



Sheldon Lobel

ATTORNEYS AT LAW

18 East 41st Street

5th Floor

New York, NY 10017

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RECEIVED

MAR 23 2012

BY COMMUNITY BOARD 8

March 22, 2012

VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Community Board No. 8
505 Park Avenue, Suite 620
New York, New York 10022

Re: BSA Calendar No. 67-12-BZ
1442 First Avenue
Block 1469, Lot 46
New York, New York (the “Premises”)



Dear Chairperson and Members of the Board:

Our office represents the applicant in a variance application that has been filed at the Board of Standards and Appeals (“BSA”). This is an application pursuant to Section 72-21, ZR for a zoning variance to permit the extension of an existing eating and drinking establishment in Use Group 6 on the first floor of the Premises to the second floor in a building occupied on the third and fourth floors by residential uses and for the construction of a convenience stair between the first and second floors, in a building constructed prior to September 17, 1970.

Enclosed is a copy of the variance application.

We look forward to meeting with the Community Board to discuss this matter, and trust that you will indicate your support of this application to the BSA.

Very truly yours,

Irving E. Minkin

IEM:kr
Enclosure

cc: Board of Standards and Appeals
Hon. Jessica S. Lappin, Councilmember
Hon. Scott Stringer, Manhattan Borough President
Ms. Edith Hsu-Chen, Manhattan DCP
Mr. Christopher Holme, Department of City Planning
Department of Buildings



City of New York
Board of Standards and Appeals
40 Rector Street, 9th Floor
New York, NY 10006-1705
 Phone: (212) 788-8500
 Fax: (212) 788-8769
www.nyc.gov/bsa

ZONING (BZ) CALENDAR
 Application Form

BSA APPLICATION NO. 67-12-BZ
 CEQR NO. 12 BSA-099M

Section A

**Applicant/
Owner**

Sheldon Lobel, P.C.

NAME OF APPLICANT O

18 East 41st Street, 5th Floor

ADDRESS ADDRESS

New York, NY 10017

CITY STATE ZIP

(212) 725-2727

AREA CODE TELEPHONE

(212) 725-3910

AREA CODE FAX ADDRESS

kreaves@sheldonlobel.com

EMAIL

1442 First Avenue, LLC

OWNER OF RECORD

1442 First Avenue

New York, NY 10021

CITY STATE ZIP

LESSEE / CONTRACT VENDEE

CITY STATE ZIP

Section B

**Site
Data**

1442 First Avenue

STREET ADDRESS (INCLUDE ANY A/K/A)

10021

ZIP CODE

Located on the southeast corner of the intersection formed by 1st Avenue and East 75th Street.

DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS

1469 46

BLOCK LOT(S)

Manhattan

BOROUGH

8

COMMUNITY DISTRICT

N/A

LANDMARK/HISTORIC DISTRICT

Jessica Lappin

CITY COUNCIL MEMBER

C1-9

ZONING DISTRICT

(include special district, if any)

9a

ZONING MAP NUMBER

Section C

**Dept of Building
Decision**

BSA AUTHORIZING SECTION(S) 72-21 for

☒ VARIANCE

☐ SPECIAL PERMIT (Including 11-41)

Section(s) of the Zoning Resolution to be varied 32-421

DOB Decision (Objection/ Denial) date: March 6, 2012

Acting on Application No: 120152244

Section D

Description

(LEGALIZATION ☐ YES ☒ NO ☐ IN PART)

Proposed extension of eating and drinking establishment in Use Group 6 on the first floor to the second floor, and construction of a convenience stair between the first and second floors.

