7	685.78	105.00	6.53	81.3
3	145.58	218.00	0.67	33.7	685.78	145.58	4.71	78.0
4	145.58	85.50	1.70	59.6	685.78	145.58	4.71	78.0
5	123.08	49.16	2.50	68.2	650.74	123.08	5.29	79.3
6	180.76	49.16	3.68	74.8	650.74	180.76	3.60	74.5
7	180.76	225.25	0.80	38.7	650.74	180.76	3.60	74.5
8	151.08	240.00	0.63	32.2	650.74	151.08	4.31	76.9
9	123.08	240.00	0.51	27.2	650.74	123.08	5.29	79.3
10	195.72	220.93	0.89	41.5	556.31	195.72	2.84	70.6
11	209.33	154.32	1.36	53.6	470.37	209.33	2.25	66.0
13	90.00	49.16	1.83	61.4	123.49	90.00	1.37	53.9
14	90.44	249.87	0.36	19.9	123.49	90.44	1.37	53.8
15	214.33	250.00	0.86	40.6	123.49	214.33	0.58	30.0
16	214.33	89.16	2.40	67.4	123.49	214.33	0.58	29.9
17	189.50	49.16	3.85	75.5	123.49	189.50	0.65	33.1

OPT. B - STREET WALL (RELAXED) - VP8 - 46TH ST & VANDERBILT - VIEW NORTH

24 APRIL 2017

Testimony on Greater East Midtown Rezoning – April 26, 2017

James Korein, Omnispective Management Corp.

Good Morning. My name is Jim Korein. My family and I own the Lever House, as well as two other Landmarks, 240 Central Park South and 608 5<sup>th</sup> Avenue. Lever House has approximately 285,000 square feet of unused air rights.

We strongly support the proposed Greater East Midtown Rezoning.

We have followed this process for years and have always fully agreed that East Midtown should be rezoned in preparation for the demands of the 21<sup>st</sup> Century. This preparation must encompass the roles of both new buildings and landmarked buildings that, together, represent the best of New York. By providing a broad, straightforward and manageable transfer of landmark development rights, we believe the rezoning will put landmark owners like us in a position to properly maintain and preserve landmarked properties in keeping with their historic significance.

In order to succeed, the rezoning needs to create significant demand for available development rights. Therefore, we support Manhattan Borough President Brewer's suggestion that the minimum price for transfers be set at a level which will encourage the healthy demand which will be necessary to achieve the stated goals of the rezoning.

We believe that the proposed rezoning can revitalize East Midtown. We are committed to ensuring that Lever House remains an iconic building and an active part of a thriving and globally competitive district.

Thank you.

James Korein  
Chief Executive Officer  
Omnispective Management  
[jimkorein@omnispective.com](mailto:jimkorein@omnispective.com)  
(212)499-0909



**Statement of  
Grand Central Partnership  
Before The  
New York City Planning Commission  
on  
Greater East Midtown Rezoning**

**April 26, 2017**

For nearly three decades, the Grand Central Partnership has served a 70 square block area surrounding Grand Central Terminal, and the proposal to rezone what is essentially the footprint of GCP is a dynamic comprehensive plan and an unprecedented step forward in helping to provide significant development and revitalization options for our commercial properties while simultaneously enhancing the mass transportation system so critical to the world's central business district.

We were pleased to have been a participant on the East Midtown Steering Committee as an advocate for not only our jurisdiction – but, as we see it- our entire city – and we thank Borough President Brewer and Council Member Garodnick for giving us the opportunity to participate in this critical effort.

Needless to say, we fully support the Greater East Midtown Rezoning Plan. And we urge you to make it happen.

There are several key technical issues related to the proposal that we share, and leave today, because of time, to the Industry representatives to outline for your consideration.

We will, with the time allotted focus on an area that we are familiar with and have extensive experience in: Public Realm Improvements.

We are pleased to see that the transit related improvements are specifically listed in the proposed text. And we wholeheartedly support their inclusion, and any and all funding of these important projects.

With respect to the above grade public realm initiatives proposed in the Concept Plan, such as plazas, shared streets, and enhancements to pedestrian and vehicular thoroughfares, while we understand that you are not acting directly on these proposals, we would like to comment on the critical issue pertaining to project identification and site selection.

There has been great concern raised – and in some cases outright opposition expressed - by property owners and businesses impacted by these proposed ideas. We have spent the past few months facilitating meetings to provide the opportunity for city officials to hear directly from the stakeholders most directly impacted, a process that unfortunately did not take place prior to the release of the Concept Plan proposals.

It is crucial that any project plans in the district be fully evaluated to help identify the negative impacts, and not just the potential benefits. Since plans that have been proposed are not evaluated in the DEIS before you, it is difficult to understand the overall impacts. Issues such as traffic congestion, lack of access to businesses, freight elevators and loading docks, and most critically, first responder and emergency vehicle access must be evaluated as part of any review to close or partially close a street.

Our most recent discussions with City representatives have focused on creating language for the Concept Plan that will provide greater clarity and certainty in how these necessary considerations will be addressed. And we appreciate that effort.

But, our experience has proven that the only successful formula to creating new public space starts and ends from the ground up with the direct involvement, planning, and approval of all relevant stakeholders. They should be partners, not reactors.

We look forward to continuing to work with everyone involved to guarantee that this key issue is addressed, and that the overall rezoning plan is adopted to ensure our neighborhoods status as a bustling global urban center.

Thank you.

April 25, 2017

Honorable Marisa Lago, Chair  
Commission Members  
New York City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10004

Re: CPC# N170186 ZRM; N170186A ZRM; C170187 ZMM

Dear Chair Lago and Members of the Commission:

Thank you for the opportunity to provide testimony on the proposed East Midtown Zoning Text. Overall, we believe that the proposal provides a positive framework for the reinvigoration of the East Midtown area and we support the overarching goals of the proposal. We do have one comment on the text that we ask the Commission to consider, namely to clarify that new transient hotel projects that are under construction but that will not have complete foundations on the date of adoption of the East Midtown text amendment will not be subject to the special permit requirements of proposed Zoning Resolution Section 81-621. We believe that projects that are underway under current zoning rules should be allowed to continue to avoid an extreme financial hardship to the developers and owners.

GCH Hotel Group is an established internationally known hotel development and management company based in Berlin, Germany with over 120 hotels throughout Europe. Recently, GCH began expanding outside of its European base, and as part of that effort acquired property on the west side of Third Avenue between East 44<sup>th</sup> and East 45<sup>th</sup> Street with plans to develop a small approximately 92 key boutique hotel that would be GCH's first project in New York City. GCH began working on the project more than three years ago, and has actively pursued the development since that time. The hotel project is fully permitted, construction protection has been installed to protect neighboring property after lengthy negotiations,



abatement has occurred, and demolition is complete. Excavation will commence, and foundations will be ready to pour in the coming months and are expected to be completed by 4<sup>th</sup> quarter 2017. In total, more than \$22,000,000 has been expended by GCH and its partners in furtherance of the project.

Proposed Zoning Resolution Section 81-621 (Special provisions for transient hotels) changes the existing zoning rules for transient hotels, making a use that benefits the New York City business and tourist communities and which is allowed today on an as of right basis subject to a special permit. While there may be some policy basis for imposing such a requirement for future projects, it will, if applied to our project, completely eradicate the years of effort and expense GCH has extended in pursuit of the project. Moreover, applying a special permit requirement to the project will cause a halt in all construction activity for at least 18 months to two years while a special permit – which may or may not be approved - is pursued. We do not believe that it is in the City's interest to have construction sites lie fallow for such extended periods and we do not believe that the City's intent in proposing the Section 81-621 was to impose such a direct economic harm on a single development project. We are aware of several instances in the Zoning Resolution where the drafters have allowed for active developments to continue construction based on the project having a full building permit and ongoing construction activity on the date of the adoption of the zoning text amendment. We would ask the Commission to add similar language to Section 81-621 to avoid this extreme hardship to GCH.

Thank you for your consideration, and we are happy to discuss at your convenience.

Sincerely,



Daniel Liven, General Counsel  
GCH Hotel Group

Development  
Consulting  
Services, Inc.

  
330 W 42nd Street  
16th Floor  
New York, NY 10036  
212 714-0280

  
Zoning Consulting  
Development Feasibility Studies  
Urban Design and Planning  
[www.dcszoning.com](http://www.dcszoning.com)

April 26, 2017

My name is Michael Parley. I am the President of Development Consulting Services, which is exclusively devoted to zoning consulting here in New York City. I follow all changes to the Zoning Resolution, but Midtown Zoning most avidly. My friend Patrick Too and I wrote most of the original Midtown Special District in 1980 and 81. So, I know Midtown zoning. I am here to state that I applaud this East Midtown Zoning Proposal.

When the first version of East Midtown was proposed in 2012, I was not a big fan, mostly because the Landmarks in East Midtown were being treated shabbily and inequitably. This time, I am happy to be here to express my support for this proposal since, under this version, the Landmarks in East Midtown are being treated properly and fairly.

Department staff working on this have produced for you a very far sighted and competent set of regulations.

My comments today in length will focus more on two reservations I have, but do not mistake my limited reservations with my admiration, for and approval of, this needed effort.

Mitigating my enthusiasm are two reservations:

- 1) The proposed special permit for hotel use in Sec. 81-621 is misguided and counterproductive. It is not a land-use provision, and, as is common knowledge, is intended to favor a particular union. This is not a proper use of the land use and urban planning functions of the City of New York. I doubt it would withstand a legal challenge. Moreover, very few hotels will be built under this, because there is nearly no one who will want to suffer 18 to 24 months of administrative torture to produce a hotel..... So this union will not gain any jobs with this. .... Instead of a special permit, I recommend that hotels be permitted by certification, with an advisory committee set up to make recommendations to the Commission on each application. The advisory committee could have a City Council member and a representative of the union on it, as well as others. This would be win/win for all.
- 2) We have been advised by staff that a qualifying site which buys floor area pursuant to Sec 81-64 from a remote Landmark cannot also buy proximate Landmark TDR's under Sec. 74-79, if they are so geographically situated that a Sec. 74-79 Landmark TDR is also possible. It is to the city's advantage to permit a site to but both .... To supplement one with the other .... Since the city will receive benefits from the Sec. 81- 64 transfer which they would not from a purely Sec. 74-79 transfer.

Thank You.

Michael Parley

CARTER LEDYARD & MILBURN LLP  
*Counselors at Law*

Christopher Rizzo  
Partner

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(212) 371-2720

**April 26, 2017 Comments by Christopher Rizzo on Behalf of the Greenacre Foundation  
Regarding Greater East Midtown Rezoning**

My name is Christopher Rizzo and my law firm represents the Greenacre Foundation. The Foundation will be submitting a letter to the City Planning Commission to comment on the rezoning and draft environmental impact statement. And you (have/will) (heard/hear) from the Foundation's executive director. I want to summarize the two key points that our letter will make.

The Foundation's first comment is that the DEIS must characterize the shadow impacts on the Greenacre Park as significant. Development of all the projected and potential development sites would essentially eliminate afternoon sunlight in the park, harming vegetation and eliminating one of the park's most important qualities—sunlight. The FEIS must include mitigation for these impacts. The Foundation recognizes that all shadow impacts do not rise to the level of significance. But Greenacre Park is not an ordinary public open space. [(1) It is only lushly landscaped public open space in East Midtown. (2) East Midtown has one of the lowest open space rankings in the City and this rezoning is intended to substantially increase its employee population. (3) It is designed to give both residents and workers alike a respite from the hustle and bustle of midtown. (4) It is too small to allow users to migrate away from shadows. And (5) the development of Second Avenue, which has no height limits, will eliminate morning sun in the park and its ability to support diverse vegetation.]

The Foundation's second comment is that the FEIS must include a sensible mitigation measure. Only a small part of the rezoning area has the potential to shadow the park. And the development sites in that area will only shadow the park if certain trigger heights are reached. The Foundation thus asks for the creation of a review process for shadows that is only triggered if and when a relevant new building application is submitted. It should require applicants to disclose shadow impacts on the park and efforts to mitigate them. These kinds of nonbinding, review procedures are used in the Zoning Resolution where impacts are by their nature project- and site-specific.

The Foundation is supportive of the goals of the Greater East Midtown Rezoning and the revitalization of East Midtown. After all, the Rockefeller family created the Park to serve this very purpose. The Foundation simply asks the City to use the SEQRA process to help it protect this legacy.

# **GREENACRE PARK**

**A  
VEST-POCKET PARK  
IN  
MIDTOWN  
MANHATTAN**

**(51<sup>ST</sup> ST BETWEEN  
2<sup>ND</sup> AND 3<sup>RD</sup> AVE)**

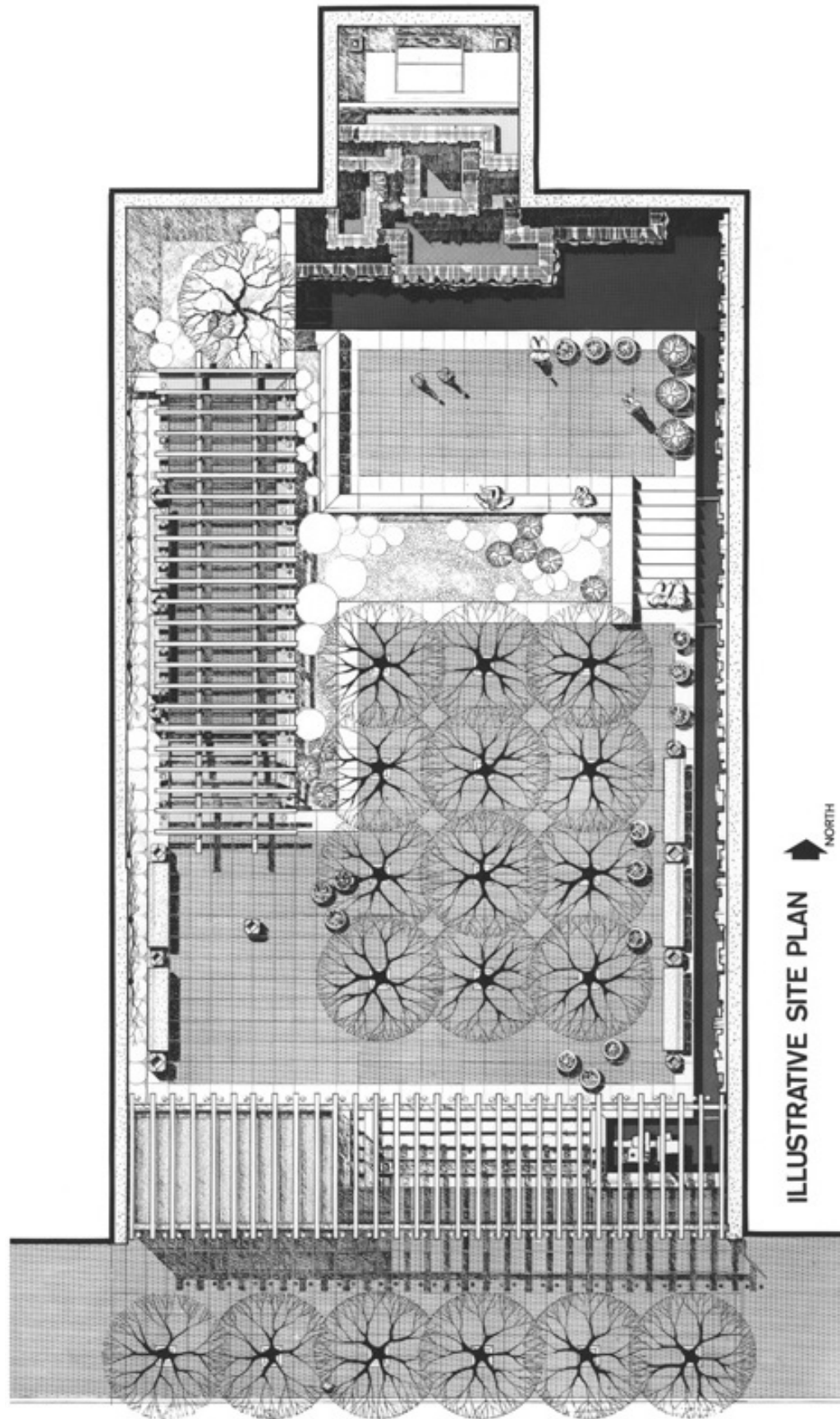


# OPENING OF GREENACRE PARK



- Abby Rockefeller Mauze dedicated the Park in 1971 to the people of New York City *"...in the hope that they will find here some moments of serenity in this busy world."*
- 1 of only 2 Private Gifts that created and maintained a park for the public in New York City with an endowment to maintain in perpetuity.
- Greenacre is a Park, not a Private Open Public Space (POPS) - NOT created for a building bonus

# ORIGINAL SASAKI DESIGN EXISTS TODAY



- Elevated several feet above sidewalk with 60 feet of street frontage
- Three different levels
  - *Central Area* which is home to a grove of honey locust trees
  - *Raised Terrace* protected by a trellis roof with heating elements for cooler weather
  - *Sunken Level* at the rear of the Park
- Water theme
  - 25-foot waterfall with a pool at its base
  - A fountain at the entrance
  - Water streams down the east wall into a brook which runs from the sidewalk entrance to the waterfall

# SUMMARY OF INCREMENTAL SHADOWS

WORST-CASE INCREMENTAL SHADOW + POTENTIAL ADDITIONAL SHADOW FROM EAST DURATIONS

## MAY/ AUG 6

FROM EAST  
4 hour 25 minutes

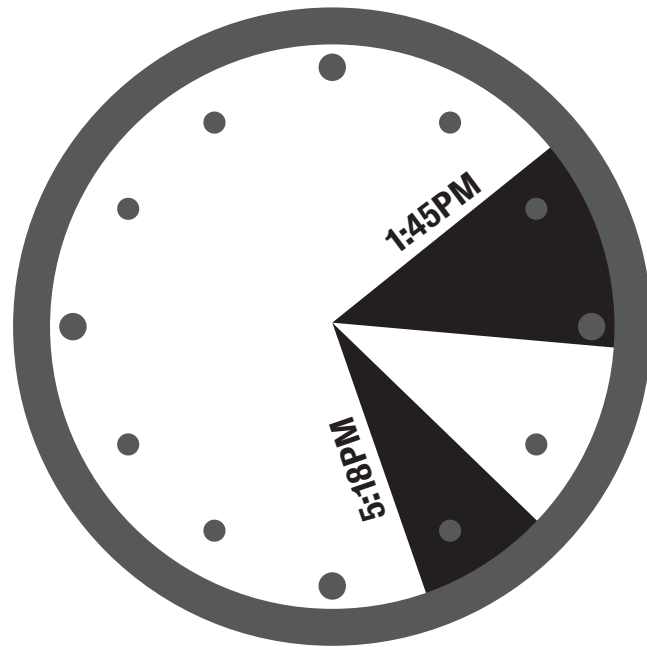
+

138 E 50TH ST + DEIS  
INCREMENTAL SHADOW  
1 hour 20 minutes

=  
TOTAL

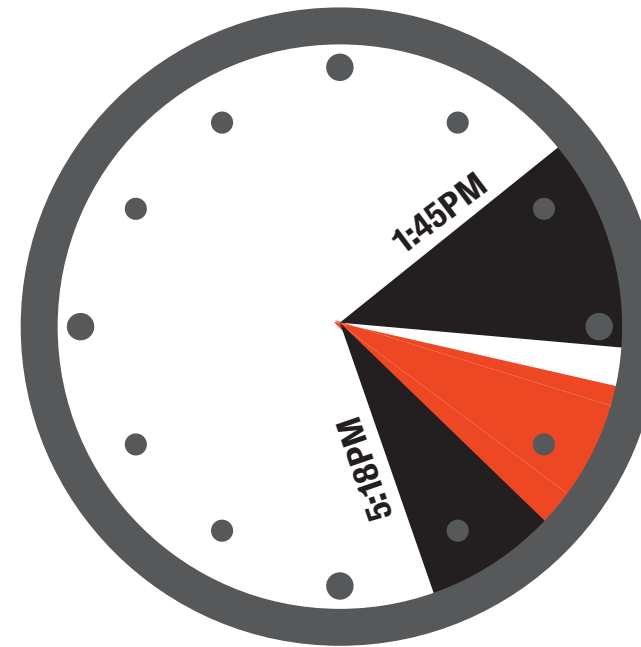
5 hour 45 minutes

### CURRENT CONDITIONS



SHADOW TIMES  
6:27AM-7:15AM, 1:45PM-3:10PM, 4:25PM-5:18PM

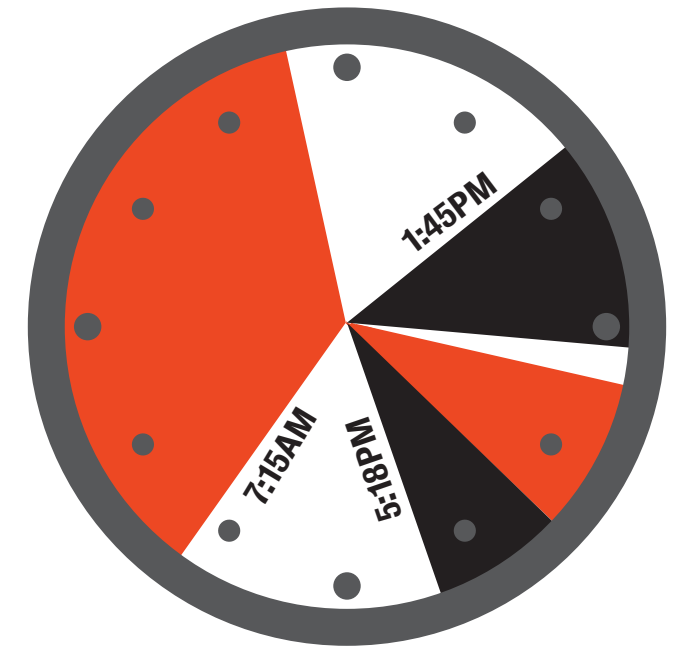
### 138 E 50TH ST + DEIS



INCREMENTAL SHADOW TIMES  
3:10PM-4:30PM

VS.

### SHADOW FROM EAST + 138 E 50TH ST + DEIS



INCREMENTAL SHADOW TIMES  
7:15AM-11:40AM + 3:10PM-4:30PM

## JUN 21

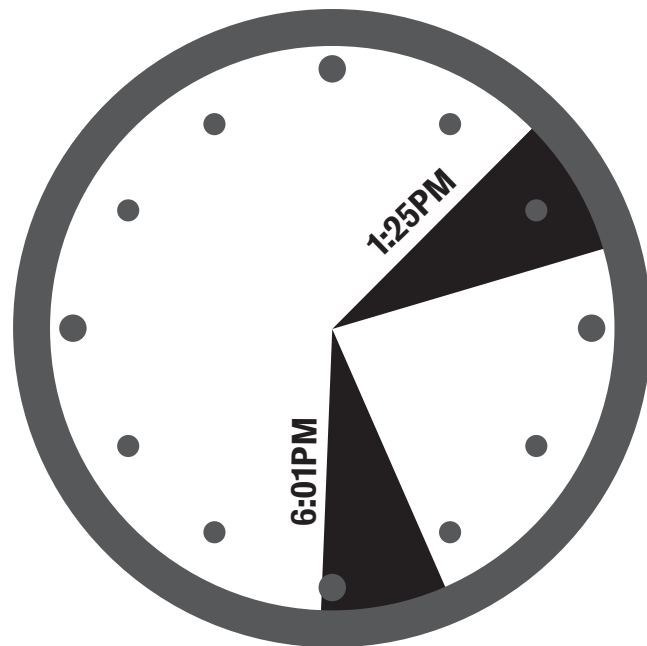
FROM EAST  
4 hour 35 minutes

VS.

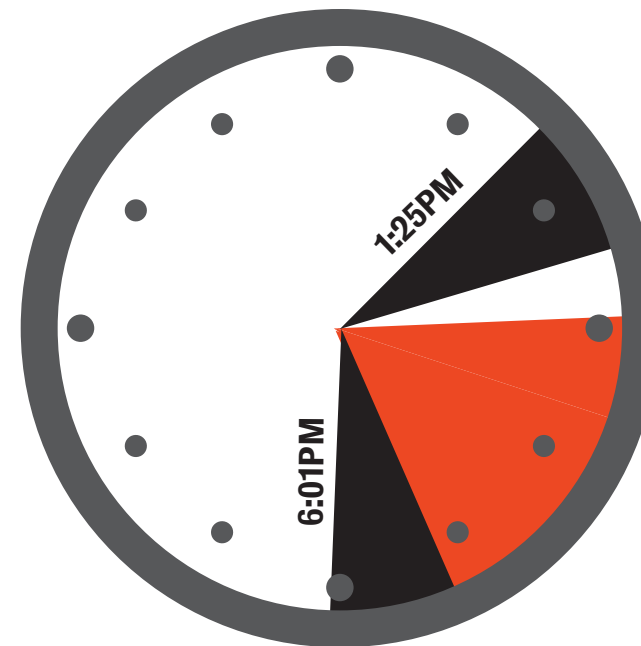
138 E 50TH ST + DEIS  
INCREMENTAL SHADOW  
2 hours 39 minutes

=  
TOTAL

7 hour 14 minutes

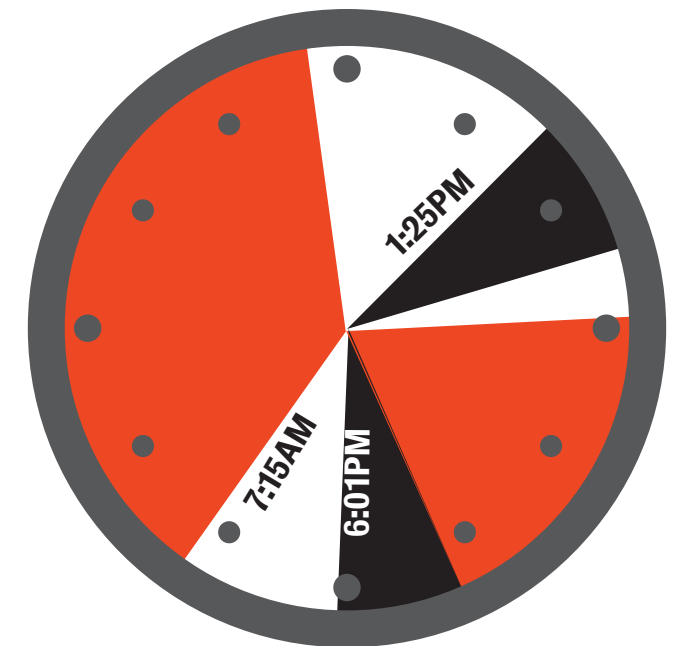


SHADOW TIMES  
5:57AM-6:45AM, 1:25PM-2:25PM, 5:15PM-6:01PM



INCREMENTAL SHADOW TIMES  
2:36PM-5:15PM

VS.



INCREMENTAL SHADOW TIMES  
7:15AM-11:50AM + 2:36PM-5:15PM

# **GREENACRE PARK SUN/SHADOW ANALYSIS**

**1. Existing Shadows**

**2. Potential Rezoning Sites Shading Greenacre Park**

**3. Building Height Analysis**

**4. New Development, 138 E 50th Street**

**5. Potential Additional Morning Shading**

**6. Shadow Summary**



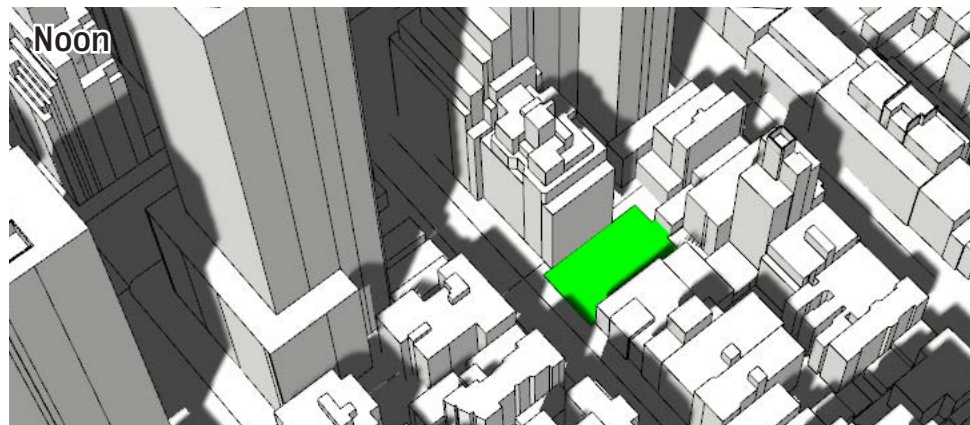
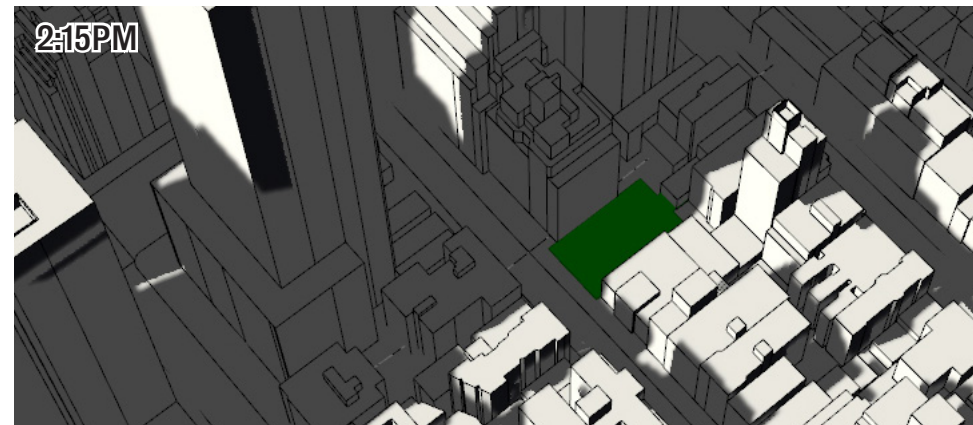
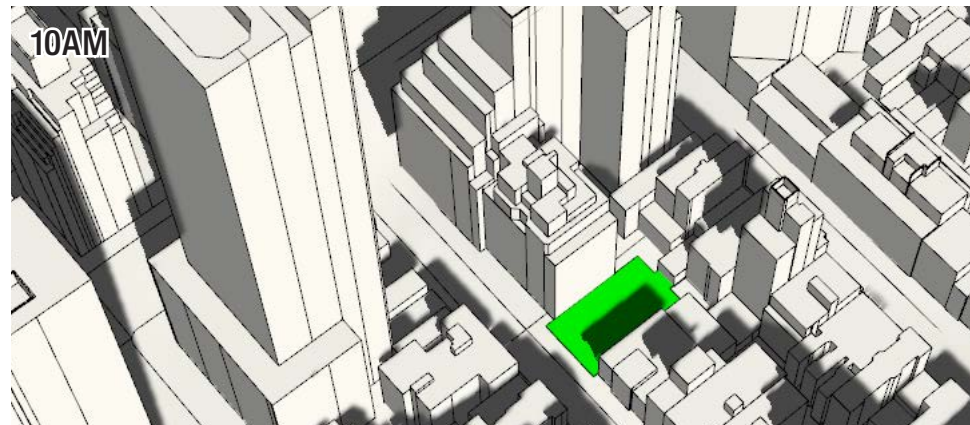
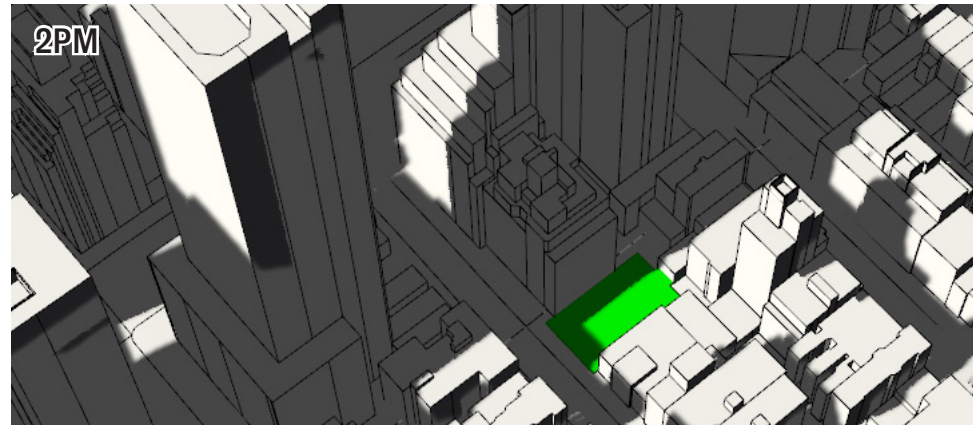
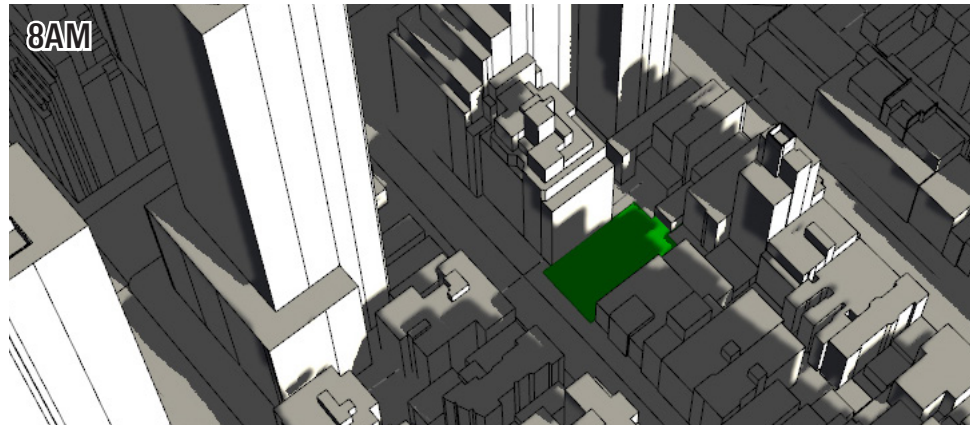
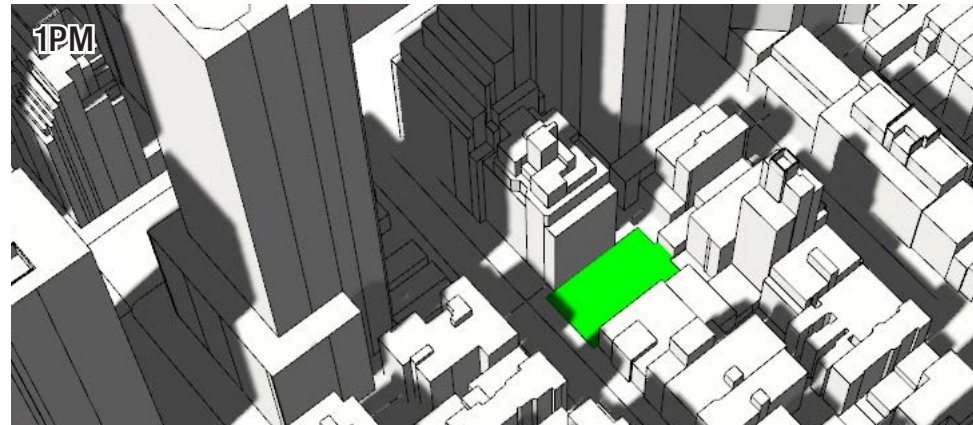
# 1. EXISTING SHADOWS

# EXISTING CONDITION, TIMEFRAME THAT CAN BE ADDITIONALLY SHADED

MARCH 21 / SEPTEMBER 21 (SPRING/FALL EQUINOX)

7:36AM

- 
- 
- Existing Condition:
- Fully Shaded
- 
- 
- 
- 
- 
- 



- - 
  - 
  - Existing Condition:
  - Fully Shaded
  - 
  - 
  - 
  - 
  - 
  -
- 4:29PM

**Timeframe Window 7:36am-4:29pm**  
 (Between 1.5 hours after sunrise and 1.5 hours before sunset as specified in the CEQR Technical Manual)

**Shadow Times**  
 7:36AM-8:00AM, 8:30AM-8:35AM, & 2:15PM-4:29PM

**Daily Sun Amounts**  
 6 Hours 10 Minutes

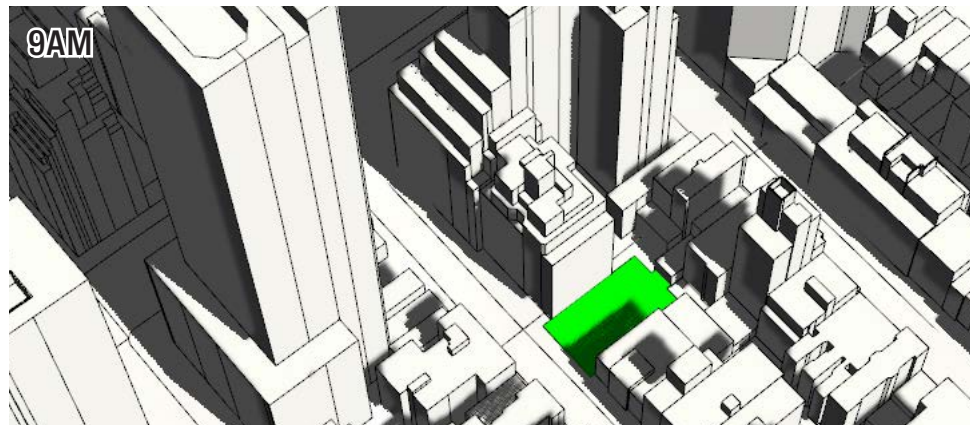
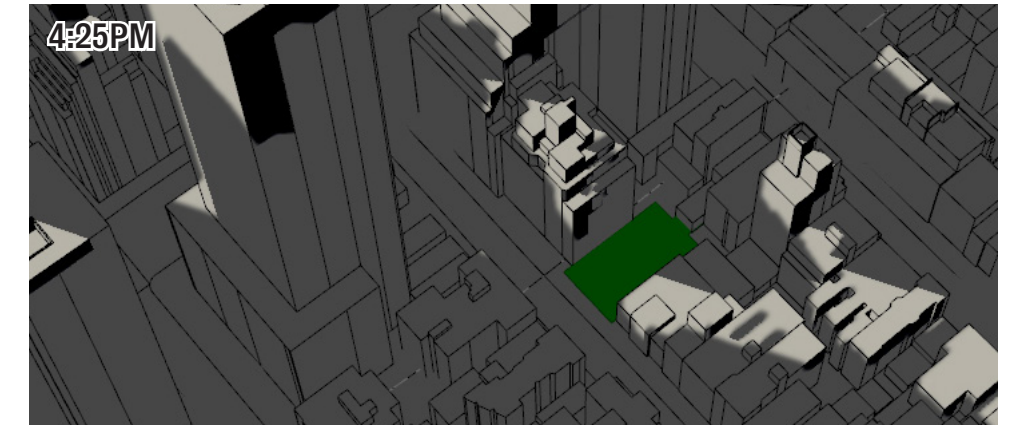
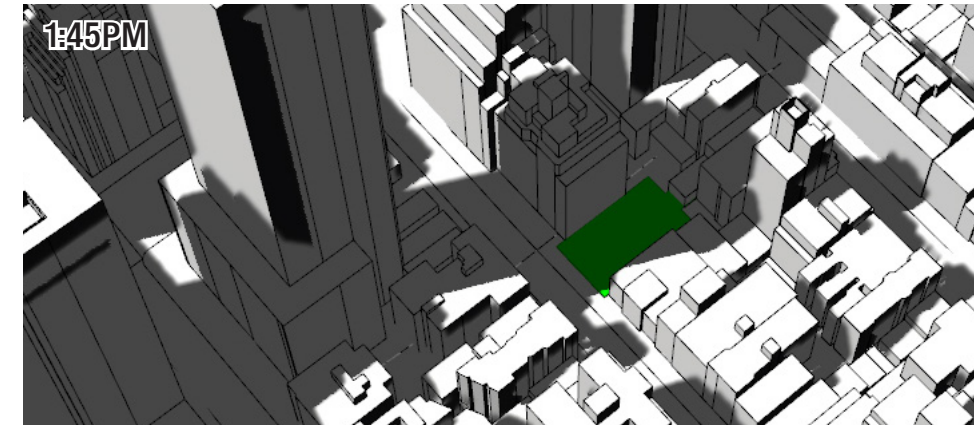
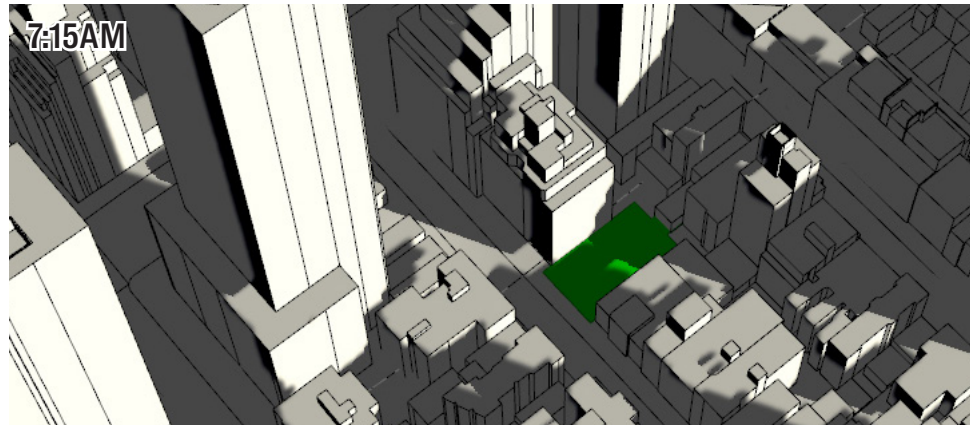
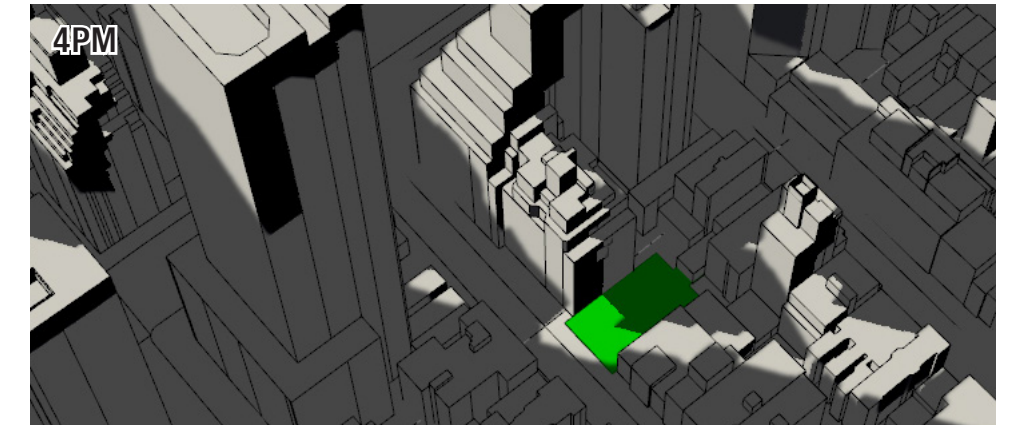
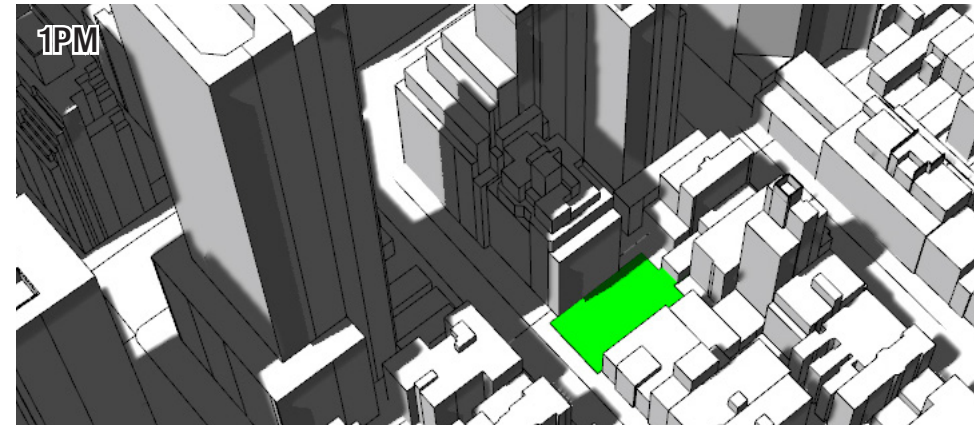
# EXISTING CONDITION, TIMEFRAME THAT CAN BE ADDITIONALLY SHADED

