

ZONING IN MIDTOWN
SETTING THE STANDARDS

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by
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FOR MY GRANDMOTHER GUSSIE SINGER
WHO ONCE SAID:

"What a human can adjust to
no one should have to
live through."

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"Until recent years urban life was relatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive....And in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming into the field of their operation. In a changing world, it is impossible that it should be otherwise."

Village of Euclid v. Ambler Realty Co. 272 US 365, 47 S. Ct. 114, 71 L.Ed.303 (1926)

Mr. Justice Sutherland delivered the opinion of the Court.

[1]

¹ Charles Haar, Land Use Planning, (Little Brown Co. Boston, 1976), P. 199

I. THE INSTITUTIONAL CONTEXT: ZONING IN MIDTOWN

On 23 May, 1979 Robert F. Wagner Jr., then Chairman of the New York City Department of City Planning, publicly announced that the panoply of statutes and services governing and relating to development in Midtown were to be in their entirety reexamined with the purpose of revising the statutes to regulate future development in Midtown. The statutes and services to be examined included those effecting taxes, crime enforcement, legitimate Broadway theatres, transportation, air quality, and most importantly the Zoning Resolution as it shaped Midtown both physically and administratively. The discussion was also to include a review of the boundaries of Midtown as they were and possibly ought to be.

The lead agency would be the Department of City Planning (DCP). The DCP was to be assisted by other city agencies and consultants. A separate unit, The Midtown Development Project, with its own Executive Director, Assistant Director, and staff were created to direct the study and develop a coherent development policy for Midtown. Technical expertise was to be made available by the various sections and offices within the Department (Urban Design Group (UDG)), Manhattan Planning Office, Office of Technical Controls, Counsels Office, etc.). Additional funding for the project to retain consultants was provided by the the following foundations: J.M. Kaplan Fund, Rockefeller

Brothers Fund, The New York Community Trust and Robert Sterling Clark Foundation. The project, which had the full support of the Mayor, was to produce a draft report by the end of the year and final recommendations in the spring of the following year. The project had the full support of the Mayor.

It would not be begging the question to ask why the City would seek to change the structures of development life in Midtown. The recession years of the 1970's, when New York faced bankruptcy, were behind. Development in Midtown was now booming. Why change the institutional structures regulating development?

(See Appendix A-1)

Everyone was sanguine about Midtown which was often referred to in the popular press as the engine fueling both New York's economy and the City coffers. [2] The same people and groups who were sanguine about Midtown were also the strongest supporters of reform [3] -- as perceived through their own interests--and if not reform at least appropriate change. The groups supporting the newly created Midtown Development Project reflected such diverse interests as the New York Real Estate Board, The New York Times, government

2 CPC Staff Summary of Borough President Andrew Stein's Meeting "Hearing on Midtown Development", 17 July 1979 see comments by George Steinleib, p.2

3 Ibid, Andrew Stein's "Hearing on Midtown Development" and Paul Goldberger, "The Legal Hands That Shape Crowded Manhattan Skyline", (New York Times, 17 July, 1980), P. B1, B6

groups (The President's Council) [4] and the affected community planning boards.

Indeed there was a broad constituency for change. The institutional conventions of the tax structure, the conventions of gaining project approval (as we will see later largely through the negotiation process as defined by the Zoning Resolution), and the conventions of designing and building buildings were all potentially to be changed if not radically restructured. The result of these changes would be manifest to the public in both the evolving form of Midtown and the location of new development.

The primary development control for Midtown during the last sixty-eight years have been the Zoning Resolution. It was a generally recognized feeling at the time that something was wrong with Midtown's zoning. It will explore the institutional context, its legislative and administrative history and its spatial order and results i.e., the built form of Midtown. Unlike most zoning for America's downtowns or CBD's, zoning in Midtown has determined the form of Midtown and in fact the form of its most treasured cultural artifacts--the skyscraper--as represented by the RCA, Empire State, Chrysler, and Seagrams, and Citicorp buildings and its Fifth, Madison and Park Avenues.[5] Therefore reference will be made to the zoning history of

4 Note: President's Council; AIA, APA, ASLA, Municipal Art Society, Landmark Conservancy, Architectural League, RPA, Parks Council

5 Clifford L. Weaver and Richard F. Babcock, City Zoning, (Planners Press, APA, Chicago, 1979) P. 296

New York City with special attention given to Midtown and the development of zoning techniques designed to regulate its development.

The relationship between zoning and aesthetics will also require us to examine the constitutional values of substantive and procedural due process, particularly as they relate to the use of the police power to directly legislate urban and architectural aesthetics.

It is clear that many other factors contributed to the form of Midtown's development (building economics, the space requirements of business, the change in business structure and scale, shifts in the regional, national and international economy, the changes in New York's economy which have fueled Midtown service economy, local, state, and national tax laws, immigration policy and New York's demographics, its infrastructure, changes in the city charter particularly regarding community participation, municipal services, availability of land, the operation of the real estate market, its development history and politics, aesthetic theory, and urban design and architectural theory). The form of Midtown could be looked at through any one of these glasses and, as with any thorough inquiry, touch on all others in varying degrees. My concern is the central role zoning played in orchestrating and responding to these factors and actors.

Paraphrasing Confucious, the way in is through the door, and the door in this case is zoning. Zoning's

advantage over the others is that its relationship to the form of Midtown is direct and causal. [6] This discussion will provide the broad context for the consultants' (Davis Brody & Associates and Michael Kwartler & Associates) proposed building bulk regulations.

In June of 1979 the Midtown Task Force, under the direction of Richard Bernstein, began the process of framing the issues. The initial perceptions of the staff, based on their experience, coupled with the charge from the Chairman of the City Planning Department, which was sensitized by the interests of the groups discussed earlier, structured the initial discussions and related research of the Task Force in regard to zoning. The Task Force drew on the talents of various groups within City Planning to assist its work. This loose amalgam included representatives of the Urban Design Group (UDG), the Counsel's Office, The Office of Technical controls, the Transportation and Economic Development sections, and the Manhattan Office of City Planning.

How issues are framed is very often determined by the interests and history of those who do the framing. A brief look at the cast of characters involved in the Midtown Development Project and their past activities will serve to contextualize the manner in which they framed the issues for discussion by the Task Force. The discussion focuses on the players having an impact and interest in the zoning issue. This approach is also commensurate with the structure of the

6 Jonathan Barnett, An Introduction To Urban Design,
(Harper & Row, New York, 1982) P.62

Task Force which assigned areas of inquiry and issued identification to the group, section or office in whose purview they were quartered.

The Urban Design Group (UDG), took the lead in the area of zoning. The Urban Design Group was created by Mayor Lindsay in 1967 on the recommendation of the Paley Commission report--"The Threatened City." [7] Stephen Zoll has characterized the Commission report in his critical study of zoning in New York City, "Superville" as "naive optimism" and in the process "...assumed the designers' omniscapability to improve our lives." [8] The designers presence could be both effective and effected through the use of zoning to coordinate the historically piecemeal development of the city zoning. [9] He summarizes the report, "Under existing law the city could exert enormous municipal control over both public and private design. "The Report," he goes on, "based its certainty of design control on the statement that actually no one can build in this city without exposing himself to a bargaining position with the [municipal] government." [10]

Conceptually the key word was bargain. Through a process of rewards, initially additional floor area and waivers of the height and setback regulations, the developer would provide,

7 William F. Paley, Threatened City, (CBS, New York, 1967)

8 Zoll, "Superville" (Massachusetts Review Summer 1973, P. 490)

9 Jonathan Barnett, Op.Cit., P.93

10 Zoll, Op.Cit., P.491

through the process of negotiation, a design consistent with a stated public policy.

11 New York City Planning Commission, Zoning Resolution (New York, 1980), Article VIII Special Theatre Districts.
Chapter 1 Special Theatre District

81-00 General Purposes

The special theatre district established in this resolution is designed to promote and protect public health, safety, general welfare and amenity. These general goals include, among others, the following specific purposes:

- (a) To preserve, protect and promote the character of the special theatre district area as the location of the world's foremost concentration of legitimate theatres - an attraction which helps the City of New York achieve preeminent status as a cultural showcase, an office headquarters center and a cosmopolitan residential community;
- (b) To develop and strengthen a much-needed circulation network in order to avoid congestion arising from the movements of large numbers of people, including convenient transportation to, from and within the district, and provision of arcades, open space and subsurface concourses;
- (c) To help insure a secure basis for the useful cluster of shops, restaurants and related amusement activities which have been attracted to the area based upon its past and present character;
- (d) To retain and improve the special employment opportunities generated in the area in a manner consistent with the foregoing objectives which are an integral element of the Comprehensive Plan of The City of New York;
- (e) To provide an incentive for possible redevelopment of the area in a manner consistent with the foregoing objectives which are an integral element of the Comprehensive Plan of The City of New York;
- (f) To provide freedom of architectural design accommodating legitimate theatres and supporting activities within multi-use structures which should produce more attractive and economic development;
- (g) To promote the most desirable use of land in this area in accordance with a well-considered plan, to promote the special character of the district and its peculiar

suitability for uses related to the legitimate theatre and thereby protect the City's tax revenues.

81-06 Bulk Modifications

The Commission, by special permit after public notice and hearing, subject to Board of Estimate action may authorize with the Special Theatre District an increase in permitted floor area ratio or modification of the height and setback regulations for any new building containing a legitimate theatre or theatres. The increase shall be in the discretion of the Commission and may range from the basic floor area ratio of the district up to but in no event exceeding the maximum limit set forth in Sections 33-120.5 and 43-120.5 (Maximum limit on floor area ratio) plus 20 percent thereof. In determining the precise extent of the increase in floor area ratio or the modification of the height and setback regulations, the Commission shall make the following findings:

- (a) Whether the legitimate theatre or theatres are of a size and type which the Commission deems appropriate under the circumstances pertaining at the time of the application, in order to achieve a balance of facilities responsive to the needs of the district;
- (b) Whether there are facilities to support legitimate theatre operations such as rehearsal, studio or storage space;
- (c) Whether open spaces, arcades, subsurface concourses or subway connections are provided to ease congestion in the area by aiding in the circulation of pedestrians or vehicles;
- (d) Whether restaurant facilities or other amenities useful to the Special Theatre District are provided; and
- (e) Whether modification of the applicable height and setback requirements is necessary to achieve good design objectives.

The Commission may prescribe appropriate conditions and safeguards to enhance the character of the surrounding area.
Chapter 2 Special Lincoln Square district2

82-00 General Purposes

The "Special Lincoln Square District" established in this resolution is designed to promote and protect public health, safety, general welfare and amenity. These general goals included, among others, the following specific purposes:

- (a) To preserve, protect and promote the character of the Special Lincoln Square District area as the location of a unique cultural and architectural complex--an attraction which helps the City of New York to achieve

pre-eminent status as a center for the performing arts, and thus conserve it's status as a office headquarters center and a cosmopolitan residential community;

- (b) To improve circulation patterns in the area in order to avoid congestion arising from the movements of large numbers of people; improvement of subway stations and transportation to, from and within the district, and provision of arcades, open space, and subsurface concourses;
- (c) To help attract a useful cluster of shops, restaurants and related amusement activities which will complement and enhance the area as presently existing;
- (d) To help attract a useful cluster of shops, restaurants and related amusement activities which will complement and enhance the area as presently existing;
- (e) To provide an incentive for possible development of the area in a manner consistent with the foregoing objectives which are an integral element of the Comprehensive Plan of the City of New York;
- (f) To encourage a desirable urban design relationship of each building to its neighbors and to Broadway as the principal street; and
- (g) To promote the most desirable use of land in this area and thus to conserve the value of land and buildings, and thereby protect the City's tax revenues.

82-08 Modification of Bulk and Height and Setback-- Requirements

Bulk and Height and Setback regulations otherwise applicable in the L District are modified to the extent set forth in paragraph (1) through (4) of this section, subject to the following limitations:

In no event shall the total floor area ratio permitted on a zoning lot exceed 12.0.

- (1) The provisions of Sections 23-16, 24-14, or 33-13 (Floor Area Bonus for a Plaza), Sections 23-17, 24-15, or 33-14 (Floor Area Bonus for a Plaza-Connected Open Area), Sections 23-18 or 24-16, or 33-15 (Floor Area Bonus for Arcades), or Section 23-33 (Density Bonus for a Plaza-Connected Open Area or Arcade) shall not apply;
- (2) For all buildings as to which the provisions of Section 82-09 (Mandatory Arcades) or Section 82-10 (Public Amenities) are applicable, floor area may be increased under terms and conditions set forth in Section 82-10 (Public Amenities);
- (3) The lot area requirements for the non-residential portion of a building which is eligible for a floor area bonus under the provisions of this paragraph may be waived or reduced by the Commission provided that the Commission makes the additional finding that the

waiver or reduction will not adversely effect the use of the structure or the surrounding area; and,

- (4) Height and setback regulations, yard regulations, regulations governing minimum distance between buildings on a single zoning lot, and regulations governing courts and minimum distance between legally required windows and walls or lot lines may be modified by the Commission, following public notice and hearing and subject to Board of Estimate action, to the extent necessary to facilitate good design and to incorporate increases in maximum floor area ratio granted pursuant to paragraph (2) of this section, and shall be modified appropriately as to any building to which Section 82-11 (Building Walls along Certain Streets) is applicable.

As Zoll summarizes, "Something new was being asked of zoning. Instead of being asked to work negatively by excluding incompatible uses, restraining intensity of use, and forbidding encroaching placement of building on their sites, zoning was from 1967 to be used positively as a planning instrument." [12]

The Counsel's Office, its related Office of Technical Controls, and the Manhattan Office of City Planning were the other activists in the development, evolution and administration of incentive zoning by negotiation. As we shall see later, incentive zoning had its origins in the 1961 Zoning Resolution. The shift from incentive zoning to the process of negotiation was revolutionary. The development of zoning text from the UDG's proposals, its interpretation during the negotiation between DCP and the development team, and certification of the applicants' project were performed in collaboration with the UDG. The

12 Zoll, Op.Cit., P491

constitutional validity of the concept of "discretionary incentive zoning" was successfully negotiated by Counsel Norman Marcus who later went on to co-author a book championing negotiated incentive zoning [13] and the inclusion of aesthetic control as a logical extension of the police power. The entire concept, as Weaver and Babcock have noted, found its origins in the discretionary zoning techniques developed in the suburbs and sustained by the courts to control burgeoning development after WWII. [14] Discretionary zoning's perceived success was in its ability to tie piecemeal and ad hoc development of land to larger planning concerns while sensitizing the development response to specifics of the site and program.

The importance to New York City of the concept of negotiated incentive zoning is manifest in the 31 Special Purpose Districts, of which 2 [15] were in Midtown before new regulations took affect, and the Special Permit, of

13 Norman Marcus and Marilyn Groves, The New Zoning (Praeger, New York, 1970)

14 Clifford L. Weaver, Op.Cit., P.14

15 New York City Planning Commission, New York City Zoning Resolution, Special Theatre District Sections 81-00, Special Fifth Avenue District, Section 87-00

which 18 [16] of the 54 have direct application in Midtown and in most cases were written specifically for Midtown situations. Both Special Permits and Special Districts have two things in common--the use of discretion in determining the new developments conformance to the zoning standard and a floor area bonus for the provision of a public amenity. The waiver of the underlying bulk regulations and the bonus would prove very popular.

The discretionary process rests considerable power in the holder of the discretion. The combined staffs of the four offices and the solid support of the Mayor together represented City policy. But before we proceed to City Planning's internal reappraisal of the effectiveness of incentive and discretionary zoning in Midtown, let us first examine the regulations the Paley Commission was reacting against.

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- 16 Ibid, Section 74-62 Railroad Passenger Station
 Section 74-63 Bus Stations
 Section 74-67 Fire or Police Stations
 Section 74-71 Landmark Preservation
 Section 74-72 Bulk Modification
 Section 74-74 Commercial Developments Extending in,
 More than One Block.
 Section 74-76 Plazas - Elevated and Sunken.
 Section 74-79 Transfer of Development Rights from
 Landmark Sites
 Section 74-80 Transient Hotels
 Section 74-82 Through Block Arcades
 Section 74-83 Court Houses
 Section 74-84 Developments with Existing Buildings
 Section 74-87 Covered Pedestrian Space
 Section 74-89 Bulk Modifications for Telephone
 Exchanges or Other Communications
 Equipment Structures
 Section 74-91 Urban Open Space Modifications
 Section 74-95 Housing Quality Developments

The As-of-Right building bulk use and districting regulations of the Zoning Resolution adopted in 1961 was the focus of the Paley Commission's attack. Less than six years after the adoption of the 1961 Zoning Resolution the modernist utopian dream of an open, spacious, high density urban center of free standing towers and slabs in a generous open space had begun to manifest itself in a less than utopian way.

The 1961 Zoning Resolution found its origins in the utopian visions of the Modern Movement and codified in CIAM's Athens Charter and the more pragmatic Plan for Rezoning the City of New York. [17] The Modern Movement's vision of the 20th Century city, although all too easy to dismiss today by its critics, was nevertheless deeply flawed. As with most urban reform it was a reaction to the chaotic, speculative, unplanned, unhealthy, dark, squalid, and sordid cities of the 19th Century. Modernism's critical analysis of the capitalist city led to the utopian approach which treated the existing city as a tabula rasa. The resulting discontinuities between new and old were seen as some minor inconvenience until the vision reached fruition. The 1920's European utopian imagery of a rationalized city structure of discrete land uses, located in super blocks and defined by a coherent street system containing free standing prismatic towers glittering in parks filled with the healthful benefits of air and sunlight, were the

17 Harrison, Ballard and Allen, Plan For Rezoning the City of New York (New York) October, 1950

intellectual and formal antecedents of the 1961 Zoning Resolution.

The physical form of the city was to be turned inside out. The 19th Century capitalist city, continuing the pattern of earlier urban development, was composed of buildings fairly consistent in height, and most importantly interconnected streetwalls which defined the public space of the street, while the new approach reinterpreted the building as an object sitting in space. [18] The 1950 Plan blandly described this dramatic reversal of urban form in the section dealing with "angle of light obstruction" regulations. It was argued this would free the architect to design better buildings instead of "merely filling the (zoning) envelope," and "that the architectural ingenuity encouraged by the new regulations are believed to be more than adequate recompense for any loss of cornice uniformity (in either height or location). "All of this was justified by its producing "First (buildings) that are more economic to build. Second it will be possible to get light and ventilation into side windows. Third, in blocks developed under these regulations, more sunlight will come into the street over the lower portions of buildings" [19] Nowhere is urban aesthetics or good city form mentioned. Although completed three years before the adoption of the new regulations, the Seagrams Building, by Ludwig Mies van der Rhoe, played a significant role in giving tangible

18 Krier, Urban Space (Rizzoli, New York, 1979), P.81
19 Harrison et.al., Op.Cit., P.47-48

expression to the new urban form. This pristine and elegant bronze clad building, although built in conformance with the 1916 Zoning Resolution (the predecessor to the 1961 Zoning Resolution--its tower covers only 25 percent of the lot area rather than the currently allowable 40 percent) was in its provision of a public open space--a plaza--suggesting the future by example. The image was compelling and reinforced at least the architectural communities belief in its embracing of the Modern Movement and its formal design theories if not its underlying social program. Furthermore, it appeared that this distinctive building and its plaza was a replicable model. The building bulk regulations of the 1961 Zoning Resolution legislated this building type. The approach was typological and was fraught, as we shall see, with all the problems inherent in the typological approach.

The as-of-right sections of the 1961 Zoning Resolution was administered by the New York City Department of Buildings with only special conditions and unique circumstances to be negotiated by the City Planning Commission. The statutory basis for the As-of-Right review was a series of regulations which prescribed the density, use, site planning and form of the building. An incentive, new to New York's zoning, was built into the system. In residential districts higher density rewarded those developments which minimized lot coverage. [20] In the

20 New York City Zoning Resolution, Op.Cit., Section 23-14 Minimum Required Open Space Ratio and Maximum Floor Area Ratio in R1 through R9 Districts.



Seagram Building
Drexler, Ludwig Mier van der Rhoe,
(Braziller, New York, 1960)

highest residential districts and all the central Business Districts a bonus of additional density and/or floor area was awarded the development for providing a publicly accessible on site open space--the plaza and/or arcade. [21] All of this was to be done As-of-Right and was non-negotiable if the absolute dimensional standards prescribed in the regulation were met.

FAR (Floor Area Ratio) was introduced to control density in commercial buildings and building volume in both residential and commercial buildings and therefore capped densities for any given site and the city as well. Each square foot of land in New York City was given a maximum development potential that could only be exceeded by the provision of a bonusable plaza and or arcade and which if fully complied with increased the basic maximum FAR by 20 percent. This was a dramatic change from the 1916 Zoning Resolution which controlled density and floor area indirectly through the combination of lot size, height and court districts, tower coverage, building technology and marketplace. The result in Midtown was very high density on large sites--The Empire State Building is 30.1 FAR--and low density (10-12 FAR) on smaller sites where the combination of streetwall height, setback and tower requirements practically precluded large, dense structures. The resulting density was far less in practice due to the variable lot

21 New York City Zoning Resolution, Op.Cit., Sections 23-16, Floor Area Bonus For Plaza, 23-17 Floor Area Bonus For Plaza Connected Open Area, 23-18 Floor Area Bonus For Arcades.

size and the difficulties inherent in assembling larger sites than the theoretical 55 to 77 million inhabitants which could fit within the 1916 zoning envelope. [22] This theoretical number assumed build-out, which in practice was virtually impossible.

Unlike the 1916 Regulations which produced value in part through the application of labor (making a building) the 1961 Resolution created value (though FAR) in advance of labor. The value was the "unused" floor area or the difference between the maximum allowable floor area and the floor area of the existing building. Thus development rights were borne out of the logic of controlling density. Ironically, the assumption of development rights or unused floor area was based on the acceptability of build-out.

The structural and conceptual flaws in the 1961 Zoning Resolution that so upset the Paley Commission was the prescriptive nature of the ordinance which worked all too well in achieving its implicit urban vision, and the piecemeal nature of its control over development--that is development parcel by development parcel. The former was the traditional format of zoning while the latter the traditional form of property regulations with the exception of Urban Renewal. Since the 1961 Zoning Resolution was building oriented--it started with premise of the desirable building form--the Paley Commission focussed its attack on the as-of-right building bulk regulations which it perceived

22 Zoll, *Op. Cit.*, P.480

as being overly rigid. The regulations tended to produce virtually the same building and bonused plaza and/or arcade (arcades were rarely done because the bonus was undervalued compared to the plaza bonus -- 3 to 1 versus 6 to 1 -- and more expensive to achieve) on every site. The result in this case did match the intentions. Simply put the commission didn't like what they looked like--they were banal architecture. [23] The new buildings were decorated versions of the model or type.

It is telling that the Paley Commission focused on the banality of the building designs rather than the appropriateness of the typological approach to urban zoning. The confused assumption equated civic design--giving form to the city--with the architectural design of building. This was an inheritance neither clarified nor rejected by the UDG. The piecemeal aspect of zoning which treated each site separately but uniformly had been the rule in American property regulation. It was the response to the equal protection and procedural due process values of the 5th and 14th amendments. The discretionary review recommended by the Commission was to be the glue that would tie the piecemeal application of the regulations together in lieu of an Urban Renewal Plan. Discretion was to overcome what Jonathan Barnett referred to as the "arbitrary lot divisions of New York" [24]. It is curious that lot divisions should be called "arbitrary" as they represent with the street system

23 Paley, Op.Cit., Introduction

24 Barnett, Op.Cit., P.58

a record of the historical development of the city.

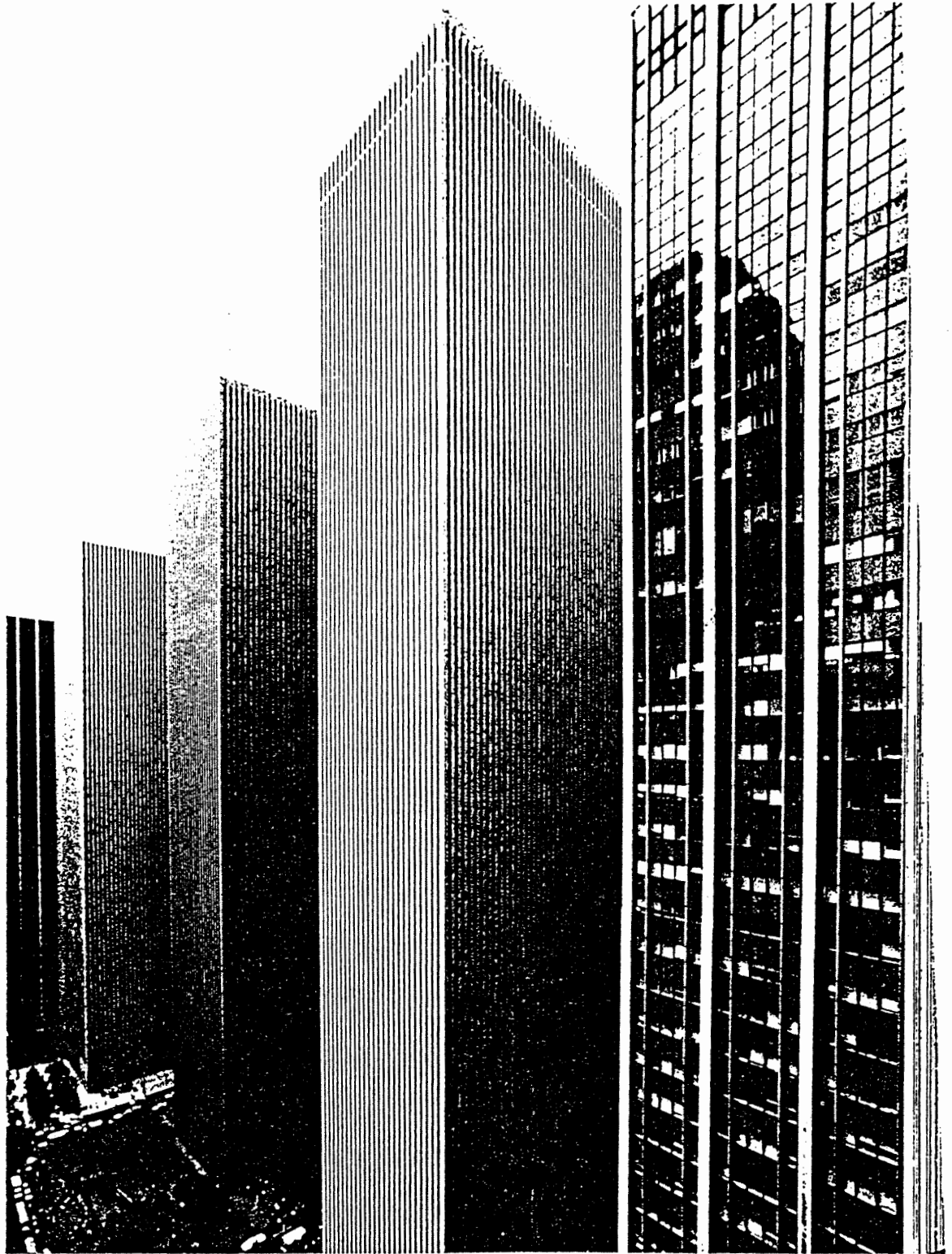
Furthermore, and most importantly, the comment represents a bias toward uniformity and centralized control, which would require each property owner to fill in a piece of an implicit master plan. The pendulum had swung from the exercise of individual property rights to centralized control of private property through a carrot and stick regulatory process. The effort was to treat the city as a work of art.

Less than ten years after the adoption of the 1961 Zoning Resolution disaffection with the concrete results of the utopian vision set in. The common wisdom of then and today was that the rigidities of the 1961 Resolution forced the architect and developers to fill the zoning envelope and thus maximize floor area, density and profits, and was and is incompatible with the best efforts of architects and urban designers to produce good architecture and good city form. In fact this had been the case under the 1916 Zoning Resolution under which the zoning envelope was similarly filled as evidenced by Lower Manhattan and the "wedding cake" or setback structures of Midtown.

This wisdom, while most often heard from architects and urban designers was also expressed with great regularity by the developers, bankers, community representatives and other professional, lay and governmental constituencies. They posited that zoning legislates aesthetics and that a singular vision was too restrictive, leaving little room for

genuine architectural design quality and innovation. The result was cookie-cutter building that was ugly and sterile, set in an ill considered and barely useable public open space that was often neglected, or when used, used by the seedies elements of New York's street corner society. These same buildings appeared to be insensitive to the existing buildings creating visual dissonance through poor scale, use, and material relationships with the existing structures (all, of course, built on and limited by the "arbitrary" property divisions). Furthermore, the buildings when taken in the aggregate did not appear to support urban life, particularly public life, but rather seemed to produce an anti-urban or minimally a-urban environment of independent structures not unrelated to our worst nightmares of the chaotic suburban strip, albiet at urban densities. The city, more than a collection of replaceable parts, seemed to have been lost in the web of regulations.

For the moment let us put controversy aside and assume AT&T, executed in the Post Modern Style, is an exemplary high rise structure. The same design realigned in a plaza on Sixth Avenue -- let us say the Exxon Plaza -- would in all probability neither satisfy the architect nor the chorus of critics. In fact they are right. The issue is not the quality of the architectural object per se but rather the type of urban values embodied in the Zoning Resolution. The free standing tower in the plaza is in many respects if not anti-urban certainly a-contextual, and ultimately



Post 1961 Sixth Avenue Office
Buildings.
Goldberger, On The Rise, (New York
Times, 1963)

destructive of the traditional urban form of New York. [25]

As evidenced above, the replicable model proved in practice not to be particularly successful. In the effort to provide useable public open space in New York (albiet on private property) and light and views to and from the building the 1961 Resolution managed to throw the baby out with the bath water. The Seagrams Building turned out not to be a replicable building probably because it was viewed as something other than the piece of contextual urban design it was. The Seagrams Building demands the masonry of the Florentine Racquet Club of McKim, Meade, and White function as a foil to the glass walls of the tower. The reflection of the masonry facade in the continuous glass wall of the lobby is as much a part of the design as the original low rise street wall buildings that framed it and the plaza to the north and south. This became apparent when another plaza and tower was to be built on the cleared site to the south. Pressure was exerted on both architects and developers to include a low-rise street wall in their development to continue to define the space created by the Seagrams Building. The Seagrams Building worked in part because it broke with the urban design conventions of the 1916 Zoning Ordinance and Park Avenue. It was a dissonant note in the landscape of Park Avenue; a one-of-a-kind site-specific building. Unfortunately, the 1961 Resolution had only one

25 Paul Goldberger, On The Rise (New York Times, New York, 1983), P.3

model in mind. When the tower and plaza model failed, the formal aspects of the 1961 Resolution failed with it.

The model failed in many other ways--the loss of retail continuity at the street and the proliferation of plaza and towers that appeared diminished the potential attractiveness of each development. The seemingly endless of row of plazas on Sixth Avenue was clearly too much of a good thing. The streetscape was being irreparably wrenched apart.

The nature of our property relationships required at the time that each developer be able to avail themselves of all the Zoning Resolution offered without regards to the developments on adjoining blocks. The plazas were located only where development activity occurred and not necessarily where the plaza might have been both useful and appreciated. Le Corbusier's utopian scheme for urban order based on the high rise, high density tower in the park, zoned land uses and rationalized road systems was ultimately a traditional master plan. Physical master plans such as the "Plan Vorsin" envisaged by Le Corbusier for Paris [26] was not contingent and as such required the steady hand of the despot to achieve not the 40-60 years of haphazard building that is characteristic of the private real estate market in New York City.

26 Le Corbusier, Oeuvre Complete 1910-1929, (Editions Girsberger, Zurich, 1937), P.109-119

It is undoubtedly clear to the reader that the litany of shortcomings could fill a book and in fact has [27]. But if zoning had these perceived shortcomings, what could be done to insure that New York would be the beneficiary of well designed buildings which when viewed in aggregate context create the good urban environment. The answer they said was simple--relax the zoning rules and good architecture and good city form will flow as surely as the East River flows under the Brooklyn Bridge. [28] The idea that 'good' architecture and 'good' city form are equivalent has not been borne out in practice. Nonetheless the idea was seductive and served as we shall see to deflect the physical planner's concerns for the aggregate environment to that of shaping individual buildings.

The design community suggested that their buildings be exempt from the conventions required by the 1961 Zoning Resolution, and for that matter any conventions that future amendments to the Resolution would mandate. But on what basis should the conventions be waived?

Rather than reevaluate the value system and structure of the 1961 Resolution the Commission developed specialized techniques to deal with development pressures as they arose on a case by case basis. In order to overcome the rigid abstractions of the prescriptive regulations of the original Resolution the Commission moved to expand the bonus concept or the idea that zoning might, if

27 Bernard Siegan, Land Use Without Zoning, (D.C. Heath & Co., Lexington, 1972), see chapter 7, Publishers, Pop Architecture & Minorities

28 Der Scutt, Letter to The Editor (Oculous, February, 1981), P.3 and Andrew Stein, Op.Cit., Hearing, Comments Donald Elliot, P.6

properly done, go beyond restricting a harm to conferring a good. [29]. This was to be achieved by manipulating the substantive and procedural rules of the Resolution. As a legislative body the Planning Commission could waive the rules, reduce rules to the bare minimum, create flexible or contingent rules, redefine the rules, and relax the process.

Two vehicles were used that allowed the Planning Commission to waive or modify in part or wholly the underlying regulations and their more onerous conventions; the Special Districts which were mapped for specific areas; and Special Permits, which applied when either the use or the development lot met certain objective criteria. Both are discretionary review procedures requiring, in varying degrees, a process of negotiation between the public and private sectors.

29 Marcus, Op.Cit., PXvi-XXii

30 New York City Planning Commission Zoning Resolution, (New York 1986) P.411 Section 74-72-- Bulk Modification 74-721: Height and Setback and Yard Regulations

A. In C4-7, C5-2, C5-3, C5-4, C6-1A, C6-4, C6-5, C6-6, C6-7 or M1-6 Districts the City Planning Commission may permit modification of the height and setback regulations including tower coverage controls for developments or enlargements located on a zoning lot having a minimum area of 40,000 square feet or occupying an entire block. For such developments or enlargements the Commission may modify the minimum required distance between a new building and an existing building as set forth in Section 23-70 (Minimum Required Distance Between Two or More Buildings on a Single Zong Lot) provided that the following findings are met.

- a. The minimum distance provided between a new building and an existing building is 60 feet;
- b. "La + Ld" as defined in Section 23-70 (Minimum Required Distance Between Two or More Buildings on a Single Zoning Lot) is not more than 150 feet; and
- c. The relationship of the said building permits the best site planning and distribution of open area possible on the zoning lot.

In physical design terms the Commission pursued three paths simultaneously: conservation of the historic fabric of the City through the reiteration of those conventions; the design of new conventions to which adherence could be evaluated with reasonable objectivity; and the negotiation of new conventions in a public design review process which had few if any objective criteria for evaluating the results. Of the three paths, accountability and certainty was strongest in the first, diminished in degrees in the second, and virtually absent in the last path.

The first type of Special Districts were essentially conservative and required the new structure to be responsive to its context in both building form, site planning and use. They tended to derive their physical form from an extrapolation of the existing conventions which were perceived a priori to be valid. In built up areas such as Manhattan these conventions derived most often from the 1916 Resolution. The Fifth Avenue and Madison Avenue Special Districts and the South Richmond Special District with its ecological considerations are typical of that type of approach.

The second generic type of Special District is exemplified by the Greenwich Street, and Lincoln Square Special Districts. In these districts the Commission and its staff devised new conventions because the area was to be, for all intents and purposes, redeveloped due to development pressures and it was essential to plan them as viable urban places. The Lincoln Square Special District and Greenwich Street Special District in Lower Manhattan in part derived their conventions from the 1916 Resolution and their historical antecedents. In addition to the

process of reinterpreting the conventions, they devised new ones such as the continuous Broadway arcade in Lincoln Square and the skyway system at Greenwich Street. The rationale for both types of Special Districts was that the areas to be designated were special by reason of the aggregate of combined redevelopment pressures and the opportunity to achieve a unified urban design plan to be built out over an extended period of time. The Lincoln Square Special District system of Broadway arcades, yet to be completed, is a good example of this approach.

A few of the Special Districts follow the third path. The Special Theatre District falls into this category. By offering Midtown developers of sites within the boundaries of the Special District a bonus or incentive of considerable amounts of additional rentable floor area, the developers were to be seduced into constructing a new legitimate theatre on site. The logistics of locating a theatre in the base of a high rise commercial office building are considerable. In order to accommodate the developers building program the Commission and staff would enter a process of negotiation that suspended the underlying as-of-right Height, Setback, Tower, and Open Space provisions (read conventions) while trying to maintain adherence when physically possible.

The Special Permits on the other hand were not mapped and were not designed to protect or advance the unique qualities of an area. They fall into three categories; those which are unique uses such as public facilities (court houses, bus terminals, sea plane bases, heliports, etc.); those which are location-specific (developments over railroad yards, sites opposite parks of three acres or more,

sites adjacent to landmarks using development rights transfer, etc); and those which virtually floated (the floating zone) over broad areas of the City only to be grounded when the development site met certain stated criteria. The criteria consisted generally of size, such as commercial developments extending into more than one block, large scale residential and community facility developments, and Section 74-72 which was operative for blockfront sites of at least 40,000 SF or more in Midtown.

The first type of Special Permit was designed in the historic tradition of waiving underlying urban conventions for what in most cases were important public institutions. Historically, not only was the architecture of the institution significantly different from that of the context but the site planning frequently was also deconventionalized. Street closings and the resultant effect of buildings located at the end of streets was typical of this approach. The New York Public Library, Grand Central Terminal, the Main Post Office, the Museum of Natural History, City Hall in its Park, major hospitals such as Bellevue and the New York Medical Center, and universities such as Rockefeller and Columbia in Morningside Heights are representative of this approach.

The second type of Special Permit was location-specific and hence predictable to some degree. They tended to represent unique design problems which were difficult to anticipate in the abstract. Building adjacent or over a landmark required the proposed structure be responsive to the Landmark. Developments over railroad right-of-ways also created unique design and planning considerations.

It was the last type of Special Permit that created the most difficult problems for the Planning Commission in urban design terms. With criteria written in the most nebulous, yet well meaning prose [30] accountability and certainty lost whatever meaning it may have had. As-of-right buildings accounted for 100% of all floor area built in the period 1960-64; 87% in the period 1965-69; 36% in the period 1970-74; 14% in 1975-79 and 0% in the period 1980-82.

[31]

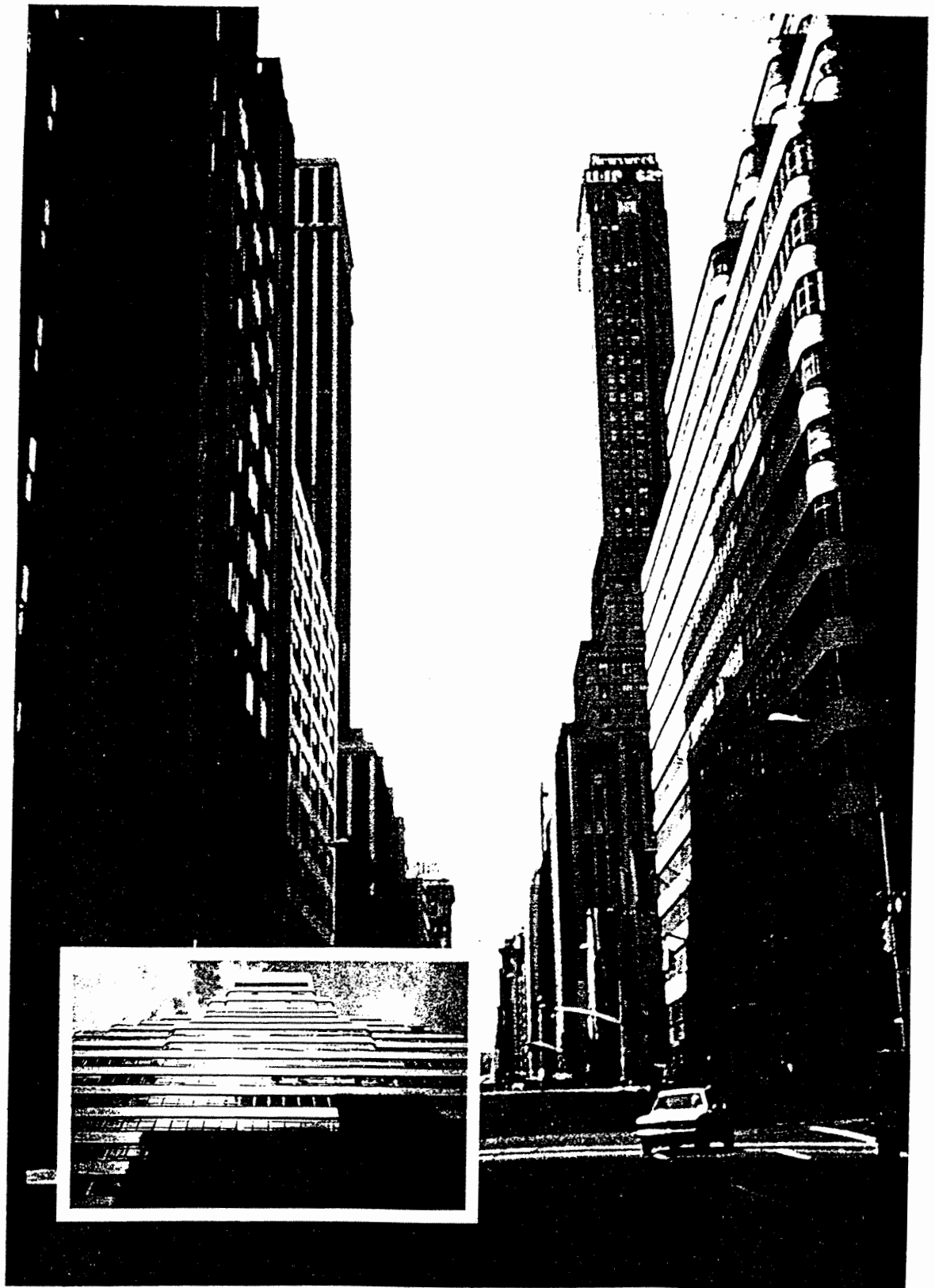
Essentially the as-of-right system of preregulation described earlier had gone unused for almost ten years and was moribund.

What was the attraction to the developer to enter into a costly, and uncertain process? As one might suspect a complex set of factors made negotiation attractive. Probably the two most important considerations were the difficulty of assembling sites large and regular enough in East Midtown to accommodate an as-of-right 40% tower (a tower which at any level occupies no more than 40% of the side in area) with a typical floor of approximately 20,000 SF to 30,000 SF and the change in the definition of a zoning lot which made certain types of assemblage easier. [32]

The 20-30,000 SF tower at 40% coverage requires a development lot of 50-75,000 SF. By comparison these site sizes are considerably larger than buildings with equivalent floor sizes and density in pre-1961 buildings such as ITT on Park Avenue or the Look Building on Madison (the "wedding cake" with site sizes of 25-

 31 New York city Department of City Planning, Midtown Development Project - Draft Report 1980, (New York, June 1980) p. A29

32 Ibid p. A30 and P. A107



Look Building on Madison
Avenue Looking South

Photo: Michael Kwartler

30,000 SF). Though the floors of the ITT Building diminish in size due to the 1916 setback provisions, a full 80 percent of the floors range in size from 15-30,000 SF. The Empire State Building site of 80,000 SF is one of the largest pre-1961 sites. With the exception of Citicorp, 1166 Sixth Avenue, One Park Plaza, and IBM, (all built before the new Midtown regulations) no new major office building in Midtown could achieve marketable floor sizes within the context of as-of-right zoning's 40% tower. And with the exception of Citicorp and IBM all were Zoning Lot Mergers (ZLM's).

To make matters even more difficult most of the major sites were zoning lot mergers. A zoning lot merger is an assemblage that includes existing buildings which are to remain on the lot. They proliferated after the change in definition of a zoning lot. [33] (The unused development potential resulting from every site or underbuilt building having a maximum potential FAR is then used on the cleared portion of the lot to contain the new building.) The Zoning lot merger assumes that the block district and ultimately the city would be built out to the maximum density. The irony, as noted earlier, is that the FAR-less 1916 Resolution with its relativist rather than absolute control of density never assumed build-out.

Tailored to each development through the amendment process Section 74-72 of the 1961 Zoning Resolution merely required a certain size site with a block front configuration to qualify.

33 Zoning Resolution Op.Sit., Article I, Section 2. Construction of
Language and Definitions. Definition 12-00

Zoning Lot (Note: the critical subsection is d)

- (d) A tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single block, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy) is declared to be a tract of land to be treated as one zoning lot for the purpose of this resolution. Such declaration shall be covering all of such tract of land or in separate written Declarations of Restrictions covering parts of such tract of land and which in the aggregate cover the entire tract of land comprising the zoning lot. Any Declaration of Restrictions or Declarations of Restrictions which individually or collectively cover a tract of land are referred to herein as "Declarations". Each Declaration shall be executed by each party in interest (as defined herein) in the portion of such tract of land covered by such Declaration (excepting any such party as shall have waived its right to execute such Declaration in a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration). Each Declaration and waiver of right to execute a Declaration shall be recorded in the Conveyances Section of the Office of the City Register or, if applicable, the County Clerk's Office of the county in which such tract of land is located, against each lot of record constituting a portion of the land covered by such Declaration.

When coupled to the new array of interior public spaces and the renewed taste for street wall building, it proved to be the most popular show in town [34] The bonusable exterior public spaces were internalized [35] and rationalized as a good thing for the obvious reason that the new building, if it was to be marketable, had to cover a considerably higher proportion of the zoning lot than 40%.

In the case of zoning lot mergers a legal sleight of hand allowed the new structure to cover considerably more than 40% of the developable portion of the merged lot. One Park Plaza is an excellent example of this procedure, which while legal--the new building does cover only 40% of the merged lot with its existing older buildings--bears no relationship to what is actually perceived by a pedestrian. What one sees is a new building of almost 90% coverage with an approximate FAR of 30 on the development portion of the lot. By comparison Citicorp, a unified development on a lot of similar size, does not appear to be as dense and overbearing, although the total FAR and tower coverage are the same. This is true for a number of reasons primarily having to do with the contrast of shoehorning versus site planning on a cleared lot and the resulting diminished daylight and sense of openness (as well as the scalar and aesthetic dissonance between the old and the new.)

The process of tailoring Special Permits to the needs of particular developments is endemic to the 1961 Resolution and

34 Midtown Development Project - Draft Report, 1980,
Op.Cit., P. A108-A111

35 New York City Zoning Resolution, Op.Cit. p., Sections 74-72, 74-82, 74-87

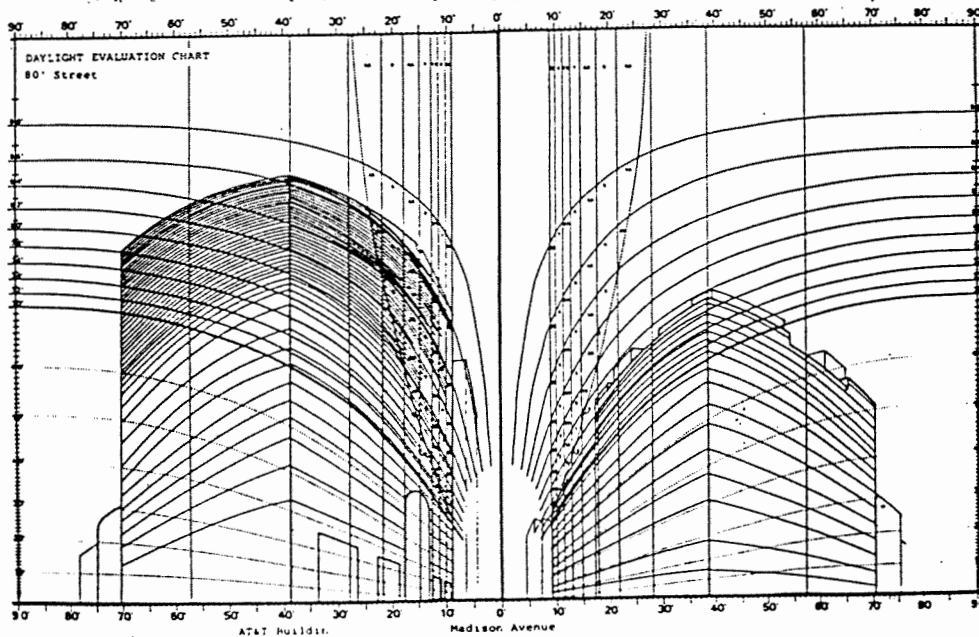
resulted from its rigid form of preregulation and every ones delight in the negotiation process. Section 74-72 of the '61 Resolution allowed the City Planning Commission to modify the height, setback, tower, and coverage requirements for what was construed to be superior design. This generation of Special Permit buildings--of which AT&T and IBM are probably the best known--caricatured the renewed interest in "context," which Philip Johnson, architect of AT&T, referred to as the historical context of New York's skyscrapers, and which Edward Larabee Barney, architect of IBM, saw as an adherence to the pattern of development established by the city grid [36]. The public space defining attributes of the earlier street wall buildings encouraged by the 1916 Zoning Ordinance as achieved by its system of Height Districts. In practice, Section 74-72 ultimately encouraged the placement of the very tall free standing extruded tower form of repetitive and standardized floors up to the street line (AT&T, IBM, etc.) or filling the lot out to the street line with same slab-like towers (I.M.Pei's 490 Park Avenue). These are street walls with a vengeance! They bear little relationship to the heights of adjacent street walls, create lighting levels in the street which harken back to prezoning days, and create wind effects on the public space of the street adjacent to these sheer towers which at best are uncomfortable and at worst dangerous. [37] Objective environmental and sensory criteria (one might even say common

36 Suzanne Stephens, "Corporate Form Givers", Progressive Architecture, July, 1979), P.57

37 Morrison Hershfield Limited, Pedestrian Level Wind Assessment on Lincoln West Development, Report, June 1964
 Isyumoy, Review of Pedestrian Level Winds For The Lincoln West Development, Report, June 1984

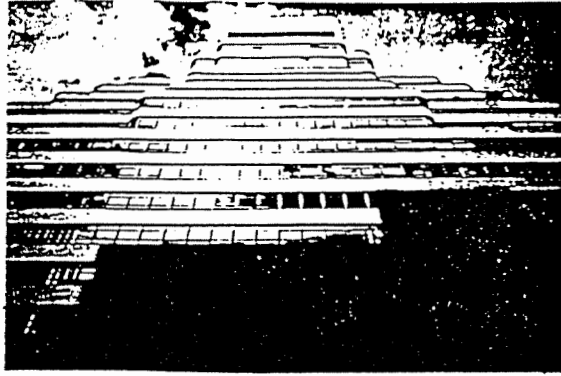


View looking North from the center of 53rd Street and Madison Avenue

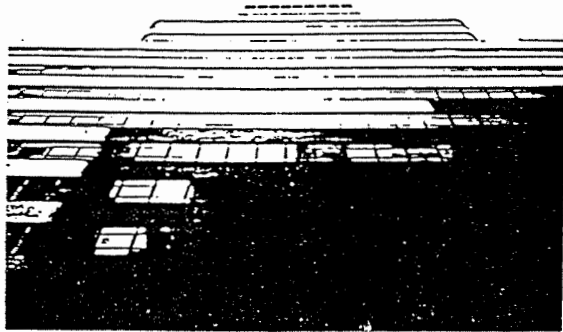


Madison Avenue Looking North
And Daylight Evaluation Chart
(DEC) of AT&T (Compare With Look
Building)

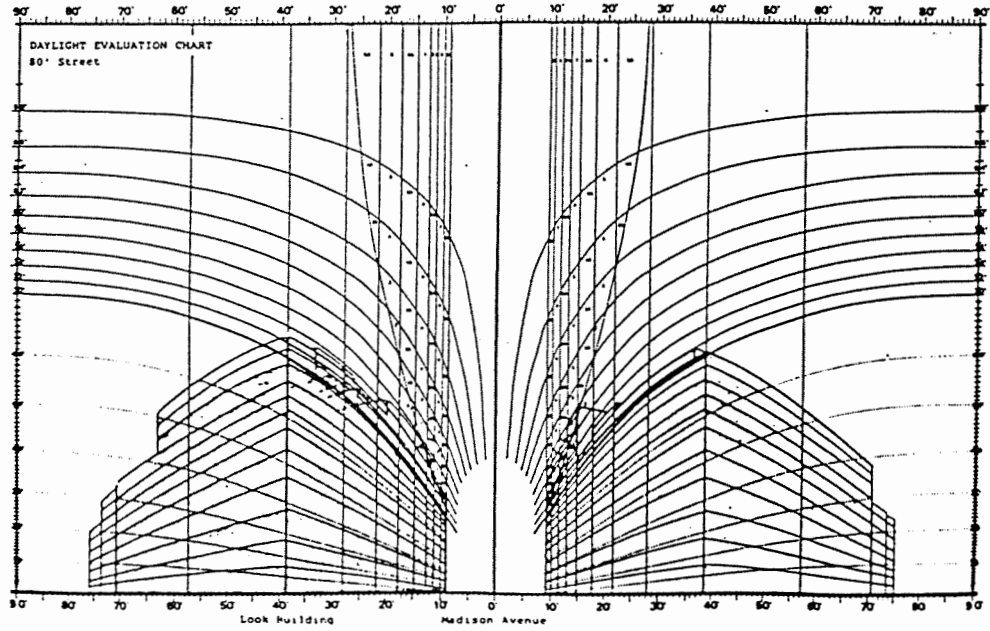
LOOK BUILDING 1949
FAR 16.0



The Look Building viewed from across the street



The Look Building viewed from the center of Madison Avenue



Daylight Evaluation Chart
(DEC) Of The Look Building

sense) were discarded for what appeared to be good architecture. In the most profound sense the DCP and CPC found itself in the awkward position of legislating architectural taste. The developers quickly learned that noted architects, like designer labels, provided a veneer of aesthetic chic and cache.

With what criteria can some buildings be rejected and others passed? Prof. John J. Costonis, in his well reasoned article for the Michigan Law Review, "Law and Aesthetics: A Critique and a Reformation of the Dilemmas," forcefully argues that abstract beauty in this country is not sustainable legal doctrine although it is certainly sustainable aesthetic philosophy. He states, "Aesthetic policy, as currently formulated and implemented at the federal, state, and local levels, often partakes of more of high farce than the rule of law. Its purposes are seldom accurately or candidly portrayed, let alone understood, by its most vehement champions....Its indiscriminate, often quixotic demands have overwhelmed legal institutions, which all too often have compromised the integrity of legislature, administrative, and judicial process in the name of beauty." [38]

38 John Costonis "Law And Aesthetics: A Critique And Reformulation Of The Dilemmas" (Michigan Law Review, Vol, 80. No.3 January 1982) P.356

II. THE REVIEW

The in-house review of Midtown zoning in terms of both its legislative and administrative history and the built results began in the late spring of 1979 and continued through to the early fall. The weaknesses of the past zoning efforts were assessed and proposals formulated to address the perceived shortcomings. The work was done primarily by the Urban Design Group (UDG), represented by its Director Raquel Ramati and Michael Parley. It was assisted by the Office of Midtown Development, the Manhattan Office, and the office of the Counsel and Technical Controls. Consultants were retained to examine the burgeoning list of amenities and sidewalk congestion (Holly Whyte), real estate economics (Abe Barkan, James Felt and Co.), and bulk regulations (initially Alex Cooper, ultimately Kwartler/Jones and Davis Brody & Associates were retained).

The UDG had already begun some of the reassessment work. Having formulated virtually all the Special District and Special Permit legislation applicable to Midtown, and having been involved in the negotiation process during the discretionary review, they had the advantage of experience. From their point of view their dual legislative and administrative role gave them the information to "fine tune" the regulations based on actual experience. Holly Whyte (amenities and sidewalks consultant) has characterized the UDG and CPC supported fine tuning in a less than flattering and neutral way. "...[S]o the planners obligingly changed the rules,

allowing developers, on a case by case basis to put up bigger buildings on smaller sites. As developers quickly realized, the planners now had the freedom to give more of the store away. And so under the rubric of "fine tuning", they did." [39]

A memorandum from Raquel Ramati to CPC Chairman Robert F. Wagner, responded "[to] the concern about overdevelopment in the midtown core and the lack of value of some of the pedestrian amenities included as trade-offs for extra floor area and height and setback modifications. Both problems could be correctly adjusted if the bonus system were restricted to mandate the correct amenity in the right place." [40] The focus is clearly on the amenity rather than the bonus system itself and most importantly the negotiated height and setback modifications. Furthermore the memo suggests that possibly Lexington and Madison Avenues could have a Special District status conferred on them. Nowhere in the memo is there any questioning of the concept of the discretionary bonus and its vehicles--Special Permits and Special Districts. The implicit conclusion of the memo is that practice has not lived up to expectations but further "fine tuning" can correct past errors.