Section E

**BSA History
and
Related Actions**

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

YES NO

1. Has the premises been the subject of any previous BSA application(s)? ☐ ☒

PRIOR BSA APPLICATION NO(S): _____

2. Are there any applications concerning the premises pending before any other government agency? ☐ ☒

3. Is the property the subject of any court action? ☐ ☒

Section F

Signature

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

Irving E. Minkin
 Signature of Applicant, Corporate Officer or Other Authorized Representative

SWORN TO ME THIS 20th DAY OF March 2012

Irving E. Minkin

Print Name

Associate

Title

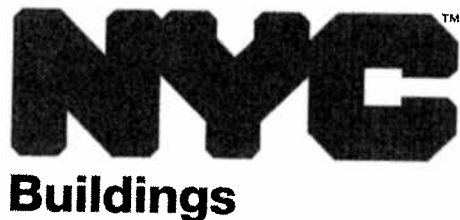
NOTARY PUBLIC

ELEANORE CURRY MARTINS
 Notary Public, State of New York

No. 02MA6247384

Qualified in Nassau County

Commission Expires Aug. 29, 2015



Joseph Bruno RA
Manhattan Chief Plan Examiner
Department of Buildings
280 Broadway
New York, New York 10007
(212) 566-5000 | TTY (212) 566-4769
josbruno@buildings.nyc.gov

MANHATTAN (1)
280 BROADWAY 3RD FLOOR
New York, NY 10007

BRONX (2)
1932 ARTHUR AVENUE
BRONX, NY 10457

BROOKLYN (3)
210 JORALEMON STREET
BROOKLYN, NY 11201

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

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

Notice of Objections

Applicant:

Michael D Berzak
Berzak Associates Architects, P.C.
115 E 23rd St.
New York, NY 10010
mberzak@berzakarchitects.com

Date: March 6, 2012

Job Application #: 120152244

Application Type: Alt 1

Premises Address: 1442 1st Avenue

Zoning District: C1-9

Block: 1469

Lot: 46

NYC Department of Buildings Examiner: Joseph Bruno, RA

Obj. #	Section of Code	Objections	Date Resolved	Comments
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Examiner's Signature

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

Obj. #	Section of Code	Objections	Date Resolved	Comments
1.	ZR 32-421	Proposed construction of convenience stair connecting the first and second story thereby extending the Use Group 6 commercial use above the first story in a building constructed prior to September 17, 1970 with residential uses on the third and fourth floors is contrary to zoning.		
2.				
3.				
4.				

DENIED

FOR APPEAL TO BOARD OF STANDARDS AND APPEALS

DATE **MAR 06 2012**

PER 
Borough Commissioner

JOSEPH BRUNO
MANHATTAN CHIEF
PLAN EXAMINER



CITY OF NEW YORK
BOARD OF STANDARDS AND APPEALS
40 Rector Street, 9th Floor
New York, New York 10006-1705
Phone: (212) 788-8500
Fax: (212) 788-8769

AFFIDAVIT OF OWNERSHIP

State of New York
City of New York
County of NA

ss.:

Joshua Lebewohl, being duly sworn, deposes and says that (s)he
resides at 20 E. 4th St in the City of
NA, in the County of NA, in the State of
NA; that 1442 First Ave. LLC is the owner in fee
of all that certain lot, piece or parcel of land located in the Borough of Manhattan,
in the City of New York and known and designated as Block 1469, Lot(s) 46,
Street and House Number 1442 First Avenue; that (s)he
hereby authorizes Sheldon Lobel, P.C. to make the annexed application
in her/his behalf; and that the statements of fact contained in said application are true.

Signature of Owner

Print Name

Print Title

(State if Partner, or give Title if Officer of Corporation)

Sworn to before me this 24th day

of Oct 2011

Terry A. Wachtel
(Notary Public)

TERRY A. WACHTEL
Notary Public, State of New York
No. 01WA4919186
Qualified in New York County
Commission Expires February 28, 2011



Sheldon Lobel & Associates

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March 20, 2012

STATEMENT OF FACTS AND FINDINGS

Premises: Block: 1469, Lot: 46
1442 First Avenue
New York, New York (the "Premises")

I INTRODUCTION:

This is an application pursuant to Section 72-21, ZR for a zoning variance to permit the extension of an existing eating and drinking establishment in Use Group 6 on the first floor of the Premises to the second floor in a building occupied on the third and fourth floors by residential uses.

