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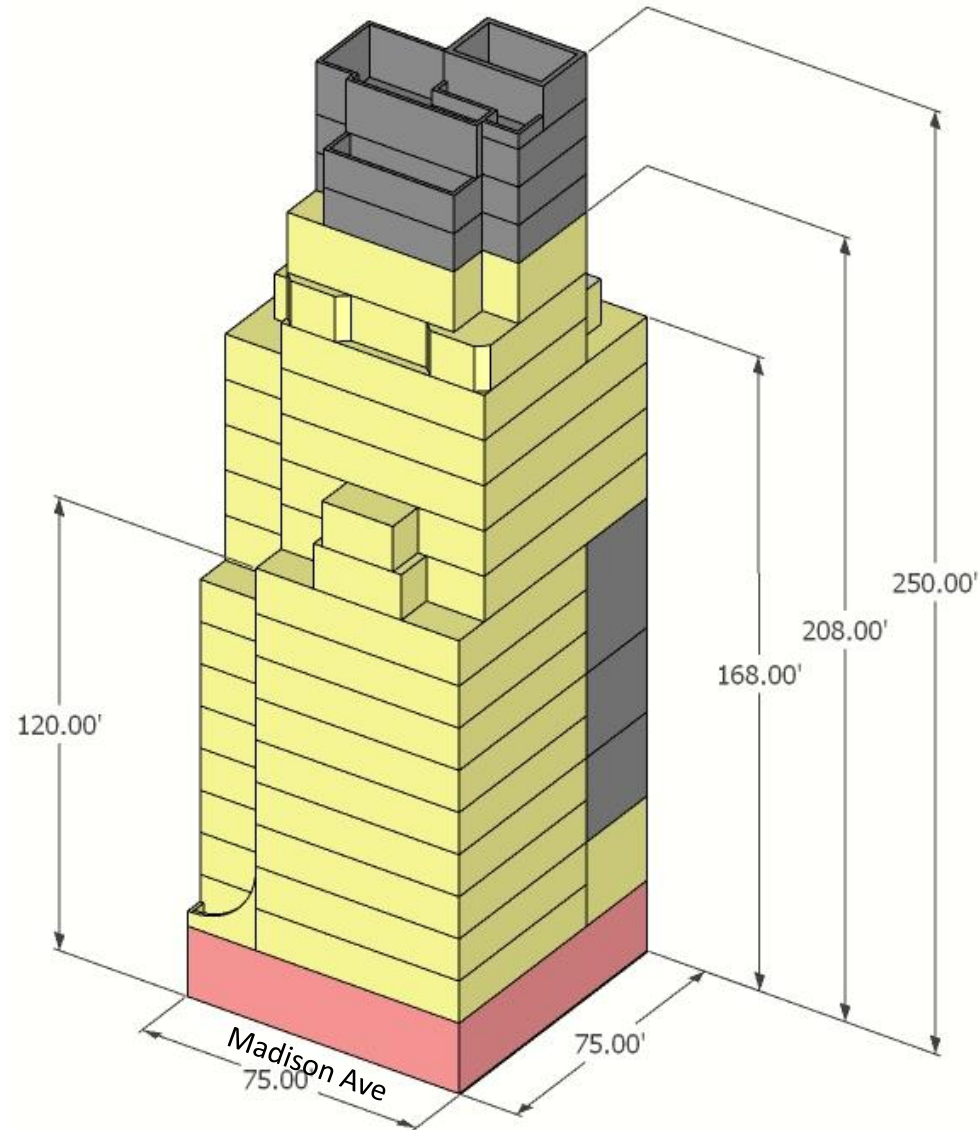
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**Zoning issues on the UES
1230 & 1045 Madison Avenue
&
Informational updates**

2/27/2020

In 2019 a new building at 1230 Madison (between 88th and 89th) was approved

- 250 feet to top of mechanicals
- 208 feet to top of residential floors
- 42 foot mechanical bulkhead
- 120 foot base height
- It also had a mini-mechanical void in the lower floors



Enormous mechanicals are being allowed as permitted obstructions all over NYC, and are being incorporated into building design

- Permitted obstructions are allowed to exceed maximum building height up to 40 feet in this district



There are two zoning issues for discussion on 1230 Madison

1. What counts as permitted obstructions to max height?
2. How does this comply with Special Madison Avenue regulations?

In 2012, NYC changed permitted obstructions in the Zoning Resolution

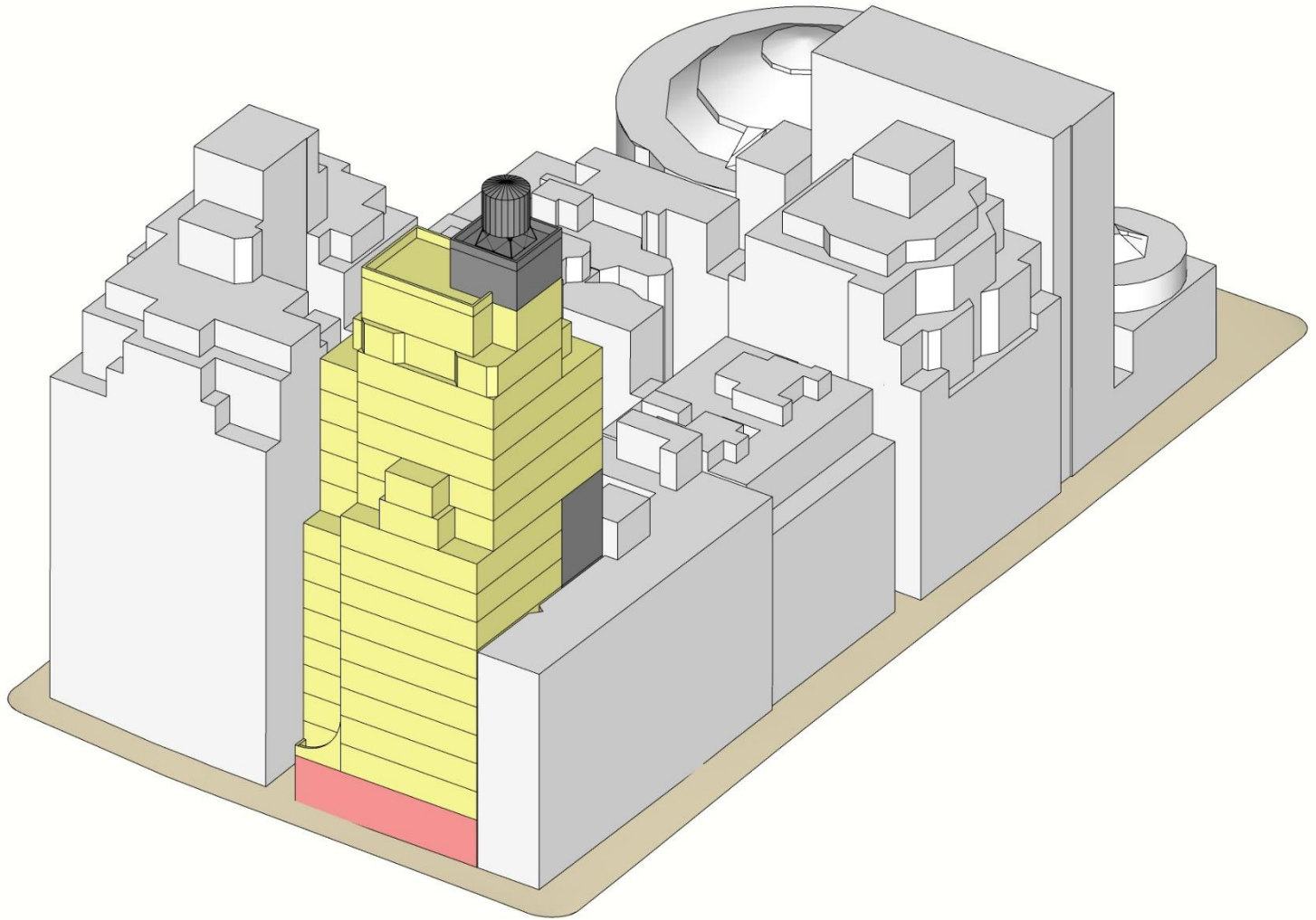
ZR 23-62(g) changed from:

*Elevators or stair bulkhead, roof water tanks
(including enclosures)*

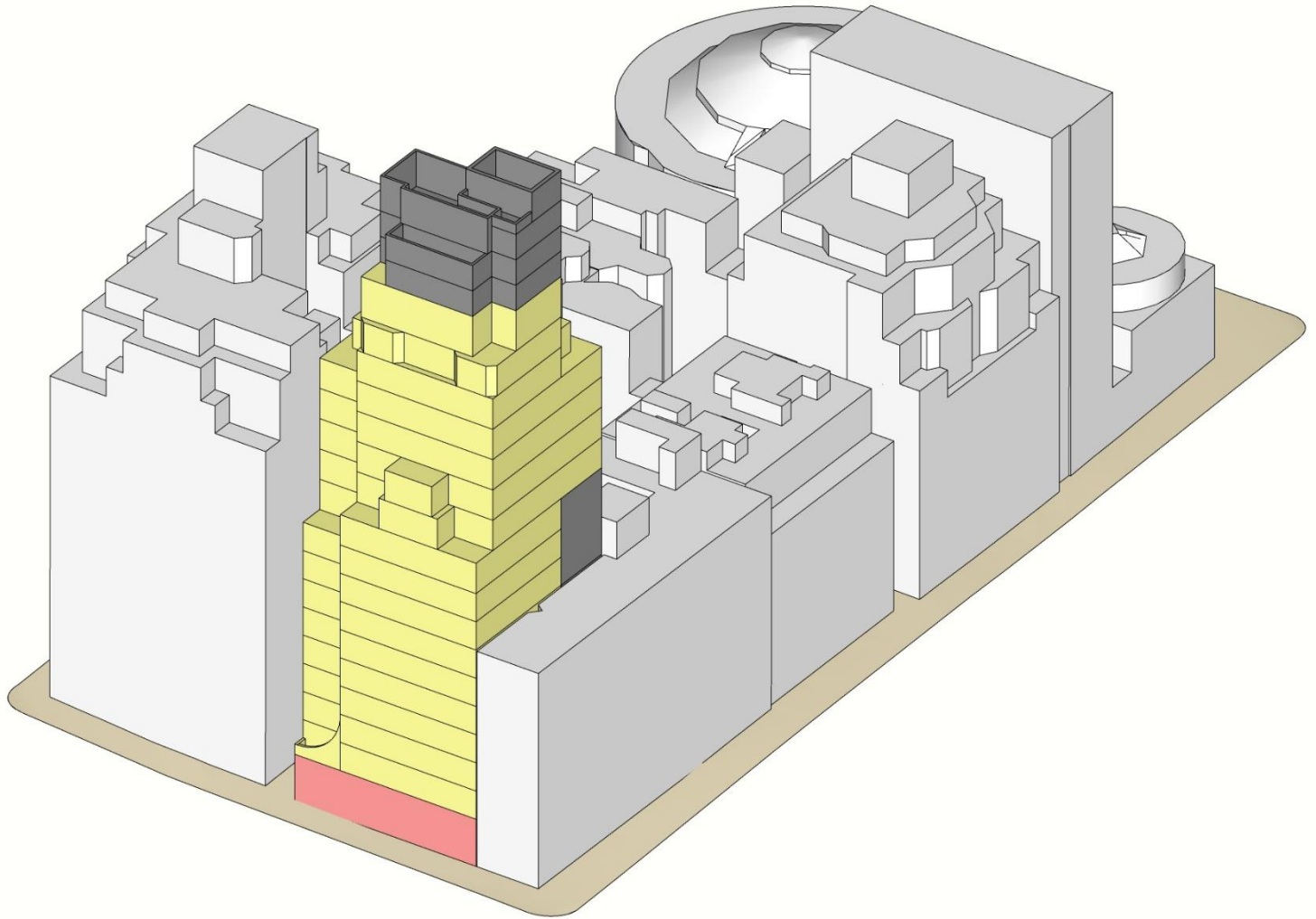
to

*Elevator or stair bulkheads . . . , roof water tanks
and **#accessory# mechanical equipment (including
enclosures)***

Before 2012, the rooftop might have looked like this



**That small change allows enclosures of basically everything
on the roof**



This change was a part of the Zone Green text amendments



NYC PLANNING



text amendment - **Approved!**

Other rooftop equipment: In a dense city where space is at a premium, rooftops can serve a wide range of purposes, including managing stormwater, providing recreation space, or generating renewable energy. In addition, systems such as boilers and cogeneration facilities can be safer and more efficient when located on roofs. Key building features such as stair and elevator bulkheads must also be located on roofs. However, zoning districts with contextual height limits restrict the space available for these systems above the maximum building height.