The Chairman's response to the approach in the Ramati memo was conveyed to the 26 June, 1979 meeting of the Task Force. He proposed a far reaching revision of the Midtown's zoning regulations calling for a performance based system for building quality that would be analogous to the Housing Quality Regulations (Section 74-95 New York City Zoning Resolution). The system should

39 William Whyte, "How To Make Midtown Livable " (New York Magazine, 9 March, 1981, P. 25-26.

40 Raquel Ramati "Memorandum to chairman Robert F. Wagner Jr." 6 March, 1979

be simple so it could be administered as-of-right by the Building Department. [41] The taskforce went on to outline the Quality Criteria for such a system which were:

1. maintenance of an existing streetwall
2. through-block connections as part of a pedestrian network.
3. maintenance of significant retail streets
4. alleviating sidewalk congestion
5. improving light/access to transit stations, and
6. providing needed open space. [42]

Subsequent to this meeting the Task Force began its round of meetings with concerned groups [43] Concurrently, Borough President Andrew Stein held a "Hearing on Midtown Development," on 17 July, 1979, at which the development community, architects, and community expressed their views. [44] At the same time the Mayor's Office of Midtown Development prepared their list of zoning issues, many of which derived from the changing nature of development in Midtown. [45] They were:

1. limited building sites
2. Existing sites have unique problems/opportunity
3. Small site size problem
4. Avenue full front sites
5. Zoning Lot Mergers (ZLM's)

41 Midtown Development Study - Task Force Meeting, 26 June, 1979

42 Ibid

43 Midtown Development Study - Meeting with Council Presidents 23 July, 1979

44 Andrew Stein Hearing, Op.Cit.

45 Memorandum from Halpern to Berstein, undated ? July 1979

6. Bulk, Height and Setback
7. Coverage
8. Midblock Zoning
9. Ground Level use

By mid-August the Task Force Director, Richard Bernstein, presented his Midtown Development Study Report Outline. [46] The outline had by then formulated the issues and a corresponding set of policy decisions regarding development and zoning strategies for Midtown. It is not unfair to say that the formulations of the issues and the suggested strategies were responses to the perceptions of the Task Force rather than a well reasoned analysis of the situation in terms of its past history and future trends.

Much work remained to be done if a preliminary report was to be ready by the fall. The report was delayed until January, and then until the following June, with the consultants doing the substantive analysis and recommendations regarding amenities, congestion, real estate economics and building bulk regulations. This was not inconsistent with Bernstein's approach which concentrated on recommendations with the report supportive of the recommendations. [47]

The UDG continued its focus on the amenity issue absent any work by its consultant Holly Whyte who began his work in December. [48] Concurrently, its cursory interest in building bulk and its

46 Richard Bernstein "Draft Midtown Development Study Report Outline", 18 August, 1979

47 Midtown Development Study - Task Force Meeting, 13 November, 1979, P.1

48 Ibid, P.1

49 Urban Design Group Memo: " Commercial Buildings and Amenity Quality" 18 September, 1979

perception (Alex Cooper never seemed to get going on this) resulted in the UDG recommendations that certain streets have mandated street walls. [49] While the UDG continued its work, Richard Bernstein began another round of public discussions. These discussions were aimed at illiciting responses to the issues and strategies as framed by the Task Force. Meetings were held with Community Board #5 representing Midtown, Community Board #6, Community Board #4, The President's Council, CHPC, and the Civic Affairs Forum. Generally the reactions were supportive of the general direction taken by the Task Force. The comments as recorded in the meeting notes are unfocused but the following could be surmised from all the discussions:

1. The quality of the bonusable amenities did not meet expectations.
2. The discretionary design review process created uncertainty.
3. There was a need for consistent zoning policy.
4. FAR and its stepchild ZLM's are a problem.
5. Try to maintain existing retail.
6. Mixed reviews on as-of-right v. discretionary design review.
7. Maintaining light and air are worthwhile goals of zoning. [50]

49 Urban Design Group Memo" Commercial Buildings and Amenity Quality: 18 September, 1979

50 Meeting Notes: CB#5, 7 December, 1979, Presidents Council, 12 December, 1979. CB#6; 14 December, 1979; CHPC, 18 December, 1979, CB#4, 10 January, 1980; Civic Affairs Forum, 21 January, 1980

The vague response could be attributed to the vagueness of the recommendations. More importantly much of the substantive background data and analysis that was necessary for these groups to intelligently assess the strategies had yet to be done. In the area of zoning and bulk controls, as elaborated on by the UDG, one could say the approach was cautious and in many respects an effort to renovate the discretionary system that its supporters, the UDG and the architects and their client, still considered to be viable and very much alive. The objective analysis of zoning in Midtown remained to be done by the consultants retained in February of 1980 to develop a comprehensive system of bulk controls that responded to Robert F. Wagner Jr's. initial proposal--a dramatic overhaul of the regulations with the goal of incorporating in as-of-right regulations and the apparent flexibility and sensitivity of the discretionary regulations. It was becoming apparent that tinkering might not work and that the problems might be structural.

This observation and the issues as framed by the Task Force became the design charge to the consultants who were to develop the new bulk regulations. The consultants, urban designers Kwartler/Jones and architects David, Brody and Associates, in the introduction to their draft report of 24 June, 1980 outlined the scope of their work and their methodology (Midtown Development Project: Zoning Regulations Study-Final Draft) as:

1. The related problems of population and perceptual density resulting from:
 - a. current mapped densities, bonuses and height, setback, coverage, open space regulations.
 - b. the aggregation of large amounts of floor area by transfer of development rights from landmark or non-landmark buildings.
2. The problem of context given the current mix of

- commercial, residential, and community facility uses and structures. This includes the impact of new buildings on existing structures and open spaces.
3. The environmental quality of outdoor space with emphasis on daylight, sunlight and streetscape.
 4. The need to minimize administrative review by streamlining procedures.

In order to understand the manner in which the physical environment and zoning regulations of Midtown co-developed, the 1916 and 1961 Zoning Resolutions were reviewed in terms of both the origins of their concepts and the subsequent modifications, revisions, and amendments.[51]

In a sense this represented "a return to zoning's basics"--a phrase repeatedly used by Richard Bernstein. The report then proceeded to examine the development of the built form of Midtown, first from a sensory point of view then by the role of zoning in creating the sensory environment and finally an analysis of how--administratively--the buildings were built.

Some aspects of the report became the substantive basis for the recommendations. As we shall see some of the a priori conclusions of the Task Force were borne out by the analysis while many others were not. Most importantly the consultants saw the legislative and administrative history of zoning building bulk regulations in Midtown as a co-equal to the actual buildings themselves in determining the public's perception of Midtown.

Given the problems of site assemblage in Midtown the report addressed the implications, intentions and limitations of the 1961 AOR regulations regarding site assemblage. The salient points were:

"The speculative and corporate market demands for typical floor sizes have predominated in the 15-25,00 SF per floor range, although there are many exceptions to this rule. The site size required for an AOR FAR 18 tower building in a Midtown C5-3, C6-6, C6-7 zone can be quickly calculated.

51 Midtown Development Project, Draft Report, June 1980, Op.Cit., P.A9

<u>Tower Floor Area</u>		<u>Ma. Cov.</u>	<u>Site Size</u>
10,000 SF/FL	+	40%	25,000 SF
15,000 SF/FL	+	40%	37,500 SF
20,000 SF/FL	+	40%	50,000 SF
25,000 SF/FL	+	40%	60,000 SF
30,000 SF/FL	+	40%	75,000 SF
35,000 SF/FL	+	40%	85,000 SF

(The 85,000 SF site is equivalent to a full block development on a small east side block or a typical new Rockefeller Center Building on a site of the same area as the Empire State Building.)

These sites are all considerably larger than buildings with predominantly equivalent floor sizes in pre-1961 buildings such as ITT on Park Avenue with a site size of 30,000 SF. Though its floors diminish in size with the setback provisions at the top, 80% of the floors range from 15,000 to 30,000 SF.

In all cases for towers, the towers were required to be no closer than 20 feet to 40 feet to a narrow street and 15 feet to 40 feet to a wide street depending on whether the entire building is a tower or a tower and base structure. This is coupled with the maximum area per floor allowed, an absolute number irrespective of site length, that could be located within 50 feet of a street line. Thus as the site increases in size the regulations require a thinner slab, rather than a tower, centered on the east-west axis of the site.

Clearly, the 1961 regulations were written for a regular, deep, avenue blockfront. The ultimate size of the building is a direct function of the lot depth--a form extruded into the midblock." [52]

The analysis of office buildings built during the period 1960-82 explains the administrative history which was based on the consultants extensive analysis of each building built in Midtown and the administrative vehicle used.

"An analysis of all office buildings built under the 1961 ordinance through 1982 presents a very revealing trend. Of the total of 111 buildings constructed since 1960, 72 or 65% were built AOR and 30 or 35% received either a BSA Special Permit or CPC Special Permit by the City Planning Commission.

The amount of floor area built AOR during that 22 year period represents 58% of the total, with the remaining 42% receiving some form of public action. Closer inspection indicates a steady trend from AOR buildings to buildings requiring public waivers. As-of-right construction accounted for 100% of all buildings in the

period 1960-64, 87% in the period 1965-69, 46% in the period 1970-74, 25% in 1975-79, and 0% in the present period 1980-82. Essentially the AOR regulations described earlier have gone unused for the last 8-10 years for the construction of Midtown office buildings.

Of the 29.6 million SF of buildings receiving either BSA or CPC action, approximately 1.6 million SF of office space required BSA action, while the other 28 million SF were granted Special permits by the CPC. The 7 BSA variances tended to deal with small corner or irregular lots. Unlike the CPC, the BSA cannot invent new zoning but can merely grant waivers on specific sections of the text on the basis of specific hardship attributable to the site. It appears from a cursory perusal of the files that BSA variances had less to do with hardship than with developers purchasing undersized lots that did not fit the ideal tower described earlier, which prevented them from achieving the maximum FAR of 18. The BSA actions cluster primarily around a few years in the late 60's and early 70's followed by a spurt of CPC additions to the Special Permit and Special Purpose District Sections of the Zoning Resolution.

This overview of the trends in the last twenty years, from AOR to discretionary review of every new building by the CPC raises the obvious question: Why did this come about? Some tentative or speculative conclusions are possible. Clearly both developers and the CPC have for whatever reasons moved away from the objectivity of AOR regulations to the negotiation procedures of discretionary zoning.

1. Trends are revealed in reviewing Appendix A16, which compares tower floor area, site assemblage via a Zoning Lot Merger (ZLM) and Transfer of Development Rights (TDR) and site area of buildings for the post-1974 period. Compared to the buildings of earlier periods, the buildable sites have gotten smaller for buildings of similar floor area. Only 3 of the 14 buildings since 1974 could have been built AOR with tower coverage representing 40% or less of the site area, bearing in mind that lots under 20,000 SF are allowed to increase their coverage up to 50% AOR depending on the size of the site; even in these situations the coverage exceeds the AOR allowable coverage. The high incidence of ZLM and TDR represent the recent approach toward site assemblage in regard to the 40% tower requirement. As the available buildable sites have gotten smaller or assemblages on the order described earlier became more difficult or economically less feasible, the purchase of "assemblage rights" from adjoining buildings has increasingly become the method by which the developer meets the letter rather than the intent of the law. The authors of the 1961 Resolution with their predilection for an ideal building, ideally sited, did not either foresee or probably desire the combining of new and old buildings on the same zoning lot, as in recent ZLM's. The reason for the incompatibility of the ZLM with the AOR regulations is that the location, size, and configuration of the buildable portion

of a ZLM are not subject to pre-regulation but rather result from the developer's assemblage. The building simply goes where it can go. The net result is that all ZLMs require waivers of height, setback, and sometimes lot coverage regulations in order to justify the exceedingly high amounts of bulk on restricted lots with existing buildings.

2. In the 1960's the earlier CPC discretionary actions resounded to the needs of the new very large Sixth Avenue building for rationalized floor configurations. Deeper blockfront sites required narrower towers than shallower sites under the prescriptive formula of tower encroachment. This contradicts building practice, where the ratio of width to depth and width to height establishes norms that increase with large buildings--(+/-) 2 million SF. The width of large buildings with their wider elevator and mechanical cores was minimally 15 to 20 feet wider than permitted under the ordinance. The early use of Sec. 74-72--a Special Permit provision allowing the waiving of the AOR bulk regulations--therefore was not used to increase tower coverage but to rationalize configuration of tower plans.
3. With the smaller sites, the desire for higher coverage and a growing dissatisfaction with the proliferation of plaza upon plaza, the development of the indoor public amenity came about. All indoor amenities require CPC review and receive Special Permits. They allow the same if not greater FAR as for an outdoor open space. The value of the amenities has been questioned. The immediate consequence of their institutionalization included (a) raising the expectation of achieving 18 FAR to the equivalent of a right on all sites, (b) facilitating large concentrations of building bulk on both the small lot and the small buildable portion of a ZLM.
4. In the late 60's and early 70's it became increasingly clear that Midtown was a rather heterogeneous collection of distinct districts homogeneous in their local character. That understanding required a more sensitized approach to new construction than afforded by the 1961 AOR regulations. Discretionary legislation was envisioned as promoting development sensitized to the environmental needs of location. The Special Purpose Districts, such as the Theater District, are typical of such legislation. The Fifth Avenue Special Purpose District recognizes the distinctiveness of Fifth Avenue, as did the framers of the 1916 ordinance. The character of Madison has recently become an issue with the assemblage of 4 or 5 sites on the avenue, each with the possibility of breaking the streetwall and retail frontage of the avenue with a plaza if the AOR regulations are met. The Commission responded to the possibility of an AOR building and plaza on Madison Avenue by directing the development through discretionary review. The developer was equally concerned by the inherent building diseconomy but used the AOR building as a basis for negotiation. The CPC allowed bonuses for indoor

amenities at higher rates than for outdoor amenities which may have attracted development away from the BSA variance route. In the late 60's it was perceived that the BSA was, in effect, creating zoning policy by granting height setback, and coverage waivers to building on small or irregular sites.

The use of discretionary review in lieu of the AOR system of pre-regulation and the development of an incentive bonus system represented a major innovation in zoning technique at the time. The planning profession had discovered during the 60's that discretionary review provided a more flexible and site specific approach than was usual in the prescriptive AOR zoning of an earlier period. These techniques were first applied in the fifties to conditional uses and later expanded for large scale developments for primarily non-urban PUD's. The boldness of the CPC to adopt this approach on the scale of Manhattan (most Special Permits and early Special Purpose districts) was greeted with enthusiasm by all parties. The decision to handle new office construction through the use of discretionary zoning techniques was based on a recognition of the more onerous and stultifying effects of the 1961 tower and open space provisions and genuine belief that zoning could promote and regulate a good environment through design incentives.

The lack of objective and uniform criteria for reviewing a proposed development and the tendency to tailor or amend existing legislation to each new building brought before the CPC has tended to undermine any consistent notion of certainty. The pre-certification period--which is excluded from ULURP time restrictions for project reviews--is often an open ended period of negotiation in which the ground rules and in some cases the purview of the CPC are indistinct. In the process of negotiation it is unclear as to the limits of the public concern in the architectural design of a privately built office building. The role of zoning should not be to place concerns for the appearance of individual buildings above concerns for maintaining overall environmental quality. Despite the current lack of clear AOR goals, the question remains, can the certainty and objectivity which should be inherent in an AOR system be compatible with the best characteristics of flexibility and site specificity inherent in the discretionary approach." [53]

The buildings which resulted from the combination of a revived economy, small sites and a discretionary review process, which focused virtually almost all its attention on the bonused pedestrian amenity and the architectural design, were regardless of

53 Ibid, P. A28-A32

their architectural merit blockbusters which harkened back to NYC's pre-zoning period. The advantage to the developer was obvious. Small sites could now house buildings which formally required substantially larger cleared development sites. The developers could eat their cake and have it to they were willing to engage the public review process.

Past events have borne out the value of this approach to developers. There were no objective standards against which to evaluate the proposed development regarding the requested height and setback modifications and their impact on daylighting and the quality of the public space of the street. The public perceived that the light was going out in Midtown. It turned out the public was right. Standards were replaced by rationalizations that asserted that the indoor or covered amenity balanced the increased density and the light blocked by these new super scale buildings. The fascination with internalization of public space, the atrium, galleria, etc., on private property and the fashionable chic of streetwalls although with a vengeance (the building of very large buildings on small lots that rise shear from their lot lines to heights in excess of 600 feet) replaced zoning's historic concern for the quality of the public space--the streets and sidewalks of Midtown. Margot Wellington (former) Executive Director of the Municipal Art Society puts it, "Our zoning has now reached the point of disintegration." Joanna Battaglia, head of Community Board #6 said, "We have unwanted amenities joisted on us at the expense of the best amenities of all--light and air." [54]

54 Whyte, Op.Cit., P.25

The consultants analysis concludes that:

"It is clear from the preceeding analysis of the structure and content of the 1916 and 1961 Zoning Resolution and their realization in buildings, that a prescriptive system of AOR zoning is not flexible enough to deal with the current difficulties of development in Midtown. Nor is a purely discretionary approach, with its lack of objectivity, certainty and accountability, an acceptable approach to complex requirements which include:

- a. widely varied site assemblage--including ZLM, TDR and irregular and small sites
- b. public space on the building or zoning lot
- c. energy conservation and solar access
- d. the need to fit the new building into an existing and valued context
- e. the need to insure the vitality of the street
- f. the need for marketing flexibility in floor sizes
- g. the financing process which often requires the developer to program the building's floor area needs to major tenant or tenants in order to obtain financing
- h. the potential objections of owners of surrounding property
- i. the preservation of existing uses, character and ambience of districts within Midtown.

The above list, formidable as it is, suggests that an integrated and comprehensive approach to the design of new bulk controls for Midtown is essential. Tinkering with the present system of prescriptive AOR bulk controls by treating them in isolation, avoids the fundamental questions raised by the analysis. This is not to say FAR controls cannot work; an AOR system of zoning is desirable and viable if tuned to the present and long term environmental and economic conditions of Midtown. AOR controls need not produce a grinding uniformity. The Chrysler, Empire State, RCA and Seagrams Buildings and the building ensembles of Fifth and Madison Avenues and Central Park West bear testimony to the efficacy of such an approach.

New bulk controls must be sensitized to the buildings and spaces of Midtown which are an expression of high concentrations of diverse activities. Its desirability as a workplace is dependent on the continued existence of its social and physical variety, and on its ability to draw upon the enormous reservoir of its own past, even as it moves forward. It is a place of constant change, but change which at its best preserves the enduring qualities of the existing environment. The street grid which connects all its areas in a seamless web provides an orientation framework. The uniformity of its topography and the grid are complimented by great heterogeneity within the districts. The historical differences between areas, both in use and scale, should be reinforced by new building activity. New buildings benefit greatly from the richness of the environment, and therefore should contribute to and enhance what

remains. Displacing diseconomies on other lots is a burden on all. Self-interested actions could accumulate into a destruction of the whole, much as incremental overuse destroyed the Commons in Garret Hardin's essay, "The Tragedy of the Commons."

The anticipated comprehensive revisions to the AOR bulk regulations of the Zoning Resolution will have effects far beyond the borders of Midtown. The problems experienced in Midtown are being felt in various degrees in other major American cities. As in 1916 and 1961, the City again has the opportunity to set a new zoning model, one that reflects today's concern for both environmental and developmental quality." [55]

In the summary and recommendations the consultants outline the approach to be taken:

"The present system of as-of-right bulk controls for commercial developments in Midtown is currently moribund; it has been unused for almost 10 years. The move away from the acknowledged rigidities of an as-of-right prescriptive system to the use of Special Permits and complete discretionary review for all new buildings has not necessarily produced environmentally sound developments. We recognize and support the strong public push to limit discretionary zoning by instituting new as-of-right regulations that incorporate environmental objectives.

The complexities of current development problems and growing environmental awareness require a reexamination of the very concept of purely prescriptive controls. Prescriptive tools at best govern what can be anticipated; the critical impasse for zoning, and for all those concerned about development, is the constantly unanticipated. Ensured quality derives not from prescribed form but from assured environmental performance.

Any truly workable as-of-right system must be an orchestration of all the zoning instruments available. Increased complexity and difficulty must be met with increased creativity and sophistication. New regulations should include the best aspects of prescriptive, discretionary and performance zoning techniques in an overall as-of-right approach. But the structure and content of such an as-of-right system must first be based on clear goals. The following general goals should be embodied in all the various tools and methods of any new zoning for Midtown:

Environmental

1. Recognize the perceptual relationship between new building bulk and the existing physical context.
2. Meet a preferred level of environmental quality which is

derived from a perceptual and functional analysis of the physical context of Midtown. This includes existing expectations of daylighting, and of the scalar definition of open spaces and streets.

3. Guide the physical change in Midtown to minimize the perceptual disruptions and discontinuities of very high bulk buildings, isolated structures and usable space.
4. Encourage the perception of historical continuity by the preservation of the diversity of building types, the enhancement of existing amenities and conservation of the social and cultural diversity of Midtown.

Administrative

1. Maximize the effectiveness of as-of-right zoning by institutionalizing flexibility in site assemblage and site design.
2. Develop as-of-right regulations that do not discriminate by lot size or configuration.
3. Insure that proposed controls satisfy both the substantive and the procedural test by being based on empirically derived and verifiable data. The controls must be objective, uniform, and comprehensive in their application.
4. Tailor the proposed controls to be responsive to the relative simplicity or complexity of a development situation.
5. Assure that the proposed controls respond to the legitimate needs of the public, developers and architects and maximize the long term benefits for all.
6. Insure that the proposed controls have a predictability of development potential." [56]

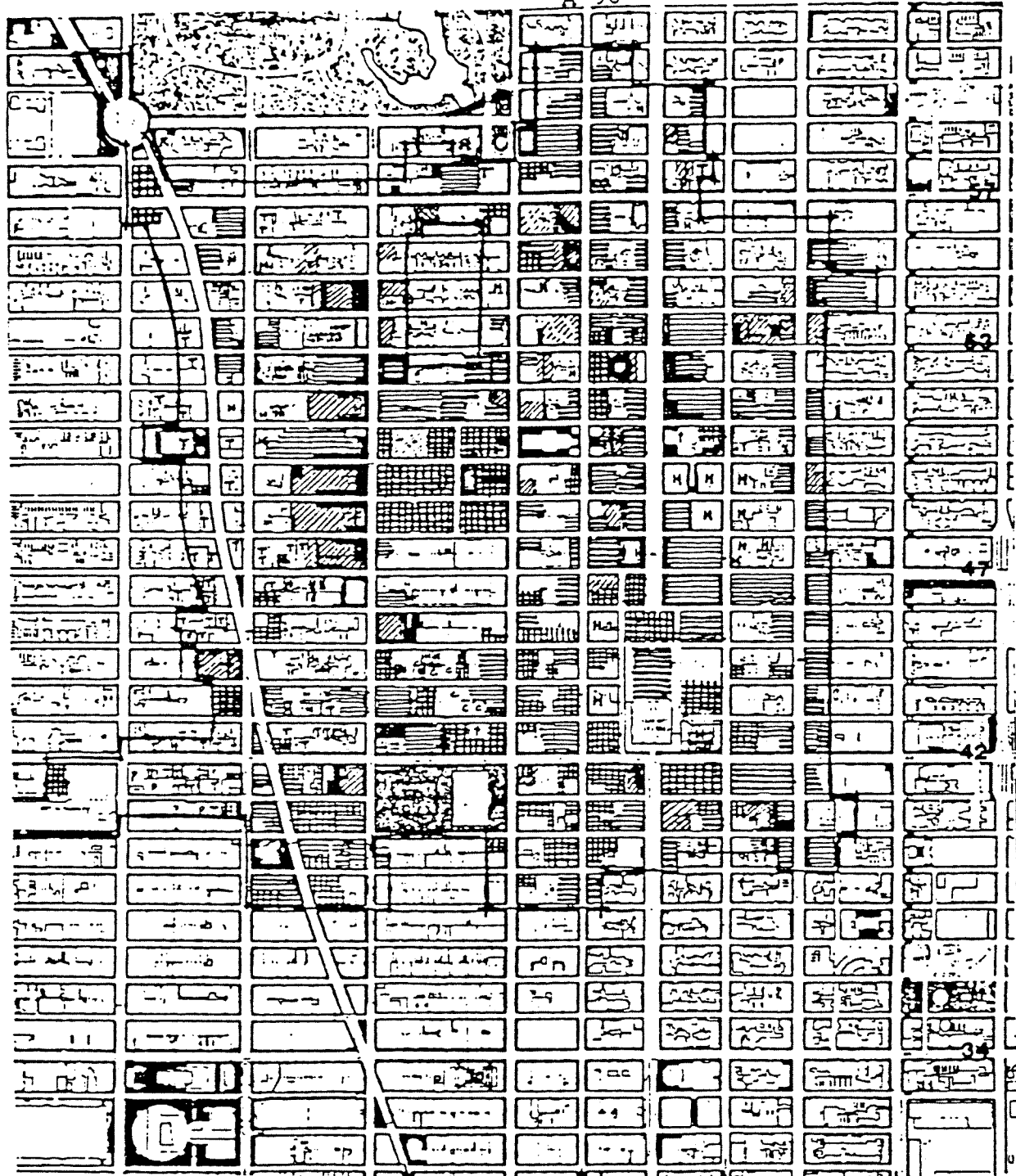
THE PROPOSAL

One of the basic public purposes to be served by any zoning regulation is to insure that an acceptable level of environmental quality is maintained. In zoning terms this means controlling the density, intensity and use of land, insuring a degree of fit between the existing buildings and any proposed building, and mandating solar access to the public space of the streets, parks,

and private plazas and to fronting property. These were the central concerns of the 1916 and 1961 regulations.

The new Midtown regulations were to be as-of-right to the degree possible, and based on objective and uniform criteria to insure certainty and accountability. The consultants recommended that a comprehensive set of as-of-right building bulk regulations that were performance based rather than prescriptive based be developed. The new regulations would return to the zoning basics--light and air--and so would represent a reaffirmation of the public's interest in a private development. Solar access and quality of public spaces would become the focus of the new regulations. The essence of the new regulations' approach to development was to build on and achieve a balance between the expectations for adequate daylighting, streetwall continuity and open space. Midtown was not to be treated as a tabula rasa but rather a complex environment with a history and ecology of its own, demanding sensitivity to both small and large scale urban design concerns. The energy crises of the 1970's further strengthened this position. Solar access for perimeter lighting and lower, bulkier buildings represented an awakened energy consciousness and were consonant with the public's historic expectations of the physical development of Midtown. We proposed an as-of-right comprehensive performance system of building bulk regulations that would incorporate and make manifest the public's expectations resulting from seventy years of zoning.

Such a system based on pre-regulation had many advantages, such as procedural certainty for both the public and developer;



KEY		Pending C.P.		Post '61 C.P.		1945 - 1966		Theater		Hotel
		Pending A.S.A.		Post '61 A.S.A.		Pre-1945		Church		Apt. post '61
		No Pending A.O.A.		Post '61 A.O.R.				Private Club		

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 Consultants Draft Report
 (June, 1980)

accountability; speedy processing; and design and development flexibility. The structure of the proposed performance system was similar to and built on the precedent of Housing Quality Zoning, an interactive trade-off performance system adopted by the City in 1976. [57] The system defined a goal to be met; gave it a numerical value indicative of its importance relative to other goals; established an objective numerical system for measuring the degree of compliance for each component; and established localized and overall thresholds of performance. In the new As of Right system for Midtown all regulations regarding building height, street wall height, building and tower coverage, and courts were to be superceded by the performance system.

Interactive components of the proposed Midtown performance system

Component	Maximum Points	Minimum Points
1a Daylighting	60.0	40.0
1b Building reflectivity	----	5.0 Optional
2 Street wall length	25.0	
3 Street wall height	15.0	
4 Sunlighting (on parks, plazas)	----	10.0 Optional
Total	100.00	

The Midtown performance system as proposed had four interactive components [see table 1], each with a numerical value. The sum of the values equalled a maximum of 100 points. Any proposed building was required to score a minimum of 85 points in order to comply with the proposed standards. This system reflected the understanding that the components were interdependent and that

57 Urban Design Council, Housing Quality: A Program For Zoning Reform, (1974) and New York City Zoning Resolution Section 74-95 Housing Quality Developments

decisions affecting a building's configuration represented a meshing of the public program (the zoning regulations) and the developer's economic and tenant space program in an artful way.

Of the four components only daylighting had a minimum acceptable score corresponding to a threshold below which the public's historic expectation of daylighting in Midtown would not be met. The excessive externalization of diseconomies to adjoining property and the public street was forbidden.

Reflectivity of the buildings surface was added as a "buy back" for those buildings whose daylighting score failed to meet either the minimum score for each street or the passing average score for the entire development. It was observed in Midtown that many of the older buildings and developments utilized limestone or light colored brick in combination with the limestone as facing material. This is particularly evident on Fifth Avenue, Rockefeller Center, the Empire State Building and the Chrysler Building, as well as many of the less well-known buildings in Midtown. Interestingly, the Waldorf Astoria is a limestone faced building by inference. The base is limestone while the upper floors after the initial setback are buff brick similar in color to the limestone. The observable fact was that the public spaces adjacent to these structures benefitted from reflected light, and compensated for, in part, for losses in daylighting.

Unlike daylighting, which in our case assumed a uniform overcast sky, building reflectivity is sensitive to the orientation of the sun. Facades facing due south utilizing the same material are more reflective by a magnitude than facades facing north.

Because of this variability and inherent built-in penalty for some sites, building reflectivity was incorporated as an option.

III. ZONING IN MIDTOWN: CONCEPTUAL ISSUES IN DESIGNING BUILDING BULK REGULATIONS

The major components of New York City's Zoning Resolution, the districting of use, density, and site planning and building form all have strong aesthetic implications if one assumes city form has aesthetic content, e.g., "Paris is a beautiful city." The first two components guide if not determine in the rough the spatial organization of the location of the residential areas, local shopping streets or districts, and commercial and manufacturing areas. The separation of uses, while clearly justifiable in the case of obvious nuisance--nuisance per se where the physical harm is apparent, becomes less compelling when the harm reflects a social and economic policy, e.g., mixed use neighborhoods v. the exclusive residential neighborhood of single family detached houses. (See *Euclid v. Ambler*, re: Apt. houses inappropriate in residential single family detached house areas. Similarly, density has aesthetic implications because it represents not only the building volume that will be perceived by the public but also the volume of people that will use the streets, infrastructure, shops and cultural institutions. Historically high density was associated with cities for reasons of economics and distance. Furthermore, density as with the separation of uses has no absolutes until public health issues, such as epidemics resulting from inadequate sanitary and fresh water infrastructure, manifest themselves. Low density is in

reality not necessarily "better" than high density as the high density cities of Europe are testimony to. (Paris Rome 300-400 person/acre). Low density produces one kind of an physical environment, high density another for the obvious reason of building volume--18 FAR @ 100% coverage is 18 stories, or at 75% coverage 27 stories and so on. High density is contingent on a host of other factors that may or may not make it possible, including cultural adaptation. Jane Jacobs noted that yesterday's unmanageable cities become today's ideal cities in terms of size and density.[58] Obviously Midtown would not be Midtown at 2 FAR.

The last in the triad are the building bulk regulations which have traditionally determined the site planning and building configuration in New York City. Obviously, the form of the city is most easily perceived in the application of the regulations to each new building constructed. Of the three use regulations have the weakest direct connection to both the form of the buildings and use regulations have a more direct connection with the form of the city because the spatial distribution of activities is contingent on the mapping of use districts. Density regulations always manifests themselves in building volume which is not always directly related to population density. SOHO, which used to be virtually empty of people, is now teeming with density regulations.

58 Jane Jacobs, *The Economy of Cities*, (Random House, New York, 1970), P103-104

Bulk regulations configure the use to be contained in the new building and the density of building volume generally measured in FAR (a measure of total floor area which assumes a building volume based on minimum floor to floor heights and more directly limited by the bulk regulations). These regulations give form to the density. Let us call it perceptual density as distinct from FAR and population density.

A few examples will help explain this point. A typical high rise apartment house built in an R6 district in accordance with the As of Right regulations of the 1961 Zoning Resolution is the same density as Phipps Houses in Sunnyside Queens designed by Clarence Stein in 1938. The difference is that Phipps occupies approximately 43% of its lot while the tower/slabs occupies 15% of its lot. Furthermore, Phipps is a perimeter block building--it defines a completely enclosed interior courtyard while the tower/slab sits in the middle of its lot. Phipps' high coverage could have been achieved by an intermediate building form. The variations that exist between the extreme opposites of the tower and the perimeter block are too numerous to elaborate on here. It is clear that when each of these models are replicated by the hundreds if not thousands--they will produce two very different and distinct environments both of which are at R6 density of 100-120 person/acre.

In Midtown the so-called wedding cake buildings constructed under the 1916 regulations are more or less equivalent in FAR as the newly constructed AT&T and IBM buildings and the earlier AOR tower buildings (Westvaco, Exxon, etc.). In fact their lot sizes are virtually identical, 30-35,000 SF in the case of Look, AT&T, IBM and WestVaco buildings. In all three cases the physical density (floor area) is the same but the Look building is 24 stories WestVaco 42 stories, and AT&T 37 stories (660 feet high). Clearly, the size of the lot, the form of the building, the height of its streetwall if any, and the buildings' locations not only produce different sensations of perceived density but, when replicated by the hundreds, a different form of perceptual density to the city.

From this discussion it should be clear to the viewer that the abstractions of use, and density can be configured in ways that will produce dramatically different sensory environments. Assuming for a moment a rational and objective reason for the spatial distribution of uses and the designated density maximums that subsume their aesthetic components, we are left with the choice of how to give form to use and density. The choice is clearly an aesthetic one even assuming a rational, functional and economic reason for the form. Rational functional determinism of urban form is a poor argument, as evidenced in the engineered design of the rocketry, satellites, and space capsules of the Soviet Union

and the United States. After all, even engineers have aesthetic preferences.

If aesthetics is a major component of city form the overriding conceptual issue is the legitimate legal basis for aesthetic legislation given our constitution. The constitutional safeguards (regarding freedom of expression, property rights, and the procedural and substantive due process) embodied in the First (freedom of speech/expression), Fifth and Fourteenth (taking of property, equal protection and procedural due process) amendments are further complicated in practice by the cultural context of a pluralist society based on the liberal economy of capitalism.

The indiscriminate use of discretion and its questionable results in Midtown might lead us to the argument that aesthetics have no place in zoning. But as we have seen zoning and aesthetics are inextricably bound together. Rationalizations that zoning is merely an instrument to protect ourselves from harming each other is sophistry at its worst. [59] In the contrary one must agree with Prof. John Costonis' assessment of the issues:

"I do not agree that the aesthetic enterprise is inherently repugnant to sound legal or social values. But I am persuaded that its second-generation problems those relating to its actual effects rather than to its ostensible goals--confirm that aesthetic policy making and jurisprudence must be disciplined by the courts and legislatures if the rule, rather than the pretense, of law is to govern. My recommendations reduce to the single prescription that, consonant with appropriate institutional constraints,

59 Jacob Ukeles, The Consequences of Municipal Zoning (Urban Land Institute, Washington, D.C. 1964), P.22

legislatures and courts should take a much harder look at these demands than they do at represent. Legislatures should insist that they reflect values that are reasonably representative of community wide sentiment; that their implementation falls within the capabilities of the agencies designated to administer them and are thus not unduly vulnerable to subversion, and that they be confined by standards intelligible to property owners, the foregoing agencies, and reviewing courts....Formulated in terms of the foregoing triad of constitutional values (vagueness due process or standards, substantive due process and freedom of expression), each [proposal to legislate aesthetics] traces to the challenge of specifying the harm aesthetic regulation seeks to forestall and of ensuring that these values are not compromised in an attempt to prevent the harm" [60]

Implicit in the Costonis' argument is the recognition of environmental change. It translates into zoning as a program for regulating change that is reasonably representative of community-wide sentiment or perceptions. In other words, how does the community perceives Midtown in terms of its past, present, and future. Ascertaining those values for Midtown, particularly in regard to Midtown, was a conceptual issue of primary importance as it set the framework for the structure of zoning controls and the setting of standards. Implicit in aesthetics, sentiments, perception, values is the concept of "beauty." Aesthetic theory aimed at defining beauty has been a favorite cultural activity of civilized man for thousands of years. In the past one theory has tended to dominate the cultural life of a period only to be recaste as the society changes. Rather than having the force of law (e.g., zoning) they were culturally enforced by an aesthetic orthodoxy as manifest in a national style of the ruling class. The autocratic nature

of these societies is at odds with our pluralistic society. In our social context it is not only incumbent on us to determine community sentiment but also come to grips with beauty in regard to legislation. Put another way what concept of beauty can be sustainable and justifiable by the constitutional triad, while simultaneously having perceptual credibility in a pluralistic context.

To amplify the point the definition of "beauty" must relate directly to the way in which we perceive the world around us physiologically and psychologically. It must recognize the constitutional and psychological values embodied in freedom of expression by encouraging a diversity of design responses while simultaneously defining the level of unacceptable environmental dissonance. The definition of "beauty" must be resolvable into objective methods and standards which can be uniformly applied and periodically reviewed, and be responsive to the contingent nature of development vis a vis individual private property rights. It is worth repeating again that the definition of beauty must be inclusive rather than exclusive--that is representative of community sentiment, but limited by a clear understanding of the public interest in the development of a piece of private property.

Structurally the zoning for Midtown should be capable of equitably balancing the forces of change with the forces of stability. This was a particularly thorny issue as there was no ostensible overall physical masterplan for Midtown

development nor had a consensus for one developed. In New York City the history of planning is synonymous with the history of zoning. Zoning not only precluded planning (the Planning Commission was established in 1938--22 years after the first zoning resolution) but is planning. With the exception of urban renewal and the vague "Plan" produced in the late Sixties. [61] New York City has resisted the pull of traditional planning with its physical and/or policy plans. The idea of the mandatory plan was promulgated by the courts in response to the abuse of discretionary power. On balance the Plan has been failure in controlling these excesses whether in the suburbs or in the cities [Note: every time NYC's zoning resolution amended the plan is amended simultaneously making a mockery of both planning and zoning.] Weaver and Babcock are right when they suggest:

"At the very least, however, if this placebo is to be administered in place of real medicines cities should be exempted from the treatment. Mandatory planning as it relates to cities is an unnecessary interference with the urban land use process...nor is it [the plan] a cure adopted to the problems that cities do have. The complex problems of maintaining and redeveloping a major city are not likely to be much helped by the development of long range goals, broad policies, or detailed future land use maps, which is what most mandatory planning legislation mandates. City planning for a city demands a rather different orientation." [62]

They suggest, "that planning for major cities be reoriented so that it begins by answering the questions:

- . What must we do today to deal with currently perceived problems?
- . What, given our current resources and the present

61 New York City Planning Commission, Plan For The City Of New York (MIT Press, Cambridge, 1973)

62 Weaver, Op.Cit., P.264

demands on them, can we expect to do tomorrow to deal with the problems and concerns we now foresee?

- . If nothing unexpected happens, what might we want to do in the immediate future to avoid problems that a continuation of current trends is likely to produce?

Given all our answers to all the previous questions, where will the city be in five or ten years, and how acceptable will that be? [63]

This articulates an approach to planning and zoning that recognizes the contingent nature of urban development and offers a method for contextualizing short term decisions yet recognize that there cumulative decisions ultimately give form to the city. Given the failures of the rigidities of the 1961 prescriptive zoning and its system of pre-regulation which attempted to resolve all design issues into a singular model analgous to the factory norm of standardized production discussed earlier and a variant on "one size fits all" on the one hand and the failures of the discretionary approach which in its ad hoc approach sacrificed standards and a longer term policy context the new Midtown zoning regulations demanded a structure for zoning that would incorporate the positive aspects of both approaches in an easily administered as-of-right system. Conceptually such a structure had to recognize that: standards are relative and not absolute; that the process of design of a particular building involves contradictions and mutual exclusivities which cannot be resolved in advance in the body of the regulations (an explicit rejection of the typological approach); that good city form is the result of

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the orchestration of many factors. Furthermore, recalling Dostoevsky's Underground Man, admonition that man's "most advantageous advantage"-- is free choice--and Milton's definition of reason--"reason is choosing"--the structure for a new midtown zoning must be existential--that is responsive to the fact that we can never really know. Because of this limitation it is incumbent on the consultants to carefully define and delimit the public's interest in an individuals use of property so as to protect the Commons (Midtown).

IV. THE DEVELOPMENT OF THE PROPOSAL

"Man has such a predilection for systems and abstract deductions that he is ready to distort the truth intentionally, he is ready to deny the evidence of his senses only to justify his logic"

(Dostoevsky's "Notes from the Underground")

[64]

The focus of this section is the recommendations of the consultants draft report to the City Planning Commission of June 1980 which became the core of the new Midtown regulations adopted by the Board of Estimate in 1981. The draft report presented the conclusions of the consultants efforts regarding the substantive and procedural zoning issues and problems encountered by the City Planning Commission in managing development in Midtown. The draft report did not, except in general terms, describe the thinking and methodology that resulted in the proposal to not only restructure the content but also the form of the Midtown zoning regulations. This section therefore addresses the manner in which the proposal is responsive to both the conceptual and pragmatic issues. As the consultants proposal represented an entirely new way of regulating change in Midtown this section will explore the form (the structure of the regulations) and the content (the substantive criteria used to evaluate a development proposal) of the proposal as developed in response to the issues.

64 Robert C. Solomon, Existentialism, (Random House, New York 1974)P.35

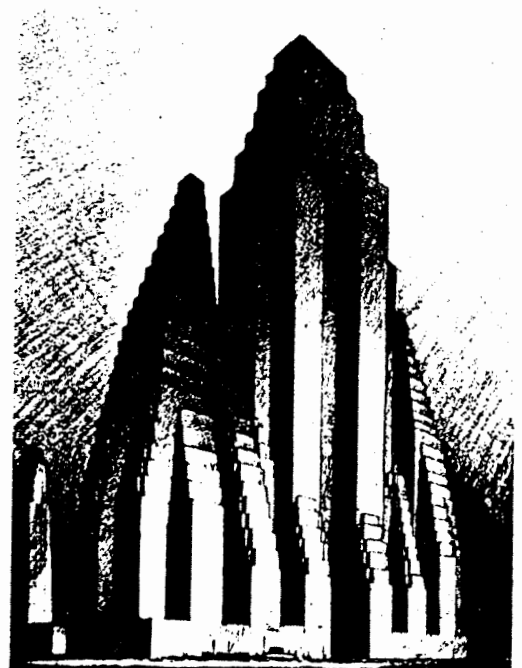
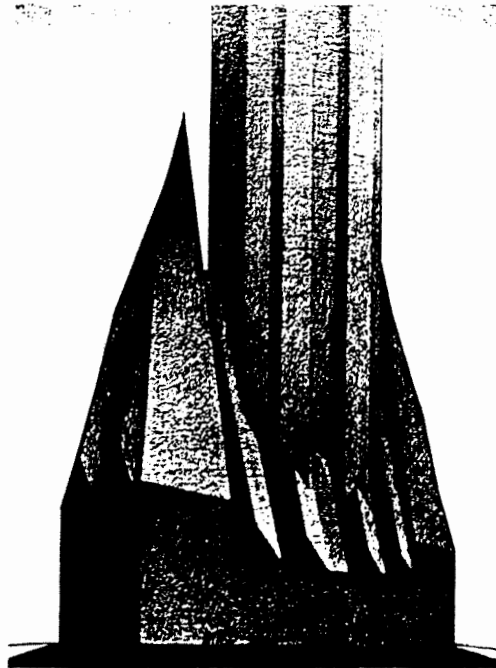
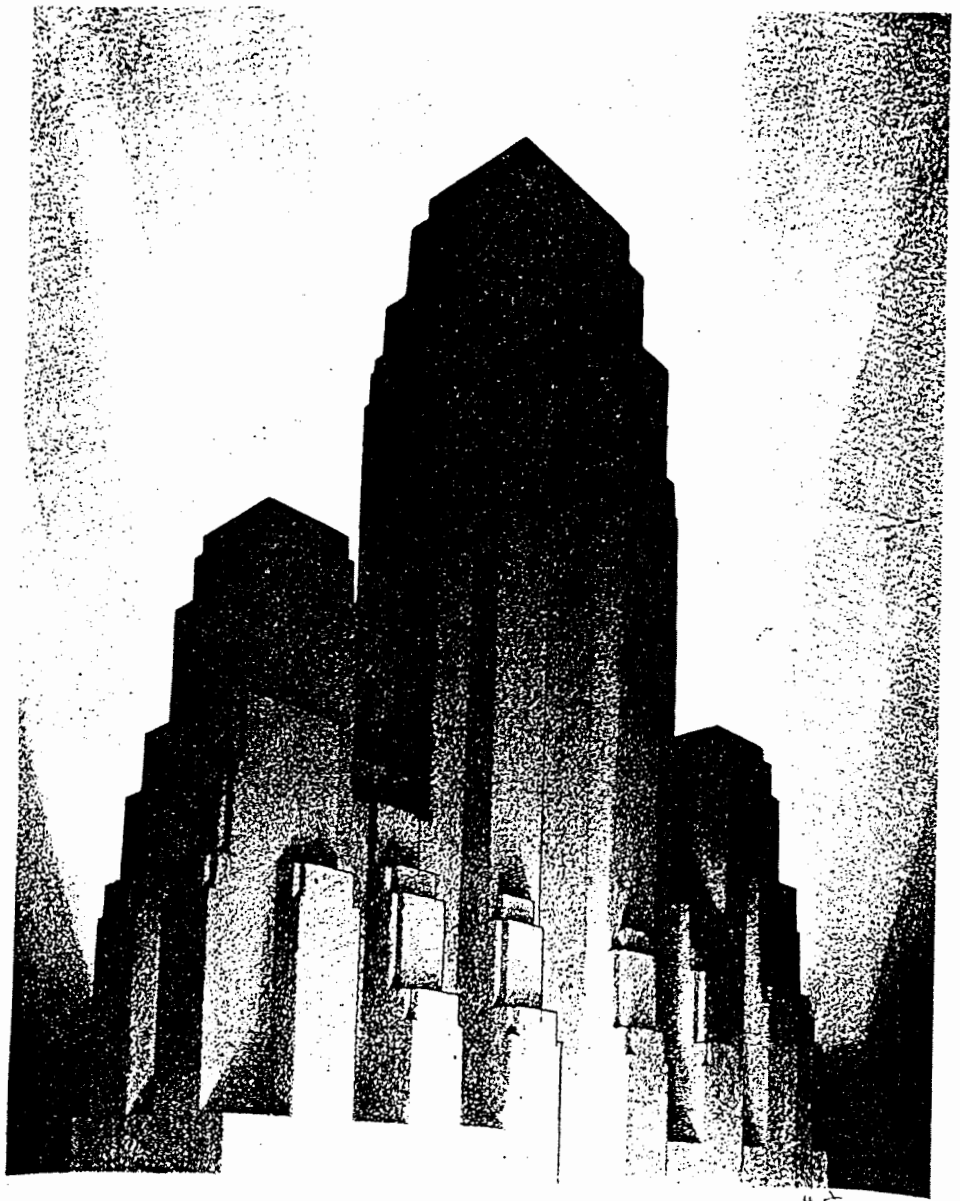
The consultants charge was essentially limited to the design of new building bulk regulations. While Midtown boundary use, density, mapping, ZLM's, and the amenity bonus system, and the Special 5th Avenue and Theatre Districts, are clearly related to any analysis of the bulk regulations they were dealt with only as they related to the basic charge--developing an as-of-right set of building bulk regulations.

V. THE STRUCTURE

The consultants analysis of the array of pragmatic and conceptual issues suggested that neither the structure of administrative discretion exercised through the lengthy Special Permit Process nor the simple but as-of-right structure of prescriptive pre-regulation characteristic of the 1961 Zoning Resolution was any longer workable. The former besides being time consuming had virtually no substantive basis for decision-making while the latter's typological approach which resolved virtually all design decision within the regulations themselves proved in practice to be a-urban and more recently unresponsive to the changing nature of development in Midtown.

The 1916 Zoning Resolution was not typologically based, as evidenced by Hugh Ferriss well known exploratory series of zoning envelope drawings, [65] and hence more inclusive. Building types were developed in response to the 1916 regulations concerning light and air on the public space of the street and the private yards. The structure of 1916 as with 1961 was prescriptive. It was based on a series of uniform regulations that pertained to any site regardless of location and orientation that was similarly mapped. It was an abstract system that was not contingent on its context

65 Hugh Ferriss, Power In Buildings (Columbia University Press, New York, 1953), Drawings 21a, b, and c.



Zoning Envelopes 1916
Zoning Resolution by Hugh Ferriss,
Power in Buildings, Columbia
University Press, New York, 1953

except in the most rudimentary manner. [66] Nonetheless, in its time it proved to be a supple document that realized most of NYC's landmark 2nd and 3rd generation skyscrapers. The setback and tower buildings--RCA, Empire State, Chrysler, Fuller, Look, Waldorf Astoria, Lever House, and Seagrams buildings--gave expression to the inclusive approach of the 1916 Zoning Resolution. Its focus on the protection of the quality of the public space of the street through its daylight controls and its non-typological approach to regulation proved to be a valuable construct that informed the consultants response to the issues.

Given the Chairman and Counsel's interest in a Building Quality System, [67] a variation on Housing Quality Zoning (HQZ) developed by Michael Kwartler and Charles Reiss for the Urban Design Council in 1974, and adopted by the Board of Estimate in 1976, the consultants proceeded to investigate the applicability of the structure of HQZ to the Midtown issues. Briefly, HQZ is a performance system that recognizes that zoning cannot successfully predetermine the appropriate building form or building type in the abstract and as such is the antithesis of the typological approach of the 1961 Zoning Resolution. Too many other forces and actors are active in the creation of the model--building technology, site assemblage, client requirements people who

66 New York City Planning Commission, Zoning Resolution Of The City Of New York, (as amended to 15 November, 1945), P.11, Section 9 Height District Exceptions (E).

67 Task Force Meeting, 26 June 1979 Op.Cit., and Memorandum to Richard Bernstein from Norman Marcus, Counsel, 27 June 1979



Rockefeller Center (Manfredo
Tafari et. al. The
American City, Granada, London,
1980)

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commission it, user needs (people who use it), development economics (the people who finance it), architectural fashion, energy, market forces, public acceptance etc. In the context of our, constitution zoning can at best be the public context for the development of the type or model by private individuals acting in their own perceived interest. In that sense it is defines the public interest in the private development decision making process. The public interest can be said to embrace the need to protect the environmental quality of the locale--in this case Midtown. This meant the clear enunciation of public policy regarding environmental quality.

The performance structure of Housing Quality was admirably suited to this purpose because firstly it distinguished between the implicit goals and practices of architectural design (building quality) and zoning as civic design (environmental quality). Civic design through zoning if it is to take seriously the First amendment guarantee of freedom of expression recognizes the pluralist context of design in our society. Civic design in this context is inclusive as long as defined environmental quality (policy expressed as standards) is not impaired.

Under our common law system "legal duties are antecedent to legal rights. [68] Therefore, obligations or duties is not a necessary or universal correlative with the

68 Cohen, Readings in Jurisprudence and Legal Philosophy, Little, Brown & Co., Boston, 1951), Holmes, "The Common Law". P.79

right of ownership and the use of property. Holmes expands on this idea by asserting that, "...a large part of the advantages enjoyed by one who has a right are not not created by the law. The law does not enable me to use or abuse this book which lies before me. That is a physical power which I have without the aid of law. What the law does is to simply prevent other men to a greater or lesser extent from interfering with my use or abuse. And this analysis and example apply to the case of possession, as well as to ownership" [69] The individual's context may or may not include a broader public purpose and if it does it is within the context of the individual's purposes. The aesthetic decisions of the architect and client are protected by constitutional guarantees. The aesthetic decisions are essentially neutral as far as the constitution is concerned as long as those decisions do not impair the public welfare. There is no requirement that the architect serve broader public or community interests that are not explicitly recorded in legislation. The need in some instances to create a distinct image which by definition is expressive of the individual (or corporation) is done at the expense of the whole. Distinctiveness is achieved by visual discontinuities [70] which in the most extreme can include the breaking of the urban conventions (the Seagrams Building and Lever are excellent examples since both were constructed

69 Cohen, Op.Cit., P.79

70 Rudolf Arnheim, The Dynamics of Architectural Form
(University of California Press, Berkley, 1979), Chapter
VI, Order and Disorder

under the 1916 Zoning Resolution). Many commentators (mostly architects) have suggested that architectural design and city design are virtually the same thing. The only difference being the shift in scale (See Aldo van Eyck,--The city is a house, the house is a city-- Rossi et al.). There are two basic flaws in the argument: the first is that a city like a building should be treated as an art object; and second that the processes of city design are essentially the same as architectural design.

The architectural design process focus on closure through the systematic elimination of possibilities (one starts with all things being possible) and the resolution of competing and contradictory claims into an integrated design. The aim of Architectural design since Alberti is synthetic--that is an absolutest conception of beauty in which beauty is a "harmony of all the parts such that nothing could be added, diminished, or altered, but for the worse" [71] This is represented not only by the process but also by the idea of the individual artist/architect creator. The building is no longer a process but rather conceived of as a product of single and singular mind.

Commentators and practitioners such as Jane Jacobs and Kevin Lynch have repeatedly emphasized the structural differences between architectural and city design. Jane Jacobs summed it when she stated "(a) city cannot be work of art ... To approach a city, or even a city neighborhood, as

71 See Page 402, Costonis

if it were a larger architectural problem, capable of being given order by converting it into a disciplined work of art, is to make the mistake of attempting to substitute art for life". [72] Kevin Lynch suggested "that the art of shaping cities for sensuous enjoyment is an art quite separate from architecture, music or literature." [73] The exclusivities of the art making process do not lend themselves to that inclusivity, the exception to the rule or the inability to think the thing you can't think for whatever reason, which is at the heart of city design in our pluralistic context.

Nonetheless zoning must by definition make aesthetic judgements which as Stephen Williams has noted,...

"often present the type of problem that Professor Fuller described as "polycentric". Polycentric problems arise when three factors coincide (1) a multiplicity of possible solutions; (2) an interdependency of relevant factors so that the outcome as to one feature of the problem will affect the outcomes as to other features; and (3) a multiplicity of relevant factors that makes it difficult to trace one solutions superiority to any particular attribute or combination of attributes." [74]

It is this issue of polycentricity that the form of HQZ attempts to deal with specifically by recognizing the contingent nature of the first two factors and their resolution in the third. This assumes that the multiplicity of factors can be reduced to a manageable number and that the attributes in combination can be said to be representative of environmental quality. The standard for

72 Jacobs, THE DEATH AND LIFE OF GREAT AMERICAN CITIES, Random House, New York, 1961, P. 373

73 Kevin Lynch, Image Of The City, (MIT Press, Cambridge, 1960) P.2

74 Weaver, Op.Cit., P.298

Housing Quality—Maximum Values

NEIGHBORHOOD IMPACT	<u>Built Up Neighborhood</u>	<u>Non Built Up Neighborhood</u>
Offsite Sunlight	8.0	10.0
Street Wall Length	4.0	6.0
Ground Floor Activity	4.0	5.0
Street Wall Height	3.1	0.0
Building Height	3.1	0.0
Street Trees	2.8	4.0
	<u>25.0</u>	<u>25.0</u>
RECREATION SPACE		
Type and Size	9.4	
Sunlight Onsite	5.5	
Parking	4.1	
Landscaping	3.1	
Trees	2.9	
	<u>25.0</u>	
SECURITY AND SAFETY		
Density of Public Corridor	5.0	
Visibility of Elevator Doors from Public Space	5.0	
Visibility of Private Outdoor Space from Lobby	5.0	
Surveillance from Apartments	4.4	
Entry of Building from Parking Garage or Lot	3.1	
Visibility of Elevator Door to Apartment Door	2.5	
	<u>25.0</u>	
BUILDING INTERIOR		
Size of Apartment	4.5	
Sunlight in Apartments	3.9	
Window Size	3.8	
Visual Privacy Onsite	2.7	
Visual Privacy Offsite	2.7	
Cross Ventilation	2.6	
Daylight in Public Corridors	1.8	
Pram, Bicycle & Bulk Storage	1.6	
Waste Storage	1.4	
	<u>25.0</u>	

delimiting the public interest in private design decision are found in the legal triad described earlier. This is similar to the conceptual approach to design outlined by Christopher Alexander in his Notes on the Synthesis of Form.

[75]

The form of HQZ does just that. The system is composed of desirable attributes all based on perception that are empirically based and which are clearly described as goals to be achieved. The attributes are organized into four sets or categories Neighborhood Impact, Recreation Space, Security and Safety and Building Interior.

The performance criteria for the attribute is then established. Each attribute is given a numerical value reflecting its social desirability, the degree of economic effort to achieve it, and its importance in the building design process (some decisions are more important than others as they set the context for the next level of decisions). This is then followed by a formula for evaluating conformance to the particular attribute which allows for partial compliance. Finally there are directions for special conditions. In this formulation the goal to be met is the subjective system of measuring or evaluating goal compliance.

The numerical sum of all the attributes is 100 points. Environmental quality is achieved when 85 points are

75 Christophen Alexander, NOTES ON THE SYNTHESIS OF FORM, (Howard University, Press, Cambridge, 1964), Chapter 5 "The Self Conscious Process"

NEIGHBORHOOD IMPACT

5. HEIGHT OF STREET WALL

GOAL

To maintain neighborhood scale by matching the height of the portion of the new building facing the street to the height of surrounding buildings.