The Department of Buildings has issued the following objection:

- "1. Proposed construction of convenience stair connecting the first and second story thereby extending the Use Group 6 commercial use above the first story in a building constructed prior to September 17, 1970 with residential uses on the third and fourth floors is contrary to zoning".

II. HISTORY OF SITE

The building at the Premises is a four (4) story building, built approximately 1920, and occupied prior to the current alterations on the first floor as a retail store and restaurant, and residential uses on the second, third and fourth floor, with two (2) apartments on each floor; in accordance with Certificate of Occupancy No. 73932 dated November 5, 1973, appended hereto as Attachment No. 1. The residences are Class A apartments, as defined in the Multiple Dwelling Law.

In 2009, the client's architect filed Alteration Application No. 120152244 with the Department of Buildings for the proposed interior alterations on the first floor, and to enlarge the second floor 882 sq. ft. from., 1,366 sq. ft. to 2,248 sq. ft., so as to be identical in area with the first floor, which has 100 percent lot coverage; and, to eliminate one apartment on the second floor. The third and fourth floors remain as the same area as originally built, with each floor 1,366 sq. ft. in area.



Prior to the commencement of the alterations, one residential tenant on the 2nd floor voluntarily relocated to an apartment on the fourth floor that was vacant. Subsequently, the other tenant on the 2nd floor vacated their apartment, and moved elsewhere. The partitions and fixtures of the two (2) pre-existing apartments vacated on the second floor were thereafter removed, and the second floor is presently vacant. Further, one of the two apartments on the third floor were subsequently vacated, and is presently vacant.

Temporary Certificate of Occupancy No. T120152244 a copy of which is appended as Attachment No. 2 was issued on December 9, 2011, based on the above-described alteration.

There are presently three (3) open Building Department violations relating to the Premises, copies of which are appended collectively as Attachment No. 3.

There are no outstanding Housing Violations issued by the Department of Housing Preservation and Development.

III. NEIGHBORHOOD CONTENT

The Premises is located in a C1-9 Zoning District, which extends for many blocks north and south of the Premises along the east side of First Avenue, on which the Premises is located. The west side of First Avenue is similarly zoned, except where replaced by a C2-8 Zoning District.

Although the midblock east and west of First Avenue are zoned R8B, significantly limiting the permissible floor area ratio of residential buildings to only 4.00 as compared to that permissible along First Avenue, in C1-9 and C2-8 Districts, for which the floor area ratio authorized for residential buildings in R10 districts (10.0) is permitted as-of-right, the majority of the existing mid-block buildings on East 75th Street exceed the above-mentioned limitations; and the majority of the buildings along First Avenue have availed themselves of the above-mentioned bulk limitations for R10 District, except for the building at the Premises, and one across East 75th Street, both of which are substantially under-built.

With regard to existing uses, virtually every building along First Avenue has commercial uses on the first (street) floor, and many have commercial uses on the second floor as well. Further, although the C1-9 and C2-8 Districts only extend to 100 ft. from First Avenue, commercial uses extend into the midblock R8B district beyond 100 feet from First Avenue.

IV. ZR 72-21 FINDINGS

A. Uniqueness

The Premises is unique as follows:

- (i) The building at the Premises is substantially underdeveloped as compared to both the zoning for the site, and the adjacent buildings, both within the R10 equivalent zoning districts, and the R8 B Zoning District. As a result thereof, the assessed value and

resulting real estate taxes are inordinately high as a consequence of the surrounding developments in the R10 zone.

