

Amendment of BSA Variance

BSA Calendar Nos. 88 thru 90-77-BZ

**220 E. 86th Street and
217-219 E. 85th Street
New York, NY 10028**

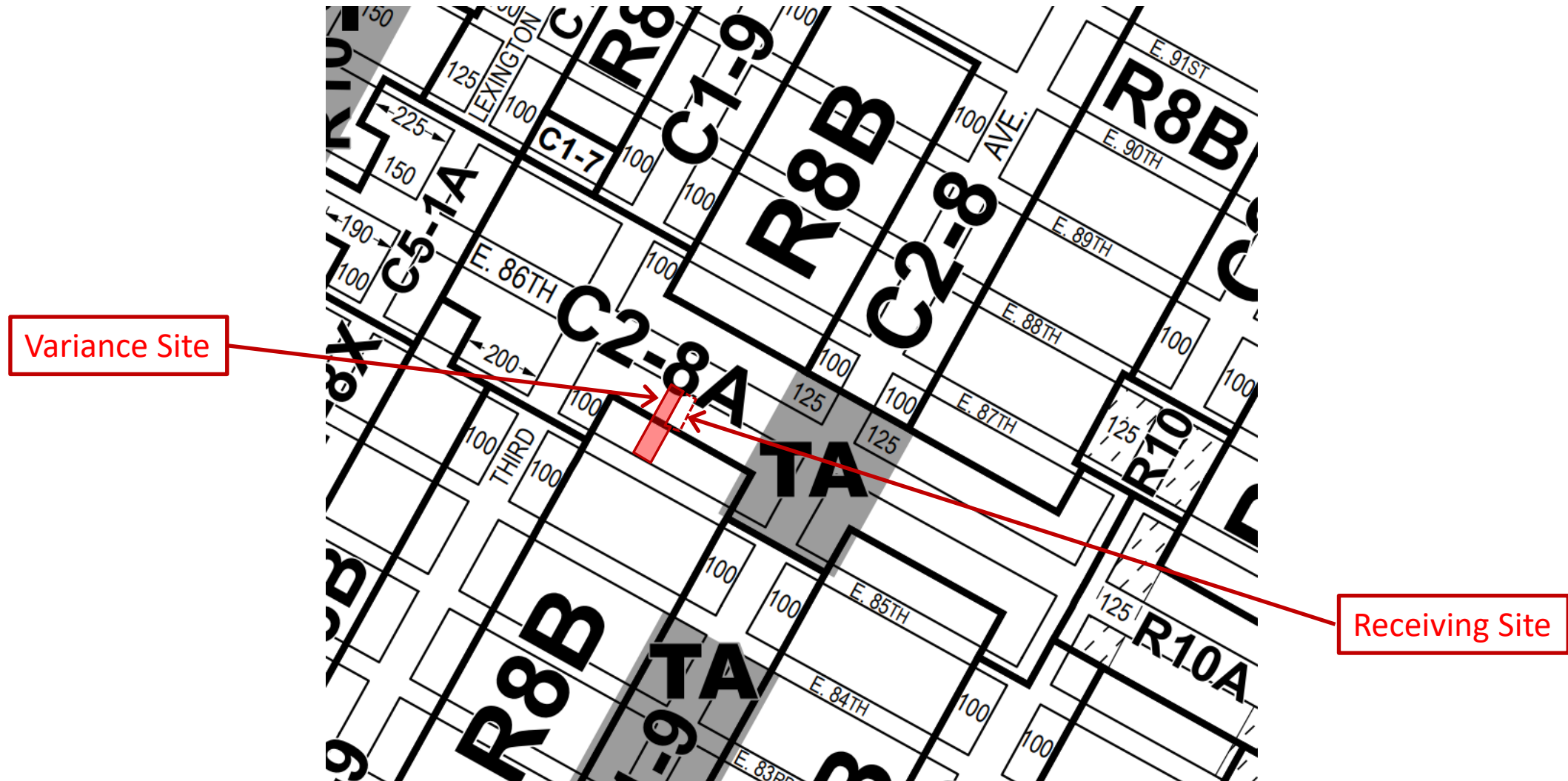
Block 1531, Lot 38



Informational Meeting – June 27, 2023

Zoning and Development Committee, Community Board 8

Partial Zoning Map 9a



Variance Site



BSA History - Variances

- (a) July 12, 1977 – Original Variances 88-77-BZ, 89-77-BZ, and 90-77-BZ:**
BSA granted three separate variances to allow commercial use (i) on the ground floor and cellar in the R8B district, and (ii) on the second floor in the C2-8A district.

- (b) December 8, 1992 – Amendment of Original Variances:** The variances were amended to allow for modifications to the floor plans.



BSA History – Special Permit

(c) January 25, 1994 – Special Permit to Legalize PCE under 173-92-BZ: Special permit approved to legalize Physical Culture Establishment for use as taekwondo center until January 25, 2004.