PROGRAM

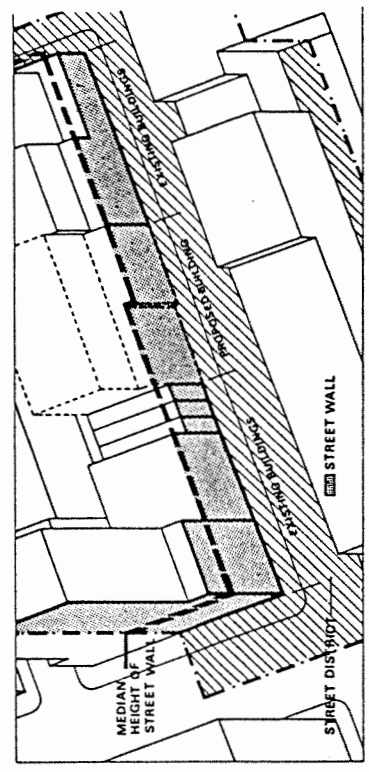
- The height of the street wall of the proposed development should equal the median height of the street wall of the existing buildings within the street district and on the same side of the street.
- If more than 20% of the neighborhood grid squares on that side of the street and within the same street district are not built upon, the computation of the median shall be enlarged to include all buildings in the street district.
- Determine the median height of the existing street wall by computing the median height of only those neighborhood grid squares which are built up and have no other built up grid squares between them and the street in a perpendicular direction to the street property line.
- The average height of the proposed street wall is determined in the same way as the height of the existing street wall.
- Grid squares less than 50% built upon shall be regarded as non built upon and shall not be computed.
- A roof height of the street wall may be excluded from this computation provided it makes an angle of no more than 45° with the ground.

COMPLIANCE

(A/B)100 = %: when the proposed street wall height is more than the existing street wall height
 (B/A)100 = %: when the proposed street wall height is less than the existing street wall height

PREFERRED (A) median height of the existing street wall is A ft.	PROPOSED (B) average height of the proposed development's street wall is B ft.	SCALE	Built Up	Non Built
			*50% = .00	
			60% = .31	
			70% = .63	NOT
			80% = 1.13	APPLICAE
			90% = 2.03	
			100% = 3.05	

*Minimum permi



achieved. The definition of environmental quality is a statistical probability. It assumed that virtually any combination of attributes that added up to 85 points meant a building had achieved a desired level of quality. Quality was expressed in equivalencies rather than abstract absolutes. The system not only allowed for tradeoffs but required them. Each attribute would interact with the others through a series of design alterations until the building "fits" the situation represented by a complying score of 85 points. The passing score of 85 points and point values for the attributes insured that the primary attributes could not be totally ignored.

It was further realized that any valid value system would have either direct or implied conflicts and contradictions. In past zoning ordinances these were rationalized before hand. In the 1961 as-of-right prescriptive regulations, these regulations produced a standardized response--the freestanding tower/slab type, which in fact was the preferred form. The maximum density and floor area were always achieved by minimizing building coverage and maximizing open space. The meat and potatoes of a design problem are these conflicts, so they were intentionally built into the program to allow resolution on a site by site basis. What would seem rational in one situation might be less than desirable in another. No two buildings had to emphasize the same areas to achieve the passing score of 85 points. Those involved in the design of

Tower Regulations

R9 R10

In the districts indicated, any *building* or *buildings* or portions thereof which in the aggregate occupy not more than 40 per cent of the *lot area* of a *zoning lot* or, for *zoning lots* of less than 20,000 square feet, the per cent set forth in Section 23-651 (Towers on small lots), may penetrate an established *sky exposure plane*. (Such *building* or portion thereof is hereinafter referred to as a tower.

At all levels, such tower shall be located not less than 15 feet from the *street line* of a *narrow street*, and not less than 10 feet from the *street line* of a *wide street*.

Unenclosed balconies, subject to the provisions of Section 23-13 (Balconies) are permitted to project into or over open areas not occupied by towers.

The provisions of this Section shall not apply to any *building*, located wholly or partly in a *Residence District*, which is within 100 feet of (a) a *public park* with an area of one acre or more, or (b) a *street line* opposite such a *public park*.

23-142

In R6, R7, R8 or R9 Districts

Except as otherwise provided in Section 23-144 (For non-profit residences for the elderly in R3, R4, R5, R6 and R7 Districts) and Section 23-145 (In R8A, R8B, R9A, R9X or R10A Districts), in the districts indicated the minimum required *open space ratio* and the maximum *floor area ratio* for any *building* on a *zoning lot* shall be as set forth in the following table for *buildings* with the *height factor* indicated in the table.¹

R6 R7 R8 R9

MINIMUM REQUIRED OPEN SPACE RATIO AND MAXIMUM FLOOR AREA RATIO, R6 THROUGH R9 DISTRICTS

For building with a height factor of	In R6 Districts		In R7 Districts		In R8 Districts		In R9 Districts	
	Min. required open space ratio	Max. floor area ratio	Min. required open space ratio	Max. floor area ratio	Min. required open space ratio	Max. floor area ratio	Min. required open space ratio	Max. floor area ratio
1	27.5	0.78	15.5	0.87	5.9	0.94	1.0	0.99
2	28.0	1.28	16.0	1.52	6.2	1.78	1.4	1.95
3	28.5	1.62	16.5	2.01	6.5	2.51	1.8	2.85
4	29.0	1.85	17.0	2.38	6.8	3.14	2.2	3.68
5	29.5	2.02	17.5	2.67	7.1	3.69	2.6	4.42
6	30.0	2.14	18.0	2.88	7.4	4.15	3.0	5.08
7	30.5	2.23	18.5	3.05	7.7	4.55	3.4	5.65
8	31.0	2.30	19.0	3.17	8.0	4.88	3.8	6.13
9	31.5	2.35	19.5	3.27	8.3	5.15	4.2	6.54
10	32.0	2.38	20.0	3.33	8.6	5.38	4.6	6.85
11	32.5	2.40	20.5	3.38	8.9	5.56	5.0	7.09
12	33.0	2.42	21.0	3.41	9.2	5.71	5.4	7.30
13	33.5	2.43	21.5	3.42	9.5	5.81	5.8	7.41
14	34.0	2.43	22.0	3.44	9.8	5.92	6.2	7.52
15	34.5	2.43	22.5	3.42	10.1	5.95	6.6	7.52
16	35.0	2.42	23.0	3.41	10.4	5.99	7.0	7.52
17	35.5	2.42	23.5	3.40	10.7	6.02	7.4	7.52
18	36.0	2.40	24.0	3.38	11.0	6.02	7.8	7.46
19	36.5	2.39	24.5	3.36	11.3	6.02	8.2	7.41
20	37.0	2.38	25.0	3.33	11.6	6.02	8.6	7.35
21	37.5	2.36	25.5	3.30	11.9	5.99	9.0	7.25

a building could instead pick and choose their emphasis. The system allowed for a localized design response which encouraged both freedom of expression and contextual fit. It could be called an existential approach to zoning. Jonathan Barnett put it another way when he observed:

"There are more possible quality design elements than any one buildings would be expected to include thus recognizing that design is always a series of choices--that circumstances alter cases, and you can't win `em all. Sometimes one objective can be achieved only at the expense of another. The architect can choose appropriate design elements in relation to the existing neighborhood, the shape of the site, the topography, and so forth, instead of adapting the needs of his client to a single stereo type." (or I might add to tastes of the reviewing urban designers and community groups in a negotiated design) [76] HQZ is zoning's response to Milton's dictum "Reason is choice."

VI. THE CONTENT

The content of HQZ and its application in Midtown reside in the definition of the terms used (eg. Street district, Streetwall, Reflectivity Coefficient. etc.) and the environmental attributes themselves. Both represent the superstructure of subjective values which the criteria for compliance objectively evaluate. But before proceeding into the reasoning behind the use of environmental attributes let us first consider briefly the legally sustainable rationale for this obviously aesthetic legislation.

Prof. John Costonis in his insightful article "Law and Aesthetic: A Critique and a Preformulation of the Dilemmas," examined the legal history of aesthetic legislation and jurisprudence in an effort to arrive at a sustainable basis for aesthetic regulation that responds to Constitutional values. While Prof. Costonis article was published a year after adoption of the new Midtown regulations and 6 years after the adoption of HQZ, his reasoning sustains the logic of our intuition and more importantly gives conceptual clarity to our intentions. The earlier discussion of the change/stability nexus of zoning and its explicit aesthetic if not aestheticizing nature discussed in terms of perception, private property, and specifically the legislative and administrative zoning practice regarding Midtown while not the focus of his article benefits from his conceptual exploration of the issues. For that reason and

in order to set the legal and social foundation for the content of the consultants proposal this paper proceeds with his presentation of the issues.

"The content of the aesthetic idea is explored through two hypothesis advanced to explain the social interest underpinning these controls. The first which dominated legal aesthetic legal thought throughout this century, locates that interest in the preservation or creation of a visually beautiful environment. The second, ... deemphasized visual beauty in favor of the compulsion of groups to protect their identity and, more broadly, cultural stability itself by forestalling threats to environmental features and settings that anchor these reciprocal values.

My contentions are basically three in number. First, that visual beauty is a defective predicate for aesthetic policy making because beauty, as John Dewey advised, is at the furthest remove from the analytic term, and hence from a conception that can figure in theory as a means of explanation of classification. Unfortunately, it has been hardened into a peculiar object, emotional rapture has been subjected to what philosophy calls hypostatization, and the concept of beauty as an essence of intuition has resulted [platonic conception of beauty--authors note]... It is surely better to deal with experience itself and show how and whence the quality proceeds.

Second, the effort to "deal with the experience itself to show whence and how the quality proceeds" discloses that the visual beauty interest, insofar as it has any discernible legal content, is subsumed under the stability interest. It is true, of course, that viewers respond affirmatively to particular visual configurations in the environment. Their responses, in fact, are often sufficiently patterned to refute the objection that aesthetics is too subjective to warrant legal protection. But these configurations are compelling because they signify values that stabilize cultural, group or individual identity not because their visual qualities conform to the canons of one or another school of aesthetic formalism.

Third, however accurately the stability hypothesis may describe the source of society's demand for aesthetic controls raises a host of legal dilemmas of its own--propelling legal institutions into foreboding terrain that they have desparately tried to avoid. Visual beauty reasoning has served as a superb avoidance device thanks to its premise that standards of beauty are ontologically based and hence exist "out there" ready to be plucked by aesthetic experts and transformed into legal ulcanes by policy makers...

Stability reasoning on the other hand, candidly acknowledges that aesthetic response is a social construct,

not an ontological given. How individuals or groups respond to an environmental feature depends on how they construe its message, a process profoundly shaped by the conventions of culture and time. If there is a care for aesthetic regulations, therefore, it must establish that protecting the stability of these patterns is a proper concern of the police power's "general welfare." It must provide reasonable assurance as well that overriding social and legal values are not sacrificed on the altar of stability. [77]

The critical point in this discussion is not which system or theory of aesthetics is valid but rather which system is sustainable within our constitutional values.

I believe that while Costonis has leveled a consistent attack on the visual beauty rationale, ultimately the question of whence comes beauty may never be resolved between the Neo-Platonist and the Phenomonological theories, for in fact the choice of theory is also aesthetic as witnessed by Einstein's aesthetic reservations about quantum theories probabilistic explanation of natural phenomenon-- "God does not play dice." Costonis is more to the mark when discussing the constitutional objections to the visual beauty rationale. He argues "that aesthetic regulation cannot satisfy the vagueness due process requirement of intelligible standards if those standards attempt to define 'beauty' or 'ugliness'." [78] "He notes, and this is critical in defining the limits of public interest, that "It is established that a law fails to meet the requirements of the due process clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it

77 Costonis, *Op. Cit.*, P. 357-58
78 Ibid, P.410

prohibits or leaves judges and jurors free to decide without legally fixed standards, what is prohibited and what is not in each particular case." [79]

If the attempt to define beauty or ugliness proceeds to the canonization by the state of a particular style it runs afoul of the First Amendment's freedom of expression. The recently enacted zoning requirement that new skyscrapers in San Francisco have interesting or sculpted tops is the legislation of the Empire State Building style of skyscraper design. The fact that the law would have prevented the construction of virtually all of Louis Sullivan's skyscraper (for that matter all of the Chicago School's skyscrapers), the Seagrams Building by Mies, and the Flatiron Building by Burnham, and flagrantly ignores the form of San Francisco's buildings from the turn of the century illustrates the stupidity not to mention illegality of applying a European approach based on cultural autocracy into the American intellectual landscape.

His final point is that the visual beauty rationale does not meet the substantive due process test. He characterizes this test as requiring that some harm is prevented by the application of the police power. He maintains that merely calling something ugly or bad design in the nonfunctional sense does not constitute a harm. Bad design or ugliness has never been known to kill. [80]

79 Ibid, P.410

80 Ibid, P. 80

As regards the claim that beauty increases or at least sustains property values he argues quite correctly that, "In truth, the relationship between aesthetic regulation and property values is extremely variable." [81]

The form and content of HQZ and the draft proposal for Midtown are in fact the realization of the stability hypothesis proposed by Costonis. He posits three tests that the stability based aesthetic legislation must pass in order to be legally sustainable that are worth repeating again. They are: vagueness due process (the standards), substantive due process, and freedom of expression. He goes on to caution that unless the vagueness due process or standards are satisfied difficulties are created for the other two requirements as well. Having previously dealt with the freedom of expression and substantive due process this section will focus its attentions to the standards issue. This is the content contained within the zoning structure described earlier, an interactive performance system whose definition of environmental quality is based on the probabilistic combination of desirable environmental attributes.

81 Ibid, P.416

VII. THE DEVELOPMENT OF THE ATTRIBUTES

Relevant aspects of HQZ's Neighborhood Impact Program were selected for inclusion into the Midtown performance system which was the equivalent of neighborhood impact for Midtown. The attributes, or program elements, as they are referred to were:

Street Wall Length, which established a procedure for determining a generalized area in which the front portion of the building should be located. This preserves street scale by physically and visually joining the front of the building with the fronts of adjacent buildings.

Street Wall Height, which extended the visual connection to the crucial area of street wall height. With the use of setbacks, it determines a procedure to solve the visual problems inherent in adjacent buildings of different street wall or in some cases building height.

Ground Floor Activity, encourages visual activity facing the street and at its level to enliven it and establish a connection between the private building and the public.

Offsite Sunlight, to maximize sunlight on nearby publicly accessible open space. [This was modified to reflect the concern of maintaining sunlight on adjoining plazas, conservatories (IBM's glass conservatory had virtually all its sunlight at key hours blocked by the AT&T

slab and poignantly suggests the actual inability of the CPC to sensitize each development to those on adjoining sites.)

In addition Daylighting procedures to evaluate the daylight performance was developed to insure that the streets and building interiors of Midtown were adequately lit and that the streets were perceptually open. A subcategory was Building Surface Reflectivity which encouraged the use of light colored reflective materials to enhance the brightness of Midtown streets and building interiors. For reasons to be explained later these program elements represented the extent of the building bulk performance system. The scoring system remained as did the format with the point scores reflecting again the social desirability of achieving the attribute, the economic cost, and its significance in the building design process. Compliance or equivalent environmental quality was achieved when 85 out of the total of 100 points was scored.

Conceptually the bulk regulations concentrated on the impact a new building had on the surrounding neighborhood. Its primary aim was to insure that the new building would be perceived as beneficial rather than disruptive by the surrounding community. The bulk regulations are contextual in that dissonance--the degree of fit or misfit between the new and existing buildings--is evaluated against the prevailing attributes of the existing context and that change always takes place within a context. That change in apparent or real density of new buildings should be gradual, occurring over a period of years. This occurs as each new buildings configuration responds to the configurations of buildings which went before. Thus a subdistrict of Midtown over a period of years might have its street wall height, building height, and street length and location changed but not in the cataclysmic and destructive manner as is typical today as evidenced by discontinuities in building form and site planning between new and old buildings.

The program element Street Wall Height derives from its context and requires that an area be defined which is perceptually inseparable from the proposed building. This is a perceptual definition and cannot rely on drawing a mere radius around the site or some other equally arbitrary boundary. Instead, the Street District--the proposed locus--responds to New York's strong street tradition where the

visual, psychological and social perception of the immediate neighborhood is the block (W. 47th between 5th and 6th Avenues Diamond District, W. 56th Restaurant Row, also between 5th and 6th Aves, Galleries on W. and E. 57th St., E. 53rd St., The Museum Block between 5th and 6th Aves. and avenues all of which have different characters (Broadway, 6th, 5th, Madison, Park, Lexington, and 3rd). This concept of the block is defined as rows of buildings facing each other across a street. Furthermore, block associations have traditionally organized themselves in this manner giving fact to this concept. It terminates when that street is intersected by a wider, more inhibiting hence defining one which tends to bound the block. The avenue is always perceived as a continuity--"I work on Madison Avenue in the 50's." The street district on avenues hence continues in each direction for one thousand feet or approximately 5 blocks from the site in both directions or until it intersects a block of equal or greater width. The distance of one thousand feet was also perceptually determined. It is approximately the point at which the pedestrian begins to see the proposed building as part of his or her immediate experience as a discrete object. Buildings further than one thousand feet are seen as a group. In both cases it differs from the legal definition of a block. The legal definition of a block is that area enclosed by streets and is at odds with perceptual reality. It ignores the traditional role and importance of public space in linking the occupants of the

block and the block to the city. The legal block is a convenience organized around the tax lots and hence its purpose to provide the locus for regulation of private property. The unthinking extension of a legal abstraction to zoning and Community Planning Board boundaries has created disjunctures between what is perceived and experienced and administrative and regulatory boundaries. The result has been streets divided by zoning district boundaries (Eighth Avenue) and Community Planning Board boundaries (the best example is 14th Street and Union Square where one finds five planning boards carving up 14th Street and Union Square).

What the Street District concept reinforces is the heterogeneity of the area referred to as Midtown. Midtown is a lot of places which are defined by the uses and building types on the one hand and the plaid of streets and avenues ranging from the 60 foot width of the east/west streets and the 75 foot width of Madison to 120 feet for Park Ave., and from the 900 foot blocks between 6th and 7th Avenues to the 400 foot long blocks between Park and Lexington and Madison Avenue. If there is a bias in the approach it is that it recognizes Midtown is not a tabula rasa but rather an environment valued by New Yorkers for its diversity of places. The places are characterized by use and physical form. The physical form of a place is important regardless of use as the distinctiveness of the form and place create opportunities for new uses which then come to be identified with the form of the place. The bias is represented in the

bulk regulations that essentially seeks to reinforce the existing physical character of the area while simultaneously allowing for incremental change. Rather than homogenizing Midtown the regulations were designed to reinforce the physically diverse environments while not creating artificial boundaries between them. This allows for the incremental redefinition of subdistrict boundaries both in terms of place and use typical to Manhattan. Most importantly, all of this is self regulating as it is a structural feature of the regulations. Furthermore, there were no value judgements other than differentiation--place making--should be encouraged. It should become more of what it is. This approach is consistent with the social stability hypothesis discussed earlier as the basis of aesthetic regulation. The regulation merely states that differentiation is valued and more importantly each place is valued (it may or may not be beautiful, for example, Times Square).

There are two other obvious bias'. The first is the emphasis on the physical definition of public and private property. The result is a strong redefinition of the public space of the street. The second is daylighting and sunlighting, which also derives from the emphasis on public space and publicly accessibly space and simultaneously reinforces that emphasis. These bias' can be called values and generate as we have seen the norms or standards for the

proposed development. Conceptually these norms are concerned with

- Mass: a)building mass at the street
- b)building mass in the sky
- Space: a)proportions of outdoor space
- b)openness and definition of space and streets
- Light: a)amount of daylight
- b)amount of sunlight on amenities

Mass, Space, and Light as we have seen in the Park Avenue example cited earlier are the fundamental indicators of an environment and which might correctly be compared to our peripheral vision which is concerned with defining the sense and limits of a place or context. [82]

All of the norms derive from the context which includes the physical context and legislative context in which the buildings were built specifically to zoning ordinances which have long recognized the primary importance of this trio.

The Height District and Tower Regulations of the 1916 Zoning Ordinance shaped the character of the individual buildings and the streets and avenues of which they were a part. Broadway in the W. 30's is relatively darker than Fifth Avenue although both are 100 feet wide streets because of the difference in Height District which determined the maximum height of the street wall--150 feet and 100 feet

82 James J. Gibson, The Senses considered As Perceptual System (Houghton Mifflin Company, Boston, 1966) Chapter X "The Visual System: Environmental Information" P.186-223

respectively with corresponding angles of light or sky exposure planes. Additionally, because the 1916 Resolution had no requirement or incentive for publicly accessible outdoor space on the zoning lot, the building street walls and the upper portions of the building setback from the street wall generally filled their entire zoning envelope. With few exceptions (Lever House and the Seagram's Building both corporate headquarters built under the 1916 Resolution) buildings defined the street space of Midtown by continuous and relatively uniform street walls built to the street line. These and earlier structures have created the dominant image of Midtown, eg. Fifth Avenue, Madison Avenue, etc.

The free standing slab and towers produced under the 1961 as-of-right regulations and the more recently negotiated buildings while changing the image of Midtown still represent a small percentage of the total building in Midtown which also includes substantial areas built before 1916.

Conceptually, these building and street character conventions are the result of the legislative context--the 1916 and 1961 Zoning Resolution.

One could argue that Bentham's concept of a "permanent expectation" [83] is in part represented by the physical urban conventions which resulted from the 1916 and 1961 Zoning Resolutions. For a physical form to become a convention and thus understood (predictable) by New Yorkers of diverse backgrounds, ages, and sexes it must, according to the OED "...be a rule or practice based upon general consent or accepted by and upheld by society at large." Conventions are critical in large complex urban environments. In fact cities are essentially conventionalized environments, meaning that the street and block structure, the building relationships, and the buildings themselves follow accepted models or traditions. If the building forms are to be conventionalized they must again by definition be replicable although as we have seen it is not zoning's role to develop the type or convention. The Georgian row houses and the loft building are but two examples of conventionalized structures which in their form and organization are eminently replicable and did become types. The ability of the type or conventional building to also accommodate individuation is also of great importance as a sense of place is also an orchestration of the general and

83 Cohen, Op.Cit., Bentham, "Theory Of Legislation" CH VIII "Of Property" "A feeble and momentary expectation may result from time to time from circumstances purely physical; but a strong and permanent expectation can result only from law. That which, in a natural state, was an almost invisible thread, in the social state becomes a cable. Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases.", P.9

the particular. If there is a component or urban design practice that is primary, it is undoubtedly the identification, understanding and reinterpretation of conventions in a changing context. Without conventionalized city form we would be lost and adrift the moment we left our block because in the conventionless urban world arbitrariness and caprice would be the rule. It would be a world designed by Carroll's Queen of Hearts. Modes of behavior would be arbitrary. Public and private would have little meaning as the basis of human social behavior. In a sense the building conventions, with the public open space conventions (streets, plazas, and parks), are the building blocks of city form and must be intelligible to a broad spectrum of the urban population. They represent the urban order and the cultural stability of the city with new buildings evaluated against the conventionalized environment. It is only in a conventionalized environment that one can break or create a discontinuity with the conventions. Costonis calls it dissonance and by so doing implicitly suggests to the urbanite the extra significance of the structure, place or event.

But as we noted earlier a zoning resolution that legislates a specific convention or building model undermines First Amendment values and risks a swift obsolescence as happened in Midtown. The appropriate role of zoning in setting the standard is rather to define the attributes of the convention. This approach recognizes the

fact that the public is neither capable of defining a single convention that all can subscribe to in advance of practice nor is it desirable that they do so. Design by consensus is what Frank Lloyd Wright once called the tyranny of mediocrity. The other problem is the behavioral fix--you show a building and everyone likes it. But buildings are designed for particular situations. In many ways the designer of the new building has learned nothing other than the apparent fact that they all liked the earlier building. But was it because someone liked the windows, another the brick color, another the form, someone the photograph and so on. What is critical for the architect is what attributes in the design were most appreciated and most importantly which of those represented community consensus. Only by analyzing a convention and atomizing it into its component parts can a consensus be reached. It thus is not necessary to agree on a particular type or convention--it is in fact besides the point as long as the resulting building is composed of the desired attributes. Beauty or ugliness become as they must in public aesthetic regulation moot issues.

This is exactly the case with HQZ. An example using a desired convention common to both Midtown and HQZ will explain the application of the method of defining attributes from conventions. It was all agreed that the convention of perimeter block buildings that defined the public space of street were desirable. The attributes of such buildings were street walls located relatively close to the street lot

line, street wall heights which were consistent with those around them, upper portions of such buildings setback from the street wall, street walls that filled out most of their street lot line, and activities of one kind or another; apts, shops, lobbies, etc. at the street level. It also suggested the value public and private and semi space (plazas) should clearly defined. Rather than present the public with complete buildings we presented them with illustrations of the attributes of the conventions at the public hearings that preceeded the adoption of HQZ. Attributes that did not receive a broad consensus were dropped. Other attributes that clearly affect the convention such as the modeling of the building, surface, materials, and colors were dropped because they could not be objectively evaluated and thus defied the vague due process requirement--they were issues of taste and style that were beyond the appropriate bounds of aesthetic legislation. Not that these attributes did not contribute to the public well being--on the contrary. Rather they were too anecdotal and could not be generalized which ultimately became the threshold for the incorporation of attributes into the legislation.

Christopher Alexander's "Pattern Language" [84] discussed earlier is essentially a catalog of attributes for building design. They are anecdotal. The difference between

84 Christopher Alexander, A Pattern Language (Oxford University Press, New York, 1977) P.X

Pattern Language whose use is by free and conscious choice by the individual is that zoning imposes its will. Although many of his patterns--his term for attributes--are desirable their specificity and the inability to achieve consensus make them legally unjustifiable.

The structure which contains the attribute is also critical and received careful attention. In response to the substantive due process test the harm and its remedy had to be clearly expressed. The format was invaluable in informing the public discussion which in the case of HQZ was not about 'good' buildings or 'bad' buildings or beautiful or ugly buildings but whether the building had the desired attributes. Suddenly, a vocabulary that all could understand was available to scrutinize a proposed development's environmental quality. Equally important was that the public discussion was framed by the agreed upon attributes. Attributes not agreed upon and not included in the legislation while possibly nice were outside the framework of the review.

The format is seductively simple. The attribute is characterized by its purpose--what it intends to achieve and hence the harm it seeks to avoid. This is the goal statement. Then the criteria used to evaluate the achievement of the goal follows. This is the performance criteria or expectation of performance. The expectation is always derived from experience and generally was based on an historical expectation. The expectation also defined the consensual limit of acceptable dissonance or the point at which expectation was no longer being realized. Next follows the points awarded to the attribute reflecting its desirability and importance. The formula then measured compliance. Partial compliance was not only acceptable but

appropriate. The absoluteness of numbers is a ridiculous tyranny, e.g., why is a required 10 feet side yard better than one only 9'8"? Does 4 inches really made a perceptual difference? The case *Lionshead Lake Inc. vs. Wayne Township* [85] concerning minimum house size emphasizes the futility of that type of exercise. And finally directions for special conditions.

The format provided not only a means of discussion but also a clear process for revision. If the results did not measure up one could systematically evaluate the validity of the formula, the points, the compliance criteria and finally the goal itself. This was done in two ways because the idea guiding the system was its use in both building evaluation and design. One designed with the system rather than the conventional approach of either establishing the building volume in advance as per the 1961 As-Of-Right Regulations or designing the building and then after the fact evaluating it for conformance with the regulations. The entire system of program elements with their goals, compliance criteria, points, and formulas were extensively tested against existing buildings and used simultaneously to design new buildings. This iterative process resulted in the tuning of the program elements or attributes within themselves for objectivity and clarity of application and between themselves to insure that desired levels of performance was achieved, the extent of possible design responses--how

flexible and responsive to local conditions and private programs was it?--and the exclusion of clearly dissonant buildings. In other words close the gap between intentions and results. It is worth repeating that the public did not have to choose between competing attributes as that was left to the architect to resolve.

The inherent flexibility of the system was tested to insure that the issues defined earlier were being satisfactorily addressed. But a larger question remains that has been not discussed in the development of the public consensus--specifically why were the program elements or attributes for the proposed Midtown Zoning limited to the five mentioned earlier?

The general feeling was that zoning conceptually should refocus itself to effecting the desired form of Midtown consonant with values placed on the existing historically derived context and conversely get out of the building design business. Second, was the workforce, the people who went there, the tourists etc. tended to be represented indirectly by the community planning boards and the good government groups. An organized constituency never really developed outside of the conventional representative structure of community participation in Midtown. Rarely did individuals in this category testify themselves. This was an unfortunate reality. New York City's Midtown did not command the active citizens response that was illicit in San Francisco as exemplified by the citizens groups calling for

a six story height limit on downtown development despite the best efforts of the consultants to generate a more direct and broad based response through the discussions of the issues in the press. Unfortunately none developed.

Given the directive to refocus (from DCP and good government groups), the lack of broad based city-wide interest, and the reality that office buildings are essentially loft buildings whose interiors are reorganized on a periodic basis--unlike housing--the consultants focused their attention on the quality of the public space--the streets of Midtown and the availability of daylight to the buildings for task lighting. The latter was in response to the new high cost of energy and the need to conserve energy. It was left to these groups and their constituencies to evaluate the proposal. Also it should be pointed out that practically speaking the kind of pre and ongoing dialogue was abbreviated due to the time constraint of four months to produce workable zoning regulations designed to respond to the myriad of issues described earlier.

It is very difficult to say as we could with HQZ that the proposed regulations represented a fair and broad consensus. We can say that the regulations were consistent with the consensus of the interested groups and sentiments expressed in the press. The fact that the proposed regulations did not survive intact was as we shall see later was the reluctance of City Planning and particularly the UDG to join that consensus.

For the remainder of this section let us focus on the development of the standards for the Daylight program element because it serves an excellent example as to how the stability reasoning argument when coupled with the common law concept of precedence--in this case the historical expectation of daylight created by the 1916 and the 1961 Zoning Resolutions could with the application of appropriate technique provide a verifiable standard, consistent with the perceptual structure of the performance system.

VIII. HISTORICAL BACKGROUND: THE COMMUNITY EXPECTATION OF
DAYLIGHT

"Whereas, there is a growing sentiment in the community to the effect that the time has come when effort should be made to regulate the height, size and arrangement of buildings, erected within the limits of the City of New York, in order to arrest the seriously increasing evil of shutting off light and air from other buildings and from public streets, to prevent unwholesome and dangerous congestion both in living conditions and in the street..."[86].

On the 27th of February 1913, the Board of Estimate and Apportionment of the City of New York adopted a motion proposed by the President of the Borough of Manhattan and quoted above in part to create the Heights of Buildings Commission which developed the United States' first comprehensive zoning resolution. That Resolution, adopted in 1916, became the model for all subsequent American zoning resolutions. The Height, Court, and Use Districts of the 1916 Zoning Resolution continued to be the urban design and development rules for Midtown Manhattan through the early sixties. Street wall heights, courts, building setback ratios, and tower coverage and locational regulations were the primary instruments in creating both the physical form

86 Heights of Buildings Commission, Report of The Heights of Buildings Commission to the Committee on the Height, Size and Arrangement of Buildings of the Board of Estimate and Apportionment of the City of New York., (New York: City of New York, Board of Estimate and Apportionment, 1913), P.1.

of Midtown and the public's and property owners' expectation of the amount of daylight available in the public space of the street and to the commercial building interiors.

Daylight availability was critical. Up to the end of World War Two, the majority of office buildings used daylight as an organizing and form giving criterion by adhering to the general rule that whenever possible no desk should be more than 35 ft. from a window.

Subsequent amendments to the 1916 Zoning Resolution, (including the omnibus 1961 amendments which fostered the tower/slab and plaza schema of development) held true to the daylighting expectation incorporated in the original resolutions. Because the combined effects of the as-of-right building bulk regulations of the 1916 and 1961 ordinances represent more than sixty years of building activity, they have created an uninterrupted record of community expectations regarding daylighting in Midtown, upon which the public and property owners relied.

While the daylight standard developed for Lower Manhattan, then the center of high-rise commercial building, may have been less than desired based on expectations from an earlier time, the 1916 Zoning Regulations as they applied to Midtown proved to be a serviceable daylighting standard that was responsive to demands for environmental quality and development economics. (This is explained by the mapping of lower Height and Court Districts for Midtown than in Lower Manhattan.)

The omnibus amendment of 1961 represented a continuation of the standard, although achieved in an entirely different manner. The 1961 building bulk regulations were derived from the 1950 Plan for Rezoning the City of New York and as such recognized that "While numerous buildings are being built in the molds determined by the setback regulations, plenty of others are being built with towers, illustrating the point that light may come along the side or sides of a thin tall building instead of over the top of a wide building." [87]

These modifications to the 1916 Resolution (which included an angle of light obstruction or sky exposure plane) assumed an equivalency between the two approaches. While not objectively evaluated as such, the intent was to fulfill the standard of daylight in the streets and on building facades established in the 1916 Resolution. (Subsequent analyses by the consultants verified this equivalency.) Tower regulations in both the 1916 and 1961 Resolutions further insured solar access to the upper reaches of the facades of high-rise office buildings by limiting their size and location relative to the street and hence to themselves by spacing the towers apart from each other.

As we had verified, by the middle 1970s, site assembly had become increasingly more difficult in Midtown. Available sites were getting smaller while demand for office

87 Ballard, Op.Cit., P.46

POST 1974 OFFICE BUILDINGS

Comparing Actual Tower Area on Site
to Minimum site for 40% Tower

Areas (SF) x 1000

DATE	BUILDING	TYP. TOWER FLOOR AREA (SF)	FOOT- PRINT ¹	ZONING LOT ²	40% TOWER MIN. ³	ASSEMBLAGE METHOD ⁴
74	1166 Sixth Ave.	32,400	64	84*	81	ZLM
80	Park Plaza	25,040	38	65*	62	ZLM
77	Citycorp Center	24,596	75*	75*	61	Cleared Site
82	101 Park Ave.	20,832	52	52	55	Cleared Site
81	Philip Morris	20,737	21	21	52	TDR
81	IBM	19,652	49*	49*	49	Cleared Site
81	AT&T	19,600	37	37	49	Cleared Site
81	805 Third Ave.	19,570	24	30	49	ZLM
75	Olympic Towers	18,811	25	40	47	ZLM
80	560 Lexington Ave.	14,221	17	17	35	TDR
82	535 Madison	11,922	17	23	30	ZLM
82	725 Fifth Ave.	11,454	19	35*	29	ZLM
78	650 Fifth Ave.	9,156	14	18	23	ZLM
80	499 Park Ave.	9,062	11	18	23	ZLM

1. Denotes the cleared buildable area of a zoning lot.
 2. Denotes the total area of a zoning lot including on site buildings which will remain as in a Zoning Lot Merger (ZLM).
 3. Denotes the minimum total zoning lot area that would be required to construct a Tower similar in floor area to those illustrated above.
 4. Denotes the type of assemblage-cleared site, no buildings remaining on zoning lot, Zoning Lot Merger (ZLM), building remaining on zoning lot; Transfer of Development Rights (TDR), transfer of unused floor area from Landmark buildings.
- * Denotes zoning lots sufficient to have produced a 40% tower under equivalent AOR regulations. This does not take into account adjustments for special district regulations.

Site Sizes Post 1974 Office
Buildings.

Consultants Draft Report
(New York, 1980)

buildings with large floors remained (15,000-20,000 SF/FL).

[88] The 1961 as-of-right regulations made it virtually impossible to accommodate what were perceived to be marketable floor sizes and an exterior bonusable plaza on an irregular and small site. Public dissatisfaction with the plazas, a growing fascination with shopping center type atriums and the practically implied right to a bonus regardless of site size, configuration, need, or appropriateness led to the Planning Commission proposing a host of internalized publicly accessible indoor bonusable amenities [89] through a special permit process which also allowed for the modification of the height and setback regulations.

As a result the obvious loss of daylight was to be compensated for by the internalized and privatized publicly accessible amenity. The privatization of the public space in plazas at least tended not to diminish the daylighting in the public streets. The privatization and internalization of publicly accessible space was at the expense of daylighting of the public streets.

More recently the development technique of combining a series of lots, some with and some without occupied

88 Midtown Development Study - Task Force Meeting with Abe Barkan of James Felt Co. Economic Consultants - 7 January, 1980.

89 New York City Planning Commission, Zoning Resolution (New York, 1980) Article 7 special permits:
 Section 74-82 Through Block Arcades, Section 84-77 Covered Pedestrian Space, Section 74-722, Special Floor Area Regulations/Public Galleria, Section 12-10 Open Air Concourse

structures, into a single, often irregular, zoning lot that could utilize unused development rights from the merged lots solved the assembly problem only to further exacerbate the building and urban design problems. In many cases the buildable portion of the merged lot represented 40% or less of the total zoning lot, resulting in very high but allowable floor area on the buildable portion of the lot. The effect of these buildings when the height and setback regulations were waived was to reduce daylight in Midtown to pre-zoning conditions. The as-of-right regulations were never meant for this type of zoning lot, nor was it ever assumed that each zoning lot might be built to its maximum floor area through the transfer of development rights or the zoning lot merger.

The factors that helped induce developers to reject the simple and speedy as-of-right process for the lengthy and uncertain discretionary process were additional floor area for interior amenities and the waiver of the height, setback, and building coverage regulations for small and/or merged lots. Most of the discretionary Special Permit regulations were created around the particular needs of a succession of developments and as a result did not conform to any consistent set of daylighting or any other objective environmental criteria.

The lack of objective standards in such evaluation resulted, in the worst cases, in turning the clock back to the pre-zoning daylighting conditions of Lower Manhattan's

Equitable Life Insurance Company Building, with its sheer street walls rising uninterrupted to a height of over 500 ft. The public and critical response to the impact of these new buildings on the Midtown environment was overwhelmingly negative. Zoning's historic concern for light and air was not taken into full account in the discretionary review process and the tendency to tailor or amend existing legislation for each new building eroded the certainty that the public, property owners, and developers had a legal right to expect of the process. (Ultimately, the value of the discretionary approach was questioned by the developers because of the lack of certainty in both time and result, and by the public because of the clear devaluation of environmental concerns in favor of those architectural.)

IX. APPROACH

The consultants and the City Planning Commission agreed that the new regulations should embody standards, objectivity, accountability and the flexibility to deal successfully with the complex requirements of development in Midtown:

- (a) widely varied site assemblages--including merged zoning lot, transfer of development rights and irregular and small sites;
- (b) public space on the building or zoning lot;
- (c) energy conservation, solar access, and daylighting;
- (d) the need to fit the new building into an existing and valued context;
- (e) the need to insure the vitality and environmental quality of the street;
- (f) the need for marketable floor sizes;
- (g) the financing process which often requires the developer to program the building's floor area to a major tenants in order to obtain financing;
- (h) the potential objections of owners of surrounding property;
- (i) the preservation of existing uses, character and ambience of districts within Midtown;
- (j) design flexibility.

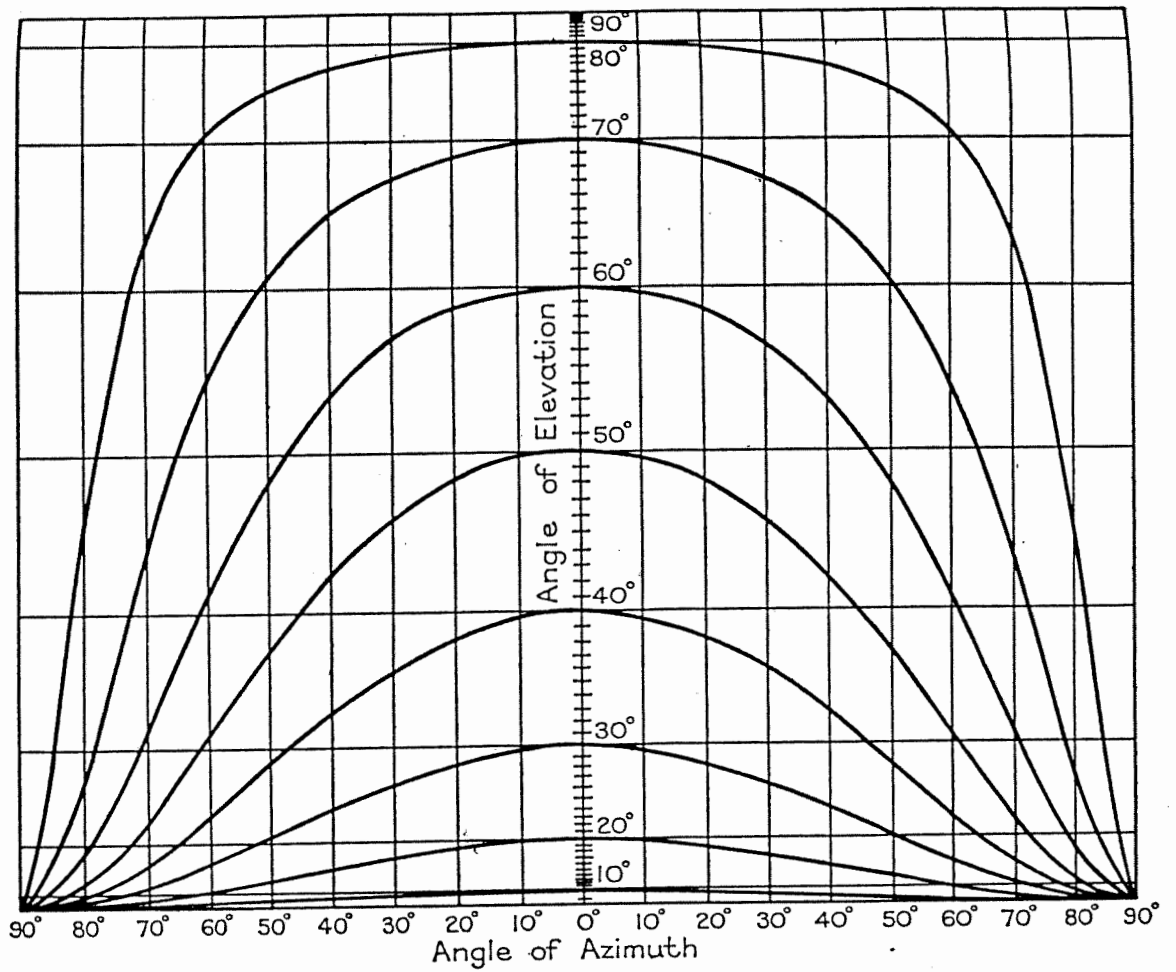
The need for the study arose out of the reality that there were in effect no bulk regulations (height & setback tower, agg. st. wall of 1961 were moribound) based on any

standard or criteria, objective or otherwise. The perception was that the historical expectations of available daylight, which were the cumulative result of the of these bulk regulations, were not being met. The consultants first task was to identify as objectively as possible what those expectations were.

Historical expectations are physically manifested in building conventions. Over time the architectural and development community, through an understanding of the underlying zoning regulations, have developed a series of typical approaches or types which overtime conventionalized commercial office building design in Midtown. In addition, regulations based on community expectations have a number of strategic advantages. Expectations are perceptual in that they reflect a sensate response to the environment and are not abstractions. Perceptual expectations can be evaluated, objectively interpreted and ultimately formed into standards and criteria. Finally, the historical expectation has gained acceptance because, by definition, a public expectation represents a long-held consensus. So rather than develop a new series of standards out of whole cloth with all the legal, political, economic, and social disruption that would entail, the major effort was focussed initially on defining and quantifying existing standards of the daylighting and the nature of the street environment. These would then be evaluated for their adequacy to meet the needs of the future.

From a review of the 1916 and 1961 Zoning Resolutions and their effect on the form of buildings, public spaces of the streets, parks, and plazas, the consultants were able to develop a series of building "types" representing the built response to the as-of-right and discretionary regulations of the Zoning Resolutions. To insure representativeness the "types" were compared to the complete inventory of Midtown office buildings. The analysis concluded that "types" represented an overwhelming majority of the buildings in Midtown. Exceptions (generally including buildings on very large sites such as the Empire State, RCA and Lincoln Buildings built under the 1916 as-of-right regulations and Citicorp under the 1961 discretionary regulations) were targeted for separate evaluation. The variations within each "type" represented the range of response to the regulations. In order to shape the street context and daylight delivery of each building type, we used two analytical techniques. New York City's Housing Quality Zoning provided a working performance system for analyzing an existing street context and establishing criteria for performance.

With the assistance of the daylighting and energy consultant, Prof. Harvey Bryan, we reviewed the analytical tools available to measure daylight in outdoor spaces in graphic form. The Waldram diagram was selected because of its extensive use in the United Kingdom as a daylight indicator for site planning.



Waldram Diagram

Hopkinson, Daylighting
 (Heinemann, London, 1966)

In the U.S. J.W. Griffith, a leading daylighting consultant had proposed the use of the Waldram diagram to insure daylighting to high density residential development in Chicago's central area. In it he states "The advisability of using a daylight standard as a basis for environmental (as distinct from lot by lot) zoning and planning deserves the most serious consideration." Recognizing the perceptual or psychological aspect of daylighting he states; "Psychologically they (the residents) extend their living space beyond the walls of their apartment and come to feel the surrounding physical environment belongs to them...The view that can be observed is an important and intimate extension of housing." [90] If one substitutes the street for apartment and housing the implications for Midtown become obvious.

Furthermore, it is characteristic to approximate the visual experience of the building from the street. The shapes of buildings on the diagram approximate the way one would perceive them from one point in the street, by bracketing or sweeping the view, as in a panoramic lens. The intent was to work within a representational convention understood by both architects and lay people. With these two tools, the existing standards could be identified objectively and evaluated for their applicability to the problem at hand--responsible regulation of new building in Midtown.

90 J.W. Griffith, Zoning For Residential Development in the Central Area, (Chicago, May 1983) P.58-59

X. DAYLIGHT EVALUATION CHART (DEC)

The traditional form and use of the Waldram diagram was modified to better fit the conditions of Midtown and with this modification is known as the Daylight Evaluation Chart or "DEC". DECs were devised to respond to the 60, 70, 80 and 100 ft. street widths of Midtown.

The combination of the typically high existing street walls and the closeness of the viewpoint produced distortions of the building which were unacceptable. More importantly, the typical pedestrian's experience is glancing or nearly parallel to the building face. Furthermore, a pedestrian experiences two major impacts of building regarding daylight and the sense of openness. One is the amount of sky visible above and around the building. The second is the effect in the long view down an avenue or street of the profile of the building relative to the sky dome. Sheer thin towers built at the street line may have exemplary daylighting at the adjacent sidewalk but from a block or two away obscure significant areas of the sky dome by the constricting effect of the leading edge of the building. In a sense these represent the micro and macro impacts of a tall building.

Our first task was to select a viewpoint. Empirical testing and subjective analysis led us to choose 250 feet. for the approximate distance for the viewpoint as the optimum between the relatively far view at which a building

can be differentiated from others in a continuous row, and the relatively near view necessary to preventing distortion on the DEC. The viewpoint was placed in the center of the street, which was consistent with zoning practice in New York City and the 250 foot. distance was measured from the furthest building lot line.

Four other factors had to be decided on before the DEC was operational to evaluate existing daylight conditions in Midtown. They were:

1. whether to treat the building profile as a special situation to be evaluated separately;
2. the degree or angle relative to the horizon above which a pedestrian might expect to see sky;
3. the subdivisions and numerical values given to the daylight squares in the DEC;
4. the number or views of each street frontage for the subject property.

Reflectivity was not considered in this portion of the work as we were concerned with the evaluation of the expectations of daylight incorporated in the 1916 and 1961 zoning resolution neither of which had a reflectivity component.

The sense of openness typical of Midtown intersections was a direct result of the 1916 Zoning Resolution requirements that towers occupy no more than 25% of their lot and be located at least 75 feet. away from the centerline of fronting streets. This historic and

characteristic opening up of the intersections to daylight and, in many cases, sunlight resulted from the dramatic setback of towers and the orientation of New York's street grid of almost 30 degrees east of north and can be directly experienced as one moves through Midtown. (See Appendix -- 1916 Zoning Resolution: Height Districts)

It was decided, therefore, that the blockage of the sky in the macro or profile view of a building, while not having localized daylighting impacts, created the perception in the viewer's mind of a dark street simply because less sky was visible. A profile curve was developed which defined the area of the skydome which would have historically been expected to be visible from the street.

Since holding a uniform cornice line was not isolated as a main urban design consideration, a weighted average of street wall heights was derived from the 1916 Height Districts for Midtown. Seventy degrees above the horizon was chosen as the average height of street walls in Midtown. Above 70 degrees a pedestrian could historically expect to see patches of sky. The street walls that predominate in Midtown are almost entirely the result of the 1916 regulations (ranging from 1.0-1.5 times the width of the street) with the exception of pre-1916 street wall structures such as the Algonquin Hotel which were typically taller (2-3 times the width of the bordering street).

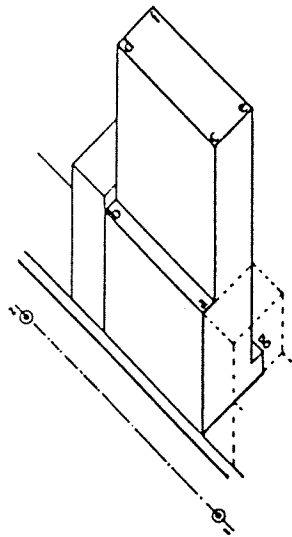
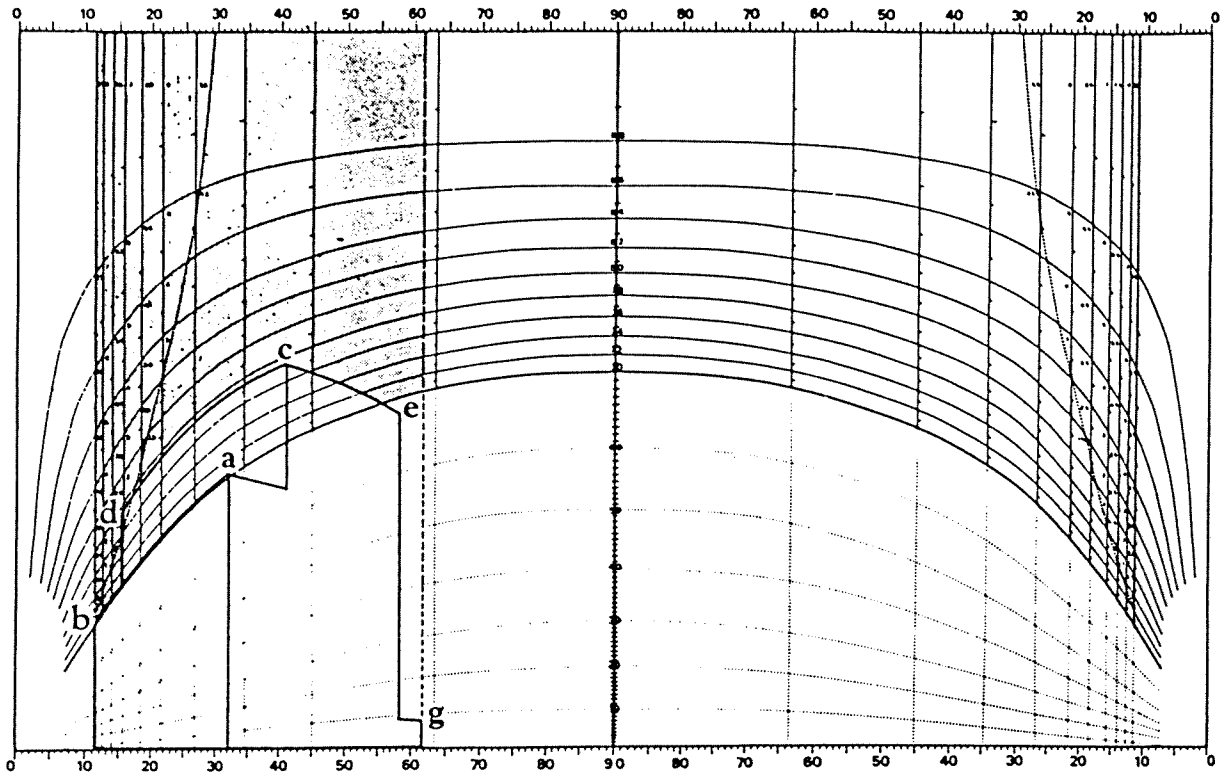
Because of the height of existing street walls in Midtown, the vertical scale was elongated so as to more

accurately reflect the actual perception of the building. As a result of this change, the altered diagram, the Daylight Evaluation Chart (DEC) became an equal area rather than proportionate area diagram. Unlike the Waldram diagram "in which patches of sky plotted on any part of the diagrams have areas which always bear the same proportion to the direct daylight equivalents of those patches", [91] the DEC is an equal area diagram in which each box or sub-box is equivalent in daylight. Values were assigned to each box on the diagram depending on its position relative to the profile curve and its importance to daylighting on the street and building facade.

As a result the DEC is divided into 100 squares of equivalent daylight above 70 degrees. Each square above 70 degrees is the equivalent of 25 ft. horizontally and 2 degrees vertically. Buildings are evaluated by comparing the number and value of squares blocked as weighted and compared to the maximum expectation. The maximum expectation is equal to the number of squares above 70 degrees and between the far lot line and a projection of the centerline of the block at the rear lot line. Boxes that are blocked above the 70 degree lines (the typical street wall height) are multiplied by their value (1.0 and greater in the profile area in ascending order corresponding to the vertical scale) and then added together and given a minus sign. Boxes below 70 degrees that are left open to daylight are multiplied by

91 R.G. Hopkinson, *Daylighting*, (Heinemann, London, 1966),
P.158

their value (0.3) and then given a plus sign. The sum of these is the daylight equivalency score for that street frontage. Each street frontage required two views to be drawn and evaluated. Their combined score was then averaged. If a building such as a corner building, fronted on other streets, two more views were required from the second street, and , if a block front, four more views. The total daylight equivalency score was determined by a weighted average of each set of averaged street scores. The weighting was based on the length of each street frontage. Weighting the individual street scores represented the relative importance and impact of each frontage. The DEC was then employed to evaluate the daylight characteristics of the representative building "types" and their as-built variations.



The example building should be scored as follows:

AVAILABLE DAYLIGHT SQUARES	89.9
SQUARES BLOCKED TIMES VALUE	
Squares above 70° blocked	-20.5
Squares below 70° open	+0.0
Profile Encroachment	
0.1 x 1.5 =	-0.4
0.25 x 1 =	_____
Total blockage	-20.9

DAYLIGHT SCORE

$$\frac{89.9 - 20.9}{89.9} = 0.7675 = 76.75\%$$

Example of Midblock Building Scored
On Daylight Evaluation Chart.
Courtesy New York City Department
Of City Planning

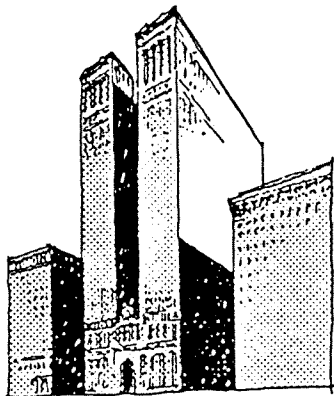
XI. RESULTS

Very few of the as-of-right 1916 and 1961 "types" violated the profile curve; close to 80% of the skydome above 70 degrees averaging all frontages was left unobstructed. Variations of the "types" left about 75% of the sky above 70 degrees unobstructed when averaging all frontages. In some instances midblock through-lot, as-of-right 1916 and 1961 buildings left in the range of 66% of the sky above 70 degrees unobstructed on certain frontages. The frontage scores for these buildings was due to a minor incursion in the profile curve at the lot lines.

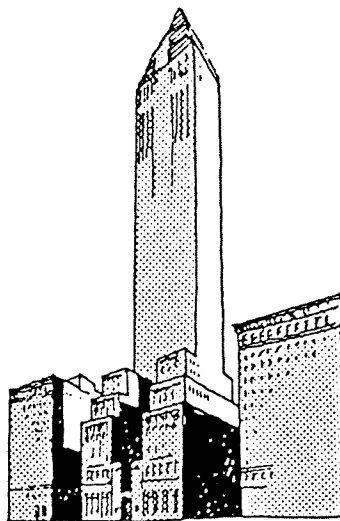
Almost every building built under the discretionary regulations of the past ten years in Midtown failed to meet either the low expectation of 66% of the skydome being visible, or the more typical expectation of 75% for the entire development. While their exceedingly low scores were blamed on the evaluation process itself by the DEC's critics, later refinements of the process had minimal effect on their average daylight equivalency scores. For instance, the sheer street wall of the Olympic Towers, the first tower/slab building to disregard the low street wall, acute setbacks and discrete tower locations of Fifth Avenue, became a looming mass from locations more than 1,000 feet away and obscured significant amounts of sky which the public historically expected on Fifth Avenue. Evaluation of

buildings which predated the 1916 Zoning Resolution indicated, regardless of the profile area, that they and the recent Special Permitted discretionary buildings had similar daylight equivalency scores which were substantially less than the overwhelming majority of structures in Midtown.

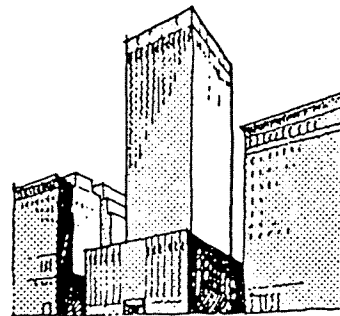
Using daylighting evaluations of the "types," built variations, and the exceptions of pre-1916 and more recent discretionary buildings, a daylighting map of Midtown was developed. (see Map) Plotting the daylight equivalency scores proved to be a valuable exercise. A visual scan of the map indicated that the predominant and historic expectation of daylighting in Midtown above the prevailing street wall heights (70 degrees) above the horizon was that 75% of the sky was left unobstructed. Similarly the worst case for a particular frontage proved to be that 66% of the sky was left unobstructed. The 75% standards and 66% threshold represented the as-of-right 1916 and 1961 Zoning Resolution buildings respectively. The latter became the minimum threshold for any street frontage while the former became the average standard expectation for an entire development. It was clear that while some externalized diseconomies in the form of less daylight to adjoining sites and streets were acceptable, they were only acceptable within tolerable limits and the development had to compensate elsewhere in order to reach the overall standard of 75%.