MAY 6 / AUGUST 6

6:27AM



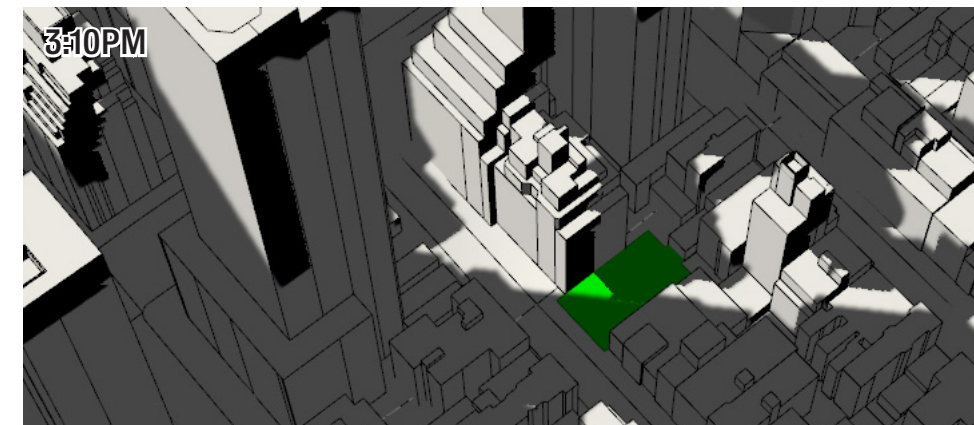
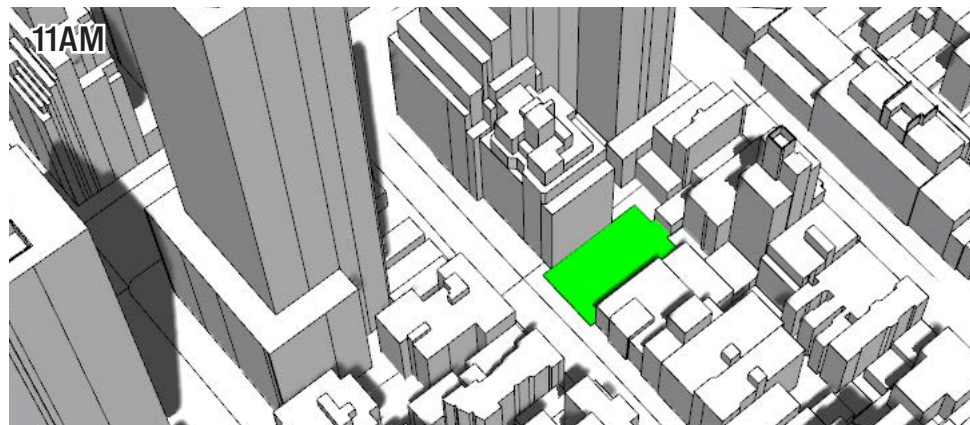
Existing Condition:  
Fully Shaded



Existing Condition:  
Fully Shaded



Existing Condition:  
Fully Shaded



5:18AM

**Timeframe Window 6:27am–5:18pm**  
(Between 1.5 hours after sunrise and 1.5 hours before sunset as specified in the CEQR Technical Manual)

**Shadow Times**  
6:27AM–7:15AM, 1:45PM–3:10PM, & 4:25PM–5:18PM

**Daily Sun Amounts**  
7 Hours 45 Minutes

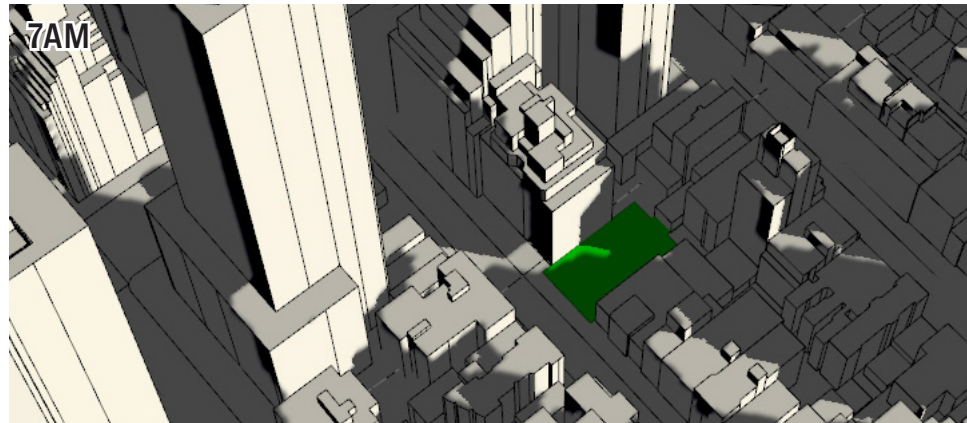
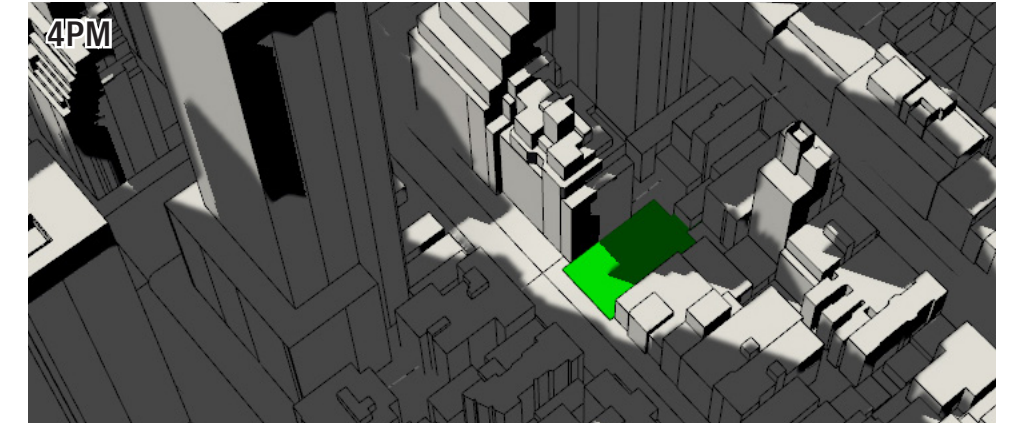
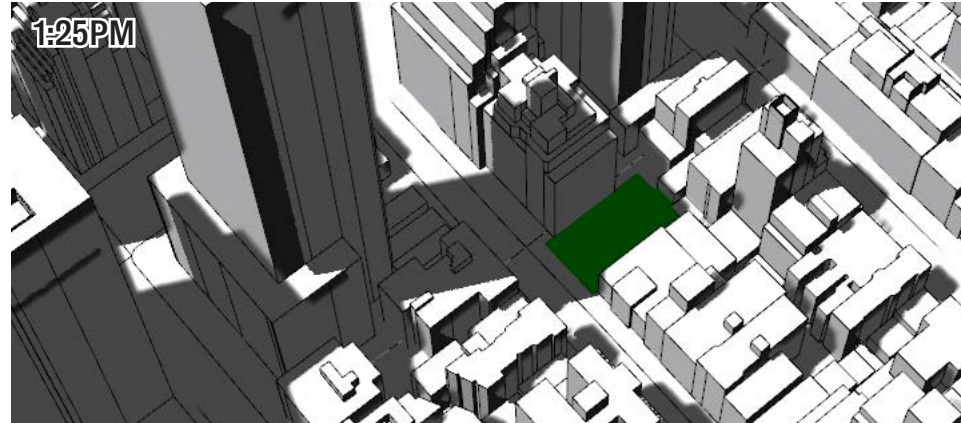
# EXISTING CONDITION, TIMEFRAME THAT CAN BE ADDITIONALLY SHADED

JUNE 21 (SUMMER SOLSTICE)

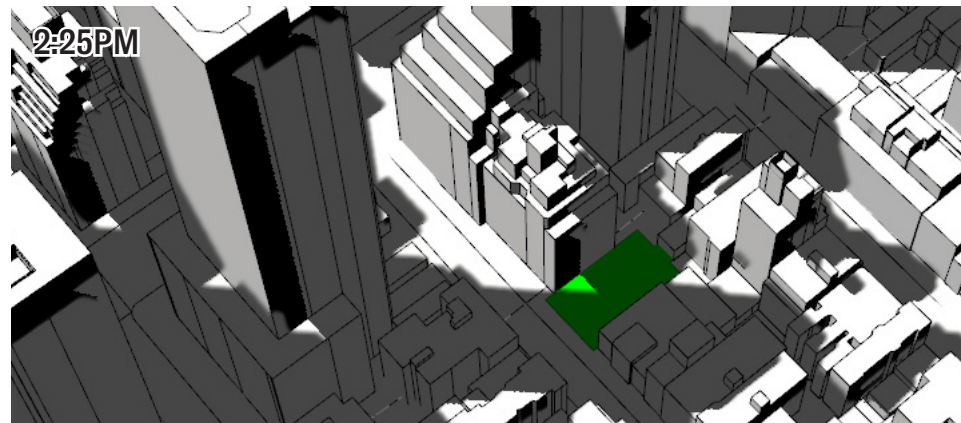
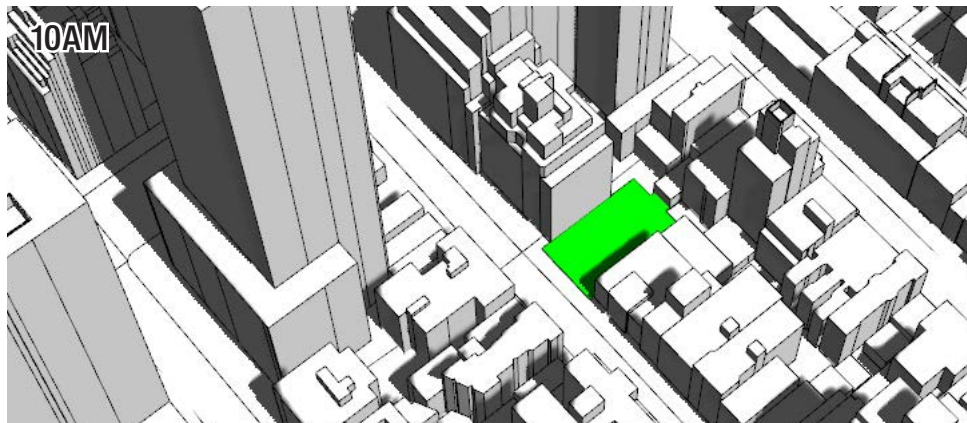
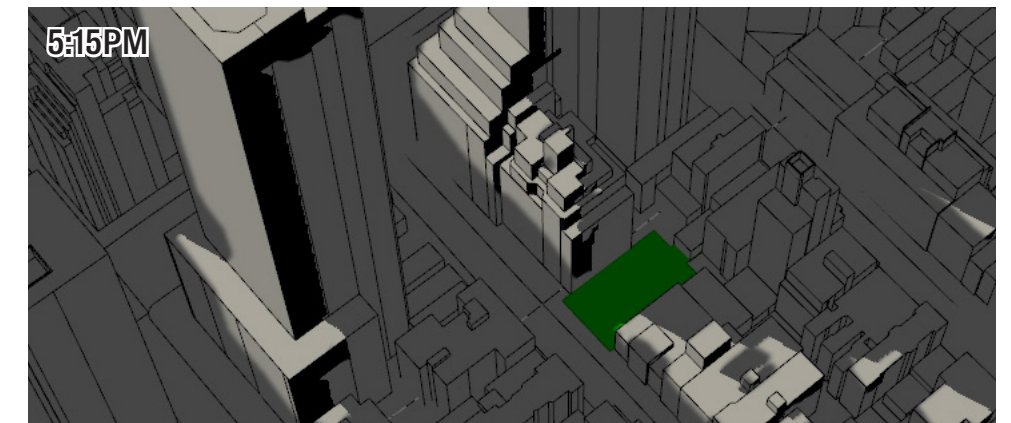
5:57AM



Existing Condition:  
Fully Shaded

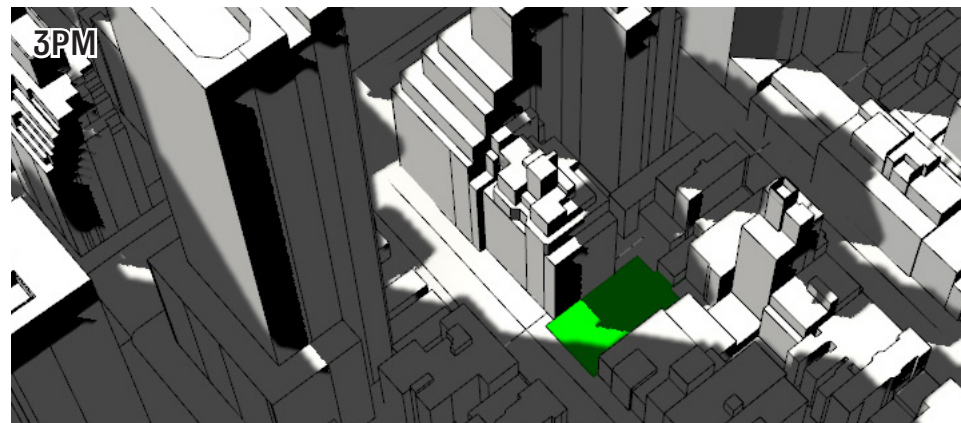
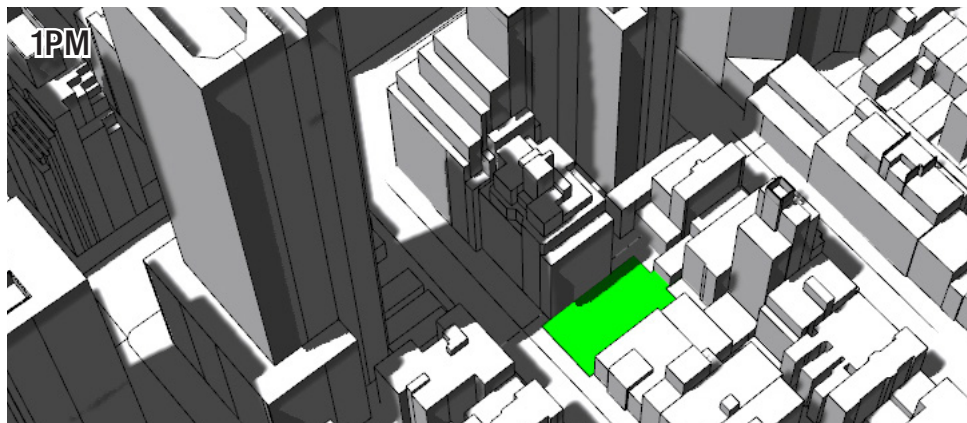


Existing Condition:  
Fully Shaded



Existing Condition:  
Fully Shaded

6:01PM

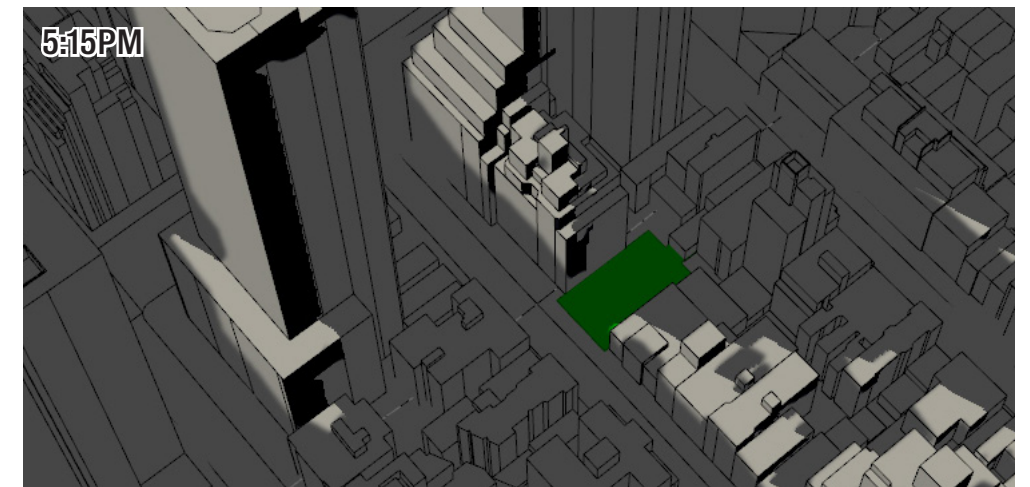
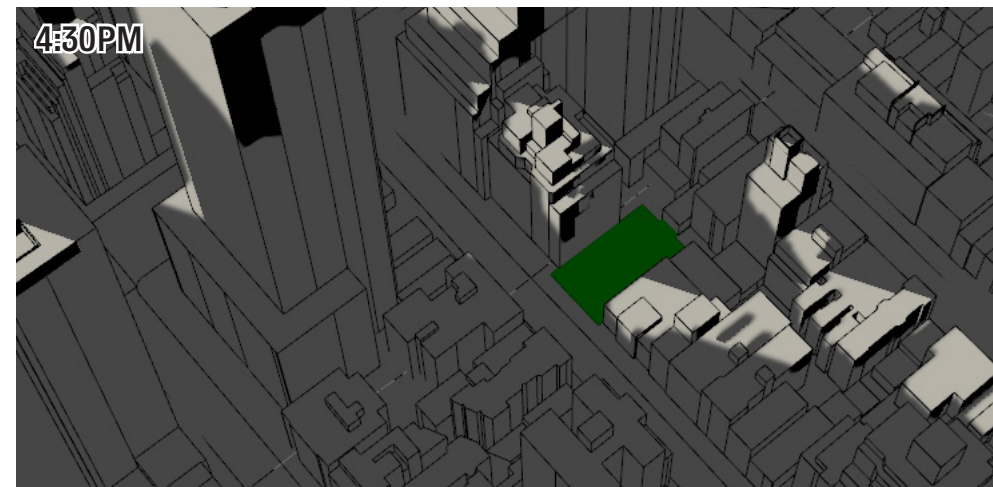
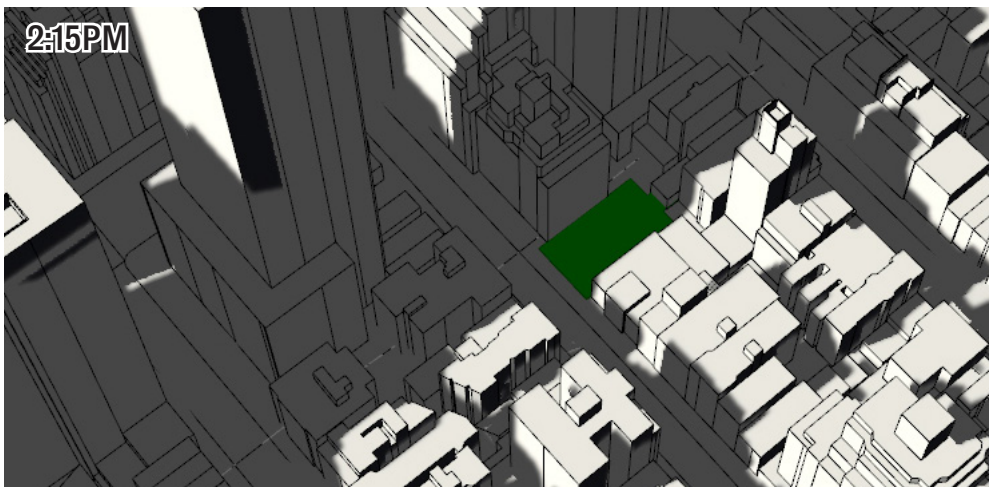
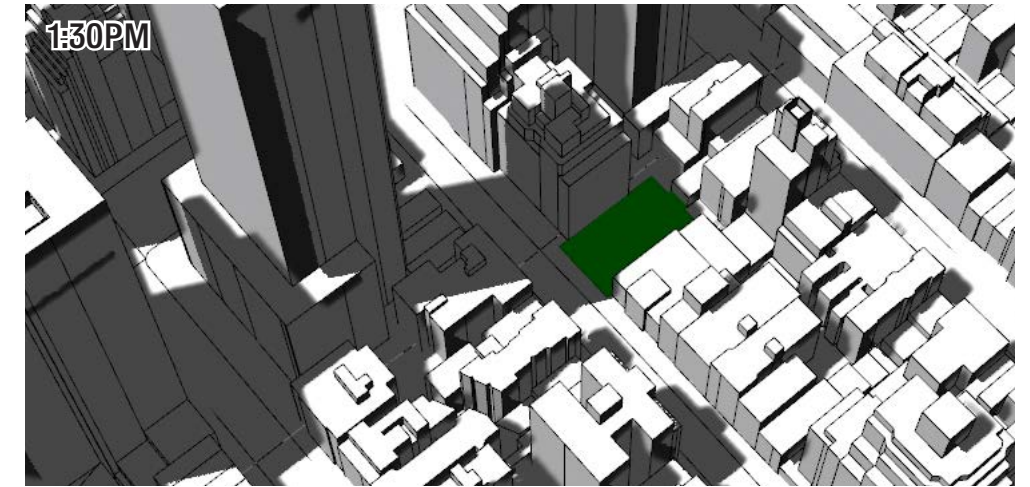
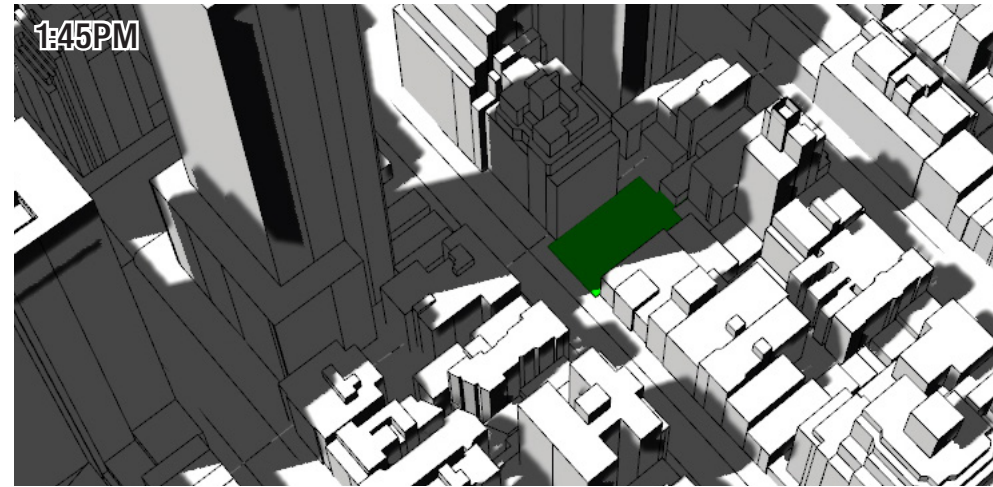
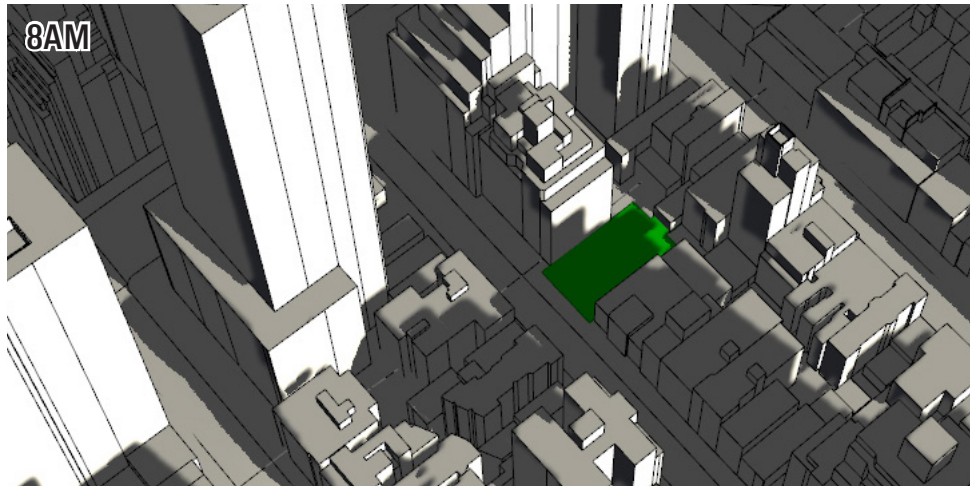


**Timeframe Window 5:57am–6:01pm**  
(Between 1.5 hours after sunrise and 1.5 hours before sunset as specified in the CEQR Technical Manual)

**Shadow Times**  
5:57AM–6:45AM, 1:25PM–2:25PM, & 5:15PM–6:01PM

**Daily Sun Amounts**  
8 Hours 10 Minutes

# SUMMARY EXISTING SHADOWS



MARCH 21 / SEPTEMBER 21 (SPRING/FALL EQUINOX)

TIMEFRAME WINDOWS FOR FURTHER STUDIES

**8AM-8:30AM**

**&**

**8:35AM-2:15PM**

MAY 6 / AUGUST 6

TIMEFRAME WINDOWS FOR FURTHER STUDIES

**7:15AM - 1:45PM**

**&**

**3:10PM - 4:25PM**

JUNE 21 (SUMMER SOLSTICE)

TIMEFRAME WINDOWS FOR FURTHER STUDIES

**6:45AM-1:25PM**

**&**

**2:25PM - 5:15PM**

\*Note:

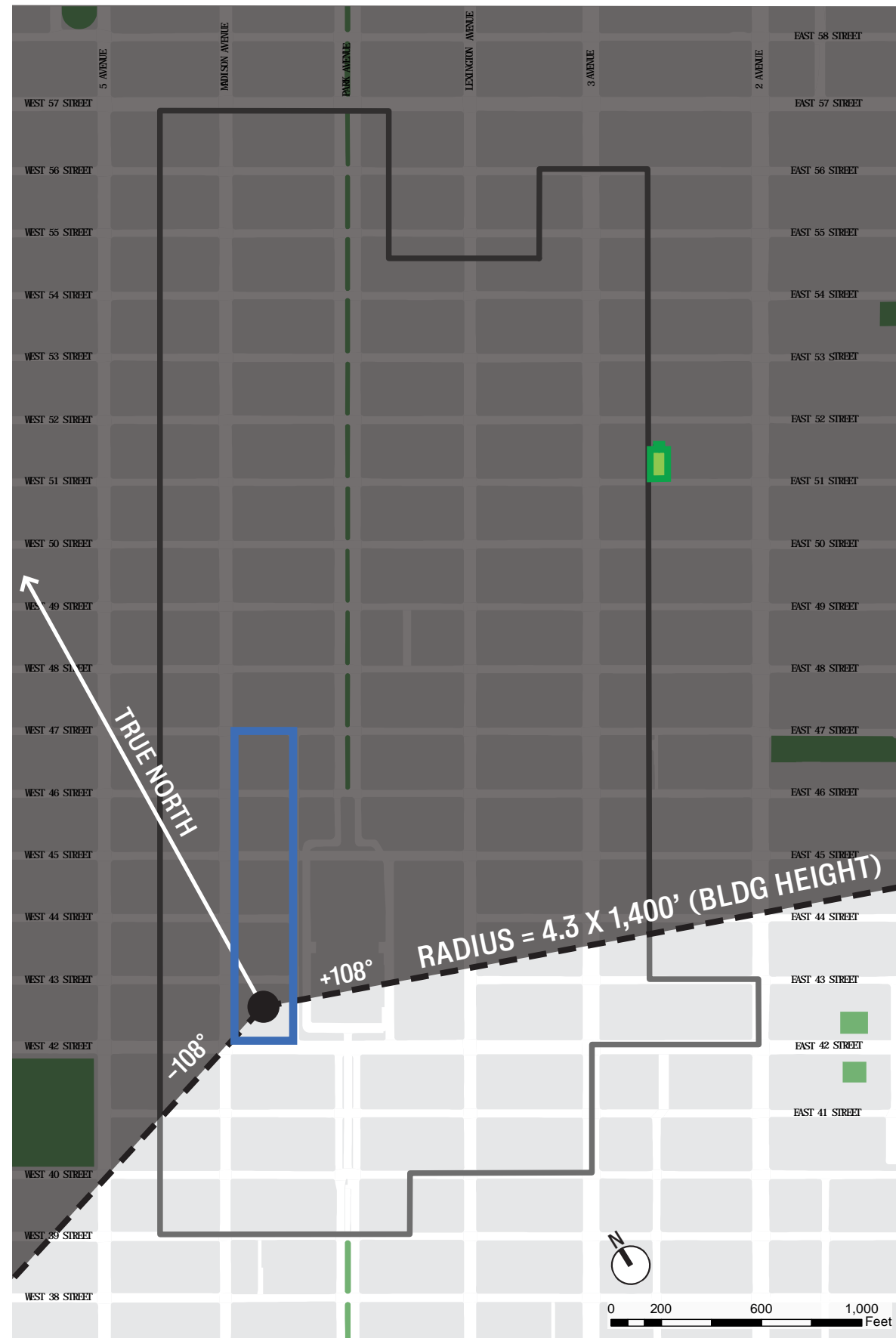
- For future shadow studies, no need to do analysis before 1PM because the East Midtown Rezoning is located west side of Greenacre Park.
- Analysis on December 21 is excluded because Greenacre Park is continually shaded by the existing surrounding context buildings between 8:51am and 2:53pm.



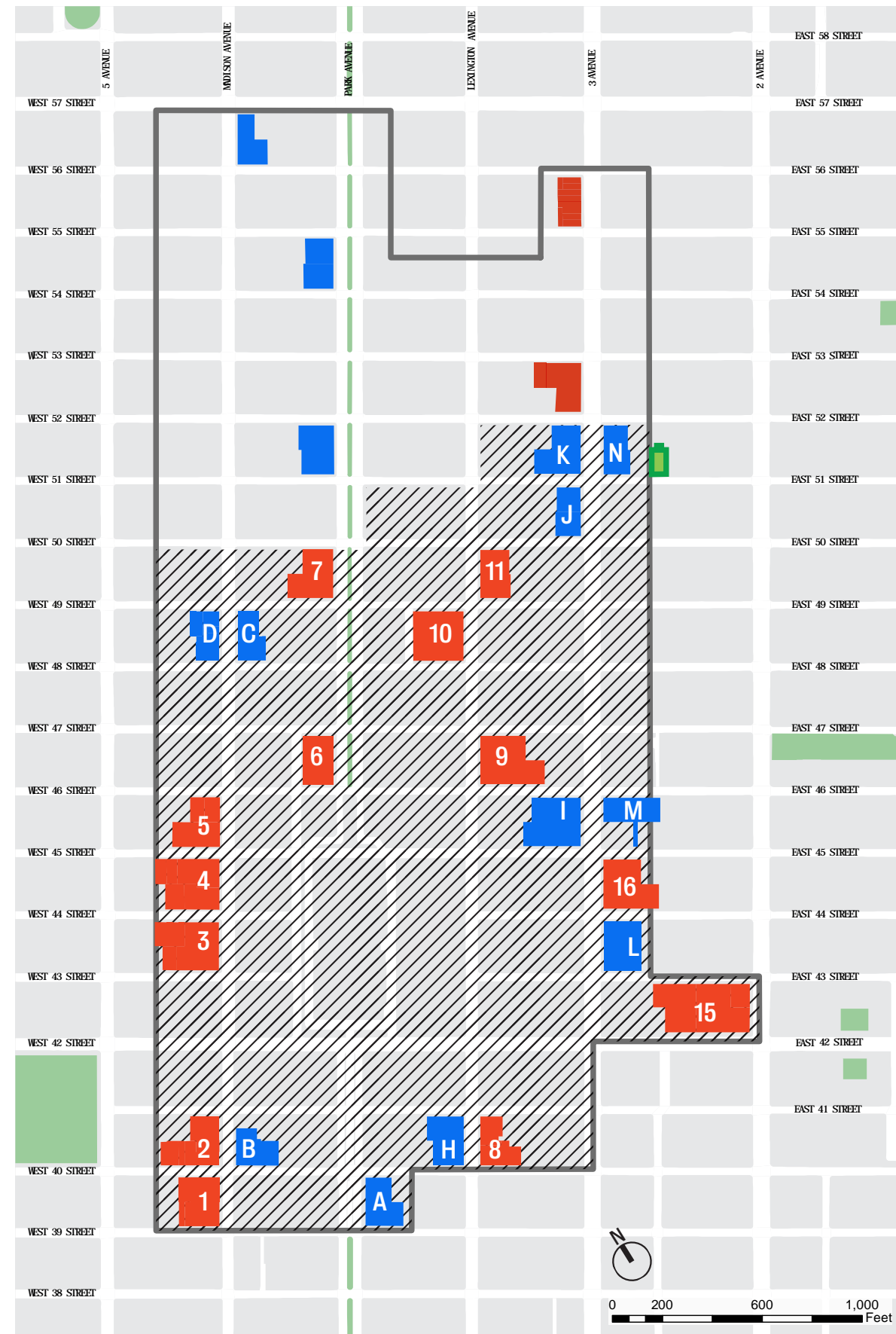
## 2. POTENTIAL REZONING SITES SHADING GREENACRE PARK

# TIER 1 & TIER 2: SHADOW STUDY AREA BOUNDARY

## TIER 1: One Vanderbilt potential shadow



## TIER 2: Potential blocks can shade Greenacre Park



- The hatched areas can potentially shade the Greenacre Park based on the methodologies in CEQR Technical Manual.

### SUN/SHADOW STUDY FOR GREENACRE PARK

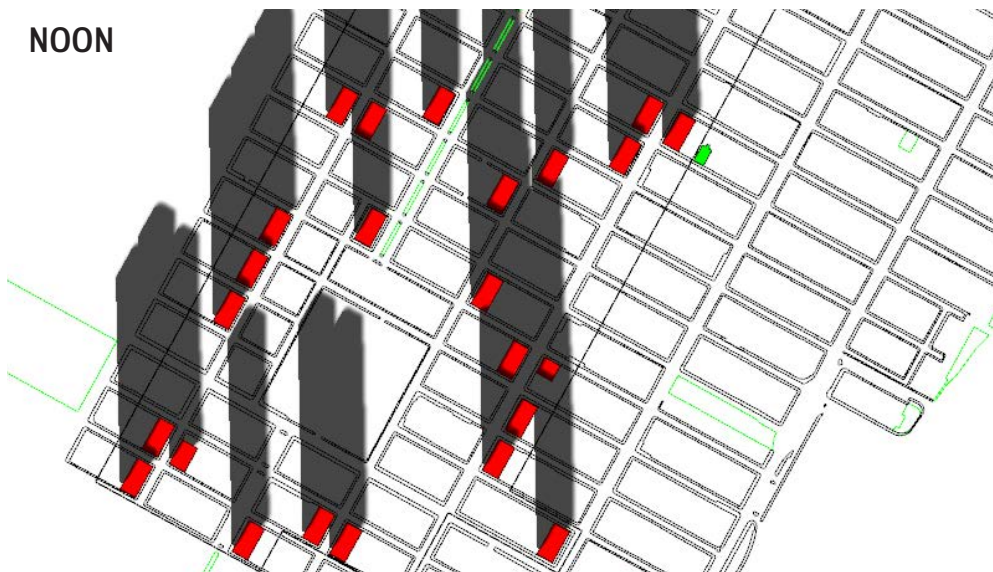
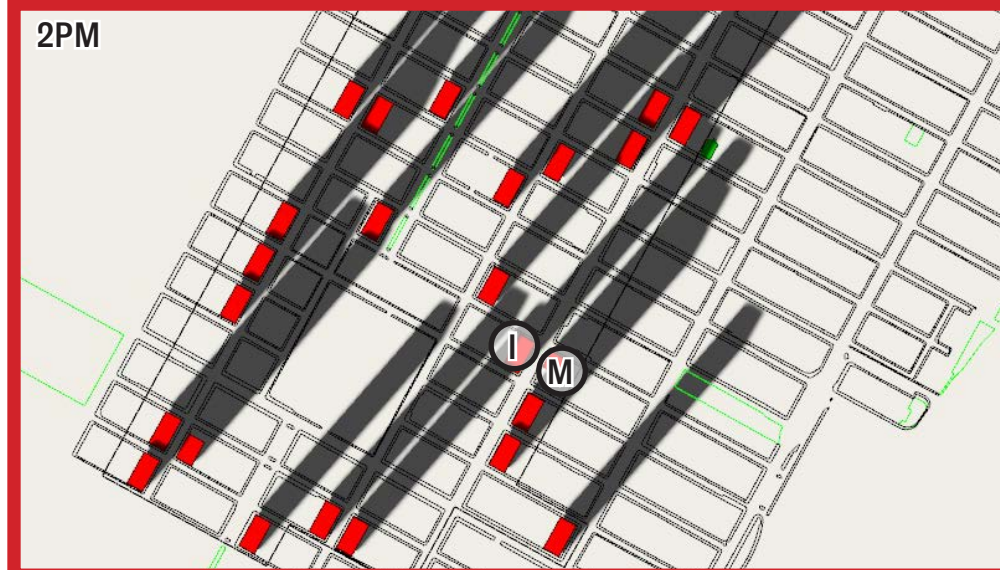
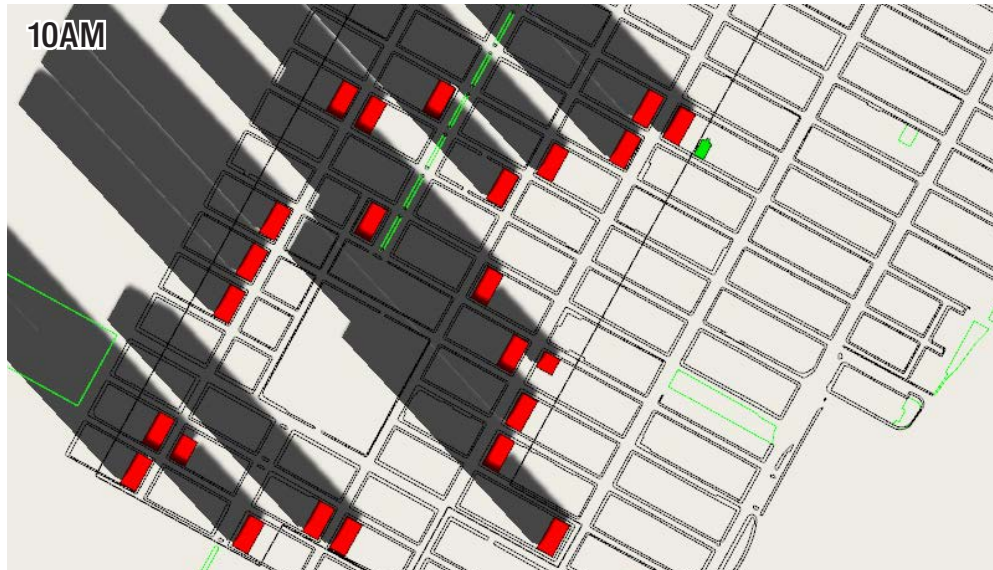
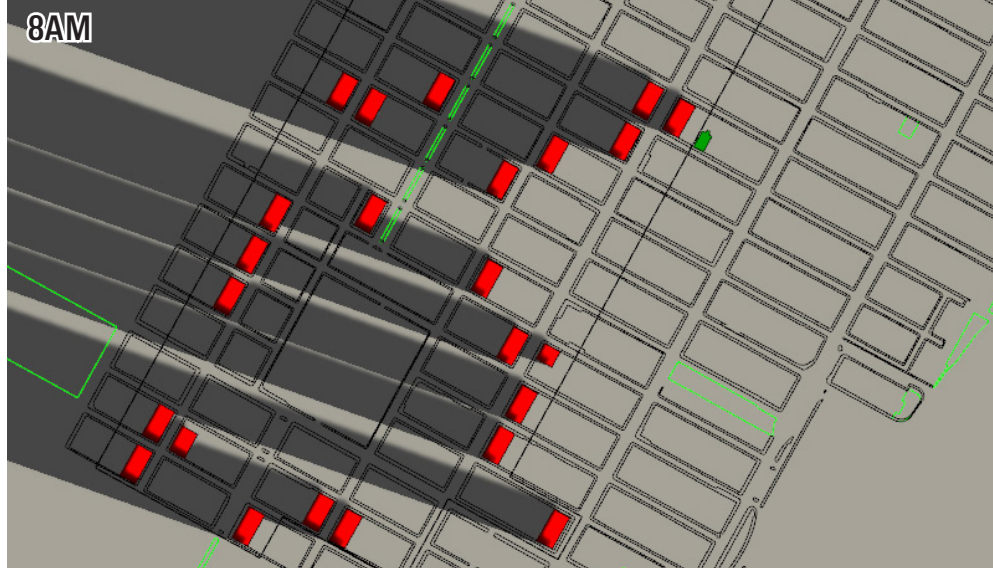
- Greenacre Park
- Potential Blocks Can Shade Greenacre Park

### DCP EAST MIDTOWN REZONING

- Proposed Greater East Midtown Rezoning Boundary
- Vanderbilt Corridor
- Projected Development Sites (RWCDs)
- Potential Development Sites (RWCDs)
- Open Space