Courtesy: NYC DEP

The proposal: Allow low-lying features such as **green roofs**, recreational **decks**, other **stormwater detention systems** and **skylights** anywhere below the parapet, regardless of building height. A guardrail no more than 30% opaque would be allowed up to 3'6" above the top surface of the roof. Greater volume, similar to what is already allowed in many Special Districts, would be allowed above the maximum building height to accommodate modern **bulkheads**, with requirements for setback and screening of equipment.

But Madison Avenue is protected by the Special Madison Avenue Preservation District (SMAPD), which has unique height protections

This district limits building height to 210 feet, with conditions:

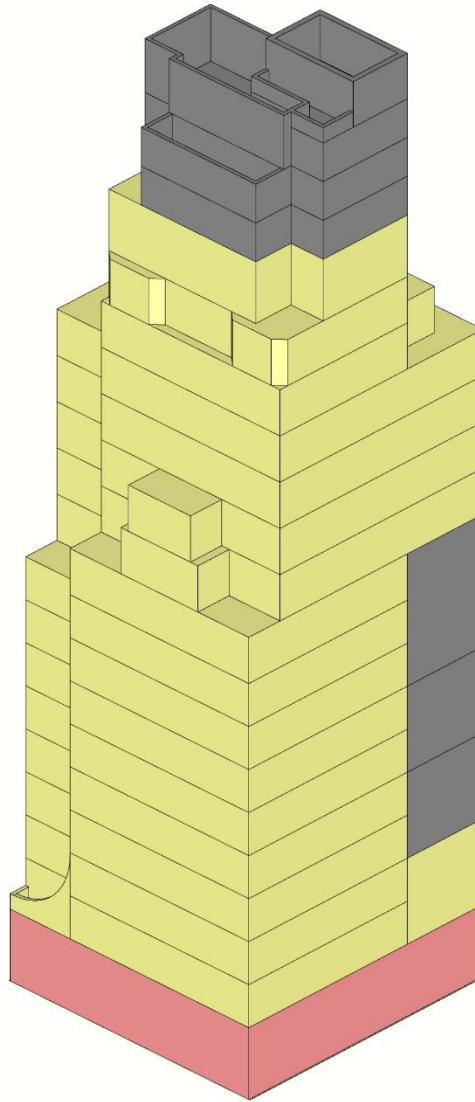
“the height of all #buildings or other structures# . . . may exceed 170 feet, to a height of 19 #stories# or 210 feet, whichever is less, **provided that the gross area of each #story# located above 170 feet does not exceed 80 percent of the gross area of the #story# directly below it.**

The idea is to recreate the form seen in many tall Madison Avenue buildings



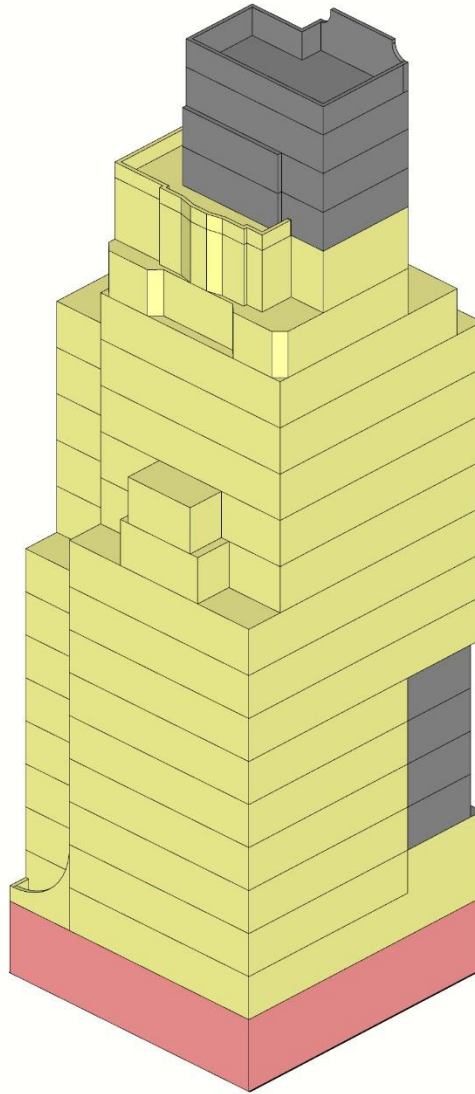
The residential floors did “pyramid”, but the mechanical floors didn’t