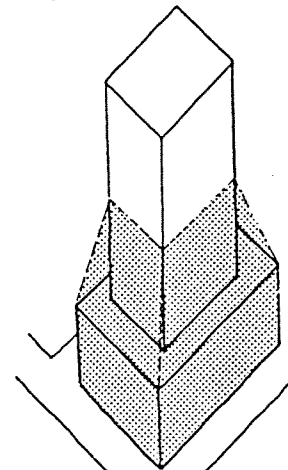
Pre-1916 building, Equitable Life Insurance, 120 Broadway
Fig. 2.



Typical 1916 "wedding cake" building
Fig. 3.

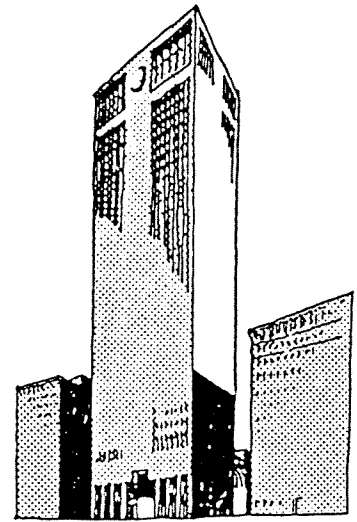
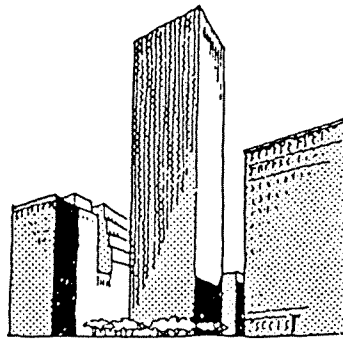


Note: dotted lines represent maximum zoning envelope

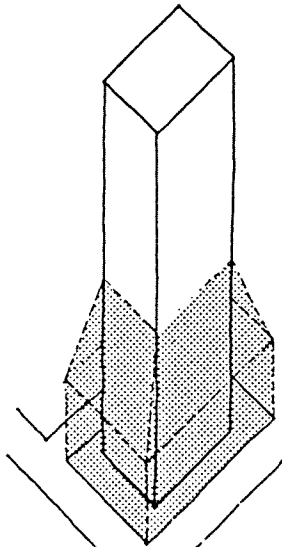


1961 tower on base,
FAR 15
Fig. 4.

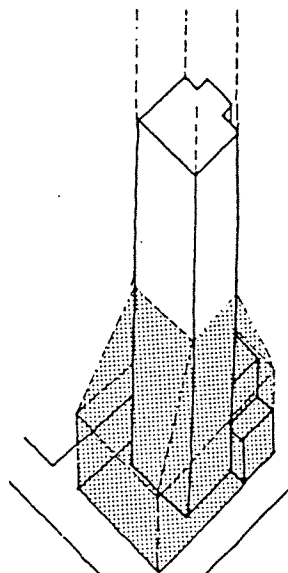
Axonometric View of Building
Types And Envelopes of the 1916
and 1961 Zoning Resolutions
(New York City Department Of City
Planning, 1981)



Note: dotted lines represent maximum zoning envelope

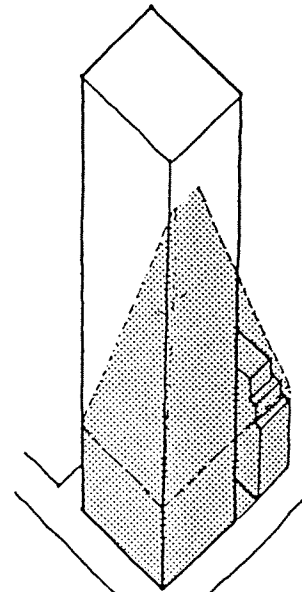


1961 tower with bonusable plaza,
FAR 18
Fig. 5



Seagram Building

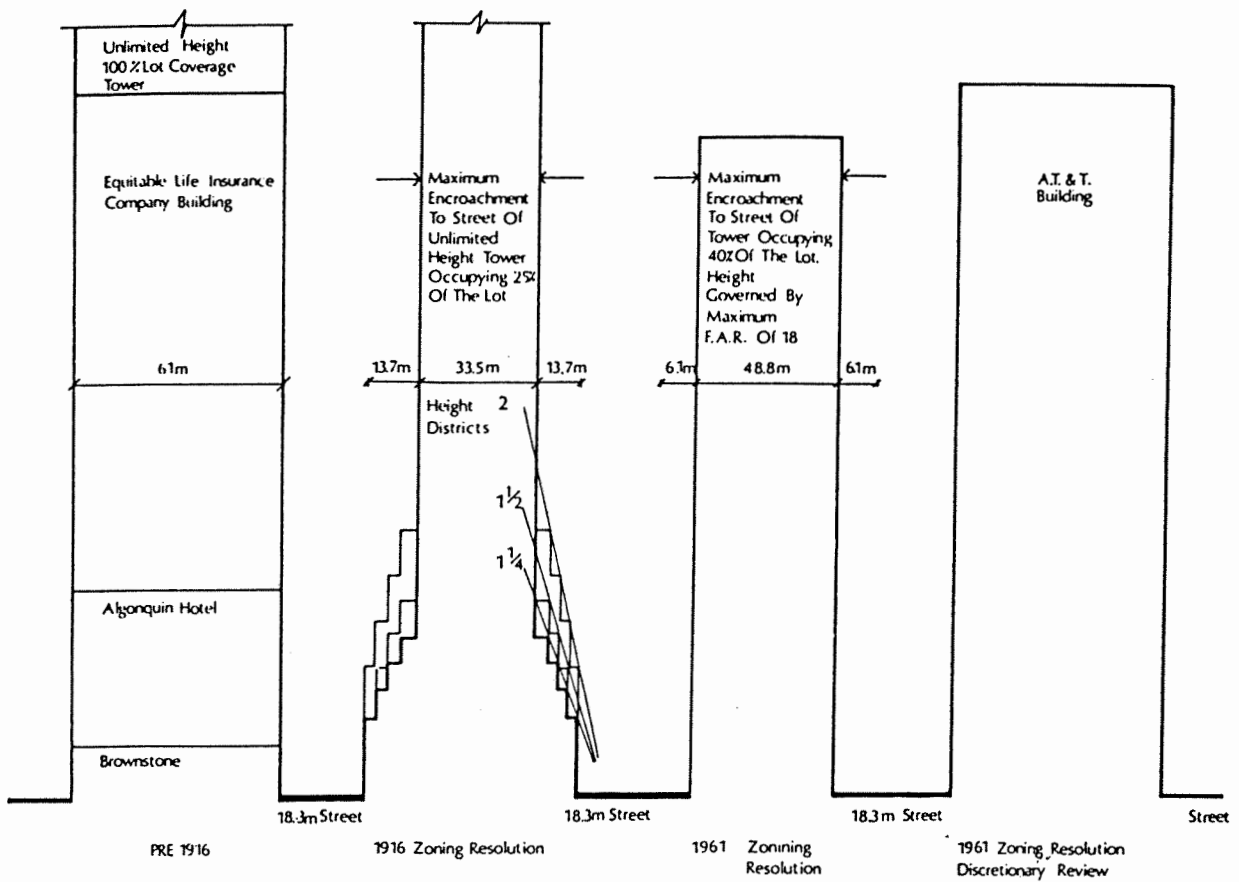
Fig. 6.



Special Permit building

Fig. 7.

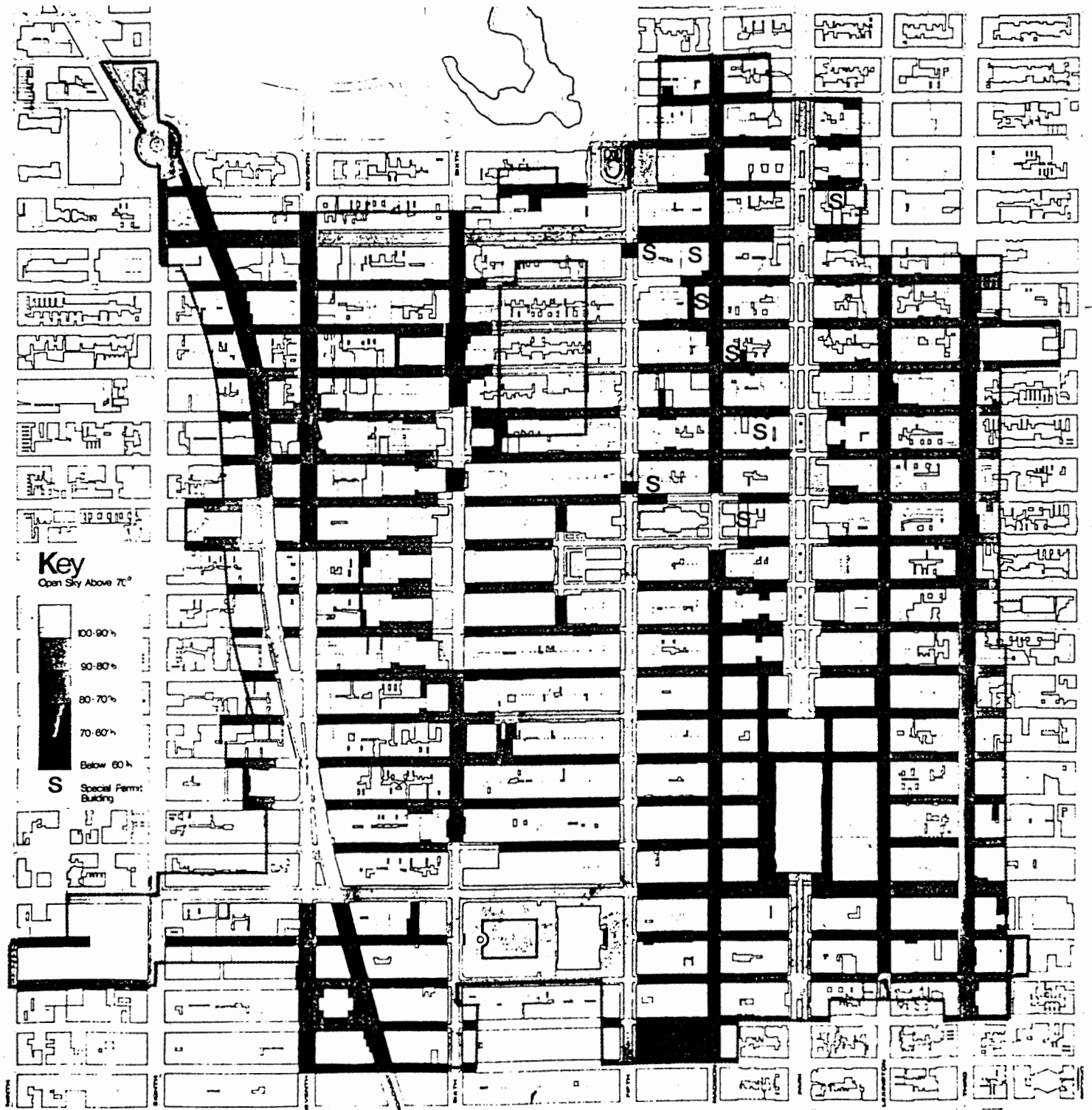
Axonometric View of Building
Types And Envelopes of the 1916
And 1961 Zoning Resolutions
(New York City Department of City
Planning, 1981)



Section Diagrams Illustrating
The Relationships of Building
Walls and Towers To The Street

The darkest areas of Midtown proved to be blocks with substantial numbers of pre-1916 buildings, and the current generation of skyscrapers, such as AT&T, IBM, Trump Towers and One Park Plaza were approved under the discretionary review procedures of the City Planning Commission.

While the standard and threshold described above may have been adequate for buildings already built--generally on larger, more regular lots--the question was raised whether these standards and thresholds could produce an economically, programmatically and aesthetically sound structure, or stated another way, the continuance of the expectation is no guarantee of the adequacy of the expectation in the first instance. Therefore, concurrent with the daylight evaluation was a series of meetings with our energy and daylight consultants, and architects and their engineers regarding the adequacy of the daylight available to buildings or building lots being evaluated. Additionally, we found that the interaction of daylighting and the contextual components of the performance system tended to favor buildings with bulkier bases. Between one half and two thirds of the total floor area of building might be located in the high lot coverage base. The result was a potentially energy efficient building. The consensus was that the daylight available was adequate for perimeter daylighting. All agreed that the standards identified presented new opportunities for daylighting and energy efficiency in office building design.



Daylight Evaluation
Map Of Midtown
Consultants Draft Report
(New York, 1980)

XII. THE PUBLIC

With the publication in June 1980 of the Final Draft Report [92], the official public review process began. The consultants and City entered into a series of formal presentations to the DCP staff and Commissioner; professional organizations such as the American Planning Association (APA) and the American Institute of Architects (AIA), concerned good government groups including the Municipal Art Society, Citizens' Housing and Planning Council, Real Estate Board, and the Regional Plan Association, and the affected Community Planning Boards. A number of informal presentations were given to lawyers, developers, and architects active in Midtown development. The AIA created a separate committee of architects familiar with the architectural issues of commercial office buildings in Midtown, to evaluate the impact of the proposed regulations including energy and operating costs, programming, interior layout, and aesthetic implications of the proposed performance system. The DCP staff concurrently began a review of the consultants' recommendations with the goal of refining and coalescing the draft report into a legal text to be ready for adoption by the CPC in early 1981.

Two reactions to the consultants' proposal quickly emerged. Both of them concerned the concept of a performance system:

(1) as an approach to as-of-right or automatic zoning; and

(2) as an approach to controlling building bulk through the dynamic interplay of the contextual street regulations and the Daylight Evaluation Chart (DEC).

Initially, the CPC staff and the AIA committee, for a variety of reasons resisted the concept that an as-of-right performance system could achieve all the positive benefits of a discretionary approach, while maintaining certainty, accountability, contextual design, and a system open enough to encourage creative and artistic responses to the Midtown context and the developer's program.

This has clearly not been the case historically. Well conceived as-of-right zoning regulations based on the adequate provision of light and air were the vehicle from which much creative and responsible architecture in New York City sprang. Witness the Empire State, Chrysler, Chanin, Lincoln and RCA Buildings as well as Madison, Park, Fifth Avenues and Central Park West with its art "Deco" apartment towers. In view of this, the consultants believed that objections to the proposed regulations may have been in large part, a perceptual problem. The proposed zoning changes did not look nor function like traditional prescriptive zoning. The DEC was particularly problematic.

Most as-of-right zoning is based on New York City's 1961 example. It is prescriptive--in that it defines an envelope in which the structure must fit regardless of site size, configuration, context, or orientation. This very simple approach allows someone familiar with the mechanics of the zoning text to virtually design the envelope--and generally the building shape--in an hour or so. The advantage to the developer is obvious; in an instant total building configuration and site plan can be known. Sixth Avenue in the forties is an example of these regulations in practice.

The proposed as-of-right performance system was both sophisticated and more complex in its practice than the 1961 regulations. By definition and by design there were, depending on the site size, orientation and location, and context, a variety of very different possible schemes, all of which met the overall performance threshold of 85 points. The number of possible approaches was open ended rather than closed. The opportunity for a creative response was encouraged, and in some cases mandatory, in order to achieve the maximum allowable density and score the threshold 85 points. Many questioned whether the flexibility and fine-grained nature of the entire performance system was worth the effort. Others questioned its flexibility vis-a-vis-design possibilities, eg., were there schemes that were inherently unacceptable? Of course there were. Schemes which neither meet the historical expectations of daylighting nor the contextual factors were unacceptable. If that had not

been the case proposed performance system would have an exercise--on a grand scale--of the "Emperors New Clothes."

Members of the Department of City Planning felt strongly that the performance system and particularly the DEC had to be translated into a traditional, prescriptive, zoning format that was understandable as a result of years of familiarity. As a result the consultants developed, at the request of the Department of City Planning, a complimentary as-of-right prescriptive tier which, while restrictive and hence predictable, was a "quick and dirty" method available to architects in lieu of the more complex yet flexible performance tier. The prescriptive regulations had the same basic components but all were executed in traditional zoning format of the Mosiac "Thou shall not...", including a parabolic sky exposure plane derived from the daylight performance system. As the evaluation proceeded, the AIA recommended the consultants work with committee emmbers in applying the proposed regulations to development sites in Midtown. The consultants requested that the architects attempt to utilize the system and particularly the DEC as a design aid rather than the traditional use of zoning as an evaluative device. The architects were also asked to evaluate the utility of the "quick and dirty" perscriptive tier on the same sites. This work ultimately focused on the DEC and the prescriptive daylight envelope of the prescriptive tier.

The test schemes that passed the 85-point threshold were analyzed by the architects and the other members of the development team as to economic viability, the capital cost required, floor configuration, floor sizes, energy impacts and maintenance and operation. All of the architects reported that the schemes that conformed to the performance system met the developers' criteria. On the other hand, the architects said the DEC required substantially more time and effort than standard as-of-right zoning. The open endedness of the system required that a strategic tack be taken in the pre-design phase to insure that the range of possibilities had been fully explored and that the preferred scheme was not just the best of a poorly defined sample. Some architects enjoyed the challenge, others disliked it. Their experience with the DEC indicated that while difficult to use initially, it was an effective design and evaluation tool that offered the architect a great deal of design flexibility not possible with the prescriptive tier. They recommended that it be dropped in favor of the performance tier.

A number of substantive and procedural issues which ultimately helped define and clarify the zoning text were raised. Most members of the AIA committee suggested changes in the DEC to make it more usable and familiar to architects. Many praised it because it required architects to think about how a building is actually perceived at grade in addition to the abstraction of models or aerial, or

axonometric views. Concurrently, the Department of City Planning staff was developing its own version of a prescriptive tier which was not too dissimilar from the daylight compensation method of the 1950 Plan. This prescriptive system was designed to replace the "quick and dirty" prescriptive tier they had requested and the performance tier as well. Because the approach was inherently intuitive there was no method other than the DEC to objectively evaluate the performance of the daylight compensation system. The consultants agreed to evaluate consistency of the staff approach using the DEC's and found dramatic and inconsistent swings in the behavior of the system. Equivalency, a legal consideration of paramount importance, was not being met. In many cases buildings which substantially failed the DEC passed the prescriptive daylight compensation system. In effect, the prescriptive (See Appendix A-5 Daylight Compensation Method) system was advocating a substantial diminution of environmental quality. The potential for litigation was apparent.[93] Initially, there was strong disagreement as to whether there had to be equivalency between the historic standard, incorporated in the use of the DEC and that of the daylight compensation system. Some members of the staff suggested that the solution to the equivalency issue was the elimination of the DEC witness. The project director overruled the staff recommendation, as the DEC represented

93 Consultants Memorandum Re: New Bulk Regulations, Draft & Midtown Development Project (11 May 1981)

the only objective and consistent method of daylight evaluation. If the DEC did not appear in the zoning text, it was argued by its partisans, the standards and thresholds readily apparent in the use of the DEC would be subsumed in the abstraction of the prescriptive system. Over time, modifications to the prescriptive system would not be accountable vis-a-vis the threshold and standard.

The resolution of the controversy resulted in the prescriptive daylight compensation system with its inconsistent standard becoming the replacement for the consultants' prescriptive tier. The second tier performance system was reduced to the DEC and building surface reflectivity as a performance system for evaluation daylight. Architects were free to submit buildings for zoning compliance under either tier. The interaction of the urban design contextual components derived from Housing Quality Zoning and the daylighting DEC were traded for a hybrid prescriptive/performance system with the performance based contextual component redrafted as a set of traditional mandatory maxima and minima that applied uniformly to both tiers. The dynamic interplay of daylighting and context in determining the building form was excised from the draft legislation.

Additionally, the DEC because of its perceived complexity and novelty, had to be computerized to make detailed review of buildings submitted under the Tier Two performance system possible without extensive retraining of

Building Department examiners. The DEC and the entire performance system had been conceived with an eye toward computer application. The consultants in fact had begun investigating computer application on their own as had SOM/NYC, one of the firms on the AIA committee. All the modifications to the Waldram Diagram as it evolved into the DEC were done on a computer. The final DEC's for each street width were drawn by the computer to insure consistency and accuracy. Without computerization, the DEC would in all likelihood not have been part of the zoning text adopted by the City.

Even so daylighting, for its aesthetic, health, energy, and economic importance, became the focus of the public debate along with that old battle horse--density. When the regulations were finally adopted, almost two years after the final draft report, the issue of insuring an adequate level of daylighting and hence solar access as a primary purpose of the police power of zoning were firmly reestablished--only this time on a firm and accountable basis.

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A-1 MIDTOWN OFFICE BUILDINGS: 1960 - 1982

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MIDTOWN OFFICE CONSTRUCTION 1960-1982 BY DATE OF OCCUPANCY

MIDTOWN OFFICE CONSTRUCTION KEY: 445 FIFTH AVE. - Denotes C.P. Action
 452 FIFTH AVE. - Denotes USA Action
 1960 - 1982 By Date of Occupancy

1960	1961	1962	1963	1964	1965	1966
<p>Net Rentable Sq. Ft. (x 1,000)</p>	<p>Address</p>	<p>Building Name</p>	<p>Sq. Ft. (x 1,000)</p>	<p>Block</p>	<p>No.</p>	<p>Block</p>
1,150	270 Park Ave.	Union Cardide	1,150	1293	1311	1311
526	320 Park Ave.	CITY BANK	526	1296	1308	1308
1,250	399 Park Ave.		1,250	1295	1309	1309
43	155 E. 56 St.		43	1277	1311	1311
1,150	270 Park Ave.	Union Cardide	1,150	1293	1311	1311
526	320 Park Ave.	CITY BANK	526	1296	1308	1308
1,250	399 Park Ave.		1,250	1295	1309	1309
43	155 E. 56 St.		43	1277	1311	1311
300	633 Third Ave.	Continental Can	300	1314	1317	1314
210	635 Third Ave.	American Home Products	210	1317	1317	1317
507	755 Third Ave.	Diamond National	507	1319	1319	1319
451	850 Third Ave.	Western Publishing	451	1306	1306	1306
420	522 Fifth Ave.	Morgan Guaranty Trust	420	1299	1299	1299
340	555 Madison Ave.	Coates Bldg.	340	1291	1291	1291
1,300	1255 Ave. of Americas	Equitable Life	1,300	1004	1004	1004
321	780 Park Ave.	Banker's Trust	321	1284	1284	1284
218	1120 Ave. of Americas	Hippodrome (add.)	218	1259	1259	1259
298	1180 Ave. of Americas	Phoenix	298	1262	1262	1262
1,700	1290 Ave. of Americas	Sperly Rand	1,700	1267	1267	1267
153	104 W. 40 St.	Spring Mills	153	815	815	815
700	135 W. 50 St.	American Management Assn.	700	1005	1005	1005
60	288 E. 56 St.	New York Telephone	60	1329	1329	1329
354	757 Third Ave.	Harcourt Brace, Jovanich	354	1321	1321	1321
488	777 Third Ave.	U.S. Plywood	488	1322	1322	1322
303	845 Third Ave.		303	1325	1325	1325
2,400	200 Park Ave.	Pan Am	2,400	1280	1280	1280
663	330 Madison Ave.	Sperly & Hutchinson	663	1277	1277	1277
70	304 W. 58 St.	M.E.M.A. Bldg.	70	1048	1048	1048
112	110 E. 59 St.	The Lighthouse	112	1373	1373	1373
115	880 Third Ave.	Bank Systems	115	1308	1308	1308
327	979 Third Ave.	Decorator & Design	327	1332	1332	1332
400	641 Lexington Ave.	Saturday Evening Post	400	1309	1309	1309
768	90 Park Ave.	Sterling Drug	768	869	869	869
1,500	277 Park Ave.	Chemical Bank	1,500	1302	1302	1302
46	410 Madison Ave.	Franklin National Bank	46	1284	1284	1284
250	1212 Ave. of Americas		250	1263	1263	1263
1,300	1501 Ave. of Americas	J.C. Penney	1,300	1005	1005	1005
14	134 E. 40 St.	Korland Corp. Bldg.	14	895	895	895
265	201 E. 42 St.		265	1310	1310	1310
222	31 W. 52 St.	CBS(1500 Ave. of the Americas)	222	1293	1293	1293
293	600 Madison Ave.	Trade Bank & Trust	293	1293	1293	1293
57	592 Fifth Ave.		57	1293	1293	1293
350	1330 Ave. of Americas	YBC	350	1293	1293	1293
50	1435 Broadway	Carnegie Bldg.	50	893	893	893
114	1475 Broadway	Allied Chemical (1 Times Sq.)	114	895	895	895
76	1855 Broadway		76	1113	1113	1113

MIDTOWN OFFICE CONSTRUCTION 1960-1982 BY DATE OF OCCUPANCY (CONTINUED)

Year	Address	Building Name	Sq. Ft.	Block No.
1966	566 Third Ave.	Crowell, Collier, MacMillan	400	1307
	1350 Ave. of Americas	WCH	400	1270
	1563 Broadway	American Bible Society	127	1114
1967	325 Seventh Ave.	American Strands	150	1006
	245 Park Ave.	MetLife	1,400	1301
	299 Park Ave.	MetLife	200	1303
	437 Madison Ave.	MetLife	640	1255
	210 E. 59th St.	Annex to Decorators Bldg.	196	1332
1968	33 E. 48th St.	Bankers' Trust	63	1254
	325 Third Ave.	Random House	500	1324
	364 Third Ave.	Interchemical	433	1312
	1133 Ave. of Americas	Interchemical	750	396
	1111 Broadway	FDN Post Office	1,200	315
	309 Third Ave.	FDN Post Office	487	1328
	5 E. 42nd St.	Emigrant Savings	275	1277
	110 E. 59th St.	Emigrant Savings	400	1313
	250 Park Ave.	Bankers' Trust Annex	630	1284
	345 Park Ave.	Bankers' Trust Annex	1,400	1306
	757 Fifth Ave.	General Motors	1,550	1294
	1335 Ave. of Americas	Washington House	-1,300	1007
	1700 Broadway	Washington House	527	1025
1969	919 Third Ave.	Finland House	1,152	1329
	645 Madison Ave.	Pan Ocean Bldg.	140	1374
	1153 Ave. of Americas	Stevens Tower	550	999
	828 Seventh Ave.	Stevens Tower	600	1024
	810 Seventh Ave.	Stevens Tower	20	1028
	15 Columbus Circle	Guil & Western Plaza	520	1113
1971	10 E. 34th St.	Harter & Row	320	1288
	350 Third Ave.	General Savings Bank	330	1311
	350 Park Ave.	General Savings Bank	330	1292
	1335 Ave. of Americas	Franklin National Bank	2,200	1002
	1301 Ave. of Americas	J.C. Penney (Annex)	225	1005
	1301 Ave. of Americas	Capital Industries	300	1271
	1301 Ave. of Americas	Capital Industries	300	1016
	1515 Broadway	M.I. Grant (1 Astor Plaza)	1,148	1016
	1625 Broadway	Uris Bldg.	2,050	1022
	600 Third Ave.	Uris Bldg.	178	895
1972	9 West 37th St.	Solow Bldg.	1,500	1273
	40 E. 57th St.	MetLife (Equity)	444	1272
	300 Third Ave.	MetLife (Equity)	367	1295
	300 Third Ave.	MetLife (Equity)	511	1304
	439 Fifth Ave.	MetLife (Equity)	1,229	1276
	1005 Ave. of Americas	N.Y. Telephone Co.	1,200	994
	1301 Ave. of Americas	MetLife	2,500	1001
	1301 Ave. of Americas	MetLife	1,550	1258
	1300 Broadway	MetLife	450	996
	1500 Broadway	MetLife	3,795	1273

Net Rentable Sq. Ft. (x 1,000)

A-12

MIDTOWN OFFICE CONSTRUCTION 1960-1982 BY DATE OF OCCUPANCY

Year	Address	Building	sq. ft. (x 1,000)	Block
1973	527 Third Ave.	Time-Space	350	1520
1974	1205 Ave. of Americas	Time-Space	1,500	1000
1974	665 Fifth Ave.	Rolex	135	1258
	1166 Ave. of Americas		1,150	1261
1975	117 E. 57th St.	Galleria	95	1312
	643 Fifth Ave.	CLINIC Tower	100	1287
1976	685 Third Ave.	American Home Products	350	1317
1977	625 Lexington Ave.	Clippings	1,500	1303
1978	650 Fifth Ave.	Pahlevi Foundation	300	1267
1979			0	
1980	727 Fifth Ave.	Teleflex Corp.	14,000	1292
	360 Madison Ave.	(Kilikon)	15,000	1281
	499 Park Ave.	(Kilikon)	250,000	1313
	500 Lexington Ave.	(Rudnik)	350,000	1305
	1 Park Ave. Plaza	(Fisher)	1,350,000	1288
1981	570 Madison Ave.	AT&T	650,000	1291
	590 Madison Ave.	IBM	744,500	1292
	120 Park Ave.	Philip Morris	600,000	1276
	400 Lexington Ave.	(Olinia & Join)	932,000	1300
	505 Third Ave.	(Conen Bros.)	525,000	1323
1982 and later	Scheduled for Completion		1,801,000	
1982 and later	Scheduled for Completion		3,469,800	
1989	570 Madison Ave.	Republic Nat. Bank	250,000	369
	520 Madison Ave.	(Kilikon)	300,000	1289
	525 Madison Ave.	(Kilikon)	420,000	1290
	600 Third Ave.	(Gladstone)	600,000	1327
	101 Park Ave.	(Kilikon)	1,250,000	1295
	125 Fifth Ave.	(Kilikon)	236,000	1292
	600 Third Ave.	(Kilikon)	450,000	1309
	1100 Sixth Ave.	(Kilikon) (rehab)	(500,000)	1258
	42nd and 52nd City at 42nd	(Kilikon)	N.A.	1355
	1 L. 49th St.	(Kilikon)	N.A.	1355
	135 E. 57th	(Gladstone)	N.A.	1312
	500 Park Ave.	(Kilikon)	N.A.	1294
	1270 Sixth Ave.	Rocketfeller Center	N.A.	1266

SOURCES: 1. Sandborn Maps Department of City Planning, 2 Lafayette St., New York City
 2. Hudson and Urban Design Groups, Dept. of City Planning, 2 Lafayette St., NYC
 3. Board of Standards and Appeals, 40 Lafayette St., New York City

75
 100

A-2 1916 ZONING RESOLUTION: HEIGHT DISTRICTS, SKY EXPOSURE
PLANES, AND HEIGHT DISTRICT MAP

sign on such intersecting street beyond a distance of twenty-five feet from the intersection. Beyond such twenty-five feet, entrances not exceeding three feet six inches in width and windows other than windows designed or used for display and, when required by law, exits, ventilators, fire escapes and other appurtenances may be permitted. The provisions of this section shall not restrict openings necessary to permit ingress and egress for required or permitted parking, loading and unloading space. Where zoning for other than residence use is confined to a distance of not over 100 feet along both streets from an intersection, the limitations of this section shall not apply. In appropriate cases, the Board, after public notice and hearing, may vary the provisions of this section subject to such appropriate conditions and safeguards as are in harmony with the general purpose and intent of this section.

ARTICLE III—HEIGHT DISTRICTS

§8. Height Districts. For the purpose of regulating and limiting the height and bulk of buildings hereafter erected, The City of New York is hereby divided into eight classes of districts; (a) class one-quarter ($\frac{1}{4}$) districts; (b) class one-half ($\frac{1}{2}$) districts; (c) class three-quarter ($\frac{3}{4}$) districts; (d) class one (1) districts; (e) class one and one-quarter ($1\frac{1}{4}$) districts; (f) class one and one-half ($1\frac{1}{2}$) districts; (g) class two (2) districts; (h) class two and one-half ($2\frac{1}{2}$) districts. The districts heretofore classified and referred to as one-quarter times districts; one-half times districts; three-quarter times districts; one times districts; one and one-quarter times districts; one and one-half times districts; two times districts and two and one-half times districts, as shown on the height district map consisting of twenty-seven sheets and an index sheet, each dated March 31, 1937, and signed by the Chief Engineer of the Board of Estimate and Apportionment, together with eight sheets, each dated August 2, 1943, and signed by the Senior Civil Engineer of the City Planning Commission, shall hereafter be referred to and described, respectively, as class one-quarter districts, class one-half districts, class three-quarter districts, class one districts, class one and one-quarter districts, class one and one-half districts, class two districts and class two and one-half districts. The height districts designated on said map, as amended, or as may be hereafter amended from time to time, are hereby continued and declared to be part hereof. The height district map designations and map designation rules which accompany said height district map are hereby declared to be part hereof. No building or part of a building shall be erected except in conformity with the regulations herein prescribed for the height district in which such building is located.

- (a) In a class one-quarter ($\frac{1}{4}$) district no building shall be erected to a height in excess of one-quarter times the width of the street, but for each two feet that the height limit of such building or such portion thereof.
- (b) In a class one-half ($\frac{1}{2}$) district no building shall be erected to a height in excess of one-half times the width of the street, but for each one foot that the height limit of such building or such portion thereof.
- (c) In a class three-quarter ($\frac{3}{4}$) district no building shall be erected to a height in excess of three-quarter times the width of the street but for each one foot that the height limit of such building or such portion thereof.
- (d) In a class one (1) district no building shall be erected to a height in excess of seven-eighths times the width of the street, but for each one foot that the building height limit of such building or such portion thereof.
- (e) In a class one and one-quarter ($1\frac{1}{4}$) district no building shall be erected to a height in excess of the width of the street, but for each one foot that the building height limit of such building or such portion thereof.
- (f) In a class one and one-half ($1\frac{1}{2}$) district no building shall be erected to a height in excess of one and one-quarter times the width of the street, but for each one foot that the building height limit of such building or such portion thereof.
- (g) In a class two (2) district no building shall be erected to a height in excess

building or portion of it sets back from the street line three feet shall be added to the height limit of such building or such portion thereof.

(h) In a class two and one-half ($2\frac{1}{2}$) district no building shall be erected to a height in excess of two times the width of the street but for each one foot that the building or a portion of it sets back from the street line four feet shall be added to the height limit of such building or such portion thereof.

§9. Height District Exceptions. (a) On streets less than 50 feet in width the same height regulations shall be applied as on streets 50 feet in width and, except for the purposes of paragraph d of this section, on streets more than 100 feet in width the same height regulations shall be applied as on streets 100 feet in width.

(b) Along a narrower street near its intersection with a wider street, any building or any part of any building within 100 feet of the wider street, measured at right angles from the side of the wider street, shall be governed by the height regulations provided for the wider street.

(c) Above the height limit at any level for any part of a building a dormer, elevator bulkhead or other structure may be erected provided its frontage length on any given street be not greater than 60 per cent of the length of such street frontage of such part of the building. Such frontage length of such structure at any given level shall be decreased by an amount equal to one per cent of such street frontage of such part of the building for every foot such level is above such height limit. If there are more than one such structure, their aggregate frontage shall not exceed the frontage length above permitted at any given level.

(d) If the area of the building is reduced so that above a given level it covers in the aggregate not more than 25 per cent of the area of the lot, the building above such level shall be excepted from the foregoing provisions of this article. Such portion of the building may be erected to any height, provided that the distance which it sets back from the street line on each street on which it faces, plus half of the width of the street, equals at least 75 feet. But for each one per cent of the width of the lot on the street line that such street wall is less in length than such width of the lot, such wall may be erected four inches nearer to the street line. This provision shall not apply to residential buildings or buildings in a residence district, or portions thereof, within 100 feet of a public park of one acre or more in area, or within 100 feet of the street line opposite such a park.

(e) When at the time plans are filed for the erection of a building there are buildings in excess of the height limits herein provided within 50 feet of either end of the street frontage of the proposed building or directly opposite such building across the street, the height to which the street wall of the proposed building may rise shall be increased by an amount not greater than the average excess height of the walls on the street line within 50 feet of either end of the street frontage of the proposed building and at right angles to the street frontage of the proposed building on the opposite side of the street. The average amount of such excess height shall be computed by adding together the excess heights above the prescribed height limit for the street frontage in question of all the walls on the street line of the buildings and parts of buildings within the above defined frontage and dividing the sum by the total number of buildings and vacant plots within such frontage.

(f) Nothing in this article shall prevent the projection of a cornice beyond the street wall to an extent not exceeding five per cent of the width of the street nor more than five feet in any case. Nothing in this article shall prevent the erection above the height limit of a parapet wall or cornice solely for ornament and without windows extending above such height limit not more than five per cent of such height limit, but such parapet wall or cornice may in any case be at least five and one-half feet high above such height limit.

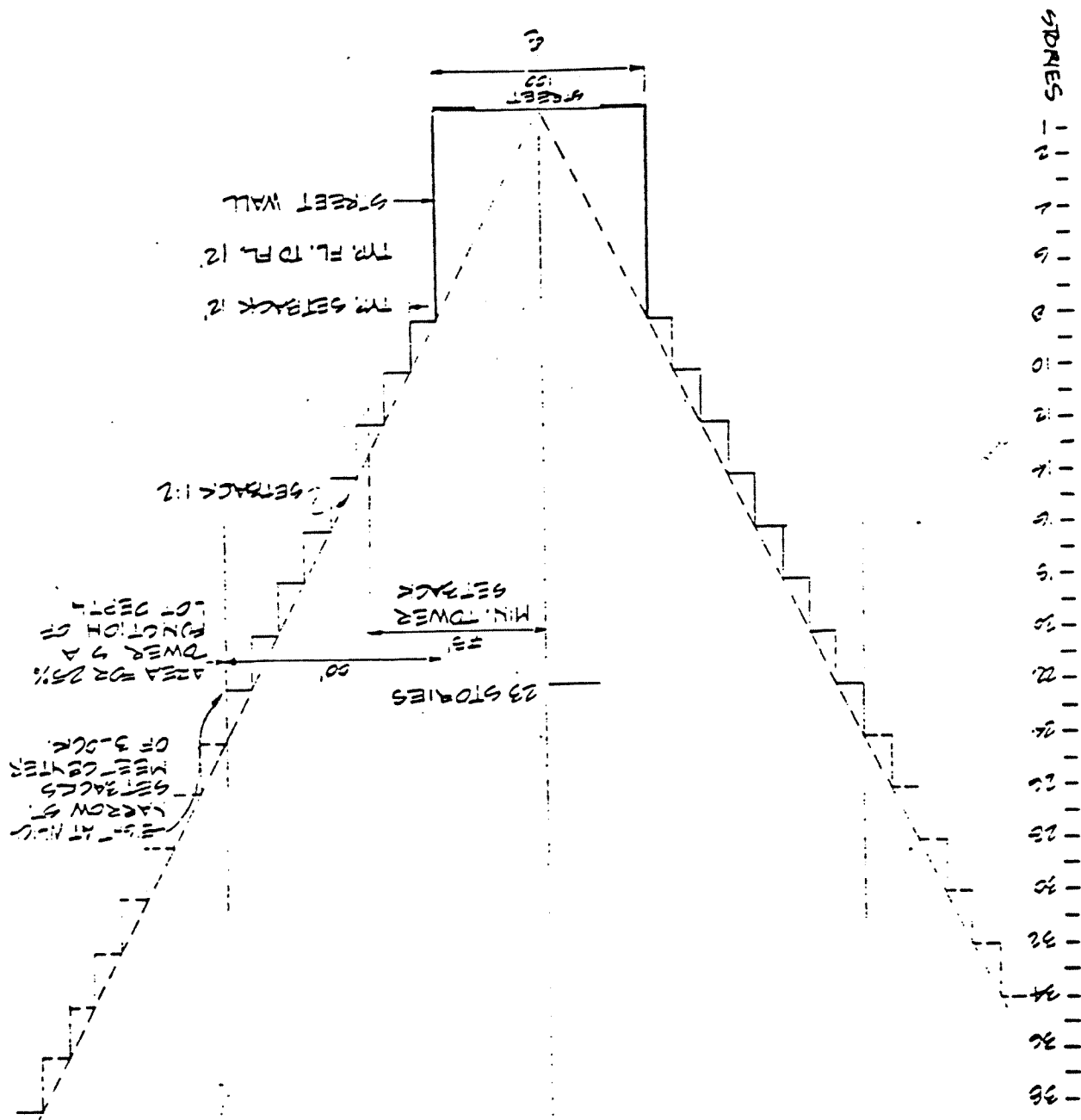
(g) The provisions of this article shall not apply to the erection of church spires, bellfries, chimneys, flues or gas holders.

(h) Where not more than 50 feet of a street frontage would otherwise be subjected to a height limit lower than that allowed immediately beyond both ends of such frontage, the height limit on such frontage shall be equal to the lesser of such greater height limits.

(i) If an additional story or stories are added to a building existing at the time of the passage of this resolution, the existing walls of which are in excess of the height limits prescribed in this article, the height limits for such additional story or stories shall be computed from the top of the existing walls as though the latter were not in excess of the prescribed limits and the provisions of this article shall apply to the

A-3

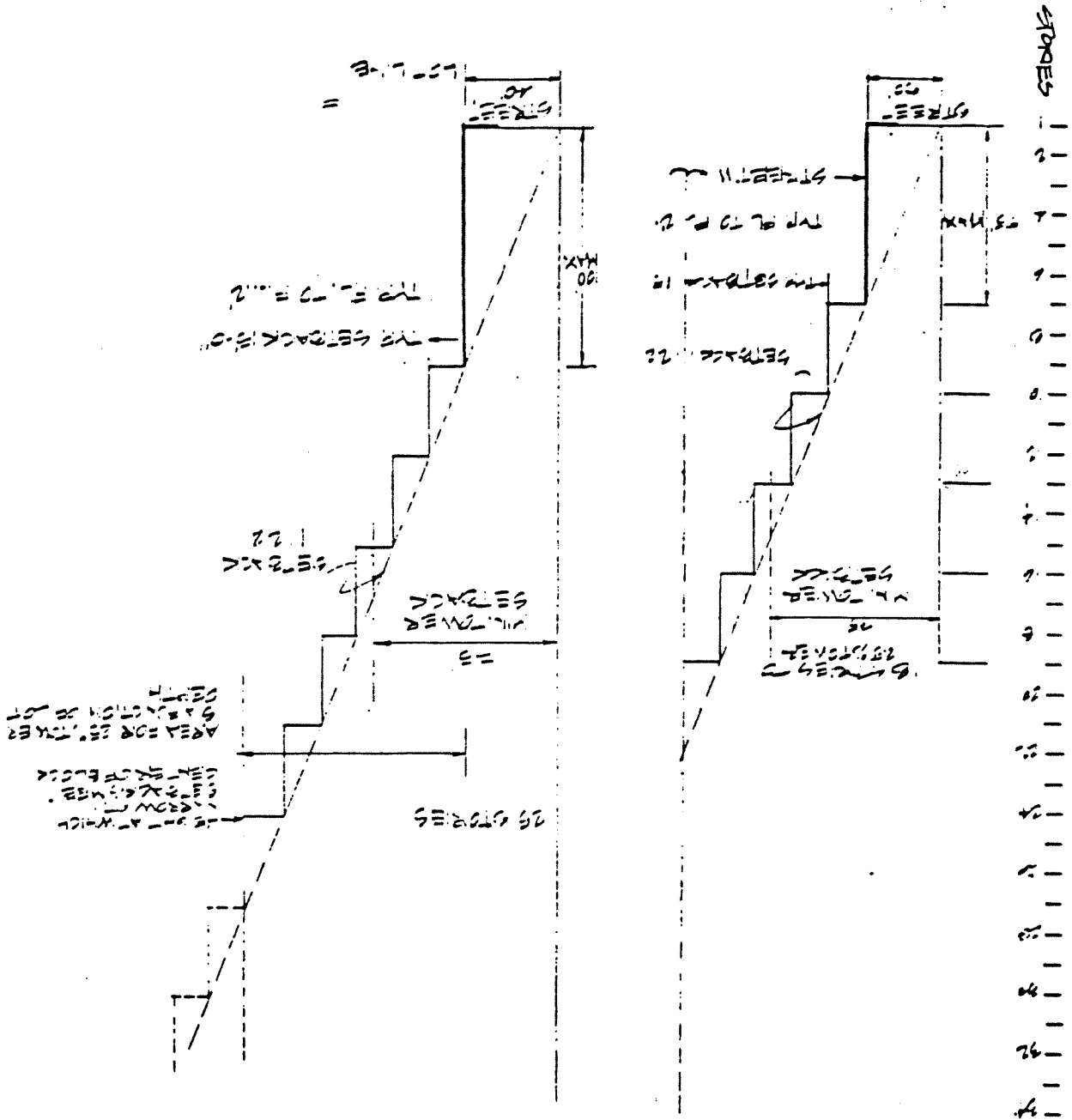
1916 ZONING RESOLUTION, 1-1/4 HEIGHT DISTRICT STREET PROFILES
(FIFTH AVENUE ONLY)



1916 ZONING RESOLUTION, 1-1/2 HEIGHT DISTRICT STREET PROFILES
 MIDBLOCKS SURROUNDING FIFTH AVENUE
 WEST 57TH PORTIONS OF EAST 42ND STREETS

80' WIDE STREET

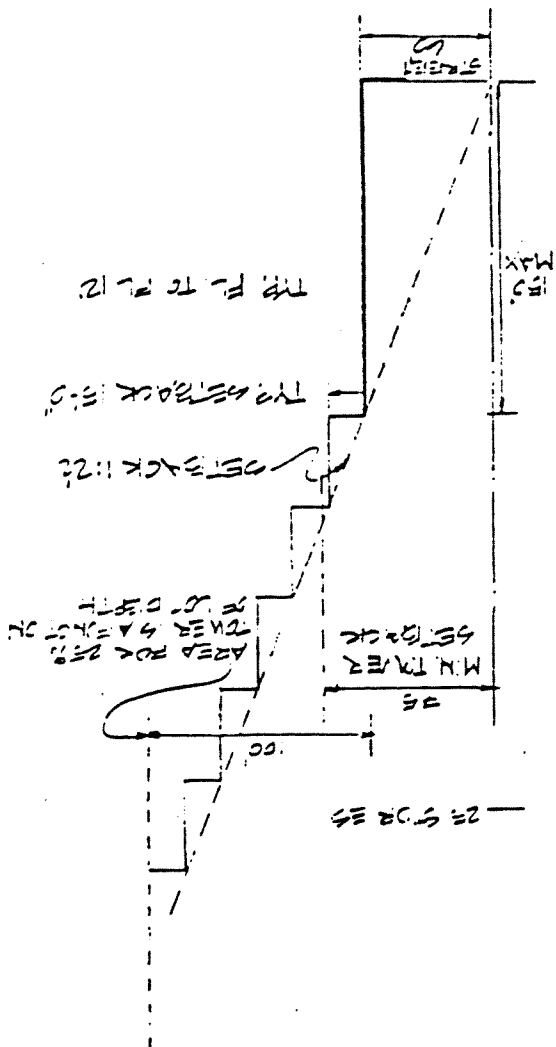
60' WIDE STREET



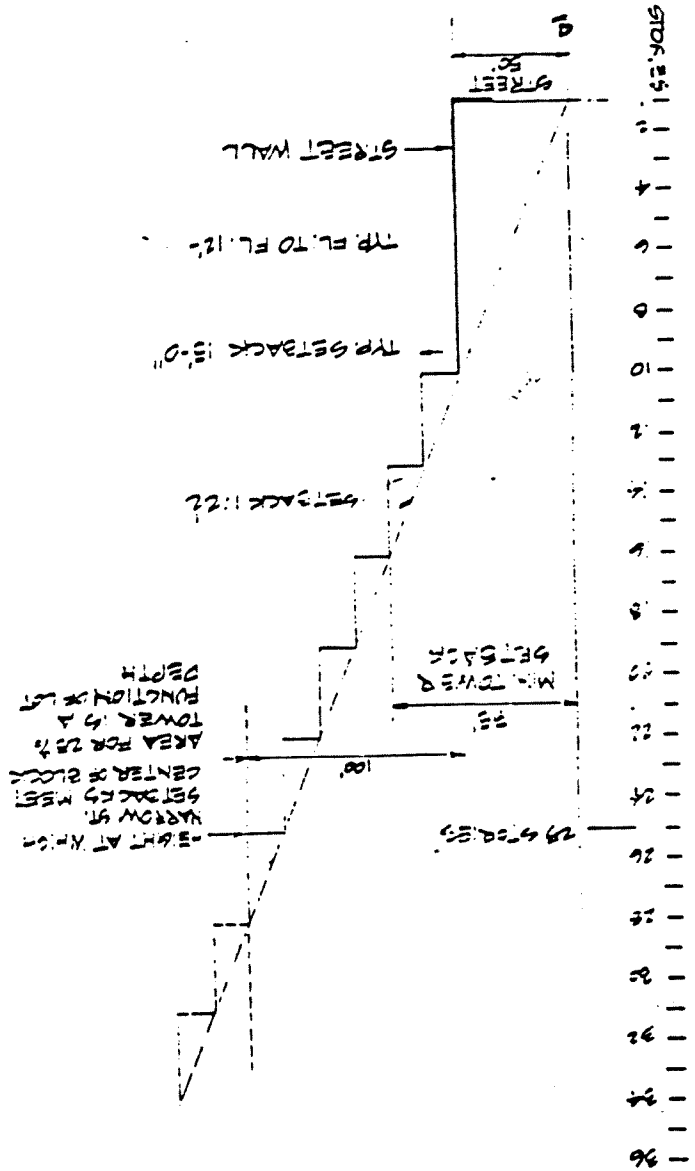
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1916 ZONING RESOLUTION, 1-1/2 HEIGHT DISTRICT STREET PROFILES

120' WIDE STREET



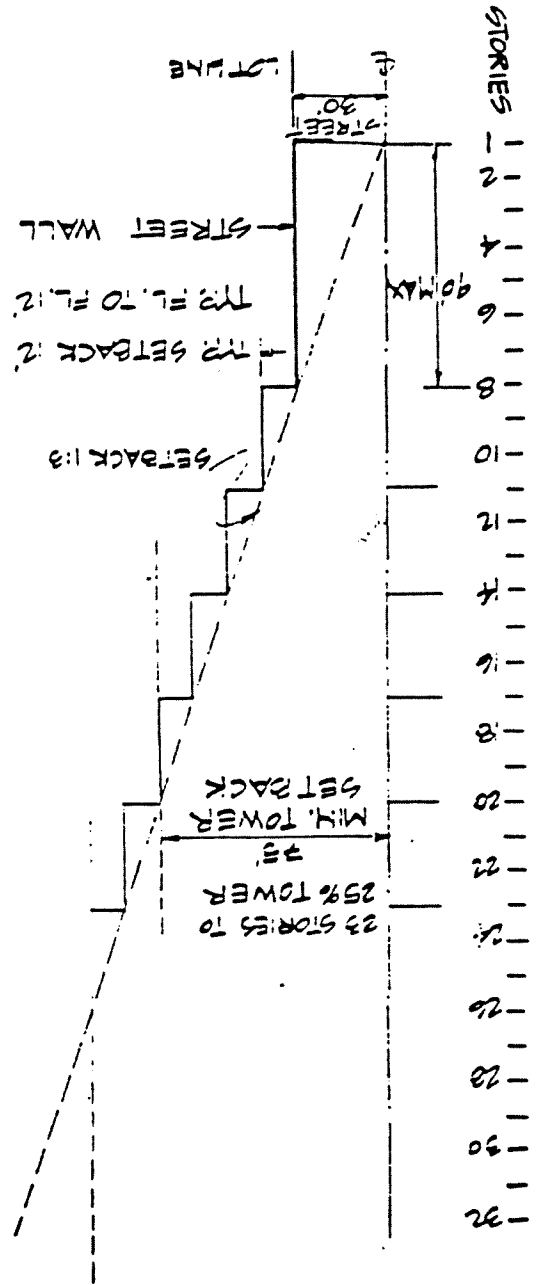
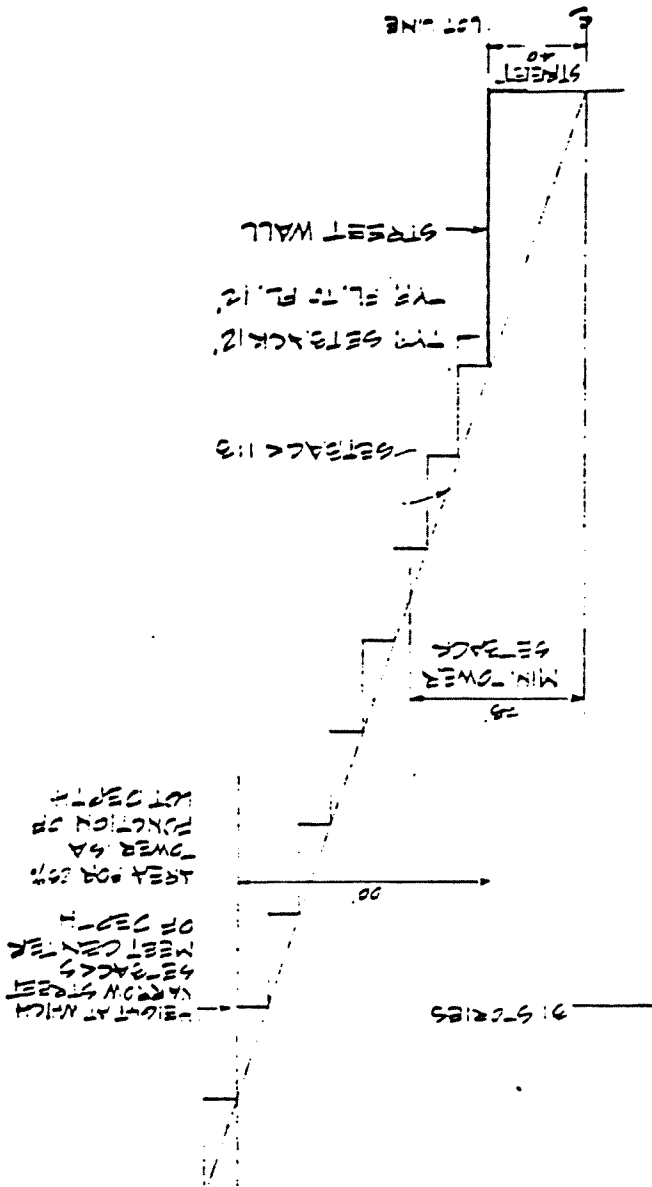
100' WIDE STREET

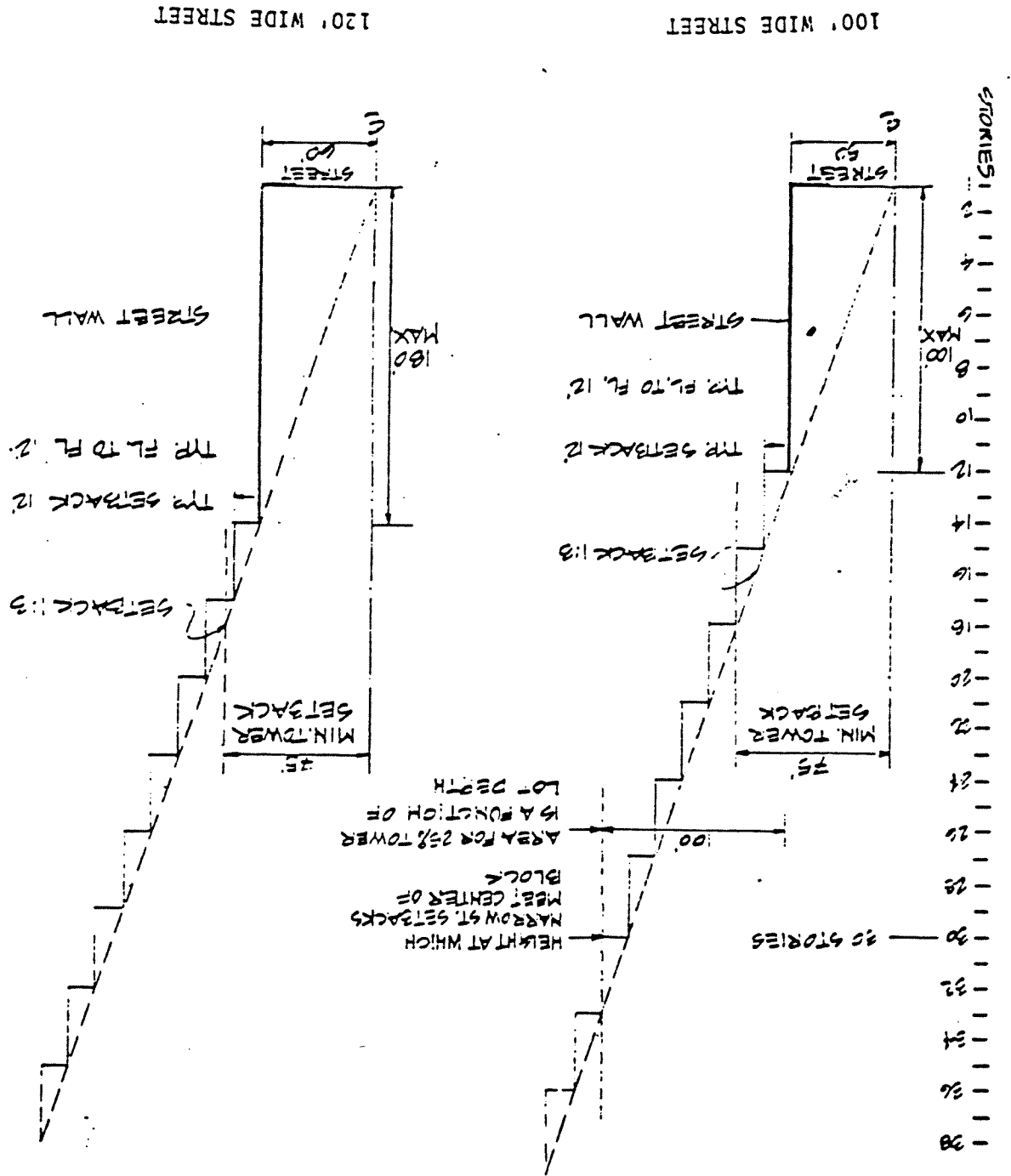


1916 ZONING RESOLUTION, 2 HEIGHT DISTRICT STREET PROFILES
 PORTIONS OF EAST & EAST 42ND STREET
 PARK, LEXINGTON, SIXTH (LOWER),
 MADISON, SEVENTH, BROADWAY,

80' WIDE STREET

60' WIDE STREET





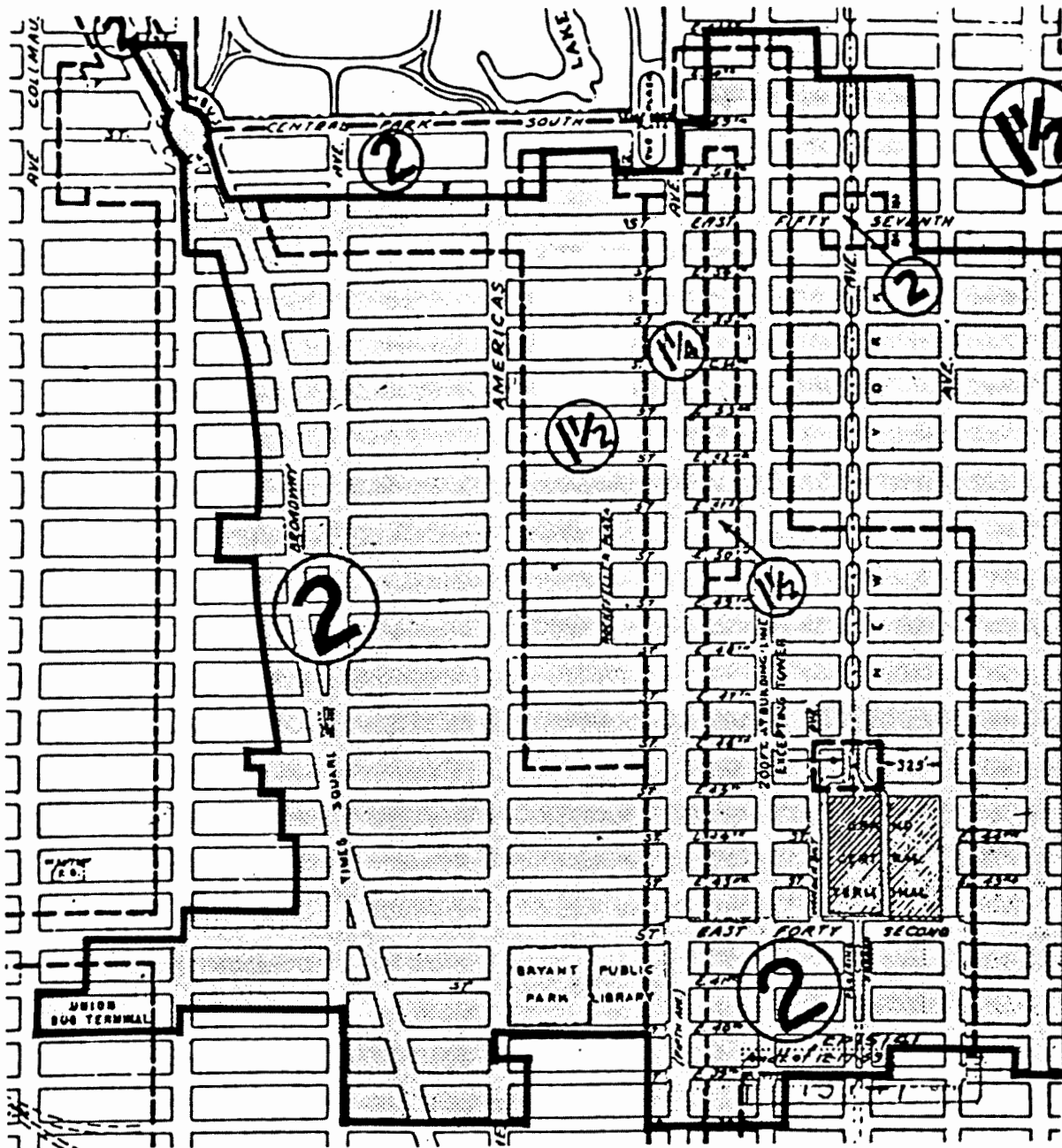


Fig. 1. 1916 Map of Height Districts for Midtown. Courtesy New York City Department of City Planning.

the amount of daylight available in the public space of the street and to the commercial building interiors. Up to the end of World War Two, the majority of office buildings used daylight as an organizing and form giving criterion by adhering to the general rule that whenever possible no desk should be more than 10.67 m (35 ft) from a window.