- (ii) Three of the four (4) apartments on the third and fourth floors are subject to the Rent Stabilization Code.
- (iii) The Premises is a corner lot, fronting on two heavily travelled streets.
- (iv) The Premises is in one of the high-density zoning districts for which the City Planning Commission zoning amendment of ZR Section 32-421 adopted February 2, 2011 permits conforming commercial uses on the second floor of mixed use buildings built after September 17, 1970.
- (v) The second floor of the Premises was enlarged approximately 70 percent in 2010.
- (vi) Were the building at the Premises demolished today, and reconstructed to its present bulk as enlarged, the building would be in full compliance with all of the present bulk provisions for the present zoning; and, the use of the second floor for the proposed use that is the subject of the variance application would be permitted as-of-right.
- (vii) Further, if the extent of reconstruction of the exterior walls in the course of the above-described enlargement and alterations exceeded the amount authorized by DOB TPN No. 1/02, dated July 24, 2002, a New Building application would have been required, also authorizing the use of the second floor proposed as-of-right.
- (viii) Alternately, if the residential occupancy of the third and fourth floors were permanently discontinued, the use of the second floor for the proposed use would be permitted as-of-right.
- (ix) Although it has 100 % lot coverage, the first floor of the building, per se, is only 2200 sq. ft.
- (x) Only approximately 500 sq. ft. of the first floor within the exterior walls of the building, per se, or only 30 percent of the first floor area of 2200 sq. ft. is allocated to accommodating patrons of the restaurant. The remainder of the first floor area within the building is devoted to kitchen and counter areas and accessory spaces, and egress for the upper floors. The preponderance of the table seating is within the enclosed sidewalk café, which is subject to a revocable franchise, and significant annual fees. Termination of the revocable franchise by the city would result in a reduction of table seating from 74 to approximately 30 patrons.



B. PRACTICAL DIFFICULTIES

The above-mentioned uniqueness creates a practical difficulty in obtaining a reasonable rate of return for the Premises, as follows:

- (a) The seating area available within the building footprint on the first floor is insufficient to provide a positive rate of return, in and of itself, since seating would only be available for approximately 30 patrons, instead of the seating present seating for 74 patrons.
- (b) The annual fees for the enclosed sidewalk café significantly impact on the rate of return; and, if the franchise is partially or wholly discontinued, would result in a negative rate of return without seating on the second floor.
- (c) The inordinately high assessed value and resulting real estate taxes as compared to similar buildings located elsewhere poses an inordinate overhead.
- (d) Discontinuing the residential occupancy of the third and fourth floors in order to facilitate the proposed occupancy of the second floor as-of-right would be time-consuming due to the protected status of the residents, causing a significant loss of income for the second floor in the interim, and a loss of income for the third and fourth floors in perpetuity.
- (e) Enlarging the building vertically to fall within the status of a new building in DOB TPPN No. 1/02, dated January 24, 2002, so as to be considered a building built after 1970 would result in exorbitant and disruptive construction. (copy of TPPN 1/02 is appended as Attachment No. 4), and substantial loss of income during said reconstruction.
- (f) With all of the cooking facilities on the first floor, and the pedestrian and vehicular traffic on the adjacent busy streets, compounded by deliveries of food and refuse collection at grade, restoration of residences on the second floor is undesirable; and use thereof for community facility use is financially impractical, resulting in a floor that will likely be frequently vacant indefinitely.
- (g) The attached Financial Feasibility Analysis dated January 2012 by Albert Marengo, PhD, indicates the inability to obtain a reasonable rate of return with any as-of-right occupancy of the second floor.

C. NEIGHBORHOOD CHARACTER

The variance requested will not alter the essential character of the neighborhood or district in which the zoning lot is located, nor impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare.

The proposed commercial use of the second floor is completely within the C1-9 District, over ten (10) feet distant from the District Boundary of the adjacent R8-B District; and, is within the recently enlarged second floor, with no additional enlargement or exterior construction intended.

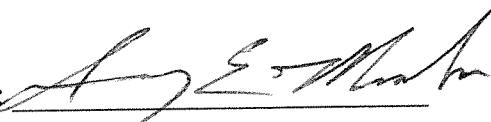
D. HARDSHIP NOT SELF-CREATED

The practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or a predecessor in title, but arise as a consequence of the limited size of the zoning lot, the limited area available within the first floor building walls for patrons, the date of construction of the building, the small number of dwelling units and their rent-stabilized status, and the inordinately high assessed valuation and resulting disproportionate real estate taxes.

E. MINIMUM VARIANCE NECESSARY

The variance requested relating only to supplementary use provisions within a completely enclosed building built prior to 1970, is the minimum variance necessary to afford the relief requested.

Respectfully,
Sheldon Lobel, P.C.