- Neighbors filed a complaint
- DOB recognized there was a problem



Original approval

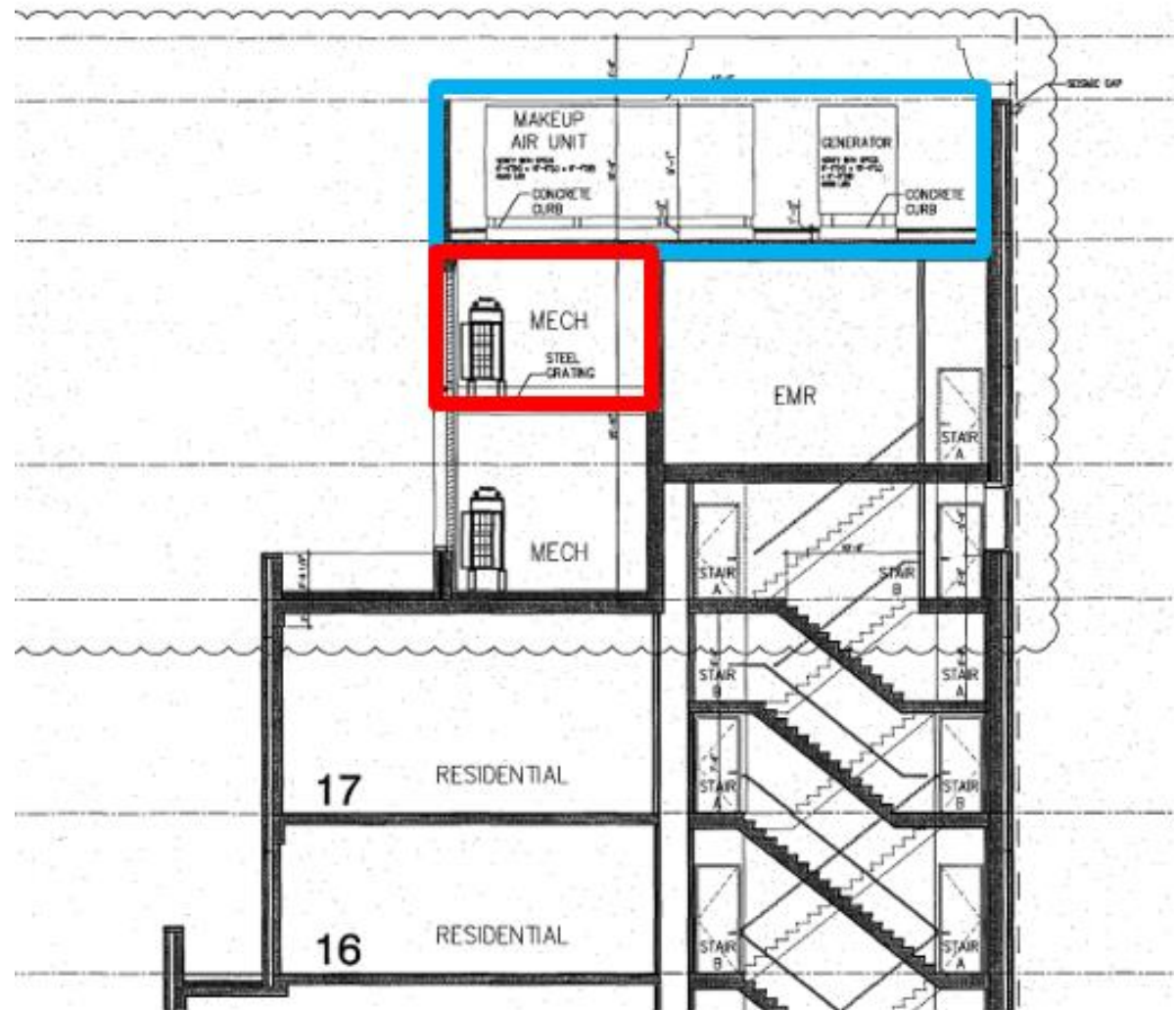
DOB required changes, and the bulkhead got smaller, but it still doesn't pyramid. How?



Current (December 2019)

The applicant claims that red marked area does not count as gross floor area, presumably because the floor is steel grate

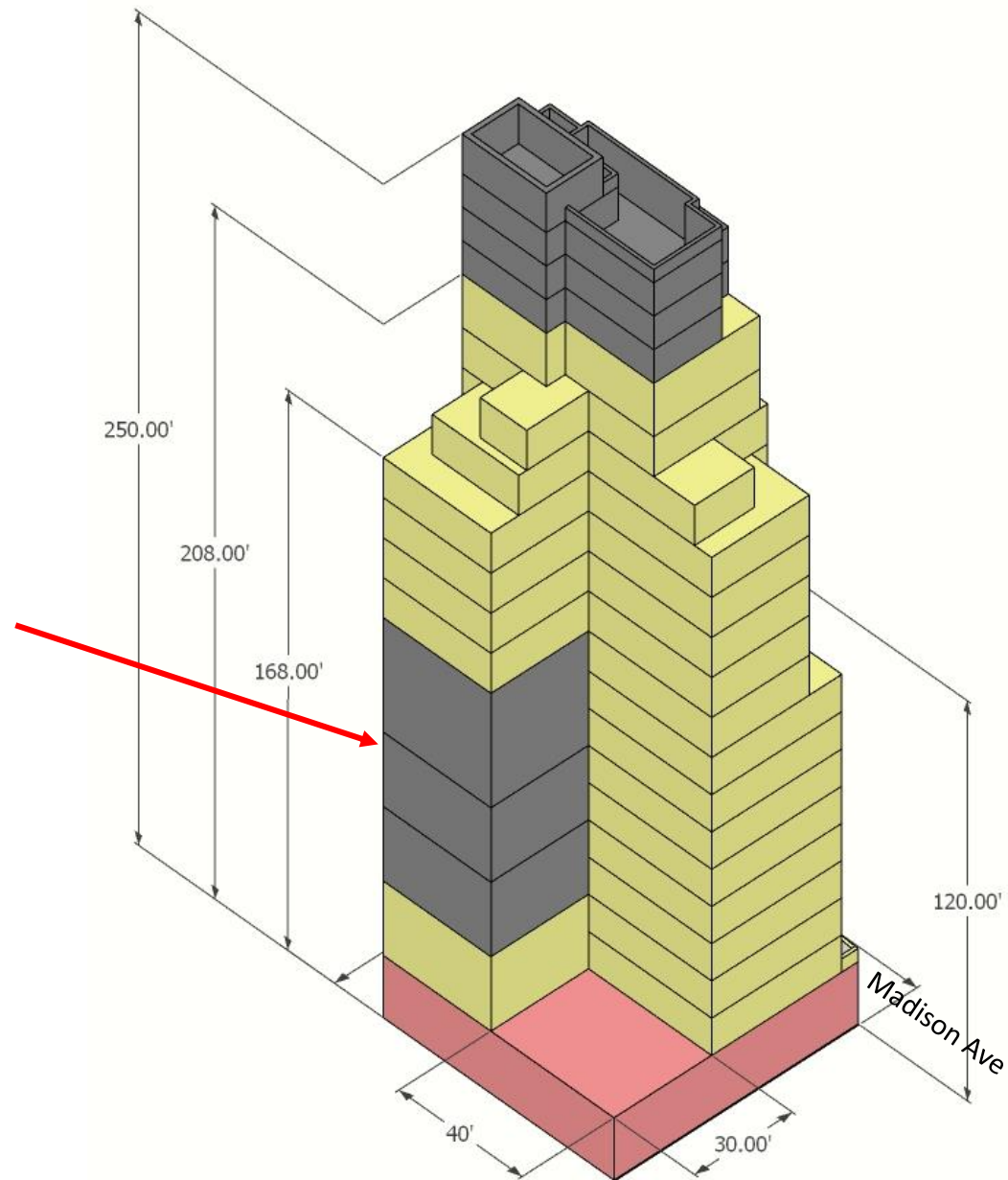
- The area in blue does not count as a “story,” it’s a rooftop
- Which means that the rooftop can be huge, much larger than the floor beneath it
- Which means the building does not pyramid, and the neighbors continue their lawsuit