Subsequent amendments to the 1916 Zoning Resolution, (including the omnibus 1961 [2] amendments which fostered the

tower/slab and plaza schema of development) held true to the daylighting expectation incorporated in the original resolutions. Because the combined effects of the as-of-right building bulk regulations of the 1916 and 1961 ordinances represent more than sixty years of building activity, they have created an uninterrupted record of community expectations regarding daylighting in Midtown, upon which the public and property owners relied.

While Lower Manhattan desired by time, the applied to daylighting demands development the map districts for Manhattan.

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A-3 PROPOSED MIDTOWN BULK REGULATION, PRESCRIPTIVE
AND PERFORMANCE TIERS

A. PRESCRIPTIVE TIER

1. DAYLIGHTING: to maximize openness and daylighting at the public sidewalks and other outdoor amenities

A. Daylighting Considerations at the Street Line

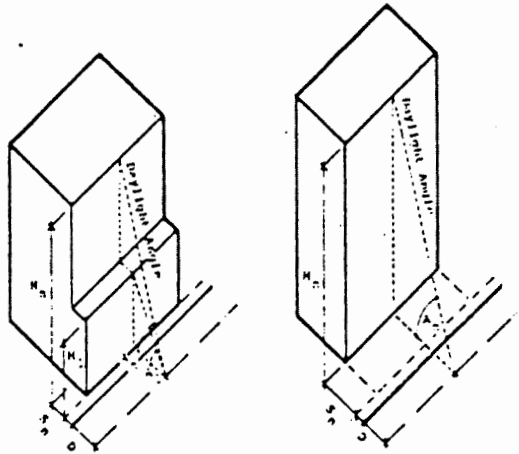
The daylight angles control the disposition of building bulk on the zoning lot. The initial daylight angle (A_1) is either 72° or the angle determined by the required street wall height. All angles are taken at the centerline of the street. Ascending daylight angles are a function of the setback or setbacks (S_n) from the street line. For every 1" of setback from the street line the angle (A) can increase by $.2^\circ$. The Height of any portion of the building (H_n) is determined by the formula:

$$H_n = (S+D) \times \tan (72^\circ + .2 S_n)$$

= distance to centerline of Street x $\tan (72^\circ + .2^\circ \times \text{setback})$

where:

- H_1 = Required Street Wall Height
- H_n = Total height of any portion of the Building
- D = Distance from the centerline of Street to Street Line
- S_n = Distance setback from Street Line
- A_n = Angle subtended by portion of Building at Street Line or at setback S_n .



a. setback and base

b. set back

Building Illustrations

Special Conditions

- a) When the initial angle (A_1) is based on a required street wall height, the proposed street wall height may penetrate that angle up to the maximum range allowed (see 3. Street Wall Height).
- b) When two streets of unequal width intersect, the required street wall height of the wider street shall be the required street wall height on the narrower street up to the depth of 100'.

Angle	Tangent	rate of height to setback	10'	20'	30'	40'	50'
18°	28.64	959'-72a	1145'-35a	1432'			
17°	19.38	572'-47a	743'-43a	954'-79a	1144'		
16°	14.30	429'-35a	572'-47a	715'-59a	858'-71a	1001'	
15°	11.43	343'-28a	457'-38a	572'-47a	583'-48a	697'-55a	812'-67a
14°	9.51	285'-23a	360'-31a	476'-39a	571'-47a	666'-53a	781'-63a
13°	8.14	244'-20a	320'-27a	407'-33a	488'-40a	570'-47a	651'-54a
12°	7.12	214'-17a	285'-23a	356'-29a	427'-35a	498'-41a	570'-47a
11°	6.31	189'-15a	252'-21a	315'-26a	379'-31a	442'-36a	505'-42a
10°	5.67	170'-14a	227'-18a	284'-23a	340'-28a	397'-33a	454'-38a
9°	5.14	154'-12a	206'-17a	257'-23a	308'-25a	360'-30a	411'-34a
8°	4.70	141'-11a	188'-15a	235'-19a	282'-23a	329'-27a	376'-31a
7°	4.33	130'-11a	173'-14a	217'-18a	260'-21a	303'-25a	346'-28a
6°	4.01	120'-10a	160'-13a	200'-16a	241'-20a	281'-23a	321'-26a
5°	3.73	112'-9a	149'-12a	186'-15a	224'-18a	261'-21a	298'-24a
4°	3.49	105'-9a	140'-11a	175'-14a	209'-17a	244'-20a	279'-23a
3°	3.27	101'-8a	131'-10a	164'-13a	196'-16a	229'-19a	262'-21a
2°	3.08	97'-7a	123'-10a	154'-12a	185'-15a	216'-17a	247'-20a

10' WIDE ST. D=40' S=0' 10' 20' 30' 40' 50'

Angle	Tangent	rate of height to setback	10'	20'	30'	40'	50'
18°	28.64	1145'-35a	1432'				
17°	19.38	743'-43a	954'-79a	1144'			
16°	14.30	572'-47a	715'-59a	858'-71a	1001'		
15°	11.43	457'-38a	572'-47a	583'-48a	697'-55a	812'-67a	
14°	9.51	360'-31a	476'-39a	571'-47a	666'-53a	781'-63a	856'-71a
13°	8.14	320'-27a	407'-33a	488'-40a	570'-47a	651'-54a	733'-61a
12°	7.12	285'-23a	356'-29a	427'-35a	498'-41a	570'-47a	641'-53a
11°	6.31	252'-21a	315'-26a	379'-31a	442'-36a	505'-42a	568'-47a
10°	5.67	227'-18a	284'-23a	340'-28a	397'-33a	454'-38a	510'-42a
9°	5.14	206'-17a	257'-23a	308'-25a	360'-30a	411'-34a	463'-38a
8°	4.70	188'-15a	235'-19a	282'-23a	329'-27a	376'-31a	424'-35a
7°	4.33	173'-14a	217'-18a	260'-21a	303'-25a	346'-28a	390'-32a
6°	4.01	160'-13a	200'-16a	241'-20a	281'-23a	321'-26a	361'-30a
5°	3.73	149'-12a	186'-15a	224'-18a	261'-21a	298'-24a	336'-28a
4°	3.49	140'-11a	175'-14a	209'-17a	244'-20a	279'-23a	314'-26a
3°	3.27	131'-10a	164'-13a	196'-16a	229'-19a	262'-21a	294'-24a
2°	3.08	123'-10a	154'-12a	185'-15a	216'-17a	247'-20a	277'-23a

100' WIDE ST. D=50' S=0' 10' 20' 30' 40'

Angle	Tangent	rate of height to setback	10'	20'	30'	40'
18°	28.64	1432'				
17°	19.38	954'-79a	1144'			
16°	14.30	715'-59a	858'-71a	1001'		
15°	11.43	572'-47a	583'-48a	697'-55a	812'-67a	
14°	9.51	476'-39a	571'-47a	666'-53a	781'-63a	856'-71a
13°	8.14	407'-33a	488'-40a	570'-47a	651'-54a	733'-61a
12°	7.12	356'-29a	427'-35a	498'-41a	570'-47a	641'-53a
11°	6.31	315'-26a	379'-31a	442'-36a	505'-42a	568'-47a
10°	5.67	284'-23a	340'-28a	397'-33a	454'-38a	510'-42a
9°	5.14	257'-23a	308'-25a	360'-30a	411'-34a	463'-38a
8°	4.70	235'-19a	282'-23a	329'-27a	376'-31a	424'-35a
7°	4.33	217'-18a	260'-21a	303'-25a	346'-28a	390'-32a
6°	4.01	200'-16a	241'-20a	281'-23a	321'-26a	361'-30a
5°	3.73	186'-15a	224'-18a	261'-21a	298'-24a	336'-28a
4°	3.49	175'-14a	209'-17a	244'-20a	279'-23a	314'-26a
3°	3.27	164'-13a	196'-16a	229'-19a	262'-21a	294'-24a
2°	3.08	154'-12a	185'-15a	216'-17a	247'-20a	277'-23a

ANGLE, HEIGHT, AND SETBACK RELATIONSHIP TABLE

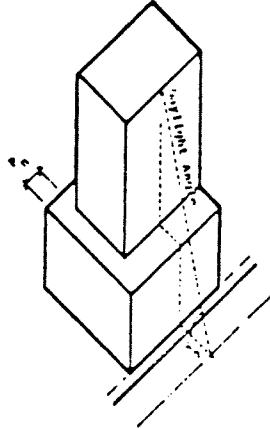
B. Daylighting Considerations at the Upper Portions of a Development

Portions of developments which subtend angles greater than 76° shall be required to set back from the lot lines. The lot line setback is expressed as a percentage of the street line, and is determined by the formula:

$$P_n = (\text{angle } A_n [276^\circ] - 76^\circ) \times .06 \times \text{length of street line} = \text{total aggregate side setback.}$$

Where:

P_n = Distance setback from Lot Line



Building Illustration
Lot Line Setback

Special Conditions:

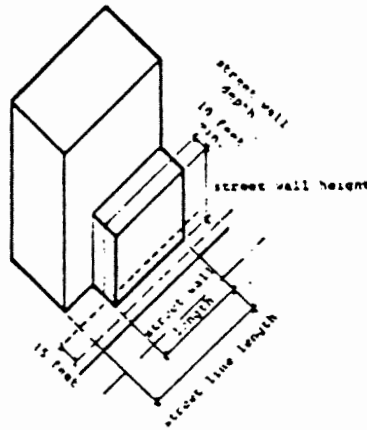
- a) The required setback may be distributed between two lot lines or aggregated in one location
- B) In no case can a side lot line setback be less than 15'-0".

2. STREET WALL LENGTH - to conserve the pedestrian scale of the street by visually and physically connecting the street wall of the proposed development with the Street Wall of existing nearby buildings.

The minimum proposed street wall length is a function of the length of the developments street line multiplied by the street wall length factor listed below:

<u>factor</u>	<u>Street</u>
1.00	5th Avenue
.90	Madison Avenue, Lexington Avenue, Broadway, 59th Street, and 42nd Street
.85	7th Avenue, Park Avenue
.20	3rd Avenue
.70	all other streets

A building wall must be located within 15'-0" of the street line to be a qualifying street wall. The proposed street wall must have a minimum depth of 10' for its entire length.



Building Illustration
Street wall Length, Height, and Depth

3. STREET WALL HEIGHT: to define the space of the street and conserve existing scale by relating the height of the street wall of the proposed development to the characteristic height of nearby buildings.

The proposed street wall heights shall conform to the following listing of street wall heights with corresponding range.

Street Width	Street Wall Height	Range	
		+	-
60'	90'	+10'	-15'
80'	120'	+10'	-15'
100'	150'	+10'	-25'
120'	180'	+10'	-30'
Fifth Avenue	100'	+10'	-15'

In no case can any portion of the proposed street wall be above or below the range when applied around the required street wall height. The proposed street wall must have a minimum depth of 10' for its entire length.

In the case of lots bounded by two street of unequal width the higher street wall height may be used on the narrower street up to a depth of 100' in from the wide street.

B. PERFORMANCE TIER

1a. Daylighting To maximize daylighting on the public sidewalks and other outdoor public amenities.

Maximum points 60.0 Minimum points 40.0

Requirements for Full Compliance The proposed building shall obscure none of the daylighting squares determined on the Waldram daylighting diagram.

Computation

$$(60.0) \frac{A - [(a_1 \times f_1) + (a_2 \times f_2) \dots]}{A}$$

Where:

A = Total number daylighting squares

$a_{1,2}$ = Number of daylighting squares blocked by the proposed development by importance factor

$f_{1,2}$ = Importance factor.

1b. Daylighting Building Reflectivity (optional)

To maximize daylighting on the public sidewalks and other outdoor amenities by utilizing highly reflective exterior building materials and surfaces

Maximum Points 5.0

Requirements for Full Compliance The building reflectivity value and its zone value should be unity.

Computation

$$(5.0) \times (O_v) \times (R_v)$$

O_v = orientation value

R_v = Reflectivity value

Special Conditions

i. in the case of multiple building materials eg. glass and limestone, the area of each material in elevation. Multiply the area determined by the percentage of the area to the total building area in elevation. Then multiply that amount by its reflectivity value. The sum of the weighted reflectivity values for all the materials equals the reflective value of the building in the street district.

2. Street Wall Length - to conserve the pedestrian scale of the street by visually and physically connecting the street wall of the proposed development with the street wall of existing nearby buildings.

Value Points - 25.0

Requirements for Full Compliance - the length of the building walls of the proposed development falling within 15' of street lines and projected perpendicularly on the street line shall equal the length of the street line within a single street district.

Computation

$$(25.0) \times \frac{(b)}{B} \times \frac{1}{(\text{street length factor})}$$

Where:

B = length of street line

b = length of street wall falling within 15' of the street line and projected perpendicularly on the street line.

Street length factors = preferred street wall length

<u>Factor</u>	<u>Street</u>
1.00	Madison, Lexington, 5th Avenue, 42nd Street, 59th Street and Broadway
0.90	7th Avenue, Park Avenue
0.85	3rd Avenue, 6th Avenue
0.75	All other crosstown streets

3. Street Wall Height - to conserve existing scale by relating the height of the street wall of the proposed development to the predominant height of the street wall of nearby buildings.

Value Points -

15.0

Requirements for Full Compliance - The proposed street wall height of the development shall occur within a zone defined by the median height of the street wall of existing buildings and a range applied around the median.

Computation

$$(15.0) \frac{(c)}{C} \times \frac{(b)}{B}$$

Where:

C = existing street wall height (with or without range)

c = proposed street wall height

B = length of site street line (see #2)

b = street wall length of the proposed development falling within 15' of the street line and projected perpendicularly on the street line.

Special Conditions

i. for developments which do not have maximum compliance, compliance may be determined by the application of a range to the median height of the existing street wall. This range can be applied above and below the median.
 ii. For developments which have more than one street wall height, each street wall height should be compared separately to the median height of the existing street wall or to the nearest height in the applied range. The compliance of each height is weighted in relation to its portion of the total street wall area and multiplied by the maximum points. Their sum is then multiplied by the ratio (b/3).

4. SUNLIGHTING (Optional) - to maximize sunlight on-site and nearby public outdoor space including parks and plazas.

Maximum Points 10.0

Requirements for Full Compliance - The proposed shadow area shall be as small a percentage of the potential shadow area as possible.

Computation

$$(10.0) \frac{S_{PR} - S_{PT}}{4000}$$

Where:

S_{PT} = Potential Shadow

S_{PR} = Proposed Shadow

Special Conditions

i. When computing the potential and proposed shadow subtract areas of outdoor amenities which are already in shadow by existing building at 11 AM, noon, and 1 PM.
 ii. In no case can a point score of 10.0 be exceeded.

Total Computations

Programs 1a, 1b (optional), 2, and 3 shall be computed by street district optional program 4. Sunlighting is computed separately and added to the total compliance points.

When a development site is located in more than one street district, programs 1a, 1b (optional), 2, and 3 shall be computed separately for each street district. The total compliance points are determined by a weighted average which is found by multiplying the total compliance points for each street district by the length of the street line pertaining to the street district. The products found are then added and then divided by the sum of the total lengths of street lines used for each street district.

DEFINITIONSDAYLIGHT ANGLES

The "daylight angles" control the disposition of building bulk on the zoning lot. All angles are taken at the centerline of the street. The "daylighting angles" ascend as the building bulk is setback from the street line.

RANGE, EXISTING STREET WALL HEIGHT

The range is an empirical measure of the degree of variation of the existing street wall heights. It is determined by first finding the average existing street wall height in the street district. Next find the area of existing street walls in elevation that are above the average existing street wall height. The range equals the sum of these areas divided by the sum of the lengths of the existing street walls. Apply the range around the median as a function of the average. In all cases the range may be a minimum of 10 feet.

SHADOW AREA, POTENTIAL

The "potential shadow area" is used in the optional sunlighting program to provide a comparative index with the proposed shadow area, by assuming a hypothetical building of 100% coverage. The "potential shadow area" is determined during the equinox (March 21) at 11 A.M., noon, and 1 P.M. standard time. The required azimuths (angle of the sun in plan) are 1) 23° East of South at 11 A.M. 2) due South at noon, and, 3) 23° West of South at 1 P.M. The lengths of the shadow measured from the lot lines is 300 feet at 11 A.M. and 1 P.M. and 250 feet at noon.

The "potential shadow area" is the total area described by the shadows East at 11 A.M., noon, and 1 P.M.

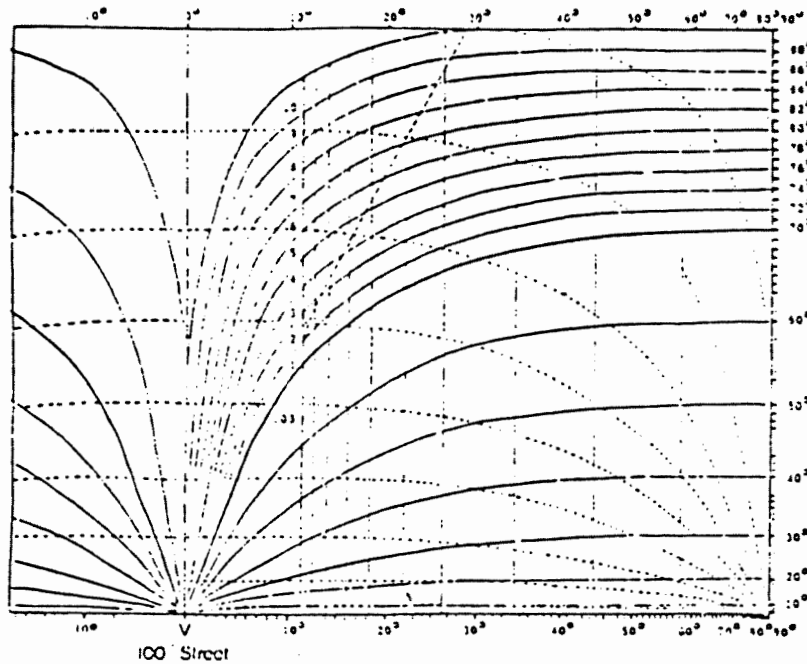
SHADOW AREA, PROPOSED

The "proposed shadow area" is the area of outdoor amenity which is within the shadow of the proposed development. As with the "potential shadow area", the "proposed shadow area" is determined during the equinox (March 21) at 11 A.M., noon, and 1 P.M. standard time coinciding with lunch hours. The required azimuths (angle of the sun in plan) are 1) 23° East of South at 11 A.M., 2) due South at noon and 3) 23° West of South at 1 P.M. The shadow lengths at 11 A.M. and 1 P.M. are .92 times the building height and .85 time the building height at noon.

The "proposed shadow area" is the total area described by the shadows cast at 11 A.M., noon, and 1 P.M.

STREET DISTRICT

A "street district" is the perceptual locus of the zoning lot. The length of the "street district" is determined by extending the centerline of the street on which the zoning lot fronts from each side lot line to the intersection of the centerline of the street of equal or greater width, except in the case of 100 foot wide cross-town streets where the street district shall extend 1,000 feet from the lot line regardless of intersecting streets. In no case, however, shall the length of a "street district" from one side lot line be greater than 1,000 feet.



ILLUMINATION ON BUILDING SURFACES (IN FOOTCANDLES)

ORIENTATION BASED ON STREET GRID

DATE MARCH 21 / SRP	ORIENTATION BASED ON STREET GRID																
	65°P	55°	45°	35°	25°	15°	5°	0°	5°	15°	25°	35°	45°	55°	65°	GRID	
7AM	SOLAR 1250	300	150	150	200	200	250	350	400	450	500	550	600	650	700	750	
8AM	SOLAR 200	325	300	300	275	275	200	1200	1800	1400	4575	4750	2475	1200	600		
9AM	SOLAR 750	350	300	300	325	325	450	550	800	1100	1100	1100	1100	1100	1100		
10AM	SOLAR 500	375	325	325	375	375	500	1250	1600	1600	1600	1600	1600	1600	1600		
11AM	SOLAR 425	400	400	400	415	480	650	900	1200	1200	1200	1200	1200	1200	1200		
12NOON	SOLAR 425	400	425	450	525	600	700	800	900	1000	1100	1100	1100	1100	1100		
1PM	SOLAR 400	400	425	480	550	650	750	850	950	1000	1000	1000	1000	1000	1000		
2PM	SOLAR 325	375	500	600	650	750	850	950	1000	1000	1000	1000	1000	1000	1000		
3PM	SOLAR 200	350	500	600	650	750	850	950	1000	1000	1000	1000	1000	1000	1000		
4PM	SOLAR 100	325	550	700	750	850	950	1000	1000	1000	1000	1000	1000	1000	1000		
5PM	SOLAR 150	300	650	800	850	950	1000	1000	1000	1000	1000	1000	1000	1000	1000		
DAILY TOTAL	2475	3900	4175	5025	6025	6875	7700	8550	9475	10350	11275	12200	13125	14050	14975		
PERCENT TO MAXIMUM ORIENTATION	5	9	15	22	40	57	72	87	93	100	93	87	72	57	40	22	5

WALDRUM DIAGRAM AND REFLECTIVITY ORIENTATION VALUE CHART

The depth of the "street district" is equal to the distance between the centerlines of the blocks on either side of the street on which the zoning lot fronts.

There shall be a "street district" for every street fronting on a site.

STREET WALL HEIGHT, EXISTING

The "existing street wall height" is the median or predominant height of the street walls of existing buildings which fall within the street district containing the proposed development and are on the same side of the street as the development. The "street wall height" for existing building shall be measured along the building wall which occurs within 15 feet of the street line. When less than 40% of the total adjoining street lines have no qualifying street wall, the "existing street wall height" shall be the median height of all the street walls of existing buildings falling within the street district containing the proposed development.

STREET WALL HEIGHT, PROPOSED

The "proposed street wall height" are the heights of roof surfaces 10'-0" back from the proposed street wall.

STREET WALL, PROPOSED

The "proposed street wall" is the building wall of the proposed development fallign within 15 feet of the street and having a minimum depth of 10 feet.

ORIENTATION VALUE

The "orientation value" is used in the optional program 1b. Daylighting Building Reflectivity to determine the solar orientation coefficient for the particular building facade being evaluated.

REFLECTIVITY VALUE

The "reflectivity value" used in the optional program 1b. Daylighting Building Reflectivity is the coefficient of reflectivity for the material used. The reflectivity value shall be certified by the manufacturer, licensed independent testing laboratory, or standard reference text such as Time Saver Standards, Architectural Graphic Standards, etc.

WALDRUM DIAGRAM

The Waldrum Diagram is a Daylight Evaluation Diagram upon which a building or buildings is drawn for evaluating daylight compliance. The building or buildings are drawn on the diagram by using a fixed vantage point (V) in the street and recording all horizontal and vertical angles subtended by all edges of of the building from the vantage point. The building or buildings are translated to the corresponding angle lines on the diagram. A Waldrum Diagram is required for each intersection of a lot line. The area of the building or buildings evaluated by each diagram is that area depicted from the far lot line to the ceter of the near perpendicular lot line.

81-265 (continued)

(g) *Encroachments by existing buildings*

Where a *zoning lot* contains an existing *building* which encroaches beyond a *half-setback line* or a *ten-foot setback line*, an *enlargement* or *development* on such *zoning lot* shall comply with the following provisions:

1. Existing *buildings* below specified heights 20

(a) Except as provided in subparagraph (b), an existing *building* less than 120 feet in height shall not be considered in applying the length and height rules even though a portion of such *building* encroaches beyond the *half-setback line* or *ten-foot setback line* along a 60 foot wide *street* and an existing *building* less than 150 feet in height shall not be considered in applying the length and height rules even though a portion of such *building* encroaches beyond the *half-setback line* or *ten-foot setback line* along a 75 foot wide *street* or an 80 foot wide *street*.

(b) However, the area occupied by the existing *buildings* shall be included in the calculation of Ar/Ae for the modification of Formula 1 allowed in the case of large areas of *compensating recess*, as set forth in paragraph (c), subparagraph 2 of this Section.

2. Existing *buildings* above specified heights

Where an existing *building* 120 feet or more in height encroaches beyond the *half-setback line* or *ten-foot setback line* along a 60 foot wide *street* or where an existing *building* 150 feet or more in height encroaches beyond the *half-setback line* or *ten-foot setback line* along a 75-foot wide *street* or an 80-foot wide *street*, the following provisions shall apply:

(a) No new construction on the *zoning lot* shall encroach beyond the *half-setback line* or *ten-foot setback line* along such *street*, and

(b) The length and height rules of this Section shall not apply.

81-266

Special permit for height and setback modifications

In C5-3, C6-6, C6-7, C5-3.5, C6-6.5 or C6-7.5 Districts, where a special permit application is made pursuant to Section 74-712 (Developments or enlargements on landmark sites in certain districts) for modification of *bulk* regulations on a *zoning lot* containing a landmark, or where a special permit application is made pursuant to Section 74-79 (Transfer of Development Rights from Landmark Sites) for transfer of development rights from a landmark site and the *floor area* represented by such transferred development rights exceeds 20 percent of the basic maximum *floor area* permitted on the *zoning lot* receiving the development rights, such application may include a request for modification of the height and setback regulations set forth in Sections 81-261 to 81-265, inclusive, relating to Height and Setback Regulations — Daylight Compensation. The City Planning Commission may authorize such height and setback modifications subject to the following conditions:

(a) The applicant shall demonstrate to the satisfaction of the Commission that a feasible design for the proposed *development* or *enlargement* which accommodates the permitted *floor area* is not possible under the provisions of Sections 81-261 to 81-265, inclusive, and shall further indicate for the proposed design where and to what extent a deficiencies of *compensating recess* are necessary or compliance with the length and height rules is not possible. Scale drawings shall be used in presenting the analyses required herein, and,

(b) The Commission shall make the following findings in addition to any required under the applicable provisions of Section 74-712 or Section 74-79:

1. That the requested departure from the height and setback regulations is the minimum amount necessary to achieve a feasible *building* design.
2. That the disadvantages to the surrounding area resulting from reduced light and air access will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole.
3. That where the landmark is located on the *zoning lot* proposed for *development* or *enlargement* or on a lot contiguous thereto or directly across a *street* therefrom, the modification of height and setback regulations will adequately protect the setting for the landmark.

81-27

Alternate Height and Setback Regulations — Daylight Evaluation

81-271

Definitions

Center Line of Street (bounding a *zoning lot*)

A line equidistant from and parallel or nearly parallel to the *street lines* on both sides of the *street*. However:

- (a) For the purposes of daylight evaluation, on a *street* 75 feet in width, the *center line of the street* shall be considered to be a line 40 feet from and parallel to the *front lot line* of the *zoning lot*.
- (b) For the purposes of daylight evaluation, on a *street* more than 100 feet in width, the *center line of the street* shall be considered to be a line 50 feet from and parallel to the *front lot line* of the *zoning lot*.

Daylight Evaluation Chart (DEC)

A graphic tool which permits objective measurements of portions of sky blocked by a *building* when it is viewed from a *vantage point*. There are three *daylight evaluation charts* for use with *street widths* of 60 feet, 75 to 80 feet and 100 feet and over, respectively. Proposed *buildings* or *enlargements* are drawn on the appropriate *daylight evaluation chart* to evaluate their compliance with the regulations of Section 81-27 (Alternate Height and Setback Regulations). The three *daylight evaluation charts* are presented in Appendix A.

(Continued)

81-271 (continued)

Far Lot Line

A lot line intersecting the street line of the vantage street such that, when viewed from the vantage point, the zoning lot does not contain any lot area which is on the far side of and immediately adjoining the lot line at its intersection with the street line. (See Illustration of Far Lot Line and Vantage Point.)

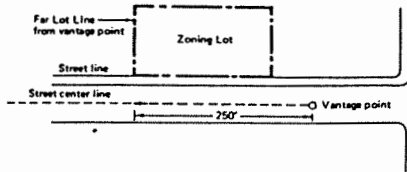


ILLUSTRATION OF FAR LOT LINE AND VANTAGE POINT

Near Lot Line

A lot line, other than the far lot line, which intersects the street line of the vantage street and which defines the extent of the zoning lot's continuous frontage along the vantage street from the far lot line.

Profile Curve

A curved line on the daylight evaluation chart rising from the intersection of the curved line representing an elevation angle of 72 degrees with the vertical line at the far lot line. The profile curve is used to evaluate a building's obstruction of the sky as seen in profile from the vantage point.

Profile Encroachment

The space on the daylight evaluation chart which, when viewed from the vantage point, is on the far side of the profile curve and which is blocked by the projection of the building on the daylight evaluation chart. (See Illustration of Profile Encroachment.)

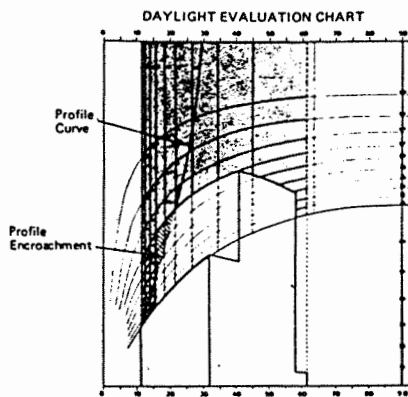


ILLUSTRATION OF PROFILE ENCROACHMENT

Vantage Point

A point on the center line of a street bounding the zoning lot for a proposed development or enlargement and located 250 feet from the intersection of the extension of the zoning lot's far lot line with the center line of the street. (See Illustration of Far Lot Line and Vantage Point.)

Vantage Street

A street bounding the zoning lot for a proposed development or enlargement and on the center line of which a vantage point is located.

81-272

Features of the Daylight Evaluation Chart

The daylight evaluation chart (DEC) is a graphic representation of a pedestrian's field of view as he looks down a street and sweeps his view 90 degrees to the left or to the right.

Under special conditions, this view can be extended to 180 degrees horizontally as specified in Section 81-275 (Special conditions).

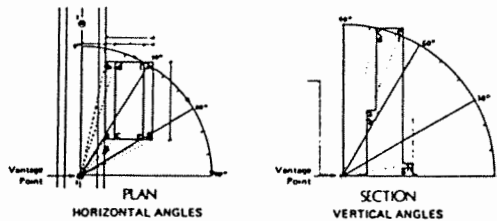
This pedestrian view is based on a vantage point located 250 feet from the intersection of the zoning lot's far lot line with the center line of the street.

There are three daylight evaluation charts for use with different Midtown street widths. They include a chart for 60-foot wide streets (for most east-west crosstown streets) as well as a chart for 75-foot or 80-foot wide streets and a chart for streets 100 feet or more in width (for avenues and major crosstown streets). All of these charts have the following features:

(a) Horizontal and Vertical Axes

The daylight evaluation chart has both a horizontal and vertical component, encompassing a view sweeping both 90 degrees horizontally and 90 degrees vertically. (See Illustration of Horizontal and Vertical Angles of View.)

Under special conditions, this view can be extended to 180 degrees horizontally as specified in Section 81-275 (Special conditions).



ILLUSTRATIONS OF HORIZONTAL AND VERTICAL ANGLES OF VIEW

The horizontal axis of the daylight evaluation chart is measured in degrees of arc from zero degrees to 90 degrees starting from the vantage point along the center line of the vantage street and sweeping toward the building.

The horizontal axis is intersected by vertical lines corresponding to lines of sight from the vantage point to points 25 feet apart from the front lot line along the vantage street measured from the intersection of the far lot line with the vantage street line.

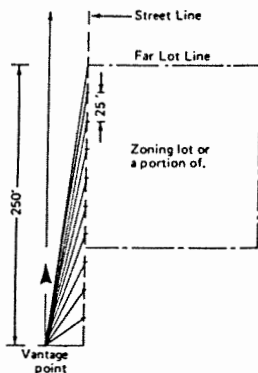
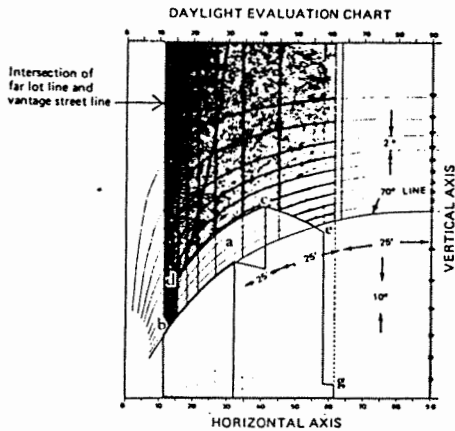
The vertical axis of the daylight evaluation chart is measured in degrees of arc from zero degrees to 90 degrees starting from the center line of the vantage street at curb level and sweeping upward.

(Continued next Page)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-271 (continued)

The vertical axis is intersected by curved elevation lines representing elevation angles from the center line of the street at 10 degree intervals from zero degrees to 70 degrees and at 2 degree intervals from 70 degrees to 90 degrees. (See Illustration of Horizontal and Vertical Axes.)



(PLAN)

ILLUSTRATIONS OF HORIZONTAL AND VERTICAL AXES

(b) Daylight Squares

The horizontal and vertical lines form a curvilinear grid dividing the daylight evaluation chart into areas called daylight squares. Above the 70 degree line, the grid is divided into 100 daylight squares starting from the vertical line rising from the intersection of the far lot line with the street line of the vantage street and ending at the vertical line representing 90 degrees along the horizontal axis. Each of these 100 squares represents 25 feet of lot frontage on the vantage street and two degrees of elevation angle from the center line of the vantage street.

Below 70 degrees, the grid is divided into 70 daylight squares starting from the vertical line rising from the intersection of the far lot line with the street line of the vantage street and ending at the vertical line rising at 90 degrees along the horizontal axis. Each of these 70 squares represents 25 feet of lot frontage on the vantage street and 10 degrees of elevation angle from the center line of the street. (See Illustration of Daylight Squares.)

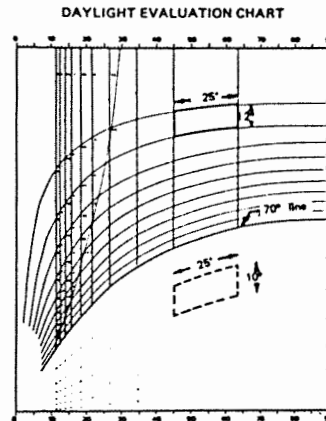


ILLUSTRATION OF DAYLIGHT SQUARES

(c) Daylight Subsquares

For greater plotting and scoring precision, the horizontal axis of the grid is further subdivided by vertical lines at points 5 feet apart on the front lot line as seen from the vantage point. The vertical axis is further subdivided by curved lines representing lines of equal elevation at one degree intervals from 70 degrees to 90 degrees. Therefore, each daylight square is subdivided into ten subsquares, each representing 5 feet of lot frontage on the vantage street and one degree of elevation angle from the center line of the vantage street. (See Illustration of Daylight Square and Subsquares Above 70 Degrees.)

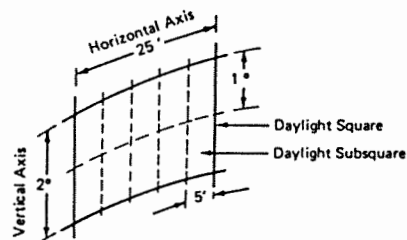


ILLUSTRATION OF A DAYLIGHT SQUARE AND SUBSQUARES ABOVE 70 DEGREES

(Continued next Page)

81-272 (continued)

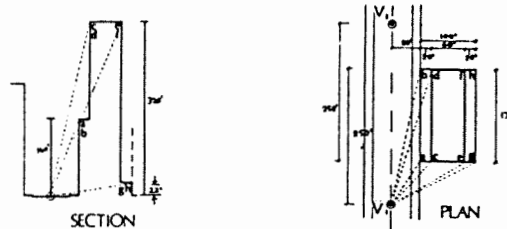
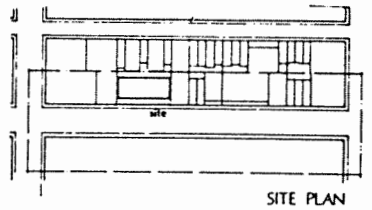
(d) The Seventy Degree Line

Research shows that, as an average, 70 degrees is the elevation angle at which Midtown's buildings are set back from the street line. Most of the daylight below 70 degrees is blocked by Midtown buildings. Slabs, towers or other setback portions of buildings rise to block an average of 25 percent of the available daylight squares above 70 degrees.

In building evaluation, the DEC measures the blocked sky above 70 degrees. Below 70 degrees, buildings are given credit for unblocked daylight.

(e) The Profile Curve

The grid is traversed by the profile curve, which rises from the intersection of the curved line representing an elevation angle of 72 degrees with the vertical line at the far lot line. The profile curve is derived from the predominant built character of developed Midtown streets as seen in profile. Encroachment across the profile curve is penalized to discourage canyon-like Midtown streets and to protect neighboring buildings.



ILLUSTRATIONS OF EXAMPLE BUILDING DRAWINGS

81-273

Rules for plotting buildings on the daylight evaluation chart

Evaluation of a proposed development or enlargement requires drawing the proposed development or enlargement (including new buildings, remaining buildings, and open spaces) on the appropriate daylight evaluation chart as viewed from each required vantage point and then scoring the development or enlargement. The rules for plotting buildings on the DEC are set forth in the following paragraphs of this Section and illustrated by an example of a building which fronts on a 100 foot wide street and occupies a site 170 feet long by 100 feet deep.

(a) Draw the Building

Draw the building in plan showing all street frontages of the zoning lot. Draw the building in section perpendicular to each street on which the zoning lot fronts. On both plan and section drawings label all corners of the building. In the example they are labeled corners (a) through (h). (See Illustration of Example Building Drawings.)

(b) Establish Vantage Points

Establish on the plan all the vantage points from which views must be taken. Vantage points shall be established on the center line of the vantage street 250 feet from the intersection of the zoning lot's far lot line and the center line of the street. For each vantage street there are at least two vantage points. In the example, they are V₁ and V₂. For each vantage point there shall be a separate daylight evaluation chart. The example will use vantage point one.

(c) Record Plan and Section Dimensions

Record on a coordinate chart for each corner of the building the following dimensions:

(1) Dimensions in plan:

The distance (S) between the corner and the center line of the street as measured along a line that intersects the center line of the street at right angles. In the example distance (S) of corner (b) = 50'.

The distance (D) measured along the center line of the street from the vantage point to the point where the street center line is intersected by the perpendicular line from the corner. In the example, distance (D) of corner (b) = 250'.

(2) Dimension in section:

The height (H) of the corner above curb level. In the example, height (H) of corner (b) = 140'.

(Continued next Page)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-273 (continued)

(d) Calculate Plan and Section Angles

Determine the plan and section angles for each corner of the *building* as viewed from the *vantage point*.

(1) A plan angle is an angle on the plan formed at the *vantage point* by the line of sight to a corner of the *building* and the *center line* of the *vantage street*. The plan angle is found by calculating the tangent. The tangent is the quotient found by dividing the distance (S) by the distance (D). The plan angle for the resulting tangent is found in a tangent table and is then entered on the coordinate chart in the column marked "plan angles".

(2) The section angle is an angle formed by a line representing the distance in section from a corner of the *building* to the *center line* of the *vantage street* and a line representing the distance in plan (S) between the corner and the *center line* of the *street*. The section angle is found by calculating its tangent. The tangent is the quotient obtained by dividing the height of the corner (H) by its horizontal distance (S) from the *center line* of the *street*. The section angle for the resulting tangent is found in a tangent table and is then entered on the coordinate chart in the column marked "section angles".

EXAMPLE OF COORDINATE CHARTS
PLAN ANGLES

Point	Distance(S) from Street Centerline	Distance(D) from Vantage Point	Tangent($\frac{S}{D}$) of Angle	Angle
a	50'	80'	50/80 = 0.63	32.0°
b	50'	250'	50/250 = 0.20	11.3°
c	70'	80'	70/80 = 0.87	41.2°
d	70'	250'	70/250 = 0.28	15.6°
e	130'	80'	130/80 = 1.63	58.4°
f	130'	250'	130/250 = 0.52	27.5°
g	150'	80'	150/80 = 1.88	61.9°
h	150'	250'	150/250 = 0.60	31.0°

SECTION ANGLES

Point	Height(H) above Curb Level	Distance(S) from Street Centerline	Tangent($\frac{D}{S}$) of Angle	Angle
a & b	140'	50'	140/50 = 2.80	70.3°
c & d	320'	70'	320/70 = 4.57	77.7°
e & f	320'	130'	320/130 = 2.46	67.9°
g & h	23'	150'	23/150 = 0.15	8.7°

(e) Plot Corner Coordinates

Plot each corner of the *building* onto the *daylight evaluation chart* at the point where the coordinates for that corner intersect. The plan angle coordinates are found on the horizontal axis of the chart and the section angle coordinates are found on the vertical axis. The points plotted are then connected to represent the edges of the *building* as shown on the plan and section drawings. A connecting line parallel to the *vantage street line* is drawn as a curve parallel to the closest elevation line. A connecting line perpendicular to the *vantage street line*

is drawn parallel to the closest dotted elevation line, which is perpendicular to the *street*. A connecting line which is neither parallel nor perpendicular to the *vantage street* is approximated on the chart by (1) establishing points along the line in plan at 10 foot intervals, (2) finding the coordinates of the points and plotting them on the *chart* and (3) connecting the resulting points. The connecting lines produce a curvilinear perspective drawing of the *building* as seen from the *vantage point* projected onto the *daylight evaluation chart*. Since in the example *vantage point* one is on a 100 foot wide *street*, corner coordinates are plotted on a *daylight evaluation chart* for 100 foot wide *streets*. In the example, corner (b) is at the intersection of plan angle 11.3° and section angle 70.3°. (See Illustration of *Building as Drawn on the Daylight Evaluation Chart*.)

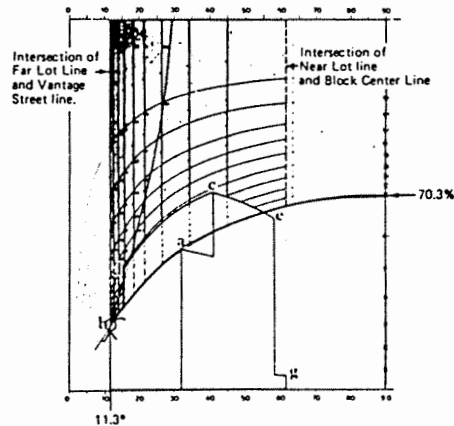


ILLUSTRATION OF BUILDING AS DRAWN ON THE DAYLIGHT EVALUATION CHART

(f) Determine Daylight Boundaries

Draw a vertical line on the *chart* rising from the intersection of the *near lot line* of the *zoning lot* with the *center line* of the *block* or with a line 100 feet distant from and parallel to the *front lot line* on the *vantage street*, whichever line is closer to the *vantage street*. This line and the *far lot line* represent the boundaries of the potential sky area that the *building* could block. (See Illustration of *Building as Drawn on the Daylight Evaluation Chart*.)

81-274

Rules for determining the daylight evaluation score

A *building* is scored by determining the number and the value of the daylight squares it blocks when viewed from the *vantage point*, compared to the total number of daylight squares available within the daylight boundaries as determined in paragraph (f) of Section 81-273 (Rules for plotting buildings on the daylight evaluation chart) and above an elevation angle of 70 degrees.

(Continued next Page)

81-274 (continued)

(a) Assign Daylight Values

The daylight squares on the *daylight evaluation chart* are each assigned a value.

- (1) Except along *vantage streets* designated for *street wall continuity* (see Section 81-43), each unblocked daylight square below the curved line representing an elevation of 70 degrees has a positive value of 0.3.
- (2) Each blocked daylight square above the curved line representing an elevation of 70 degrees has a negative value of 1.0.
- (3) Where a *building* blocks any portion of a subsquare the *building* is charged with blocking the entire subsquare in computing the daylight evaluation score. Each blocked subsquare has a negative value of 1.0/10 or 0.1.
- (4) The daylight squares and subsquares which are on the far side of the *profile curve* are assigned additional weighted values set forth on the chart below. (See Illustration of Profile Encroachment Incurring Profile Penalty.)

Degrees of Elevation	DISTANCE FROM FAR LOT LINE						
	First 25 feet	Second 25 feet	Third 25 feet	Fourth 25 feet	Fifth 25 feet	Sixth 25 feet	Seventh 25 feet
88°-90°	8.5	8.0	7.5	7.0	6.5	6.0	5.5
86°-88°	7.5	7.0	6.5	6.0	5.5	5.0	4.5
84°-86°	6.5	6.0	5.5	5.0	4.5	4.0	
82°-84°	5.5	5.0	4.5	4.0	3.5	3.0	
80°-82°	4.5	4.0	3.5	3.0	2.5		
78°-80°	3.5	3.0	2.5	2.0	1.5		
76°-78°	2.5	2.0	1.5	1.0			
74°-76°	1.5	1.0	5				
72°-74°	.5						

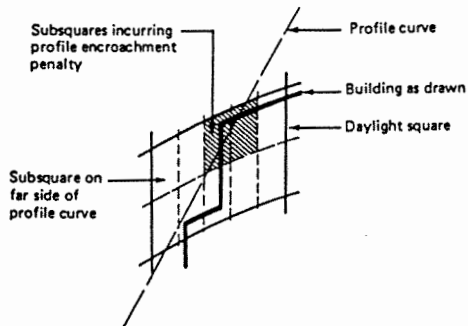


ILLUSTRATION OF PROFILE ENCROACHMENT INCURRING PROFILE PENALTY

- (5) If the *building* encroaches beyond the *profile curve*, the entire subsquare in which the encroachment is located is given an additional weighted value. The total penalty is the additional weighted value of the daylight square multiplied by the negative value of the subsquare. The penalty is applied even if the subsquare does not lie entirely beyond the curve.

(b) Calculate Daylight Blockage

Count the number of blocked daylight squares and subsquares which are above the curved line representing an elevation of 70 degrees. A negative sign is to be given to this number. Total value of daylight blockage in the example is -20.5.

(c) Calculate Unblocked Daylight Credit

Count the number of unblocked daylight squares which are below the curved line representing an elevation of 70 degrees and within the area defined by the intersection of the *far lot line* with the *vantage street line* and the intersection of the *near lot line* with the *vantage street line*. The total is given a positive value and multiplied by 0.3, the value of these daylight squares. This provision is not applicable where the *vantage street* is a designated *street* on which *street wall continuity* is required by the provisions of Section 81-43 (Street Wall Continuity along Designated Streets). In the example, the number and value of squares unblocked below 70 degrees = +0.0.

(d) Calculate Profile Daylight Blockage

Count the number of blocked daylight squares which are entirely on the far side of the *profile curve* when viewed from the *vantage point* and the number of blocked or partially blocked subsquares which are on the far side of the *profile curve*. All of these daylight squares and subsquares are given a negative sign, multiplied by their respective weighted values in the table in paragraph (a) (4) above and the products added. Subsquares are counted as one tenth of a daylight square. In the example, the total value of profile daylight blockage = -0.45.

(e) Calculate Available Daylight

Count the number of daylight squares available to the site. This is the total number of daylight squares and subsquares, calculated to the nearest tenth, which are above the curved line representing an elevation of 70 degrees and within the boundaries of the potential sky area available to the site, said boundaries being delineated in accordance with the provisions of paragraph (f) of Section 81-273 (Rules for plotting buildings on the daylight evaluation chart). Available daylight in the example is 89.9.

(f) Calculate Daylight Remaining

Calculate the remaining or unblocked daylight by adding the results of paragraphs (b) through (e). Daylight remaining in the example is $(-20.5) + (0.0) + (-0.45) + (89.9) = 68.95$.

(g) Calculate Daylight Score

Compute the remaining daylight score from (f), as a percentage of the available daylight from (e). The percentage is the daylight score for the proposed *building* from that *vantage point*. In the example, the daylight score is $68.95/89.9 = 76.70\%$ for *vantage point* one.

(h) Calculate Overall Daylight Score

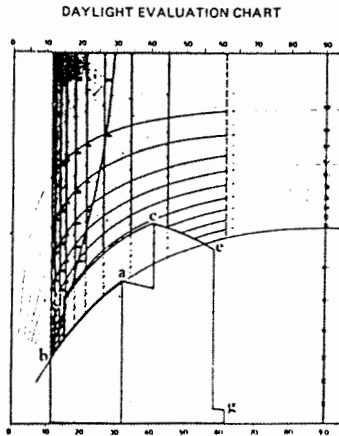
- (1) The street score is the arithmetic mean of all the scores from all *vantage points* along a *vantage street*. When a *zoning lot* fronts on only one *street*, the street score is also the overall score.
- (2) Where a *zoning lot* fronts on more than one *street*, the overall score is the average of the street scores, weighted by the length of their respective *vantage street* frontages.

(Continued next Page)

81-274 (continued)

(i) The Passing Score

To be in compliance with these regulations, a *development* or *enlargement* must have an overall score of not less than 75 percent, with no single *street* frontage having a street score of less than 66 percent. If a *development* or *enlargement* fronts only on one *street*, a daylight evaluation score of not less than 75 percent is required for that *street* frontage. If a street score is less than 66 percent, or if the overall daylight score is less than the passing score of 75 percent, a modest improvement in either the street score or the overall score may be obtained by scoring the relative reflectivity of the *building's* surface as specified in Section 81-276 (Modification of score for reflectivity). The passing daylight score of 75 percent is equivalent to the average daylight levels of Midtown *buildings* built as-of-right under the 1916 and 1961 Zoning Resolutions. The minimum requirement of 66 percent on one frontage is equivalent to the daylight level of any *interior lot building* built in Midtown under the 1916 Zoning Resolution in a two-times height district. However, if any one frontage is less than 75 percent, other frontages must be greater than 75 percent to reach the passing overall daylight score. This allows flexibility in *building* design while maintaining daylight standards within the levels established by *buildings* built as-of-right under the 1916 and 1961 Zoning Resolutions. (See Illustration of Daylight Evaluation Score Results.)



Section No	Description	Score
81-274(b)	Squares above 70° blocked	20.5
81-274(c)	Squares below 70° open	0.0
81-274(d)	Profile encroachment penalty	
	1 x 15 =	15
	3 x 1 =	45
	Total blockage	20.95
81-274(e)	Available daylight squares	89.5
81-274(f)	Remaining daylight	68.95
81-274(g)	DAYLIGHT SCORE	
	$\frac{68.95}{89.5} = 77.0\%$	76.70%

ILLUSTRATION OF DAYLIGHT EVALUATION SCORE RESULTS

81-275

Special conditions

Notwithstanding the provisions of Sections 81-271 to 81-274, inclusive, relating to Alternate Height and Setback Regulations — Daylight Evaluation, the provisions of this Section shall apply under special conditions, as follows:

(a) For zoning lots with street frontages exceeding 250 feet

(1) Where the length of the *street* frontage is more than 250 feet but not more than 500 feet, the *building* as viewed from each *vantage point* shall be plotted on a *daylight evaluation chart* that extends in both directions from the 90 degree line on the horizontal axis. In each case, the number of available daylight squares for daylight evaluation shall be the number of squares between the *far lot line* and the *near lot line*.

(2) Where the length of the *street* frontage is more than 500 feet, daylight evaluations shall be made from three *vantage points*, as follows: *vantage points* one and two, each 250 feet distant from a *far lot line* extended to the *center line of the street*, and *vantage point* three, on the *center line of the street*, half-way between the other two *vantage points*. The *daylight evaluation charts* for the first two *vantage points* shall in each case encompass a view extending from the *far lot line* to the 90 degree line on the horizontal axis and the number of available daylight squares shall be the number of squares between the *far lot line* and the 90 degree line and above the curved line representing an elevation angle of 70 degrees. The *daylight evaluation chart* for the third *vantage point* shall extend in both directions from the 90 degree line on the horizontal axis to the vertical lines representing the points on the *front lot line* directly opposite *vantage points* one and two. The number of available daylight squares for daylight evaluation shall be the number of daylight squares between such vertical lines and above the curved line representing an elevation angle of 70 degrees.

(b) For zoning lots with interrupted street frontages

Where a *zoning lot* has two or more *front lot lines* on the same *street* which are separated by frontage of an intervening *zoning lot*, there shall be two daylight evaluations for each such *front lot line*. Each *lot line* of the *zoning lot* that intersects the *street line* shall be treated as a *far lot line* for the purposes of daylight evaluation from a *vantage point*.

(c) Where front lot lines are curved or broken

If the *front lot line* of the *zoning lot* is curved or bent, the extremities of such *front lot line* shall be connected by a straight line, which shall be considered the *front lot line*.

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-276

Modification of score for reflectivity

Where *buildings* have utilized the *daylight evaluation chart* but a street score along one frontage is less than 66 percent or the overall score is less than 75 percent, a modest improvement in either the street score or the overall score of a *building* which reflects more light than a medium gray or glass *building* may be obtained by scoring the relative reflectivity of the *building's* surface. The use of reflectivity is optional and not necessary if a passing score can be obtained under subsection 81-274 (Rules for determining the daylight evaluation score). Reflectivity scoring permits greater design flexibility for a light colored *building* than a dark one.