By: 
Irving E. Minkin

E. 75th

St. N

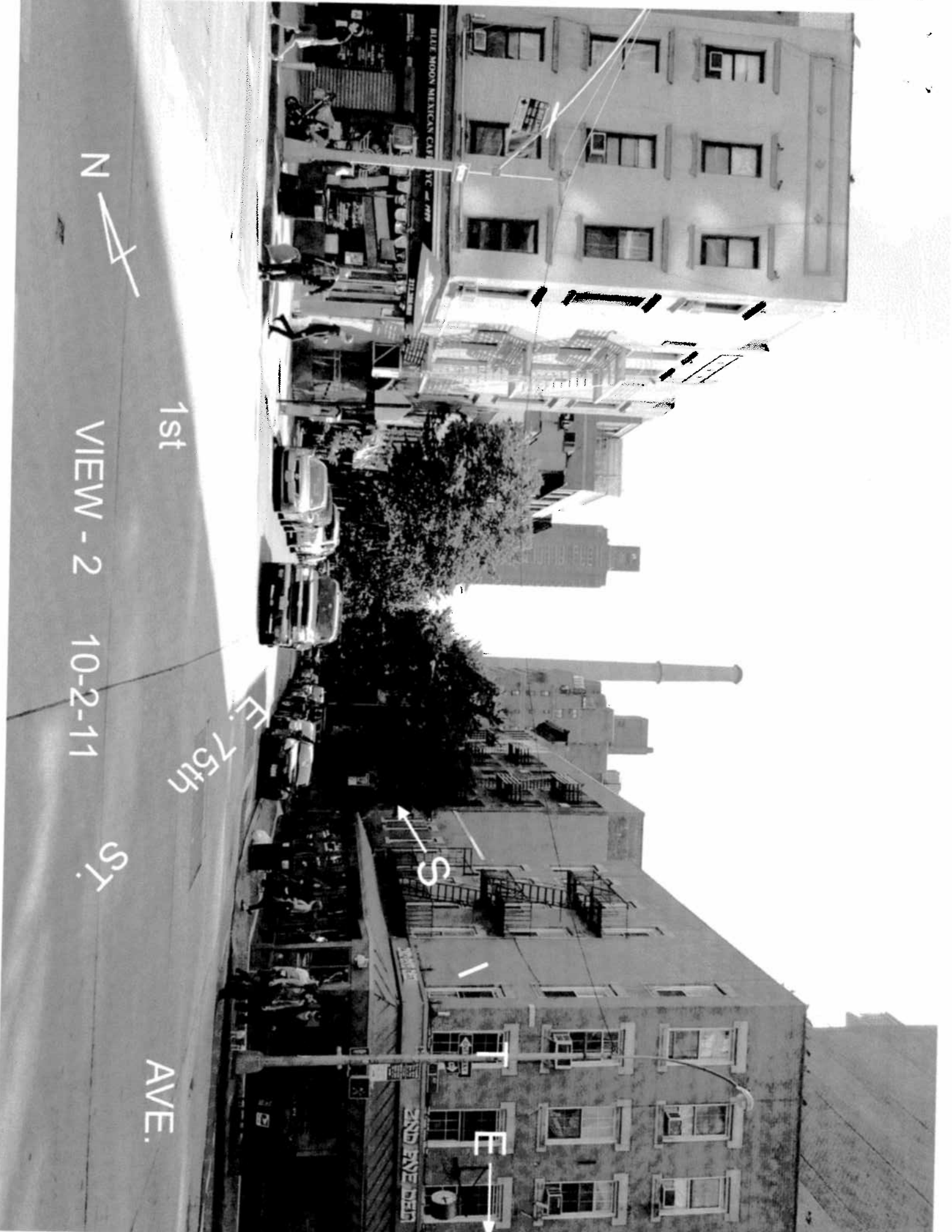
1st

VIEW - 1 10-2-11

AVE.

1442 1st AVE.
NEW YORK, NY





N →

1st

VIEW - 2

10-2-11

ST.

AVE.