# TIER 3: RWCDS SITES 1400 FEET TOWERS

MARCH 21/ SEPTEMBER 21




## Timeframe Windows

8AM-8:30AM, 8:35AM-2:15PM

## RWCDS Sites With Potential Shadow Impact On Greenacre Park

- SITE I
- SITE M

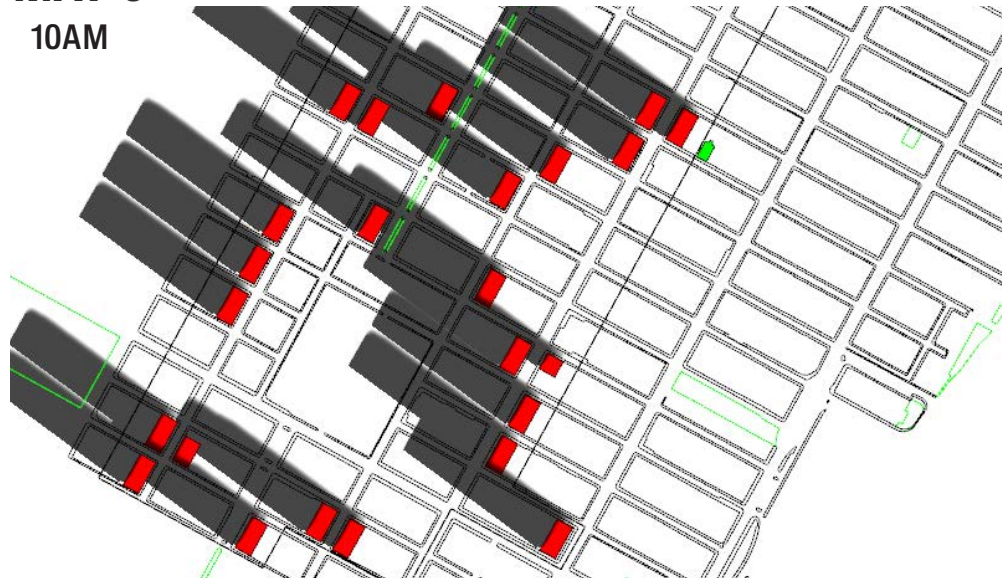
## LEGEND

 Potential additional shadow

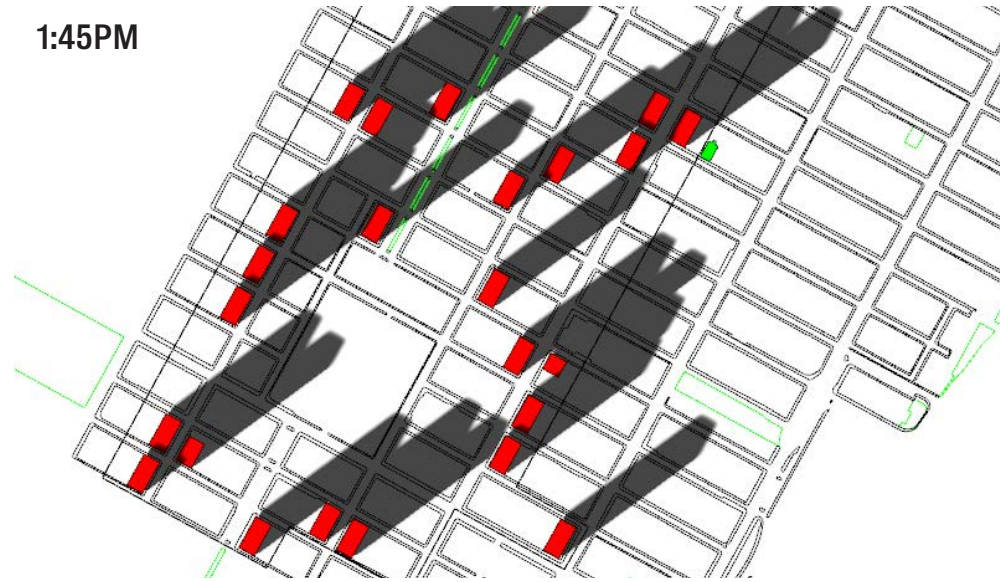


# TIER 3: RWCDS SITES 1400 FEET TOWERS

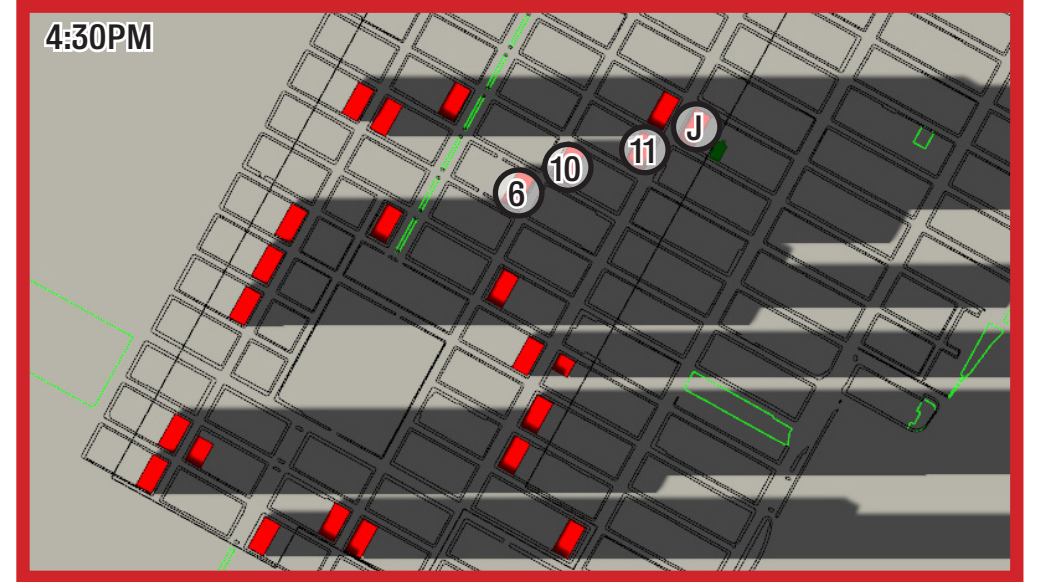
MAY 6  
10AM



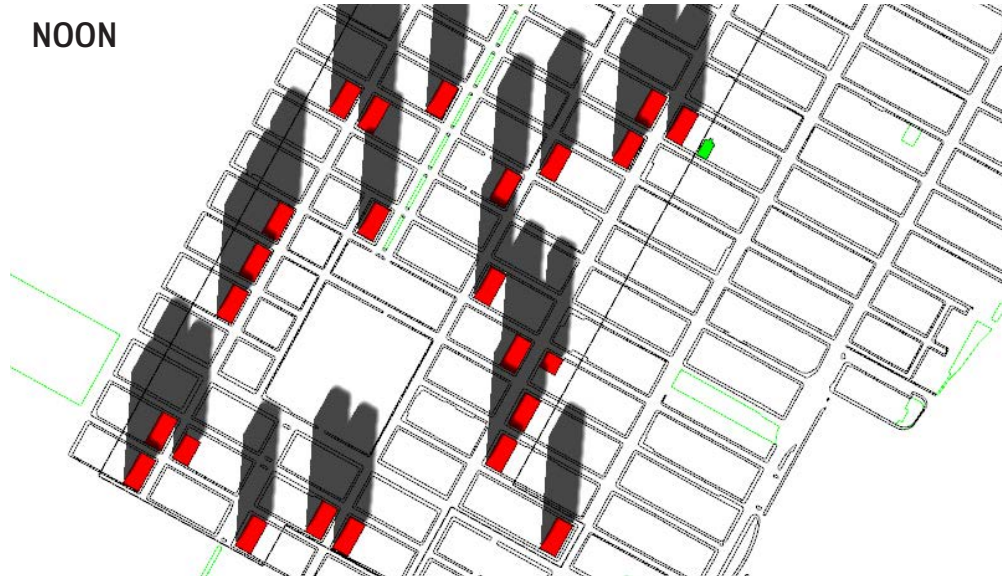
1:45PM



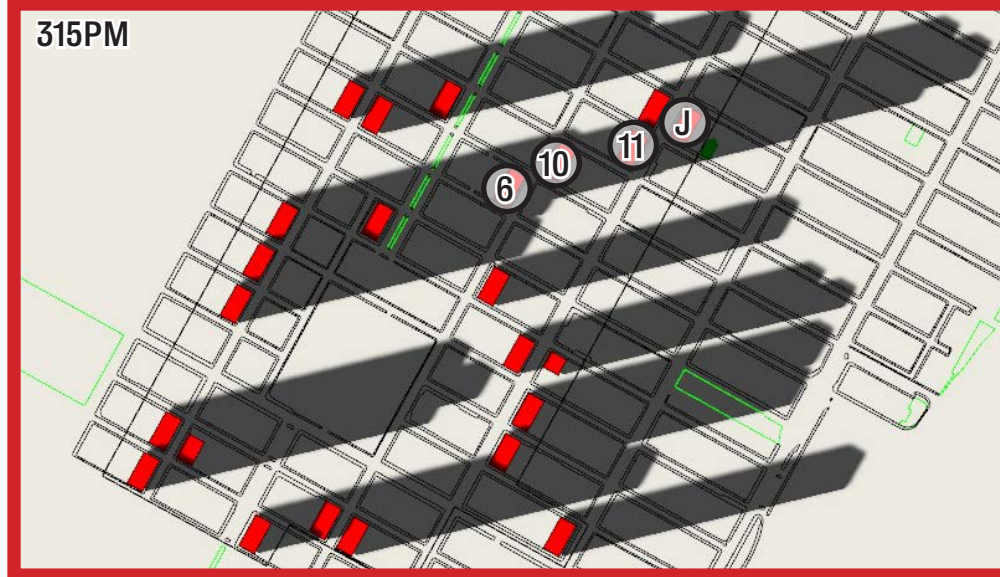
4:30PM



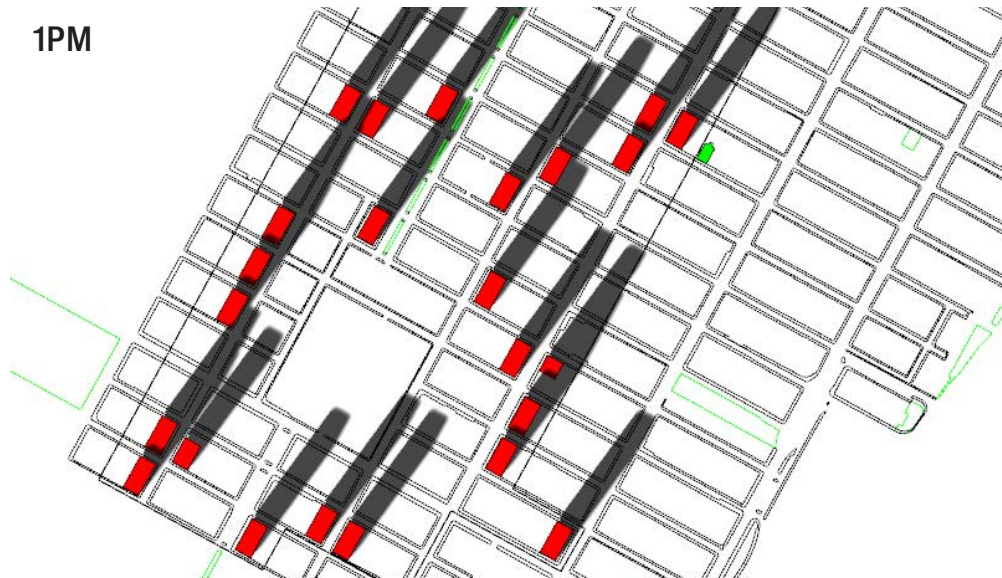
NOON



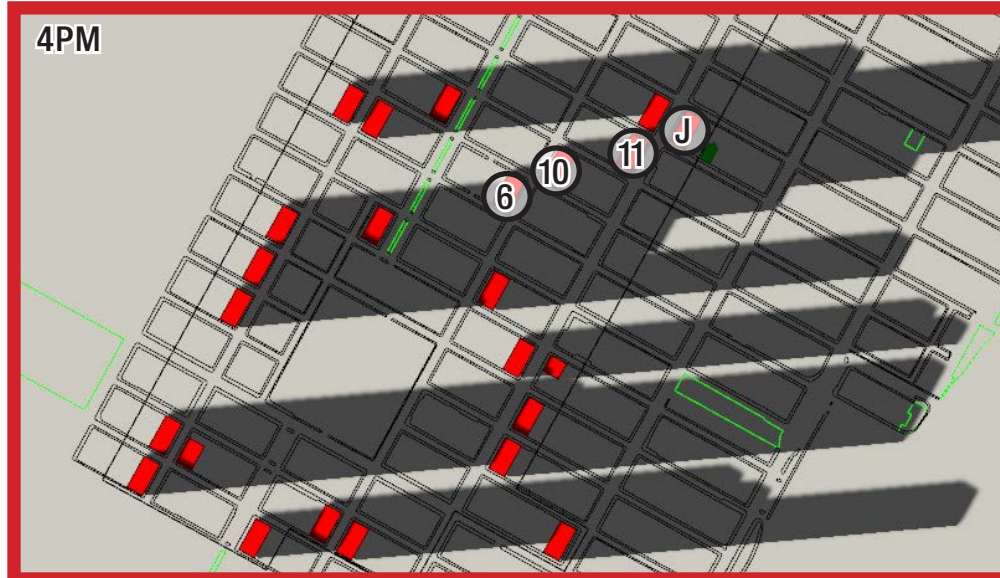
3:15PM



1PM



4PM




## Timeframe Windows

7:15AM-1:45 PM & 3:10PM-4:25PM

## RWCDS Sites With Potential Shadow Impact On Greenacre Park

- SITE 6
- SITE 10
- SITE 11
- SITE J

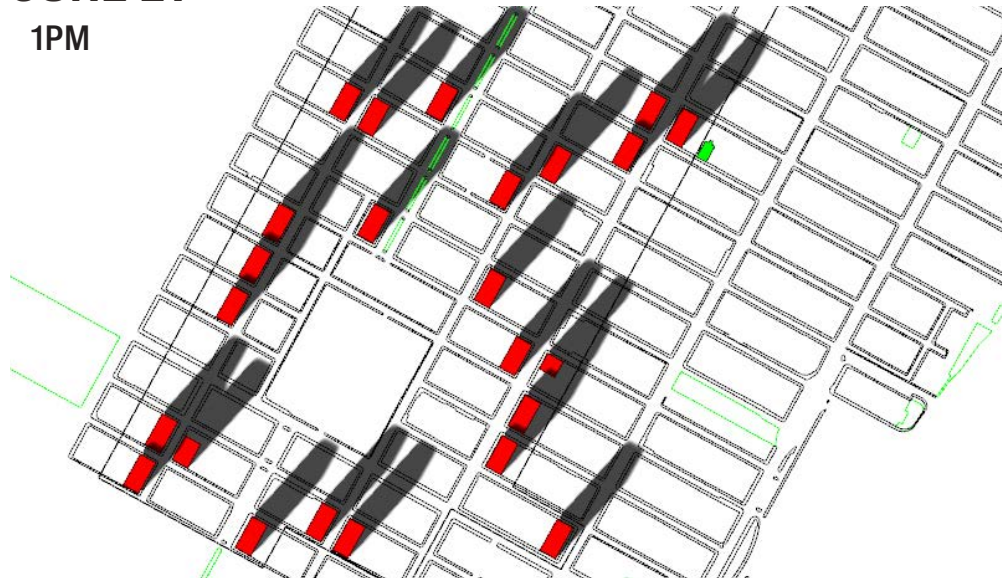
## LEGEND

 Potential additional shadow

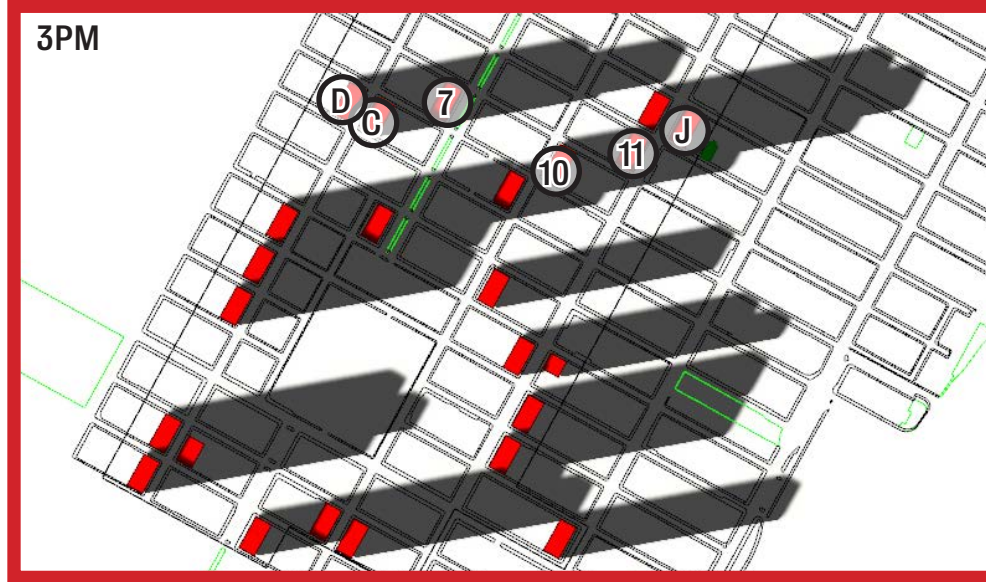
# TIER 3: RWCDS SITES 1400 FEET TOWERS

JUNE 21

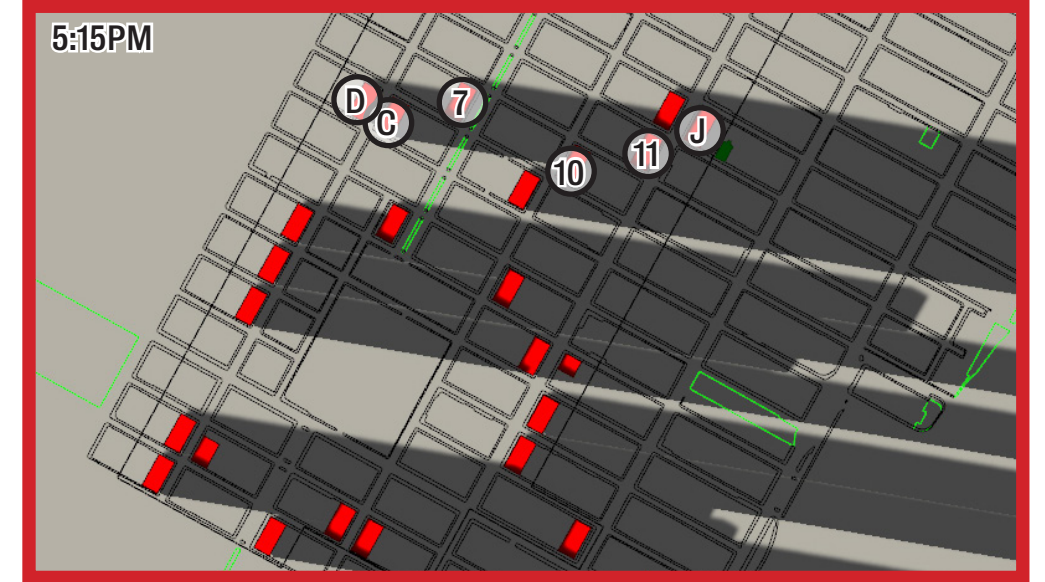
1PM



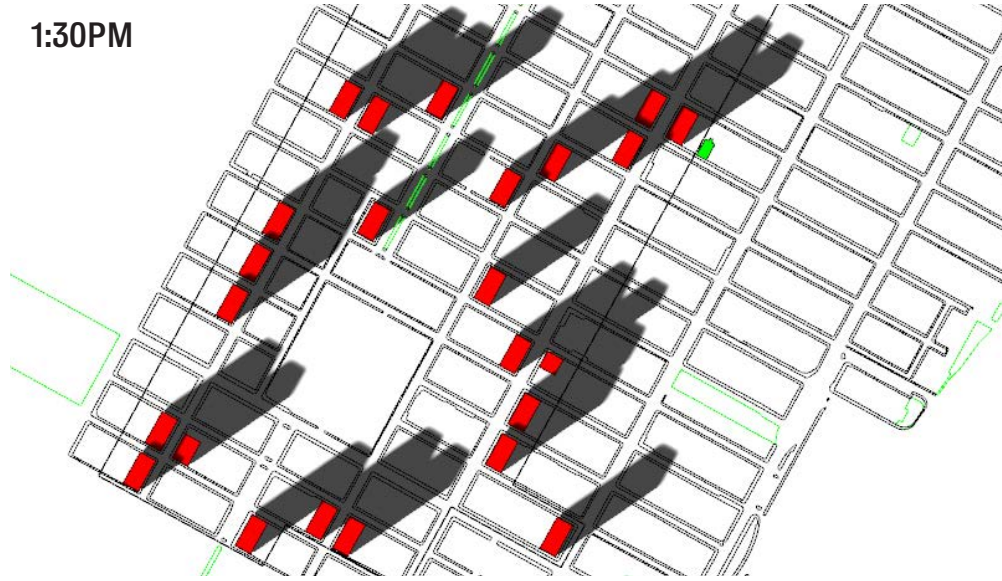
3PM



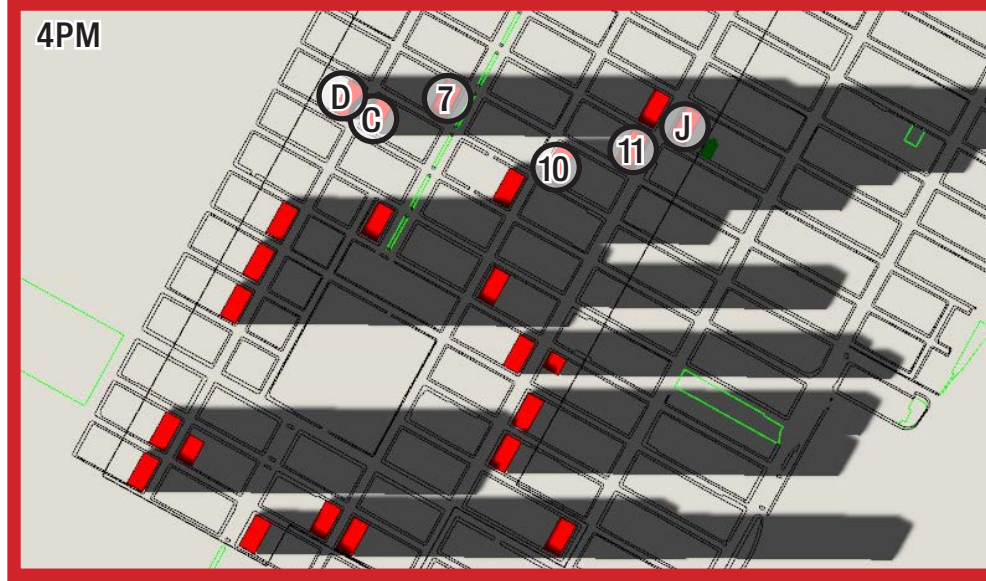
5:15PM



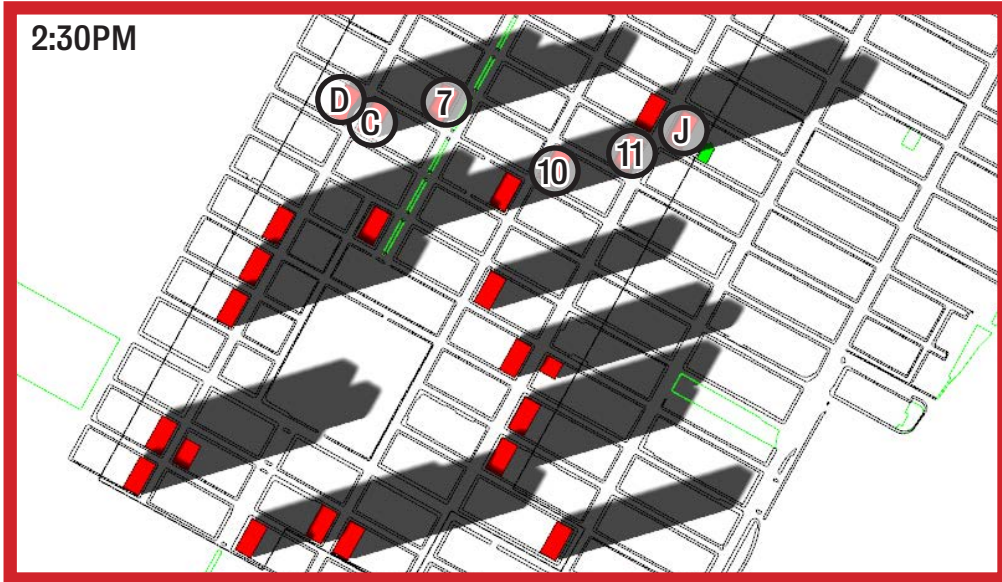
1:30PM



4PM



2:30PM



5PM




## Timeframe Windows

6:45AM-1:25PM & 2:25PM-5:15PM

## RWCDS Sites With Potential Shadow Impact On Greenacre Park

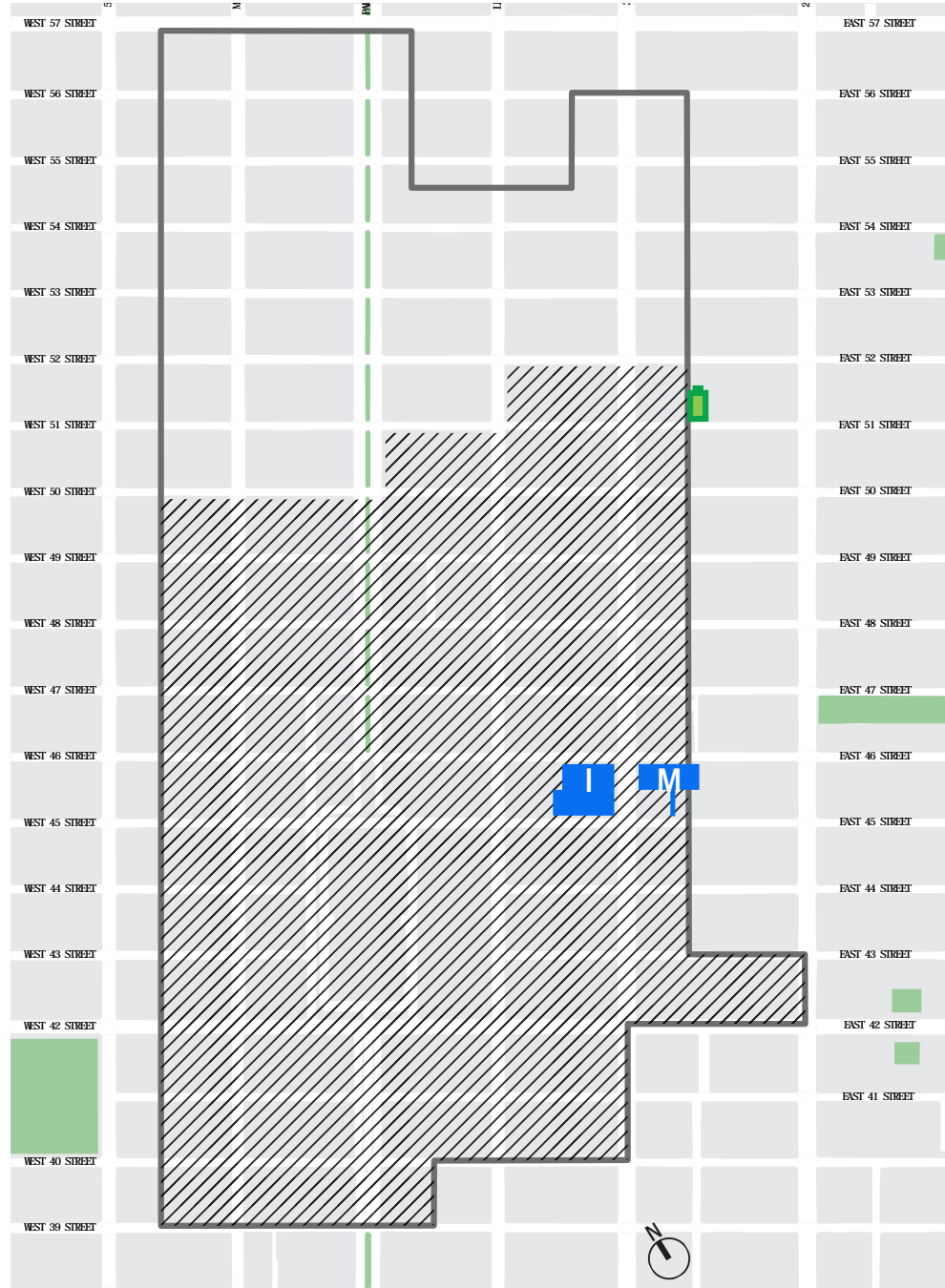
- SITE 7
- SITE 10
- SITE 11
- SITE C
- SITE D
- SITE J

## LEGEND

 Potential additional shadow

# SUMMARY OF TIER 1-3: SITES NEED ADDITIONAL STUDY

## NO NEED FOR ADDITIONAL STUDY



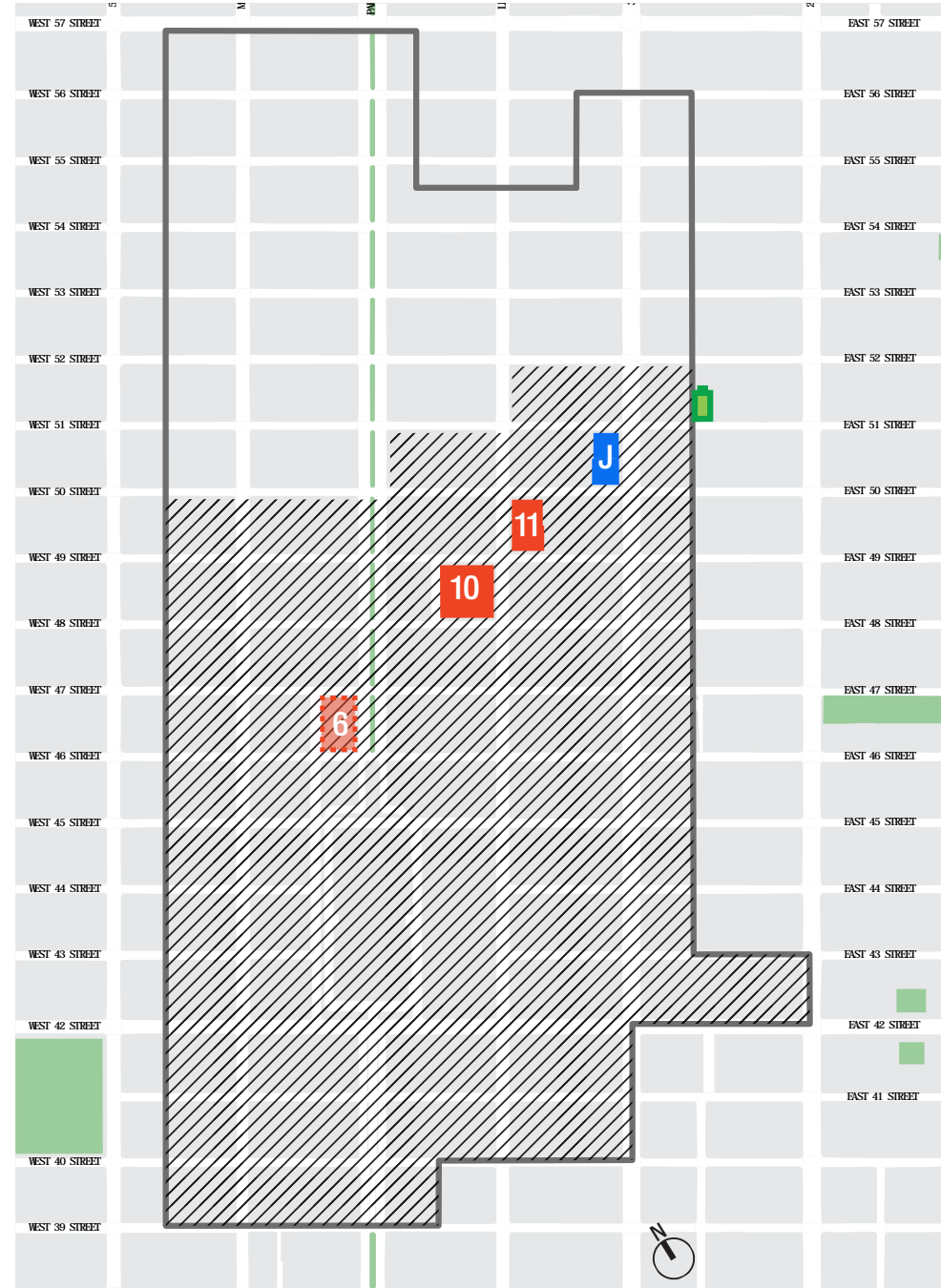
MARCH 21 / SEPTEMBER 21 (SPRING/FALL EQUINOX)

TIMEFRAME WINDOWS SHADED BY THE SITES  
1:33PM-2:22PM

### NO NEED FOR FURTHER STUDY

- SITE I: No need further study due to the long distance to the Park and the tall towers on East side of 3rd Avenue
- SITE M: No need further study due to the long distance to the Park.

## ADDITIONAL STUDY REQUIRED

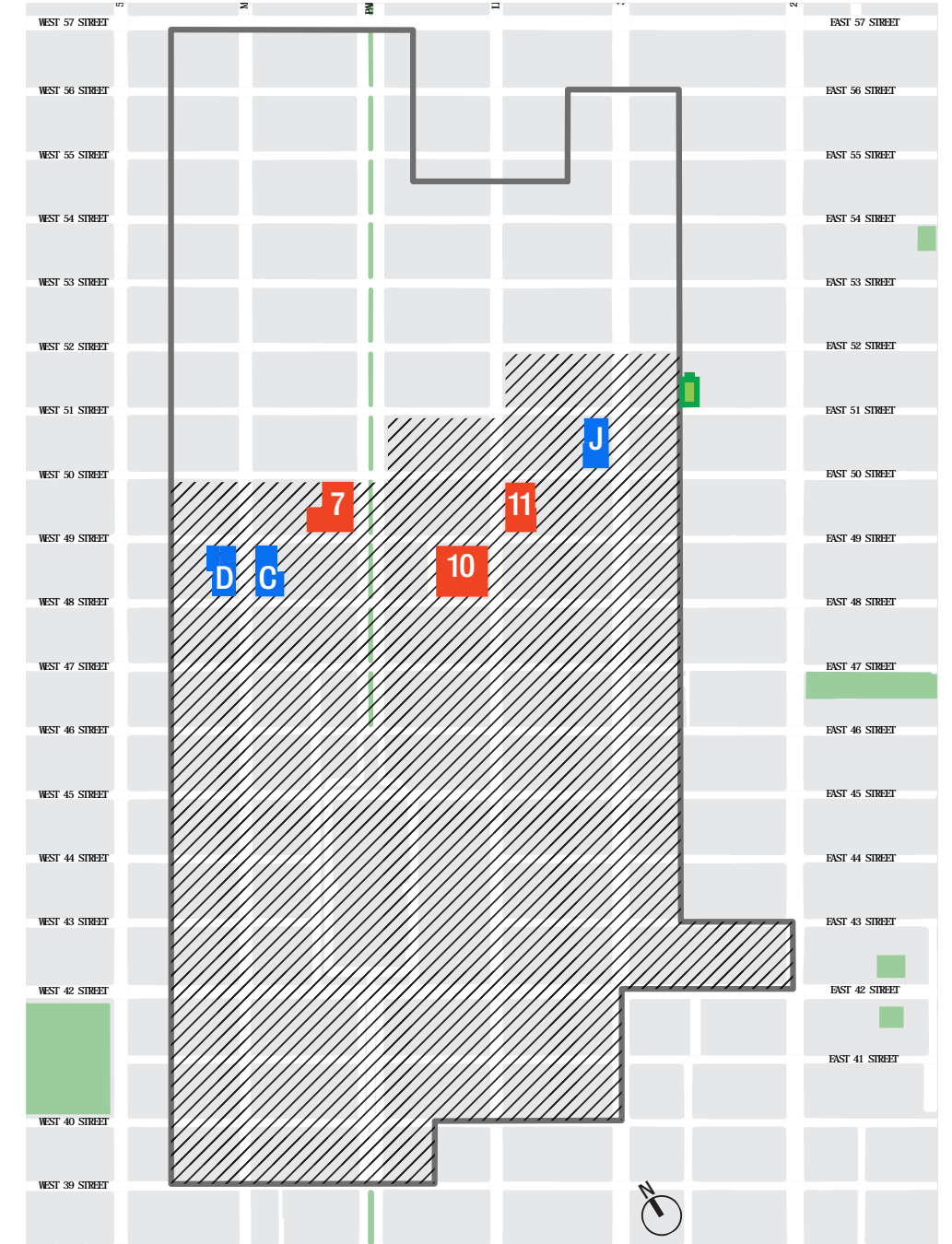


MAY 6 / AUGUST 6

TIMEFRAME WINDOWS SHADED BY THE SITES  
3:10PM-4:30PM

### NO NEED FOR FURTHER STUDY

- SITE 6: No need further study due to the long distance to the Park and the Park will be shaded by this site less than 25 minutes.



JUNE 21 (SUMMER SOLSTICE)

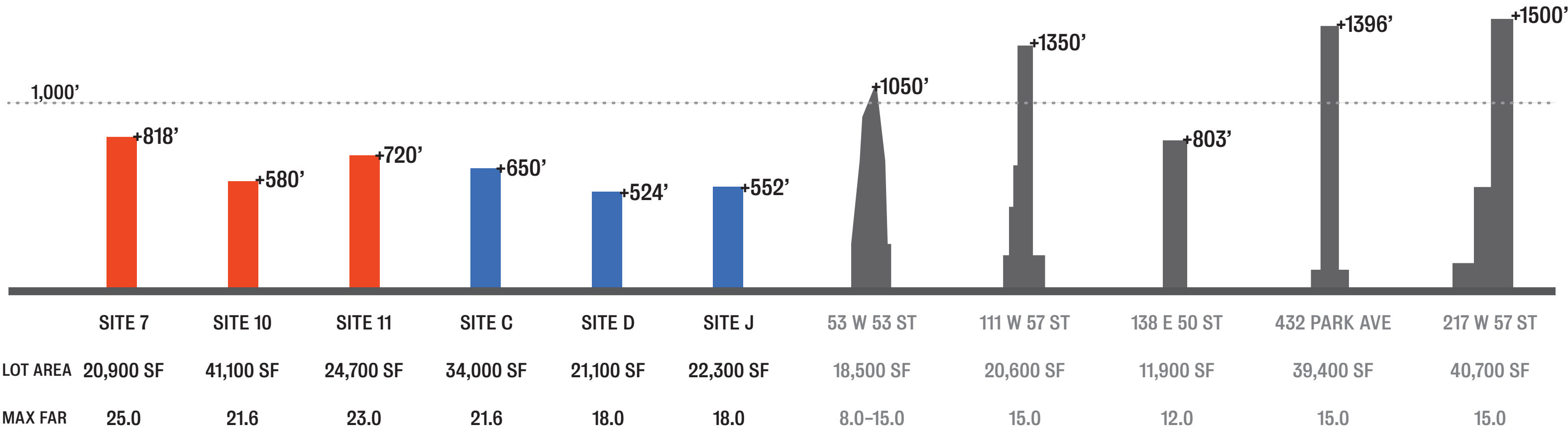
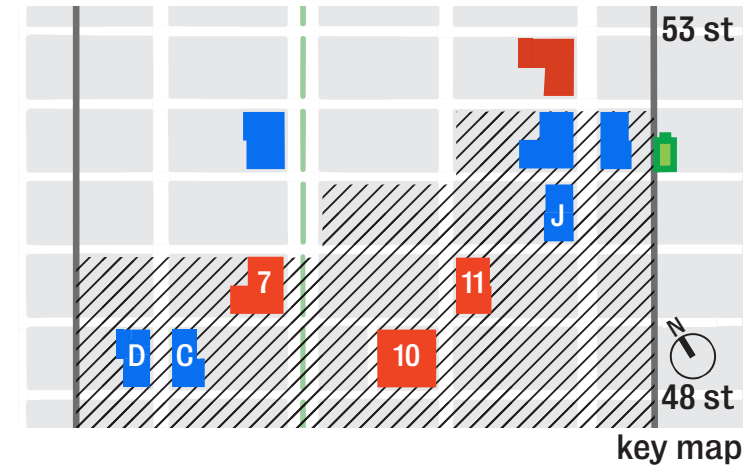
TIMEFRAME WINDOWS SHADED BY THE SITES  
2:36PM-5:15PM



# 3. BUILDING HEIGHT ANALYSIS

# DEIS BUILDING HEIGHTS

DEIS BUILDINGS HEIGHTS ARE SHORTER THAN ALLOWABLE & NEW CONSTRUCTION



	SITE 7	SITE 10	SITE 11	SITE C	SITE D	SITE J	53 W 53 ST	111 W 57 ST	138 E 50 ST	432 PARK AVE	217 W 57 ST
LOT AREA	20,900 SF	41,100 SF	24,700 SF	34,000 SF	21,100 SF	22,300 SF	18,500 SF	20,600 SF	11,900 SF	39,400 SF	40,700 SF
MAX FAR	25.0	21.6	23.0	21.6	18.0	18.0	8.0-15.0	15.0	12.0	15.0	15.0

## GREAT EAST MIDTOWN REZONING DRAFT EIS (DEIS)

## CURRENTLY BEING DEVELOPED OR RECENTLY BUILT

**18.0 - 25.0**  
MAX FAR

**552'-818'**  
BLDG HEIGHTS

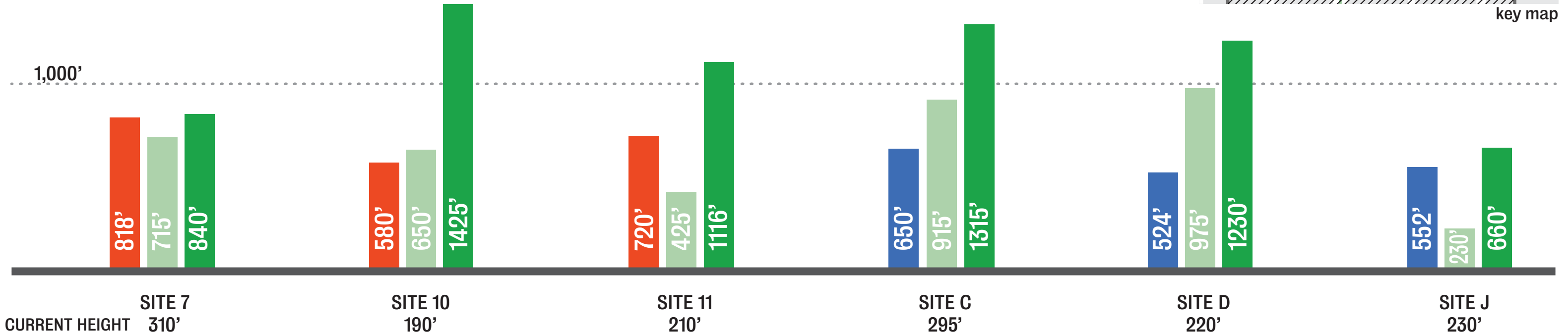
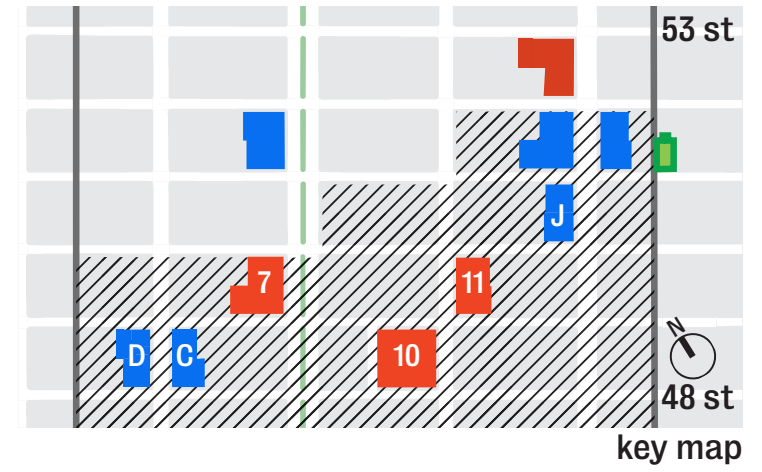


**8.0-15.0**  
MAX FAR

**803'-1500'**  
BLDG HEIGHTS

# TRIGGER HEIGHTS AND WORST-CASE BUILDING HEIGHTS

ESTIMATED BUILDING HEIGHTS CASTING 20-MINUTE AND MAX AMOUNT SHADOWS



	CURRENT HEIGHTS	DEIS HEIGHTS	20 MINS SHADOW TRIGGER HEIGHTS	MAX SHADOW WORST-CASE HEIGHTS
SITE 7	310	818	715'	840'
SITE 10	190	580	650'	1425'
SITE 11	210	720	425'	1116'
SITE C	295	650	915'	1315'
SITE D	220	524	975'	1230'
SITE J	230	552	230'	660'

## LEGEND

■ DEIS HEIGHTS (THE PROJECTED SITES)

■ DEIS HEIGHTS (THE POTENTIAL SITES)

■ TRIGGER HEIGHTS are measured when the potential buildings starts to cast shadow on the Greenacre Park and have an effect of 20 minutes reduction in sunlight.

■ WORST-CASE HEIGHTS are measured when the potential buildings fully cast a shadow on Greenacre Park.