Because the greatest reflectivity comes from the upper portions of *buildings*, the value of reflected light is credited against the amount of daylight blocked by the portions of the *building* above an elevation angle of 70 degrees from the *center line of the street*.

Reflectivity has two components: the reflectance of the surface material and the orientation of the material to the sun.

(a) Reflectance

Reflectance values of materials will be determined by the Department of Buildings.

(1) Mixed reflectance

A *building* of several surface materials will have a reflectance value determined by multiplying each material's reflectance value by its percentage of the total wall surface and adding the products. For example, a *building* that is 60 percent limestone and 40 percent clear glass would have a reflectance of $.60 \times .45$ (the reflectance of limestone) plus $.40 \times .15$ (the reflectance of clear glass) or an overall reflectance of .33.

(2) Relative reflectance

In order to be included in the reflectivity score of a *building* the material must reflect more light than a medium gray or glass *building*. The reflectance value of a medium gray or glass *building* in Midtown is .15 so that the *building* with an overall reflectance of .33 given in the example above would be increasing the expected reflectance by .33 minus .15 which equals .18.

Examples of potential reflectance values for different types of surface finishes are shown on the chart

REFLECTANCE VALUES—EXAMPLES OF BUILDING MATERIALS

White plaster or paint or glaze	.80 to .90
Aluminum paint	.55
Green paint	.50
Red paint	.26
Light gray paint	.25
Flat black paint	.06
Polished aluminum, stainless steel	.85
Polished light marble	.40 to .50
Light granite, limestone	.45
Copper, brass, lead	.60 to .80
Smooth concrete	.45 +
Rough concrete	.40 -
Asbestos cement	.31
Light buff brick	.48
Dark buff brick	.40
Light red brick	.45
Dark red glazed brick	.30
Dark red brick	.12
Slate	.11
Wood	.22 +

Glass: double glazing with reflective coating*

Solarcool [®] bronze or gray	.35 to .36
Solarban [®] clear	.36 to .44
Solarban [®] bronze	.18
Solarban [®] gray	.14

Glass: tinted double glazing

Gray	.08
Bronze	.09
Solex [®] (green or blue)	.12

Glass:

clear double glazing	.15
----------------------	-----

Glass:

clear single glazing	.08
----------------------	-----

*Reflectance varies according to which layer the reflective coating is placed on, but can be precisely determined for each position.

Sources: Anderson, Bruce Solar Energy: *Fundamentals in Building Design*, (McGraw Hill, New York, 1977)
Callender, John Hancock Time Saver Standards: *A Handbook of Architectural Design*, (McGraw Hill, New York, 4th Edition, 1964).
PPG Industries, Inc., *Architectural Glass Products* (G 702), PPG, Pittsburgh, PA., 1977.

(Continued next Page)

81-276 (continued)

(b) Facade orientation

Orientation of the facade of the *building* is the second component required for measurement of reflectivity. Because reflectivity varies according to the orientation of the facade, the orientation value for a particular surface from the chart below is multiplied by the reflectance of the surface to ascertain the amount of daylight reflectivity.

The orientation values are shown on the following reflectivity chart:

ORIENTATION BASED ON TRUE NORTH		ORIENTATION VALUE
(N)	0°	.09
	22.5°	.15
	45.0°	.22
	67.5°	.40
(E)	90.0°	.57
	112.5°	.72
	135.0°	.87
	157.5°	.93
(S)	180.0°	1.00
	157.5°	.93
	135.0°	.87
	112.5°	.72
(W)	90.0°	.57
	67.5°	.40
	45.0°	.22
	22.5°	.15

(c) Reflectivity Score

In order to obtain the reflectivity score for each view of the *building*, first count the daylight squares and subsquares which are blocked by the *building* on the *daylight evaluation chart* above an elevation angle of 70°. This number shall be calculated separately for every orientation of each facade and multiplied by the relative reflectance of that portion of the *building* and the orientation value.

$$\text{Reflectance} = (\% \text{ material A} \times \text{reflectance material A}) + (\% \text{ material B} \times \text{reflectance material B})$$

$$\text{Relative reflectance} = \text{reflectance minus } .15$$

$$\text{Reflectivity score} = \text{RR} \times \text{facade orientation value} \times \text{daylight squares blocked above } 70^\circ$$

The reflectivity scores for the several orientations are then added together to give the reflectivity score for that view of the *building* as a whole from the *vantage point* represented on the *daylight evaluation chart*.

The reflectivity score is added to the daylight remaining after accounting for daylight blockage as calculated in paragraph (f) of Section 81-274 (Rules for determining the daylight evaluation score).

The sum is then calculated as a percentage of the available daylight squares calculated in paragraph (e) of Section 81-274 to give the adjusted daylight score for the *building* from the *vantage point* represented on the *daylight evaluation chart*.

The adjusted street score along a particular *vantage street* is obtained by calculating the mean average of the adjusted daylight scores from all *vantage points* along the *vantage street*.

The adjusted overall score for the *building* is obtained by calculating the average of the adjusted street scores weighted by the lengths of their respective *vantage street* frontages.

(d) Limits on adjusted scores

1. Adjusted street score

The adjusted street score shall not be more than six percentage points higher than the street score not adjusted for reflectivity.

If reflectivity scoring is used to bring the adjusted overall score for the *building* above 75 percent (the passing overall score), the street score for each *street* frontage without adjustment for reflectivity shall be not less than 66 percent.

2. Adjusted overall score

The adjusted overall score shall not be more than six percentage points higher than the overall score not adjusted for reflectivity.

If the reflectivity scores for any single *street* frontage are used to bring the adjusted street score for that frontage above 66 percent (the passing score for a single *street* frontage), the *building's* overall score without adjustment for reflectivity shall be not less than 75 percent.

81-277

Special permit for height and setback modifications.

In C5-3, C6-6, C6-7, C5-3.5, C6-6.5 or C6-7.5 Districts, where a special permit application is made pursuant to Section 74-712 (Developments or enlargements on landmark sites in certain districts) for modification of *bulk* regulations on a *zoning lot* containing a landmark, or where a special permit application is made pursuant to Section 74-79 (Transfer of Development Rights from Landmark Sites) for transfer of development rights from a landmark site and the *floor area* represented by such transferred development rights exceeds 20 percent of the basic maximum *floor area* permitted on the *zoning lot* receiving the development rights, such application may include a request for modification of the height and setback regulations set forth in Sections 81-271 to 81-276, inclusive, relating to Alternate Height and Setback Regulation Daylight Compensation. The City Planning Commission may authorize such height and setback modifications subject to the following conditions:

(a) The applicant shall demonstrate to the satisfaction of the Commission that a feasible design for the proposed *development* or *enlargement* which accommodates the permitted *floor area* is not possible under the provisions of Sections 81-271 to 81-276 inclusive, and shall further present for the proposed design a complete daylight evaluation with an explanation of street score or overall daylight score deficiencies.

(b) The Commission shall make the following findings in addition to any required under the applicable provisions of Section 74-712 or Section 74-79:

1. That requested departure from the alternate height and setback regulations is the minimum amount necessary to achieve a feasible building design.

(Continued next Page)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-277 (continued)

2. That the disadvantages to the surrounding area resulting from reduced light and air access will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole.
3. That where the landmark is located on the *zoning lot* proposed for *development* or *enlargement* or on a lot contiguous thereto or directly across a *street* therefrom, the modification of the alternate height and setback regulations will adequately protect the setting for the landmark.

81-28

Minimum Distance Between Buildings

On any single *zoning lot* within the *Special Midtown District*, if a *development* or *enlargement* results in two or more *buildings* or portions of *buildings* detached from one another at any level, such *buildings* or portions of *buildings* shall at no point be less than 8 feet apart.

81-30 OFF-STREET PARKING AND OFF-STREET LOADING REGULATIONS

81-31

General Provisions

The regulations of Article I, Chapter 3 (COMPREHENSIVE OFF-STREET PARKING REGULATIONS IN COMMUNITY DISTRICTS 1, 2, 3, 4, 5, 6, 7 and 8 IN THE BOROUGH OF MANHATTAN) and the applicable underlying district regulations of Article III, Chapter 6, or Article IV, Chapter 4, relating to *Off-Street Loading Regulations*, shall apply throughout the *Special Midtown District* except as otherwise provided in this Section.

81-311

Applicability of more restrictive provisions

In the event of a conflict between the provisions in this Chapter and those contained in Article I, Chapter 3, the more restrictive provisions shall apply. For the purpose herein, the more restrictive provisions shall be considered those which permit the:

- a) fewer number of parking spaces;
- b) more exclusive use of parking spaces;
- c) more limited location of curb cuts.

81-312

Prohibitions of off-street parking or off-street loading facilities

Notwithstanding the provisions of Article I, Chapter 3, prohibitions of *off-street* parking facilities or *accessory off-street* loading berths or restrictions as to their location or access, as provided in Section 81-44 (Curb Cut Restrictions) or Section 81-84 (Mandatory Regulations and Prohibitions), may be waived only in accordance with the applicable provisions of Section 81-44 or Section 81-84.

81-40 MANDATORY DISTRICT PLAN ELEMENTS

81-41

General Provisions

The provisions of Section 81-40 (MANDATORY DISTRICT PLAN ELEMENTS) specify mandatory planning and urban design features to be provided in connection with new *developments* or *enlargements*. Requirements which apply generally or with minor specified exceptions throughout the *Special Midtown District* are fully set forth in the provisions of Section 81-40. For requirements which are not generally applicable but tied to specific locations within the district, the locations where these requirements apply are shown on Map 3 (Retail and Street Wall Continuity) or Map 4 (Through Block Corridors) or Map 5 (Subway Station Improvement Areas).

Special district plan requirements for the Theatre Subdistrict are set forth in Section 81-70 (Special Regulations for Theatre Subdistrict) and for the Fifth Avenue Subdistrict in Section 81-80 (Special Regulations for Fifth Avenue Subdistrict).

The provisions of Section 81-40 (MANDATORY DISTRICT PLAN ELEMENTS) are all primarily oriented toward the accommodation and well-being of pedestrians. The requirements pertain to a number of elements which are interrelated and complement one another but are set forth in different sections because they can be treated separately. Sections 81-42 (Retail Continuity along Designated Streets), 81-43 (Street Wall Continuity along Designated Streets) and 81-44 (Curb Cut Restrictions) are a group of sections with closely related purposes concerned with amenity and the well-being and safety of pedestrians. Sections 81-45 to 81-48, inclusive, are all concerned primarily with pedestrian traffic circulation. Major *building* entrances are focal points of heavy pedestrian traffic, so that controls on the locations of these entrances as set forth in Section 81-48 are closely related to the pedestrian circulation space requirements.

81-411

Maintenance of pedestrian circulation spaces

Owners of property on which pedestrian circulation spaces are provided shall be responsible for their maintenance unless in the case of relocated subway stairs the Transit Authority has agreed in writing to such maintenance responsibility.

81-412

Directional signs

Directional *signs* are required to call attention to relocated subway stairs and through *block* connections and announce their accessibility to the public.

81-413

Provisions for handicapped

All mandatory district plan elements required by the provisions of Section 81-45 (Provision of Pedestrian Circulation Space) or Section 81-46 (Through Block Connection) shall be accessible to the handicapped, meeting the standards set forth in Section 81-231 (Standards for urban plazas), paragraph (c), subparagraph (2).

A-5 MIDTOWN ZONING: DAYLIGHT COMPENSATION METHOD

81-26

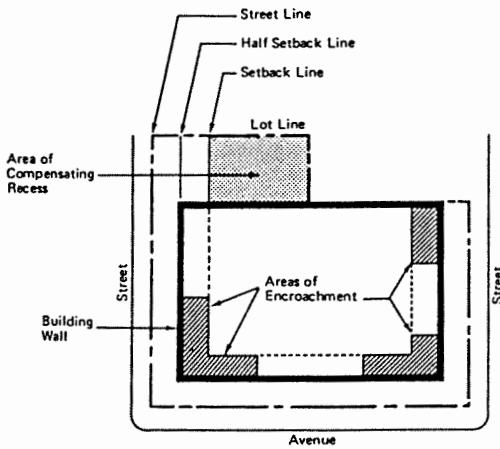
Height and Setback Regulations—Daylight Compensation

81-261

Definitions

Compensating recess

A portion of a zoning lot which, at the building height selected for determining compliance with the provisions of Section 81-26 (Height and Setback Regulations), lies in the free zone (Zone A on the encroachment grid), is not covered by any portion of a building or other structure and qualifies as compensating for building encroachments beyond the free zone under the provisions of Section 81-264 (Encroachments and compensating recesses). (See Illustration of Compensating Recess and Encroachment.)



ENCROACHMENT GRID

ILLUSTRATION OF COMPENSATING RECESS AND ENCROACHMENT

Encroachment

A projection beyond the setback line, the free zone, the half-setback line or the ten-foot setback line by any portion of a building or other structure that exceeds the maximum height permitted at the street line. (See Illustration of Compensating Recess and Encroachment.)

Encroachment grid

A plan drawing of the zoning lot at any given height above curb level selected to determine compliance with the provisions of Section 81-26 (Height and Setback Regulations) and showing, for that height, street lines, setback lines, half-setback lines, Zone A (the free zone), Zones B and C (encroachment zones) and, where applicable, the ten-foot setback line. The encroachment grid serves as a device for measuring areas of encroachment beyond the free zone and areas of compensating recess within the free zone. (See Illustration of Encroachment Grid.)

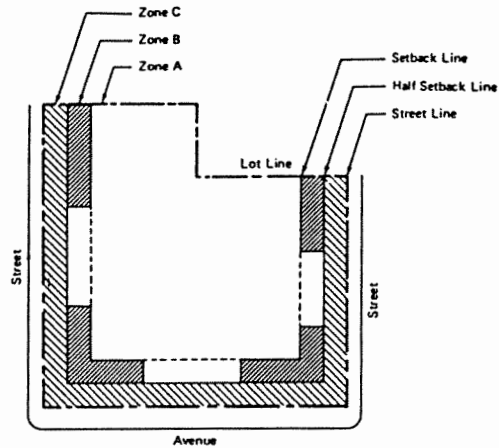
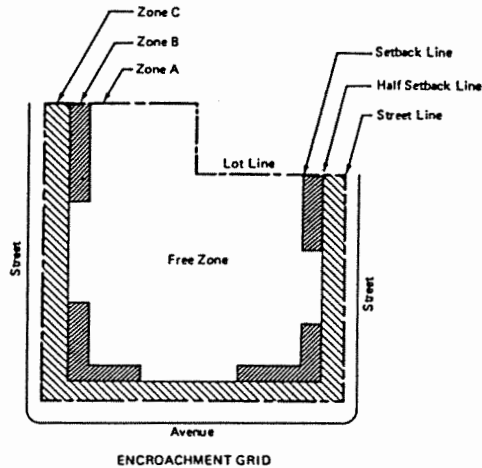


ILLUSTRATION OF ENCROACHMENT GRID

Free zone

That portion of a zoning lot, at any given height, which may be covered by a building without coverage constituting an encroachment that requires daylight compensation.

In addition to the area that lies behind a setback line or lines, the free zone shall include areas between the setback line and the half-setback line and which qualify as free zone areas under the middle one-third rule. The free zone is referred to as Zone A on the encroachment grid.



ENCROACHMENT GRID

ILLUSTRATION OF FREE ZONE

(Continued)

Italicized words are defined in Section 12-10, 81-261 & 81-271

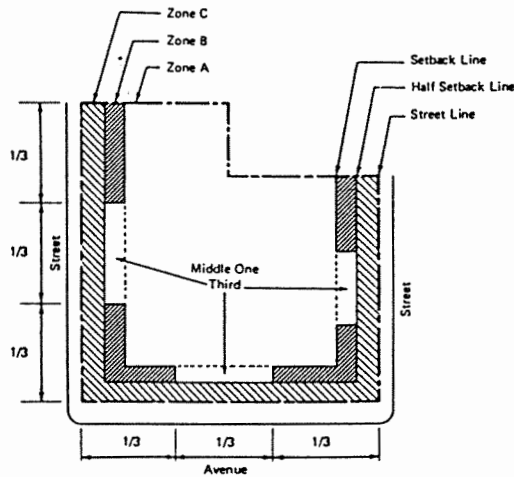
81-261 (continued)

Half-setback line

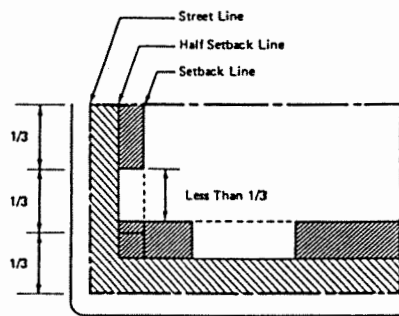
A line drawn parallel to a *street line* and halfway between the *street line* and the *setback line*. (See Illustration of Setback and Half-Setback Lines.)

Middle one-third rule

The rule under which, for the middle one-third of the *front lot line* length, the *free zone* includes area between the *setback line* and the *half-setback line*. However, on a *corner lot* the *free zone* does not extend beyond the *setback line* along an intersecting *street*. (See Illustration of *Middle One-Third Rule*.)



ENCROACHMENT GRID

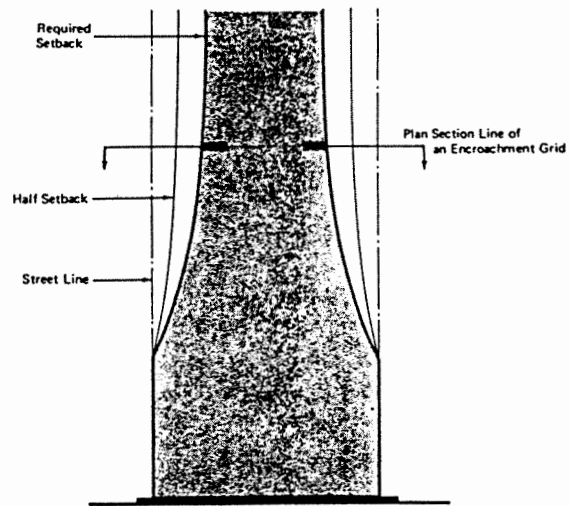


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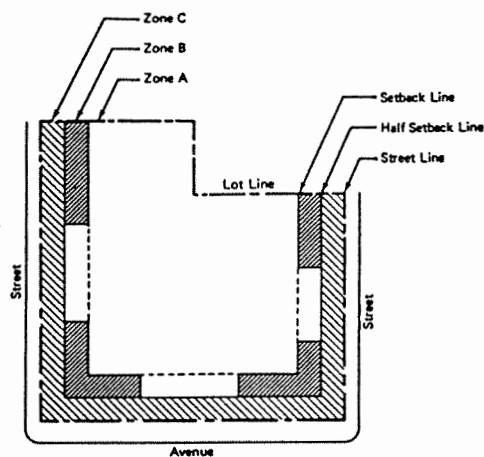
ILLUSTRATIONS OF MIDDLE ONE-THIRD RULE

Setback line

A line drawn in plan parallel to a *street line* and showing for a given *building* height the minimum depth to which a *building's* front wall is required to be set back from the *street line* by the applicable depth to height chart in Section 81-263 (Standard setback requirements). Required setbacks established by the chart increase with the *building's* height. (See Illustration of *Setback and Half-Setback Lines*.)



Elevation



Encroachment Grid

ILLUSTRATIONS OF SETBACK AND HALF-SETBACK LINES

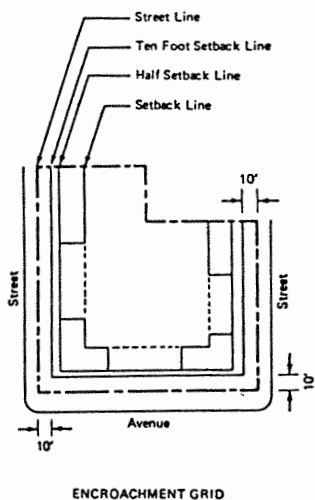
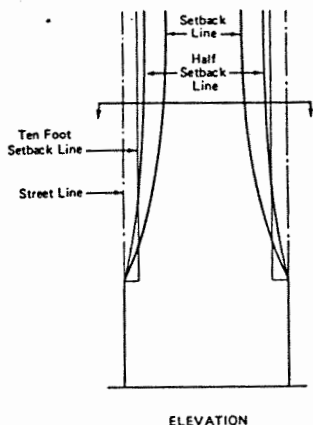
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Italicized words are defined in Section 12-10, 81-261 & 81-271

81-261 (continued)

Ten-foot setback line

A line which is parallel to the *street line* at a distance of 10 feet therefrom and which, except as provided in Section 81-265 (Encroachment limitations by length and height rules), represents the minimum distance any portion of a *building's* front wall exceeding the maximum height at the *street line* is required to be set back from the *street line*. A greater setback distance may be required by a *setback line* or a *half-setback line* depending upon the *building height* for which such *setback line* or *half-setback line* is established.



ILLUSTRATIONS OF TEN FOOT SETBACK LINE ON AN ENCROACHMENT GRID

Zone A, Zone B, Zone C

"Zone A", "Zone B" and "Zone C" are zones on an *encroachment grid* defined as follows:

- (a) *Zone A* is the *free zone*
- (b) *Zone B*, an *encroachment zone*, is the zone, exclusive of any area in *Zone A* which lies between the *setback line* and the *half-setback line*.

(c) *Zone C*, an *encroachment zone* and *penalty zone*, is the zone which lies between the *half-setback line* and the *street line*.

81-262

Maximum height of front wall at the street line

(a) General Provisions

The front wall of a *building* at the *street line* shall not exceed the height limit applying along the *street* on which it fronts. Maximum front wall heights at the *street line* vary with the width of the *street* on which the wall fronts, as follows:

Street Width (feet)	Maximum Front Wall Height at Street Line (feet)
60 or less	90
75 or 80	120
100 or more	150

(b) Special provisions for *corner lots*

For a *corner lot* with frontage on *streets* of different widths, the maximum front wall height at the *street line* of the narrower *street* may be increased above that indicated in paragraph (a) in accordance with either one of the following rules:

Rule 1:

The maximum front wall height at the *street line* for the wider *street* may extend up to 100 feet from the corner along the *street line* of the narrower *street*, or

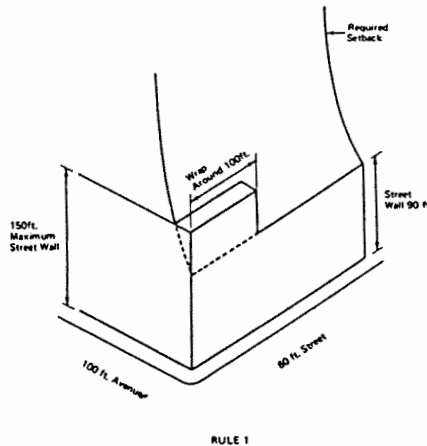


ILLUSTRATION OF SPECIAL RULES FOR CORNER LOTS

Rule 2:

For any length of frontage from the corner along the narrower *street*, a maximum height for such length of frontage may apply, which shall be the weighted average of (1) the height permitted under Rule 1 for the first 100 feet from the corner and (2) the standard height limit for front walls on the narrower *street* for the remainder of the frontage.

(See Illustration of Special Rules for *Corner Lots*.)

(Continued next Page)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-262 (continued)

CHART A

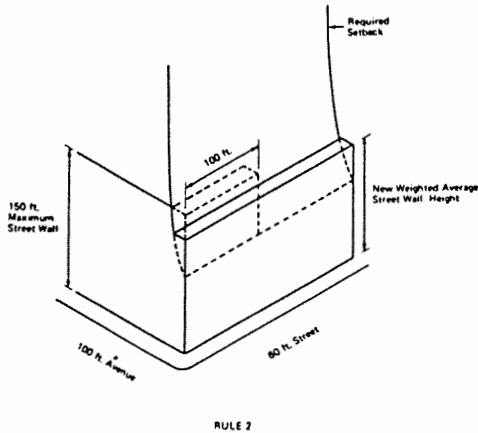


ILLUSTRATION OF SPECIAL RULES FOR CORNER LOTS

81-263

Standard setback requirements

If a building complies with the regulations of this Section, it will be in compliance with the height and setback regulations.

(a) Ten-foot setback requirement

Above the maximum height permitted at the street line pursuant to the provisions of Section 81-262, every portion of a building's front wall shall be set back at least 10 feet from the street line. Exceptions to this provision along a particular street frontage are permitted only if the building complies with the provisions of Section 81-265 (Encroachment limitations by length and height rules).

(b) General setback provisions; depth to height charts

Above the maximum height permitted at the street line, building walls, in addition to meeting the requirements of paragraph (a), are required to be set back behind the applicable setback line, the depth of the setback line at any point depending upon the height of the wall at that point in accordance with the requirements of the applicable Chart A, B or C presenting required setbacks from streets 60 feet or less, 75 or 80 feet, or 100 or more feet in width, respectively.

Setback Requirements On Streets 60 Feet or Less in Width

Depth of Setback Line from Street Line at Stated Heights above Curb Level

Height	Depth of Setback Line	Height	Depth of Setback Line
90	0.00		
100	2.00	400	40.25
110	4.00	410	41.00
120	6.00	420	41.75
130	8.00	430	42.25
140	10.00	440	43.00
150	12.00	450	43.50
160	13.75	460	44.25
170	15.25	470	44.75
180	16.75	480	45.50
190	18.50	490	46.00
200	20.00	500	46.50
210	21.25	510	47.00
220	22.50	520	47.50
230	24.00	530	48.00
240	25.25	540	48.50
250	26.50	550	49.00
260	27.50	560	49.50
270	28.75	570	50.00
280	30.00	580	50.50
290	30.75	590	51.00
300	31.75	600	51.50
310	32.75	610	52.00
320	33.75	620	52.25
330	34.75	630	52.75
340	35.50	640	53.00
350	36.25	650	53.50
360	37.25	660	53.75
370	38.00	670	54.25
380	38.75	680	54.50
390	39.50	690	55.00
		700	55.25
		710	55.75
		Above 710	*

*for every 10 feet of height above 710 feet the depth shall increase by 1 foot

(Continued next Page)

81-263 (continued)

CHART B

Setback Requirements
On Streets 75 or 80 Feet Wide

Depth of *Setback Line*
from *Street Line* at Stated
Heights above *Curb Level*

Height	Depth of <i>Setback Line</i>	Height	Depth of <i>Setback Line</i>
		400	36.25
		410	37.00
120	0.00	420	37.75
130	1.50	430	38.25
140	3.50	440	39.00
150	5.50	450	39.75
160	7.50	460	40.50
170	9.25	470	41.00
180	11.00	480	41.75
190	12.75	490	42.50
200	14.25	500	43.00
210	15.75	510	43.50
220	17.25	520	44.00
230	18.75	530	44.75
240	20.00	540	45.25
250	21.25	550	45.75
260	22.50	560	46.25
270	23.75	570	46.75
280	24.75	580	47.25
290	26.00	590	47.75
300	27.00	600	48.25
310	28.00	610	48.75
320	29.00	620	49.00
330	30.00	630	49.50
340	31.00	640	50.00
350	32.00	650	50.50
360	32.75	660	50.75
370	33.75	670	51.25
380	34.50	680	51.75
390	35.50	690	52.00
		700	52.50
		710	53.00
		Above 710	*

*for every 10 feet of height above 710 feet the depth shall increase by 1 foot

CHART C

Setback Requirements
On Streets at least 100 Feet Wide

Depth of *Setback Line*
from *Street Line* at Stated
Heights above *Curb Level*

Height	Depth of <i>Setback Line</i>	Height	Depth of <i>Setback Line</i>
		400	32.00
		410	33.00
		420	33.75
		430	34.50
		440	35.25
150	0.00	450	36.00
160	1.50	460	36.75
170	3.00	470	37.25
180	5.00	480	38.00
190	6.75	490	38.75
200	8.50	500	39.25
210	10.25	510	40.00
220	11.75	520	40.50
230	13.25	530	41.25
240	14.75	540	41.75
250	16.00	550	42.25
260	17.25	560	42.75
270	18.75	570	43.50
280	20.00	580	44.00
290	21.00	590	44.50
300	22.25	600	45.00
310	23.50	610	45.50
320	24.50	620	46.00
330	25.50	630	46.50
340	26.50	640	47.00
350	27.50	650	47.50
360	28.50	660	47.75
370	29.50	670	48.25
380	30.25	680	48.75
390	31.25	690	49.25
		700	49.50
		710	50.00
		Above 710	*

*for every 10 feet of height above 710 feet the depth shall increase by 1 foot

(Continued next Page)

81-263 (continued)

(c) Use of charts

To comply with the setback requirements of this Section a *building* at any height shall be set back at least to the depth of the *setback line* indicated on the applicable chart.

For heights between those shown on the chart, the depth of the *setback line* shall be interpolated.

Required depths of *setback lines* shall be rounded off to the next highest half foot.

The setback requirements apply only to portions of *buildings* above the maximum height permitted at the *street line*, so that required setbacks on the narrower *street* frontage of a *corner lot* shall apply only to heights above the maximum front wall heights permitted by the *corner lot* provisions of paragraph (b) of Section 81-262 (Maximum height of front wall at the street line).

(d) Middle one-third rule

A *building* wall may penetrate beyond the *setback line* at any height if the penetration is confined to the middle third of the *front lot line* length and complies in all respects with the *middle one-third rule* as defined in Section 81-261 (Definitions).

81-264

Encroachments and compensating recesses

A *development* will be in compliance with the height and setback regulations of this Chapter if it does not at any height encroach beyond a *half-setback line* or a *ten-foot setback line* and at no level has an aggregate area of *encroachment* beyond the *setback line*, other than in any *free zones*, greater than the aggregate area of *compensating recess* at such level.

The requirement that aggregate area of *compensating recess* at least equal the aggregate area of *encroachment* as set forth in this Section shall also apply to any *development* which encroaches beyond a *half-setback line* or a *ten-foot setback line* and which is therefore subject to the provisions of Section 81-265 (Encroachment limitations by length and height rules). (See Illustration of *Encroachments* and *Compensating Recesses*.)

(a) Rules for measuring *encroachments* and *recesses*

Areas of *encroachment* and *compensating recess* shall be measured in plan on one or more *encroachment grids* showing for the *zoning lot* at a given height level the *street line*, the *setback line*, the *half-setback line*, *Zones A, B* and *C* and, where applicable, the *ten-foot setback line*.

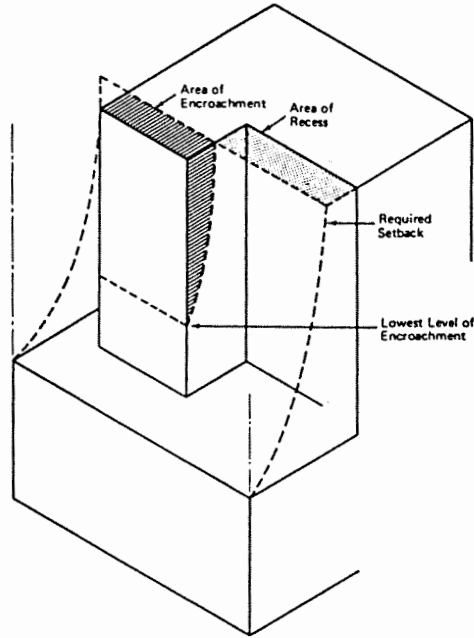


ILLUSTRATION OF ENCROACHMENTS AND COMPENSATING RECESSES

The scale of the *encroachment grid* shall be not more than 20 feet to the inch. All *buildings* or *other structures*, existing and proposed, shall be located accurately on the *grid* in plan at the height level selected to demonstrate compliance. The areas of the *building's encroachment* in *Zones B* and *C* or beyond the *ten-foot setback line* and the *compensating recess* areas not covered by any *building* in *Zone A* shall be measured on the *encroachment grid*.

(b) Limits of *encroachment*

Except as provided in paragraph (d) below for existing *buildings* below specified heights, *encroachment* is limited as follows:

1. At every height above the maximum front wall height at the *street line*, the area within *Zone A* which is not covered by a *building* and qualifies as *compensating recess* area shall, in the aggregate, equal or exceed the aggregate area in *Zones B* and *C* or beyond the *ten-foot setback line* that is encroached upon by a *building* at such height.
2. No part of a *building* shall encroach into *Zone C* unless it complies with the provisions of Section 81-265 (Encroachment limitations by length and height rules).
3. On *corner lots*, the projection of a *building's* front wall beyond the *setback*, *half-setback* or *ten-foot setback line* on the narrower street shall not count as an *encroachment* except at heights above the maximum height permitted at the *street line* by the *corner lot* provisions in paragraph (b) of Section 81-262 (Maximum height of front wall at the street line).

(Continued next Page)

81-264 (continued)

Compensating recess areas are subject to the following limitations:

1. Any required *compensating recess* area shall extend without diminution of dimensions downward at least to the lowest level at which any *encroachment* into *Zone B* or *Zone C* or beyond the *ten-foot setback line* occurs and upward to the sky. (See Illustration of Extension Downward of *Compensating Recess Area*.)

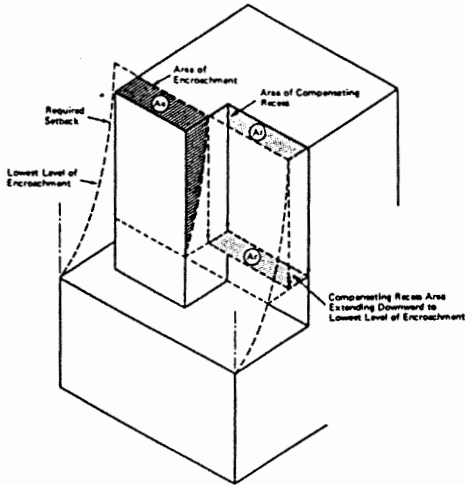


ILLUSTRATION OF EXTENSION DOWNWARD OF COMPENSATING RECESS AREA

2. *Compensating recess* area shall be visible when viewed from at least one adjacent *street* along a line that intersects the *front lot line* of the *zoning lot* at right angles. (See Illustration of *Visibility of Recess Area*.)

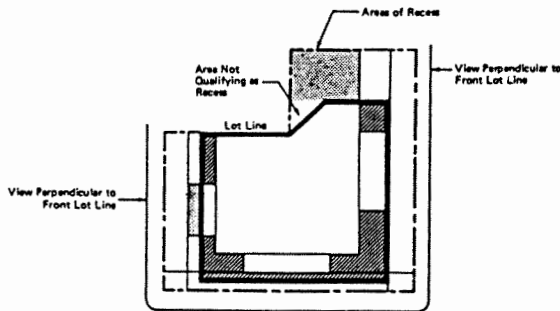


ILLUSTRATION OF VISIBILITY OF COMPENSATING RECESS AREA

3. The minimum length of a *compensating recess*, measured parallel to the *street line*, and behind the *setback line*, is 30 feet, except for any uncovered portion of an area that qualifies as *Zone A* under the *middle one-third rule* or an uncovered area located behind two intersecting *setback lines*. An uncovered area between the *setback* and *half-setback lines* that qualifies as *Zone A* under the *middle one-third rule* is not subject to the minimum length requirement. (See Illustration of Minimum Length of *Recess*.)

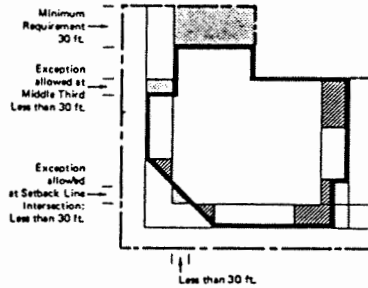


ILLUSTRATION OF MINIMUM LENGTH OF COMPENSATING RECESS

4. *Compensating recess* area shall be within 100 feet of a *front lot line*.

(d) Existing buildings on the zoning lot

Where a *zoning lot* contains an existing *building* which exceeds a height limit, an *enlargement* or *development* on such *zoning lot* shall comply with the following provisions:

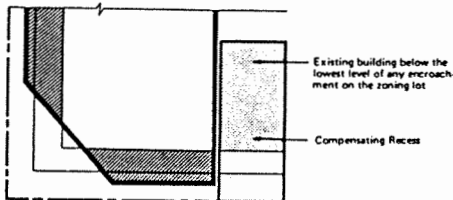
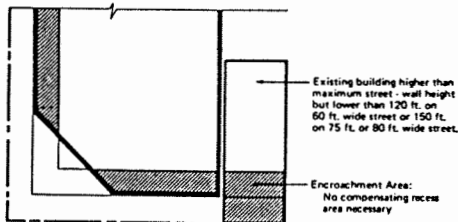
1. If the existing *building* is not more than 120 feet in height at any point and encroaches into *Zone B* or *Zone C* or beyond the *ten-foot setback line* along the frontage of a *street* 60 feet wide, or if the existing *building* is not more than 150 feet in height at any point and encroaches into *Zone B* or *Zone C* or beyond the *ten-foot setback line* along the frontage of a *street* 75 or 80 feet wide, the new *building* or *enlargement* is not required to compensate for such *encroachment* by the provision of *compensating recess* areas. *Encroachment* by such an existing *building* into *Zone C* or beyond the *ten-foot setback line* will not subject the new *building* or *enlargement* to the provisions of Section 81-265 (*Encroachment limitations by length and height rules*) unless the new *building* or *enlargement* also encroaches into *Zone C* or beyond the *ten-foot setback line*.
2. Space above such existing *building* and within *Zone A* on the *encroachment grid* may count as *compensating recess* area for the new *building* or *enlargement* provided that such space is at or below the lowest level of any compensable *encroachment* by the new *building* or *enlargement* and that it qualifies in all respects under the provisions of paragraph (c) of this Section (*Limitations on compensating recesses*).

(Continued next Page)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-264 (continued)

3. If an existing *building* more than 120 feet in height at any point encroaches into *Zone B* or *Zone C* or beyond the *ten-foot setback line* along the frontage of a *street* 60 feet wide, or if an existing *building* more than 150 feet in height at any point encroaches into *Zone B* or *Zone C* or beyond the *ten-foot setback line* along the frontage of a *street* 75 or more feet in width, the *encroachment* of such *building* into *Zone B* or *Zone C* or beyond the *ten-foot setback line* at any height shall be subject to the requirements for *compensating recess* areas set forth in paragraph (b)(1), as if it were a new *building*. Where such an existing *building* encroaches into *Zone C* or beyond the *ten-foot setback line* the provisions of paragraph (g)(2) in Section 81-265 (*Encroachment* limitations by length and height rules) shall apply. (See Illustration of Existing Buildings on the Zoning Lot.)



ILLUSTRATIONS OF EXISTING BUILDINGS ON THE ZONING LOT

81-265

Encroachment limitations by length and height rules

Above the maximum height of a front wall at the *street line* as set forth in Section 81-262 (Maximum height of front wall at the street line), a *building* may only encroach beyond the *half-setback line* or the *ten-foot setback line* if it complies with the provisions of this Section and if the area of *compensating recess* equals or exceeds the area of *encroachment* in *Zones B* and *C* or beyond the *ten-foot setback line* in accordance with the provisions of Section 81-264 (*Encroachments* and *compensating recesses*).

(a) Special limitations

No *encroachment* beyond the *half-setback line* or *ten-foot setback line* along a *narrow street* shall be within 30 feet of a *side lot line*. (See Illustration of Prohibited and Allowed *Encroachment* Beyond *Half-Setback Line*.)

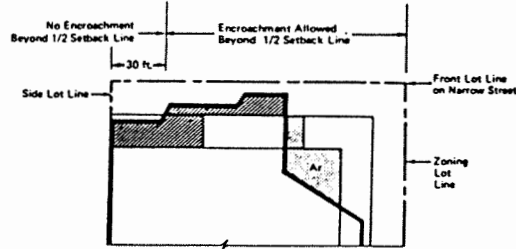


ILLUSTRATION OF PROHIBITED AND ALLOWED ENCROACHMENT BEYOND HALF-SETBACK LINE

(b) General provisions

The length, depth, height and area of *encroachments* along any *street* frontage all contribute to a *building's* impact on daylight access. In order to determine whether the depth of a *building's* *encroachment* into *Zone C* or beyond the *ten-foot setback line* is justified, the length of the *encroachment*, measured parallel to the *street line*, and its height above *curb level* must also be evaluated. The extent of *encroachment* also must be considered in relation to the extent of the area of *compensating recess* along the *street* frontage. The purpose of the length and height rule is to ensure, in the case of *encroachments* beyond the *half-setback line* or the *ten-foot setback line*, that the closer a *building* comes to the *street line*, the less will be the length of its *encroachment*, its height or both. (See Illustration of Elements Analyzed.)

The elements comprising this analysis are represented by symbols and are as follows:

1. *de* depth of *encroachment*

$$\frac{de}{d} = \frac{\text{depth of } encroachment}{\text{depth of } setback\ line}$$

de (depth of *encroachment*) means depth of *encroachment* beyond the *setback line* or the *ten-foot setback line*, whichever line is the greater distance from the *street line*. Depth of *encroachment* is measured perpendicularly to the *setback line* or *ten-foot setback line*.

d (depth of *setback line*) means depth of *setback line* from the *street line* or depth of *ten-foot setback line* from the *street line* whichever depth is greater.

2. *le* length of *encroachment*

$$\frac{le}{L} = \frac{\text{length of } encroachment}{\text{length of } front\ lot\ line}$$

le (length of *encroachment*) means total length of *encroachment* outside the *half-setback line* or the *ten-foot setback line*, whichever line is the greater distance from the *street line*. Length of *encroachment* is measured as the total length of the *encroachments' projections* on the *street line*.

L (length of *front lot line*) means the length of the *front lot line* along the particular *street*. However, the length of the *front lot line* for the purposes of this Section shall not exceed 300 feet, irrespective of the actual *lot line* length.

(Continued)

81-265 (continued)

3. *le* length of *encroachment*

$$\frac{le}{lr} = \frac{\text{length of } encroachment}{\text{length of recess}}$$

le (length of *encroachment*) as defined in subparagraph 2 above.

lr (length of recess) means total length of *setback line* not encroached upon by a *building*.

4. *H* height of *encroachment*

$$\frac{H}{L} = \frac{\text{height of } encroachment}{\text{length of front lot line}}$$

H (height of *encroachment*) means the height of the *encroachment* above *curb level*.

L (length of *front lot line*) as defined in subparagraph 2 above.

5. *Ar* area of *compensating recess*

$$\frac{Ar}{Ae} = \frac{\text{area of compensating recess}}{\text{area of encroachment}}$$

Ar (area of *compensating recess*) means area of *compensating recess* along the particular *street* frontage. Area of *compensating recess* is calculated to a depth of 100 feet from the *street line*.

Ae (area of *encroachment*) means area of *encroachment* beyond the *setback line*. Area of *encroachment* is calculated to a depth of 100 feet from the *street line*.

Values for the above elements 1 through 5 shall be found for each *street* frontage on which there is any *encroachment* beyond the *half-setback line* or *ten-foot setback line*.

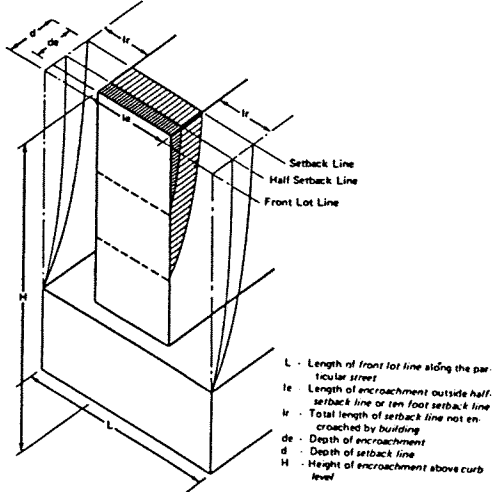


ILLUSTRATION OF ELEMENTS ANALYZED

The elements, weighted according to their effects on daylight access, are represented in the formulas and charts that control the depth, length and height of *encroachments*, as set forth in paragraph (c) (Encroachment limitations by Formulas 1 and 2) and paragraph (d) (Encroachment limitations by Charts 1 and 2). Applicants may elect to have their *buildings* regulated by either the formulas or the charts, but not by a combination of the two.

Encroachments of proposed *buildings* or *enlargements* beyond the *half-setback line* or *ten-foot setback line* are permitted only if in compliance at every point with the formulas in paragraph (c) or the charts in paragraph (d) of this Section. Aside from this general requirement, specified points at which the length, depth, height and area rules shall be applied are presented in paragraph (e) (Measurement of encroachments) and paragraph (f) (Heights and depths at which formulas or charts are applied).

- (c) *Encroachment* limitations by Formulas 1 and 2

Where applicants elect to have their *buildings* regulated by the formulas, *buildings* shall comply with both Formula 1 and Formula 2 as set forth in this paragraph. Elements of the formulas and the symbols by which they are represented are as set forth in paragraph (b)

FORMULA 1:

$$\text{Maximum } \frac{H}{L} = 5.5 - 4 \left(\frac{de}{d} \right) - 2.5 \left(\frac{le}{L} \right)$$

FORMULA 2:

$$\text{Maximum } \frac{le}{lr} = \frac{3.5 le}{L}$$

The maximum height of *encroachment* (*H*) allowed by Formula 1 may be modified for certain conditions, as follows:

1. For short frontages

For any frontage less than 200 feet in length, the maximum $\frac{H}{L}$ found by applying Formula 1

is 1 may be increased by the following multiplier:

$$2 - \frac{L}{200}$$

2. For large areas of *compensating recess*

To the extent that the aggregate area of *compensating recess* (*Ar*) exceeds the aggregate area of *encroachment* (*Ae*), the maximum $\frac{H}{L}$

found by applying Formula 1 may be increased by the following multiplier:

$$1 + \frac{.067 Ar}{Ae}$$

For the purposes of this modification, the measurement of the area of *compensating recess* (*Ar*) and the area of *encroachment* (*Ae*) along the particular *street* frontage shall be made on the *encroachment grid* at the height level for which *encroachments* beyond the *half-setback line* or *ten-foot setback line* are checked. *Ar* shall include all areas of *compensating recess* along the particular *street* frontage, whether or not connected, and *Ae* shall include all *encroachments* in both *Zone B* and *Zone C* or beyond the *ten-foot setback line* along the same *street* frontage, whether or not such *encroachments* are connected.

(Continued)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-265 (continued)

(d) *Encroachment* limitations by Charts 1 and 2

Where applicants elect to have their *buildings* regulated by the charts, *buildings* shall comply with both Charts 1 and 2 as set forth in this paragraph. The elements represented by the symbols on the charts are defined in paragraph (b)

CHART I

MAXIMUM $\frac{H}{L}$
RELATED TO $\frac{de}{d}$ AND $\frac{le}{L}$
 $\frac{le}{L}$

de/d	0-.10	.11-.20	.21-.30	.31-.40	.41-.50	.51-.60	.61-.70
.91-1.00	1.25	1.00	0	0	0	0	0
.81-.90	1.50	1.25	1.00	1.00	1.00	0	0
.71-.80	2.00	1.75	1.50	1.25	1.00	0	0
.61-.70	2.50	2.25	2.00	1.75	1.50	1.25	1.00
.51-.60	3.27	3.00	2.75	2.50	2.25	2.00	1.75

CHART 2

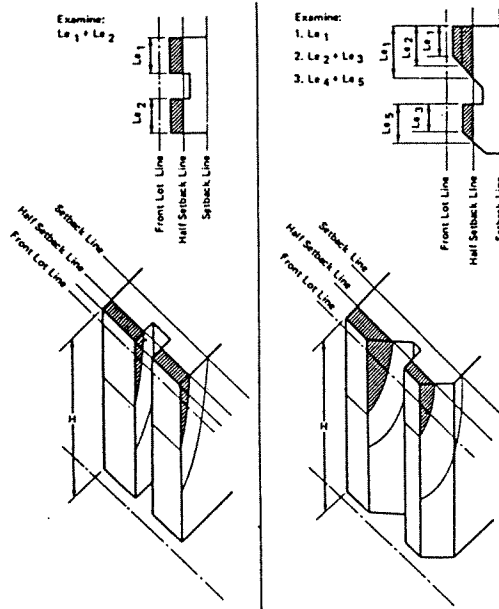
MAXIMUM $\frac{le}{lr}$
RELATED TO $\frac{le}{L}$
 $\frac{le}{L}$ Max $\frac{le}{lr}$

0-.10	.25
.11-.20	.50
.21-.30	1.00
.31-.40	1.25
.41-.50	1.50
.51-.60	2.00
.61 and above	2.50

(e) Measurement of *encroachments*

The points at which the formulas or charts are applied will depend upon the shape and dimensions of the *encroachments* beyond the *half-setback line* or *ten-foot setback line* and shall be in accordance with the provisions of this paragraph and paragraph (f).

Where the *encroachments* along a single *street* frontage are not connected outside the *half-setback line* or *ten-foot setback line*, each *encroachment* shall be measured separately in accordance with the provisions of paragraph (f). However, at any given height, where such non-contiguous *encroachments* occur, the *encroachments* shall be examined together, and the length of *encroachment* (le) shall be the total of the le 's for the individual *encroachments*. (See Illustration of Noncontiguous *Encroachments*.)



ILLUSTRATIONS OF NONCONTIGUOUS ENCROACHMENTS

(f) Heights and depths at which formulas or charts are applied

Heights and depths at which the formulas or charts shall be applied are set forth in this paragraph. In addition to meeting the requirements of subparagraphs 1 and 2, the applicant shall demonstrate that there is no height at which the proposed *building* or *enlargement* fails to comply with the formulas in paragraph (c) or the charts in paragraph (d) of this Section.

(1) Standard requirement where length of *encroachment* is uniform

Where the length of the *encroachment* (le) is uniform for the entire height of the *encroachment* (H) and the entire depth (de) at every height, the length, depth and height rules expressed in the formulas or charts shall be applied only at the height where de/d is greatest and the outermost edge of the *encroachment*. (See Illustration of Uniform Length of *Encroachment*.)

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81-265 (continued)

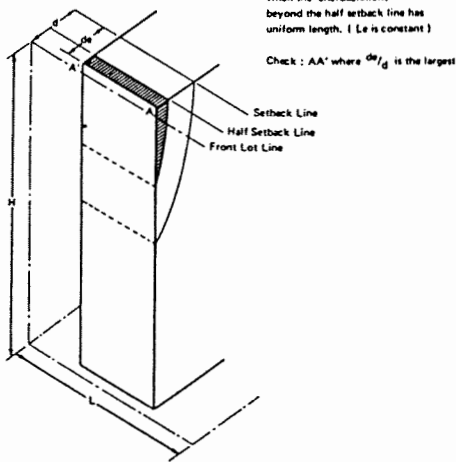
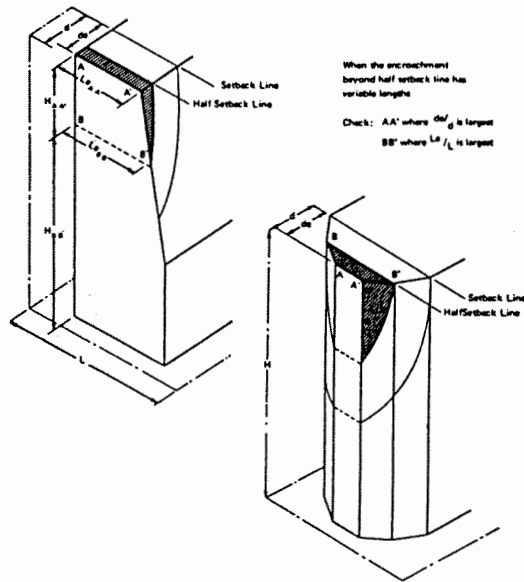


ILLUSTRATION OF UNIFORM LENGTH OF ENCROACHMENT

(2) Standard requirement where length of encroachment is not uniform

Where the length of the encroachment (l_e) is not uniform, the rules shall be applied at the height level where d_e/d is greatest and also at the height level where the length of encroachment (l_e) is greatest. If the greatest length of encroachment is uniform for part of the building's height, the rules shall be applied at the highest level at which such greatest length of encroachment occurs. (See Illustration Where Length of Encroachment is Not Uniform.)



ILLUSTRATIONS WHERE LENGTH OF ENCROACHMENT IS NOT UNIFORM

For each height level at which the formulas or charts are applied in accordance with the provisions of this subparagraph, the length and depth of encroachment (l_e and d_e) shall be measured at the depths indicated in the following table:

	Depth at Which Encroachment is Measured
Where $\frac{d_e}{d}$ does not exceed .70	1. Outermost edge of encroachment 2. Half-setback line or ten-foot setback line, whichever line is the greater distance from the street line.
Where $\frac{d_e}{d}$ exceeds .70	1. Outermost edge of encroachment 2. Half-setback line or ten-foot setback line, whichever line is the greater distance from the street line. 3. The point midway between 1 and 2.

(See Illustration of Depth at Which Encroachment is Measured.)

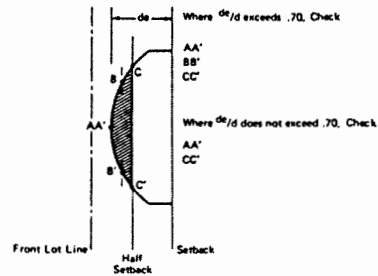


ILLUSTRATION OF DEPTH AT WHICH ENCROACHMENT IS MEASURED

(Continued)

Italicized words are defined in Section 12-10, 81-261 & 81-271

81-265 (continued)

(g) *Encroachments by existing buildings*

Where a *zoning lot* contains an existing *building* which encroaches beyond a *half-setback line* or a *ten-foot setback line*, an *enlargement* or *development* on such *zoning lot* shall comply with the following provisions:

1. Existing *buildings* below specified heights 20

(a) Except as provided in subparagraph (b), an existing *building* less than 120 feet in height shall not be considered in applying the length and height rules even though a portion of such *building* encroaches beyond the *half-setback line* or *ten-foot setback line* along a 60 foot wide *street* and an existing *building* less than 150 feet in height shall not be considered in applying the length and height rules even though a portion of such *building* encroaches beyond the *half-setback line* or *ten-foot setback line* along a 75 foot wide *street* or an 80 foot wide *street*.

(b) However, the area occupied by the existing *building* shall be included in the calculation of Ar/Ae for the modification of Formula 1 allowed in the case of large areas of *compensating recess*, as set forth in paragraph (c), subparagraph 2 of this Section.

2. Existing *buildings* above specified heights

Where an existing *building* 120 feet or more in height encroaches beyond the *half-setback line* or *ten-foot setback line* along a 60 foot wide *street* or where an existing *building* 150 feet or more in height encroaches beyond the *half-setback line* or *ten-foot setback line* along a 75-foot wide *street* or an 80-foot wide *street*, the following provisions shall apply:

(a) No new construction on the *zoning lot* shall encroach beyond the *half-setback line* or *ten-foot setback line* along such *street*, and

(b) The length and height rules of this Section shall not apply.

81-266

Special permit for height and setback modifications

In C5-3, C6-6, C6-7, C5-3.5, C6-6.5 or C6-7.5 Districts, where a special permit application is made pursuant to Section 74-712 (Developments or enlargements on landmark sites in certain districts) for modification of *bulk* regulations on a *zoning lot* containing a landmark, or where a special permit application is made pursuant to Section 74-79 (Transfer of Development Rights from Landmark Sites) for transfer of development rights from a landmark site and the *floor area* represented by such transferred development rights exceeds 20 percent of the basic maximum *floor area* permitted on the *zoning lot* receiving the development rights, such application may include a request for modification of the height and setback regulations set forth in Sections 81-261 to 81-265, inclusive, relating to Height and Setback Regulations — Daylight Compensation. The City Planning Commission may authorize such height and setback modifications subject to the following conditions:

(a) The applicant shall demonstrate to the satisfaction of the Commission that a feasible design for the proposed *development* or *enlargement* which accommodates the permitted *floor area* is not possible under the provisions of Sections 81-261 to 81-265, inclusive, and shall further indicate for the proposed design where and to what extent a deficiencies of *compensating recess* are necessary or compliance with the length and height rules is not possible. Scale drawings shall be used in presenting the analyses required herein, and,

(b) The Commission shall make the following findings in addition to any required under the applicable provisions of Section 74-712 or Section 74-79:

1. That the requested departure from the height and setback regulations is the minimum amount necessary to achieve a feasible *building* design.

2. That the disadvantages to the surrounding area resulting from reduced light and air access will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole.

3. That where the landmark is located on the *zoning lot* proposed for *development* or *enlargement* or on a lot contiguous thereto or directly across a *street* therefrom, the modification of height and setback regulations will adequately protect the setting for the landmark.

81-27

Alternate Height and Setback Regulations — Daylight Evaluation

81-271

Definitions

Center Line of Street (bounding a *zoning lot*)

A line equidistant from and parallel or nearly parallel to the *street lines* on both sides of the *street*. However:

(a) For the purposes of daylight evaluation, on a *street* 75 feet in width, the *center line of the street* shall be considered to be a line 40 feet from and parallel to the *front lot line* of the *zoning lot*.

(b) For the purposes of daylight evaluation, on a *street* more than 100 feet in width, the *center line of the street* shall be considered to be a line 50 feet from and parallel to the *front lot line* of the *zoning lot*.

Daylight Evaluation Chart (DEC)

A graphic tool which permits objective measurements of portions of sky blocked by a *building* when it is viewed from a *vantage point*. There are three *daylight evaluation charts* for use with *street* widths of 60 feet, 75 to 80 feet and 100 feet and over, respectively. Proposed *buildings* or *enlargements* are drawn on the appropriate *daylight evaluation chart* to evaluate their compliance with the regulations of Section 81-27 (Alternate Height and Setback Regulations). The three *daylight evaluation charts* are presented in Appendix A.

