

# **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**

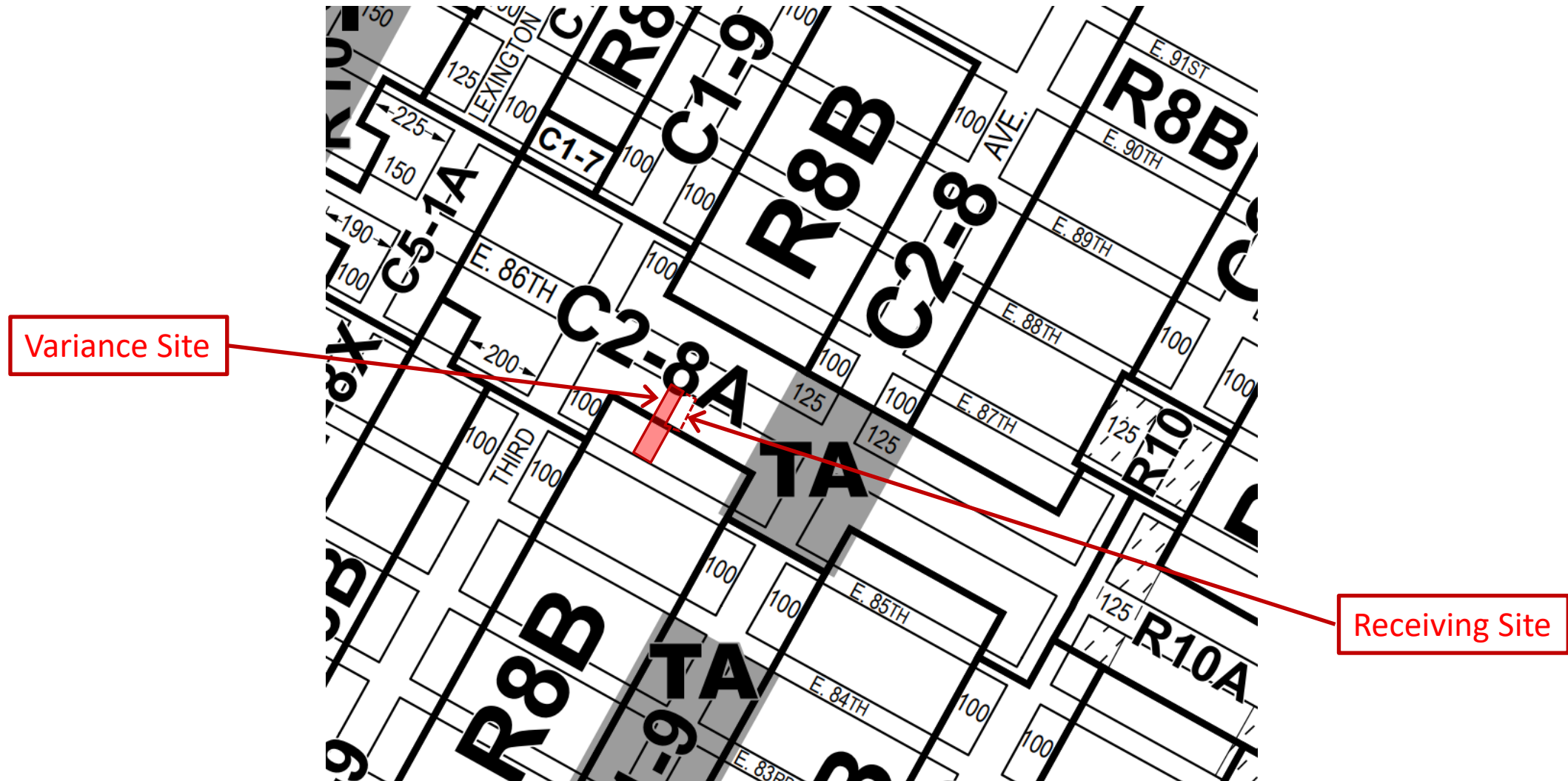
**Block 1531, Lot 38**



**Public Hearing – July 12, 2023**

**Land Use 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.



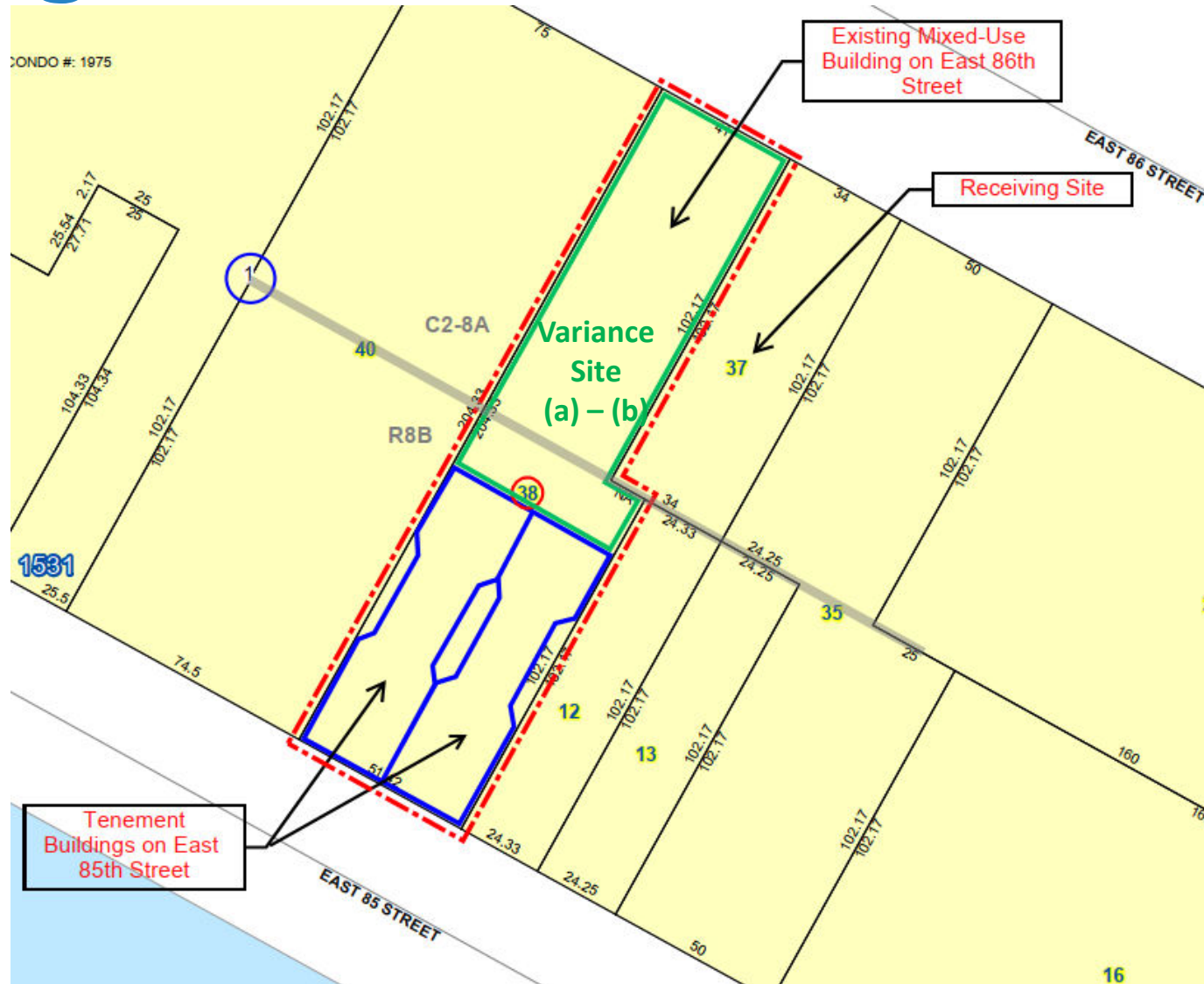
# BSA History – Special Permit

**(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.

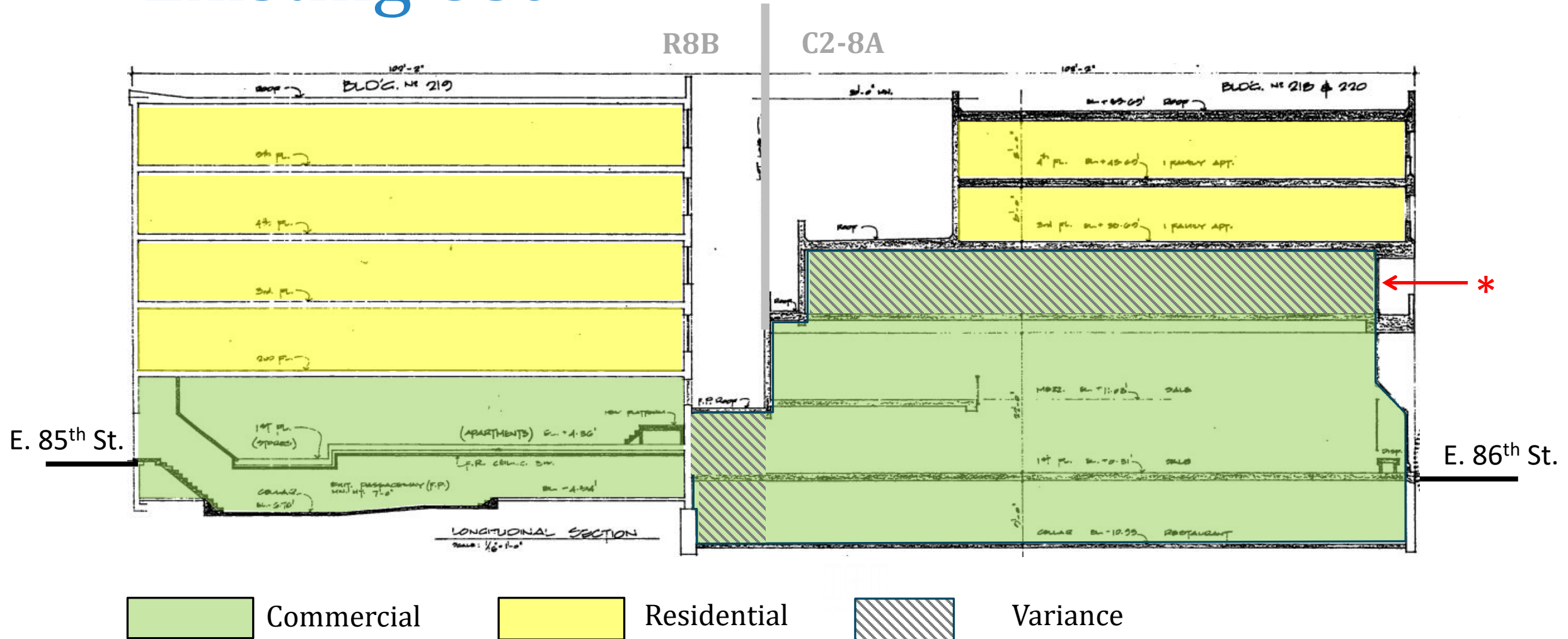
**(e) September 20, 2016 –Extension of Term of PCE:** Extension approved to allow Modern Martial Arts use of the PCE until January 25, 2024. *(On December 9, 2021, the Health and Fitness Text Amendment of the NYC Zoning Resolution was adopted to allow PCEs in commercial districts on an as-of-right basis.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

# Existing Site Plan





# Existing Use



\*Under the City of Yes proposal, the second story commercial use would become as-of-right.

# 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 drawings by 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 when asked to allow the transfer of unused development rights from variance sites for use in otherwise as-of-right developments.

Generally, the Board will approve such an amendment where the proposed transfer does not conflict with the original findings of the previously granted variance. Note: 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.

## Why should this amendment be approved?

**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

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