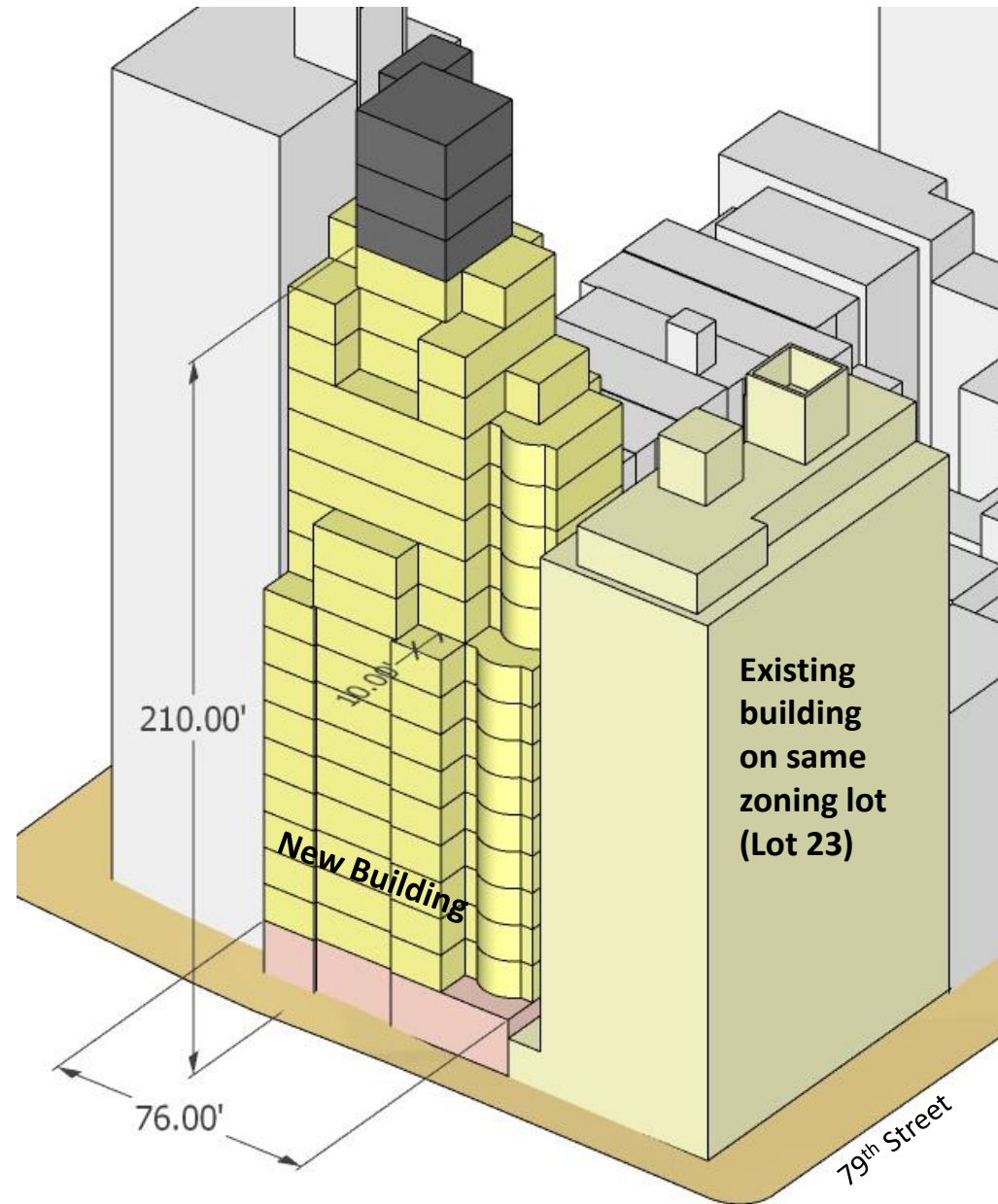
Bulkhead section

The lower mechanical space avoids the “voids” text amendment because it is located on a floor that is predominately residential