(Continued)

A-6 MIDTOWN DEVELOPMENT STUDY - TASK FORCE MEETING
MINUTES AND NOTE



City of New York

Department of City Planning

2 Lafayette Street, New York, N.Y. 10007

MEMORANDUM

TO: Chairman Robert F. Wagner, Jr.
 FROM: Raquel Ramati *RR*
 RE: Midtown Zoning
 DATE: March 6, 1979

I. Some Recommendations

There has been concern about overdevelopment in Midtown core and the lack of value of some of the pedestrian amenities included as trade-offs for extra floor area and height and setback modifications. Both problems could be correctly adjusted if the bonus system were restructured to mandate the correct amenity in the right place. Bonuses should be scaled, based upon their suitability of location and quality of amenity. Some amenity facilities that have in the past been bonusable should become mandatory.

NOTE: NO
 MENTION OF
 WAIVERS ETC

Since most of the developments have been before the Commission for review, the Commission should consider special permit to be, literally, special, rather than an automatic upzoning.

In areas that are now overdeveloped, rezoning should be evaluated. Special permit findings should be stiffened and greater mandatory amenities provided by the developers. Some areas may be appropriate for upzoning and may redirect development.

A. Zoning changes in certain areas

1. Limit the 5th Avenue District to 18. Mandate retail on first floor and eliminate bonus for extra retail. Retail in existing buildings on zoning lot should not count towards retail requirements.

2. Eliminate bonus amenities on 57th Street which increase FAR from 15 to 18. Mandate retail and the continuation of the existing street wall on 57th St Street. Do not permit curb cuts.
 3. Madison and Lexington Avenue sidewalks should be widened by mandating sidewalk widenings or arcades (10'0" suggested). Continuous retail and preservation of the street wall should be required.
 4. 57th Street, 5th Avenue, and Madison Avenue have unique qualities which call for a special Design Review Board to review all projects, would have three members, one from the A.I.A., the City, and a private community architect. (They will change every year.)
 5. Mandate retail on 42nd Street (no bonus) and reduce sidewalk congestion by including arcades or sidewalk widenings. Do not permit curb cuts.
 6. At the edge of the CBD with East Midtown (East side of Third Avenue) limit FAR to 10-12, with bonus limited to plaza and subway improvements.
 7. Evaluate raising FAR from 10-12 to 15-18 on the east side of 8th Avenue, 5th Avenue from 34th-40th and 6th Avenue from 34th-40th Street. (8th Avenue rezoning will require study of relocation problem.)
 8. Evaluate the area around the Convention Center for development potential. Evaluate existing uses. (Design Competition suggested.)
 9. Reevaluate CR District in terms of bonus system provision.
- B. Amenity System- reduce and restructure bonuses for questionable amenities (wrong amenity in the wrong place).
1. Discuss establishment of specified priority action of pedestrian amenities on site by site basis for all of Midtown.
 2. Through block arcade should be limited to where it aligns with another through block connection on the next block, or to longer blocks in the area between 5th and 8th Avenues (Re-define "Through Block Arcade.")

Handwritten notes:
SUGGEST - 10/15/87
Public Review
10/15/87

LEAD
10/1/78

- 3. Eliminate covered pedestrian spaces- except on sites larger than 30,000 sq.ft. and where the space is not less than 6,000 sq.ft. in size. (Redefine "Covered Pedestrian Space.")
- 4. Mandate off-sidewalk connection to subway mezzanine wherever physically possible and desirable. Develop findings to determine where possibility exists. (Example- developments around Citicorp area should connect to subway.)
- 5. Mandate a sidewalk widening, arcade or through block arcade to reduce pedestrian congestion in the following areas:

Madison Avenues, Lexington Avenue, 7th Avenue and Broadway between 51st Street, 8th Avenue, 42nd Street, and 59th Street.

II. Comments on Norman's, Ken's and Julie's memoranda

A. Norman's suggestions

1. Delineation of critical areas, etc.

a) Additional landmarks (e.g. Bonwit)

- 1. We feel that designating additional buildings, such as Bonwit's, as landmarks actually weakens the intent of landmarks preservation, because it makes distinctions between noteworthy buildings and landmarks rather too subjective.
- 2. The density problems may actually increase with transferring development rights from more landmarks, rather than decrease, since TDR from landmarks makes small sites much more attractive. Assuming the Olivetti Building, for instance, were a landmark, the site adjoining Olivetti becomes more attractive through development. Thus larger development is encouraged.

Again as to the TDR mechanism- it is questionable whether it doesn't in reality encourage more developments rather than prevent development of small sites with existing low-rise structures. In fact, transfer of FAR should be limited to 20% of the new building in areas such as Grand Central, where today unlimited transfer is allowed.

b) Areas with unique but unenconomic use

We agree on the necessity of preserving the restaurant row on 56th Street. However, we feel that the whole area of 57th-53rd, between 5th & 6th Avenues should be preserved in terms of air and light. While most of the area is zoned at 10-12, there should be some height limitation in that area which will not permit any accumulation of development rights on one site in midblock. (Note: there are rumors of a major assemblage in this area.)

c) Areas of unique physical character

Madison, Lexington & Park Avenues have a unique physical character. A special district of these three avenues could incorporate a density limitation in midblock. (See A.3)

2. Tinkering with zoning lot merged legislation in 42nd-49th Streets, 3rd-6th Avenue area

a) While the idea of making this by special permit makes sense, this approach would appear to have only limited value in improving upon the intensity of uses and quality of trade-offs (because in most of the past cases the Commission was involved where developers needed height and setback modifications).

b) Regarding embarrassing postures

Norman's fear that we will find ourselves in an embarrassing posture may be overstated. It is important to have flexibility in zoning as long as the major intentions are maintained. It is important to re-evaluate our zoning work during the last 10 years.

B. Ken's suggestions

Very good overall approach. Definitely should be investigated as specifics are developed.

C. Julie's suggestions

While we agree with questioning the pedestrian amenity bonus system, we think that covered pedestrian spaces and through block arcades in the right location, on large sites and with adequate enforcement of zoning regulations can be an asset to Midtown.

MIDTOWN DEVELOPMENT. STUDY--TASK FORCE MEETING
JUNE 12, 1979

PRESENT: Richard Bernstein, Pares Bhattacharji, Alex Garvin, Gerrard George, Kenneth Halpern, Jolie Hammer, Robert Jacobson, Tony Levy, Lauren Otis, Michael Parley, Raquel Ramati, Barbara Reach, Charles Smith, Julius Spector, Jack Toby, David Vandor and Howard Weiss.

Dick Bernstein opened the meeting with a brief status report: A moratorium on construction in midtown has been suggested by some. The Chairman is completely opposed.

An effort to raise funds from foundations has been started; among other things we want to get a real estate consultant aboard as soon as possible; Abe Barkan, President of the James Felt Company has agreed to serve. The Chairman plans to have a private luncheon meeting with a few foundation executives. We will want some slides; Lauren will look through his slides for some that illustrate the problem. Raquel said she can have special material prepared if given adequate time; Dick hopes to be able to use material already on hand.

Meetings will be arranged with business, professional and civic groups. A meeting with CHPC Zoning Committee will be held this afternoon; as soon as Community Boards elect their new Chairpersons, we will arrange meetings with them.

Charles Smith reminded everyone that even though they are busy, this project has very high priority with the Chairman.

MAPS

Ken and Lauren said they have maps of recent construction that are now being brought up-to-date.

EMPLOYMENT

Jack Toby said that the budget for the study should include money to buy the information that will be needed. The work could be done in house or we could use a consultant. To get the census runs and the Dun & Bradstreet tapes of unemployment data for recent years will cost a minimum of 10 or 15 thousand dollars.

TRANSPORTATION & DENSITY

Bob Jacobson said a circulation study exists and also current turnstile figures. He and Dick will discuss how they should be analyzed. Dick said an analysis of the use of stations need not be complex; we can test the assumptions we have already made and that will give us a data base. Jolie suggested that Holly Whyte has probably already done studies of density in midtown and that we should talk to him soon.

URBAN DESIGN STUDY

Raquel made the following points: there will be continued growth for 5 or 10 years; incentive zoning should be continued but in a different way from at present; many incentives should be mandatory; the bonuses we have given have not met our original intention. She expressed concern about waiting nine months to make changes; other buildings (e.g. Saks) are in danger. She suggested that consideration be given to proposing interim changes immediately.

The problem of congestion was discussed; at what point is it undesirable? The question of whether we are going to make judgment about this and other matters was raised. Dick said that while the answers to these questions are not an absolute science, we are going to make some simple judgements.

Michael presented a series of maps and he and Raquel reviewed their efforts at analyzing problems, issues and current conditions in midtown including uses and urban forms and, formulating some preliminary recommendations.

Dick said that much of the work he thought we would have to do has already been well started by the Urban Design Group. He thanked Raquel and Mike and asked everyone to review the material presented. The next meeting will be devoted to a review and analysis of the approach proposed by the UDG and he hopes everyone will be prepared with specific comments.

NEXT MEETING

Tuesday, June 26th in the 15th Floor Conference Room at 9:00 a.m.

6/20/79

MIDTOWN DEVELOPMENT STUDY--TASK FORCE MEETING
JUNE 26, 1979

PRESENT: Richard Bernstein, Pares Bhattachargi, Gerard George, Kenneth Halpern, Jolie Hammer, Robert Jacobson, Norman Marcus, Lauren Otis, Michael Parley, Barbara Reach, Richard Satkin, Julius Spector, David Vandor and Howard Weiss.

Foundations: The Chairman is having a luncheon for people from foundations on Thursday. Only four persons can attend but four others have expressed interest.

Consultants: A specific proposal has been received from Abe Barkan of James Felt & Company. The Chairman believes that it might be desirable to have one, or possibly two, additional consultants. He suggested that Alex Cooper might prepare a system for building quality that would be analogous to the work on housing quality. A simple system is needed that can be administered by the Building Department.

Discussion centered on why housing quality zoning has been used so little. Can a relatively simple objective quality system be devised for Midtown buildings? Can it avoid special permit processing? Can it be administered by the Department of Buildings?

Zoning and Quality Criteria

The six criteria ^{OR} are "context parameters"

1. Maintenance of an existing street wall
2. Through block connections as part of a pedestrian network.
3. Maintenance of significant retail streets.
4. Alleviating sidewalk congestion
5. Improving high/access to transit stations
6. Providing needed open space

which Raquel and Michael had shared with the Task Force at their last meeting, even through their work was still in development, served as the basis for a general and far-ranging ^{discussion} of zoning issues. Among the major substantive points raised were the following:

- o Bulk of buildings may be more the cause of concern than density
- o There is need to examine the fundamental bulk controls in our Resolution
- o The impact of the highest FAR's (e.g. 216) on bulk and configuration of buildings may be more important than the impact on density per se
- o Consideration should be given to a building "volume" control.
- o Amenities, whether required or as a basis for a bonus, should be "targeted" in accordance with a national development plan and specific locational needs
- o To the greatest extent possible they should be based on performance standards
- o Re-mapping may be the answer in some areas.
- o The fundamental grid system of Midtown must be considered in assessing the importance of maintaining existing street walls and cornice lines, measuring building impact on light and shadow of streets etc

- o "As of right" versus discretionary zoning is a key issue with either direction undoubtedly involving some calculated risks
- o Mid-block development is also an important and sensitive issue

Borough Presidents Zoning Hearing: Pares stated that he had been informed (in his capacity as Chairman of the PDC of AIP) that Borough President Stein planned to hold a public hearing on Midtown zoning in City Hall on July 17, 1979. This further underscores the sensitivity of Midtown zoning concerns as a political and community issue. We assumed the Chairman would be invited to testify.

Next Steps:

Dick said we need to focus on the issues we have discussed in a general way. He asked that the following be given to him in writing before the next meeting, stated as sharply as possible:

web
 Julie ---
 Ken --
 Norman ---

Specific, key zoning issues

nothing to say anything & myself in town

web Alex
 Bob Jacobson -- Tax issues and
 Comp. Planning -- mass transit and traffic issues
 C.D. & Capital Budget--Capital investment issues in midtown

Spending with out a mtg

account: debit money

Ken -- Issues on service delivery and management coordination

Jolie -- political and community issues

Dick said he would like this material in time to review it prior to the next meeting which will be on Tuesday, July 10th.

to 7/11

By September we expect to have a sharp definition of the issues.

Meeting adjourned 11 a.m., Next meeting, Tuesday, July 10th.

MIDTOWN DEVELOPMENT STUDY--TASK FORCE MEETING
JULY 10, 1979

PRESENT: Richard Bernstein, Pares Bhattachargi, Alex Garvin, Gerard George, Kenneth Halpern, Jolie Hammer, Robert Jacobson, Norman Marcus, Lauren Otis, Michael Parley, Barbara Reach, Richard Satkin, Charles Smith, Julius Spector, David Vandor and Howard Weiss.

ISSUE PAPERS: Papers have been received from Norman and Julie; Jolie and Ken have completed papers; they are being typed. Alex said that Dick Chudd would have a paper by the end of the week on subway loading patterns. Dick reminded Alex that he would like to have in writing the issues in 1) traffic, 2) taxes and 3) capital investment in midtown.

HEARING: Borough President Stein has scheduled a hearing on July 17 concerning development in midtown Manhattan. (As anticipated, the Chairman received an invitation to testify subsequent to the meeting.)

The Manhattan office was asked to monitor the hearing; Dick and Barbara will attend at least part of the time.

FOUNDATIONS: At the meeting on June 28, representatives of three foundations were present. They indicated support but could not make any commitment without their boards. The likelihood of getting contributions in the range that we need looks promising but not until after Labor Day when their boards next meet. We were advised to expand our material and to be quite specific about the proposed use of foundation money.

The two principal interests and concerns expressed by representatives of the foundations were how our recommendations would be implemented and how they will be enforced.

TIMING: It is clear that we cannot expect funding until the Fall. Therefore we can and must start on the basic work of gathering data ourselves. The purpose is twofold: so that we know what we're talking about; and to provide a base for a report that will be acceptable.

WORK ASSIGNMENTS: Copies of work assignments were distributed and discussed.

ZONING INFORMATION

Information on the computer can document that there have been a tremendous number of changes. The information, if accurate, will need to be up-dated. If it proves useful, consideration should be given to keeping it up-to-date on a regular basis.

Existing Bulk & Density compared to maximum permitted should be mapped schematically to give us clues to danger spots. It should not be done on a lot-by-lot basis but by area. The Manhattan Office prepared such a map 5 years ago. Identification of soft areas is needed for three purposes: 1) Consideration of areas for possible remapping; 2) conservation/preservation issues (e.g., preservation of the appearance of Fifth Avenue); and 3) individual parcels that we want to preserve. It is understood that there will be some overlap among these categories.

Ken, Michael and Dave have already done some creative work in this area. Ken was asked to get them together and jointly recommend the best way to find out what areas or sites need protection.

Major Midtown Developments of Last Ten Years should be reported, not just for 10 years, but back to '61 or '62. Whether a building is institutional or speculative should also be noted. There was a brief discussion of how much data should be included; Dick said this decision should be made by Ken and Lauren as they do the work. Dick emphasized that all the basic information must be in hand by the end of summer.

At the next meeting some key issues will be discussed. One of the questions to be considered is volume control.

DEVELOPMENT INFORMATION

Dick asked for recommendations by the end of the week of any additional detailed work that should be done.

The tasks under "Development" were reviewed and Ken and Gerry were asked to contribute thoughts on factors that inhibit office development west and south. Also, on significant activities or districts in the area.

TAXES AND ECONOMIC INFORMATION

It was suggested that a comparison should be made between J-51 and ICIB but it was decided that this should be a later step. It was agreed, however, that it would be desirable to get dates of tax abatements and exemptions in order to study the trends.

Assesed Values: There was a brief discussion about the need for this information. Dick pointed out that if we propose down-zoning, it will be important to know the relationship between zoning and av's.

An Economic Profile of Midtown led to a discussion of the need for the Dun & Bradstreet tapes. Jack Toby is to submit a memo explaining the need for them, cost, etc. Dick suggested that Jack Toby and Richard Satkin get together with him to discuss what information is available.

GENERAL PLANNING INFORMATION

User Trends is one of the most important tasks; it is essential that we have the information as soon as possible.

Traffic & Parking Trends: Bob said that a big study has just been completed. Dick pointed out that this could be used as the basis for the paper.

Environmental Issues led to the suggestion that a consultant be retained to write a paper providing the latest information on the energy situation; speculation about future trends could then be based on authoritative facts. Since the energy problem is not likely to change our final recommendations, Dick said that we could probably make do with existing information.

As the meeting drew to a close, the following points were made:

Norman and Julie were asked to do a separate paper on enforcement as soon as they can. Dick needs it for material he is preparing for foundations.

We might need a consulting engineer to consider energy problems and how they affect design. Also, for example, whether the space allowed for mechanicals is excessive.

By the end of the week or early next week, Barbara should be informed 1) what additional jobs should be done, and 2) after review of tasks to be done, an estimate of when the work will be finished. Some jobs can be done quickly, others will take longer. Everything must be done by the end of August.

Dick will pull together the issue papers and circulate them.

C 11-011

TO: Midtown Development Task Force
FROM: Richard K. Bernstein
RE: Zoning Issues for discussion at July 24th meeting
DATE: July 23, 1979

1. Tomorrow's Task Force meeting will be devoted primarily to discussing three closely related zoning problems:
 - Small sites
 - Midblock development
 - Zoning lot mergers

Why do these now loom as key Midtown zoning problems and what new approaches should we be thinking of to deal with them?
2. Enclosed are pertinent memoranda from Ken Halpern/Lauren Otis; Julie Spector; and Norman Marcus/Pares Bhattacharji.
3. Also enclosed is a copy of the statement the Chairman gave at Borough President Stein's Midtown Zoning Hearing on July 17, 1979.

MEMORANDUM

TO: Richard Bernstein
FROM: Ken Halpern
Lauren Otis

Zoning Issues:

1. Limited building sites
2. Existing sites have unique problems/opportunity.
3. Small site size problem
4. Avenue full-frontage sites.
5. Zoning Lot mergers
6. Bulk and Height & Setback
7. Coverage
8. Midblock Zoning
9. Ground level use. Mandatory ground level use such as retail use
Group F in 5th Avenue Special District

Related Development Issues

1. Limited number of available building sites. Most sites have been known for five years or more.
2. Almost all available assemblages have unique physical limitations or problems.
3. Present zoning is heavily biased against small site construction. Most available sites are small sites. In the past these go to the Board of Standards and Appeals.

Development

1. Market forces focus development on the Eastside "Gold Coast". The only place to obtain financing and lease space.
2. Cost of construction and administrative costs are the highest in the United States for new development. This creates tremendous pressure to maximize the site's zoning potential.
3. National Corporations want certain minimum floor sizes, total areas and projected needs for future expansion.
4. Avenue full frontage building sites are most attractive for development but there are few such sites available. This has led to increased real estate activity and public controversy associated with midblock developments.
5. Zoning lot mergers have severely aggravated the public perception of building bulk and height in Midtown (i.e. Fisher Bldg. (with CBS Bldg. and Raquet Club) Trump Bldg. (Tiffany Bldg.)).
6. Individual controls on bulk and height are presently neither realistic, practical or enforceable. A number of projects have recently maximized all three.

7. More emphasis should be placed on coverage as a means of lowering building heights and perceived bulk while providing viable buildings on small sites.
8. Practical method of controlling midblock commercial development is critical. Proposed building between Lexington and Park is indication of the problem.

Service Delivery in Midtown

Major new buildings have a much greater impact on the transportation system than on fire, police and sanitation. Most corporate buildings provide very sophisticated internal security systems, waste is removed by private carting and the buildings meet the rigorous criteria of Local Law 5. Many new buildings have provided truck service elevator systems with basement service which minimizes impact on the street level.

NOTE: NO MENTION



City of New York

Department of City Planning

2 Lafayette Street, New York, N.Y. 10007, Telephone: 566-8483, Room 1513

OFFICE OF TECHNICAL OPERATIONS

Julius Spector, P.E., *Director*

6 July 1979

MEMORANDUM

=====

FOR: Richard K. Bernstein

FROM: J. Spector *JS*

SUBJ: MIDTOWN ZONING PROBLEMS

=====

The basic problem is the diminution of the number and size of buildable sites in East Midtown while the size of the typical office tower floor remains constant. This has resulted in towers of excessive coverage located much closer to the street than envisioned by the 1961 zoning. Relating tower coverage to building volume or height may provide some relief of this problem.

If a building quality point system is seriously being considered, the following factors should be weighted heavily in addition to tower coverage and volume:

- 1) Energy conservation by placing greater emphasis on unenclosed bonusable pedestrian amenities. Developer should also be encouraged to follow Federal energy standards.
- 2) Environmental factors that minimize and reduce air and noise pollution by requiring buildings to be set back from avenue frontage street lines (i.e. Avenue of the Americas).
- 3) Vehicular circulation. Subsurface loading for truck servicing and garbage removal as well as taxi drop-off and pull-thrus (porte cocheres) are important factors in relieving traffic congestion.

CITY PLANNING COMMISSION

Chairman: ROBERT F. WAGNER, Jr. / *Vice Chairman:* MARTIN GALLEN

Commissioners: ALEXANDER COOPER / SYLVIA DEUTSCH / JOHN P. GULINO / HOWARD B. HORNSTEIN / THEODORE E. TEAH

Executive Director: CHARLES M. SMITH, Jr.

Richard K. Bernstein

6 July 1979

page . . . 2.

Retail continuity, cornice lines and street walls should be required only as a part of a special purpose district, and even there, its impact on the factors noted above should be evaluated.

The special purpose theatre district should be reviewed to evaluate its impact on existing free standing theatres.



City of New York

Department of City Planning

2 Lafayette Street, New York, N.Y. 10007 Telephone: 566-8569

OFFICE OF COUNSEL
Norman Marcus, Counsel

June 27, 1979

M E M O R A N D U M

TO: Richard K. Bernstein
FROM: Norman Marcus, Pares C. Bhattacharji
RE: Key Midtown Zoning Issues and a Tentative
Approach for Resolving Them

The public's perception is that the Commission engages in ad-hoc negotiation on each and every application for zoning relief. Essential to any recommendation emerging from the Midtown Zoning Study is a comprehensive review framework which applies to all discretionary approvals for development in the Midtown area and provides both flexible and mandatory performance standards -- all formulated with reference to a comprehensive land use plan for the Midtown area.

I feel that a Quality Development System (QDS) approval mirroring the conceptual, but not the precise components of the housing quality program is a promising approach to Midtown zoning reform.

The Urban Design Group has already done work suggesting several key areas to be covered by such a system. Minimum performance standards in each scoring area would be required. Housing quality development has four such categories; commercial Midtown development may have other categories which could include:

1. Neighborhood physical character (e.g. street wall, including volume perception),
2. Pedestrian amenity,

CITY PLANNING COMMISSION

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Executive Director: CHARLES M. SMITH, Jr.

3. Light and air to streets and/or surrounding development,
4. Functional neighborhood character (e.g. depending on location, presence of major retail, ground floor retail, theatre district support),
5. Transit access (e.g. subway station access or improvement).

A point system of such or similar comprehensive character would assure satisfactory attention to concerns posed by new development while allowing flexibility above minimum performance standard levels depending upon the needs of the developer and his own preferences. All discretionary relief sought in zoning applications, such as tower coverage relaxation, height and setback modifications, discretionary FAR bonus features, --- would all depend upon QDS scoring requiring minimum satisfaction in each of the categories as well as those additional special amenities and/or features which add up to a required minimum point score.

Issues such as "mid-block" bulk will be addressed in such a system via neighborhood physical character criteria and/or underlying mapping and/or special districting.

Zoning lot merger problems would be controlled through the scoring system which will not reward bulk concentrations in the wrong location.

Crucial to the success of this comprehensive Midtown zoning reform program would be the elimination of all alternate means of zoning relief in the tower coverage, height and setback and discretionary FAR bonus areas. I realized that the Board of Standards and Appeals remains an exception to this system. In light with our current procedures, however, exhaustion of special permit relief through ULURP and/or the City Planning Commission authorization route, would have to precede any application to the Board of Standards and Appeals.

I do not believe it necessary to roll back Midtown FARs except on a highly-selective, map-oriented basis. The issue is not density per se; rather the issue is the deployment of bulk and density on the zoning lot.

Landmark transfer of development rights being a discretionary approval, would equally be subject to a satisfactory point score in the QDS. Thus, the Grand Central - Philip Morris transaction where Philip Morris obtained a 21.6 building would be approved only if it satisfied the discrete criteria set forth in the ordinance (e.g. neighborhood physical character, pedestrian amenity, etc.) The major difference from the present set-up is that the criteria will be spelled out, the scoring values will be pre-determined and the vacuum of standards on which ad-hockery thrives -- will be filled.

Whether QDS should be implemented through a special permit process or an authorization process will be a political decision. I do not believe that we are justified in entrusting such a sophisticated system to the Buildings Department for enforcement on an as-of-right basis. The responsible development community should be receptive enough to our enunciation of predictable standards and criteria without achieving as-of-right status. To a great extent, these standards and criteria will limit our untrammelled exercise of discretion.

An as-of-right approach to QDS would cause problems regarding the maintenance of our basic as-of-right controls such as 40% tower, etc. Always remember that our handle on new development is ultimately based on their requested departure from as-of-right controls. When this privilege becomes a right, government control disappears.

UAKOV

Meeting with Council of Presidents

Present: Jonathan Barnett, Architectural League; Jeanette Bamford, Parks Council; Paul Byard, MAS; William Conklin, AIA; Susan Jones, Landmarks Conservancy; George Lewis, AIA; Marita O'Hare, Architectural League; Sheldon Pollack, RPA; Nicholas Quennel, ASLA; Dick Bernstein, Marty Gallent and Barbara Reach.

July 23, 1979

After Dick's presentation there was a long discussion about the Pahlevi building and the Parc Vendome plaza. It was said that the Pahlevi amendment is fundamental to the Fifth Avenue District.

The Park Vendome raises the question of giving a bonus where it is not desirable and whether, allowing the owner to use the plaza for stores sets a precedent.

Display space will be available at the Urban Center which should be used to illustrate aspects of the Midtown Study as it progresses.

A "mechanism" should be set up for regular meetings between the Study and the Council.

A moratorium should be declared by the Chairman on all special amendments. He should say that he is instituting the moratorium while awaiting the findings and recommendations of the Study. This would give the Study added credibility.

Jon Barnett said that if after a prototype is negotiated in a Special District, the previous negotiations ought to be codified so they don't have to be done over again.

The history of special funds was reviewed starting with Greenwich Street, the upper Fifth Avenue Park Fund and funds for on-site improvement. Their desirability in all but the first case was questioned.

The Council members agreed to write a letter to the Chairman urging a moratorium and opposing any zoning legislation 'till after the Study is complete. A letter will also be written indicating the Council's support of the Study.

7/26/79

MIDTOWN DEVELOPMENT STUDY--TASK FORCE MEETING
JULY 31, 1979

PRESENT: Richard Bernstein, Pares Bhattacharji, Gerrard George, Kenneth Halpern, Robert Jacobson, Tony Levy, Norman Marcus, Lauren Otis, Michael Parley, Barbara Reach, Richard Satkin, Charles Smith, Julius Spector and David Vandor.

Stein Hearing: Dick reported that the Hearing was well attended with many prominent speakers. Two major impressions: even the real estate and development speakers conceded that there is a problem with respect to potential mid-block development. Stein, by his questions, suggested several times that Midtown office development should be deflected to Lower Manhattan. The Manhattan office is preparing a report of the Hearing.

Residential Construction: Midtown development is clearly related to general Manhattan development south of 96th Street. There are links between the construction of office buildings and high-rise, unassisted new housing. There are links between the Manhattan market for new "luxury" housing and conversions. While we must be cautious and prefer not to extend the focus of the study, we ought to know if there are other areas outside of Midtown (i.e., lower Sixth Avenue) they may be suitable for rezoning to R-10. If so, such re-zoning may not only be beneficial to the City's economy, but may help balance any constraints we recommend in the Midtown office core area. Likewise it might relieve pressure on the upper East Side. There is general agreement that protection of this area is an appropriate planning objective, although the best means for accomplishing this (i.e., historic district, down zoning, or some combination) has not yet been determined. Accordingly the Manhattan office was asked to do a study of areas suitable for R-10 re-zoning. Gerry said they would intensify the work they were already doing along these lines.

Small Sites; Mid-block development: The accepted view is that there are few remaining developable sites in midtown, that they are small, and generally each has unique problems.

Lauren reported that in checking on buildings completed from 1970 to the present, more small as-of-right buildings have been found than anticipated. Special permits and waivers were largely associated with larger sites. More analysis is needed to verify and determine the reason for this.

A map was displayed showing assemblages of 20,000 square feet or more on avenue frontage as of June '78. The map also illustrated sites under construction; known assemblages, known weak spots and zoning lot mergers. With the exception of the Fisher and Trump mergers, there have not been a surprising number of new sites; the vast majority of construction is on sites we have been aware of for the past 5 years. It was pointed out that the Fisher merger has resulted in a building considerably over 21.6 in its "footprint". Most of the larger buildings under construction are corporate buildings.

Zoning Lot Mergers: The pros and cons of zoning lot mergers were discussed. The view was expressed that as a technique for assemblage, mergers should not be discouraged, that there should be development controls. It was also said that so long as we permit mergers, developers will assume that the Commission is predisposed toward a certain kind of building and developers will expect to get height and setback waivers. The findings could be tightened but this is difficult with special permits. We have controls now but don't use them adequately. Our study will show where waivers have been used.

Next Meeting: Dick asked everyone to be prepared to recommend approaches to conservation/preservation issues. How do we avoid doing violence to what now exists that is good? What limitations, if any, do we want to propose?

Meeting with Donald Elliott

August 2, 1979

Present: Don, Dick and Barbara

There was a general discussion of the issues and problems during which Don made the following points:

Midtown Study: Don't make it harder for developers on the Eastside-- rather encourage them to develop on the Westside. The rent differential is substantial; on the Eastside everything can be rented at \$25 all the way up to \$40 a foot. On the Westside, Minskoff has to fight for \$12 a foot.

The study should be described in more positive terms: i.e., trying to make life easier for developers on the Westside. We should not continually talk about stopping building on the Eastside.

Tower Size: We are letting expanded towers slip by; they have tremendous economic implications; as much as several million dollars. They are much more important than FAR. Developers expect a waiver of height and setback regulations. Fisher Brothers received a 55% tower. It isn't necessary to stay rigidly within 40% but we should bear in mind that the tower size is a major variant.

Environment: We should try to change the area; help people who are doing what we would like to see happen. For example, it is said that Zeckendorf is going to reopen the Royal Manhattan--he should get all the help we can give him to make sure it happens.

CUNY did a study for Ford, BRIGHT LIGHTS, by David Kornblume that we should get.

Carl Weisbrod is doing a great job but real change will only come to Times Square when desirable new uses move in.

Special Districts: The net result of the special districts has been good.

Theater District: The added incentive to get theaters is a good one. Since theaters are uneconomic, incentive is needed if we are to have any new ones. Most existing theaters are obsolete backstage; they're too small and they are not airconditioned. They will only be saved in the long run if they are designated as landmarks.

EIS: The clean air rules are terribly expensive and nobody knows what is wanted.

Problems: It's hard to know whether the City wants a development; nobody is sure where to go--City Planning, Solomon or Trimble.

Development in mid-block is not a problem; tall buildings in the C.B.D. are all right.

Tax Abatement: It's not needed on the Eastside and developers do not expect it to last. It might be retained on the westside as an inducement.

Future Trends: R-10 construction will probably not pick up. There will be a great deal more conversion of offices and lofts to multiple dwellings. Office construction will probably continue for a couple of years because there are some buildings in planning. Principal activity will be converting old buildings because cost of new construction is enormous.

MIDTOWN DEVELOPMENT STUDY -- TASK FORCE MEETING
August 7, 1979

Present: Richard Bernstein, Pares Bhattacharji, Gerard George, Bob Gochfeld, Jolie Hammer, Robert Jacobson, Norman Marcus, Lauren Otis, Michael Parley, Barbara Reach, Inderjit Singh, Julius Spector, Jack Toby, David Vandor and Howard Weiss.

Status Report

Greg Farrell of the Fund for the City of New York was encouraging, our chances of getting start-up money look promising.

Meetings have been held with the President's Council (the presidents and executive directors of the Municipal Art Society, AIA, Landmarks Conservancy, Parks Council and RPA) and subsequently with Margot Wellington of the Municipal Art Society. We also have met with Carl Moss of Diesel Construction, Dick Ravitch, Sandy Lindenbaum, Ms. Battaglia of Board #6, Don Elliott, Fred Rose, Edward Larabee Barnes, Don Davies of Prudential and David Baldwin of Noyes and an associate of Helmsley.

In general, there is agreement on the following points:

- Bulk The principal problem is bulk (the shape of the building), not density.
- Bonuses have been given for amenities that are not real amenities; the City has been cheated. There is inadequate awareness of our analysis and of the work done here.
- Moving Development West is a good idea but question has been raised as to whether we can provide sufficient incentive. It is very difficult to develop on the Westside and the Goodman Dearie bill adds to the difficulty.

- Urban Renewal Area The possibility of declaring part of the Westside area as an unassisted urban renewal area was raised. Ford's proposal for Seventh to Eight on 42nd Street and the proposal from Sixth to Seventh from 42nd Street to 47th Street are both based on urban renewal. The suggestion will be explored further. (see below.)

Preservation/Conservation: There are areas to be preserved, e.g. restaurant row. Fifth Avenue requires conservation so that what is done is consistent with what is there now. If an important corporate developer appeared, the City would not turn him down; we must try to develop controls but still provide enough leeway for some development.

Review Process: Architects and even developers have respect for the professional review in this office. They are concerned about ULURP and other aspects of the process but have found the review helpful. It is something in which the Department should take pride.

Promotion of Development: The Manhattan office is doing a study of areas where development should be encouraged.

Tax Abatement: Jack Toby was asked to give priority to doing a preliminary analysis of buildings where tax abatement and exemption has been given. Perhaps the figures should also be accompanied by a map.

Transportation: A good memorandum has been received.

Computer Print-Out: Mike Levine reviewed the print-out with Julie and Norman. It shows text changes of CBD; Special Permits from CPC and Bd. of S & A, and variances up to the end of 1977. It is good but should be brought up-to-date.

Enforcement: Norman has given material to Dick.

Consultants: Alex Cooper can be most helpful in looking at bulk. Michael has been preparing a description of the work to be done. It is important to publicize what has already been done by the Department.

Holly Whyte will be asked to determine which bonuses have and which have not worked--he'll be the "official jury."

Urban Renewal: Land write-down is a possibility; there can be covenants that go with the land controlling bulk. We should make certain that urban renewal does not, however, result in a windfall to the seller. Counsel's office will analyze the pros and cons of urban renewal. Marcy is exploring areas suitable for designation.

Recommendations: Recommendations on bulk will be considered along with controls, both new and old, including enforcement, zoning map changes and special districts, especially the theatre district.

Theatre District: A means of preserving some of the old theatres will be sought. Some are now designated as landmarks. The Conservancy may do a study of theatres and other buildings of quality in the area; funding is being sought.

Midtown Use Areas: Lauren displayed a map that had special use areas outlined in various colors. He pointed out the unique concentration of hotel rooms that serve conventions and tourists. Other special areas include theaters; jewelry; and Rockefeller Center. Also streets with special uses such as 46th Street with restaurants and retail Brazilian uses; 45th Street with electronic supplies. Forty-second to 45th Street has a concentration of clubs and institutions. North of Rockefeller Center, on 53rd Street from Madison Avenue to Sixth Avenue, we

4

have exceptionally high pedestrian use and a number of museums. It is over the IND station. Madison to Park includes Parley Park and a thru block connection.

Fifty-fourth Street marks a major change to high quality residential use. It is zoned 10 Commercial and is very attractive for redevelopment; a definite interest has been shown in this street. Fifty-sixth Street is restaurant row. Fifth to Madison could be very attractive and should be treated specially.

Fifty-fifth Street from Park to Lexington is the most attractive block between Park and Lexington in the area, however, a variance has been granted by the Board of S & A for a new building. Turtle Bay and Amster Yard both have specially attractive Townhouses. A serious problem will be created for Amster Yard by 805 Third Avenue which requested height and setback waivers.

There are important values in residential areas on the fringe of the CBD. On 62nd Street, from 5th to 1st, there are high quality, low-scale houses. When the new subway station opens on 63rd Street between 3rd and Lexington, there will be a great increase in pedestrian traffic which will change the character of the area.

Sixtieth Street is extremely attractive; it is zoned R-8 and has small specialty stores and boutiques on the street floor.

Fifth Avenue and 57th Street has a number of different characteristics. From Lexington to somewhat West of Fifth, there are luxury foreign boutiques. These extend around Fifth Avenue south almost to Rockefeller Center and Saks. South of Saks there is a mixture of banks, and airlines offices. There has been tremendous pressure to open Fifth Avenue to banks. Some of the airline offices have become weak and closed but none of the banks has closed. Herald Square and

Fifth are entirely different, they are shopping precincts with attractive department stores i.e., Altman's and Lord & Taylor, and many secondary uses. Farther west, Macy's has been greatly up-graded.

Thirty-fourth Street is not strong. There are many different frictional uses that create problems and conflict from the retail view. Better retail businesses would be better for Lord & Taylor.

On Madison Avenue there is a major break from 56th Street to 60th or 61st. This area is beginning to get unique luxury retail shops.

Fifty-seventh Street, as it heads west between Sixth and Seventh Avenues, is the location of all the major piano showrooms and for sales of other musical instruments. Galleries are also located on upper floors along 57th Street and many artists live there. Fifty-seventh and Lexington is deteriorating and has some soft spots. There is no new development East of Lexington.

Dick said that the analysis was extremely valuable and that it would help us to select those areas that we want to retain and areas where we have to allow for change. We must make our analysis vivid enough so that the public will understand it.

MIDTOWN DEVELOPMENT STUDY--TASK FORCE MEETING
August 21, 1979

PRESENT: Dick Bernstein, Moira Casey, Alex Garvin, Bob Gochfeld, Ken Halpern, Jolie Hammer, Norman Marcus, Raquel Ramati, Barbara Reach, Inderjit Singh, Charles Smith, Julie Spector, Jack Toby, Dave Vandor, Howard Weiss and, later, Chairman Wagner.

A draft outline of the Midtown Development Study Report Outline, Work Assignments for Final Report, and Recap of Work Assignments - 8/21/79 were distributed. One-third of our time has already passed so Dick asked that recommendations be drafted by members of the Task Force. In order to provide extra time, the meeting scheduled for September 4th has been cancelled. If anyone has questions about the assignment or the outline, Dick must be informed in writing within a week, otherwise it is assumed that the work is underway.

ICIB

Jack Toby distributed a list of projects that have received tax exemption from ICIB. The exemption is as follows: 95% exemption declining by 5% annually for 19 years on industrial, new and reconstruction, and on commercial reconstruction; 50% exemption declining by 5% annually for 19 years on commercial new.

The industrial exemption is "as-of-right"; for a commercial building, the ICIB must find that the building will be a public benefit and that the construction is unlikely to occur without the tax benefit.

The Board has recently been discussing whether tax benefits were necessary in various office buildings and hotels and new criteria are being developed.

Headquarters office buildings will get priority, taking into account the area in which they will be located the Board has become stricter; recently it turned down a number of office buildings and a hotel.

Developers of one office building that was rejected came back and agreed to a ceiling on rents in exchange for the tax exemption.

Dick questioned whether the policy of keeping rents down helps to achieve what we want; is it a factor in the design of the building? We will have to assess as realistically as possible in where we want development to take place. Barkan will have to tell us how it affects rents and profits.

A large office building at 466 Lexington was rejected by the ICIB and the application was revised for a portion of the building; the Board approved it because it was for a corporation that serves a national market.

The Board cannot alter the benefits. The application must be rejected or the developer must agree to modify it.

A recent change in legislation will create a new schedule of benefits: Commercial new--50% for 5 years; Commercial reconstruction--50% for 10 years.

The Board can determine the criteria including specific geographic criteria. Dick said that developers that he has consulted are in agreement that tax exemptions should not be given in the heart of midtown.

ICIB is giving exemptions on buildings that are not "as-of-right" and need subsequent action by the Planning Commission, the Board of Estimate or the Board of Standards & Appeals. This prejudices the buildings and raises serious question.

Recent projects should be checked against the ICIB list in order to ascertain what buildings have gone ahead without exemption.

Dick said the discussion illustrates the importance of tax policy. The ICIB program was developed in the worst construction depression in our history but that period has passed. Now the question is what the best, most effective policy for midtown. Also, how we get incentives where we want development; there is no longer any reason for incentives on the east side. Tax exemption is a more important incentive than zoning. On the westside land is cheaper but the costs of construction is the same; the principal help we can give is exemption. The important questions are what the City is giving up in dollars and what investment is being made in dollars. The figures re jobs are soft; we must see hard figures on investment. Whether tax abatement ever created anything has been questioned; it may increase the pace and this can be important. What is its applicability to midtown development?

At the next meeting we will discuss the specific areas where we want to push development and what areas we want to preserve. In development areas tax exemption will be most helpful but in preservation and conservation areas, zoning will have more impact.

Barkan will be asked to look at the figures with respect to the rent differential that is necessary on the westside in order to make offices marketable.

Dick said we need to know more about all the tax abatement and exemption programs, J51, 421 and the special exemption for the Commodore, etc.

The Chairman joined the meeting and spoke of the importance of the study and the need to finish it as soon as possible. He asked how he might help. Dick

pointed out that the Planning Commission cannot make City policy on tax abatement; that it is important to start talking about this with others who are concerned.

The Chairman asked whether we were looking into assessment policy. It was agreed that this is an important area and one that will be explored. Generally, it is viewed only from a revenue raising perspective but the Seagram case illustrates its importance to urban development.

Meeting with Raquel Ramati, Michael Parley, Lauren Otis, Patrick ?
Dick Bernstein and Barbara Reach

~~U. T. K. D. T. X~~
file

September 11, 1979

Raquel said she started work over a year ago on amenities but shifted to work on Fifth Avenue; now she will shift back but would appreciate it if you don't shift priorities again. She cannot work with Midtown because the two offices are not physically together. The only way it can be done is if each office does some work and then gives it to the other one for comment. Dick said that perhaps she had misunderstood but there had not been any change in priorities. He had wanted the UDG to work with Midtown since they are the two groups that know about the area and initial recommendations should come from them. Dick said that he had tried to spell out 3 different kinds of areas. He said that UDG should delineate the three areas. Dick emphasized that he never contemplated disregarding work already done by UDG.

Fifth Avenue should be a conservation area, not preservation; we are not trying to freeze development but rather to control it. Raquel said we should preserve restaurant row, theaters and noteworthy buildings. Fifth Avenue and 57th Street should be maintained in scale.

Lauren said that only landmarks can be preserved; we don't have the tools for preservation elsewhere.

Down-zoning is a possibility. Other possible requirements include physical standards (such as masonry), length of lease, or an architectural review board that would approve store fronts.

Dick asked Raquel to identify how she would like to see areas preserved or changed--down-zoning is possible and so is an architectural review board.

Dick asked Raquel to make sure that everything relevant in her files is given to Lauren. He asked Lauren to map it within two weeks.

With respect to zoning incentives, Dick asked Raquel to take all the work she has done another step--what are the bonusable amenities? Are they worthwhile? Raquel said that they had already made a recommendation on this.

Dick said we need a specific recommendation on what should be done and where. There is general agreement that we need a targeting system. He asked whether priorities have been developed. Raquel said that she is not sure; that it's not easy. She said she favors taking out covered pedestrian space except for very large sites.

Raquel said that because of staff shortages she could not be ready next week with recommendations.

By October 1st, Dick said, we are committed to presenting our general thinking to interested groups. Recommendations from UDG and Midtown should be as unified as possible. He asked Raquel to pull together what has already been done.

Dick said he would like to have a meeting within two weeks with the consultants. There was some discussion regarding precisely what Holly Whyte is expected to do. Raquel said we should give him some questions so we can get some answers. Dick asked her to put on paper in general terms what she would like Holly Whyte to do. Raquel said she would do it after next week. Dick asked her for a summary after Tuesday's meeting of what Holly Whyte should be doing.

Alex Cooper will be asked to make suggestions for modified bulk controls. Dick said he wants to arrange a meeting with Alex, Raquel, Julie and Lauren. Raquel asked that it be postponed for 2 weeks but Dick said that we want him

to do this work by the end of the year and we cannot delay the meeting. But it is important that Raquel, Lauren and Julie attend.

Dick said that Barkan has started work and he asked Raquel to let him know what she would like him to look into. Raquel said she wanted to know the economics of Fifth Avenue construction if it were zoned 15 or 18. If Fifth Avenue is over-zoned what should it be?

Dick said we need to know whether our objectives are the same--do we want to encourage combined development?

Cooper will be looking into the disposition of buildings on their site. This includes the true bulk of the foot print. Raquel Ramati said she had already done this.

Kuo Ming is the name of the CETA employee who transferred to Parks.

PRESENT: Dick Bernstein, Pares Bhattacharji, Alex Garvin, Robert Jacobson, Jolie Hammer, Tony Levy, Norman Marcus, Raquel Ramati, Barbara Reach, Richard Satkin, Charles Smith, Julius Spector, Patrick Too and David Vandor and Lauren Otis.

Studies of Foundations Grants

The Fund for the City of New York has given us a commitment for \$10,000 in start-up funds which has enabled us to authorize Barkan to start. Based on several meetings--the latest last week with some senior foundation people--we are revising our request to reflect a two-stage budget and anticipate a favorable and early response to the first stage. The revised requests will be sent out this week. The Task Force will get copies. The foundations we have consulted have made clear that keeping to our schedule is critical. They are more concerned about the urgency of developing a set of recommendations that hold together along the lines we have indicated and putting them in place than they are about a slick report. This will put more pressure on us.

Meetings

Housing areas: Dick wants an early meeting to evaluate areas for unassisted housing listed in Gerry and David's September 7th memo. Jolie should attend.

Tax incentives: Dick want Alex as soon as possible to fill in material requested.

Consultants: Next week, if possible, with Lauren, Raquel, Julie and Norman to coordinate consultant work. Also separate meeting before or after of Barkan with Norman and Tony re Midtown parking.

General: It may be necessary to schedule special meetings of the Task Force in October to permit adequate discussion of the preliminary recommendations after they have been presented.

presentations

Lauren presented the preliminary recommendations of OMPD on development strategy. Four general types of areas were proposed:

- 1) office development
- 2) housing and mixed development .
- 3) conservation
- 4) preservation.

Discussion brought out the importance of making a clear distinction between the areas outside the core where we wanted to encourage development (e.g. Times Square, Penn Station vicinity) and those within the core where we thought it likely to occur (e.g. Lexington Avenue in vicinity of Grand Central Station) and where we needed to make a special effort to mitigate its impact. This discussion also brought out the need to better define and differentiate between conservation and preservation areas. Lauren will distribute a memo with maps by the end of the week.

Raquel and Michael presented the preliminary recommendations of the UDG re the amenity needs and requirements for a revised incentive zoning system. Although, as they emphasized, this was still work in being, it reflected some very substantial and creative progress in advancing the work they had presented at an earlier task force meeting. A memo setting forth this work in more detail was distributed.

Task Force members were requested to review both memos and give their comments to Lauren and Raquel as soon as possible. If written, send Dick a copy.

MIDTOWN DEVELOPMENT STUDY--TASK FORCE MEETING
October 2, 1979

PRESENT: --Richard Bernstein, Pares Bhattacharji, Gerard George, Leonard King, Tony Levy, Lois Mazzitell, Merry Neiser, Lauren Otis, Michael Parley, Raquel Ramati, Barbara Reach, Richard Satkin, Julius Spector, David Vandor, Kanubhai Vyas and John West.

Broadway Area: John West said that a study prepared a year ago in cooperation with Carl Weisbrod and Fred Pappert demonstrated that office buildings spread west and south for some years but that the movement stopped in 1963. He said that three areas need attention:

1. The image of the center -- This will be improved by the plaza and the Portman Hotel and operation "sweep-up". Construction on the Broadway Plaza is expected to begin early next year. A special assessment district is being discussed with business owners in the area who want to be sure that the plaza will be well controlled. State enabling legislation providing for assessment districts has been passed; David Ford can give us further information.

2. Forty-Second Street, between Seventh and Eighth Avenues, --Carl Weisbrod is working on this and has closed a number of undesirable uses.

3. The "dirty dozen", a group of run-down buildings along Eighth Avenue --Some have undesirable uses but others simply need to be cleaned. Pappert might take over some of these buildings or serve as a conduit to existing owners. It may also be necessary to increase lighting and make other street improvements. Forty-Sixth Street and Eighth Avenue is especially important because of restaurant row; an effort will be made to tie it more closely to Broadway.

Theatre District:

There are two types of buildings in the district that need consideration-- theatres and old hotels. Michael Hobbs is working on an EDA funded study to examine what can be done with budget hotels: which are worth saving and which are no longer useful. Millstein is preparing a package to refurbish the Royal Manhattan hotel with help from ICIB or to renovate under J-51. The Knickerbocker, which is City owned, and the 1-2-3 Hotel which is privately owned, may be restored.

A number of legitimate theatres have been converted to movie houses. A survey by the Landmarks Commission found a number of the theatres were of landmark quality. The Landmarks Conservancy has applied for a State grant to do a survey of theaters in The Times Square area, however, it will be completed too late to be useful to us.

There are three possible office buildings sites on Sixth Avenue between 44th and 45th Streets. The Belasco, on 44th East of Broadway, may be part of one of the sites. It is anticipated that there will be hotels and theaters in mid-block and development will be on the avenue. Durst is holding several assembled sites but there are so few buildings because the character of the area makes it difficult to get tenants and financing.

The Theatre District does not provide much of an incentive to build theatres.

They are a valuable resource; they are not obsolete and at present there is a shortage. If development pushes west, they will again be vulnerable, especially since they are in single ownership. We have three potential ways to protect them: downzoning, transfer of development rights, and landmarking.

It was suggested that developers of office buildings might be required to improve and maintain old theaters as an amenity.

Dick said that at the next meeting recommendations for housing outside of the midtown core and preliminary recommendations for remapping will be considered. On the 30th, there will be a review of tax incentives and capital investment strategy. A decision must be made as to whether urban renewal will be used and, if so, under what ground rules.

Fifth Avenue: The Urban Design Group has been analyzing Fifth Avenue and has concluded that the District is not working well because it encourages development. It is recommended that the Avenue be 15 FAR with mandatory retail and probably/mandatory material. Amenities should be eliminated and we should look carefully at setback regulations. Barkan should check the economics but the goal is to discourage development.

If 15 FAR is not acceptable, we should rezone to 18 FAR. The recommendation should be related to Alex Cooper's recommendations for bulk controls. Questions were raised about zoning lot mergers and the number of development sites. The UDG will set forth its findings and recommendations in a memorandum and will develop further details after a presentation has been made to the Chairman. UDG will also recommend to the Chairman that action be taken now, without waiting for the entire program.

The possibility of some type of architectural control board or quality review board was also suggested. Dick asked that information be gathered about the experience in other cities. In the Atlantic Avenue District the City controls the colors that may be used.

Dick said he was pleased that very specific recommendations had been made. At the next meeting we should have specific recommendations for high density housing outside of midtown. Also, preliminary recommendations for re-mapping.

PRESENT: Richard Bernstein, Alex Garvin, Gerard George, Robert Gochfeld, Jolie Hammer, Robert Jacobson, Tony Levy, Lois Mazzitelli, Merry Neiser, Authur Ong, Lauren Otis, Michael Parley, Barbara Reach, Richard Satkin, Charles Smith, Julie Spector, David Vandor and Kanu Vyas.

Lauren Otis described his preliminary proposals for changes in zoning in four areas:

1. Restaurant row, mid-block between 5th and 6th from 54th Street to 56th or 57th Street.
 2. Mid-block from 43rd Street North to Rockefeller Center.
 3. The theatre district.
 4. Mid-block from Fifth Avenue to Third Avenue, North of 48th Street.
-
1. Restaurant row would be the easiest to rezone. In many ways it is similar to mid-blocks on the upper East side. C-1 with R-8 above was suggested. The intention is to reflect what now exists rather than the present R-10 which would totally change the character of the area. Everyone agreed that the area should be downzoned but R-7 was suggested instead of R-8. The question of zoning to permit a hotel was also raised; Lauren said this would greatly increase traffic and reduce the amenities for pedestrians. It was generally agreed that we want to preserve the area more-or-less as is. Dick asked Lauren to work with Julie on the appropriate zone to reflect existing conditions.
 2. Mid-block, 43rd Street to 47th Street, between 6th and 7th Avenues, is now C5-3 and about 10 FAR. It is a long block with many clubs and if we want to preserve it, the zoning should be brought down. We will be more restrictive but we do not want to affect the jewelry district. There are at present several development sites on the West side of Sixth Avenue which would not be affected by the proposed change.
 3. The theatre district was reviewed in detail at the last meeting. In order to protect existing theaters, we will probably need to change the present zoning. Any proposed change must be based on protecting theaters and balancing this with some new development.
 4. Mid-block, Fifth to Third Avenues, north of 48th Street, is the most difficult area to rezone. The blocks are short, only 420 feet, and are now zoned C5-3. Unfortunately the area is no longer consistently attractive and it may be too late to save the architectural scale and the current uses.

Mid-Block Policy: Lauren said that it was his intention to develop a consistent policy for the mid-blocks in midtown and his proposals were drawn with that goal. It was pointed out that if we are going to downzone in mid-block, we might have to revise our basic tower regulations in order to facilitate development on the avenues.

* * * * *

Rezoning for Housing: Gerry George reviewed areas suitable for unassisted housing-- see attached memorandum.

In addition to the sites mentioned in the memorandum, the 42nd and 57th Street corridors were suggested. It was said that the community would welcome a study of these corridors and would be inclined to support development provided it was contingent on preserving the remainder of the district.

Lauren pointed out that there are vacant sites on Eighth Avenue in the upper 50's. They are now zoned C6-4.

Dick asked what the opportunities are for rezoning for residential use. The 42nd and 57th Street corridors seem to offer the best opportunity and the site of the old Garden is a major opportunity. Eighth Avenue is appropriate for maximum development and the Clinton community would like it. To provide additional opportunities would help to balance some of the added restrictions that we may propose.

Zoning Room Restrictions: Many developers believe that these restrictions do not make sense in today's market. Their original purpose was to encourage apartments of various size but now the high rents make multiple bedroom apartments hard to rent except to several single persons. Gerry will explore this question further.

Next Meeting will be on Tuesday, October 30th. The agenda will include tax abatement policy, capital investment and service strategies.



City of New York

Department of City Planning

2 Lafayette Street, New York, New York 10007

M E M O R A N D U M

TO: Richard Bernstein
FROM: Gerard George, David Vandor
DATE: September 7, 1979
RE: Areas suitable for unassisted housing

The areas appropriate for unassisted housing fall into a number of categories:

A. Areas currently zoned to permit such development

1. Remaining sites on the east side in Boards # 6 & 8. Here most development would be as of right except for special sites noted below.
2. Lincoln Square area. Development here is controlled by Special District legislation which encourages mixed use development. Development pressures are strong in this area.
3. Broadway and West End Avenue. Currently there are two proposals, at 81st and West End, and 96th and Broadway. Community Board would like a special zoning district for these streets.
4. Battery Park
5. Manhattan Landing
6. Conversions of office buildings and hotels in Commercial Districts from Lexington to Fifth Avenues in Boards 5 and 6.

B. Areas which require zoning actions or changes:

1. Union Square. Low residential FAR.
2. 60th Street Yards, Zoned manufacturing.

CITY PLANNING COMMISSION

Chairman: ROBERT F. WAGNER, Jr. / Vice Chairmen: MARTIN GALLEN

Commissioners: ALEXANDER COOPER / SYLVIA DEUTSCH / JOHN P. GULINO / HOWARD B. HORNSTEIN / THEODORE E. TEAH

Executive Director: CHARLES M. SMITH, Jr.

3. Sixth Avenue from 23rd to 30th Streets. Zoned manufacturing, flower district.
4. Waterfront area from 17th Street to 25th Street on East River. Zoned manufacturing.
5. East 72nd Street between York and East End Avenue. Zoned manufacturing, custom furniture district.
6. Conversions in West Village. Zoned manufacturing, meat market and trucking uses.
7. Chinatown. Development pressures are strengthening for luxury housing for growing Chinese middle class. R7-2 zoning makes small lot development difficult.
8. Former Convention Center site in Clinton. Pressures are not strong at current time. Manufacturing zoning.

C. Special Sites

1. Coca Cola site. 35th Street at East River. Manufacturing zone.
2. Madison Square Park at 23rd Street. Urban Design considerations are important. An as-of-right building would not be compatible with Flatiron Building, Madison Park and Broadway.
3. Post Office site. 31st and 32nd Streets between Lexington and Third. Post Office is selling site. UDG has devised guidelines that should be followed by purchasers of this full site.

Rezoning Considerations

The factors that should be taken into consideration before rezoning any areas to permit new luxury housing include:

1. Rezoning should not be disruptive to industrial or commercial uses especially uses that are accessory or vital to CBD office, hotel, tourist uses.
2. Consideration should be given to efficient use of existing infrastructure to support new residential uses in terms of:
 - open space
 - shopping
 - schools
3. Newly rezoned areas should be areas which support and extend existing residential neighborhoods.
4. Rezoning should maximize existing open space and waterfront potential and increase the utilization of these.
5. Attention should be paid to the increased land values such rezoning would create and to opportunities for recoupment of benefit to the public in the form of amenities or uses important to the City.