E. 75th

← S

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SITE

1st

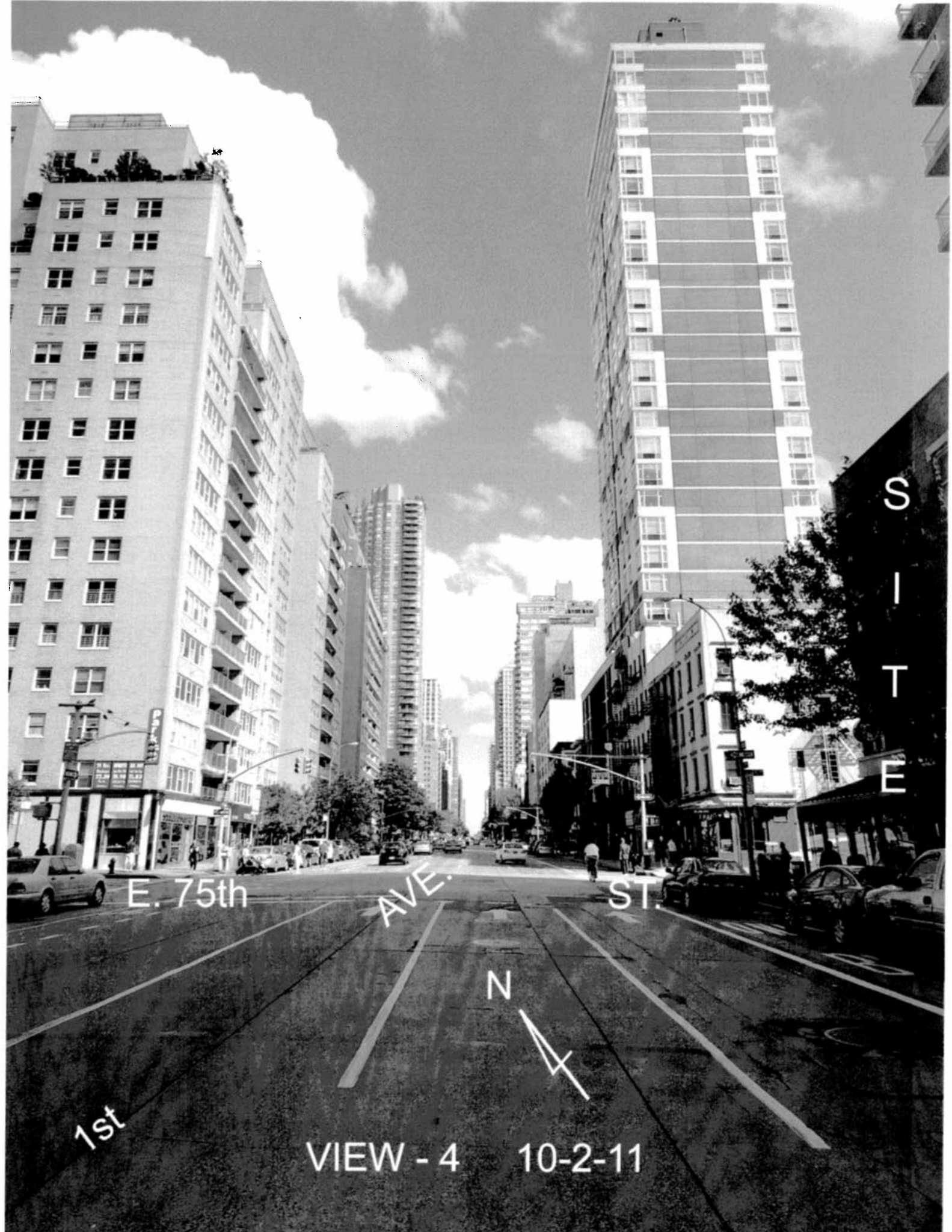
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VIEW - 3 10-2-11