This largely empty ~100 foot space fills out the envelope



1045 Madison has a completely different issue

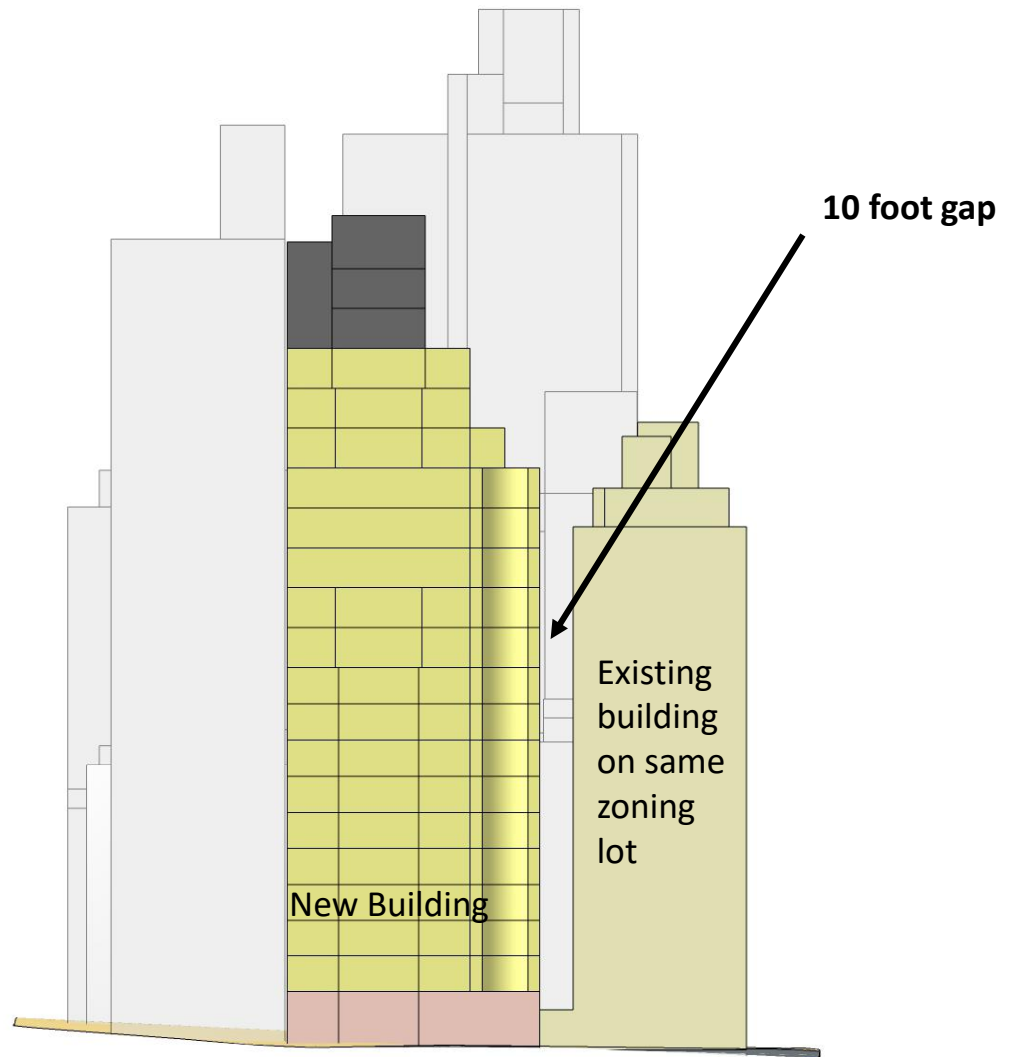


Section 28.2 of New York State's Multiple Dwelling Law states:

"[if] a multiple dwelling is placed anywhere on the same lot with another building, there shall be left between the two buildings an open space unoccupied from the ground up and at least forty feet in depth

Zoning has similar language, but the distances are 40, 50, or 60 feet, depending on building height and window/wall condition

The new building and the existing building on the zoning lot are separated by just 10 feet. How is this legal?



DOB invented a concept called: “Former Lot Line Theory” (FLLT)

First used in 1983 on 1300 First Avenue in CD8! The gap between the tenement and the new building failed building spacing



FLLT allows DOB to pretend a zoning lot line exists where the zoning lot line was actually erased

Quoting DOB Commissioner Martin Rebholz in 2014:

FLLT is “a zoning concept, not defined in the NYC Zoning Resolution,” but “historically acknowledged and granted by the Department [of Buildings]”

In my opinion, DOB should never use zoning concepts not in the Zoning Resolution. They interpret law, they do not make it

- And because FLLT not based in law, it has changed over time and now covers all situations where zoning lot mergers are used
- Makes compliance issues with building spacing go away, but it has been expanded to cover undersized courts and yards
- To my knowledge, the neighbors' lawsuit and appeal of 1045 Madison Avenue was the first time FLLT has been challenged

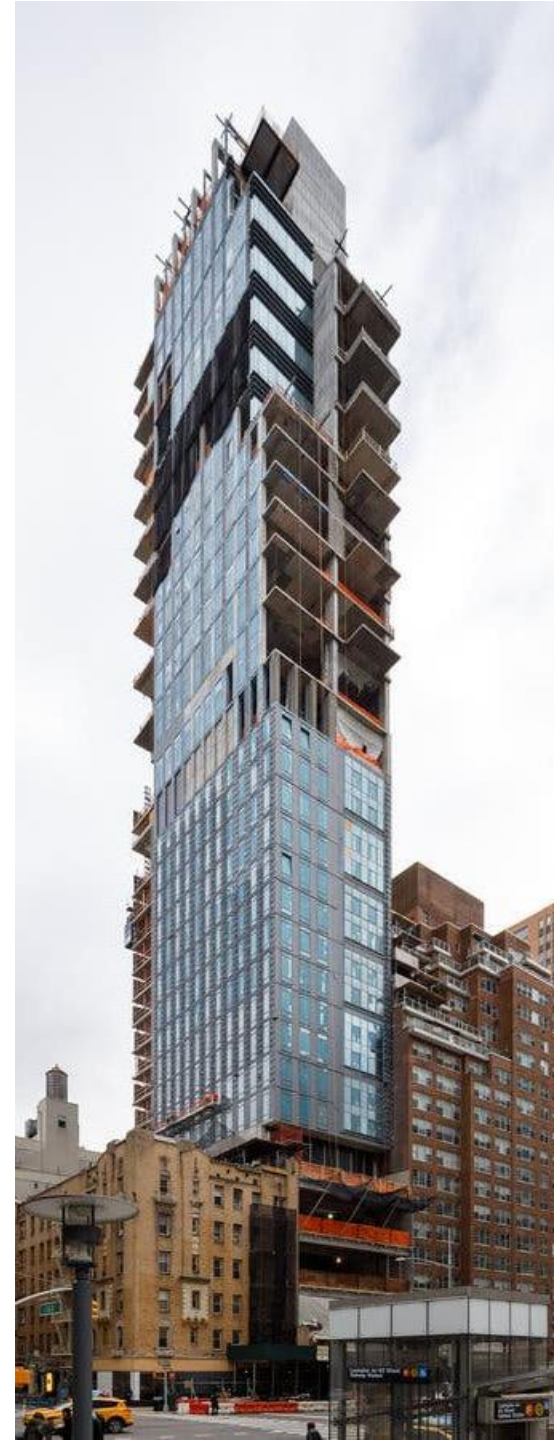
The applicant's response to the lawsuit was to undo the zoning lot merger and walk away from the floor area they purchased

- This moots the case. Legality of FLLT is still unsettled
- The legality of the undoing of the zoning lot merger, however, has been challenged, because the merger cured a non-complying inner court, so it may come back

Immediate lesson: If there are zoning lot mergers that rely upon FLLT for their approval, they can be challenged!