# MAX INCREMENTAL SHADOWS

ANALYSIS ON MAY/ AUG 6 & JUNE 21 WITH WORST-CASE HEIGHTS BUILDINGS

Note: The detailed shadow analysis uses Rhinoceros 5.0 3D modeling software in combination with other data sources, including New York City Geographic Information Systems (GIS) data, and a 3-D Building Massing Model and 2-ft contour line features of New York City by Department of Information Technology & Telecommunications (DoITT)

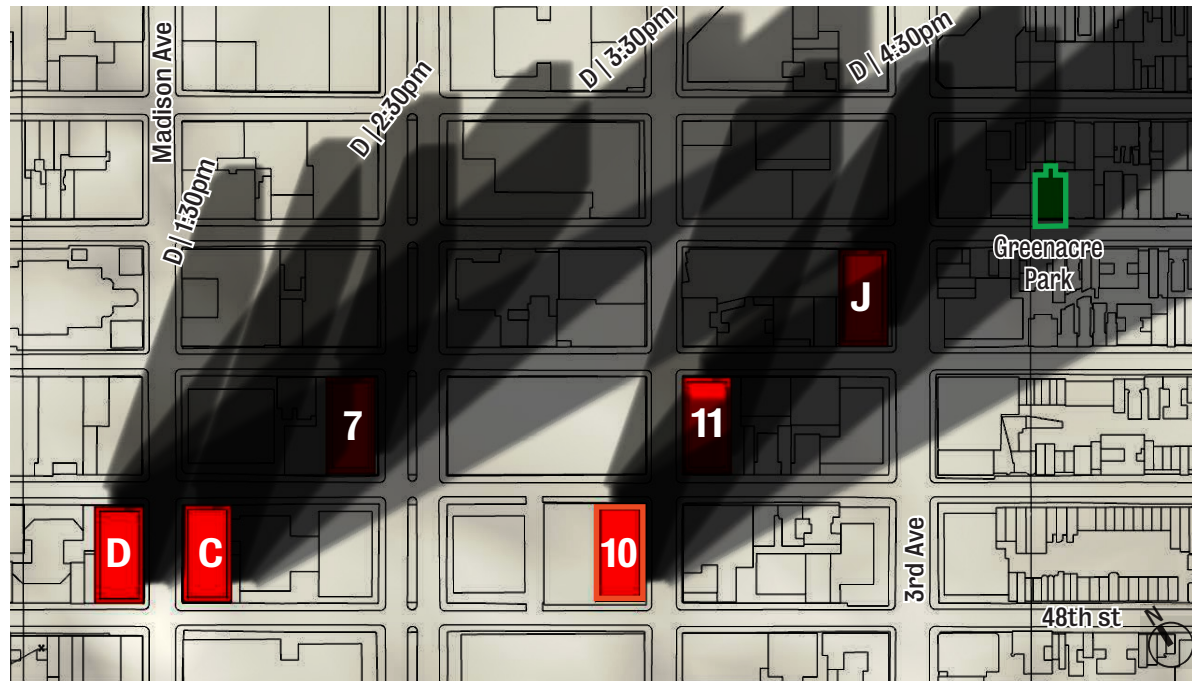


HONEY LOCUST TREES/  
DAPPLED LIGHT

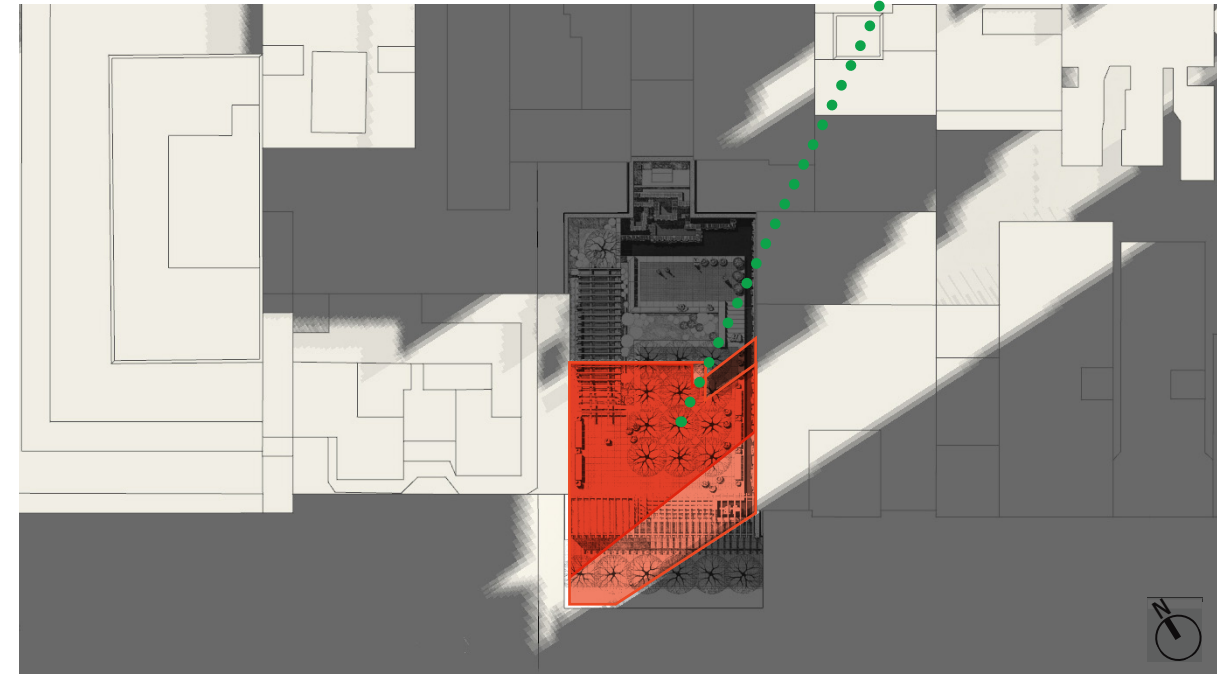
## MAY/ AUG 6

WORST-CASE  
INCREMENTAL SHADOW

- SITE 10 (1425')
- SITE 11 (1116')
- SITE J (660')



Shadows from 1:30pm-4:30pm

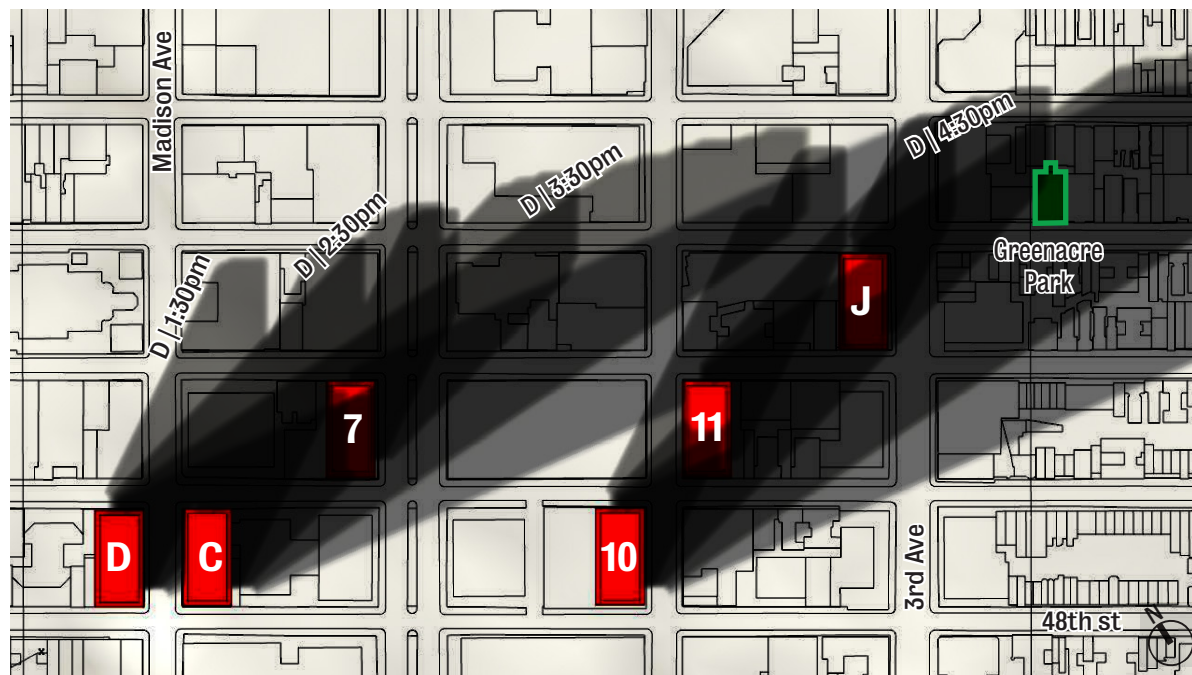


Incremental shadows at 3:30pm and 4:00pm  
Base map shows current shadow conditions at 4 pm on MAY 6

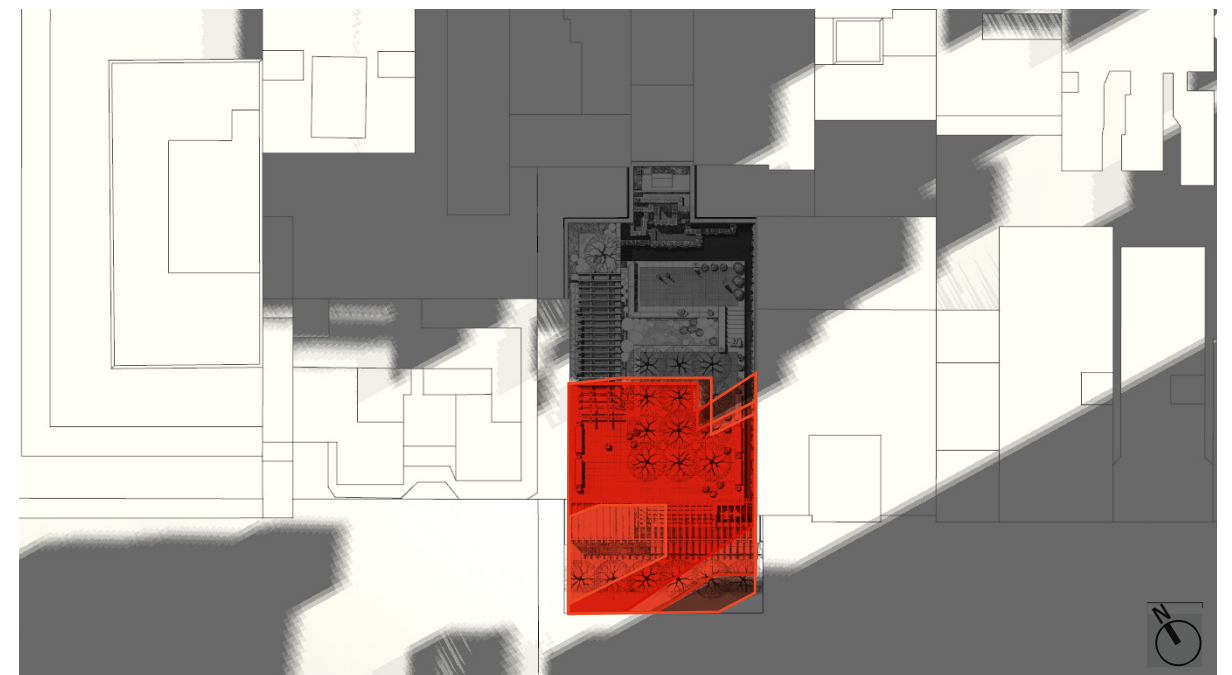
## JUN 21

WORST-CASE  
INCREMENTAL SHADOW

- SITE 7 (840')
- SITE 10 (1425')
- SITE 11 (1116')
- SITE C (1315')
- SITE D (1230')
- SITE J (660')



Shadows from 1:30pm-4:30pm



Incremental shadows at 3:30pm, 4:00pm and 4:30pm  
Base map shows current shadow conditions at 4 pm on JUN 21

# SUMMARY OF INCREMENTAL SHADOWS

COMPARING DRAFT EIS & WORST-CASE INCREMENTAL SHADOW DURATIONS

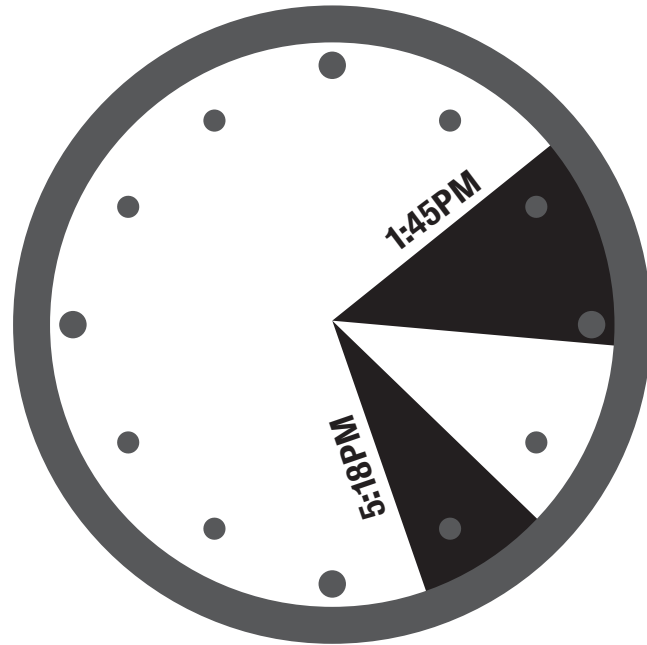
## MAY/ AUG 6

DEIS INCREMENTAL SHADOW  
42 minutes

VS.

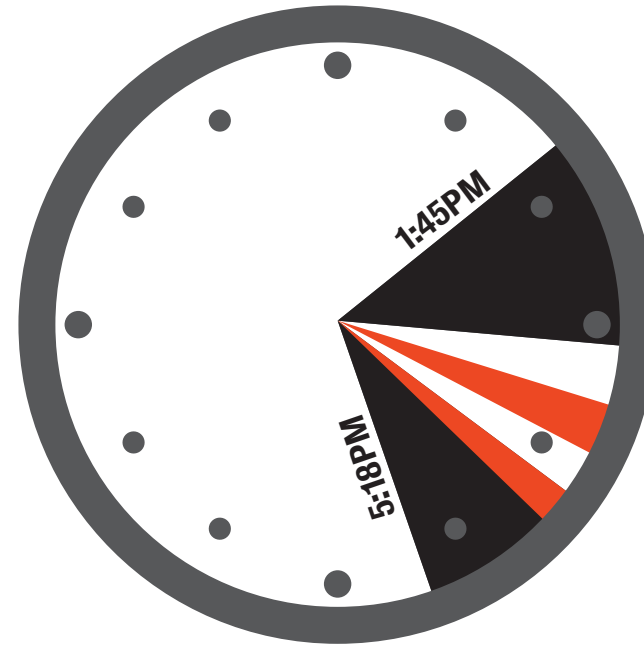
WORST-CASE HEIGHTS  
INCREMENTAL SHADOW  
1 hour 20 minutes

### CURRENT CONDITIONS



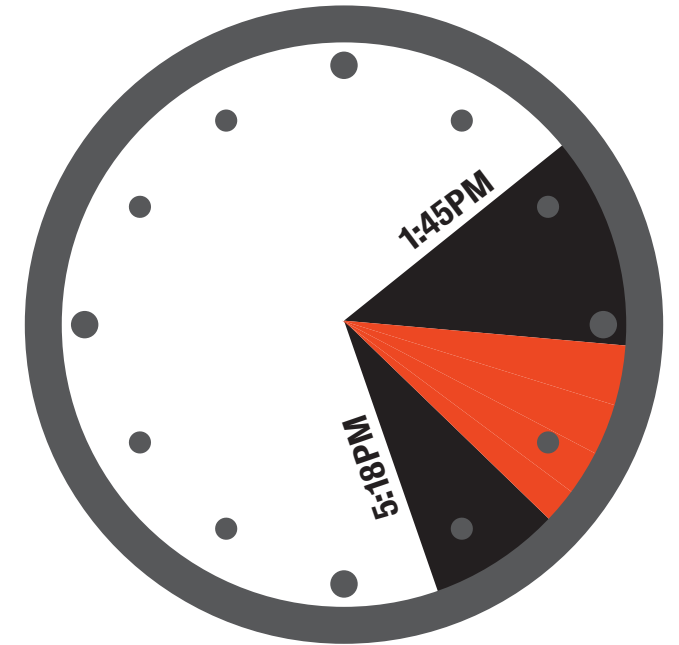
SHADOW TIMES  
6:27 AM-7:15 AM, 1:45 PM-3:10 PM, 4:25 PM-5:18 PM

### DEIS HEIGHTS



INCREMENTAL SHADOW TIMES  
3:30 PM-3:48 PM, 4:16 PM-4:42 PM

### WORST-CASE HEIGHTS



INCREMENTAL SHADOW TIMES  
3:10 PM-4:30 PM

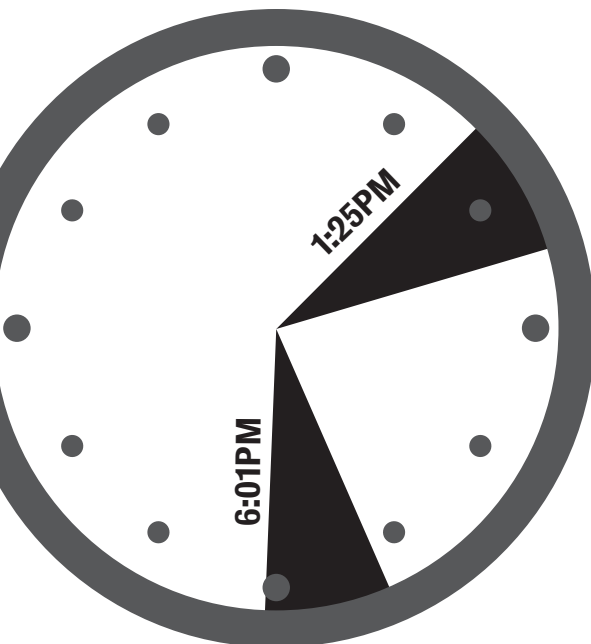
VS.

## JUN 21

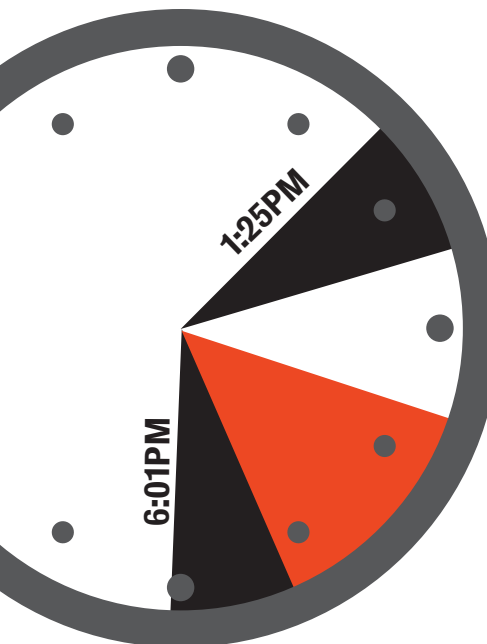
DEIS INCREMENTAL SHADOW  
1 hour 41 minutes

VS.

WORST-CASE HEIGHTS  
INCREMENTAL SHADOW  
2 hours 39 minutes

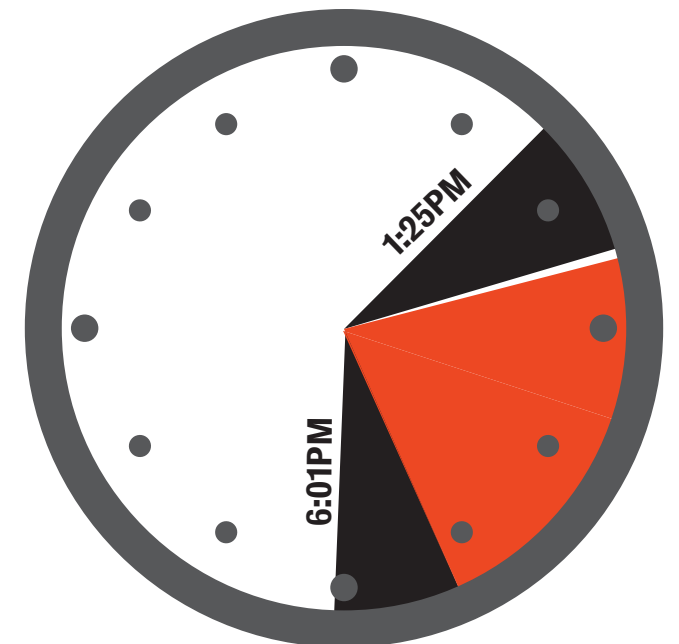


SHADOW TIMES  
5:57 AM-6:45 AM, 1:25 PM-2:25 PM, 5:15 PM-6:01 PM



INCREMENTAL SHADOW TIMES  
3:42 PM-5:23 PM

VS.



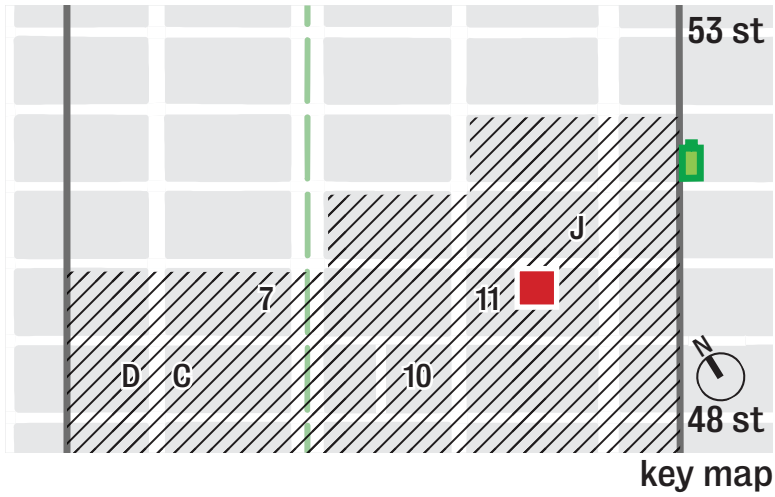
INCREMENTAL SHADOW TIMES  
2:36 PM-5:15 PM



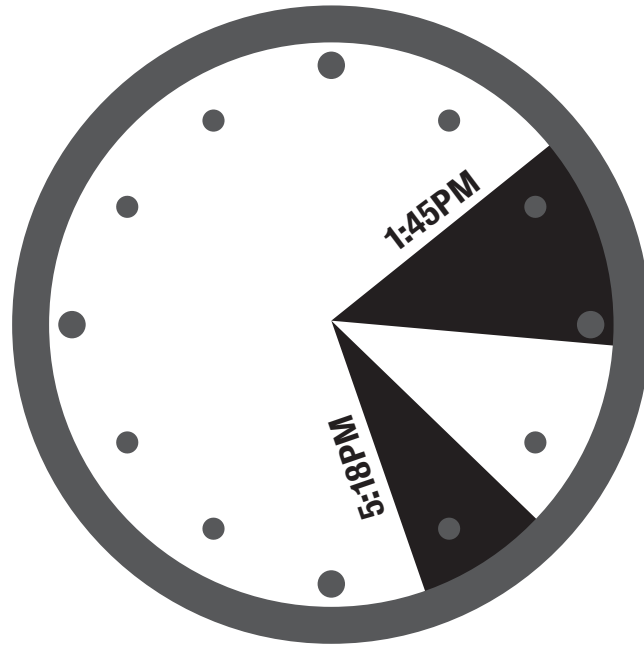


**4. NEW DEVELOPMENT  
AT 138 E 50TH STREET**

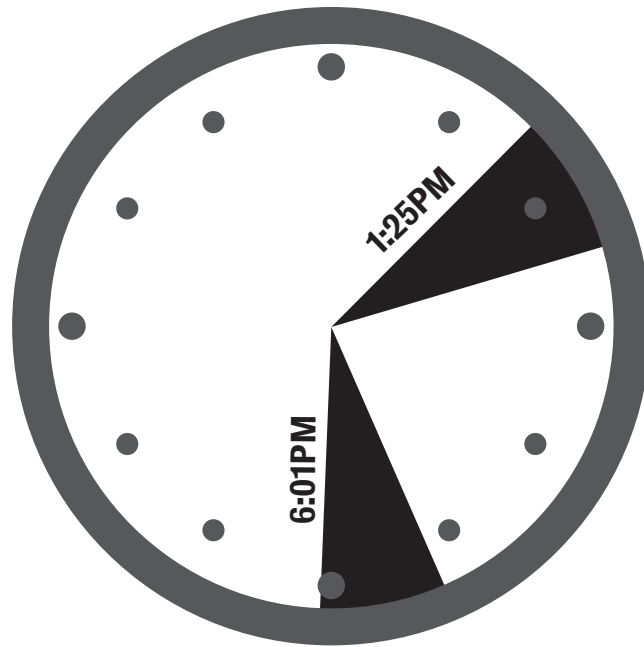
# INCREMENTAL SHADOWS FROM 138 E 50TH ST



## CURRENT CONDITIONS

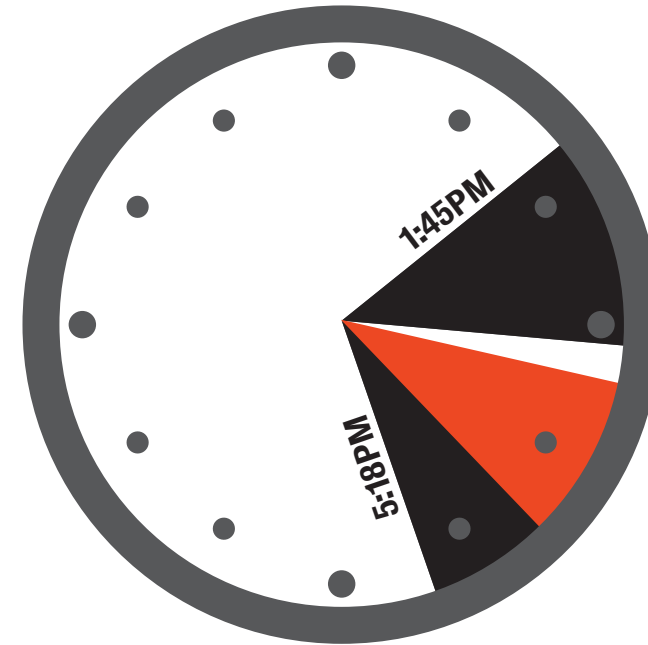


SHADOW TIMES  
6:27AM-7:15AM, 1:45PM-3:10PM, 4:25PM-5:18PM



SHADOW TIMES  
5:57AM-6:45AM, 1:25PM-2:25PM, 5:15PM-6:01PM

## 138 E 50TH ST BUILDING



INCREMENTAL SHADOW TIMES  
3:15PM-4:30PM



INCREMENTAL SHADOW TIMES  
2:53PM-4:08PM

**MAY/ AUG 6**

138 E 50TH ST BUILDING  
1 hour 14 minutes

**JUN 21**

138 E 50TH ST BUILDING  
1 hour 15 minutes

# SUMMARY OF INCREMENTAL SHADOWS

DRAFT EIS & 138 E 50TH ST SHADOW DURATIONS

## CURRENT CONDITIONS

## 138 E 50TH ST BUILDING

## 138 E 50TH ST & DEIS SITES

### MAY/ AUG 6

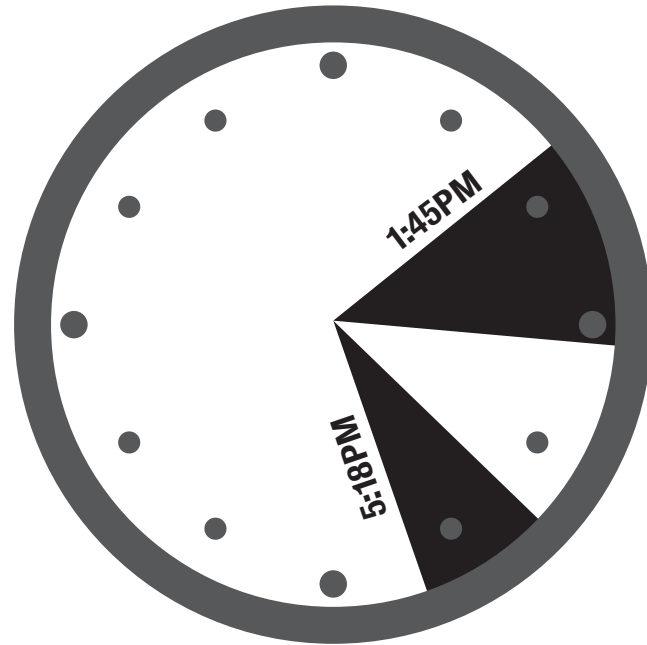
DEIS INCREMENTAL SHADOW  
42 minutes

+

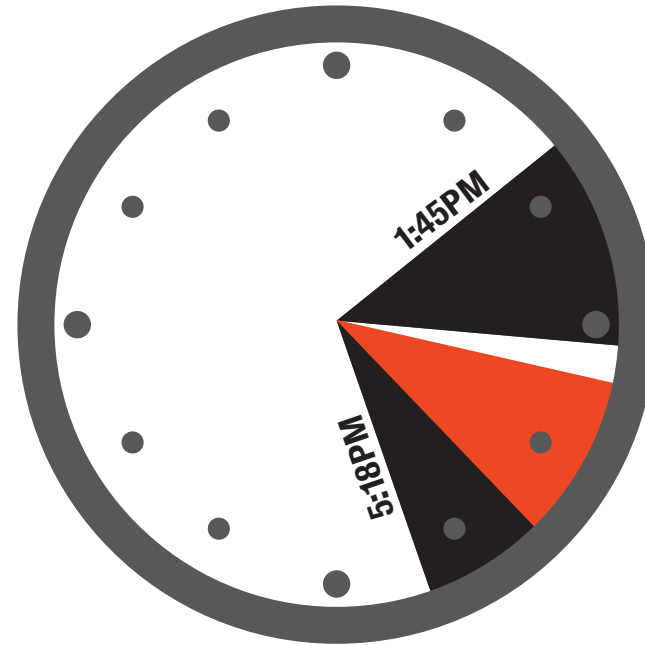
138 E 50TH ST BUILDING  
1 hour 14 minutes

=

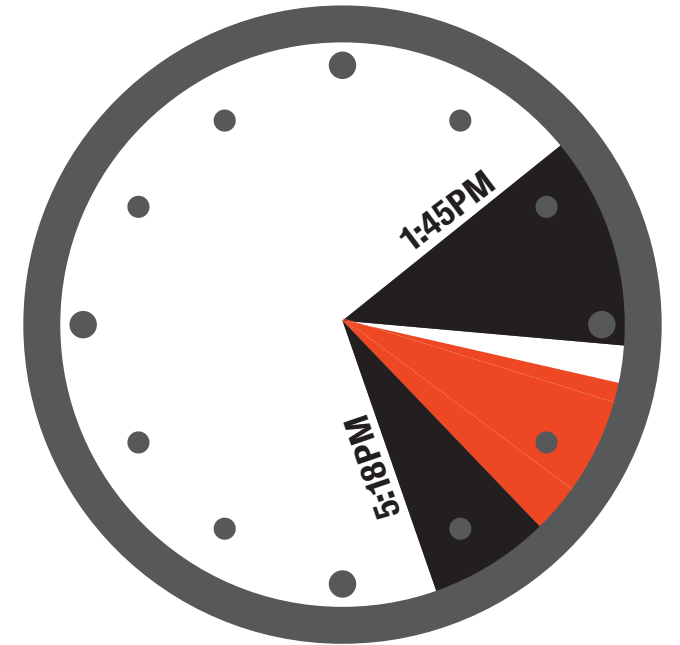
TOTAL  
1 hour 15 minutes



SHADOW TIMES  
6:27AM-7:15AM, 1:45PM-3:10PM, 4:25PM-5:18PM



INCREMENTAL SHADOW TIMES  
3:15PM-4:30PM



INCREMENTAL SHADOW TIMES  
3:15 PM-4:30 PM

### JUN 21

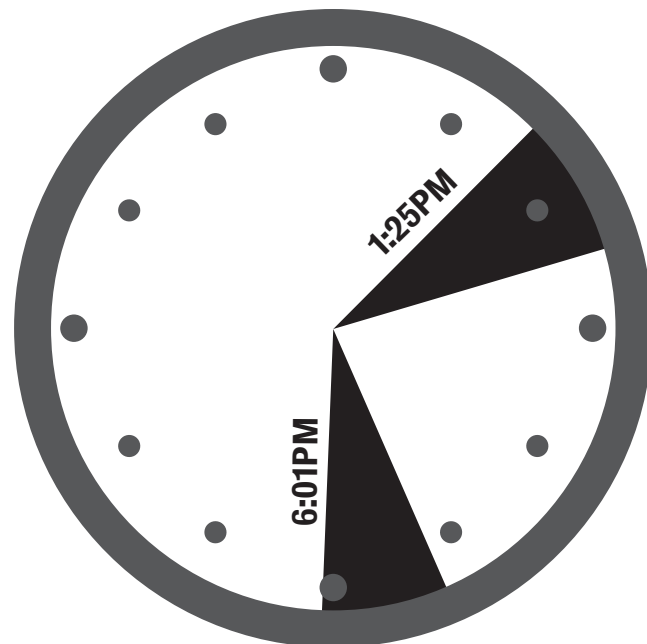
DEIS INCREMENTAL SHADOW  
1 hour 41 minutes

+

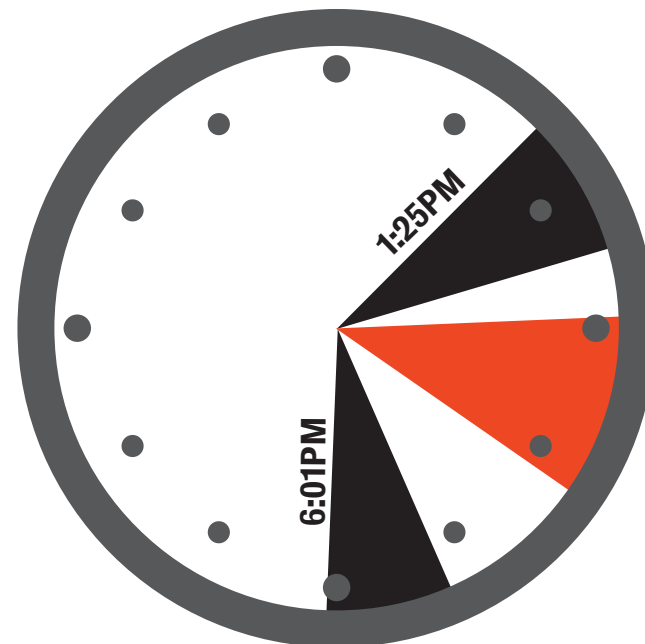
138 E 50TH ST BUILDING  
1 hours 15 minutes

=

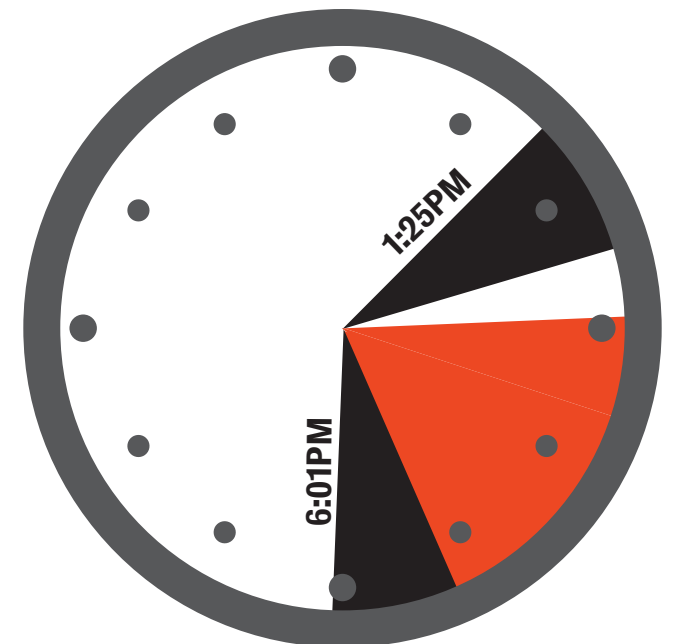
TOTAL  
2 hour 22 minutes



SHADOW TIMES  
5:57AM-6:45AM, 1:25PM-2:25PM, 5:15PM-6:01PM



INCREMENTAL SHADOW TIMES  
2:53PM-4:08PM

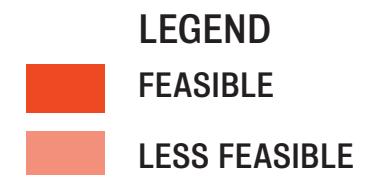
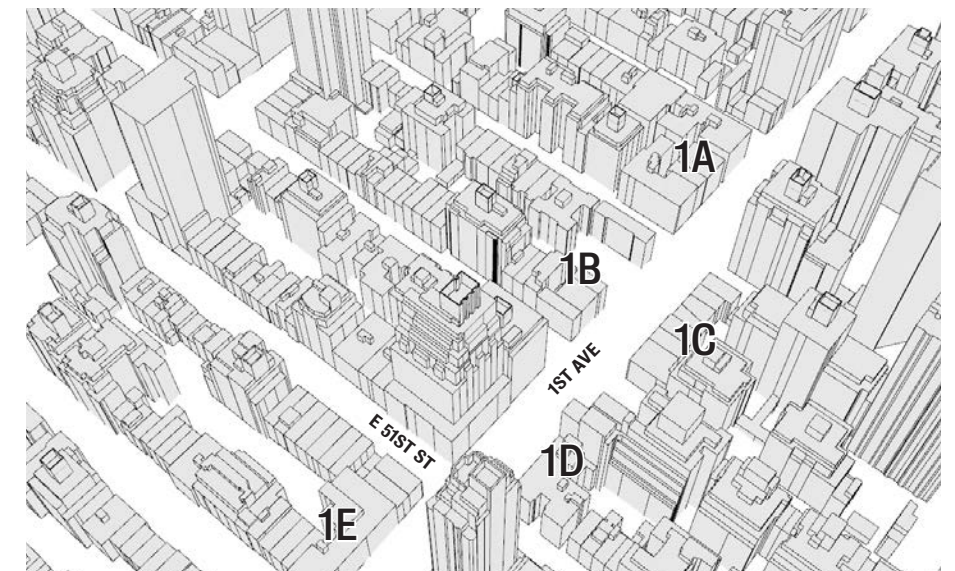
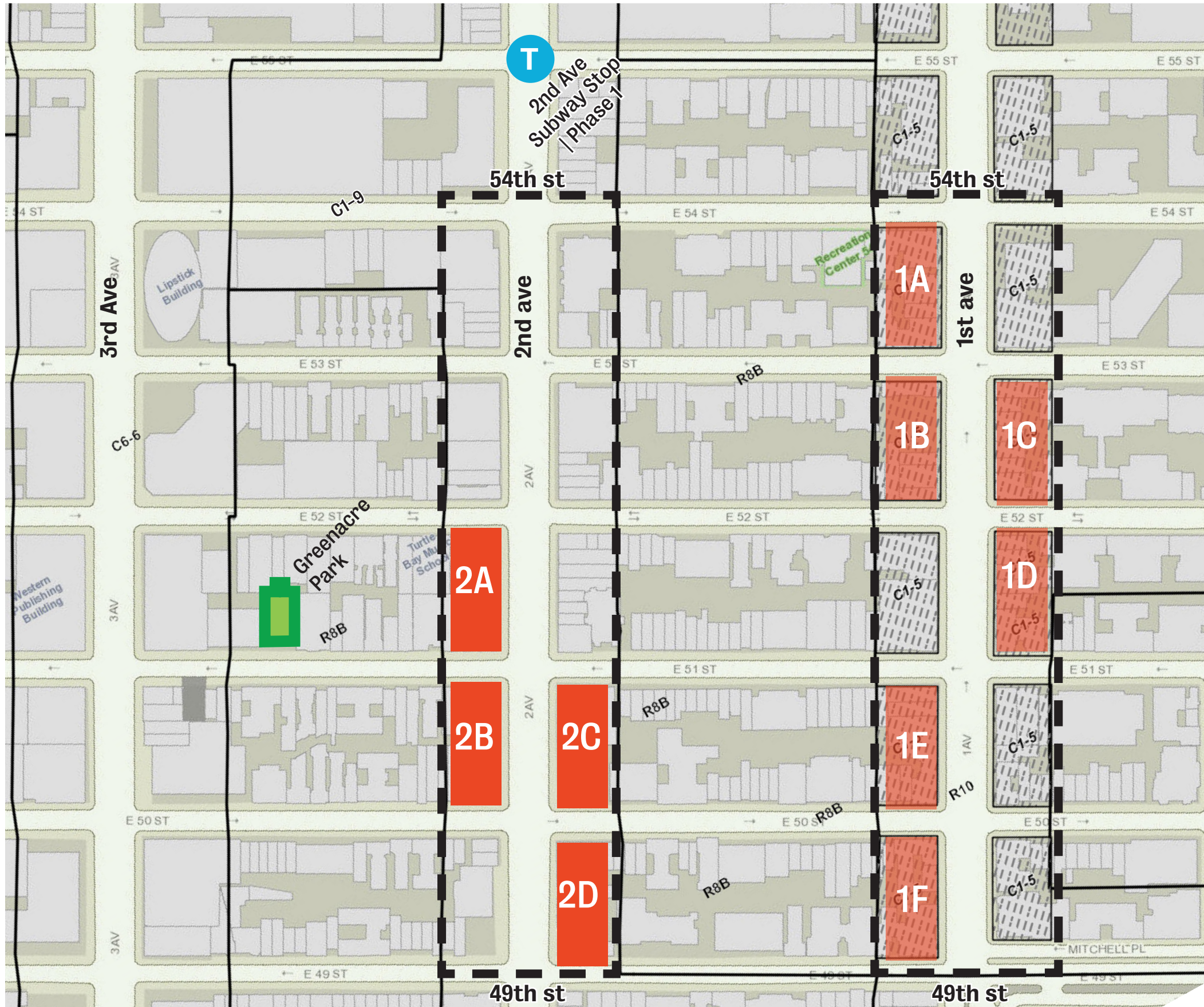


INCREMENTAL SHADOW TIMES  
2:53-5:15 PM

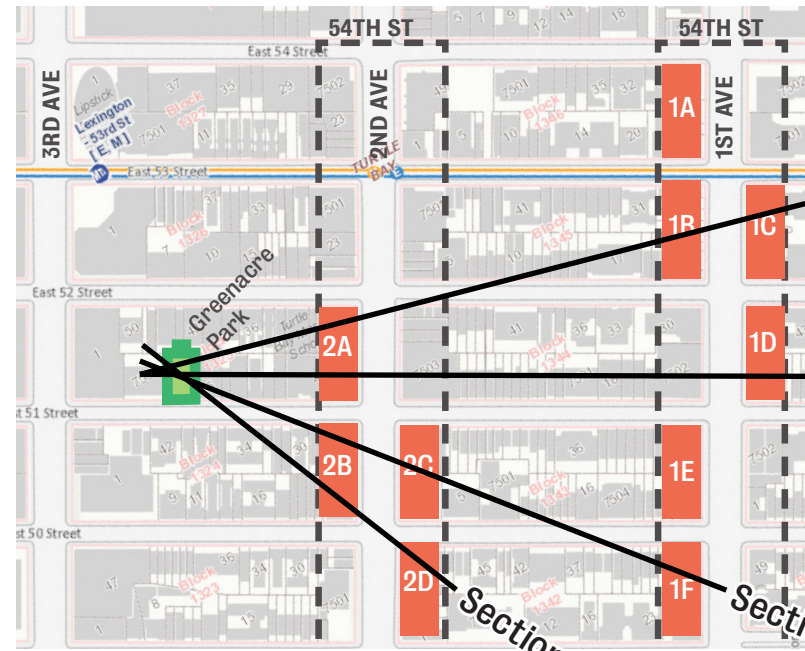
A photograph of an outdoor courtyard with trees and people, overlaid with a blue tint and white text. The scene shows a paved area with several trees and people sitting at tables. The text is centered in the middle of the image.

# 5. POTENTIAL ADDITIONAL SHADING FROM EAST

# POSSIBLE ADDITIONAL MORNING SHADOW



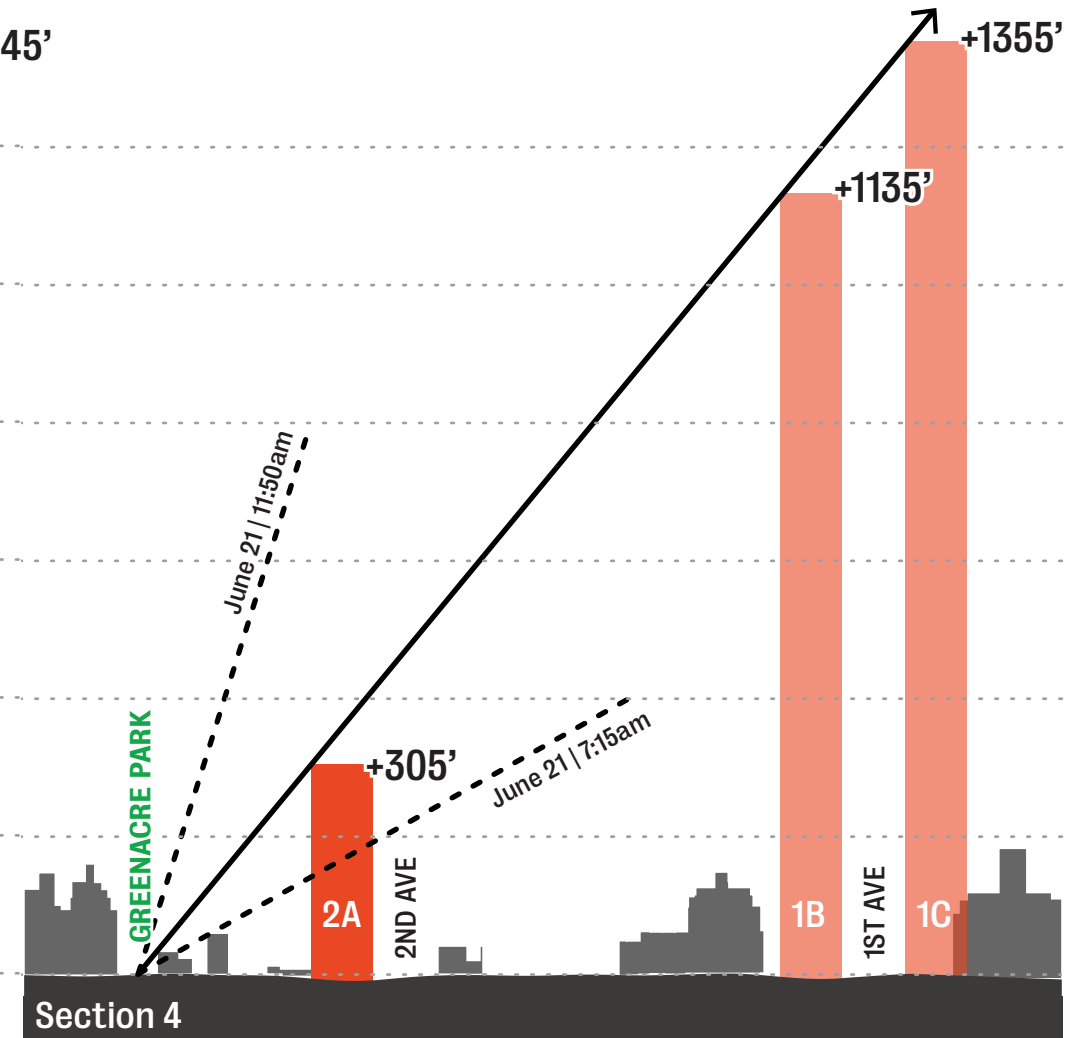
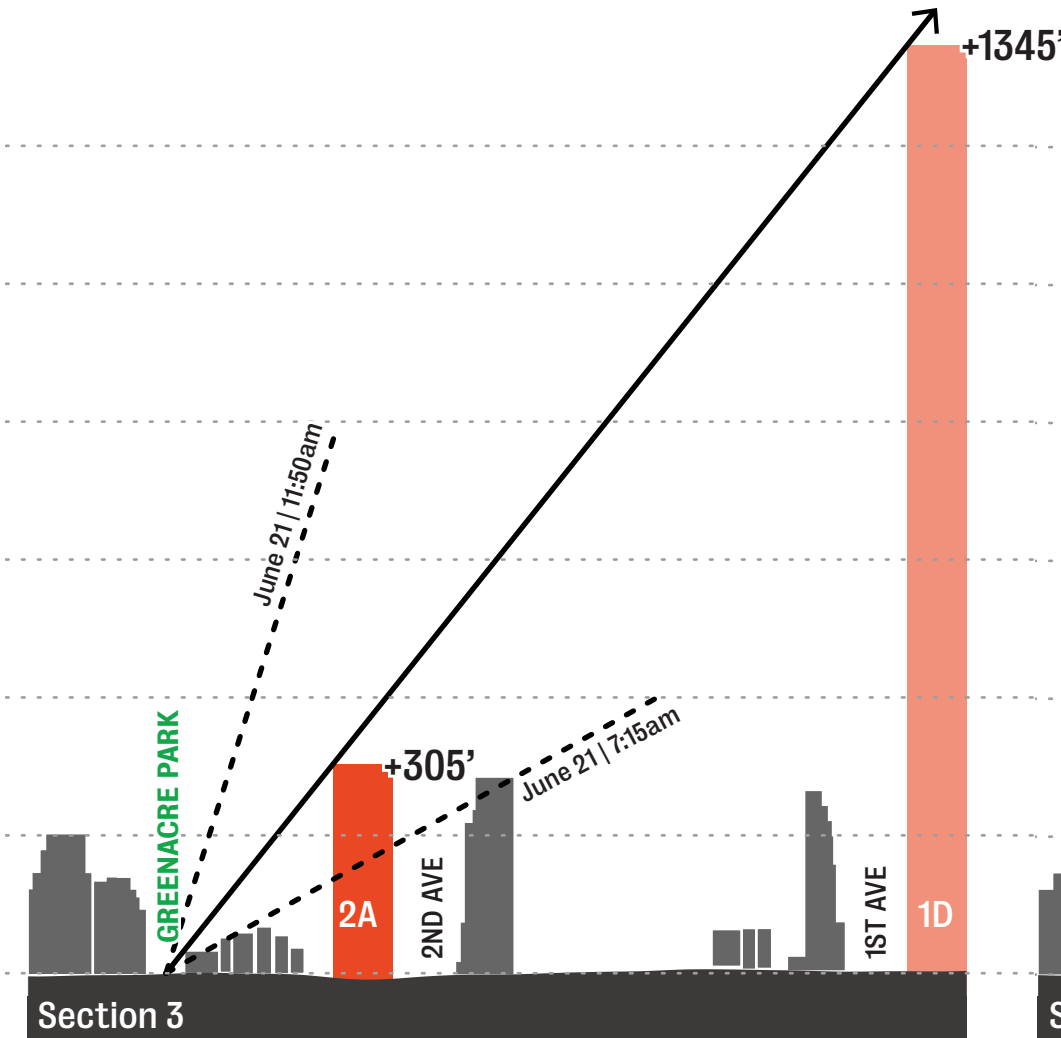
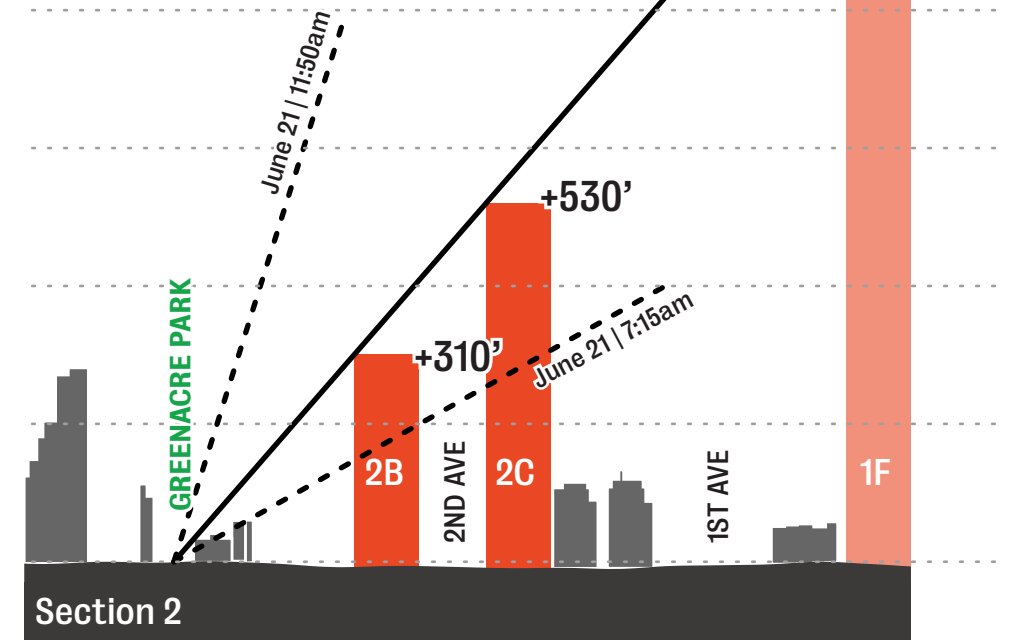
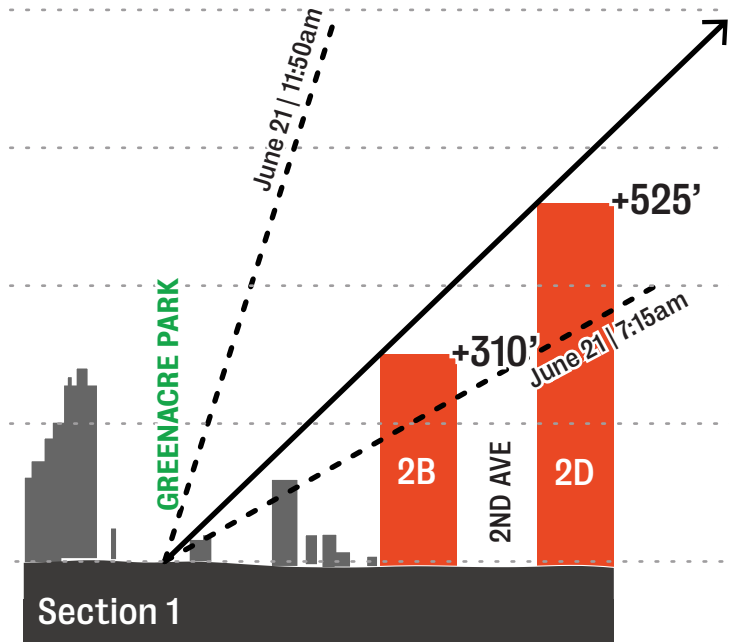
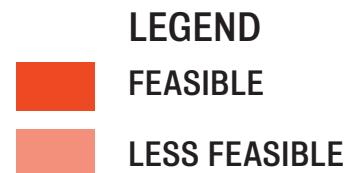
# POTENTIAL BUILDING HEIGHTS



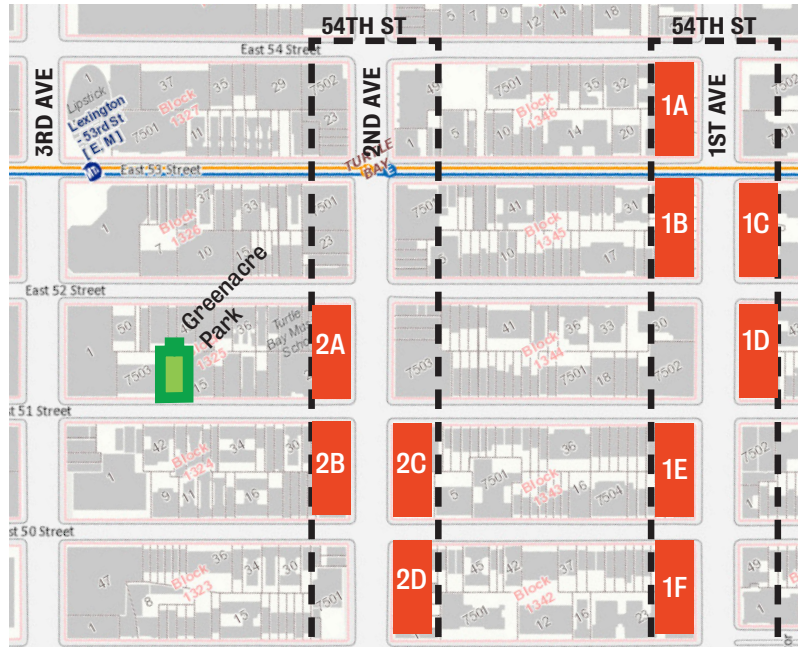
key map

## SUMMARY:

- Potential incremental shadows from the sites on 2nd Ave
- West side of 2nd Ave: new buildings taller than 310' would cast additional shadow on Greenacre Park.
- East side of 2nd Ave: new buildings taller than 530' would cast additional shadow on Greenacre Park.

