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**The City of New York**  
**Manhattan Community Board 8**

**Zoning and Development Committee Meeting**  
**Lenox Hill Hospital**  
**130 East 77<sup>th</sup> Street (Lexington-Park)**  
**Michael Bruno Presentation Room**  
**Wednesday, April 26, 2017, 6:30PM**

**Present:** Elizabeth Ashby (co-chair), Gayle Baron, Michele Birnbaum, Barbara Chocky, Sarah Chu, Edward Hartzog, Craig Lader, Rita Popper, Marco Tamayo, Cos Spagnoletti, David L. Rosenstein, and Elaine Walsh (co-chair)

The meeting was called to order at 6:35 PM by Elaine Walsh, Committee Co-Chair.

**Update on 180 East 88th Street**

The first order of business was an update on construction at 180 East 88<sup>th</sup> Street. New York City Department of Buildings (DOB) issued Stop Work Order last year because construction was not in accordance with the approved plans. The Stop Work Order has been lifted and construction continues because the developer has satisfied all but one of DOB's current concerns.

Community Board 8 (CB8) and Upper East Side civic organizations have asked that all permits be revoked because the proposal does not comply with the provisions of the Zoning Resolution. CB8 has pointed out that the building would be in violation of the "Sliver" Law because the street wall is less than 45 feet wide, which would limit the height of the building to 60 feet or 100 feet if the lot is deemed a through lot.

To date, DOB has not been particularly responsive to concerns raised by community groups and CB8 despite ongoing follow through. If DOB does not withdraw the permits, the next step would be an Application to the Board of Standards and Appeals to compel them to do so.

**Height limits for 1st, 2nd, 3rd, and York Avenues, and Questionable Tactics to Evade the Text and Intent of the Zoning Resolution**

Discussion next centered on building height limits for First, Second, Third and York Avenues where there are no height limits. Questionable tactics have been used by developers to evade the intent of zoning regulations. The livability of our neighborhood depends upon human scale development. First, Second, Third, and York Avenues are zoned R-10 or its equivalent and remain at risk for a proliferation of out of scale buildings as found in other areas of the City. A large proportion of buildings on these avenues are considerably less than 210 feet tall. About 90% of the buildings on York, 92% on First, 93%

on Second and 87% on Third Avenue are less than 210 feet tall. Buildings taller than 210 feet limit light and air, cast shadows over parks and playgrounds and change the character of the neighborhood. CB8 sent a letter to the New York City Department of City Planning (DCP) expressing concern about the lack of adequate height limits. The Board will be involved with the preparation of an Application for zoning text changes that will mandate the needed height limits.

Since mechanical space does not count in Floor Area Ratio (FAR), buildings become higher when excessive mechanical floors are placed in the middle of the building. Other questionable tactics include higher than normal ceilings, vacant or open floors, pointless zoning lot changes, and gerrymandered zoning lot mergers. These are deliberate maneuvers on the part of developers to create taller buildings in as much as apartments on higher floors provide greater financial return for the developer. As an example, 432 Park Avenue has 19 floors of mechanicals. CB8 will be involved with the preparation of an Application for zoning text changes that prevent these and similar abuses.

### **Height limits for R10-A and R9-X Districts**

R10A and R9X zoning districts under Zoning for Quality and Affordability (ZQA), according to the DCP, were to have no height increases and changes except in the R10A and R9X affordable development component. In R10-A districts, limits go from 210 feet to 235 feet and on Lexington Avenue, they increase from 185 feet to 215 feet. CB8 wrote to Carl Weisbrod, the then Director DCP, requesting that the increase in these height limits revert to the original zoning. The additional FAR allowed for affordable housing can be accommodated within the original height limits. There is concern that the increased height limits will give developers an incentive to demolish smaller buildings and construct higher towers. Moreover, a major issue is that with higher buildings permitted there will be a net loss in affordable housing contrary to DCP's stated intent. A discussion ensued regarding fairness when it comes to height limits and how to retain neighborhood character.

### **Update on Privately Owned Public Spaces (POPS)**

The last discussion centered on Private Open Public Space (POPS). POPS were first conceptualized as a way for the city of New York to partner with commercial and residential properties to create urban public space in densely developed commercial and residential neighborhoods. These spaces were created through zoning bonuses in the form of additional floor area ratios (FAR). The New York City Controller's office completed an audit on POPS and found that the City is not properly overseeing POPS agreements. In some cases, violations for years went without DOB's enforcement. DOB also has no adequate data base of POPS. Half of the POPS are not required to post signs since they were built before signing requirements. Many residents in buildings with POPS are not aware of the existence of their POPS. Buildings can be issued a fine of up to \$25,000 on the second violation if space is not properly maintained and open to the public. The Controller's report recommended corrective action regarding these deficiencies. Recently, the New York City Council introduced two local laws to amend the Administrative Code of the City of New York in relation to penalties for violations of conditions and restrictions on POPS as well as signage requirements in these spaces. In the Fall of 2012, CB8's Zoning and Development committee conducted a study of the POPS in the district. The study was completed by graduate students in the Hunter College Strategic Planning class. There are 76 POPS in CB8, just fewer than 25% of the program total; there are 3 cohorts of POPS and regulations depend on when they were built. Today no POPS can be built in a residential building, only community facilities are permitted to include a POPS.

Based on the findings of the study, the committee attempted to work with the NYC Department of City Planning and the Department of Buildings to monitor and enforce the regulations. Given the regulations that require buildings to have a ULUP and architect develop any changes for a POP, the cost can be prohibited. There was no action taken by the City agencies to follow up with our recommendations. Elaine Walsh will draft a letter for Jim Clynes to sign, supporting these laws and addressing additional concerns. The POPS report can be found on the CB8 web site under the zoning and development committee.

### **Old Business**

The subway entrances at 147 E 86<sup>th</sup> Street (NE corner of 86<sup>th</sup> & Lexington), also known as the “Pet Co” site, have been reviewed by the MTA. The entrance steps will be widened 1 foot, leading to periodic closing for “public safety”. There is also discussion about the development of 147 E 86<sup>th</sup> Street, and the requirement for a loading birth. The site is 12 FAR, subway stairs and elevator will be on 86<sup>th</sup> street and the proposed plans call for widening the sidewalk 9’ extending from Lexington 110’ toward third Ave

### **New Business**

The proposal for school and residential development at 96<sup>th</sup> and 97<sup>th</sup> Streets & 2<sup>nd</sup> and 1<sup>st</sup> Avenues was approved by CB11. The extreme height of the buildings will have potential effects on CB8, and simulations are being done to see those effects. CB11 asked that CB8 comment on the proposal. Elizabeth Ashby will draft a letter for Jim Clynes’ signature.

The meeting was adjourned at 9:10 PM.

**Elizabeth Ashby and Elaine M. Walsh, Co-Chairs  
Zoning & Development Committee**