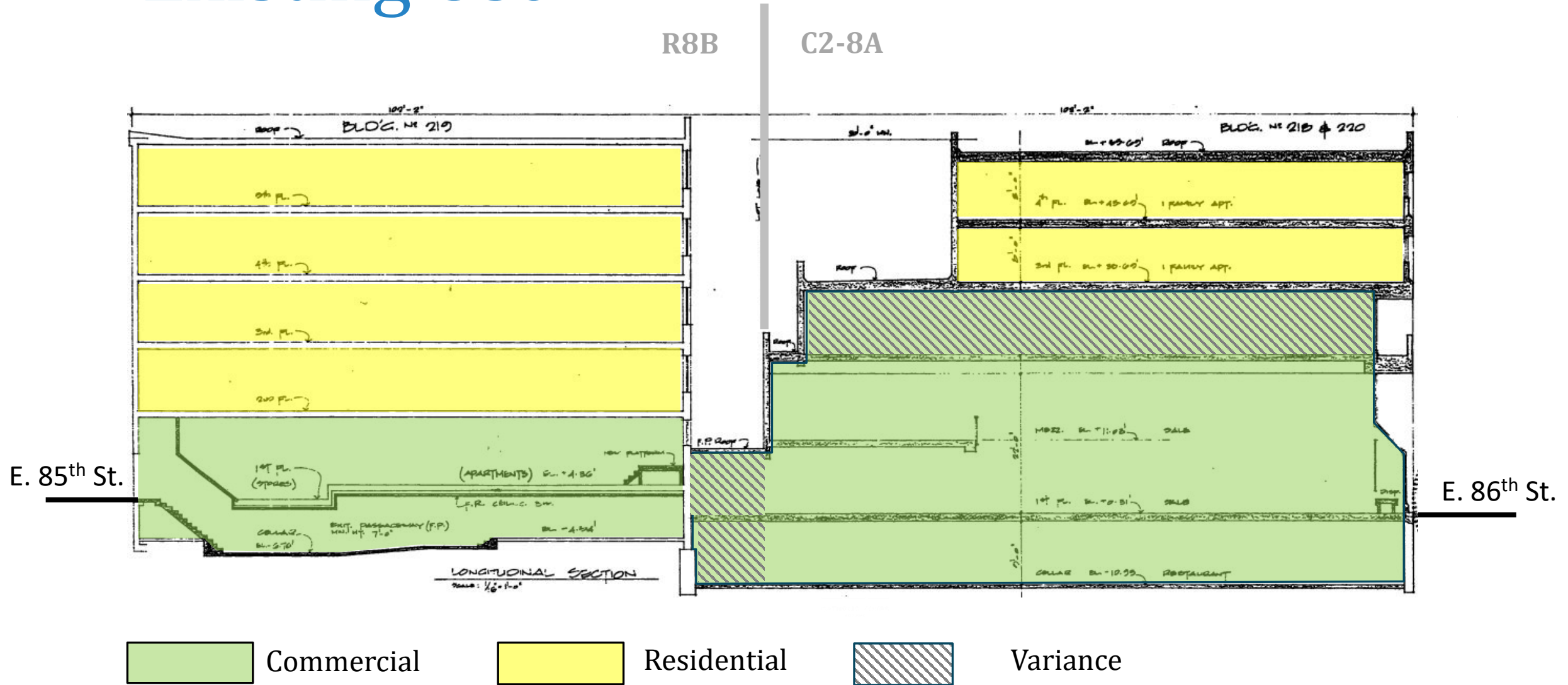
(d) August 10, 2004 – Amendment and Extension of Term of PCE: PCE amended to allow new tenant, Modern Martial Arts, and extension of term until January 25, 2014.

(e) September 20, 2016 –Extension of Term of PCE: Extension approved to allow Modern Martial Arts use of the PCE until January 25, 2024. *(On December 9, 2021, the Health and Fitness Text Amendment of the NYC Zoning Resolution was adopted to allow PCEs in commercial districts on an as-of-right basis. **And, therefore, the Special Permit is no longer required.**)*

06/27/2023



Existing Use



Proposed Amendment of Variance

Why is this amendment application required by BSA?

Typically, a zoning lot merger and development rights transfer is permitted as-of-right, *i.e.*, subject to the ministerial approval of the Department of Buildings.

However, in *Bella Vista v. Bennett*, 89 N.Y.2d 465 (1997), the NYS Court of Appeals held that BSA has jurisdiction to review amendments of previously-granted variances to facilitate the transfer of unused development rights from variance sites for use in as-of-right developments.

Generally, the Board will approve such an amendment where the proposed transfer is consistent with the *Bella Vista* holding and does not conflict with the original findings of the previously granted variance.

Findings for Amendment of Variance

Why should this amendment be approved?

The financial analysis prepared by Jack Freeman concludes that the proposed transfer of excess development rights from the Variance Site to adjacent Lot 37 (the “Receiving Site”) is consistent with the original findings because:

1. The applicant had no control over the Receiving Site because the Variance Site and the Receiving Site have been in separate ownership.
2. At the time of the original variance, there was limited market value in the unused development rights because the neighborhood was depressed.
3. The value of the development rights has changed substantially in the 45 years since the variance was first approved.

BSA has approved multiple amendments to variances granted in the same timeframe (circa 1977) finding that the unused floor area did not have any marketable value at the time of the original variance grant. **The findings made under the original variances are not invalidated or called into question by the proposed zoning lot merger and transfer of development rights. Therefore, the proposed amendment should be approved.**

Questions and Answers

Caroline G. Harris, Esq.
charris@goldmanharris.com

Eric J. Vath, Esq.
evath@goldmanharris.com

GOLDMANHARRIS LLC
475 Park Avenue South, Suite 2803
New York, New York 10016
(212) 935-1622