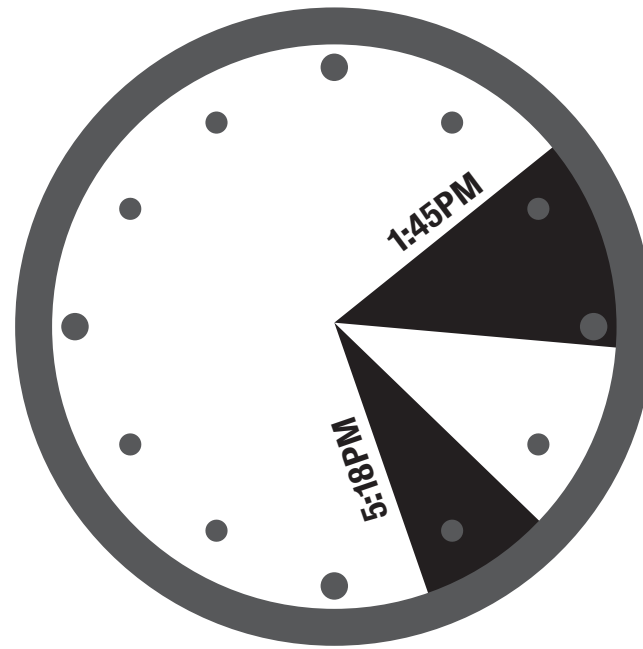


# SUMMARY OF INCREMENTAL SHADOWS



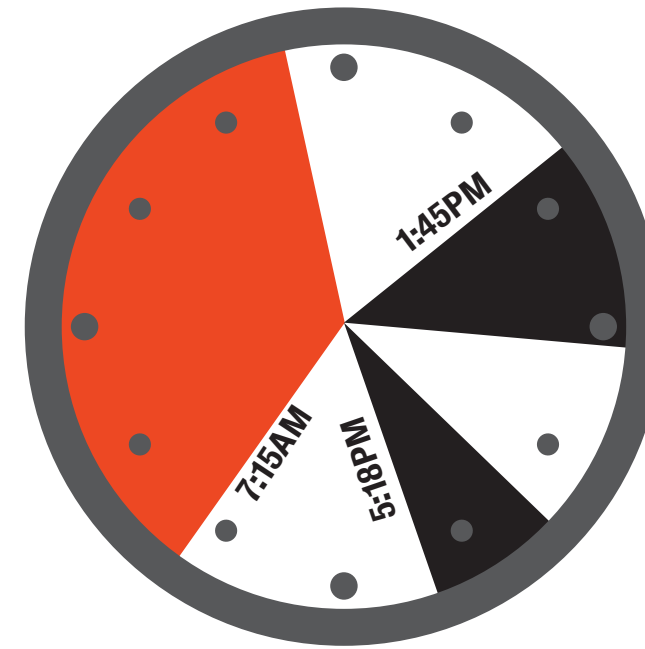
key map

## CURRENT CONDITIONS



SHADOW TIMES  
6:27AM-7:15AM, 1:45PM-3:10PM, 4:25PM-5:18PM

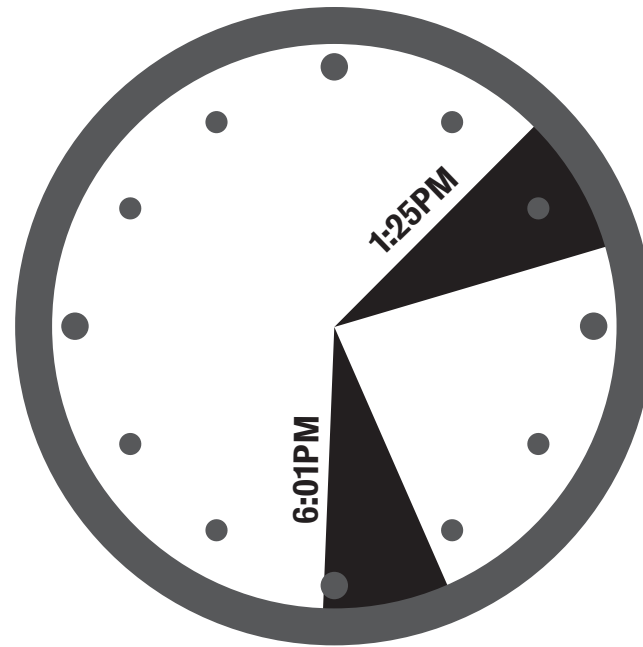
## POTENTIAL ADDITIONAL SHADING FROM EAST



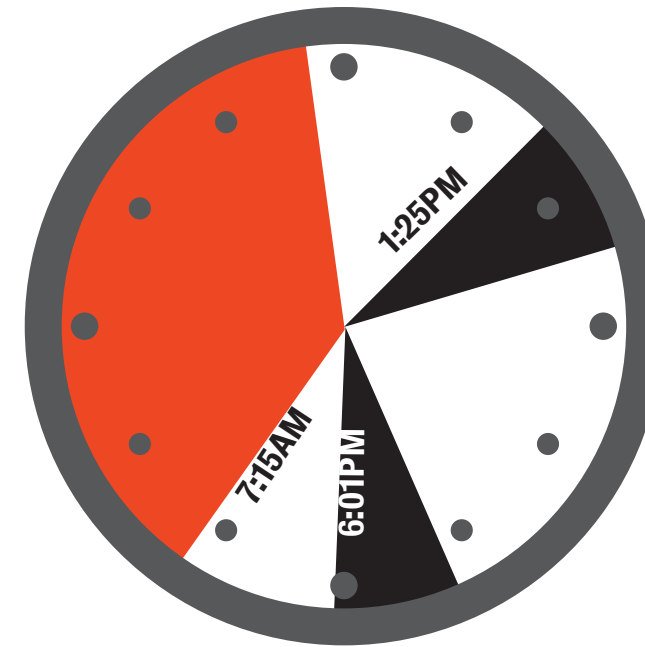
INCREMENTAL SHADOW TIMES  
7:15AM-11:40AM

**MAY/ AUG 6**

4 hours 25 minutes



SHADOW TIMES  
5:57AM-6:45AM, 1:25PM-2:25PM, 5:15PM-6:01PM



INCREMENTAL SHADOW TIMES  
7:15AM-11:50AM

**JUN 21**

4 hours 35 minutes



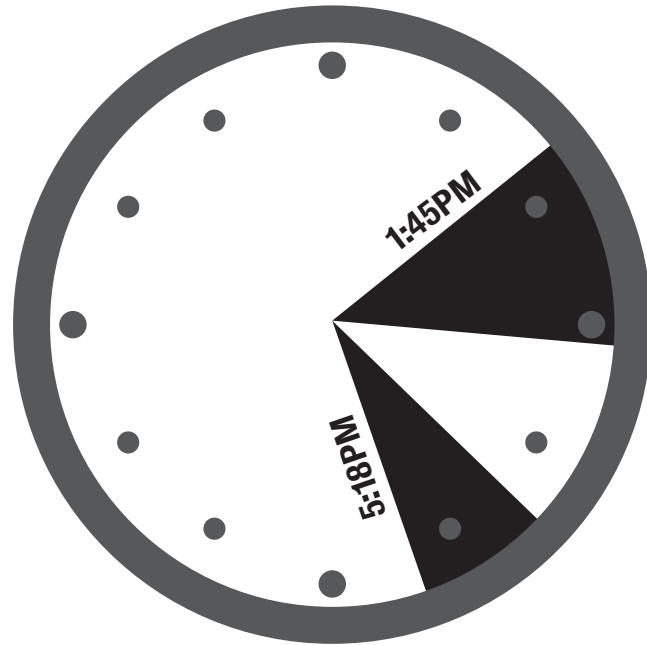
## 6. SHADOW SUMMARY



# SUMMARY OF INCREMENTAL SHADOWS

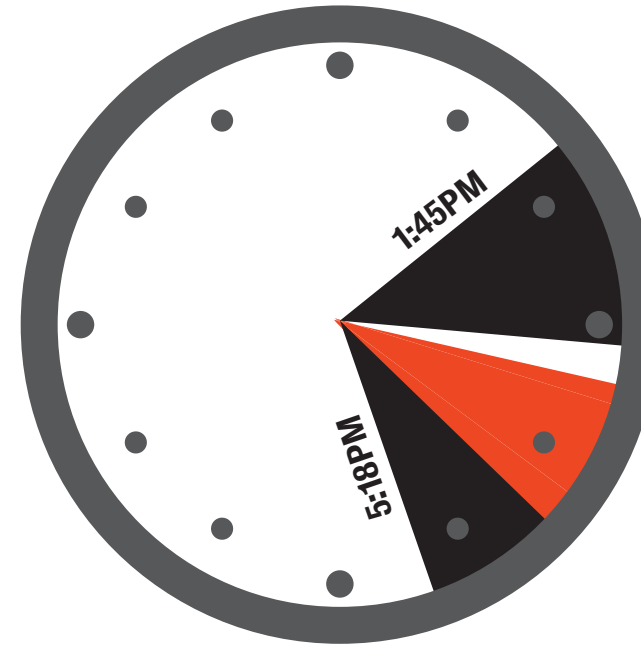
WORST-CASE INCREMENTAL SHADOW + POTENTIAL ADDITIONAL SHADOW FROM EAST DURATIONS

## CURRENT CONDITIONS



SHADOW TIMES  
6:27AM-7:15AM, 1:45PM-3:10PM, 4:25PM-5:18PM

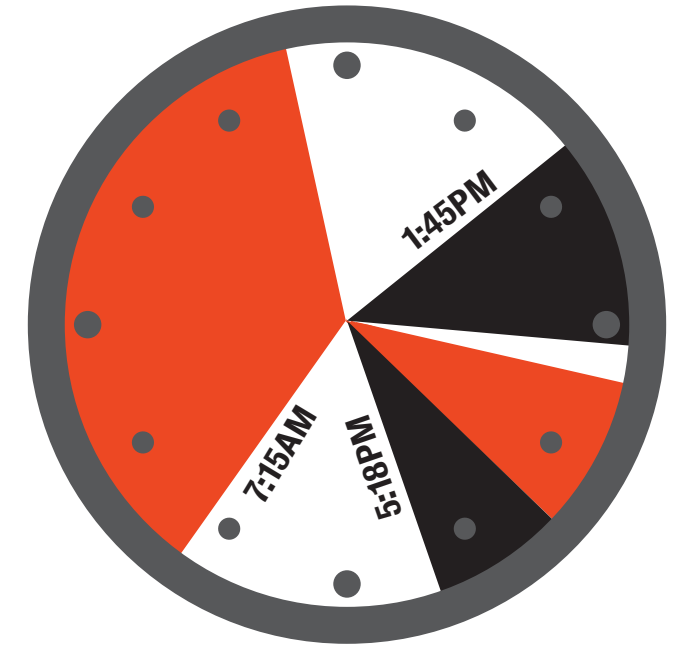
## WORST-CASE HEIGHTS



INCREMENTAL SHADOW TIMES  
3:10PM-4:30PM

VS.

## SHADOW FROM EAST + WORST-CASE HEIGHTS



INCREMENTAL SHADOW TIMES  
7:15AM-11:40AM + 3:10PM-4:30PM

## MAY/ AUG 6

FROM EAST  
4 hour 25 minutes

+

138 E 50TH ST + DEIS  
INCREMENTAL SHADOW

1 hour 20 minutes

=

TOTAL

5 hour 45 minutes

## JUN 21

FROM EAST  
4 hour 35 minutes

VS.

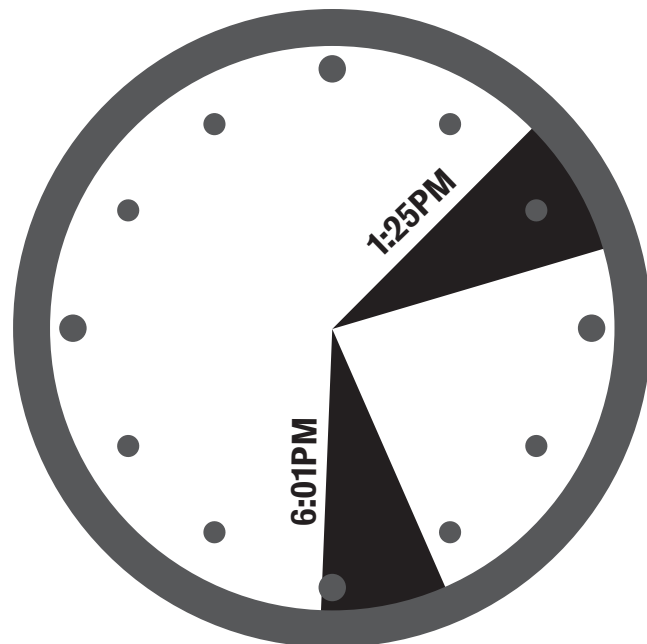
138 E 50TH ST + DEIS  
INCREMENTAL SHADOW

2 hours 39 minutes

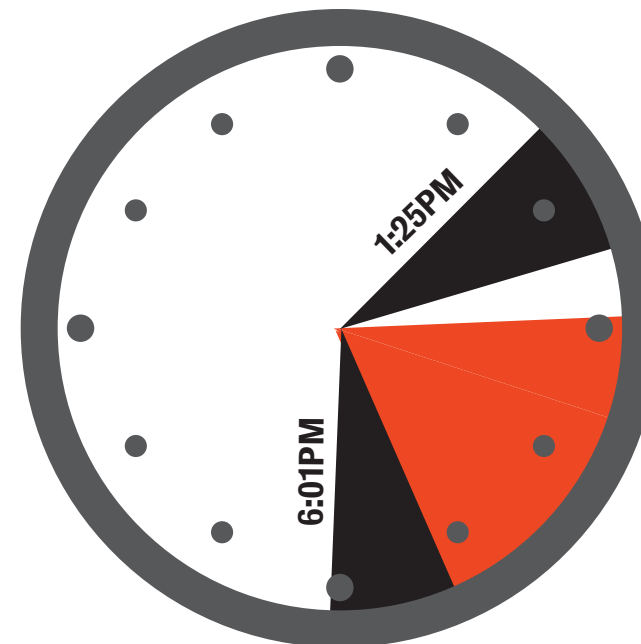
=

TOTAL

7 hour 14 minutes

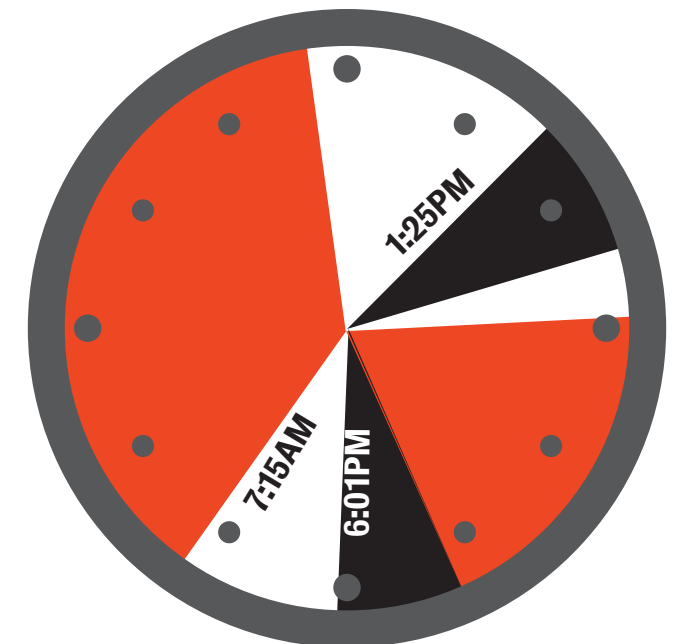


SHADOW TIMES  
5:57AM-6:45AM, 1:25PM-2:25PM, 5:15PM-6:01PM



INCREMENTAL SHADOW TIMES  
2:36PM-5:15PM

VS.



INCREMENTAL SHADOW TIMES  
7:15AM-11:50AM + 2:36PM-5:15PM

**THANK YOU!**

# CATHOLIC COMMUNITY RELATIONS COUNCIL

---

80 Maiden Lane, 13<sup>th</sup> Floor, New York, New York 10038

**Testimony of Joseph Rosenberg, Executive Director  
Catholic Community Relations Council  
New York City Planning Commission - Greater East Midtown  
April 26, 2017**

Good morning, Chair Lago and City Planning Commissioners. I am Joseph Rosenberg, Executive Director of the Catholic Community Relations Council representing the Archdiocese of New York and the Diocese of Brooklyn on local legislative and policy matters. I am here today on behalf of the Archdiocese of New York and the Trustees of Saint Patrick's Cathedral.

We thank you for your leadership in formulating the proposed East Midtown Rezoning Plan. This rezoning is essential not just for the revitalization of the business district of East Midtown but also for the continuing growth of our City. We especially support the initiative as necessary to provide landmarked houses of worship with the means to preserve their properties for future generations by allowing their development rights to be transferred to other sites throughout the proposed district. Religious organizations do not generate revenues from their houses of worship. They are ineligible to receive public funding and they face great challenges in maintaining many unique architectural features of their landmarked properties which include stained glass and carved stonework. Funding through this rezoning will be invaluable towards preserving this landmark. As caretakers of St. Patrick's Cathedral, one of the most prominent landmarks in our City and one that receives 5.5 million visitors annually, we urge, however, that the Commission reconsider the so-called "floor price" for transferring development rights from landmarks in the district.

One of the strengths of this rezoning proposal is its clear structure and reliance upon "as-of-right" development. Inherent in any development process is the assumption that market forces will establish the price of the transaction. Interference in the buy/sell market will serve to alter incentives, and undermine the goal of inducing much-needed new development in East Midtown as well as the funding of public realm improvements.

The proposed requirement that landmarks set aside a minimum amount of proceeds from each transfer -- regardless of the sale price -- significantly reduces the value of any transaction for landmark owners who could wait for the market to catch up to the floor price. High tax rates have an adverse effect on economic activity, and there is no reason to expect a different result in this proposed rezoning. With landmark owners less willing to undertake transfers of their development rights, there will be less development, less funding available for landmark preservation, and less funding for public realm improvements.

A floor price should not be included in this proposed plan. Taxes for every other real estate transaction in the City are based upon the actual consideration for the arms length transaction between willing sellers and buyers. To treat owners of landmarks in a different manner is illogical and counterproductive. We have seen no evidence of a need for this minimum set-aside and this element of the proposal should be eliminated. Please permit the market to operate without artificial constraints.

An underlying rationale for a floor price is that owners will circumvent reporting the consideration received from a transfer. This fails to recognize well established reporting systems that determine transaction value. These include the transfer tax filing system at the Department of Finance and for houses of worship, the need for the New York State Supreme Court to approve all real property sales, thereby assuring the accuracy of the reported sales consideration.

To ensure the success of the proposed rezoning, we therefore strongly urge the Commission to reconsider and remove the proposed floor price for landmark transfers.

Thank you again for your continuing efforts to ensure a bright future for East Midtown.

**From:** [Robert Dobruskin \(DCP\)](#)  
**To:** [Diane Mccarthy \(DCP\)](#); [Christopher Lee \(DCP\)](#); [Ezra Moser \(DCP\)](#); [Bob Tuttle \(DCP\)](#)  
**Cc:** [Edith Hsu-Chen \(DCP\)](#)  
**Subject:** FW: Comment re Midtown East Rezoning EIS  
**Date:** Wednesday, January 04, 2017 5:48:18 PM

---

ROBERT DOBRUSKIN, AICP

DIRECTOR • ENVIRONMENTAL ASSESSMENT AND REVIEW DIVISION

NYC DEPT. OF CITY PLANNING

120 BROADWAY, 31<sup>ST</sup> FLOOR • NEW YORK, NY 10271  
212-720-3423 | [rdobrus@planning.nyc.gov](mailto:rdobrus@planning.nyc.gov)

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[www.nyc.gov/planning](http://www.nyc.gov/planning)

**From:** Joseph Sanderson [mailto:joseph.sanderson@gmail.com]  
**Sent:** Wednesday, January 04, 2017 5:30 PM  
**To:** Robert Dobruskin (DCP) <RDOBRUS@planning.nyc.gov>  
**Subject:** Comment re Midtown East Rezoning EIS

Dear Mr. Dobruskin,

I work in Midtown East, and I am writing to express my support for the proposed Midtown East rezoning, and to make a few comments on ways in which the proposed rezoning could further mitigate its environmental impacts or otherwise serve important policy goals.

### **Transit Improvements**

Firstly, I urge the City to consider bus improvements, such as funding for bus lane expansion, bus shelters, and equipping intersections with signal priority for buses and emergency vehicles, as part of the transit improvement packages that developers would be required to pay for. Notably, this would allow the City to demand transit improvements that go beyond the immediate vicinity of subway stations, and would accurately reflect the fact that many Midtown commuters do not use the subway.

Secondly, I urge the City to consider partnering with the Long Island Railroad, Metro-North, and New Jersey Transit to encourage developers to contribute to improvements to the regional rail systems. Increased development in Midtown East will put greater strains on these railroads, and developers should be incentivized to contribute to measures that would enhance their capacity, such as through-running trains between Grand Central and Penn Station and signal upgrades.

Thirdly, I urge the City to consider requiring developers to contribute funds toward the installation of Communications-Based Train Control (CBTC) on all subway lines

serving Midtown East, with a particular priority on the over-capacity Lexington Avenue Line. CBTC could significantly enhance the number of trains capable of running, and comparable cities such as London have achieved extremely high frequency service through CBTC upgrades to lines.

### **Cultural Space**

Office development in Midtown over the last half century has led to the loss of a significant number of cultural spaces. I urge you to provide incentives for developers to include theaters and other cultural spaces within their developments.

### **Pedestrian Skyway System**

I would also urge the City to encourage developers to create a system of elevated enclosed pedestrian passageways and retail similar to Minneapolis's Skyway system. Such a system would allow pedestrians to stay dry, and to escape humid summer and cold winter conditions. It would also provide an alternative to congested sidewalks while providing much-needed additional space for small retail businesses.

### **Automated Garbage Collection**

The waste generated by Midtown businesses is currently overwhelmingly removed by hundreds of garbage trucks. These trucks are noisy, cause congestion, and endanger pedestrians and cyclists. I encourage the City, as part of the rezoning, to provide incentives for developers to install an automated garbage collection system similar to the one on Roosevelt Island. As one of the densest business districts on Earth, Midtown East is an ideal place to deploy automated garbage collection efficiently.

Sincerely,

Joseph M. Sanderson  
344 E. 65th St. Apt. 1B, New York, NY 10065



# Regional Plan Association

## Regional Plan Association Testimony before the City Planning Commission, on the Greater East Midtown Rezoning (ULURP Application Nos. N 170186A ZRM and N 170187 ZMM)

Pierina Ana Sanchez, New York Director

April 25, 2017

Good morning, my name is Pierina Ana Sanchez and I am the New York Director at Regional Plan Association, which aims to improve the New York metropolitan region's economic health, environmental sustainability and quality of life through research, planning and advocacy.

I am here today to testify in support of the proposed rezoning for Greater East Midtown, the city's premier central business district. East Midtown fuels the economy of the city and region, and is one of the greatest generators of prosperity in the country. But the district faces a number of challenges – East Midtown has an aging and increasingly outdated office building stock, limited new construction, and a severe need for improvements to public spaces, pedestrian networks and transit amenities. As long-term, regional planners, we are concerned about the 25 and 50 year horizon. As the Commission decides the future of the district's land use, RPA urges consideration of a vital question: **are the public's needs being met in this proposal?**

As a member of the Steering Committee, RPA helped to shape the [recommendations](#) that set the foundation for the City's [proposals](#) for the Greater East Midtown Rezoning. Thanks to Manhattan Borough President Gale Brewer and Council Member Dan Garodnick, for your leadership, where the proposal stands today represents a significant achievement. As a world-class city, the question is less whether East Midtown remains at the forefront relative to other NYC or even U.S. business districts, but how we compete with London, Paris, Shanghai and Tokyo. To remain a leader, East Midtown must stay globally competitive, which requires a truly ambitious vision. We commend the hard work that has been put into this effort, and have a few outstanding concerns and recommendations:

- **The place-making incentives for the public and private realm:** As we have previously stated, there is room for more aspirational improvements to meet the district's challenges than what is currently in DOT's proposed concept plan. There could be more preference for people, room for bikes, and preference for transit. We are also concerned the concept plan itself has no teeth – improvements are not guaranteed. Finally, we are doubtful of the potential for success of the privately owned public space (POPs) bonuses, and recommend an as-of-right framework be identified.
- **Transit improvements:** Given the critical role of the district, RPA supports the proposed boundaries and even eastward considerations. And, with respect to transit improvements, recognizing the critical nature of ADA accessibility, how can more flexibility be added for consideration of more aspirational transit improvements in the future?
- **Limiting residential conversions:** East Midtown is a commercial district first and foremost, conversions should be limited and dis-incentivized.
- **Public realm improvement fund governance:** Control should be balanced between mayoral appointees and other representatives.

Our written testimony is more comprehensive and I will not read it out today. Thank you for your time this morning, I would be happy to answer any questions.

More detailed RPA concerns below:

## Transit Bonuses

**More aspirational pre-approved transit improvements:** As part of the as-of-right framework, pre-identified improvements will be assigned a specific amount of floor area based on their scope and benefit to the public. Developments taking advantage of this zoning framework should contribute to transit network improvements, above and beyond the State of Good Repair (SOGR), Normal Replacement (NR), System Improvement (SI) and Network Expansion (NE) work usually carried out through the MTA's capital program. Additionally, the City and MTA should consider how the district can achieve more aspirational improvements including:

- MTA and City should consider how to upgrade relevant East Midtown bus routes as redesigned roadways, involving greater preference for transit and more space for people.
- The City should consider improvements to add safety and convenience to the bike and pedestrian network. Right now, there are no bike network improvements included in this plan.
- MTA, City, Port Authority of New York and New Jersey should explore airport access from East Midtown to the area's airports

**Build flexibility into the pre-approved transit improvements list:** We strongly recommend flexibility be built into the concept plan, such that as needs change at GEM district transit stations, pre-approved projects can be amended.

**The valuation of floor area should also be able to change over time:** The public should receive fair benefits for the additional development rights, and this information should be made publicly available for each transaction.

**Special permit through certification not ULURP:** Given how scarcely the transportation special permit has been used in the past 30 years, 10 times since 1982, RPA is not confident the transit improvement special permit mechanism will yield many benefits. Per the steering committee's recommendations, the transit bonus in the GEM special district should be restructured so as to maximize the opportunity for approvals through certification by DCP and MTA, as opposed to through the Uniform Land Use Review procedure (ULURP). Otherwise, RPA recommends greater preference be given to transit improvements over landmark transfers.

## Boundaries


**Leave room for improvements and density considerations near future stations, including 2nd Avenue:** After almost a century of stops and starts, the first segment of the Second Avenue subway – between 63rd to 96th Street – is nearing completion. The first phase alone will divert 200,000 riders from the Lexington Avenue subway lines. In all, the public will invest upwards of \$20 billion on the second avenue subway and its stations. Because of the immense amount of public resources new rail transit represents, RPA recommends the zoning framework include language about future stations that will serve the district.

**Expand Grand Central Terminal (GCT) Transit Improvement Zone (TIZ) to 49<sup>th</sup> Street:** Part of the proposal's planning rationale for allowing additional density in certain areas is related an area's proximity to transit nodes. These areas are the blocks or portions of blocks directly above GCT's below-grade network, and the blocks or portions of blocks directly below Fifth Avenue-53 Street, Lexington Avenue-51<sup>st</sup>/53<sup>rd</sup> Street. We recommend the GCT TIZ be extended two-blocks north to 49<sup>th</sup> Street, from 47<sup>th</sup> Street. This would enable more of the developments with holdings directly over transit stations to "earn" FAR through implementation of pre-identified transit improvements. This is especially important since only developments within TIZ's will be eligible to earn FAR through direct transit improvements.

## Place-making

**Codify pre-approved place-making opportunities documented by DOT:** With respect to place-making opportunities, RPA is concerned both that the concept plan will not be implemented, and that even if it is, there is room for more aspirational improvements to meet the district's challenges. The concept plan that may





be pre-approved through ULURP should use the Steering Committee’s recommendations as a foundation, and borrow more ideas from four foundational reports including the Grand Central Partnership’s 1987 revival plan, Jonathan Rose Companies’ “Places for People: A Public Realm Vision Plan for East Midtown,” commissioned by DCP and EDC in 2013, the Municipal Art Society’s 2013 Vision, and the multi-board task force’s 2013 statement. Ideas contained in these documents date back 40 years and have support from key stakeholders. In particular, RPA strongly recommends:

- The advancement of NYC DOT public plaza and shared streets recommendations, including plazas at Pershing Square West, the northern section of Vanderbilt Ave, a shared street along Library Way, and additional pedestrian space along Vanderbilt Ave.
- The EIS should evaluate these options and more, and detail the potential safety, public health and cultural benefits of additional public space in this overcrowded district.

**Public realm improvements achievable through as-of-right framework:** Finally, RPA is dubious about the success of the NYC Planning’s privately owned public space bonuses. With ULURP requirement, will it really be successful?

## Limiting Residential Conversions

**Limit residential conversions and require affordable housing in any residential development enabled:** East Midtown is first and foremost a business district and to that end, RPA recommends residential uses be discouraged. In order to utilize the zoning framework proposed in this rezoning, the City’s proposal requires that development have clear frontage along a wide street, exceed environmental performance standards, and that residential floor area be no more than 20 percent of the development. RPA agrees with these provisions, and furthermore recommends that any additional residential should be mixed-income, applying the same provisions that apply to new rezonings under the city’s Mandatory Inclusionary Housing provisions. For grandfathered buildings that are currently permitted as-of-right conversion to residential, we recommend that owners be required to demonstrate, through a special permit or other mechanism, that commercial use is not economically viable.

## Decision-Making for the Public Realm Improvement Fund

**Decision-making should be distributed across the Mayor’s representatives, Manhattan Borough President, City Council Member and Community Boards.** 20 percent of the sales landmark development rights will go to a public realm improvement fund managed by a governing group consisting of appointees from the Mayor’s office, local elected officials, and community boards.

## Conclusion

At RPA, we pay special attention to the infrastructure systems that make this concentration of activity possible, including the housing that is home to our labor force, the movement of goods to support those workers, and the transit system which is the lifeblood of our city and region. Our transit system is a modern wonder, providing over ten million daily trips in, out and around the city and region efficiently, sustainably and sometimes even comfortably. The maintenance and expansion of this system remains among our highest priorities. As we look to the future, we have a responsibility to ensure the district’s global competitiveness, which will require ambitious reimagining of the resident, worker and visitor experience.

## MEMORANDUM

To: Marisa Lago  
Anita Laremont  
Purnima Kapur  
Edith Hsu Chen  
Elenora Bershadskaya

Date: April 24, 2017

Re: **Response to City Methodology and Landauer Market Study for TDRs in East Midtown**

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### INTRODUCTION

The City's response (March 22, 2017) to the industry's analysis of the Landauer market study was appreciated. However, the Department of City Planning's (DCP) approach fails to capture the reality of the market for Transfers of Development Right (TDR) sales in three important ways: 1) the valuation relies on land sales to approximate TDR sales instead of studying actual TDR sales; 2) the Landauer report applied inflated growth rates despite market evidence to the contrary; and 3) half of the land sales that were used to determine the current floor price are systematically overvalued as a result of a failure to account for significant benefits offered to sites within Hudson Yards.

The goals of the Greater East Midtown rezoning were to revitalize an aging office stock, provide public realm improvements, and fund the continuing maintenance and operation of our treasured landmarks. In order for this vision to be realized, significant development must occur. The City's stated floor price of \$393 per square foot (psf) jeopardizes the goals of this rezoning.

The purpose of this memo is to determine a fair and accurate value for development rights in East Midtown so necessary development can occur. REBNY maintains that the market should determine the value of TDRs and the City should collect twenty percent of the proceeds to fund public realm improvements. However, REBNY does acknowledge the need to determine the contribution amount for overbuilt floor area, making an accurate valuation necessary.

### TRANSFER OF DEVELOPMENT RIGHTS SALES

The City's response does not adequately address a fundamental objection raised by REBNY, namely the failure to rely on actual TDR sales to establish a floor price. TDR sales provide a far more appropriate and accurate view of the value of TDRs in Greater East Midtown. Using the TDR transactions for office and hotel use cited in the Landauer report, and applying the City's methodology of taking the lower quartile of the ten most recent sales, the value of TDRs is approximately \$179 psf. See Attachment 1.

### MARKET GROWTH RATES

There is no market-based evidence for the upward price adjustments used to reflect the supposed market growth rate. In fact, while the Landauer study applied growth rates on land sales as high as 94% for some of the transactions, their study found that the value of TDRs over the eleven years reviewed is generally flat, if not declining (see Attachment 2). The divergent trend lines demonstrate that TDRs and land are different assets. Therefore, any upward price adjustments would be inappropriate to apply to TDR values.

## HUDSON YARDS DEVELOPMENT RIGHTS

An analysis of land sales in Hudson Yards lends further support for establishing a lower contribution price for overbuilt floor area in East Midtown. The Hudson Yards sales used in the Landauer report were effectively overvalued and systematically misapplied, since they did not factor in the significant benefits offered in Hudson Yards. In these sites, developers were able to procure additional development rights, both by purchasing them from the Eastern Rail Yards and by contributing to the District Improvement Fund, for a far lower price per square foot than the cost of land. Additionally, the available tax benefits, estimated at roughly \$70 psf, should have been considered. When all of these relevant economic factors are taken into account, the true value of development rights for a Hudson Yards site drops to \$178 psf. See Attachment 3.

## CONCLUSION

An analysis of past TDR sales, which mirrors the City's own methodology, supports a TDR value of approximately \$179 psf.

While \$393 psf may be an aspirational price for the value of TDRs in East Midtown, it does not represent market value, and certainly not the floor. If \$393 psf is intended to represent the floor of the market, it should be noted that the Landauer market study does not list a single sale of office TDRs that meets that price. The fact is that no willing buyer with a site in Greater East Midtown will pay \$393 for TDRs, and no willing seller will want to contribute nearly 45% of their sales price (\$78.60 divided into the true market value of \$179). Instead of guessing TDR value, the City should allow the market to determine the value.

REBNY welcomes and supports the efforts to revitalize our city's most important office district. This rezoning is needed to invigorate development in East Midtown, while also funding much needed public infrastructure. Unless the valuation used in East Midtown is fair and accurate, all the aspirations for commercial revitalization and an enhanced public realm will be for naught.

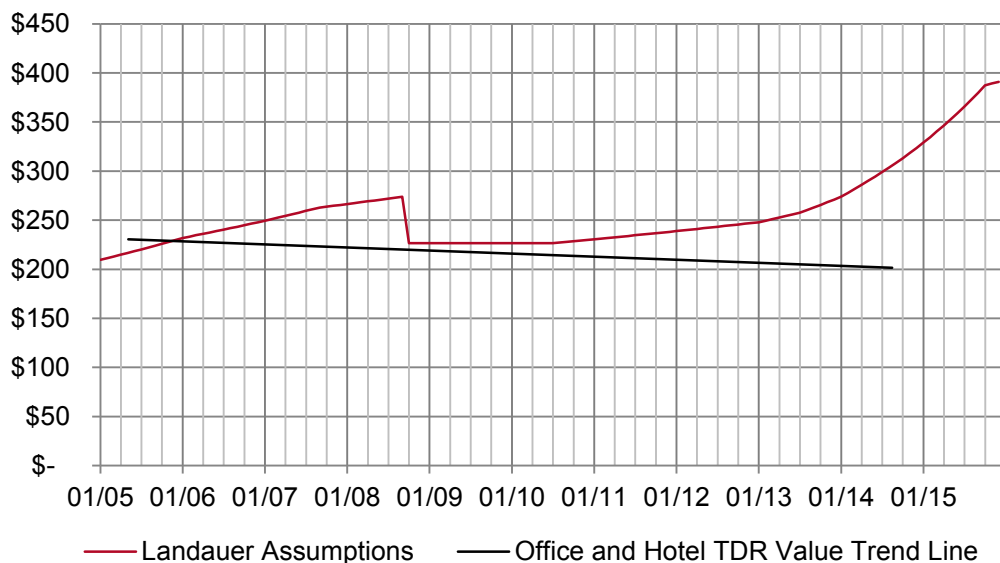
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Despite Landauer’s core assumption that the end of 2015 represents the peak of the real estate market between 2005 and 2015, it is clear that office and hotel TDR sales are trending downward over that same period of time. In fact, two of the most recent sales were among the lowest over the entire period that Landauer recorded.



### ATTACHMENT 3: HUDSON YARDS DEVELOPMENT RIGHTS

Below is an analysis of recent Hudson Yards land sales that acquired additional square footage from the District Improvement Bonus (DIB) and the Eastern Rail Yards (ERY). It illustrates the fact that the City's use of land sales without consideration for the economics that make those sales possible misrepresents the true market for TDRs. In order to arrive at a fair and reasonable valuation for TDR sales, it is imperative that the City take these factors into account, especially when half of the land sales that the City used in their analysis are within Hudson Yards.

These sales have an average price per square foot of \$564 and represent approximately a third of the development square footage. Using the 65% conversion factor from land to TDRs, this number comes down to \$367 psf.

The remaining two-thirds of development rights for these sites cost \$125 and \$233 psf, from the DIB and the ERY respectively.

Blending the three costs of these development sites in Hudson Yard, the average development cost for these two sites is \$248 psf.

In addition, there are tax benefits — real property and mortgage recording — available for new development in Hudson Yards. According to one estimate, these benefits lower effective land costs by as much as \$70 psf. This brings the true cost of a Hudson Yards development site down to \$178 psf.

	Sales Price	Conversion from Land to TDR Value (65%)	TDR or Equivalent Price Per SqFt	Percentage of Development Area	Effective Price Per SqFt
Land Values	\$606,000,000	\$393,900,000	\$366.53	32.1%	\$117.79
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Eastern Rail Yards (TDR)	\$328,338,931	N/A	\$232.90	42.2%	\$98.18
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\*The District Improvement Fund Bonus is not technically a TDR, but does act similarly. A developer would pay a flat fee of roughly \$125 psf to the City, in a fashion very similar to the 2013 East Midtown proposal.

## TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK BEFORE THE CITY PLANNING COMMISSION, IN SUPPORT OF THE GREATER EAST MIDTOWN REZONING

April 26, 2017

The Real Estate Board of New York (REBNY) is a trade association with over 17,000 members comprised of owners, builders, residential and commercial brokers, managers, lenders, and other real estate professionals active in New York City.

The East Midtown business district is a tremendous driver of economic activity and employment, and is critical to the City's tax base and economy. According to the City, East Midtown accounts for 10 percent of the real property taxes, or \$2.4 billion in fiscal year 2017.

The Greater East Midtown rezoning plan emerged after a year-long collaborative process among key community stakeholders. The goals of the Greater East Midtown rezoning were to revitalize an aging office stock, provide public realm improvements, and fund the continuing maintenance and operation of our treasured landmarks.

REBNY supports the City's Greater East Midtown zoning proposal.

In order for this vision to be realized, new development must occur. As such, we have concerns that the plan may be too restrictive given the high cost of redeveloping existing sites. We propose modifications to the plan which preserve and promote its goals without inhibiting new development.

The concept of a floor price to establish a minimum contribution to the improvement fund is an obstacle to new development. The City's floor of \$393 per square foot would result in a minimum contribution of \$78.60. This contribution amount would result in a 44 percent contribution of the Transferred Development Rights (TDR) based on REBNY's analysis of TDR sales in the Landauer Market Study prepared for the City. This effective contribution rate is well above the City's recommended twenty percent contribution for public realm improvements and would be a deterrent to transactions and new development. However, REBNY does acknowledge the need to determine the contribution amount for overbuilt floor area, but this amount must be based on a realistic valuation of TDRs.