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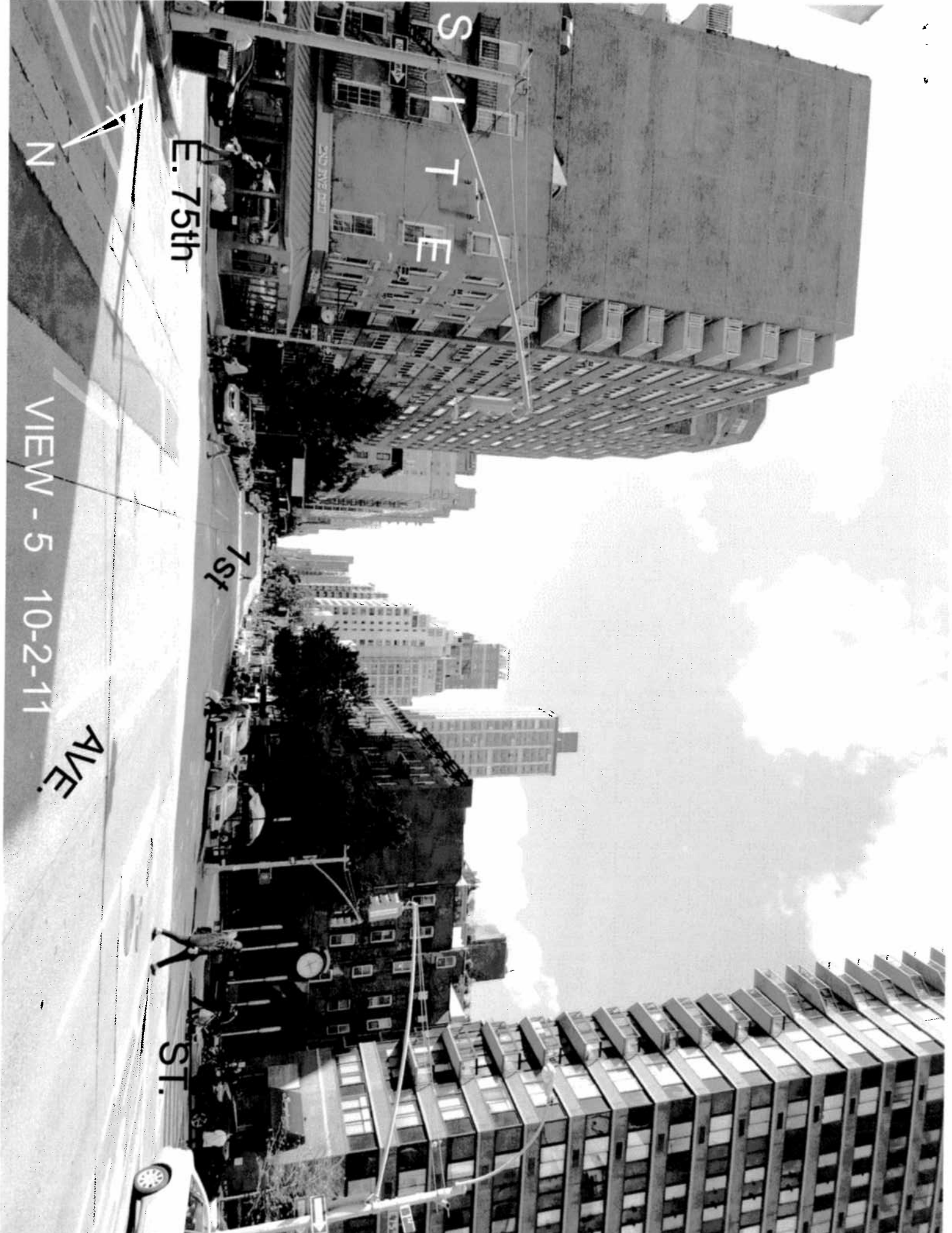
AVE.

ST.

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VIEW - 4 10-2-11



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75th

VIEW - 5 10-2-11

AVE.

ST.



AVE.

N

VIEW - 6
10-2-11

E. 74th

1st

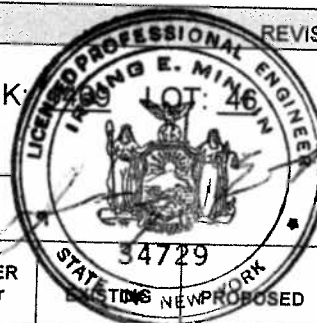
SITE

ST.