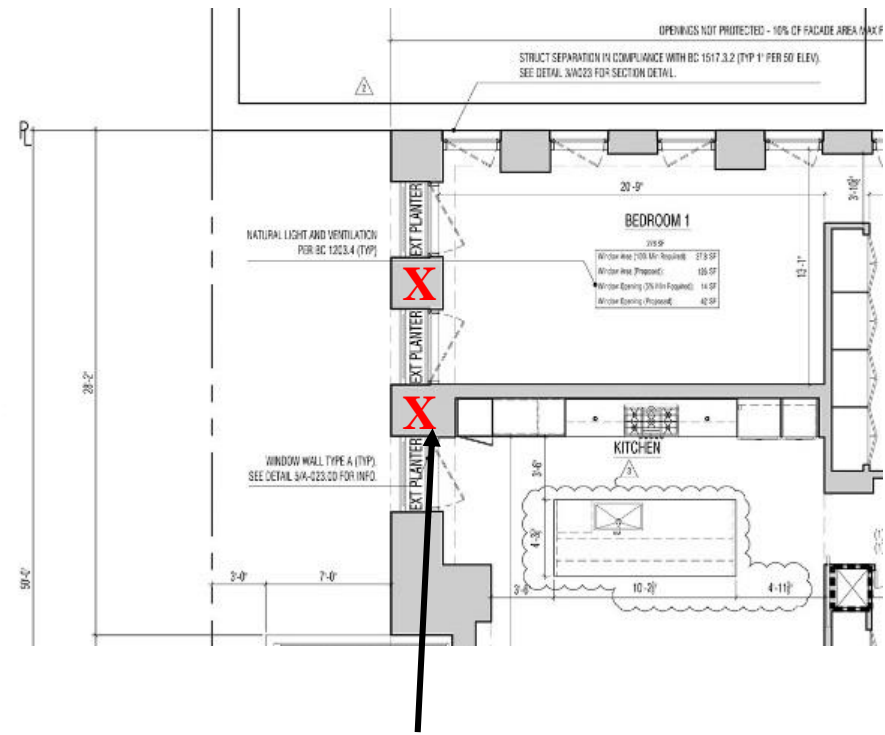
Informational update: 1059 Third Ave

- CB8 was briefed in 2019 on how 1059 Third Avenue filed two sets of plans, which described a building too big for its zoning district
- The building was challenged. DOB accepted the challenge, stopped work and required new plans
- Applicant filed new plans showing major changes in the building to remove floor area
- But instead of cutting off the top, they removed floor area from the sides



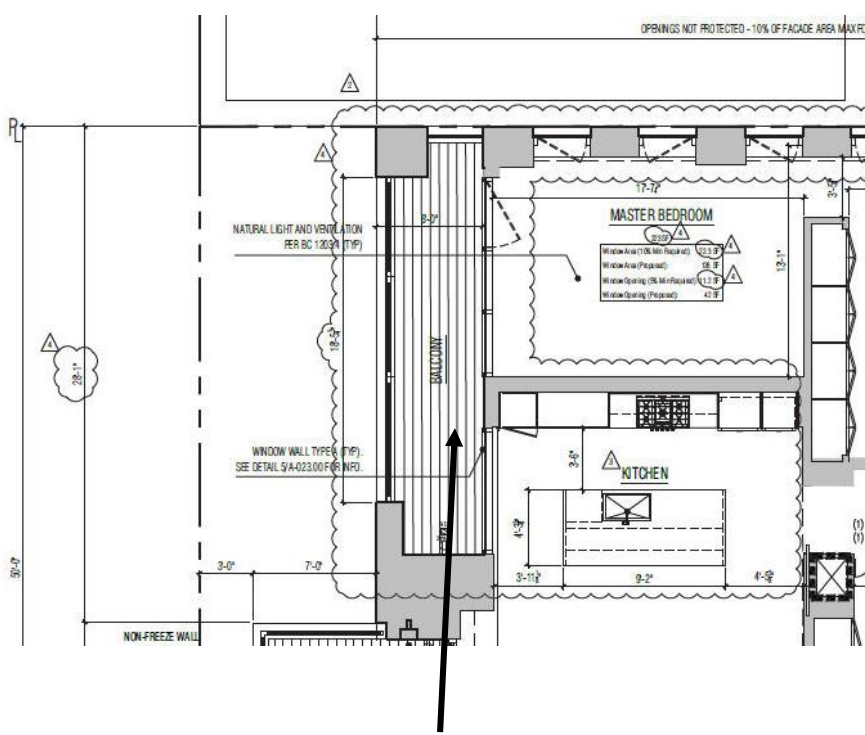
Balconies were added

Prior plan



Columns removed

Approved plan



Balcony added, floor area removed

The exterior walls were redesigned to qualify for the Green Wall deduction

Prior plan

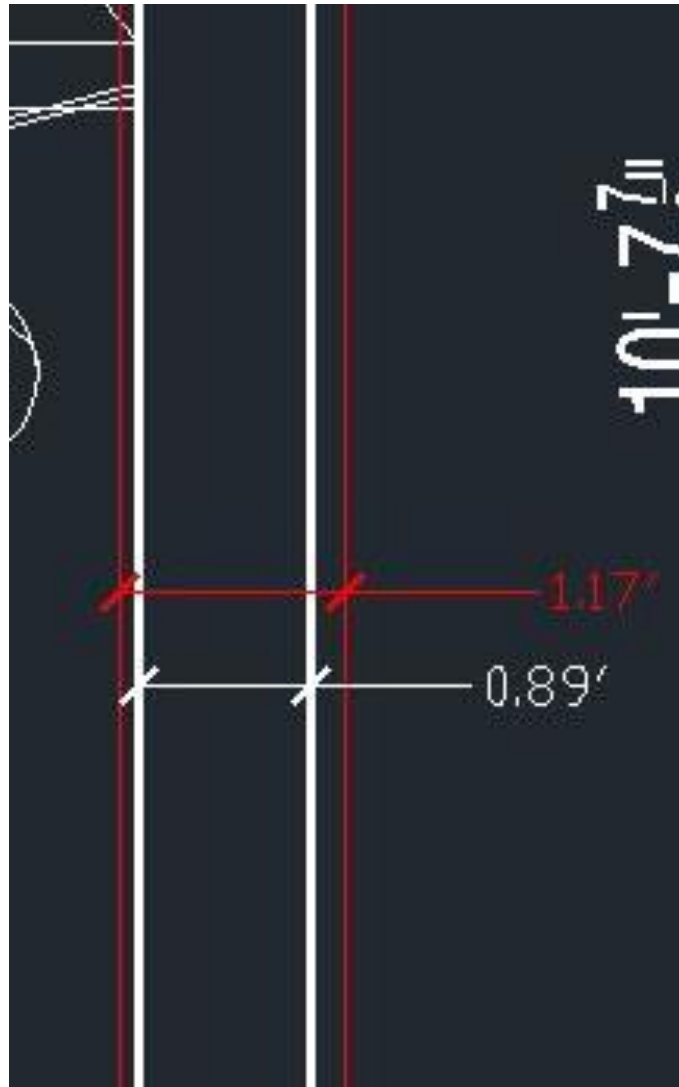


Approved plan



By increasing the width of the walls, up to 8 inches of exterior wall can be deducted from zoning floor area saving close to 4,000 SF!