The \$393 per square foot (PSF) floor price, established by the City is flawed in three important ways: 1) the valuation relies on land sales to approximate TDR value instead of studying actual TDR sales; 2) the Landauer Market Study applied inflated and unwarranted growth rates despite market evidence to the contrary; and 3) half of the land sales that were used to determine the current floor price are systematically overvalued as a result of a failure to account for significant economic benefits available to sites within Hudson Yards.

TDR sales provide a far more appropriate and accurate view of the value of TDRs in Greater East Midtown. There is no market evidence in the Landauer Market Study to support the upward price adjustments it applied to land sales to approximate TDR values. In fact, their study found that the value of TDRs over the eleven years reviewed is generally flat, if not declining.

Therefore, any upward price adjustments would be inappropriate to apply to TDR values. Using the TDR transactions for office and hotel use cited in the Landauer Market Study, and applying the City's methodology of taking the lower quartile of the ten most recent sales, the value of TDRs is approximately \$179 psf.

A REBNY analysis of land sales in Hudson Yards, which is integral to the City's floor price, lends further support for establishing a lower contribution price for overbuilt floor area in East Midtown. The Hudson Yards sales used in the Landauer Market Study were effectively overvalued and systematically misapplied since they did not factor in the significant economic benefits available to development sites in Hudson Yards. In these sites, developers were able to procure additional development rights, both by purchasing them from the Eastern Rail Yards and by contributing to the District Improvement Fund, for a far lower price per square foot than the cost of land. Additionally, the available tax benefits, estimated at roughly \$70 psf, should have been considered. When all of these relevant economic factors are taken into account, the true value of development rights for a Hudson Yards site drops to \$178 psf.

It is also important to note that while \$393 psf is intended to represent the floor of the market, the Landauer Market Study does not list a single transaction of office TDRs that meets that price.

The City's proposal that would allow an applicant to commission the City to prepare a new appraisal is simply impractical given the volatility of the TDR market and the time it would take to complete this assignment. Additionally, given the overstatement of the value of air rights in the initial market survey, there are no assurances that even the new results would match the buyer and seller's assessment of the market value of development rights. Instead of guessing TDR value, the City should allow the market to determine the fair market value and collect 20 percent of the sales price for public realm improvements.

Another fundamental issue that threatens the viability of the rezoning proposal is the constraints on what constitutes a qualifying site for new development. While we support the goal of creating new Class A commercial office space on the avenues, it is important to note that as-of-right development on midblock sites or through the enlargement of existing buildings would accomplish many of the goals of this rezoning at a lower cost and a more rapid pace. Such projects can offer equally appealing development opportunities as new construction that fronts on the avenues, but have lower opportunity costs. As a result, midblock development and enlargements would generate the funds needed for public realm improvements sooner.

We strongly encourage the City to develop guidelines that would allow for the as-of-right development of mid-block sites even when they do not have wide street frontage. (We have proposed that through-block sites with at least 75 feet of cleared frontage on both streets be considered a qualifying site.) Buildings such as these often times are underutilized and functionally obsolete, and thus would be less expensive to acquire than avenue-fronting buildings. Flexible guidelines should also be proposed to allow for the as-of-right enlargement of existing buildings.

In regards to split lots, we strongly recommend that a provision that was included in the text certified on January 3, 2017 be restored to the current Greater East Midtown text. This initial text contained a provision in 81-612 which permitted a zoning lot having 50% or more within the East Midtown Subdistrict to be deemed entirely within the Subdistrict.

The inclusion of the east side of Third Avenue, an overwhelmingly commercial corridor, provides less expensive new development opportunities now and in the future. This important corridor should remain in the plan.

Currently, the proposed zoning change requires post 1961 overbuilt buildings to buy back the overbuilt floor area by buying development rights from a landmark, while pre-1961 overbuilt buildings will buy back their overbuilt floor area by paying 20 percent of the floor price to the City. There is no planning rationale for treating overbuilt buildings differently strictly based on the date it was constructed. We ask that the City treat overbuilt buildings equitably and remove this unnecessary distinction. Likewise, we recommend that pre-1982 overbuilt buildings be covered by the damage and destruction provisions that are applicable to buildings constructed under the 1916 Zoning Resolution.

The proposed hotel special permit in the Greater East Midtown rezoning proposal is a dramatic departure from current land use regulations and a significant barrier to new hotel development. This new requirement will place an enormous burden on current plans to convert existing commercial space for hotel use and seems incongruous with the recent moratorium which impedes the elimination of hotel rooms for other uses. We would recommend a discussion to develop a provision of the rezoning plan that would achieve the intended goals of the special permit without imposing a special permit for hotel conversion projects underway which would likely be abandoned if they were required to go through a special permit process.

The City should be commended for the introduction of a public concourse special permit to address the community's and the Steering Committee's concern over a lack of open space in the area. This special permit would provide the development community with a meaningful incentive of a 3 FAR bonus in exchange for meaningful public open space, while retaining a public review process that will give the community and elected officials the opportunity to tailor new development to create the open space desired.

In regards to other proposed public realm improvements, we strongly recommend that any future changes, particularly regarding street closures and changes to traffic patterns, be made with extensive consultation and input from adjacent or impacted property owners and stakeholders.

The built conditions and market of East Midtown is an environment that is challenging and costly for new development. As a mature market area with virtually no vacant sites, new development opportunities will occur slowly over time, and only when the leasing circumstances in individual buildings and market conditions in the area combine to make new development economically feasible. Therefore, we believe the aforementioned modifications are necessary to ensure that the rezoning achieves its stated goals.

East Midtown is a key job center in NYC. Its building stock, however, is aging and outdated; many buildings lack the slab-to-slab clearances and design efficiency that today's tenants require. This rezoning proposal is needed in order to create opportunities for updated workspaces that will continue to attract companies and employers, while also funding much needed transit infrastructure and public realm improvements. It is our hope that the City Planning Commission will consider the issues we raised and put forth the strongest plan possible to ensure that East Midtown remains the world's premier office district.

Contact: Michael Slattery  
Senior Vice President  
REBNY  
212-616-5207  
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THE REAL ESTATE BOARD OF NEW YORK

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REBNY ANALYSIS OF GREATER EAST MIDTOWN TDR VALUE



**REBNY**<sup>®</sup>  
REAL ESTATE BOARD OF NEW YORK

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    ATTACHMENT 2: LANDAUER ASSUMPTIONS FOR MARKET GROWTH RATES ..... 4

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The purpose of this memo is to determine a fair and accurate value for development rights in East Midtown so necessary development can occur. REBNY maintains that the market should determine the value of TDRs and the City should collect twenty percent of the proceeds to fund public realm improvements. However, REBNY does acknowledge the need to determine the contribution amount for overbuilt floor area, making an accurate valuation necessary.

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There is no market-based evidence for the upward price adjustments used to reflect the supposed market growth rate. In fact, while the Landauer study applied growth rates on land sales as high as 94% for some of the transactions, their study found that the value of TDRs over the eleven years reviewed is generally flat, if not declining (see Attachment 2). The divergent trend lines demonstrate that TDRs and land are different assets. Therefore, any upward price adjustments would be inappropriate to apply to TDR values.

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An analysis of past TDR sales, which mirrors the City's own methodology, supports a TDR value of approximately \$179 psf.

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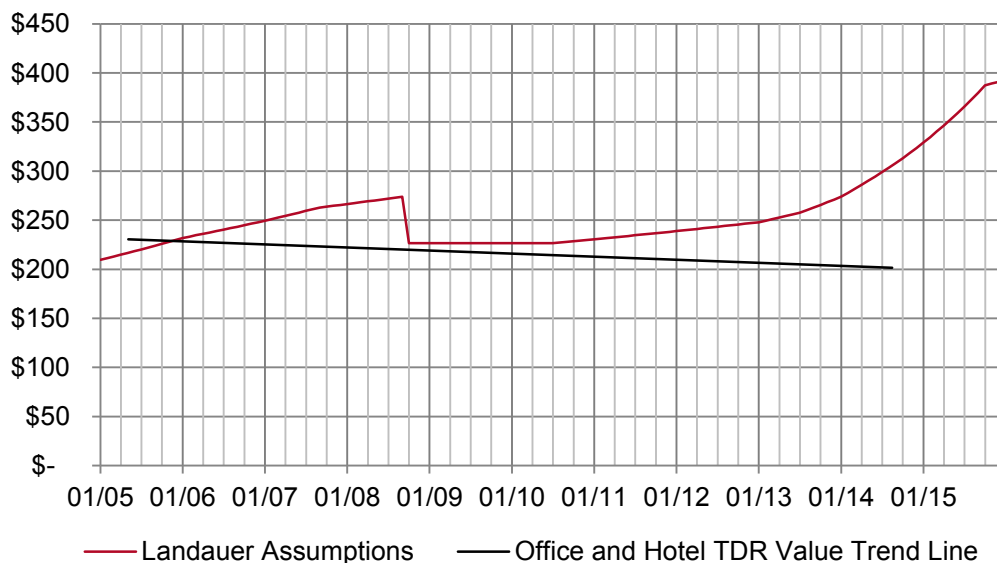
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These sales have an average price per square foot of \$564 and represent approximately a third of the development square footage. Using the 65% conversion factor from land to TDRs, this number comes down to \$367 psf.

The remaining two-thirds of development rights for these sites cost \$125 and \$233 psf, from the DIB and the ERY respectively.

Blending the three costs of these development sites in Hudson Yard, the average development cost for these two sites is \$248 psf.

In addition, there are tax benefits — real property and mortgage recording — available for new development in Hudson Yards. According to one estimate, these benefits lower effective land costs by as much as \$70 psf. This brings the true cost of a Hudson Yards development site down to \$178 psf.

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# THE REAL ESTATE BOARD OF NEW YORK

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## PARK AVENUE DEVELOPMENT ANALYSIS



## INTRODUCTION

The Greater East Midtown Rezoning, certified on January 3, 2017, contains a provision that establishes a minimum contribution amount (“the floor price”) to the district improvement fund from the sale of landmark air rights and the payment for overbuilt development rights.

We think that the stated floor price of \$393/sqft greatly overstates the value for TDRs exclusively for office use in 2017. The concept of a floor price and the valuation of TDRs would seriously impede transactions and jeopardizes the goals of the rezoning. Both the floor provision and the market price will be especially burdensome to the type of office buildings (large floor plate buildings with avenue frontage) that this rezoning hopes to encourage.

As a result of the economic realities facing new office development in a fully built commercial area, we have advocated for the elimination of the floor price and a realistic valuation of landmark air rights for commercial development. While we support the goal of creating new Class A commercial office space on the avenues as well as generating contributions for public realm improvements, it is important to note that as-of-right development of midblock sites and of enlargements of existing sites would accomplish many of the goals of this rezoning, at a lower development cost and at a more rapid pace. These types of projects would offer more affordable development opportunities than large, new construction on the avenues—in part because of lower land and opportunity costs. New development in East Midtown—on the avenue or the midblock, new ground up construction or an enlargement—would revitalize East Midtown and would generate the funds needed for the public realm improvements. We think new development, and the public realm improvements that they would bring, can be accomplished more realistically and quickly with the modifications we have proposed.

This memo illustrates and highlights the financial challenges of new development on a typical Park Avenue site and expands on the points raised in our Borough Board testimony.

## EXISTING BUILDING ANALYSIS

In our analysis, we assume an existing building overbuilt at a 17 FAR and on a 30,000 square foot lot for a total of 510,000 square feet of zoning floor area (zoning floor area is what is purchased and is seen as the land cost).

As built, with the mechanical space and below grade space (neither of which counts as zoning floor area) the building’s gross square footage is 566,000 square feet. A building’s gross square footage is what must be built and is the basis for the construction cost.

Revenue from the rentable space in the building must cover the cost to build and maintain the leased space. Leased space includes: the mechanical and below grade space (not zoning floor area) as well as common areas, such as lobbies, hallways and other building amenities (zoning floor area). In our existing building, the rentable square footage is 600,000 square feet. Building revenue and rent per square foot is reported on this rentable square foot number. (See Table 1)

<b>Table 1</b>		
<b>Existing Building Square Foot Analysis</b>		
Zoning SF	Built SF	Rentable SF
510,000	566,000	600,000



## NEW BUILDING ANALYSIS

In our analysis, we assume the new building is built to a 25 FAR on a 30,000 square foot lot for a total of 750,000 square feet of zoning floor area. The land cost will include the cost to acquire the existing building, purchase the overbuilt development rights with a contribution to the fund, the acquisition of development rights from a landmark, and demolition costs.

### Land Cost

We estimate the cost of the existing Park Avenue building, described above, at \$750 million dollars. In this example, 60,000 square feet (2 FAR) is what is now overbuilt based on the current base FAR. New development would require a contribution of \$4.8 million for this portion of the new development. This amount is based on the City's method for valuing the overbuilt contribution which is 20 percent of the estimated market value landmark air rights of approximately \$400 per square foot.

The remaining 240,000 square feet (8 FAR) is estimated at \$400/sqft, or \$96 million in total for this portion of the new development.

In addition, the demolition of the existing structure is estimated at \$28 million.

The land cost of a new development would be \$878.8 million. (See Table 2)

	17(2 FAR Overbuilt)	25
FAR		
Lot Area	30,000	30,000
<b>Total Zoning Square Feet</b>	<b>510,000</b>	<b>750,000</b>
	<b>Existing Building</b>	<b>New Building</b>
Initial Land	\$750,000,000	\$750,000,000
Overbuilt Contribution	N/A	\$4,800,000
Air Rights Purchase	N/A	\$96,000,000
Demolition	\$28,000,000	\$28,000,000
<b>Total Land Cost</b>		<b>\$878,800,000</b>

### Construction and other Related Costs

With mechanical, below grade space, and common areas, the new building will contain 818,000 gross (built) square feet. This gross square footage is what must be built and is the basis for a project's construction costs.

Revenue from the rentable space in the building must cover the cost to build and maintain the mechanical and below grade space (not zoning floor area) as well as common areas, such as lobbies, hallways and other building amenities (zoning floor area). The customary leasing practice is to report rent per square foot based on the actual space occupied and a percentage, commonly termed a loss factor, to reflect the cost of building and maintaining common areas and mechanical and other built space not counted in zoning floor area. In our new building example, the rentable square footage is 890,000. Building revenue and rent per square foot is reported on this rentable square foot number.

### *Carrying Cost on Land*

One critical component in the redevelopment of sites in a mature commercial district like East Midtown with an average vacancy rate is the cost of foregone revenue from the existing occupied building and expenses like property taxes. We estimate the carrying cost from the acquisition of the existing building to the completion of the new building at \$217 million.

### *Hard and Soft Costs/Financing*

The new building analysis assumes hard construction costs of \$573 million; soft costs are \$120 million. Financing of hard and soft costs is \$165 million.

### *Tenant Improvement Allowances and Leasing Commissions*

The final component in the development of the new building is the landlord's contribution for the tenant to build out their space—the tenant improvement allowance, or TI. This is a negotiated number, but an unavoidable one. The landlord is always making some level of contribution to the completion of the tenant's space as part of the lease agreement. Likewise, there is always, especially in a new building, leasing commission costs. These costs are based on the total dollar value of the lease.

In our illustration, the TI cost is \$76 million; leasing commissions total \$53 million.

Construction and other related costs total \$1,204 million.

**This brings the total project cost—land and construction—to \$2,082.8 million, or \$2,546 per gross square foot, or \$2,340 per rentable square foot. (See Table 3)**

	Cost (in millions)	Cost Per Gross SF (818,000)	Cost Per Rentable SF (890,000)
Land Carry	\$217	\$265	\$244
Hard Cost	\$573	\$700	\$644
Soft Cost	\$120	\$147	\$135
Financing	\$165	\$202	\$185
TI	\$76	\$93	\$85
Commission	\$53	\$65	\$60
<hr/>			
Total Construction/Related Cost	\$1,204	\$1,472	\$1,353
Land Cost	\$878.8	\$1,074	\$987
<hr/>			
Total Project Cost	\$2,082.8	\$2,546	\$2,340

**RETURN AND RENTAL ANALYSIS**

The target return for a new project is assumed to be a minimum of 6%. This annual return on total project costs of \$2,082.8 million would be \$124.9 million annual or \$140 per rentable square foot, before taxes and operating expenses. Operating expenses are estimated at \$15 per rentable square foot and taxes \$49 per rentable square foot which is 25% of gross rent.

The average rent for the entire building required to achieve the target return is **\$204 per rentable square foot**, not including an assumed average vacancy of 5%. (See Table 4)

<b>Table 4</b>		
Return and Rental Analysis		
	Return Analysis	Per Rentable SF
Total Development Cost	\$2,082,800,000	
Target Return (6%)	\$124,968,000	\$140
Building Operating Expenses	\$13,350,000	\$15
Real Property Taxes	\$43,610,000	\$49
Average Rent PSF		\$204

A recent review of average asking rents for Greater East Midtown between 42nd and 57th Streets for Madison, Park, Lexington and Third Avenue buildings show rents in a range of \$67 to \$93 per rentable square foot—significantly below the minimum rent required to make a new development economically feasible. (See Table 5)

<b>Table 5</b>	
Average Avenue Asking Rents	
<u>Avenue Location</u>	<u>Average Asking Rent</u>
Madison	\$92
Park	\$93
Lexington	\$74
Third	\$67

Analysis of average asking rents for midblock buildings show even lower average asking rents. However, the lower rents in these locations would result in a lower upfront land cost for someone interested in developing a new building in the midblock, as well as along Third Avenue. (See Table 6)

<b>Table 6</b>	
Average Midblock Asking Rents	
<u>Midblock Location</u>	<u>Average Asking Rent</u>
5 <sup>th</sup> Madison	\$88
Madison – Park	\$68
Lexington – Third	\$60
Third – Second	\$56

However, midblock boutique buildings that provide more modern office space and revitalize the area command higher rents, on average \$120/sqft. Though still below the average in our illustration, this rent over time would make new midblock development more likely, especially with lower existing building costs and realistic air rights costs for new commercial development.

### CONCLUSION

Avenue development, especially along Park Avenue, is economically unfeasible under current market conditions. Existing landowners whose basis in the property is low because they acquired the property decades earlier could be lured into pursuing new development. However, the current floor price will set unreasonable financial expectations for air rights owners and the minimum contribution into the improvement fund will stall sales when these prices are not achieved.

# GREATER EAST MIDTOWN REZONING

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ANALYSIS OF THIRD AVENUE BUILT CONDITIONS

MARCH 2017



SPECIAL THANKS TO EAST MIDTOWN PARTNERSHIP FOR THEIR  
CONTRIBUTION TO THE PRESENTATION

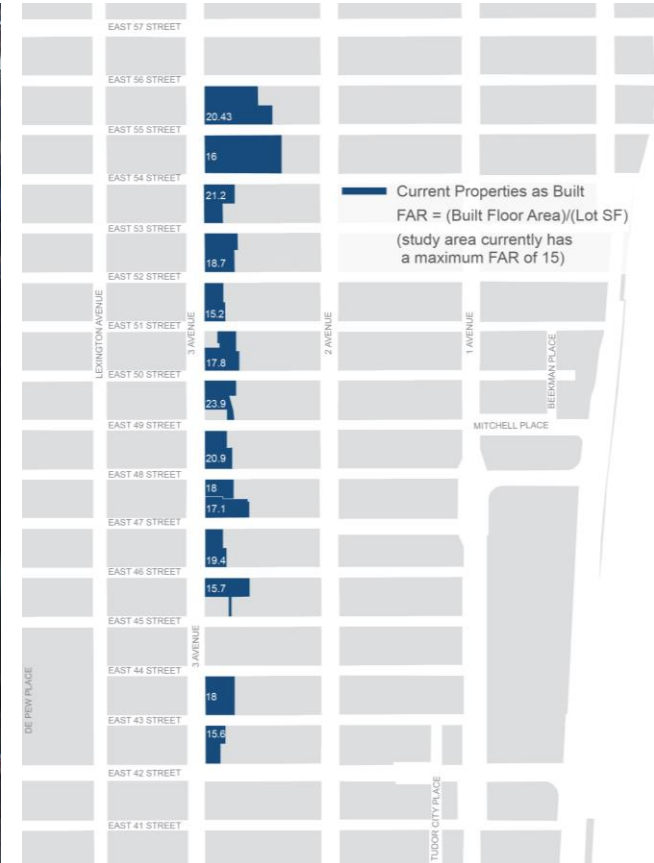
## EAST SIDE OF THIRD AVENUE: 42<sup>nd</sup> - 56<sup>TH</sup> STREET

### A BLOCK BY BLOCK BREAKDOWN



Third Avenue is a commercial corridor with nearly **14,288,259 square feet** of commercial office space between East 42<sup>nd</sup> Street and East 56<sup>th</sup> Street.

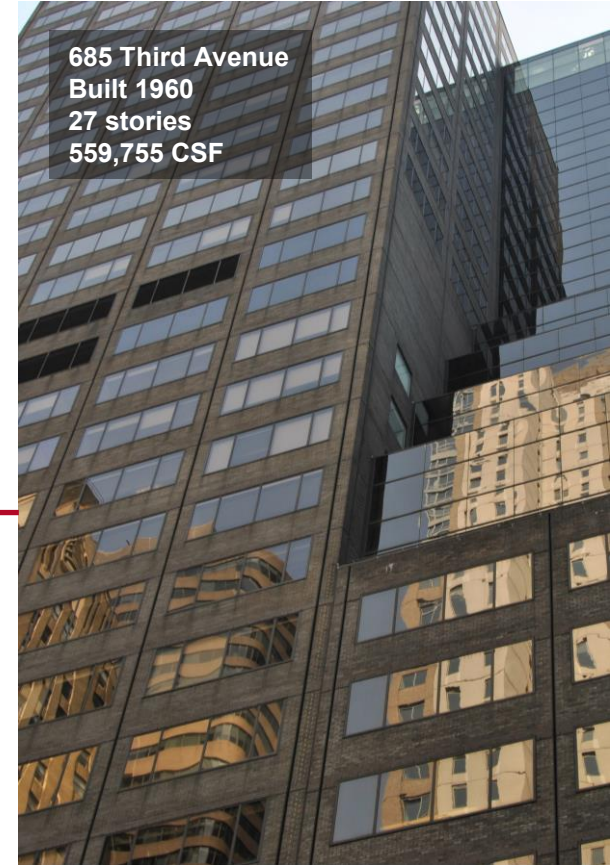
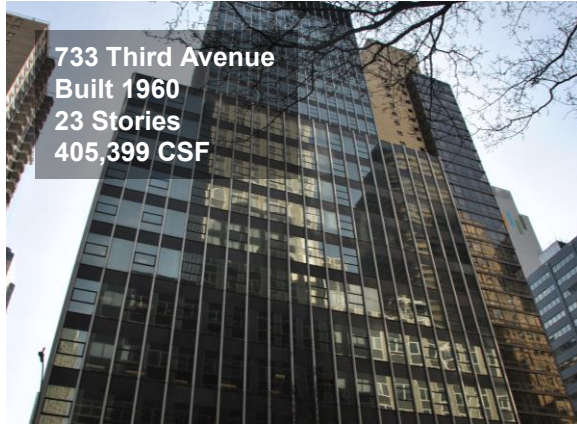
Fifty-five percent of the commercial office space is located on the east side of Third Avenue and the **average FAR is 16.9**.



Looking South From East 57<sup>th</sup> Street

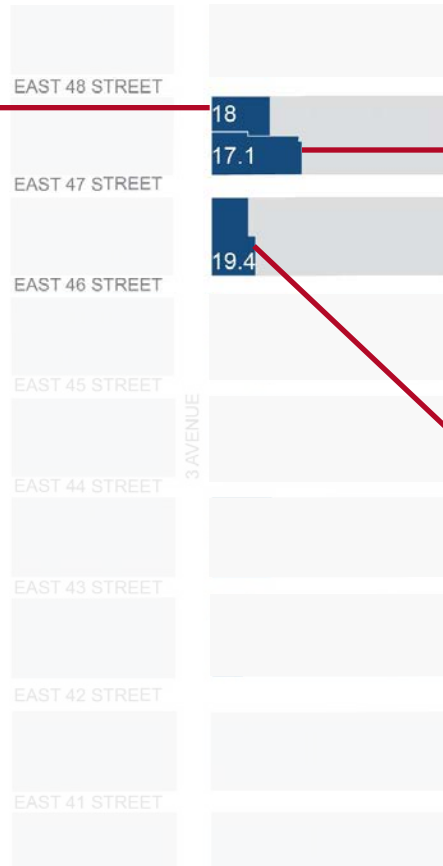
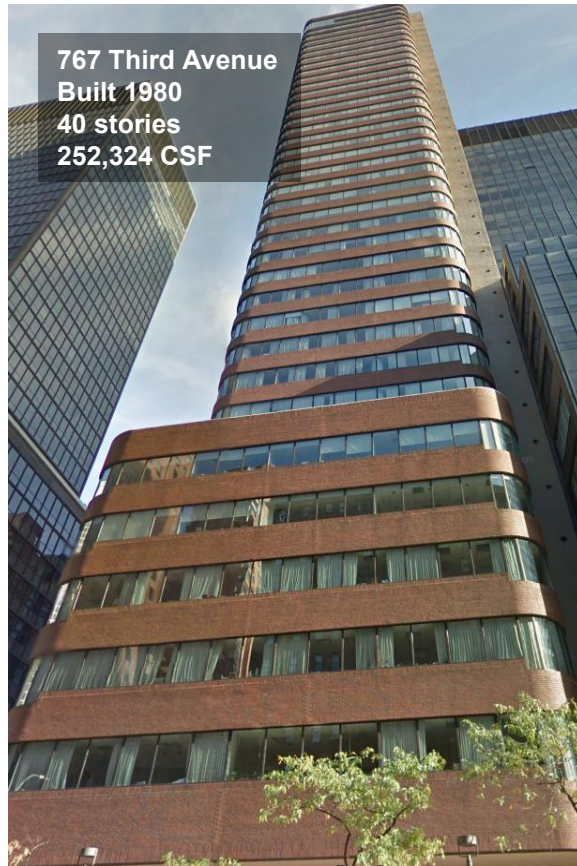
# EAST SIDE OF THIRD AVENUE: OVERBUILT BUILDINGS

## 42<sup>ND</sup> TO 46<sup>TH</sup> STREET



# EAST SIDE OF THIRD AVENUE: OVERBUILT BUILDINGS

## 46<sup>TH</sup> TO 48<sup>TH</sup> STREET



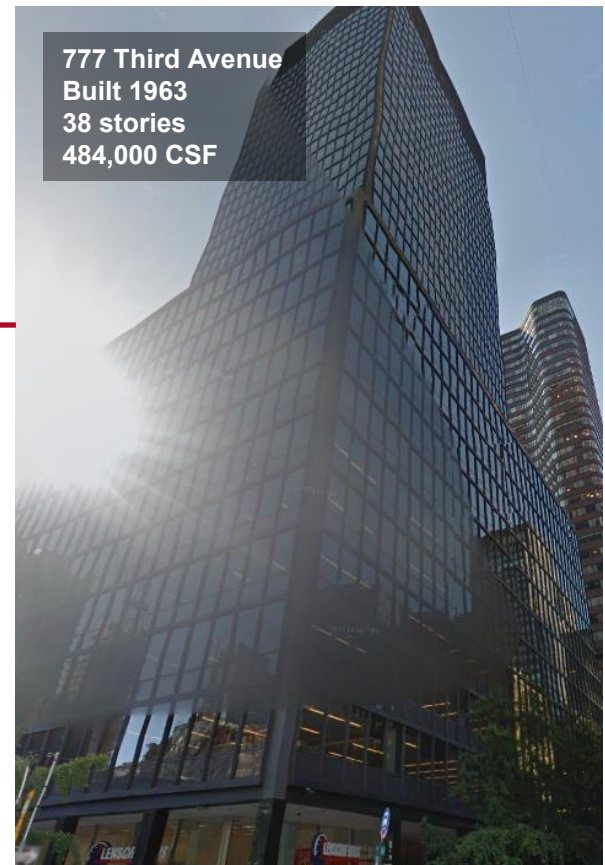
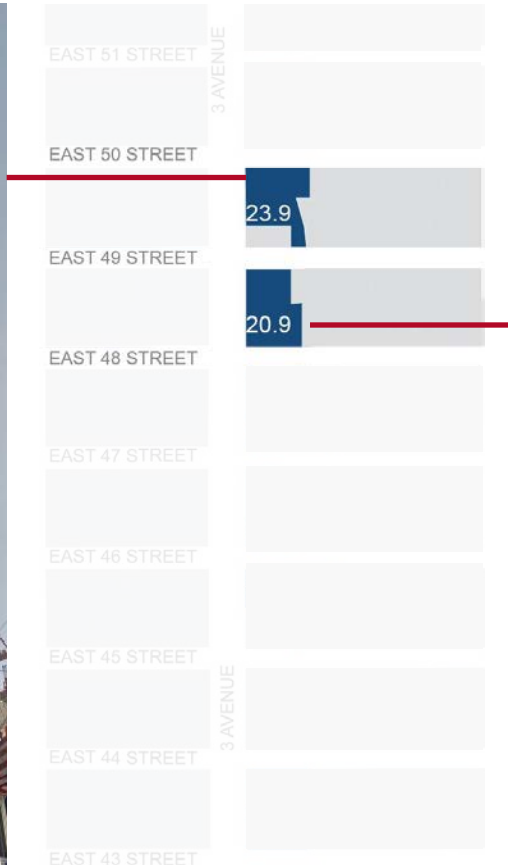


# EAST SIDE OF THIRD AVENUE: OVERBUILT BUILDINGS

## 48<sup>TH</sup> TO 50<sup>TH</sup> STREET



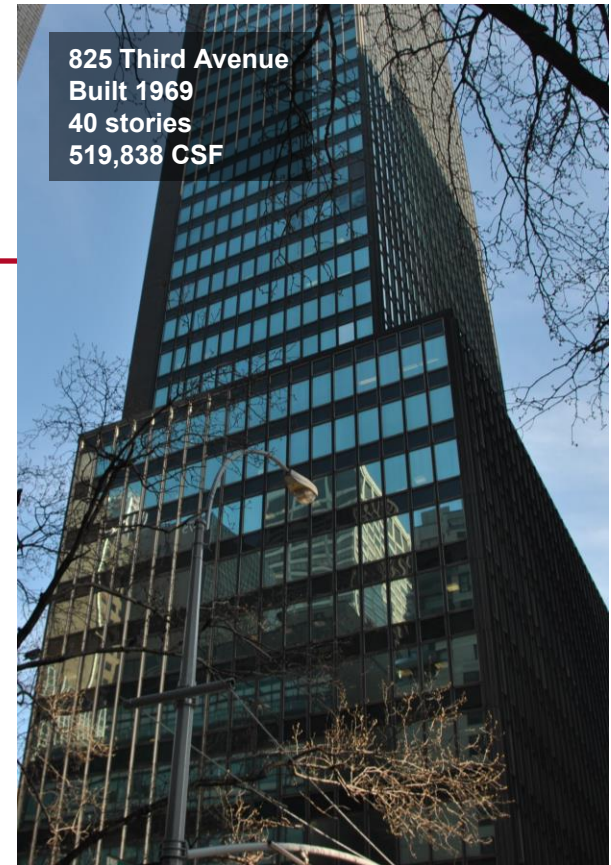
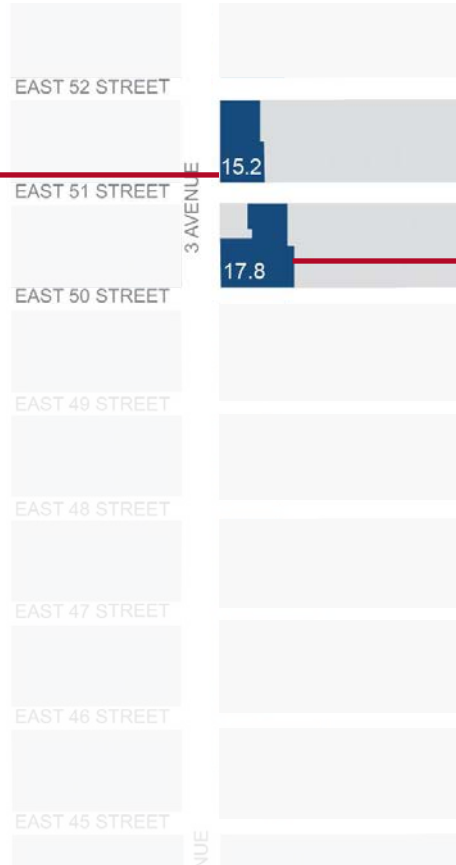
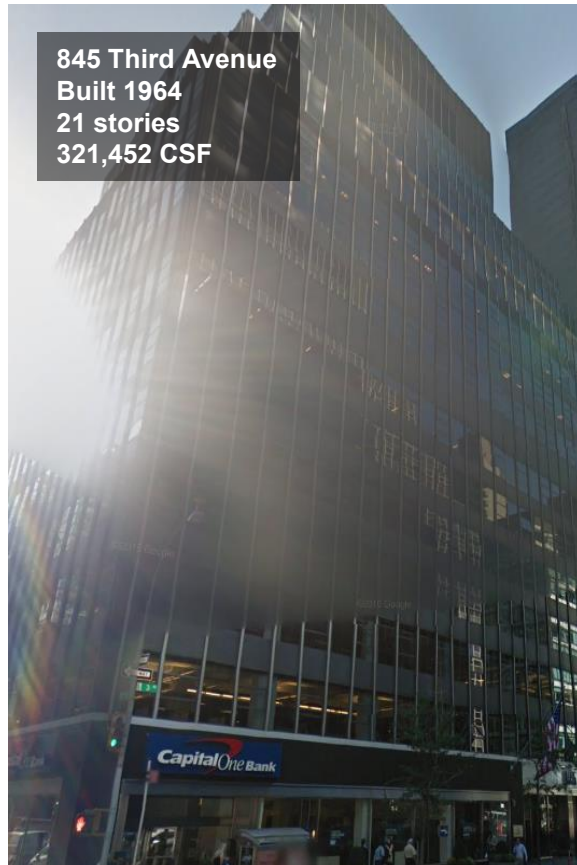
**805 Third Avenue**  
 Built 1982  
 31 stories  
 596,553 CSF



**777 Third Avenue**  
 Built 1963  
 38 stories  
 484,000 CSF

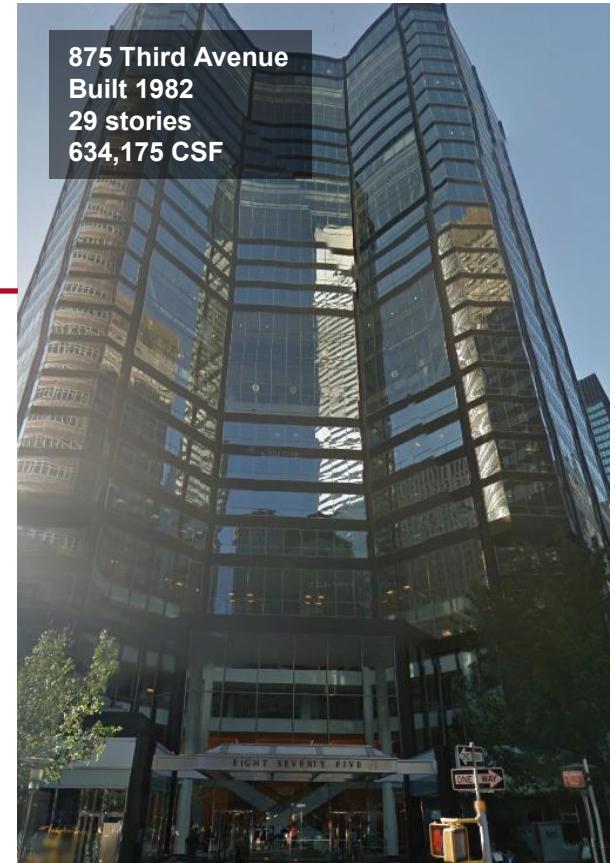
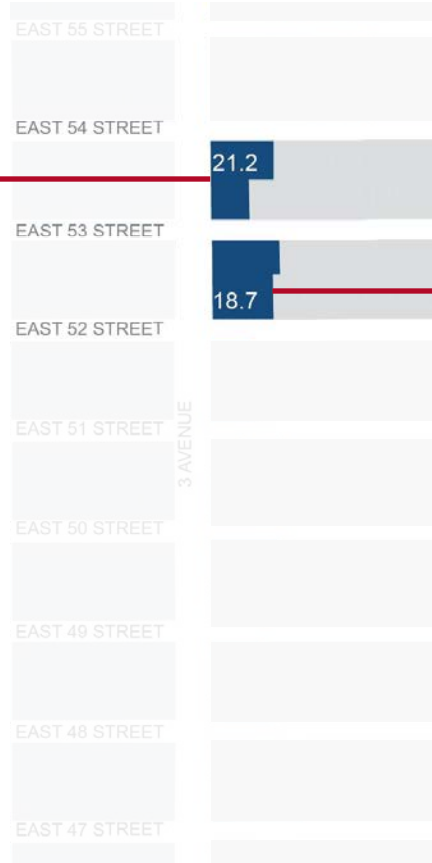
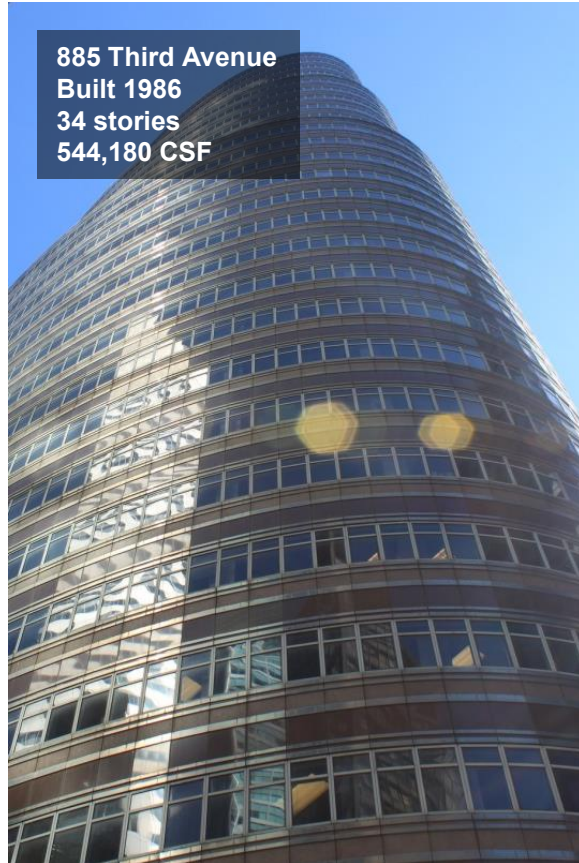
## EAST SIDE OF THIRD AVENUE: OVERBUILT BUILDINGS

### 50<sup>TH</sup> TO 52<sup>ND</sup> STREET



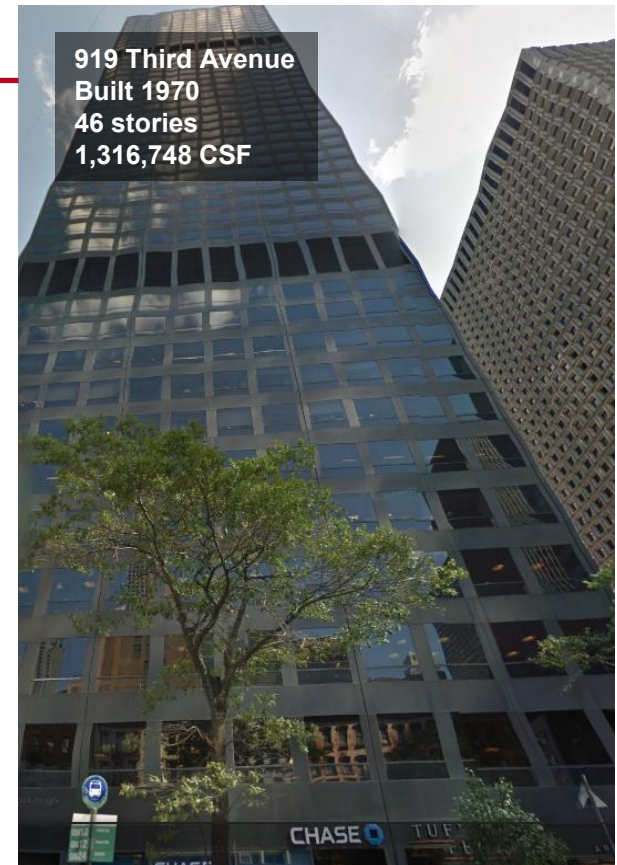
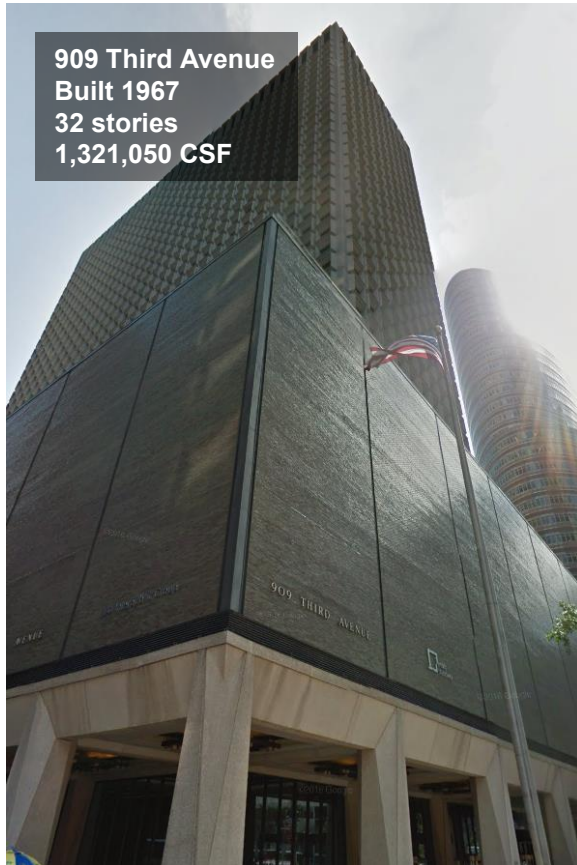
## EAST SIDE OF THIRD AVENUE: OVERBUILT BUILDINGS

### 52<sup>ND</sup> TO 54<sup>TH</sup> STREET

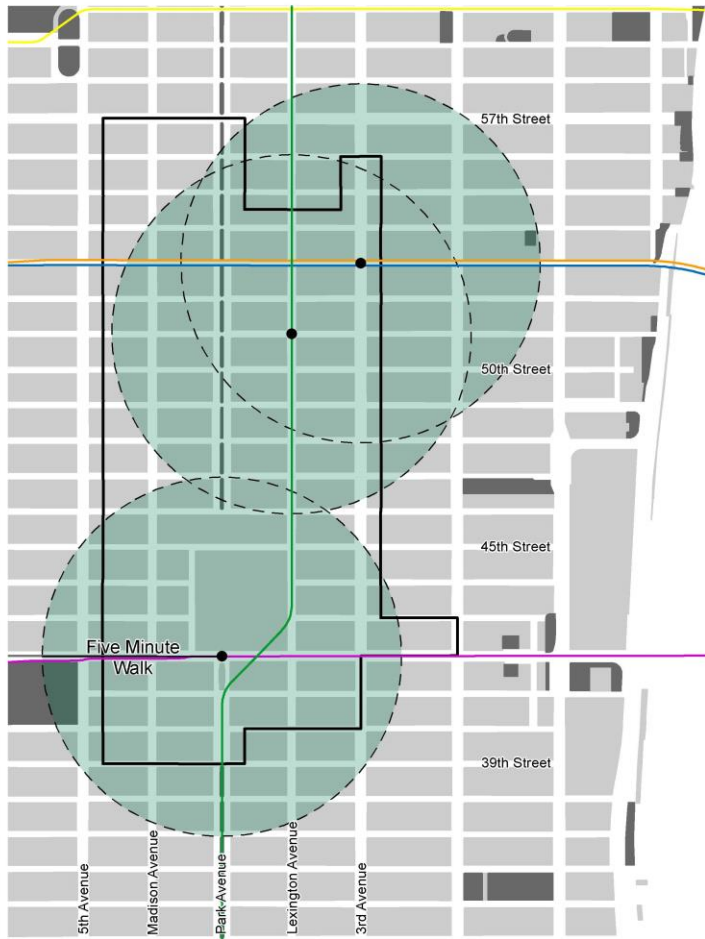


# EAST SIDE OF THIRD AVENUE: OVERBUILT BUILDINGS

## 54<sup>TH</sup> TO 56<sup>TH</sup> STREET



## MASS TRANSIT SERVING THIRD AVENUE



East Midtown Rezoning ties **increased FAR to improvements to the subway and rail systems.**

Subway platforms beneath 866, 875, 880, and 885 Third Avenue (at 53<sup>rd</sup>) are crowded and need of improvement.