BSA CALENDAR NO.
SUBJECT SITE ADDRESS
APPLICANT

1442 First Avenue, New York, NY
Sheldon Lobel, P.C.

BLOCK:



ZONING DISTRICT C1-9

PRIOR BSA #

SPECIAL/HISTORIC DISTRICT

COMMUNITY BOARD 8

	* APPLICABLE ZR SECTION	MAXIMUM PERMITTED	MINIMUM REQUIRED	LEGAL PER C of O or BSA	EXISTING	NEW PROPOSED	COMPLIANT: "Y" IF NOT: "N" and INDICATE AMT OVER/UNDER
LOT AREA	23-32		1700	2248	2248	2248	Y
LOT WIDTH	23-32		18	25.5'	25.5'	25.5'	Y
USE GROUP (S)	32-10	2,3,4,6		2 & 6	2 & 6	2 & 6	Y
FA RESIDENTIAL **	35-23, 23-15	22,480		2742	2742	2742	Y
FA COMMUNITY FACILITY	33-123	22,480		0	0	0	Y
FA COMMERCIAL/INDUST.*	33-122	4496		2248	2248	4496 *	N
FLOOR AREA TOTAL **	35-31	22,480		7228	7228	7,228	Y
FAR RESIDENTIAL	35-23, 23-15	10.00		1.21	1.21	1.21	Y
FAR COMMUNITY FACILITY	33-123	10.00		0	0	0	Y
FAR COMMERCIAL/INDUST.	33-122	2.00		1.00	1.00	2.00	Y
FAR TOTAL	35-31	10.00		2.21	2.21	3.21	Y
OPEN SPACE	35-23, 23-14		0	0	0	0	Y
OPEN SPACE RATIO	35-23, 23-14		0	0	0	0	Y
LOT COVERAGE (%)	23-145	100%		100%	61%	61%	Y
NO. DWELLING UNITS	23-22, 35-40	23		4	4	4	Y
WALL HEIGHT	35-24	150'		46 ft.	46 ft.	46 ft.	Y
TOTAL HEIGHT	35-24	210'		46 ft.	46 ft.	46 ft.	Y
NUMBER OF STORIES				4	4	4	Y
FRONT YARD	33-20		N/A	0	0	0	Y
SIDE YARD	33-25		N/A	0	0	0	Y
SIDE YARD	33-25		N/A	0	0	0	Y
REAR YARD	33-261		N/A	0	0	0	Y
SETBACK(S)	35-24		10	N/A	N/A	N/A	Y
SKY EXP. PLANE (SLOPE)	35-24	N/A		N/A	N/A	N/A	Y
NO. PARKING SPACES	13-40	N/A	0	0	0	0	Y
LOADING BERTH(S)	36-62	N/A	0	0	0	0	Y
OTHER: * (2 nd Floor)	32-421	-	-	-	Vacant	U.G. 6	N*

* In Applicable ZR Section column: For RESIDENTIAL developments in non-residential districts, indicate nearest R district, e.g., R4/23-141, and contrast compliance. For COMMERCIAL or MANUFACTURING developments in residential districts, contrast proposed bulk and area elements to current R district requirements, except for parking and loading requirements (contrast to nearest district where use is permitted). For COMMUNITY FACILITY uses in districts where not permitted, contrast to nearest district where permitted. For all applications, attach zoning map and highlight subject site. Be sure that all items noted in the DOB Denial/Objection are included.

NOTES: * Although proposed Use Group 6 on second floor is conforming and complying, it is contrary to supplementary use regulations due to residences above.

** Presently, the second floor, previously residential is vacant.



Premises

- Legend
- Streets
 - Miscellaneous Text
 - Possession Hooks
 - Boundary Lines
 - Lot Face Possession Hooks
 - Regular
 - Underwater
 - Tax Lot Polygon
 - Condo Number
 - Tax Block Polygon