**Many small deductions (pipe chases, chutes) changed.
Some inexplicably adding a few inches to the sides**

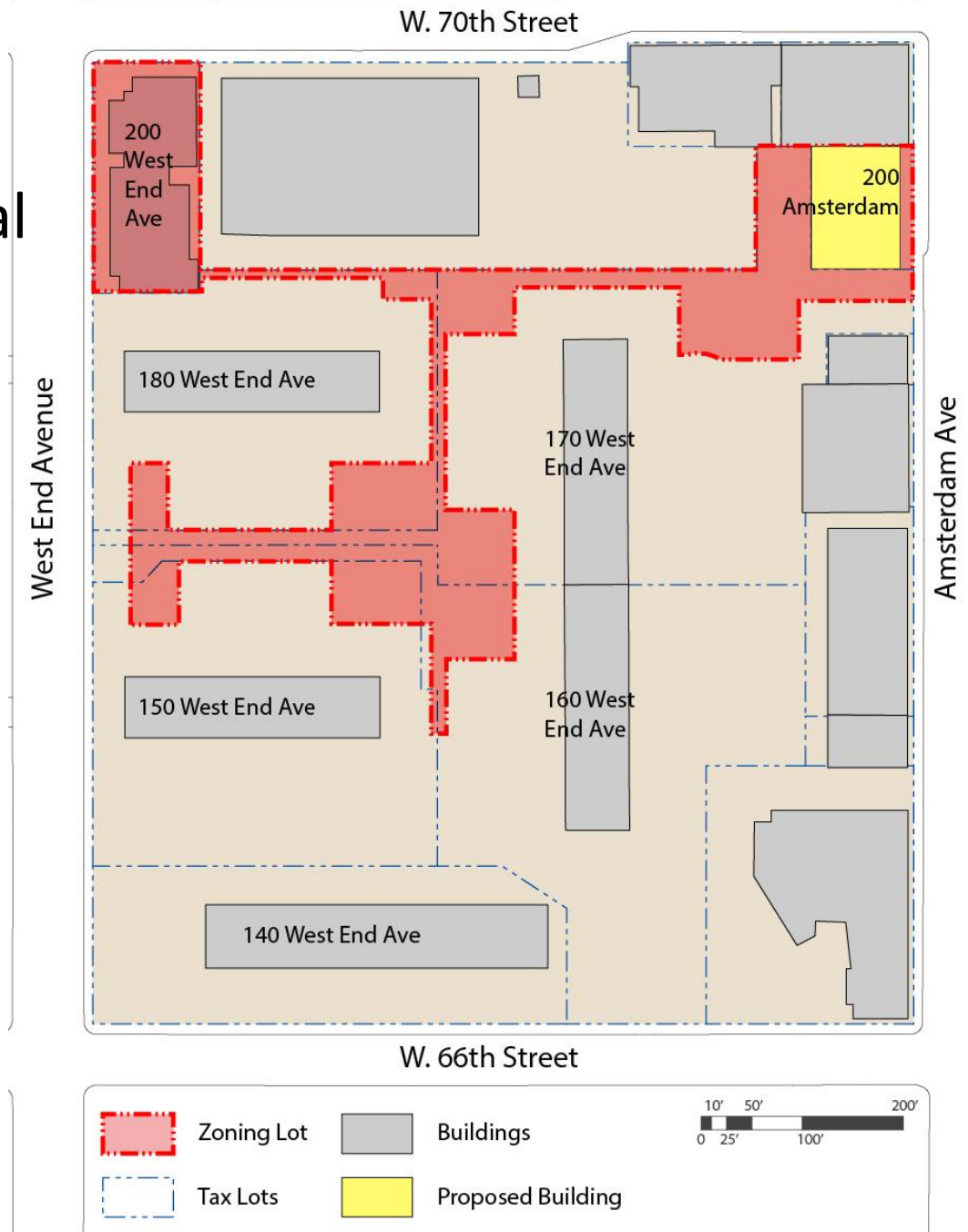


While the building is no longer grossly illegal, Friends challenged the new plans in December 2019

- DOB denied the challenge in January 2020
- An appeal was filed. The appeal is still outstanding
- The plans show substantial demolition and rebuild throughout the building. Will these changes actually occur?

Final informational update:

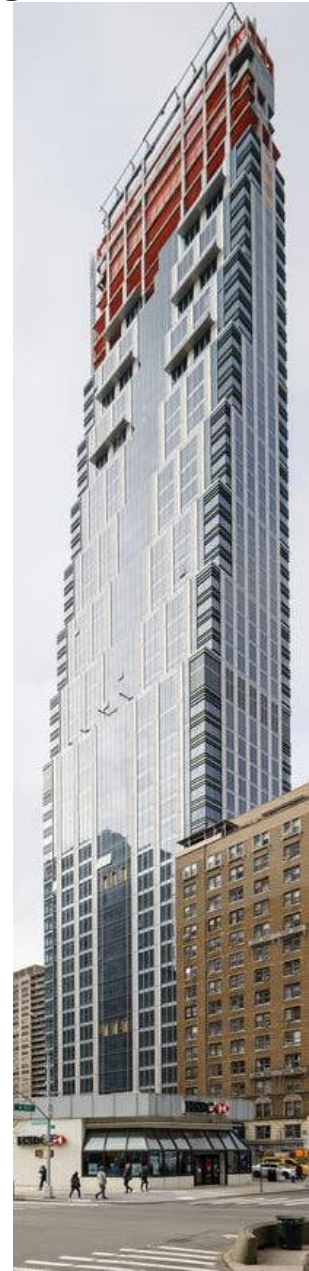
Court rules that the
gerrymandered zoning lot
of **200 Amsterdam** is illegal



The zoning lot was made up of bits and pieces of tax lots.

Normally, zoning lots are one or more whole tax lots

- DOB acknowledged that they should have never approved the zoning lot and planned to change the policy going forward
- Judge said that the City must fix errors
- 200 Amsterdam developer stipulated early on that they would proceed at their own risk
- 200 Amsterdam would have to lose more like 40 stories to be legal under their own tax lot, not the 20 stories reported in the press



Developer will appeal, may also seek other remedies

- One remedy is making the zoning lot legal by merging with whole tax lots of one or more Lincoln Towers buildings
- Another remedy is going to the BSA for a variance
- The appeal and possible remedies will take considerable time before any building is demolished

Questions/Comments/Discussion



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