More than **70,000 commuters** pass through the **53<sup>rd</sup> and 51<sup>st</sup> street stations daily.**

These three stations - **53<sup>rd</sup>, 51<sup>st</sup>, and Grand Central** – are a **crucial component for business and development** in East Midtown

## RESIDENTIAL PROPERTIES ALONG EAST SIDE OF THIRD AVENUE



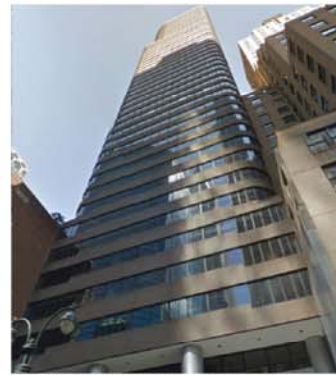
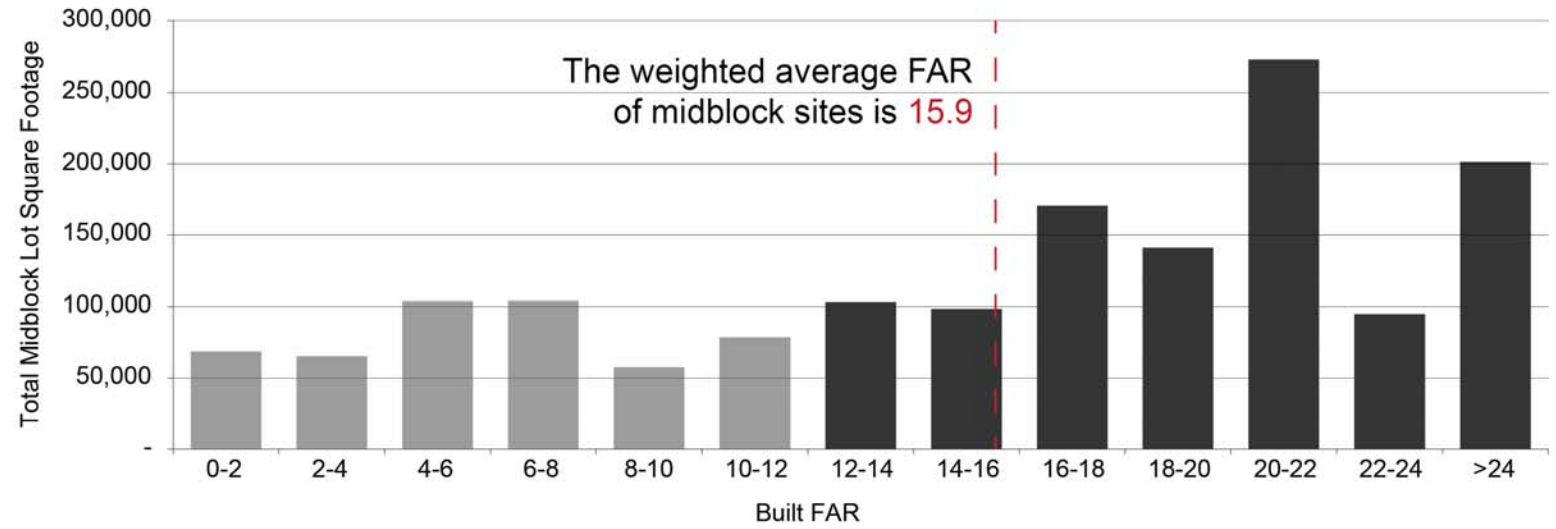
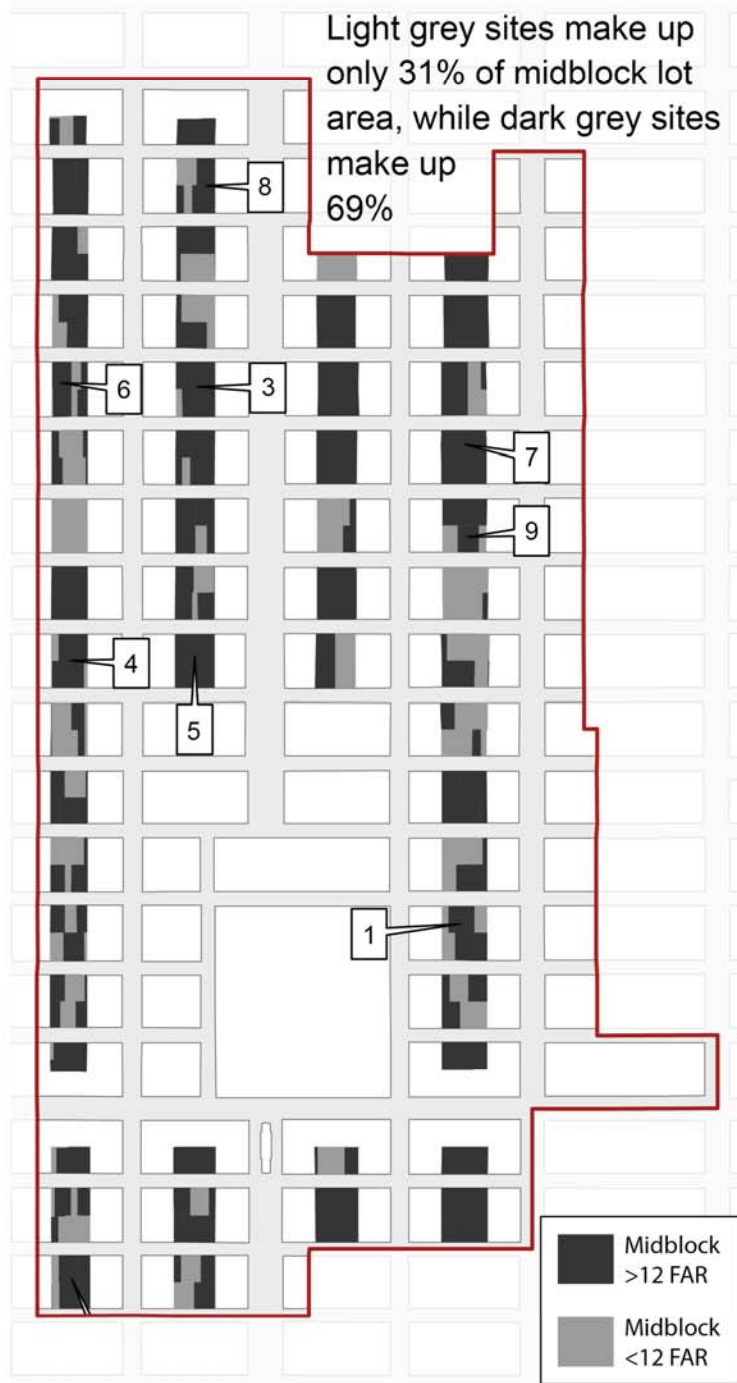
**Only one** residential property, containing two apartments, fronts on east side of Third Avenue

The **four largest** residential properties within the rezoning boundary are **condominiums with minimal risk of redevelopment**

Two other properties within the rezoning boundary contain **12 rental units**

One residential property, functioning as a women's shelter, is **owned by the Department of Homeless Services**

# Midblock Character of East Midtown



1. 147 EAST 44 STREET  
Built 1982  
35.98 FAR



2. 10 East 40 Street  
Built 1928  
30.04 FAR



3. 57 EAST 52 STREET  
Built 1980  
27.78 FAR



4. 7 EAST 48 STREET  
Built 1984  
23.99 FAR



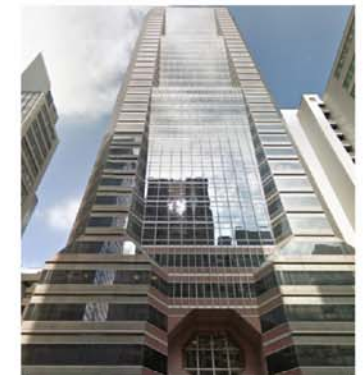
5. 33 EAST 48 STREET  
Built 1968  
23.02 FAR



6. 5 EAST 52 STREET  
Built 1971  
21.49 FAR



7. 154 EAST 52 STREET  
Built 1984  
20.23 FAR



8. 65 EAST 55 STREET  
Built 1986  
20.02 FAR

## SUPPLEMENTAL TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK BEFORE THE CITY PLANNING COMMISSION, IN SUPPORT OF THE GREATER EAST MIDTOWN REZONING

May 5, 2017

Subject: Greater East Midtown Rezoning

Sponsors: New York City Department of City Planning

This statement, prepared by members of the Real Estate Board of New York's (REBNY) Zoning and Design Committee, will supplement the REBNY's statement regarding the Greater East Midtown Rezoning at the City Planning Commission's April 26, 2017 public hearing. The specific suggestions for changes to the text now under consideration are accompanied by comments and have been discussed with the Department of City Planning (DCP) staff. The suggestions are intended to make a good planning proposal even better, and REBNY urges the Commission to give them favorable consideration.

Our suggestions and comments are:

- Allow proposed Section 81-642, which authorizes as-of-right (but capped) transfers of floating landmark development rights, to be used in conjunction with Section 74-79, which allows uncapped (but discretionary) landmark development rights transfers across individual streets by special permit. REBNY has been told by the DCP that it has interpreted the proposed text so as not to permit the two to be used to increase floor area on a single qualifying site. However, we have been unable to find any language in the proposed zoning text that requires such an interpretation.

REBNY believes that the goals of the Rezoning would be advanced if the draft text were amended to make it clear that Sections 74-79 and 81-642 may be used together to transfer landmark development rights to a qualifying site. Doing so would eliminate an artificial and unnecessary constraint on the development options available in East Midtown. More specifically, it will make it possible for an individual development project to acquire development rights from non-"adjacent" landmarks; to generate funds for infrastructure and public realm improvements (or, for a site in Transit Improvement Zone, to itself cause the construction of the transit improvements); and to maximize the development of state-of-the-art, 21<sup>st</sup> century office and/or hotel space. And there will be no downside. The public will be assured that all such projects will be subject to the City Environmental Quality Review process and that floor area in excess of that permitted by the Greater East Midtown Rezoning will be developed only pursuant to a discretionary special permit where the City Planning Commission (and the City Council) deems it appropriate.

- Allow sidewalk extensions (or widenings as they are called in the proposed Section 81-672(a)) that are mandated for certain sites on Madison Avenue and Lexington Avenue to be covered by a cantilever or an arcade.



One of the keys to a successful avenue front building is the ability to offer large base floors. Requiring that the sidewalk extensions be uncovered will reduce the design and/or programming options available on qualifying sites by materially reducing the size of a base floorplate, and it may compromise the marketability of office buildings so developed. At the same time, covering these spaces will not compromise the pedestrian experience if an adequate minimum height is mandated by the zoning text.

- Do not require that residential floor area developed or converted pursuant to permits issued prior to the public review of the Greater East Midtown Rezoning be offset against the maximum residential floor area permitted on a qualifying site.

The requirement for such an offset in proposed Section 81-613 (“Qualifying Site”) makes a distinction without any basis in land use law or policy between zoning lot mergers with development rights parcels that are improved with commercial buildings (where there is no penalty to those wishing to build a mixed building) and mergers with development rights parcels that are improved with residential buildings (where the offset acts as a penalty to mixed-use development). Penalizing such mixed-use developments will discourage qualifying sites from entering into zoning lot mergers with parcels containing residential use, needlessly restricting potential new large commercial development which is the goal of the plan. An illustration of the impact of this requirement (modeled on a potential East Midtown assemblage) is attached.

- Do not eliminate the 1 FAR as-of-right transfer from Grand Central Terminal for non-qualifying sites in the Grand Central Core. The 1 FAR transfer and bonus both facilitates the transfer of landmark development rights and ensures that sites within the existing Grand Central Subdistrict have the same right to additional floor area as sites outside the Subdistrict that can take advantage of the plaza bonus. Leaving the existing 1 FAR transfer provisions in place will ensure that the floor area potential of non-qualifying sites within the Grand Central Core will not be changed. In this regard, we note that there are a number of non-qualifying development sites located in the Fifth - Madison Avenue midblocks between East 43 and East 46<sup>th</sup> Streets and the Lexington – Third Avenue midblock between East 45 and East 46 Street.

There have been no land use changes in the area around Grand Central Terminal since the adoption of the Subdistrict in 1992 that would justify elimination of this transfer and bonus. Moreover, continuing to offer non-qualifying buildings the opportunity to increase their floor area in the most transit-rich area of East Midtown is consistent with the Greater East Midtown Rezoning’s goal of encouraging higher density development near transit hubs. Maintaining the transfer and bonus is also consistent with the Rezoning’s landmark preservation objectives because it is limited to non-qualifying sites, where it supplements rather than competes with the district-wide, as-of-right development rights transfers that are available only to qualifying sites.

- Refine the reconstruction provisions of proposed Section 81-643 – the provision allowing non-complying pre-1961 buildings to be rebuilt with a contribution to the public infrastructure fund - to make clear that portions of a building incorporating transit infrastructure may be preserved without

requiring a cleared wide street frontage. By way of example, there are instances identified as development sites in the Rezoning's Draft Environmental Impact Statement whose development would require the preservation of existing transit infrastructure. Creation of a cleared wide street frontage for such sites would thwart important transit improvements or new development. Such an outcome would be contrary to the goals of the rezoning. Allowing for reconstruction of a Class-A building while also preserving transit access serves two goals of East Midtown, and it should be allowed.

- Allow small enlargements of overbuilt buildings without requiring a “buy back” of excess floor area. Proposed Section 81-684 fosters East Midtown's goal of creating upgraded, desirable first-class office space by authorizing the enlargement of existing buildings where the City Planning Commission finds, among other things, that the enlargement is accompanied by a significant renovation that will bring the building up to contemporary environmental and space standards. However, the provisions of the text requiring a “buy-back” of pre-existing, non-complying floor area can severely undercut – and in some cases will absolutely preclude – use of this provision where the enlargement proposed is small. By way of example, a 17.5 FAR building within both a C5-3 zoning district and an 18 FAR Subarea that is seeking the available .5 FAR increase in FAR would be required to “buy back” 2.5 FAR from the City, effectively doubling the cost of the development rights needed to enlarge the building. Faced with this choice, it would be no surprise if the owner were to forgo the opportunity to enlarge the building – with the attendant loss to the City of both the upgrade of the existing office space and the newly constructed office space. This issue can be addressed by ensuring that the Rezoning text exempts small enlargements (say under 1 FAR) of both pre- and post-1961 buildings from purchasing the “buy back” floor area.
- Restore the text in proposed Section 81-60 as referred out authorizing split lots with 50% or more of their lot area within the Subdistrict to be treated as though they are entirely in the Subdistrict but limit the right to do so to zoning lots that both are located entirely west of Third Avenue and are existing as of the date of the adoption of the Subdistrict.

Finally, REBNY encourages the City Planning Commission to establish, either in the Greater East Midtown Rezoning text or in a follow-up rule or protocol, a maximum time for East Midtown certifications. Today, certifications of floating theater development rights, the closest analogue to the floating landmark development rights transfer under the Rezoning, can take nine months or even longer despite the fact that the required information is straightforward and easy to review. There is simply no reason that the process should take so much time. East Midtown presents an opportunity to establish rules (that may then be applied elsewhere in the City) to ensure that the process for utilizing additional floor area is not so long as to discourage using the Rezoning's incentives.

REBNY thanks the Department of City Planning and the Commission for the work that has gone into the preparation of the Greater East Midtown Rezoning proposal and believes that these comments, if accepted, will strengthen the proposal and enhance the likelihood that it will achieve its goals.

## THE IMPACT OF THE RESIDENTIAL FLOOR AREA OFFSET

This model assemblage consists of what are today two adjacent and separate zoning lots, each with a lot area of 25,000 square feet. One of the lots is a qualifying site with cleared avenue frontage and mapped in a 15 FAR zoning district (“Qualifying Site”); the other is a midblock site with existing buildings mapped in a 12 FAR district (“DR Parcel”). Both sites are in a Subarea permitted up to 18 FAR.

- The Qualifying Site is vacant. The DR Parcel is improved with a residential buildings containing 200,000 square feet of floor area and commercial buildings containing 100,000 square feet of floor area.
- Without the DR Parcel, the Qualifying Site could be developed with 375,000 square feet of floor area (of which 300,000 square feet could be residential) under current zoning and 450,000 square feet of floor area (of which 90,000 square feet could be residential) under the proposed rezoning.
- The permitted floor area on the combined zoning lot is 900,000 square feet, of which 600,000 square feet could be developed on the Qualifying Site. All of 150,000 square feet of additional floor area made available through a zoning lot merger with the DR Parcel would have to be used for a commercial use.
- However, maintaining Qualifying Site status for the zoning lot would limit the amount of residential floor area on the combined zoning lot to 180,000 – less than is there today. The result of this condition is that the merger would not occur because it would have the effect of disqualifying the Qualifying Site. The development potential of the zoning lot would be 375,000 square feet of commercial space.

Permitting the merger to occur without requiring that the existing residential floor area be offset against what the permitted residential would result in a building of 600,000 square feet, of which at least 480,000 square feet – or 105,000 square feet more than could be developed today – would be required to be used for commercial use.

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May 5, 2017

Hon. Marisa Lago, Chair  
City Planning Commission  
120 Broadway, 31st Floor  
New York, NY 10271

Re: Greater East Midtown Rezoning

Dear Chair Lago:

We are writing on behalf of Seaver Realty, LLC, the owner of 229-241 East 42<sup>nd</sup> Street (the "Property"), to reiterate the reasons why the Department of City Planning's proposal to include the Property in the East Midtown Subdistrict of the Special Midtown District is appropriate. The Property is located on the block bounded by East 42<sup>nd</sup> and 43<sup>rd</sup> Streets and Second and Third Avenues (the "Block"). As explained below, and in the attached report by Cooper Robertson, dated May 4, 2017 (the "Cooper Report"), this portion of East 42<sup>nd</sup> Street has a unique and distinctive wide-street commercial character that establishes it as part of East Midtown.

The Property contains a 33 story building ("the Building"), constructed in 1960, that is currently occupied by Pfizer Inc. Pfizer announced in October 2016 that it intends to vacate the Building and the adjacent building to the west, which it owns. The Property, along with other properties on the Block more than 200 feet from Third Avenue, are currently mapped C5-2 (10 FAR) and are not located within the Special Midtown District. The Building has a FAR of approximately 16, and is therefore substantially overbuilt under the current zoning. All of the buildings on the Block are occupied with commercial uses.

The Department of City Planning's pending application would remap the portion of the Block that is more than 200 feet east of 3<sup>rd</sup> Avenue ("Remapping Area") into a C5-3 zoning district within the Special Midtown District, which would allow a base FAR of 15 (the "Proposed Zoning"). The Draft Environmental Impact Statement prepared in connection with the Proposed Zoning treats the Property, along with the buildings to its west and northeast, as a potential development site, designated as Site 15. The potential development sites are those that are likely to be developed within the next twenty years, based on their age, number of lots required for assembly and ratio of existing built FAR to proposed maximum as of right FAR. If

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990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

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Hon. Marisa Lago, Chair  
May 5, 2017  
Page 2

the Building, or all of the buildings on Site 15, were to be demolished and a new primarily commercial building were built in compliance with certain energy efficiency requirements, such a site would meet the definition of a “Qualifying Site” under the Proposed Zoning. As a Qualifying Site, the development would have the option of “buying back” the portion of the existing FAR that exceeds 15 by making a contribution to the public realm improvement fund (the “Fund”), and would also have the option of purchasing landmark development rights, which would include a contribution to the Fund, up to a maximum as of right FAR of 21.6

As explained in the Cooper Report, the principal reasons why the Remapping of the Affected Area is appropriate are that it is located on East 42<sup>nd</sup> Street, and is entirely developed with dense commercial uses. The Remapping Area has unique characteristics that are not shared by other blocks in this area:

- East 42<sup>nd</sup> Street, in the area that extends east from Grand Central Terminal to this Block, is different in character than other streets in this area.
  - It is a wide street with consistently high density commercial development. The Remapping Area is part of the distinctive urban fabric of this portion of East 42<sup>nd</sup> Street, with its high density, entirely commercial buildings.
  - It anchored at one end by Grand Central Terminal, with access to both rail and subway, and at the other end by a 42<sup>nd</sup> Street and Second Avenue stop shown on the current alignment of the Second Avenue Subway.
- The buildings within the Remapping Area were all built prior to 1961. When the Comprehensive Amendments to the Zoning Resolution were enacted in 1961, and then again when the Special Midtown District was created in 1982, they did not recognize the built form of these buildings. The current remapping is, in effect, rectifying a past oversight, from a planning point of view.
- The buildings within the Remapping Area are obsolete buildings that are appropriate candidates for redevelopment. If the Remapping Area were to be excluded from the application, the owners would have the option of utilizing Section 54-40 of the Zoning Resolution, which applies to all non-complying buildings. This Section would allow an owner to preserve 25 percent of the buildings, and rebuild up to the existing overbuilt FAR. Such a building would not be fully state-of-the-art, even if it could be financially feasible for its owner. It would not achieve the City’s goals of providing contributions to the public realm through the payments to the Fund (by “buying back” the overbuilt FAR, or in connection with the purchase of landmark air rights), there would be no benefits to landmark buildings through the purchase of air rights, and there would

Hon. Marisa Lago, Chair  
May 5, 2017  
Page 3

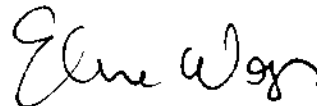
be no sustainability benefits through the achievement of the energy efficiency goals required under the Proposed Zoning.

In addition, we note that the inclusion of the Affected Area in the East Midtown Subdistrict will not act as a precedent for inclusion of the blocks to its east, south and north in the Subdistrict. These blocks do not contain sites that are candidates for large-scale commercial redevelopment consistent with the goals of the Subdistrict:

- The block to the east is further from Grand Central Terminal, and is occupied, along its entire Second Avenue blockfront, by a 30 unit commercial condominium building that would be difficult to develop because of its ownership structure. The balance of the block is occupied by the Ford Foundation, which is a designated landmark, and a portion of the residential Tudor City complex, which is within an historic district;
- The block to the south is principally occupied by the Daily News building, a designated landmark, with only one additional pre-61 office building and the Westin Hotel, which was built in 1980; and
- The block to the north, to the extent that it is not already included in the Subdistrict, contains 11 separate tax lots with a range of uses, including a residential building that is under construction in the middle of the block, and is unlikely to be assembled for commercial development.

Therefore, in light of the unique and distinctive nature of East 42<sup>nd</sup> Street and the dense commercial character of the Remapping Area, along with the benefits to the public realm associated with its potential redevelopment, we ask that the Community Board support the inclusion of the Remapping Area in the East Midtown Subdistrict and its associated remapping to a C5-3 district.

Sincerely,



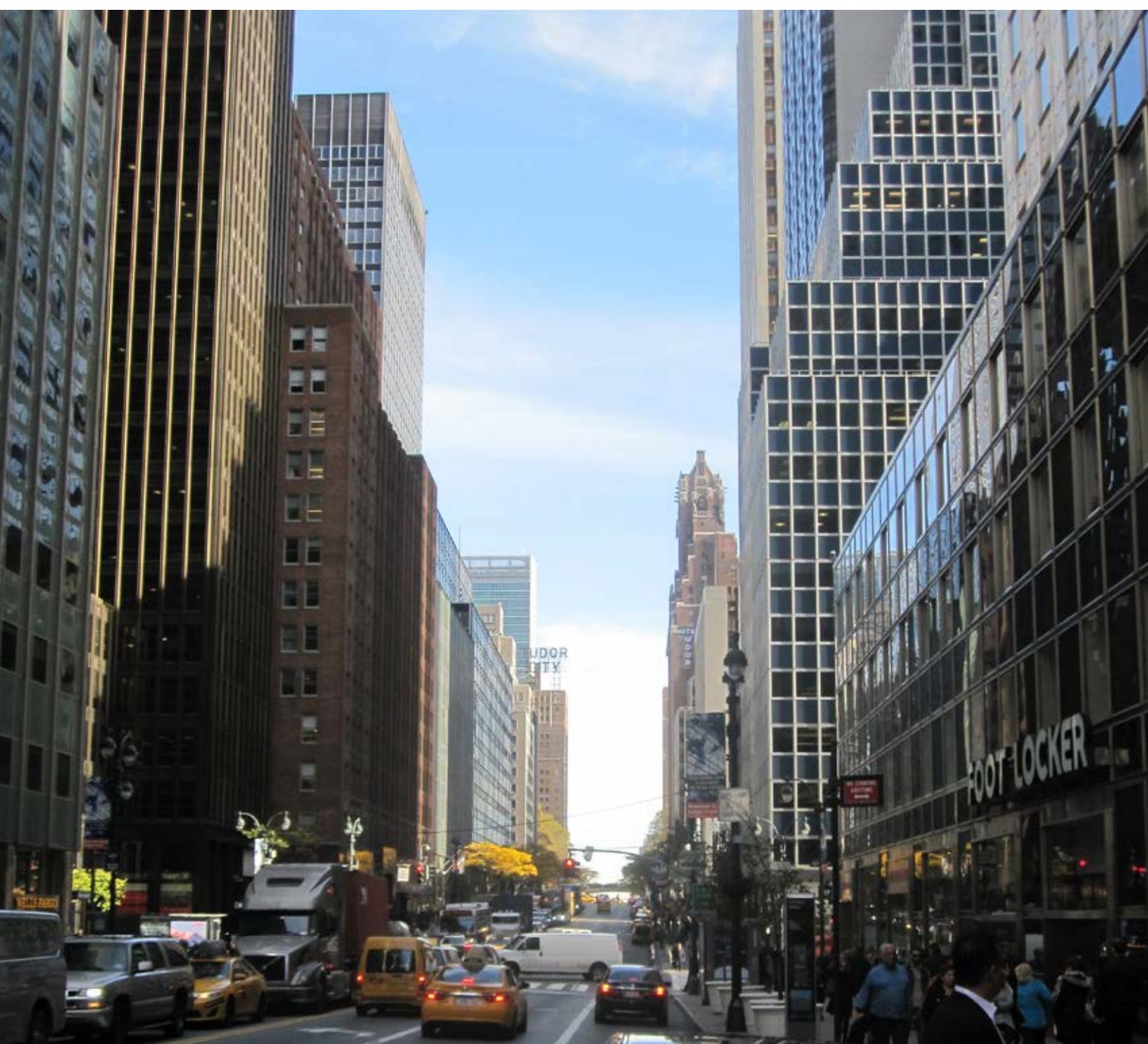
Elise Wagner

cc: Hon. Daniel Garodnick  
Hon. Gale Brewer  
Mr. Sandro Sherrod  
Mr. Richard Eggers

COOPER ROBERTSON

MAY 4, 2017

# EAST MIDTOWN ZONING ANALYSIS



## **East Midtown Zoning Analysis**

*Submitted to Kramer Levin Naftalis & Frankel LLP*

*May 4, 2017*

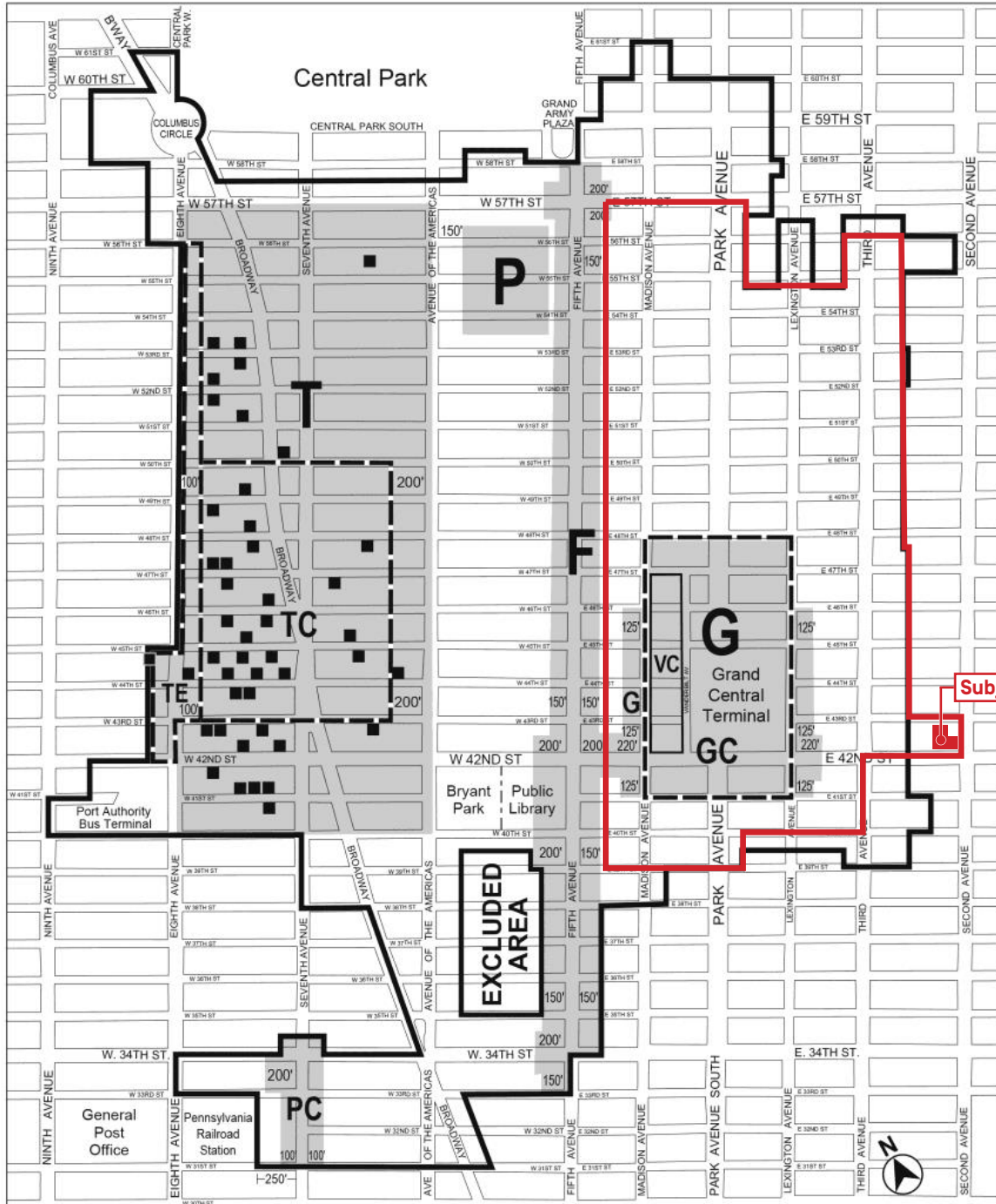
Cooper Robertson has prepared this analysis of certain zoning actions proposed by the Department of City Planning (DCP) to assist Kramer Levin as public reviews take place. Kramer Levin represents the owner of 235 East 42<sup>nd</sup> Street (block 1316, Lot 23) (the "subject site"), which is located on the block bounded by East 42nd and 43rd Streets and Second and Third Avenues, and which is affected by the zoning actions proposed by the DCP. This analysis assesses the appropriateness of DCP's proposed actions as they affect the subject site, taking into consideration the urban design context of the site (bulk, land use, public realm character) and DCP's policy goals in undertaking the proposed actions.

### **The Proposed Zoning Actions:**

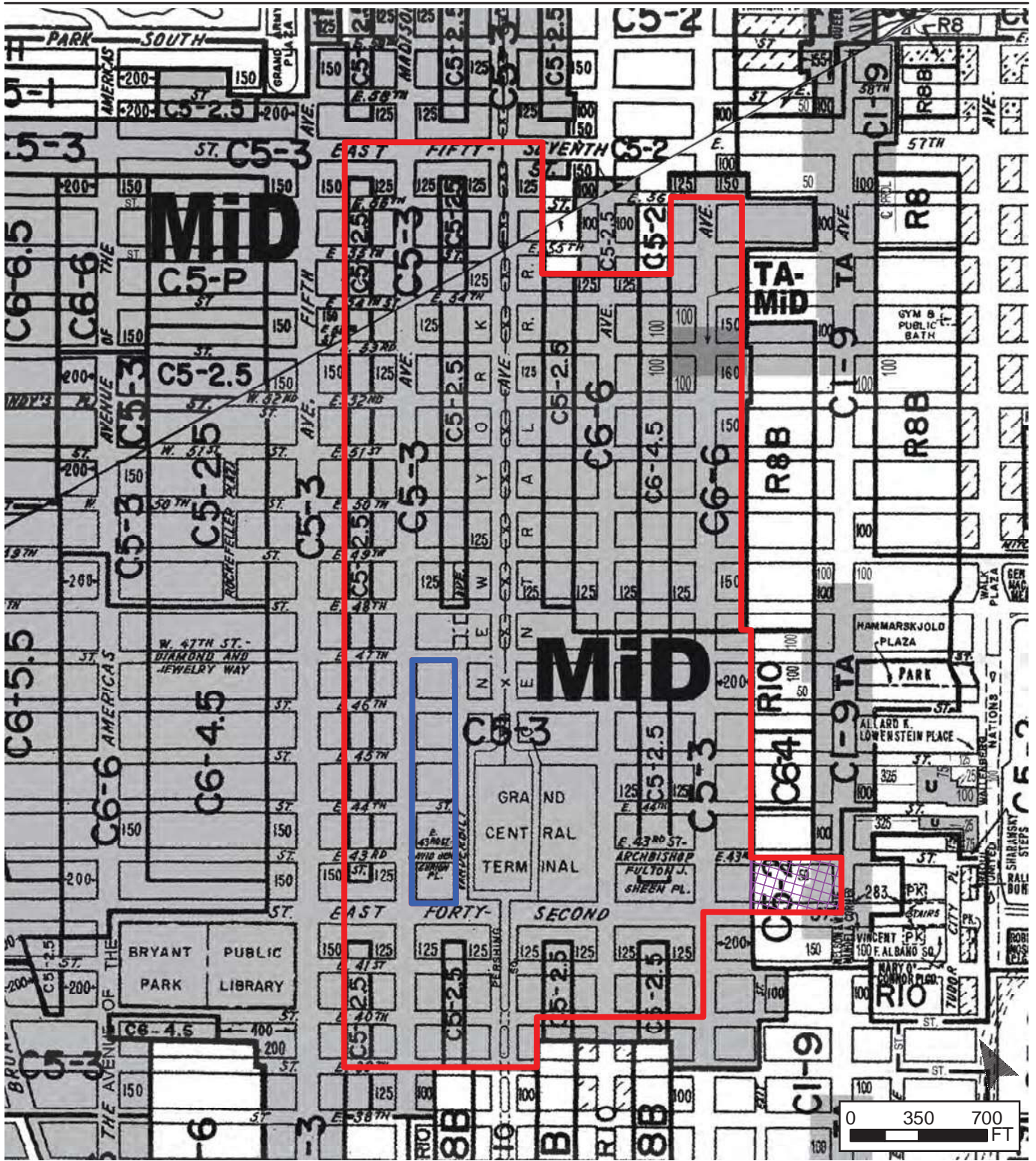
DCP's proposed actions include expansion of the Special Midtown District. The subject site falls within the proposed new East Midtown Subdistrict and the related expansion of the Special Midtown District (refer **Exhibit 1**). DCP also proposes a zoning map change to extend the C5-3 zoning district into the area being added to the Special Midtown District (refer **Exhibit 2**, taken from the Draft Environmental Impact Statement (DEIS) prepared by DCP in support of the contemplated actions). And finally, the subject site falls within Projected Development Site 15, one of a group of sites which DCP has identified for environmental impact analysis purposes as likely to be developed within the next 20 years (the "Reasonable Worst Case Development Scenario"), based on the age of existing buildings, number of lots required for assembly and ratio of existing built FAR to proposed new maximum as-of-right FAR (refer **Exhibit 3**). Projected Development Site 15 comprises three existing tax lots (12, 23 (the subject site), and 30) on Block 1316, on the north side of 42<sup>nd</sup> Street, between Second and Third Avenues (refer **Exhibit 8**).

DCP is proposing these actions to address long-term challenges to the competitiveness of East Midtown as a premier business district. These challenges include an aging stock of office buildings; limited new development; and public realm challenges, for both the pedestrian realm and the transit network. Because many buildings in the East Midtown are "overbuilt" relative to current permitted FAR, and because of the complexity of the discretionary certification and special permit processes needed to gain additional FAR through transfer of development rights from landmark sites or to take advantage of bonus provisions for improvements to the subway network, relatively few developments have taken advantage of these processes.





- Proposed East Midtown Subdistrict and related expansion of the Special Midtown District
- Special Midtown District
- F** Fifth Avenue Subdistrict
- G** Grand Central Subdistrict
- GC** Grand Central Subdistrict Core
- VC** Vanderbilt Corridor
- P** Preservation Subdistrict
- PC** Penn Center Subdistrict
- T** Theater Subdistrict
- TC** Theater Subdistrict Core
- TE** Theater Subdistrict Eighth Avenue Corridor
- Listed Theaters



- Proposed Greater East Midtown Rezoning Boundary
- Vanderbilt Corridor (Existing Regulations Apply)
- Proposed Zoning Map Change\*

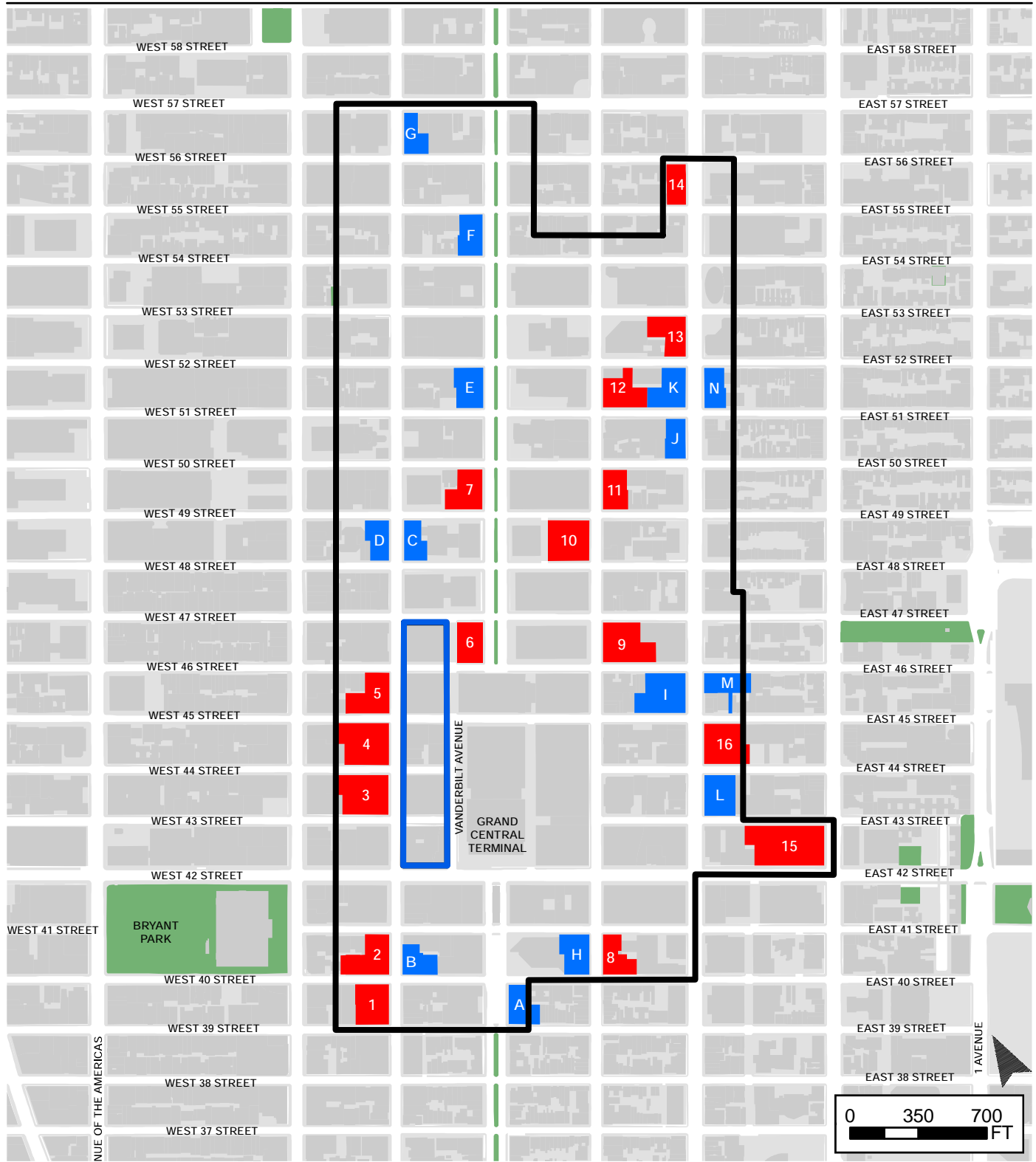
\*Extension of C5-3 and Special Midtown Zoning District

**Greater East Midtown Rezoning**  
Manhattan, New York

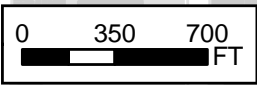
**Proposed Zoning**  
**Amendments**

**Figure**





- Proposed Greater East Midtown Rezoning Boundary
- Vanderbilt Corridor (Existing Regulations Apply)
- 1 Projected Development Site (w/ I.D. Label)
- A Potential Development Site (w/ I.D. Label)



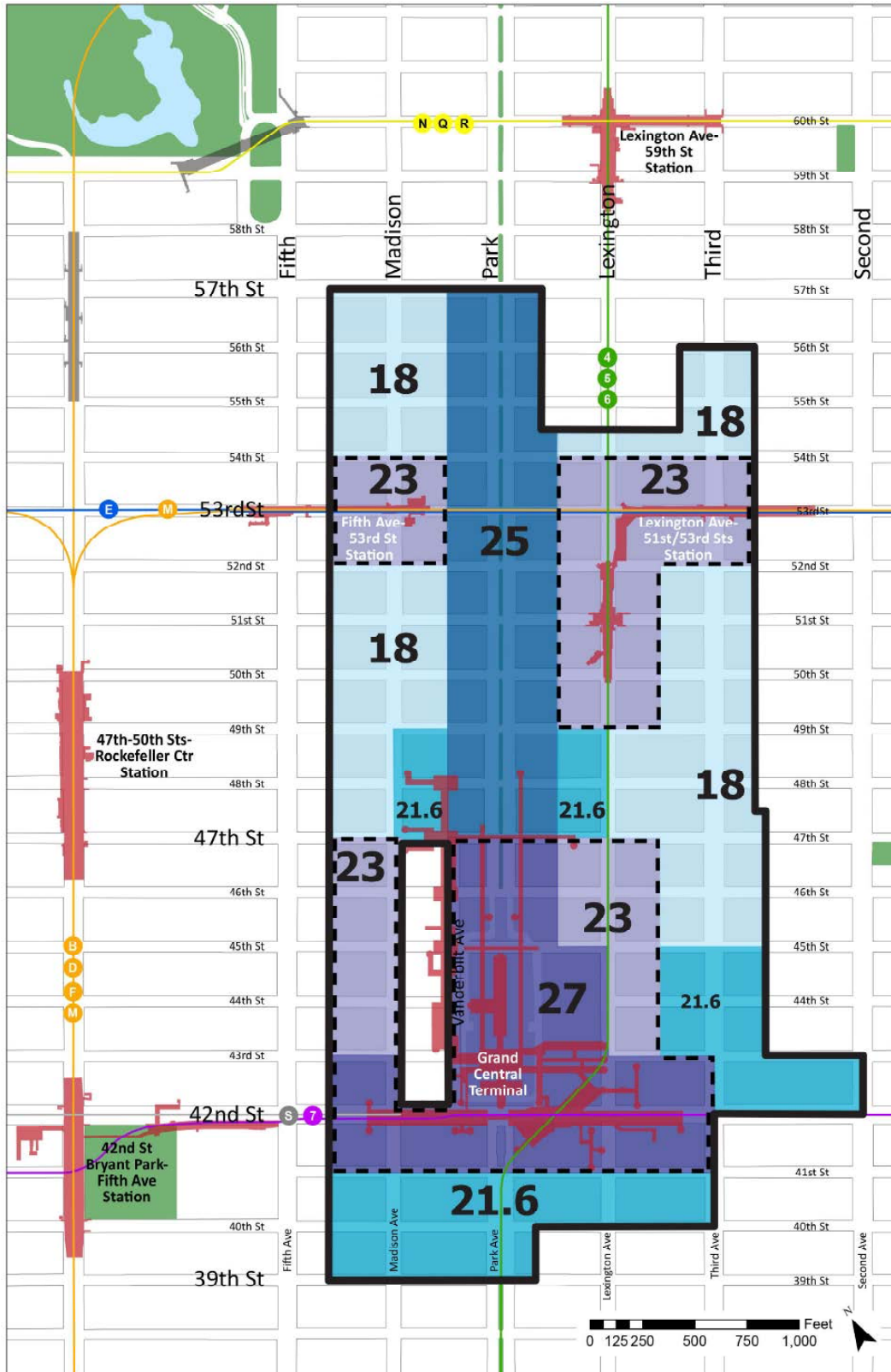
DCP's proposal is to put in place a new largely as-of-right zoning framework that will, over time, seed the East Midtown Subdistrict with an estimated 16 new predominantly office buildings in the coming decades. Three as-of-right mechanisms proposed by DCP would: allow qualifying sites to receive transfers of unused development rights from underbuilt landmark sites in or adjacent to the Subdistrict; allow floor area of pre-1961 buildings that exceed the maximum permitted base FAR to utilize that overbuilt floor area in a new development on the site without retaining 25% of the current building; and for new developments in "Transit Improvement Zones" in close proximity to transit nodes to complete pre-identified transit infrastructure projects in exchange for floor area. All of these mechanisms will generate improvements to the public realm, either through contribution to a public realm improvement fund (in the case of landmark development rights transfers and floor area from overbuilt buildings) or, in the case of transit infrastructure projects, through direct construction by the new development. The as-of-right densities allowable under this new framework would be largely tied to transit proximity, with the greatest as-of-right density around Grand Central Terminal, and incrementally lower densities along Park Avenue and near subway stations in the north part of the Subdistrict. The lowest FAR tiers would be those blocks not as proximate to transit. (Refer **Exhibit 4**).

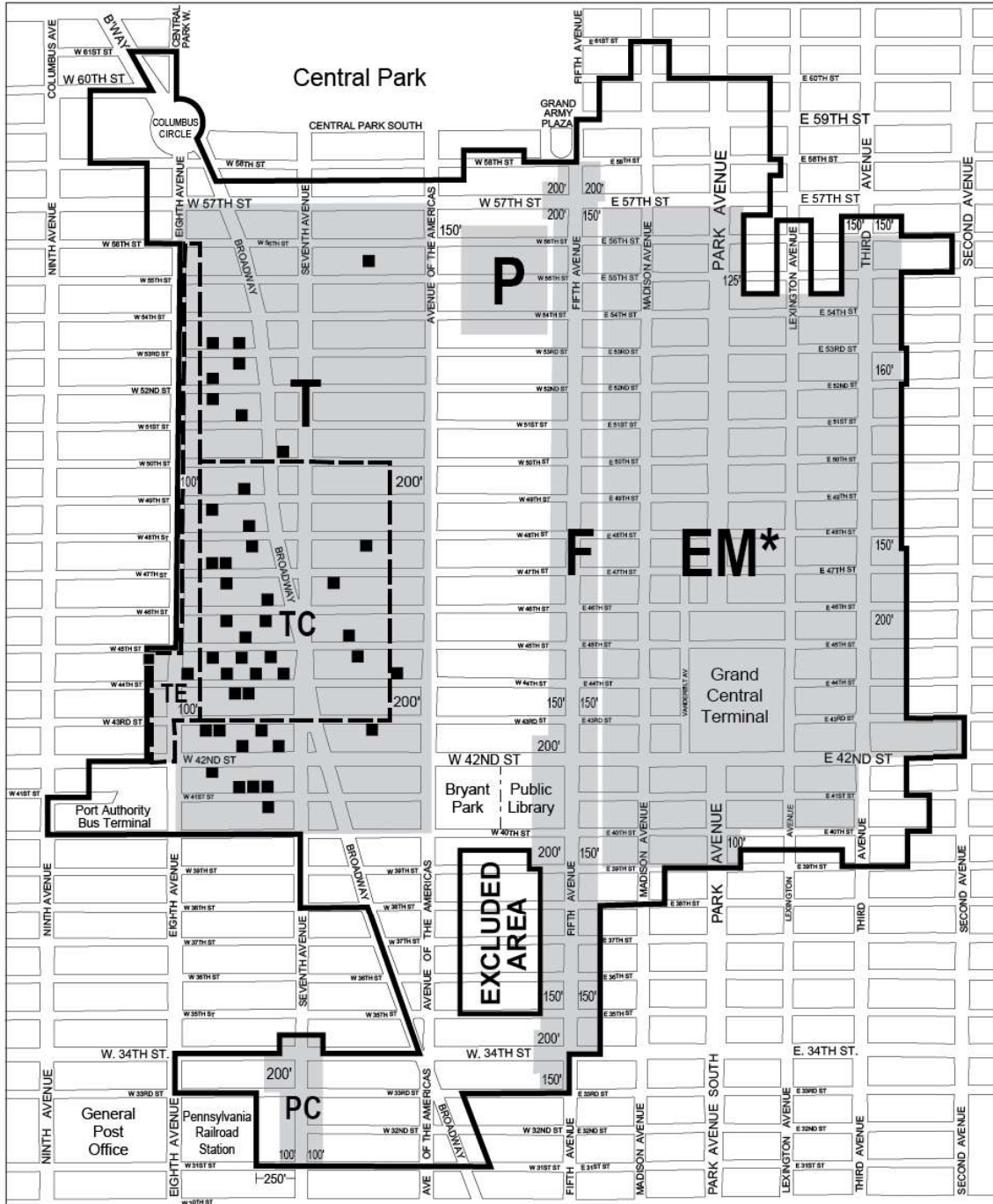
As part of the text amendment DCP has prepared to implement the proposed changes, a revised map of the Special Midtown District has been proposed (**Exhibit 5**), as well as a new map setting out Subareas within the East Midtown Subdistrict (**Exhibit 6**). These proposed Subareas are linked to tables within the proposed text amendment formally establishing the new maximum densities for each Subarea.

### **Is Inclusion of the Subject Site Appropriate?**

The subject site, as well as the balance of Projected Development Site 15 of which it is a part, fall east of the current east boundary of the Special Midtown District (refer **Exhibits 1 and 8**). DCP's proposed zoning actions will make all of the block between 3<sup>rd</sup> and 2<sup>nd</sup> Avenues north of 42<sup>nd</sup> Street part of the Special Midtown District. In our judgment, this is an appropriate change for the City to make. East 42<sup>nd</sup> Street has a distinctive character defined by its width and high density commercial fabric. While the commercial character of midtown north of 43<sup>rd</sup> Street extends only as far as the frontage parcels along the east side of Third Avenue (as pointed out in the 197a plan prepared by Community Board 6), the blocks flanking both sides of 42<sup>nd</sup> Street between 3<sup>rd</sup> and 2<sup>nd</sup> Avenues are demonstrably commercial in character (**Exhibit 7**). The distinctive urban form of this portion of 42<sup>nd</sup> Street, which has been uniformly developed with high density office buildings (Refer **Exhibits 8,9 and 10**), is very much a continuation of the unique wide-street commercial character that extends east of Grand Central along 42<sup>nd</sup> Street. And it is also noteworthy that these blocks are within the Grand Central Partnership's Business Improvement District, attesting both to the proximity to Grand Central and the commercial character of the blocks. As the

# Greater East Midtown Densities + Transit Zones

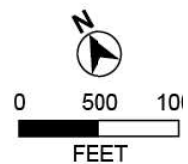


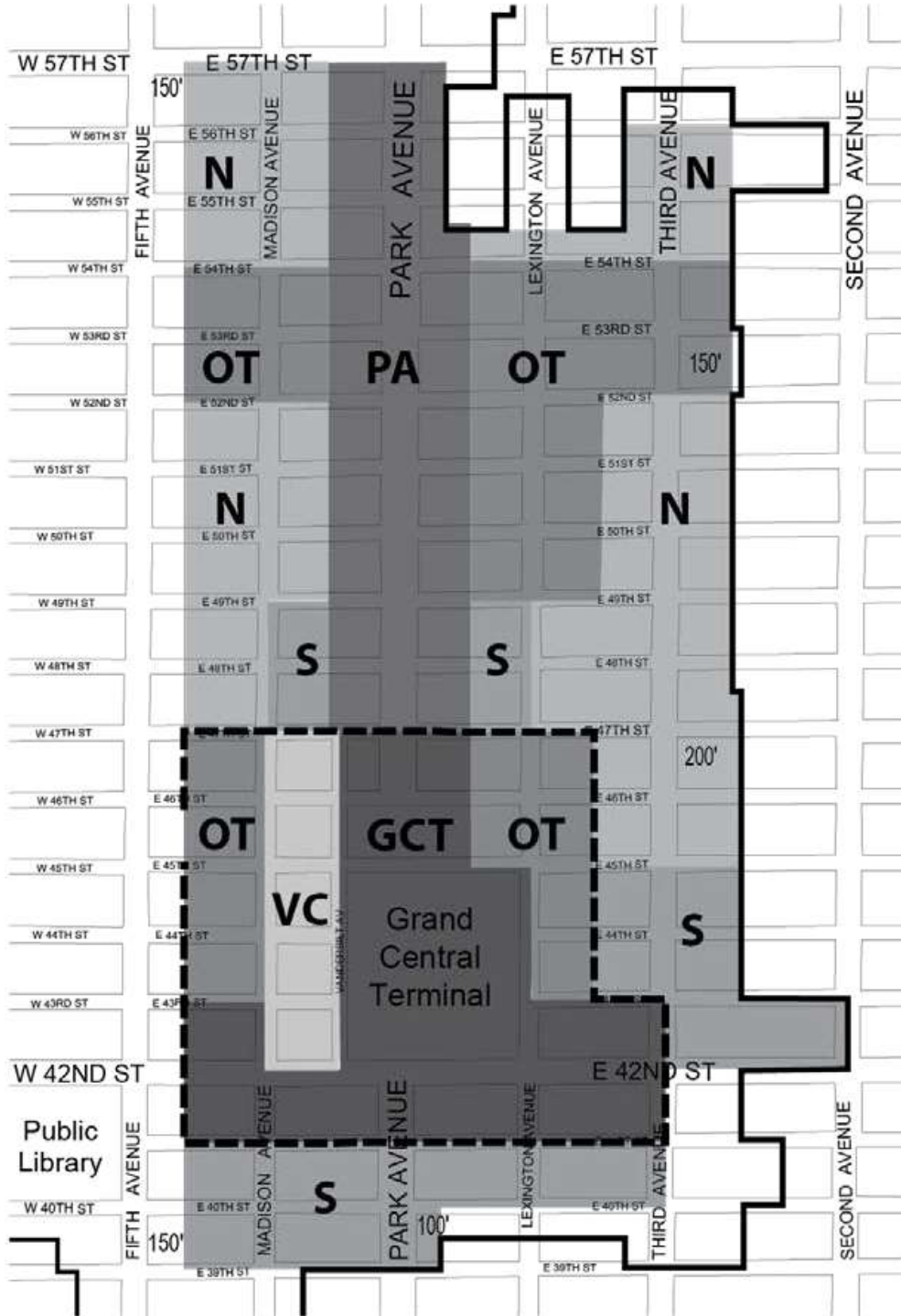


## MIDTOWN DISTRICT PLAN MAP 1 - Special Midtown District and Subdistricts









- F** Fifth Avenue Subdistrict
- EM** East Midtown Subdistrict
- PC** Penn Center Subdistrict
- P** Preservation Subdistrict
- T** Theater Subdistrict
- TC** Theater Subdistrict Core
- TE** Theater Subdistrict Eighth Avenue Corridor
- Listed Theaters
- Special Midtown District

\* East Midtown Subareas are shown on Map 4

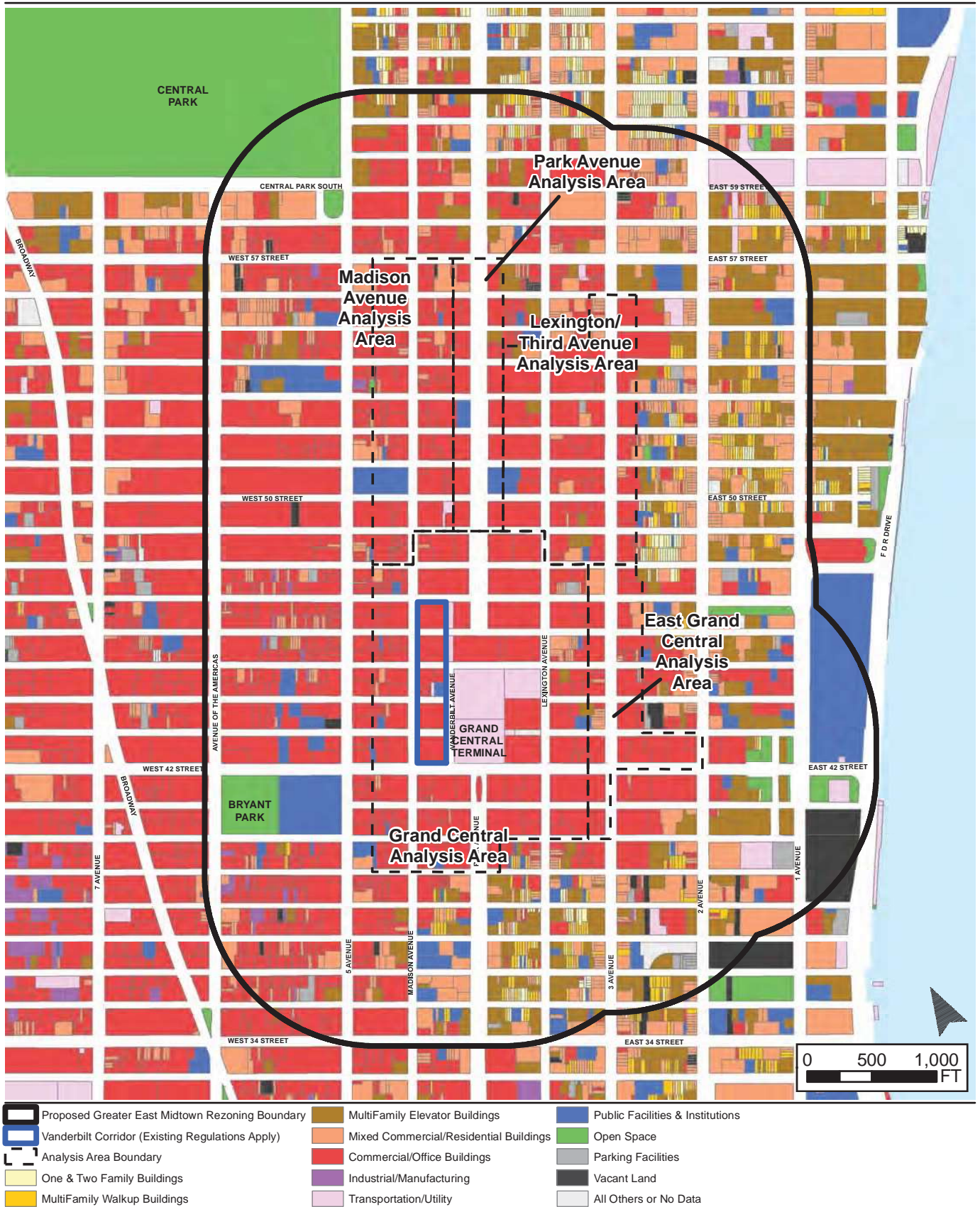




MIDTOWN DISTRICT PLAN  
 MAP 4 - East Midtown Subdistrict and Subareas

- |                                                                                                                                          |                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
|  Grand Central Transit Improvement Zone Subarea (GCT) |  Grand Central Core Area  |
|  Park Avenue Subarea (PA)                             |  Special Midtown District |
|  Other Transit Improvement Zone Subarea (OT)          |                                                                                                               |
|  Southern Subareas (S)                                |                                                                                                               |
|  Northern Subareas (N)                                |                                                                                                               |
|  Vanderbilt Corridor (VC)                             |                                                                                                               |





**Greater East Midtown Rezoning**  
Manhattan, New York

**Primary Study Area Existing**  
Land Use

**Figure**





Proposed Subdistrict Boundary

Existing Special Midtown District

Tudor City Historic District

Block Number  
 Lot Number

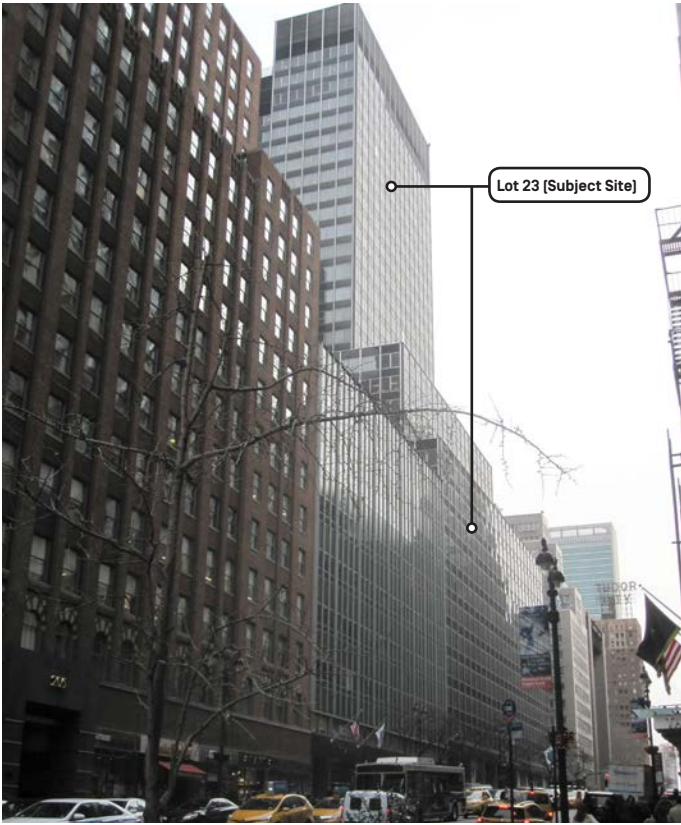


Lot 23 (Subject Site)

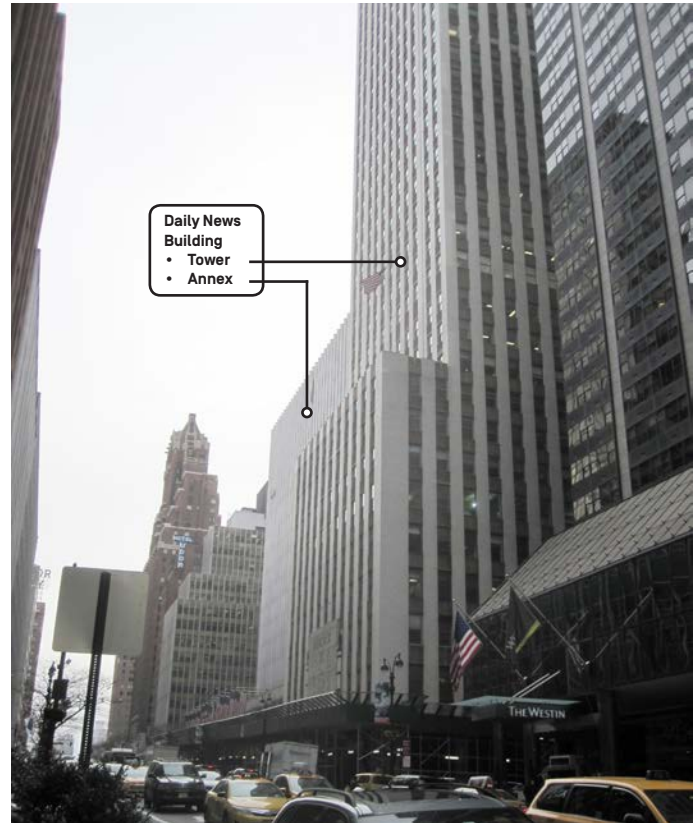
Daily News Building

Refer also:  
Exhibit 8 Plan  
Exhibit 10 Photos

East 42nd Street looking East (Third Avenue intersection in the Foreground)



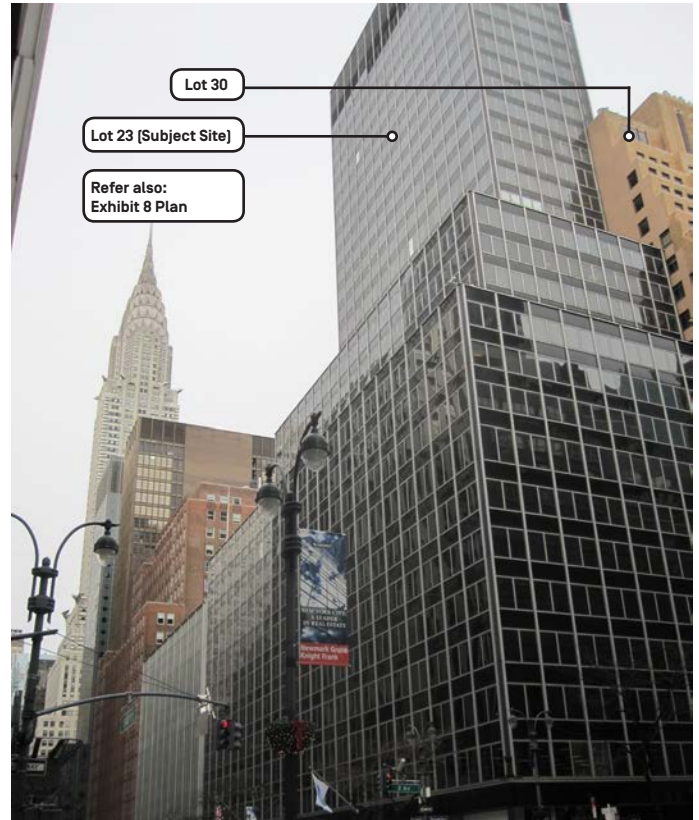
East 42nd Street (North Side) looking East from Third Avenue.



East 42nd Street (South Side) looking East from Third Avenue.



East 42nd Street (South Side) looking West from Second Avenue.



East 42nd Street (North Side) looking West from Second Avenue.

DEIS states: the Special Midtown District "generally follows the boundary of midtown's commercial areas and thus the area would be more appropriately located" in the Special Midtown District "and additionally part of the East Midtown Subdistrict" (DEIS, Project Description, page 1-20).

In addition to these contextual considerations, the designated Projected Development Site 15 meets important criteria the City has identified as making sites candidates for redevelopment. It consists of only three lots, facilitating assembly (lots 12, 23 and 30 as identified on **Exhibit 8**); all of the buildings pre-date 1961 (with initial dates of construction of 1905, 1960 and 1932 respectively); and, even when considered on their own, all of the lots meet the key qualifying criterion of wide street frontage.

While we believe that the rezoning of the affected block is an appropriate change for DCP to make for the reasons cited above, we also believe that rezoning of the affected block is unlikely to set a precedent for inclusion of adjacent blocks in the East Midtown Subdistrict. None of these adjacent blocks offer sites with the potential to address the broad district revitalization goals DCP has articulated for the proposed zoning actions. Specifically:

- The adjacent block to the east is less proximate to transit and redevelopment potential is limited to the Second Avenue frontage, which is occupied by a commercial condominium building. The land east of that is occupied by the Ford Foundation building, a designated landmark. The balance of the block (as well as much of the area to the north, east and south) is zoned residential and mapped as the Tudor City Historic District (refer **Exhibits 2 and 8**).
- To the south, across 42<sup>nd</sup> Street, all of the land opposite Projected Development Site 15 is occupied by the Daily News complex, also a designated landmark, and not a candidate for redevelopment. The land west of the Daily News is dominated by a large pre-1961 office building and a more modern hotel, which currently fall within the Special Midtown District and already have 15 FAR zoning. The office building is overbuilt under that zoning and the hotel is built within the maximum FAR. The inclusion of this block in the East Midtown Subdistrict would not meaningfully address the goals of the rezoning, since only the limited site area of pre-61 office building is a plausible candidate for redevelopment.
- North of the block to be rezoned, across 43<sup>rd</sup> Street, is a mixed-use block with a heterogeneous combination of consular, commercial, hotel, institutional and residential uses (refer **Exhibit 7**). The western end of this block, occupied by two large commercial buildings, is already in the proposed East Midtown Subdistrict. On the balance of the block, residential buildings occupy dispersed parcels; one of these is a new 41 story multifamily project straddling the middle of the block and currently under construction. The balance of the block is fragmented into 11 separate tax lots (compared, for example, to the 5

tax lots on the entirety of the block to the south), and we believe that this fragmented ownership and complex development pattern make this block an unlikely candidate for assembly for large-scale commercial redevelopment.

### **Is the Density Proposed for the Site Appropriate?**

In its planned zoning actions DCP proposes, as it brings Projected Development Site 15 within the Special Midtown District and the East Midtown Subdistrict, to replace the existing C5-2 mapping (10.0 FAR) with a C5-3 mapping (15.0 FAR). C5-3 is widely used in the Special Midtown District, and brings with it district-specific height and setback and streetscape requirements (C5-2 is a more generic 1961 high density commercial zoning). DCP then proposes that, through the as-of-right mechanisms described above, the maximum density for the site in excess of the base 15.0 FAR should be 21.6 FAR. As structured in the overall Subdistrict density framework illustrated on **Exhibits 4 and 6**, this is in our judgment an appropriate maximum as-of-right density. The principal factor DCP has used in setting maximum densities in the Subdistrict is proximity to transit, which is an entirely appropriate consideration. Wide street frontage, a traditional (and appropriate) factor in setting density levels, has also informed DCP's density framework. The block occupied by Projected Development Site 15 is within two blocks of the eastern entrances to Grand Central Terminal, with its extensive subway and rail mass transit offerings, and Site 15 itself has frontage on two wide streets, East 42<sup>nd</sup> Street and Second Avenue. While the highest permitted maximum densities are allocated to blocks directly proximate to Grand Central, along Park Avenue and proximate to other Subdistrict subway stations (27.0 FAR, 25.0 FAR and 23.0 FAR respectively), DCP's recommended 21.6 FAR for Site 15 is an appropriate step down from these higher figures, while still establishing a permitted density sufficient to induce new development.

In written comments submitted to the hearing on DCP's proposed Scope of Work for the EIS, objection was raised by Community Boards 5 and 6, as well as State Senators Hoylman and Krueger, that the subject site (Lot 23, occupied by Pfizer, which has an estimated overbuilt FAR of 16.01 as compared to its current 10.0 FAR limitation), should only be permitted to use DCP's zoning framework if the 5.0 FAR increment from former C5-2 (10.0 FAR) to the new C5-3 (15.0 FAR) district is treated as "earned FAR" and make a contribution to the Subdistrict's public realm improvement fund, as will be the case for the balance of FAR developed up to the 21.6 FAR maximum. In assessing this issue, it is important to point out that in 1961, when 10 FAR zoning was mapped along this portion of East 42<sup>nd</sup> Street, all the buildings on Site 15 on the north side of the street and the Daily News buildings on the south side of the street were already in place (with construction dates ranging from 1905 to 1960), and were built at a scale and density more accurately reflected in the 15.0 FAR (C5-3) mapping DCP now proposes. In our opinion, revising the zoning map to reflect more accurately the built

fabric, in instances where that built fabric is consistent with development policy, is good planning practice.

We also believe that requiring the subject site to make a contribution to the public realm improvement fund for replacement of the entire increment of overbuilt floor area currently developed and occupied on the site will work counter to DCP's policy goal in establishing the 21.6 FAR framework for this block: to induce new state-of-the-art office development on this good-sized and well-located site. It may either inhibit new development entirely, or cause the owners to avail themselves of current zoning regulations for non-complying buildings that would allow the site to be redeveloped as-of-right up to current density by retaining at least 25% of the old building in place. Such an outcome would deprive the public realm improvement fund of *any* contribution for replacement of the current overbuilt floor area, would potentially result in a compromised hybrid development, and would not allow the site to qualify for transfer of additional floor area from underbuilt Subdistrict landmarks (with the additional public realm improvement fund contributions such transfers would bring). While such hybrid old/new development could potentially be financially feasible for a developer, it will not produce the kind of state-of-the-art, 21st Century building the City is seeking to encourage with the East Midtown rezoning. On balance, we believe DCP's proposal to integrate a zoning district change with extension of the Special Midtown District and new East Midtown Subdistrict achieves the right balance of inducements both for appropriate redevelopment and for public realm improvement fund contribution.

**Assessment Based on East Midtown Steering Committee Criteria:**

The East Midtown Steering Committee, established by Mayor de Blasio in May 2014, took a site-specific approach to determining whether a site should qualify for additional density and what the appropriate level of density should be. Six criteria were identified, and the degree of compliance with each of the six criteria was translated by the committee into additional increments of permitted density. The six criteria provide another means of assessing the appropriateness of Projected Development Site 15 as a suitable site for dense as-of-right development. The Steering Committee criteria are:

- Immediate proximity to an existing or potential subway station
- Immediate proximity to commuter rail at Grand Central Terminal
- Frontage on an Avenue or Wide Street
- Frontage on intersection of an Avenue and a Wide Street
- Adjacency to significant light and air created by a low-rise landmark
- Large site size of 25,000+ square feet with full block frontage

While the quantitative FAR value assigned to each of these criteria, ranging from 1 FAR for adjacency to a "light and air commons" created by a landmark to 5 FAR for proximity to an existing or potential subway station, was not specifically adopted by City Planning as the basis for its FAR recommendations (transit proximity is the guiding principle used by the City), a qualitative evaluation of Projected Development Site 15 using these criteria is helpful.

*Immediate Proximity to an Existing or Potential Subway Access Point:* The Second Avenue frontage of Projected Development Site 15 is within the Special Transit Land Use District overlay mapped at each station location of the planned Second Avenue subway (**Exhibit 2**). The first phase of the Second Avenue subway (from 63<sup>rd</sup> Street north to 96<sup>th</sup> Street) is now open, and the second phase, extending north from 96<sup>th</sup> Street, is being actively planned. In planning these northern legs of the new subway line, the MTA needed to address the evolving surface access needs of contemporary subway construction, including provisions for ADA-compliant access and locations for smoke purge shafts, needs that were not anticipated when the Special Transit Land Use District locations were mapped in 1974. As the line is currently being planned through East Harlem, a neighborhood for which the City is contemplating a comprehensive set of zoning changes and other planning initiatives, the MTA and the City have been working to determine how these evolving station access needs can best be satisfied and to modify the provisions of the Special Transit Land Use District and its mapping. The MTA has indicated that, as they have the design and engineering team now in place for the second phase work on the line, it would be feasible and timely to undertake more detailed analysis of access needs for the future 42<sup>nd</sup> Street station location.

These discussions with the MTA have highlighted the need to weigh the extension of the Second Avenue subway in evaluating Projected Development Site 15; clearly it meets the "proximity to a potential subway station" criterion set by the Steering Committee as a standard for significant incremental additional density. And while DCP, in its current East Midtown density strategy, has not anticipated investment in station access facilities for the future 42<sup>nd</sup> Street station on the Second Avenue line as a pre-designated public realm transit improvement (i.e. the 42<sup>nd</sup> Street Station is not encompassed in a designated Transit Improvement Zone), the active design and engineering work on the new line may offer a future opportunity for development on Projected Development Site 15 to support and/or construct station-related facilities as a means to contribute to public realm improvements.

*Immediate Proximity to Commuter Rail at Grand Central Terminal:* Projected Development Site 15, while not directly above the underground pedestrian network serving Grand Central, is within two blocks of eastern access points to the Terminal; this level of proximity has appropriately informed DCP's placement of the site within the proposed 21.6 FAR density Subdistrict as shown on **Exhibits 4 and 6**.

*Frontage on an Avenue or Wide Street / Frontage on an intersection of an Avenue and a Wide Street:* Projected Development Site 15 meets both these standards, with full block frontage on Second Avenue, and 350 feet of frontage on 42<sup>nd</sup> Street, a wide crosstown street.

*Adjacency to significant light and air created by a low-rise landmark:* While the Steering Committee had in mind landmarks like St. Patrick's Cathedral and St. Bartholomew's Episcopal Church in establishing this criterion for site density, Projected Development Site 15 does have a unique relationship to more contemporary landmark: the Daily News complex, which faces Site 15 across 42<sup>nd</sup> Street (refer **Exhibit 8**). This landmark site contains Raymond Hood's 1928 groundbreaking 37 story office tower at its west end, and adjacent and to the east of the tower, extending to Second Avenue, the 1959 Harrison & Abramovitz addition, which sits above and subsumes the original printing plant (refer **Exhibit 10**). Because this 18 story annex building is set approximately 40' back from 42<sup>nd</sup> Street on a low 2 story base, this block of 42<sup>nd</sup> Street enjoys a remarkable degree of light and air (as evidenced by the well-grown honey locust street trees along the north sidewalk in front of Site 15). And while the Daily News is not a candidate for transfer of development rights (it is adjacent but outside the proposed East Midtown Subdistrict, and is overbuilt for its mapped zoning, at approximately 15 FAR), the sense of space and generous southern light it lends to this block of 42<sup>nd</sup> Street is palpable, and enhances Site 15 as a setting for significant new development.

*Large site size of 25,000+ square feet with full block frontage:* The assembly of three lots encompassed in Project Development Site 15 has a total area of 76,318 sf, and full block frontage on Second Avenue. Two of the component lots (12 and subject site 23) each have, on their own, in excess of 25,000 sf (Lot 12 is 31,130 sf and Lot 23 is 37,657 sf) and enjoy frontages of 130' and 220' respectively on East 42<sup>nd</sup> Street.



The six criteria provide a useful context for evaluating the appropriateness of Projected Development Site 15 as a site for new high-density development, and in our opinion further support the site as a candidate for substantial development that can contribute significantly to the City's goals for East Midtown.

**Conclusions:**

We find the subject site's inclusion in the Special Midtown District and proposed new East Midtown Subdistrict to be appropriate: the land use context of the site is predominately commercial, and this portion of East 42<sup>nd</sup> Street has long been developed with high density office buildings. Further, Projected Development 15, of which the subject site forms apart, meets City criteria for candidate development sites, including assembly potential, building age, and site frontage.

We also find the maximum as-of-right density proposed by the City for the site to be appropriate, given the site's proximity to Grand Central Terminal and wide street frontage. The level of density proposed is also supported when the site is assessed against the criteria established by the East Midtown Steering Committee: transit proximity, lot size and frontage, and light and air characteristics.

## East Midtown – City Club Testimony

City Planning Commission Public Hearing Wednesday 26 April 2017

The City Club of New York has been carefully examining and commenting on the series of proposals to rezone East Midtown during the last several years. We agree with the stated goal of maintaining East Midtown as a premier business address and our cautions and recommendations have been intended to help achieve that vision. We regret that we disagree with the means City Planning has chosen to achieve its goals.

We start by thanking the East Midtown Steering Committee for its efforts to understand East Midtown and to address its problems. We also thank City Planning for its efforts to craft solutions and to explain them.

Our general criticism is, and has been, that the proposals for East Midtown are not founded on a well-considered plan. Such a plan would put East Midtown in a regional context and would address issues of transit access, local circulation in an improved public realm, and the interrelationships of uses in a complex urban ecosystem.<sup>1</sup>

Our specific concerns are of three types:

- Departures from the recommendations of the East Midtown Steering Committee,
- Conflicts of interest between implementing a well-considered plan and zoning for dollars, and
- Conflicts with constitutional protections.

---

<sup>1</sup> What would make East Midtown more attractive?

- Completion the Second Avenue subway from 63 Street to Lower Manhattan: this would improve access from the Upper East Side and further reduce congestion on the Lexington Avenue line.
- A direct rail connection between Grand Central and Penn station: this would allow NJ Transit trains to bring passengers directly from New Jersey to Grand Central, allow Metro-North trains to travel through Grand Central to Penn Station, and allow Amtrak to serve the east side of Manhattan.
- Direct rail access to the airports.
- A public realm that better connects transit, buildings, and streets.
- A public realm with more and better POPS (Privately Owed Public Space) such as plazas, arcades, and atriums.
- A public realm with streets that better serve all their users, most of whom are pedestrians, but also buses, taxis, trucks, bicyclists, and others. This should include the conversion of 42 Street to landscaped open space and a light rail line as proposed by Vision42<sup>1</sup>.
- Preservation of the area's rootedness. (A palimpsest is a page that has been erased and reused but on which the older information is still discernable. The richest built environments are often palimpsests in that the inquiring eye can see their history.)

**Steering Committee Recommendations:** There are three major recommendations of the East Midtown Steering Committee that the City's proposed zoning contradicts. One is the addition of public open space to the public realm through the encouragement of POPS, another is keeping the Special Midtown height and setback regulations to protect daylight, and the third is maintaining the lower scale of the midblocks.

- The East Midtown Steering Committee report recognizes the dearth of public open space in East Midtown and recommends creating a plan for the public realm that includes on-site spaces such as plazas and covered plazas. By contrast, the proposed rezoning encourages very large buildings to be developed using transferred air rights and off-site subway improvements as-of right and discourages on-site public spaces by limiting them to a new special permit for "public concourse". Consequently, the DEIS finds the lack of public open space in the proposal to be a largely unmitigated significant impact.

With respect to open space and a plan for the public realm the proposed zoning turns the recommendations of the Steering Committee upside down.

- The East Midtown Steering Committee report recommends that new development adhere to the height and setback rules of the Special Midtown District, although a special permit review was anticipated for buildings that tried to fit too much zoning floor area into the zoning envelope. Indeed, sensing a potential conflict between very big buildings with FARs up to 30.0 and maintaining some daylight in the streets, the committee recommended a compromise in which City Planning should examine reducing the passing Daylight Evaluation score from 75 to 66. (Remember that this was in the context of the recently approved One Vanderbilt, a 30.0 FAR building, having a score of negative 62.)

However, the proposed zoning goes further and changes the scoring process for "qualifying sites" to allow much greater encroachment. With respect to protecting light and air in East Midtown the proposed zoning appears to be surreptitiously ignoring the recommendations of the Steering Committee. By way of example, One Vanderbilt if scored using the proposed scoring would earn a score of positive 20 rather than negative 62 – a large difference. (Also, the impact of these changes does not seem to be disclosed or analyzed in the DEIS.)

- The East Midtown Steering Committee report recommended increasing density along wide streets, not in the midblocks. However, the proposed zoning allows greater increases in FAR in the 12.0 FAR midblocks than on the 15.0 FAR wide streets such that the FARs on the midblocks become the same as on the avenues. The proposed zoning also allows the height of the street walls on the midblocks to be as tall as the street walls on the wide streets. Furthermore, these changes seem to obviate the split lot rules.

**Conflict of interest:** (zoning for dollars)<sup>2</sup> We are concerned that there is a conflict of interest when the City uses zoning to raise revenues rather than for the authorized purposes of zoning -- to regulate land use, light and air, and density in conformance with a well-considered plan -- and that this conflict results in bad planning. For example:

- If the City charges a fee for the privilege of the remote transfer of development rights from landmarks, as it does in the Theater Subdistrict and proposes in the East Midtown Subdistrict, is it likely to allow unused floor area to be transferred further and to allow greater increases on receiving sites? Such transfers violate the principle of a geographic nexus between the benefit of the preserved landmark and the burden of the larger building.
- If the City requires developers to improve subway stations, some of which are even outside of the East Midtown Subdistrict, to obtain bonus floor area it effectively supplements the MTA's budget. Does this financial benefit to the MTA influence the City to not require traditional, much needed, density ameliorating amenities on the development sites, such as plazas, covered pedestrian spaces, and access to adjacent subway mezzanines?
- If the City allows bonus floor area for an improvement in a subway station that then becomes the responsibility of the MTA to operate, maintain, repair, and replace, the development is relieved of the traditional obligation, which it would have in the case of a plaza, to maintain the density ameliorating amenity for the life of the bonus floor area on the top floors of the benefitted building. Does the City see the one time benefit to the MTA as more important than the long term relationship between the increased density and the public improvement?
- If the City charges a fee to reconstruct the portion of an overbuilt building in excess of the site's base FAR (rather than retain 25% of the existing structure) the City is collecting dollars rather than requiring the provision of the traditional plazas and arcades that would ameliorate the additional density. Does this reflect a greater interest in obtaining dollars than in increasing the amount of public space in East Midtown?
- If the City relaxes height and setback in order to facilitate the redevelopment of a site that will pay fees to reuse overbuilt zoning floor area and to transfer floor area and will make improvements to subway stations thereby supplementing the MTA's budget, is it doing so in furtherance of a well-considered plan or in order to raise revenues?

At issue is the height and setback exemption proposed along Vanderbilt Avenue. It would allow height and setback to be measured from the far side of the street rather than the near side, which is detrimental to the public's light and air but allows larger floors in the upper part of the building. Would the City include this provision if it were not benefiting financially?

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<sup>2</sup> See the Coliseum case: *Municipal Art Soc. of N.Y. v. City of N.Y.*, 137 Misc. 2d 832 (Sup. Ct. N.Y. Co. 1987)

This only affects one site, the Postum Building at 250 Park Avenue, which would presumptively be illegal spot zoning.

- If the City insists on including Third Avenue in the rezoning of East Midtown does it do so in furtherance of a well-considered plan or to create more development sites?

In response to the draft scope of work for the environmental analysis of East Midtown Manhattan Community Board Six passed a resolution last year that an alternative be considered that omitted the area east of Third Avenue from the rezoning. The community board sees Third Avenue as an area of transition between the CBD and the residential neighborhoods of Turtle Bay and Tudor City in which development should be transitional in scale and mixed in use. It also sees it as an area that should not have its density increased until the Second Avenue subway is extended south.<sup>3</sup>

It appears that the City is including Third Avenue in order to have enough development sites to use all of the transferable development rights from landmarks and all of the bonus floor area for subway improvements in order to collect the fees for TDRs and pay for improvements to MTA facilities.

The City Club has repeatedly suggested that other ways than zoning be considered to fund public realm improvements, including the possibility of tax increment financing as a way to fund transit improvements in the area that will be served by East Side Access for the LIRR.

Alternatives such as the capital budget and tax increment financing would allow zoning to address improvements to the public realm on development sites rather than bonusing improvements within subway stations so as to supplement the MTA budget or collecting fees to supplement the DoT budget. These alternatives would avoid conflicts of interest between planning and raising revenue, would spread the cost over all the properties that benefit from the transit improvements, and, in the case of tax increment financing, would likely provide significantly more funds to the MTA. (Keep in mind that this is not an addition to the real estate tax, like a BID, but an assignment of a portion of the natural increase resulting from the completion of East Side Access – which should be appealing to local property owners).

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<sup>3</sup> Community District Six is the area generally east of Lexington Avenue between 14 and 59 Streets. This is the eastern edge of Midtown Manhattan. It is an area of transition between the Midtown Central Business District and the residential areas of Turtle Bay and Tudor City. It is an area of transition in scale and use.

Community Board Six has recommended that the area east of Third Avenue not be subjected to the large increases of density and scale of buildings proposed for East Midtown. It is also concerned that the uses be mixed or residential in character rather than primarily commercial. In addition it notes that residential development seems to be doing quite well in this area and to not be in need of any zoning incentives.

On the other hand, we also understand that there are arguments against tax increment financing, not least of which is that it diverts tax revenues from the City's general budget. Nevertheless, we believe it is a tool that is worth thorough and objective consideration.

**Constitutional Protections:** We believe that the proposed rezoning of East Midtown threatens three constitutional protections generally enjoyed under zoning: **Nexus** -- there should be geographic proximity such that the same community enjoys the benefit and carries the burden of an action such as transfers of development rights from landmarks and bonus floor area for density ameliorating amenities. **Proportionality** -- there should be a proportional relationship between the impact of increased density on a site and the amenity that is intended to ameliorate that density and that the relationship should be maintained for the life of the increased density. **Exactions** -- the agreement of a supplicant to a deal does not make it right.

For example:

- There needs to be a geographical nexus between the benefit of a preserved, smaller, landmark building and the burden of the larger development that uses its air rights. For instance, the daylight in the street that is assured by the granting site should be enjoyed by the same community that suffers the shadows and increased congestion of the receiving site.

The proposed rezoning would allow unused development rights to be transferred from any landmark in the East Midtown Subdistrict to any "qualifying site"<sup>4</sup> in the subdistrict. It would also allow the fee charged for the privilege of a remote transfer to be spent on subway or street improvements anywhere in East Midtown.

This might, for example, allow air rights from St Patrick's at Fifth Avenue and 50 Street to land on the Pfizer site at 42 Street and Second Avenue and improvements be made to a subway station at Lexington and 53 Street. As a result, the burden of increased density, less light and air, and greater congestion would be at one corner of East Midtown, the light and air benefit of St Patrick's at another and the circulation improvement in a subway station somewhere else. Is this fair?

We suggest that smaller transfer districts, such as the existing Grand Central Subdistrict, be established rather than allowing air rights to be transferred throughout East Midtown.

- There is a need for proximity between a density ameliorating amenity and the development that incorporates its bonus zoning floor area. Traditionally, a plaza provides public open space on the same site as the building generating the need,

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<sup>4</sup> A "qualifying site" qualifies for the transit improvement bonuses and district-wide transfers of landmark development rights by (i) having buildable frontage on a wide street, (ii) having no more than 20% of its zoning floor area in residential use, (iii) being environmentally efficient (ZR 81-681), and (iv) if in a transit improvement zone providing required subway station improvements (ZR 81-682).

although it probably could also be justified by separate sites that are adjacent or nearly so.

The proposed rezoning would allow “qualifying sites” located in the Grand Central Transit Improvement Zone Subarea and in the Other Transit Improvement Zone Subareas to earn bonus zoning floor area from improving subway stations as far away as outside of the East Midtown Subdistrict.<sup>5</sup>

We suggest that the subway station being improved be much closer to the development using the bonus floor area such that the increased density is more convincingly ameliorated by the improvement to the subway station.

- Is there adequate proportionality between the impact of a development on a subway station and the bonus floor area received for improving that station when the bonus is the same whether the station is adjacent to the development or many blocks away?

If the subway station being improved is adjacent to the site that is being developed it seems likely that the new building will be creating some of the congestion being mitigated in the station; if the station is remote it is likely that only a diminishingly small portion of the congestion will be caused by the new building. To maintain proportionality less bonus floor area should be given for the remote improvement. If not, this may risk a finding that the cost of the improvement to the non-adjacent subway station amounts to an unconstitutional exaction.

We suggest that the subway station improvement bonus only be allowed when the station is near, preferably adjacent, to the site on which the increased density will be developed.

- As proposed, the subway improvement is to be built by and at the expense of the developer and then operated, maintained, repaired, and replaced by and at the expense of the MTA. This means that in the long run the MTA, rather than the developer, is paying for the development’s bonus floor area.

We suggest that in addition to building the subway improvement the developer establish a trust fund for its operation, maintenance, repair, and replacement and that the building replenish the fund as necessary as long as the bonus floor area exists.

- The zoning resolution requires overbuilt buildings to follow the current zoning regulations if redeveloped. There is, however, a sort of casualty provision that allows the building to retain its excess zoning floor area if no more than 75% of the building is demolished. The proposed zoning would allow the existing building to be completely demolished and

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<sup>5</sup> ZR 81-682 prioritizes improvements to stations close to the development site but allows more remote stations when closer stations are not available.



to pay a fee to reuse the overbuilt floor area. Because there is no difference in the impact of the overbuilt portion on the city the fee becomes an exaction.

We suggest that the overbuilt provisions be left as is and that the developer use other provisions of the zoning, such as transfers of development rights or bonus floor area from density ameliorating amenities to achieve greater FAR.

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