City of New York

Department of City Planning

2 Lafayette Street, New York, N.Y. 10007

October 22, 1979

Mr. John Keith
Regional Plan Association
235 East 45th Street
New York, New York 10017

Dear John:

Sheldon Pollack was good enough to let us have a copy of RPA's unpublished draft report, The Future of Manhattan, on a confidential basis as a follow-up to the meeting Barbara Reach and I had with him, Boris Pushkarev and Jeff Zupan in August.

This report is first rate. It provides an insightful and sensible look into the future against the perspective of an excellent analysis of current conditions and trends -- international, national and regional.

It can be of great usefulness to us in the Midtown Development Project which, as you know, is the top priority special project of the Department of City Planning and which I am directing. It provides a sound and well documented basis for the recommendations we will be making for directing the course of midtown development, and avoids the need for costly and time-consuming duplication of work.

The only problem I have with it is that it is unpublished -- and confidential. I would hope that we could get your permission to borrow from it and quote it at the very least. Better still, I would like to see it published before we complete our recommendations in April. Read in full, it will provide the interested public and the officials who have to act in order to implement our recommendations with this kind of background and perspective to better judge our work.

Congratulations on a job superbly done.

Warmest personal regards.

Sincerely,

Richard K. Bernstein
Special Assistant to the Chairman

CITY PLANNING COMMISSION.

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Community Board #5

Walking Tour w/Mimi Fischbein	Arthur Ong
Hal Negbaur	Barbara Reach
Margaret McClintock	Dick Bernstein

10/17/79

1. W.R. Grace Co. Building

This building received a bonus for a public plaza that is very stark and has little public use. Very limited seating is provided.

2. Exxon/McGraw Hill Midblock Plazas

These plazas are looked on as good examples of bonusable plaza space. They are well used with pleasant amenities such as fountains, seating, tables, food vendors, summer events programming, and abundant greenery. (It is important to note that the Exxon plaza has only been successful following redesign. Previously, it had been a "needle park", a hangout for drug peddlers).

3. Olympic Towers

There were several concerns voiced here.

- a. The building is out of scale with surrounding Fifth Avenue buildings.
- b. The sleek glass facade was "plastic looking" - a marked contrast to surrounding limestone buildings.
- c. A 120,000 square foot bonus was awarded to the building for inclusion of a walk-through indoor retail arcade. The arcade has no retail now with little public use. Hal Negbaur strongly feels that arcades in midtown do not work.

- d. The arcade doesn't conform to the zoning resolution (Special District?) in the first place.
- e. They object to the maximum 21.6 FAR available in the Fifth Avenue Special District; 15 FAR would be fine to them.

4. Solow Building 9 West 57th Street

- a. The Building was given bonuses for an entry plaza that has no seating, public amenities.
- b. They questioned the design of a public plaza tucked away at the side of the building requiring a climb up numerous steps to reach plaza level.

5. Galleria

- 1. Objections to bonuses for a retail, walk-through arcade that presently has no retail.
- 2. Overall design deemed good except for the arcade retailing concept.

Midtown Development Task Force
October 30, 1979

Present: Richard Bernstein, Pares Bhattacharji, Alex Garvin, Gerry George, Bob Jacobson, Rick Kumro, Arthur Ong, Lauren Otis, Michael Parley, Raquel Ramati, Barbara Reach, Richard Satkin, Phil Schneider, Charles Smith, Julie Spector, David Vandor, Kanu Vyas.

Dick said that we have virtually completed our preliminary review. At the next meeting we will review our conclusions to date and our next steps.

In preparation for the meeting on November 13th, Dick said he would like to meet individually with each member of the Task Force within the next week to review the assignments given, see how much more work needs to be done, and when it will be completed. The meeting should take about an hour but Dick said he would be prepared to spend as much time as necessary. Our second round of meetings with community groups, civic organizations, developers, etc., must be started shortly and we are committed to discussing our preliminary findings.

TAX POLICY - Memoranda describing the four tax incentive programs was distributed and the heavy concentration in the core area of individual buildings benefiting from tax abatement or exemption was noted on the map. Excluded from the map were projects in Clinton and East Midtown because they are not within our area of major concern. Alex Garvin described the programs and said that ICIB has been by far the most important in Midtown; 421 and J51 are relatively unimportant. He pointed out, however, that while the number of 421 projects was relatively small, the dollar amount is disproportionately large. And in addition, there may be more J51 projects in the pipe line that we don't yet know about. Dick asked Julie to inquire of Irwin Fruchtman whether there is a record of major conversions underway or authorized.

ICIB: (Industrial, Commercial Incentive Board) has greater impact on Midtown than other programs. Richard Satkin said that industrial projects are as-of-right under certain conditions but the program is discretionary for commercial projects--see attached description of the legislation.

The ICIB Board is chaired by the Deputy Mayor for Economic Development. It is comprised of three additional ex-officio members, the Chairman of the City Planning Commission, the Finance Commissioner and the President of the Borough in which the project under consideration is located, and three public members, Karen Gerard of Chase, John Procope of the Amsterdam News, and James Brigham.

Discussion: Dick said there is wide agreement that tax abatements are an incentive for development and should not be given in areas where we do not want to stimulate construction, and in areas where market forces will take care of development.

A distinction should be made between as-of-right programs and discretionary programs. ICIB is discretionary and can be excluded from Midtown by acceptance of City policy by their Board. Dick said he has already discussed this with

Peter Solomon and his view is basically the same as ours. Precisely how 421 and J51 can be excluded from Midtown is a different question. Alex believes the as-of-right element should be retained; there is agreement that programs can be excluded from certain areas and continue to be as-of-right elsewhere. Changes in State legislation will be required. Various possible techniques for implementing the agreed upon policy were discussed. Excluding certain areas on a geographic basis is one possibility. Alex proposes tying the 421 exemption to the a.v.; Lauren suggested that if mixed use buildings are excluded, we will achieve our purpose. He said that exemptions in the 42nd and 57th Street corridors should be studied as this may affect our development policy. Raquel expressed concern that eliminating 421 from Midtown would accelerate development on the upper East side unless we eliminated 421 from there also; is this a likely consequence? If so should we extend our recommendations to the upper East Side?

Even if we should decide that geographic exclusion is the best method, there are various possibilities. Dick said he is inclined to favor authorizing a City agency to exclude certain areas but to require periodic review of the boundaries. Alex cautioned against too frequent reviews because developers need several years lead-time. The question of whether this would require City Council action was also raised.

Many issues remain about how best to carry out our policy but it was generally agreed that when excluding one area from tax benefits we should signal to developers where in Midtown the City prefers development and would be sympathetic to requests for tax benefits.

Next Meeting Tuesday, November 13th at 9:00 a.m.

MIDTOWN TASK FORCE

November 13, 1979

PRESENT: Dick Bernstein, Pares Bhattacharji, Gerry George, Ken Halpern, Bob Jacobson, Tony Levy, Norman Marcus, Arthur Ong, Lauren Otis, Michael Parley, Barbara Reach, Richard Satkin, Phil Schenider, Julie Spector, David Vandor, Kanubhai Vyas.

CURRENT STATUS OF THE PROJECT

Dick said that the April deadline remains unchanged but that we are about one month behind schedule. Based on today's meeting, Dick plans a second round of meetings with the public to start immediately after Thanksgiving. He reminded everyone that specific recommendations must be ready by January.

We are behind schedule on work from consultants. Barkan has been developing the real estate economics but Alex Cooper is just getting ready to start. Whyte will be available next month which will give us ample time; he will work with Raquel and Michael on amenities.

Dick said that he had hoped to do more with respect to what work is still to be done but he asked everyone to make notes themselves with respect to what they must still do. He reported that he had reviewed the preliminary general recommendations with Bob Wagner who was in agreement with them.

We must concentrate on our recommendations; the report will support the recommendations but will be secondary.

The underlying economic assumption is that there will be moderate growth in the midtown function over the next decade or two, although there will be ups and downs. This is based on the assumption that we are over the worst crisis of confidence in the City. There would be a substantial difference only if we anticipated a decline. We are assuming

that there will be a growth in office space, tourism and hotels; general city population may remain level or decline.

Our report must emphasize that what happens in midtown is critical to the entire city, not merely Manhattan.

DEVELOPMENT STRATEGY

There are areas that we want to preserve and some where we want to see development and growth. We have had a semantical problem with those areas in between, where we are not trying to stop all change and development but to keep it in the context of the present development--evolutionary, not revolutionary. Dick suggested that such areas be called "stabil^zation" areas, a term proposed by ~~the~~^a previous zoning study. ?

The various areas were reviewed on the map. Dick asked everyone to reread Lauren's memo carefully and if there is any criticism or disagreement, put it in writing to Lauren with a copy to Dick.

Questions were raised in connection with the 34th Street and 57th Street corridors because of the previous Commission decision on the Sheraton and because of the potential impact of Westway. They will be reviewed.

Because of scheduling conflicts the meeting was adjourned and a special meeting was scheduled for Wednesday, November 13 at 3:30 p.m. in Gerry George's office

MIDTOWN TASK FORCE

November 14, 1979

PRESENT: Bernstein, Bhattacharji, George, Halpern, Levy, Marcus, Ong, Otis, Parley, Reach, Schneider, Smith, Spector, Vandor.

Dick reviewed the purpose and goals of the project. He reminded everyone that we are not doing a zoning study but a development study or project; the maps were also reviewed. During the meeting the following were the major questions and comments that were discussed:

Strategy Areas: We are treating the strategy areas with a broad brush for the time being, indicating on the map only whether the area is for preservation, stabilization, or growth. Question was raised as to whether the maps might give the false impression that we are anti-development. Are we taking away too much? Is this impression created by having one map that combines the three areas? If so, we might do better to have three separate overlays.

Rockefeller Center as shown on our map extends to Sixth Avenue, possibly conflicting with the proposals that would require building over Radio City in order to save it. Dick will discuss with Kent Barwick whether the Landmarks Commission has any plans for Rockefeller Center before making a recommendation. Stabilization will be used to preserve the department stores on Fifth Avenue.

Taxes: We will definitely recommend that no tax benefits be given in the midtown core. It is an important part of the over-riding strategy of trying to shift development West and, to some extent, South. This has been discussed with Bob Wagner and he is in agreement.

We will target incentives by exclusion of Tax benefits. ICIB can be handled by policy. J51 and 421 will require State legislation and, perhaps, local legislation. The exclusion should have built in a periodic review, every 2 to 5 years. There is no reason in today's market to give tax benefits in midtown.

Bulk Controls: One of our goals is to develop bulk controls that will make "as-of-right" a real option for developers. We must also deal with transfer of development rights, zoning lot mergers and coverage.

Design Controls: Should there be bonuses for certain features, or should they be mandated? If the controls are mandated, how are they paid for?

Design controls will be targetted to varying conditions. The UDG has done good work; however, the question of precisely what we want to mandate remains--street lines, retail use, arcades, etc. Mandating or giving an incentive for support access to the subway was discussed and it was agreed that unless we develop a plan jointly with the TA, it will not be feasible. Dick Chudd has suggested that Bob Wagner take this up with the TA. Norman said the "adopt-a-station" approach should not be overlooked; it may not provide new access but it does result in improved stations.

The proposal was made that the best way to insure effective design control in the stabilization area, and particularly in sensitive areas like Fifth Avenue, would be to require individual review for every new building. It was pointed out that the number of new buildings anticipated in this built up part of midtown would be sufficiently small to make this practical from a staffing point of view. However, this clearly would not be consistent with the goal of establishing a feasible "as-of-right" option.

Special Districts: We are principally concerned with only two districts-- Urban Design is working on the Fifth Avenue District and the Midtown Office is working on the Theatre District. The desirability of a Special District around the new Convention Center site will be discussed with Jon Barnett; Charlie will arrange a meeting. It is important to control the uses around the Convention Center in order to protect our investment.

We will review with the Community Boards whether there would be any problem in repealing the old convention and U.N. Special Districts which are no longer applicable.

High Density Housing: The Real Estate Board urges that zoning room regulation be repealed. Developers of luxury housing think the requirements are impractical and suggest instead that there be a maximum FAR of 9 1/2 or 10 and no bonus. There was general approval of the idea of developing a high density luxury housing district along these lines. The questions raised were whether it could be done as part of the Midtown Project and whether it would require additional outside resources.

Gerry George will make a recommendation re zoning room regulations.

Administration & Enforcement: Most developers do not object to working with the professionals in the Department but they complain that they do not know where to go. As a result, they shop around. The report will have to address this problem.

Assessment Policy: Will down-zoning and removal of tax benefits cause owners to appeal for a reduction in their assessments? Norman suggested that Barkan be asked the effect of the proposal on the tax base.

Capital Investment Strategy: We must signal the City Administration's urban renewal policy for Midtown. It is important to the development community and will affect land values to know if the City will consider urban renewal projects with property acquisition under eminent domain in the midtown area; and, if so, where and under what circumstances.

Two specific proposals have been made for this area: the City at 42nd Street and the DeMattis proposal. There are also 3 or 4 separate proposals for a fashion mart in the midtown area.

Transportation: We are concerned about the LIRR connection, station improvements, and maximum transit to the Convention Center.

City Services: We should reinforce the Midtown Enforcement Project. It was suggested that we check as to when funding for the project will end.

A special assessment district for sanitation has been proposed. Only if the owners of surroundings buildings help, can we justify extra City service.

MEETING DECEMBER 7, 1979 WITH BOARD 5

Dan Biederman, Mimi Fishbein, Richard Bernstein, Gerry George, Arthur Ong, and Barbara Reach.

During Dick's presentation Dan and Mimi raised the following points.

Will ICIB be cooperative? Dan expressed the opinion that most of the members will not vote against anything that Phil Click approves and Click approves everything. He asked whether Wagner is a member of ICIB as Deputy Mayor for Planning, or as Chairman of CPC.

Mimi asked why as long as we will propose changes to J51 and 421, we do not propose that they be discretionary. A review every five years may not be enough.

The Broadway Association sanitation project has worked very well, Dan said. He urged that the report include a special plug for complying with the Clean Air Act.

Biederman said the express bus problem on Madison Avenue is serious and we should address it; nobody else is doing anything about it. Traffic on Lexington Avenue from 42 - 46 Streets is impossible, and we should do as much as we can to have on-Street parking reduced.

Mimi asked whether it was realistic to say that builders can build as-of-right and make a profit. How will we know?

Dan: Amenities should be targeted--he asked whether we are coming out with specific geographic recommendations.

Re: The Fifth Avenue Special District, he said that if it survived in its present form, we will not be doing our job.

In making an assessment of what the FAR should be, Mimi asked whether we are going to find how it was set in the first place.

MIDBLOCKS

Dan said that if we down-zone, we should quote four developers who said they do not believe in midblock monsters. Dan asked that we be more specific about what we are going to do to improve administration.

When we get slides, it will be a "snazzy presentation," Dan said. He said that the stabilization map should clearly indicate the areas for preservation.

Mimi asked what RFW's departure means to the study.

BR:cak
12-10-79

Presidents' Council Richard Bernstein, December 12, 1979
Present: CPC: B. Reach, A. Ong; President's Council: Jeanette Bamford,
Jon Barnett, Chas. Hughes, George Lesis, Ralph Menapace, Sheldon
Pollack, Margot Wellington.

During the presentation, there were the following questions and comments.

Barnett: Parsons is doing a fixed-rail study for UDC in connection with the Convention Center. Jeanette said she thought a trolley was planned.

Chas. Hughes asked whether the work we are doing is based on RFW's statement of May 23rd. He said that statement was strong on zoning but weak on the other points.

Barnett made the point that there is now an underlying right to build on every site. Margot Wellington said that the reviews are worth it to the developers or they wouldn't go through with them.

Chas. Hughes: The development community claims that the square foot control has increased markedly; that would affect bulk.

Barnett: The architectural system of bulk control is the key to many problems; we have gotten many good buildings but at the expense of policy. If we can get a new system, Dick deserves an equestrian statue!

The gerrymandered map makes it harder for people to understand zoning.

Margot Wellington: Even though there is twice as much office space per person now, we will have a problem when we go from 6 to 60 stories. None of us has yet seen the results of the buildings under construction. It's too early to be sanguine since we don't know what will happen.

Barnett: Is there any way to get the overall numbers? If there is an overall increase in congestion, we will have a problem. Can we find out the present and the projected population?

In view of the cost of theatres, the 20% bonus is reasonable. I don't accept all Ables & Schwartz' figures but the fact is, what is in effect a bigger lobby gets a helluva bonus.

02 { Is Alex using the quality control system in BPC? Jon said he was dismayed that Alex is willing to jettison quality controls altogether. Housing quality recognizes that in designing buildings, you can't win them all.

Pollack: Isn't it possible to remove some of the as-of-right bonuses?

Geo. Lewis: The theatre district bonus has a reasonable relation to cost. Will the economic analysis show whether developers are getting too much? Isn't that at the center of the entire question of bulk?

Margot Wellington: Why is there a bonus at all times? Lindenbaum came to us about the Philip Morris building and asked us what we wanted. He said they'd do whatever we want.

Barnett: We've taught the builders a new game--but the quality of the buildings has gone up.

We've been giving bonuses for lobbys. If we're going to continue to give bonuses, we must fine-tune the legislation. The legislation for plaza bonuses is now good.

Menapace: What about the timing? When do you expect to seek the legislation?

Pollack: The CBD is not just the economic heart of the City, it's the heart of the region. Something like 40% of Nassau's income comes from NYC.

BR:cak

Present: Joana Battaglia, Philip Howard, Dick Bernstein, George Vandor, Pepi Ertag, Arthur Ong, Barbara Reach.

Following Dick's review of the current status of the midtown project, a number of issues were raised.

Tax Exemption:

Joana wanted to know why the exclusion of tax exemption will not extend to the East River. She asked why we planned to stop at Third Avenue and whether we are studying or making any recommendations about tax programs farther East. That area is under significant pressure. She asked why Zucker or Helmsley should get tax exemption. Also, there are several parcels in the M zone which they certainly do not believe need tax exemption. Conversion of SRO's is creating "vast social problems." There is no need for tax incentives on First and Second Avenues; if there is development, that's okay but it does not deserve tax incentives. Phil said that a number of applications are now pending before ICIB in areas zoned M; there is an attempt to rezone to R-10 "which we will fight." There is development pressure from 34th Street to 60th Street.

Enforcement:

There is a pattern of non-enforcement. The recent New York Times article pointed out that there are more housing code violations in Murray Hill than anywhere except Brooklyn. A landlord can get \$1,000 for a two-bedroom apartment but he can get more by illegal conversion to commercial use.

Zoning:

The vitality of Manhattan is in its diversity of uses. There is more and more pressure to get rid of the M zone. Discos should be in a different use group; that is what we should attack and change. Gerry George said that zoning for discos is now being rewritten. Phil asked for a copy but Gerry said it is not yet ready; he will send it as soon as he can.

Joana said that if the City were fully developed according to the zoning resolution, it would not be livable. Phil said from the developers point of view, if they can get a bonusable amenity, why not? The amenity provisions are not a fair trade. We don't value the amenities and they should not be.

They expressed agreement about holding the street line. Re open space, perhaps developers could be required to provide something really special.

Design:

CPC design group exercises enormous power and seems to embody an institutional approval. To get a bonus, the developer should have the burden of providing something of extra merit, something really good.

Room Count:

In conversions, developers are getting around the room count. Question was raised about how rooms are counted. Dick explained that different agencies have different methods. It was suggested that we recommend a standard system and call for unanimity. Dick agreed that it is important but questioned whether we will have the capability to do it, much as we might like to.

Zoning Lot Mergers:

Phil asked about merging two lots that have different zoning. He and Joana agreed that mergers are important in preserving mid-block, but Joana said that developers look at brownstones and want to buy the development rights of all of them and then build enormous buildings on the corner. The zoning resolution is not meant to stimulate development but rather to tell developers what can be done and to treat everyone fairly. Third Avenue should not become another Sixth Avenue. Even though many of the buildings on Fifth Avenue may not be landmark quality, Fifth Avenue should be saved.

Joana said there is talk of sale by the City of air rights over public buildings and streets--she does not believe this should be allowed. "The fiscal crisis does not mean we should move to moral bankruptcy."

The East side of Third Avenue should be down-zoned because it impinges on a residential area. The avenues have an impact on mid-block.

Embassies and Missions:

We should examine where embassies and missions are allowed to locate. Dick said we will not be getting into that question.

Bulk and Design Controls:

Much of what is done will apply to the entire City; there is no reason why the bulk controls should not apply on the upper East side.

Next Steps:

Joana said she hoped we would get back to her when we have specific recommendations.

BR:cak

Meeting with CHPC
December 18, 1979

Present: Bill Wilson, Chairman; John Costonis, Amy Delson, Milton Glass, Carl Heimberger, Ed Lukashak, Gene Morris, Hal Negbaur, Lewis Stone, Arthur Zabarkas, Jack Richman, Dick Bernstein, Arthur Ong and Barbara Reach.

During the presentation and the subsequent discussion, the following points were made:

Lew Stone referred to the proposed tax change as retroactive. He asked whether the legislation would authorize an administrative decision as to which areas would/would not get tax abatement or exemption, or whether we propose to write specific geographic boundaries into legislation. The question of constitutionality was raised but it was agreed that it would be all right in that respect.

Regarding provision for review every few years, Lew said that this was unnecessary because when the laws come up for renewal they are automatically reviewed.

Arthur asked whether we are expecting the City to make a decision re urban renewal at the same time as our report is issued.

Dick said there is concern that we have good development around the Convention Center. Milton asked "Good development from what point of view?" He also commented on the deterioration of traffic and urged that there be police officers at intersections.

Gene said the report should emphasize strong support for City help to developers in getting UDAG. There was some discussion as to whether there is a cap on the amount of UDAG money one area can get. The Federal budget constitutes an effective cap and there is no doubt that there is an effort by the federal government to distribute it around the country, but there is no cap per se.

Lew said that two important points were not mentioned: assemblage problems and hold-out residential tenants. He asked whether we have looked into these issues. Gene agreed with Lew that these are very important issues and should be examined. Bill said that help with hold outs would be "one helluva incentive" to developers. Arthur said we could make a "completely legitimate case for not dealing with that problem."

Bill said the committee had discussed as-of-right development and it was their unanimous opinion that there should be more.

Lew asked whether anyone had suggested eliminating bulk controls and eliminating zoning in mid-town.

Milton said that the FAR formula is the root of all the trouble. Before we used FAR, a developer could not borrow someone else's development rights.

Lew brought up the question of energy. He said that costs are entirely different than when the study was started. Towers are a "disaster." We should go to a "no zoning" policy in midtown. Not to take energy problems into account is fighting the last war over again. It is his view that we should not have controls around subway stations; instead, he said, "we put parks where there are subway stations--incredible!"

Milton said we could have controls on light and air but FAR is a serious detriment; there is a premium on tall buildings. Bill said we should let the sun in; it is nicer when there's sun on the street.

Bill said there's no need to reduce controls from 21.6 but there is a need to get to as-of-right.

Dick said density is not the problem, bulk is.

Lew said to reduce bulk, you'd have to down-zone.

Hal asked why density is not a problem--isn't it ever?

Milton said density is self-limiting because of other controls. Lew argued that the market would control density.

The possibility of special design controls was opposed by Milton. To require a particular material, for example, is unwise because in ten years there might not be any more of it. Design requirements will conflict with as-of-right.

John said that if you set controls too low, developers will bargain again; if we give bonuses we will have too much. Lew said that the market will limit it. Bill and Lew expressed opposition to design controls.

Hal said we should calculate just what would result if all sites were built to maximum with bonuses.

Lew said if we stop building it will have the effect of raising rents; if there is more building, rents will go down.

Gene thought the study had not directed enough attention to four major areas:

1. Assemblage problems
2. Midtown traffic
3. "Honky tonk"
4. More zoning regulation flexibility.

Lew was concerned about the reduction of parking in Midtown to improve air quality. He proposed the use of the "bubble concept" for parking.

Milton thinks that many areas in the 30's on the West Side are useless as M Zones and should be changed.

BR:cak
12-27-79

A.O.



City of New York

Department of City Planning

2 Lafayette Street, New York, New York 10007

From the Desk of
BARBARA REACH

January 7, 1980

TO: MIDTOWN TASK FORCE

FROM: Barbara Reach

Handwritten signature of Barbara Reach, consisting of the letters "BR" in a stylized, cursive font.

RE: NEXT MEETING

The Task Force will meet on Tuesday, January
15th at 9:00 a.m., in the Conference Room.

Abe Barkan will conclude his presentation
at that time.

BR:cak

Attachment

Midtown Development Study - Task Force Meeting December 18, 1979

Present: Abram Barkan, Dick Bernstein, Pares Battacharji, Alex Garvin, Gerry George, Ken Halpern, Bob Jacobson, Tony Levy, Norman Marcus, Arthur Ong, Lauren Otis, Michael Parley, Raquel Ramati, Barbara Reach, Julie Spector, David Vandor, Fred Wyman.

Abram Barkan and Fred Wyman of the James Felt Realty Services, Inc., presented the results of their preliminary analysis of the midtown office, residential, retail rental markets and development costs.

New Rentals in Existing Buildings

East Side - East Side rents are averaging \$15-\$16 per sq. ft. Rents are stratified by avenue.

Some examples are:

- Park Avenue, which commands the highest rents at around \$20/sq. ft.
- Madison Avenue at \$18/sq. ft.
- Sixth Avenue at \$14.50/sq. ft. (based on a recent 1166 Sixth Avenue deal with International Paper)
- Fifth Avenue (Rockefeller Center) at \$20-25/sq. ft.
- Third Avenue has higher rental prices than Lexington Avenue.

West Side - Mr. Barkan is using \$12/sq. ft. as the average rent on the West Side north of 52nd street. 1 Astor Plaza recently got \$9/sq. ft. from Bell Telephone. The market near Penn. Station is better i.e., 2 Penn. Plaza at \$17/sq. ft., Empire State Building at \$15-\$17/sq. ft. 1 Penn. Plaza is less successful due to its large floor sizes.

Floor Sizes

Norman noted that the CPC is frequently told by developers that large floor layouts are the present trend. They claim that the larger floor sizes are necessary for their projects to be economically feasible. CPC would be in a better position to evaluate these claims with information about actual floor area requirements in today's market.

Abe Barkan said that these requirements change depending on the location, type of site, clientele. For example, 499 Park has small floors while Tishman has large floors. The most demanded floor sizes are 15-20,000/sq. ft. blocks.

Zoning Effects on Real Estate Economics

A number of comments were made about the necessity of determining the effects of zoning regulations on the real estate market and whether zoning adequately reflects market conditions.

Raquel asked if there might be some way to approximate the economic value of permitting increases in coverage, for instance from 40% to 60%.

Abe Barkan thinks this could be done case by case. If he were given floor plans of proposed buildings, he could compare the value of the as-of-right option to the increased coverage option.

Julie asked about the value to developers of extra stories on their buildings, particularly since the upper floors supposedly command higher rents. Abe Barkan gave 1919 Third Avenue, a 40-story building as an example. His firm, in a recent estimate, organized the floors into three groups: 0-10th floors, 11-20th floors, and 20-40th floors. The increase from one group to the other was approximately \$2/sq. ft.

Norman expressed interest in the possibility of the James Felt Realty Co., supplying the department with a methodology to analyze the interaction of City Planning regulations and real estate economics.

Amenities - Several present questioned whether the cost of atriums and other amenities were ultimately paid for by the developer or the tenant. A related question was whether the amenity paid for itself as a marketable building feature. Abe Barkan felt that, given two buildings on Third Avenue, one with an atrium and one without, that above the ground floor and retail levels, rents would not be significantly different.

He also guesses that most tenants do end up paying for public atriums as an operating expense, as they would for a lobby.

Norman commented that our present system of amenities is a CBD wide treatment that does not recognize differences in the market. When should amenity costs be eaten by the developer (mandated?) and when should they be passed along (bonused?)

It was asked if people will pay for the premium building and how much amenities and good design were a part of the premium building. Abe Barkan emphasized the importance of management in a successful building. For instance, Uris owned buildings, though architecturally undistinctive, are fully rented due to good management. The Chrysler Building, though architecturally distinguished, was not fully rented under the poor management of the Goldman Brothers. Dick asked Abe to analyze some examples of how buildings deal with their amenities.

Energy

Several questions were directed at the costs of energy and its effects on the office market. Abe Barkan said that electricity in NYC office buildings now costs \$1.75 while costing \$.75 in New Jersey. This is a critical factor in the marketability of New York vs. the suburbs of attractive office space. Julie suggested that energy subsidies might be a future tool for encouraging the office market.

Fifth Avenue Retail

Rents in newly constructed buildings on Fifth Avenue would be prohibitively expensive for Department Stores.

Residential

According to Mr. Barkan, the market for housing is very strong and has no problem developing anywhere in Midtown.

Summary

Dick summed up by restating the meeting consensus that accurate information is necessary on the relative costs and benefits of public amenities to the city landlords, and tenants. Abe Barkan did not have time to discuss the pro formas done on the economic feasibility of office development on the West Side. Preliminary analyses indicate that even with 100% tax abatement a developer would not quite break even. This will be discussed at another Task Force meeting.

Next Meeting January 15, 1980 at 9:00 a.m.

A0:cak
12-27-79

Meeting with Board #4

Present: Aston Graves, Carolyn Meinhardt, Dick Bernstein, Arthur Ong, David Vandor, and Barbara Reach

Date: January 10, 1980

Dick said that we hope to encourage development from Sixth to Seventh Avenue in the Times Square area; also from 34th to 40th on Sixth; towards the convention center, and around Penn. Station; on 57th Street, going west from Sixth Avenue, we hope that housing will be developed.

He asked whether there would be an adverse reaction to repealing the former special convention center district. Carolyn said that Gerry George had brought this up and most members did not see that there was any special reason to retain it. On the other hand, why remove it? Apparently there is no plan for the area; removal should be tied to planning for the whole strip, 42nd to 52nd.

Ten years ago the strip could have been left alone but now pressures are building up. Concern was expressed that if controls are not established, things will "just happen."

The waterfront is used for parking; this is thought to be an inappropriate use.

Anything that will stimulate development on Eighth Avenue will be very welcome. Zoning is R10 plus a bonus.

The old Madison Square Garden site is the only large vacant property remaining. Whatever happens there will create a tremendous impact. Before any decisions are made, they were very clear about wanting to be consulted. They want to be brought into discussions at the very beginning. It is rumored that Gulf & Western owns the site; the people who live around it are nervous. They are afraid that development will result in up grading of the surrounding area and will ultimately mean that many people now living there will have to move.

The upper part of Eighth Avenue is beginning to change; it is very bad. The major problem in the 50's is the west side of Polyclinic.

Aston is a member of the Board of The City at 42nd Street. The Community Board is in agreement with most of what has been proposed. He said that he cannot imagine two urban renewal projects in that area.

With respect to the Portman Hotel, question was raised about the wisdom of destroying the Picadilly. There is increasing question about locating the Portman on that site. It was also said that the theatres are not happy about the mall.

Transportation is very poor; there needs to be a good look at the connections.

The Board has reviewed the convention center's EIS with the help of its consultants. There are major problems of traffic control. The traffic study will soon be published. There is question about how taxis will enter and leave the area.

The Flushing line should be extended but there is no money. A "people mover" is too large a capital expense. Parking is provided for 140 cars; a conservative estimate of the need is 1,500 to 2,000. A nearby hotel facility is also needed.

A plaza and galleria are proposed as a repetition of the 9th Avenue ethnic atmosphere. There is concern that it will take away from 9th Avenue and also whether it can be a success with only 200 operating days a year. A special district for this area may be appropriate.

Aston said that he had been working for several months to develop a model block on 57th Street between Eighth and Ninth Avenues. Channel 13, John Jay, CBS, D'Agostino and Rose Bros., are all working together. Rose is involved because he is doing another development next to the Henry Hudson. If it works, it will spread. They approved of our suggestion for development of housing on west 57th Street.

Other Issues: Aston said he would like to see a specific proposal for the Eighth Avenue Strip.

Carolyn said she was pleased with the time constraints on tax abatement that Dick had mentioned.

BR:cak
1-17-80

January 21, 1980

PRESENT: Katherine Strauss, Chair; Robert Trentlyon, guest
Terence Benbow, Citizens Union
George Hallett, " "
Clara Fox, Settlement Housing Fund
Joan Ohlson, Citizens Committee for Children
Margot Wellington, Municipal Art Society
Wm. Swan, ABNY
John Keith, Regional Plan Association
Sheldon Pollack, Regional Plan Association
Jeff Zupan, " " "
Arthur Zabarkas, Citizens Housing & Planning Council
Janet Cooper, Woman's City Club
Meg Stillman, Woman's City Club

Following Dick Bernstein's presentation, questions and comments included the following:

Terence Benbow expressed concern that by the time action on our recommendations is taken, it will be after the fact.

John Keith referred to the story in the morning paper regarding loss of jobs; he agreed with Dick that there would probably be a slight increase in white collar jobs and that the loss would be in manufacturing. He said that RPA's recently completed study and economic forecast would be released on February 28th.

Sheldon Pollack said that when the President's Council had asked for a moratorium, he had been assured by Marty Gallany that there were no new buildings in process; now there are plans for a Klein building at Madison and 54th Street. Dick explained that the waiver requested for this building is being presented to the B.S. & A; it is not within the jurisdiction of the Department of City Planning. Sheldon also raised question about demolition of theatres for the Portman Hotel.

Clara Fox commented on the role of organized crime in the porno industry and asked whether there is pressure for jambling casinos in the Times Square area.

Kitty Strauss said that if we now encourage development on the west side, how do we know that we won't have the same problems there that we now have on the east side. Dick mentioned the review provision in the tax incentives that he is proposing, also the difference in zoning, and bonuses.

BR:cak
1-24-80

Meeting in Abe Barkan's Office, February 8, 1980

Present: Barkan, Wyman, Halpern, Otis, Weston, Zimmerman
Barwick, Bernstein and Reach

The purpose of the meeting was to ask Barkan if he would make a recommendation as to what City policy should be with respect to the theatres; what is the best way to protect them? During a wide-ranging discussion, a number of points were made including the following:

The theatres can be divided into those suitable for musicals and others. A musical requires a large theatre and a wide proscenium arch. Uris is too large.

There are 37 or 38 houses but there is a shortage; Brandt owns 7 or 9.

The Belasco is a good theatre but is often dark because it is on the wrong side of Broadway; the Lunt/Fontaine is also vulnerable.

If we try to demolish the Helen Hayes for Portman, there will be a fight.

There are 40 or 50 landmark quality theatres; some are landmark quality inside, and some outside. Landmark quality does not necessarily make a good theatre, and vice-versa.

There are 4 separate ways of protecting the theatres--or any combination thereof:

- . landmark designation
- . Development rights' transfers--Preservation or Cultural District
- . Down-zone midblock
- . tax policy

Theatres have a high capitalization rate because of risk; it is calculated on a per seat basis.

Abe said that if we down-zone midblocks and FAR 15 on Eighth Avenue does not go beyond 150 feet, you cannot assemble a plot and effectively freeze the Avenue.

Office building in the next 20 years will probably be limited to block fronts; twenty-five thousand square feet is the most desirable size; the bonus is not enough to pay for the theatres. Maybe theatres should be assessed as two-story buildings. There is NO tax on theatre tickets.

If we establish a Cultural District and get it on the National Register the owner can accelerate depreciation.

The westside will eventually be a "ribbon image" of the east-side.

It was agreed that:

- . Ken will send Barkan copies of his maps
- . Abe will send Ken everything in his file that is not confidential
- . Dick, Ken, et al will develop a hypothesis as to the preferred way to protect the theatres and will submit it to Abe for his analysis and opinion.

January 31, 1980

Meeting with Foundations: Peggy Ayres, Joan Davidson; Greg Farrell; Terry McAdam & Lori Slutsky; Richard K. Bernstein; Arthur Ong; Barbara Reach and, briefly, Herb Sturz.

During the presentation Joan Davidson made many comments and suggestions. She wanted to know what we are going to propose in general and specifically, for the theatres. She urged that we reconsider the Portman.. because of the destruction of the theatres that will be required if it is built. She asked the Chairman about the possibility of a legal impediment to UDAG. He said that he had not yet learned the facts about Portman but suggested that she hire a lawyer to look into the question. He said he would very much like to see a copy of any memorandum she might get.

Joan thought the proposed recommendation for theatres was "good", also the tax incentive policy which "...should be easy."

Re urban renewal, Joan asked whether we were going to "adjudicate" between the City at 42nd Street and DeMattes or "just take them at face value." She urged Dick to analyze the proposals and make a decision about them. Terry McAdam asked whether we expect to have concrete recommendations for specific blocks.

Joan raised a number of other questions, including the following:

Whether we are going to recommend a policy for SRO's (she referred to the story in the TIMES two Sundays ago); what is happening with the McGraw Hill Building? Are we considering transportation improvements--are we dealing with express buses? Have we thought about what would be involved

in replacing the entire stock of buses? why should we be saddled with the present stock indefinitely? Dick said that we would not be including this in our project. Joan urged that we make "important" proposals. Dick reminded her that she had insisted that all his proposals must be practical and likely to be implemented.

Terry asked whether we are getting all the internal support we need. There was some brief discussion of staff needs.

Greg asked for a description of what we have received from Barkan to date and what we still expect. He asked that we send him the material Barkan submits to us.

Terry raised the question of special bicycle lanes; Greg said that they are not used much.

Peggy asked what deadline we have set for Alex and asked about consideration of alternatives.

Terry mentioned that our grant is being held pending receipt of contracts with our consultants.

and entertainment center. It will relate its function as the nation's and the world's premier "downtown" to the residential areas, both old and new, that it incorporates or adjoins, and to the rest of the city and metropolitan region. The most important point to be made in this chapter is that the successful functioning of Midtown is critical to the well-being of the entire city but cannot by itself guarantee it. Without an economically healthy Midtown there cannot be an economically healthy city; but the health of Midtown does not automatically make all other parts of the city healthy.

Chapter II Development Strategy--The Planning Framework

There will be four major sections in this chapter, the first one introductory, factual and descriptive to lay the groundwork for the next three which incorporate the specific development strategy recommendations.

1. Recent Trends This section will include demographic, employment and economic trends to the extent that the Department has the capability of identifying and articulating them. It will generally describe the area's infrastructure (streets, sewers and utilities), its strength and its problems. It will include a description of the mass transportation system serving Midtown and recent transportation trends. It will touch (lightly) on the

significance and impact of the energy crisis. It will describe in considerable detail recent construction in Midtown (related to post-war construction and total floor space) and trends in costs brought up to date--land, construction, financing, rents. This section will also include a description of the special quality of certain streets, avenues, places and functional groupings to the extent they are not covered in Chapter I.

2. Preservation Areas This section will have our recommendations for the comparatively few areas that should be preserved virtually as they are as part of our broad planning and development strategy. In addition to designated landmarks they might include a number of the old theatres or a portion of the Theatre District, Restaurant Row and perhaps some of one area's mid-blocks with especially fine and functional residential development. We will have to exercise considerable self-discipline and fine discrimination in these recommendations.

3. Conservation Areas These will incorporate the areas, avenues and streets where new development should be carried out with sensitivity and respect for the character, quality and ambience of what already exists (e.g., Fifth Avenue, 57th Street, mid-blocks generally, indeed much of the East Side office core). It will also include the areas that

require careful and thoughtful transition (e.g., the east side of Third Avenue). The intent in these areas is not to freeze development or stop change, but to moderate its tempo and magnitude in the interest of the whole.

4. Development Areas These are the areas where we want to encourage new development. In addition to the western and southern fringes of the Midtown core area these will probably include areas of special opportunity--e.g., the Penn Station - Herald Square - Convention Center area and Eighth Avenue. We will also have to relate our Midtown development strategy in at least a general way to our view of development in Lower Manhattan. We may also want to include areas outside of Midtown suitable for new unassisted housing construction (R-10) or for conversion to housing where either the developers, the market or both are clearly related to Midtown development.

Chapter III Zoning

This chapter will consist of a general background or introductory section and several sections grouping the various zoning issues under the logical and appropriate control categories.

1. Background The basic existing zoning controls and mapping will be described. Current zoning problems will be

spelled out, enumerated where appropriate (i.e., number of text changes in Midtown districts since 1961) and put in some historical perspective. Without ducking or diminishing the weaknesses or faults of current zoning, New York's continuing pioneering efforts should be cited. So too should be the need to change laws and regulations as conditions, circumstances, expectations and perceptions change.

2. Bulk and Coverage Controls The size and bulk of new buildings on their actual sites and in relation to their surroundings, far more than their density (i.e., number of people in them), appears to be the critical zoning issue in the highly developed Midtown core area. It subsumes such related issues as zoning lot mergers, transfers of development rights, waivers of tower and set-back regulations, "shoehorning" of buildings into small sites, and, in general, the growing reaction against so-called "monster" buildings. The primacy of F.A.R. as the zoning control of building size and form, and its use as the measure of bonus in incentive zoning, is a major factor in this constellation of issues. A new or modified system of bulk and coverage controls which deals directly with the problem of building size under current conditions needs to be formulated as a fundamental recommendation of the report.

3. Zoning Incentive System This is the second major area of zoning problems and criticism. There is a general perception that we give away too much, that what we get isn't worth it, and that a good deal of the time we don't get what we are supposed to anyway. In part the criticism reflects dissatisfaction with what has been built under old rules without awareness that the rules have already been changed. Nevertheless, the reality as well as the perception of the weaknesses of the present system needs to be addressed. The recommendations should:

(a) Sort out what amenities are worth a bonus. At present, covered pedestrian spaces and through block arcades are most generally criticized even though everyone thinks the Citycorp space is great.

(b) Examine the practicality and desirability of giving incentives for any new features such as energy-efficient buildings or, as RPA has proposed, combined open space. At the same time, we need to be sensitive to the strong criticism of paying into a common fund as in the Central Park - Fifth Avenue district.

(c) Propose as specific a system for "targeting" incentives as possible. This should spell out what amenities are wanted where as well as include any proposals for mandated amenities.

(d) Determine realistic and defensible bonuses in light of the recommendations proposed for bulk control. This

will require some cost-benefit analysis.

4. Special Districts There needs to be analysis of the special districts and special provisions applicable to Midtown. They should be re-examined for consistency with the proposed development strategy and zoning incentive system if they are still needed, and for clarity and simplicity. Special attention will be given to the Theatre District and the Fifth Avenue District.

5. Re-mapping The zoning maps will be analyzed and re-mapping recommended if and where it is appropriate to realize the objectives of the development strategy--by itself or in combination with other measures. For example, the simplest and most direct way to control development in some areas may be to "downzone" them; an added incentive in areas we want to encourage development may be to "upzone" them.

6. Administration The administration including the enforcement of the zoning resolution and the proposals we are making must be specifically addressed by the report. This will include developing or reiterating such proposals as withholding or withdrawing certificates of occupancy or giving Community Boards legal standing to sue for enforcement if these proposals are practicable. But it also means measuring zoning provisions against the administrative and

enforcement capability of the City and its agencies, including our own. And it means sitting down with the responsible people in our sister agencies (Buildings and Board of Standards and Appeals) to explain what we are after and to give serious consideration to their views. Frustration is the only appetite we'll satisfy if we ask someone who has trouble boiling an egg to make a fancy souffle.

Chapter IV Tax Incentive Policy

The first part of this chapter will sketch the history of the various tax abatement programs. It will relate the programs to the economic conditions that prevailed when they were adopted. It will also, as specifically as possible, indicate where tax exemption (or abatement) was granted, what for, and the value of the abated taxes as well as the taxes saved or new taxes generated. The second part of the chapter will examine current policy for granting tax abatement under the various programs (J-51, Sect. 421, ICIB, UDC) and recommend such changes as may be desirable. We may also, in consultation with the Finance Department, examine the impact of basic assessment policy on Midtown development.

Chapter V Capital Investment Strategy

The introductory section of this chapter will sketch the recent history of public capital investments in Midtown. It

will attempt to put public investments in the perspective of the massive private investments that Midtown pumps into the City's economy. As presently envisaged there will be three sections incorporating recommendations. The first will deal with urban renewal. This section should serve the purpose of clarifying City policy as to where--if anywhere--an urban renewal project would be entertained by the City and under what circumstances (e.g., un-assisted, or with the public contribution from special federal or state funds, etc.). It should equally serve the purpose of signalling very clearly where urban renewal will not be entertained. This is important in order not to inhibit private assemblage, or artificially inflate prices. While staff work can help define the options, these recommendations should reflect agreed upon if not formally approved Administration policy. The second section should deal with transportation investments. The third section will incorporate recommendations for all other public capital investments in Midtown.

Chapter VI Delivery and Coordination of City Services

The introductory section of this chapter will define as rigorously as possible the nature of City services directly related to development strategy. It is expected to include transportation services, policing, sanitation, control of peddlers, etc. In developing recommendations we will consult closely with the operating agencies involved and with the Midtown Enforcement Project.

: CKB 8/18/79

A-9 DRAFT: MIDTOWN DEVELOPMENT PROJECT/ZONING
(2/17/84) W/ COMMENTING MEMO BY NORMAN MARCUS,
COUNSEL

A-7 BOUROUGH STEIN, "HEARING ON MIDTOWN DEVELOPMENT":
HEARING NOTES

Robert Wagner, Jr.

Task Force announced May 23

9-month study of midtown development covering:
 zoning delivery of public services
 land use public investment

OTHER POINTS:

- I. Projected ways to draw development away from midtown:
 - J51 beginning to work in reverse, favoring commercial tenants
 - zoning and tax incentives
 - Battery Park
- II. Community Planning Board #5 suggested moratorium on bonuses
 Wagner reply - this has been considered by CPC and rejected However,
- III. Bonus must be recognized as at discretion of CPC, not "as of right"
 - granted less often, and-
 - given for public transportation system improvements rather than pedestrian amenities

Richard Kahan

- I. UDC does not contribute to midtown congestion because all projects either increase density only in underutilized areas (convention center) or renovate existing structures without changing bulk or usage (Grand Hyatt)
 - exception: Portman Hotel - incremental increase in favorable economic impact outweighs incremental increase in unfavorable environmental impact
 - II. Board #6 representative very concerned about UDC's exemption from Building Code, zoning regulations and ULURP
 - Kahan justification:
 - UDC collects fees from developers for public amenities (Ex. - Times Square subway arcade work, Grand Central)
 - UDC expedites and accelerates projects to such an extent that NYC chooses to use it, rather than any local agency, as its "implementation agency"
 - exemptions never used unless at request of Board of Estimate
- Boards #6 and #8 rebuttal:
- World Trade Center, encompassing so many exemptions, now going to private ownership
 - UDC's "immunity" renders it unresponsive to problems in existing projects (Roosevelt Island)
- III. Board #4 - concern over development projections for periphery of convention center
 Kahan - CPC working to avoid counterproductive early speculative development around area, now that site is known
 - IV. Concern voiced over UDC use of tax incentives Response:
 - incentives only sufficient to make projects feasible for private financiers
 - since sites paying no taxes previously, sales and payroll taxes constitute an improvement

I.M. Pei

- I. Important issue not applying incentives outside healthy midtown core, but fact that underdeveloped areas have no overall use plan
- II. Stein questions on waterfront usage (he opposes Westway)
Pei - other harbor cities even worse about utilizing waterfront
- III. Board #5 - zoning rules too flexible?
midtown [Pei - only since '61 when law inaugurated have public amenities been utilized, eliciting much more sensitive architecture and a livelier midtown]
- IV. Board #8 - Isn't a 20-year-old zoning regulation by definition obsolete-
Shouldn't it be re-written?
projects * [Pei - takes too long - more important to amend in such a way as to accelerate procedure (499 Park took 6 months)
- V. Sylvan Lawrence - market for new buildings is always where people already are, causing greater density. Can architect change this?
Pei - no, but his secondary obligation is to reject sites too small for a major building, and attempt to tailor building design to its surroundings in a way that will benefit them.
- VI. Professor Sternlieb (Rutgers) point:
As city population and job base shrinks, midtown is only generator of jobs, taxes and hope for future.
Is lot by lot consideration helping to increase the drawing power of the area?
- VII. Pei very enthusiastic about retail strip on 5th Avenue

Michael Grosso - Fifth Avenue Association (bankers, retailers, residents, ^{property} owners)

- I. New zoning resolution unnecessary - it was written to change with time
- II. Delighted with AT&T, IBM and Trump (including other big stores!)
- III. Improve public transportation instead of restricting development (ex. - 34th St. subway facilities, so important to shopping, filthy)
- IV. Dryfoos (for Krupsak)
- this attitude will send small specialty shops to Madison
- threatens that Easter Parade will go to Madison if 5th Avenue not improved

Grosso response - anything good that has been done on Park, Madison or Fifth has been done by non-government groups
- V. Association will soon announce big new project for 5th Avenue

Donald Trump

MAIN POINT: Severe recession coming, and building in midtown has already peaked.
If restricted it will halt altogether. Changes in regulations will take

effect just when city needs to encourage building again.

- * [II. IBM told him personally that they would have left NYC had they not been allowed exactly what they wished on their new building (*SEE BELOW)
No corporation will move outside core
- III. As economy waxes and wanes; core itself will expand and shrink
- IV. Trump urges legalized gambling as fastest way to bring development to non-core areas
- V. Notes that Portman project won't work financially. Implies that insiders have told him it should lose \$12-14 million a year.
- VI. Board #5 notes that Olympic Tower and Galleria bonuses wasted, and -5th Avenue District's 21.6 FAR is anti-retailers
- VII. Stein - what strategies encourage developers?
Trump -
 - easier permits for non-core areas won't work
 - speed up approval process - can't proceed with architects' final design or financing until process is completed
(Bonwit Teller site costing Trump \$500,000 per month)
- VIII. Stein - affect of energy costs on development?
Trump - could bring new residents to city to avoid commuting
 - will favor Sun Belt, where little temperature variation

Also - electricity in Virginia costs 1/3 of that in NYC!
even in New Jersey costs much lower

Fred Papert

- I. Summary of his projects
- II. Publicly owned air rights on 42nd St. could attract midtown-oriented developers

Seymour Durst, developer

- * [I. Zoning regulations are perfectly adequate, but continually ignored
 - especially setback and other tower requirements
- * [II. Discretionary powers of CPC should be abolished
- III. There is no office building boom in NYC, nor any great potential for one midtown. Even large recent employment boom affected NYC building only at its very end, so tinkering with this fragile surge should be avoided.
- IV. Only economic conditions can move developers and corporations out of core -(SEE PAGE 4
(* Lawrence notes that when blocked by tenants on proposed site, Alcoa and U.S. Steel moved to Pittsburgh, started the Golden Triangle)

not zoning or tax incentives.

- V. True danger requiring zoning changes : residential-housing being replaced at very low rate (.4% of existing stock per year - dramatically below big-cities average)
 - as of right provisions should be allowed for residential building

Peter Salins, Hunter College Department of Urban Affairs

- I. No evidence that controls and subsidies either increase or decrease development (versus Trump, who cited Houston's lack of zoning as explanation for its growth)
- II. If core building discouraged, in the aggregate corporations will not leave city (they base decisions on other factors)
- III. Core strength is based on small companies rather than huge corporations
- IV. NYC has highest profile (height allowed) in country
 - other cities have not suffered from lower ones

Sandy Lindenbaum - Roseman, Colin, Freund, Lewis & Cohen
Represents developers of Palace, Harlie, Commodore, 499 Park, Philip Morris, Portman hotel

- I. Flexible zoning didn't cause building in 1960's; development began with-
 - tax incentives ?
 - economy improved
 - city's financial situation improved
- II. Other Points
 - restricting new construction will lead to a "preservation rather than development" strategy
 - corporations will never leave the core
 - * (- high density is balanced by pedestrian amenities which take increased population off streets
 - infrastructure must be improved
 - non-core areas can be made more attractive by making them much cheaper than core (tax abatement, etc.)
 - bigger buildings do not lead to more people because space per worker has increased dramatically in new buildings
- III. Board #4 representative - Could definition of core be extended?.
Lindenbaum - in time, but only for companies' "back office" spaces, not executive spaces
- IV. No new assemblages are available in core; any building will be piggy-back or on site of older buildings

Battaglia (Board #6) points out that committee wishes not to stop building, but to examine which bonuses have worked, and why.

Kent Barwick

- I. Lindsay administration changes were appropriate and intelligent, occurring just when bottom had dropped out of office space market, but now is an appropriate moment for re-appraisal

MAIN POINT: Need for more as of right development and less bureaucratic review and delay because -

- present procedure is too expensive for vital small and medium-sized developers to participate
- ✗ (- unpredictability and flexibility of rules add to land cost
SIMPLER = BETTER

- II. Preservation problem - finding out that buildings on a proposed site are eligible for designation only after UDAG participation necessitates environmental review (ex. - Helen Hayes theater)
 - unfair delay and expense for developer
 - often lose landmark anyway

Henry Stern

- I. City must include loophole in Commodore-type agreements so that exemptions end when project becomes profitable
- ✗ [II. Bonuses should not be taken for granted, as they can be now because threat of using real as of right provisions is so effective
- III. Developers are allowed to lie about providing public spaces without punishment
- IV. When CPC does not have effective leadership, discretionary powers can be dangerous
- V. Since interest rates fluctuate unpredictably with economy, subsidy rates should too
 - opposes \$2.5 million tax abatement for "rich" AT&T

Edwin Glickman

- I. We're at end of major development cycle - assemblages long established, just in moratorium until now
 - Example - 52nd to 53rd Streets, east side of 3rd Avenue and,
Galleria to Lexington on 57th (27,000 feet)
He assembled both in 1960's
- II. Galleria - he developed; explanation for business failure:
 - \$50 million mortgage default caused building to be returned to bank, which refused to fund public amenities included in original plan

POINT:

Certificate of Occupancy should have required fulfilling that obligation

Elsie Shapiro - 59th Street Task Force

60-day consideration period for community critical

Example - Task Force studied vehicular traffic problem and forced Trump to build separate loading berth instead of sharing IBM's

Peter Solomon

- I. Wants state to - shorten abatement period in prime areas
 - change J51 to help small manufacturers in midtown
- II. Stein - where will development go next?
 - Solomon - East first (3rd Avenue already - 2 inquiries to them this month)
 - downtown - strong even without Battery Park City
 - Only problem - north into Harlem
- III. Board #8 representative - won't eastward move threaten solid housing?
 - Solomon - you can never successfully force developers to move to a new area
 - Market forces may cause them to move in and destroy housing, but government can only encourage them to go elsewhere

Donald Elliott, CPC chairman when changes made

- I. City shapes development by -
 - zoning, but density itself relatively insignificant
 - shape of building - very important
 - taxes
 - access to site (transportation)
 - transfer of development rights - one of best strategies
 - special districts and regulations
- 1 II. Importance of special districts -
 - Example - forced mixed-use building out of Trump (which Trump admitted during his own testimony), when office building would have been more profitable
 - this spreads out use of transportation, etc., over entire day
- III. Justification of present rules - compare buildings built after they took effect to those built before
- IV. Tishman and old McGraw-Hill building failures are remembered, and will ensure that developers don't go to risky areas
 - though West Side has over 1/2 all public transportation and much "vacant" land
- V. Changing rules midstream is terrifying to prospective builders
- VI. City really has right to control architecture only on ground floor of a building - subway access, sidewalks, etc.
- VII. General law encourages mediocre development
 - Example: zoning law doesn't force developer to make plaza usable, so - Discretionary power important

Andrew Stein Borough President of Manhattan

Hearing on Midtown Development

July 17th, 1979

Panel

Joana Battaglia, Chairperson
Community Board No. 6
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-Andrew Stein Borough President of Manhattan

Hearing on Midtown Development

July 17th, 1979

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Hearing on Midtown Development

July 17th, 1979

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Hearing on Midtown Development

July 17th, 1979

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Hearing on Midtown Development

July 17th, 1979

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Hearing on Midtown Development

July 17th, 1979

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Hearing on Midtown Development,

July 17th, 1979

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Hearing on Midtown Development

July 17th, 1979

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July 17th, 1979

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Goals

The proposed zoning revisions have four chief goals in support of our basic Midtown development strategy.

1. To help stabilize the prime East Side core area, perhaps the world's most valuable piece of real estate and certainly the heart of the City's economy, and to provide direction and incentives for its growth and expansion to the west and to the south.
2. To make the zoning regulations as simple, direct, predictable and as-of-right as possible, drastically reversing the recent trend to negotiated zoning.
3. To emphasize the valid planning concern of zoning with the impact of buildings on the streets and avenues of Midtown--not only in terms of their openness to light and air, but in how well the streets serve the movement of people, define Midtown as a special place and enhance its role as the world's preeminent "downtown".
4. To protect the theatre district (by helping to preserve existing theatres) and a few other unique areas which make a special contribution to the function and ambiance of Midtown and are unlikely to be replaced if destroyed.

Recommendations

A comprehensive revision of Midtown zoning is proposed to achieve these goals. It consists of a package of closely knit recommendations.

- o An explicit as-of-right floor area ratio differential between the stabilization area (FAR 15) and the growth areas (FAR 18).
- o An absolute and predictable limit to building size in relation to site size by capping the "footprint" site at 20 percent above the base FAR for zoning lot mergers, bonuses, or any combination of the two.

- o A much reduced and simplified set of bonusable amenities limited to urban parks and plazas, superior subway station connections, and the transfer of development rights from theatres and landmarks.
- o Clearly specified planning requirements for new buildings -- pedestrian circulation improvements for all; and maintenance of street wall and retail continuity and simple off-street relocation of subway stairs where mapped.
- o As an added incentive for mixed commercial and residential buildings, mapping the growth areas "CR" which has more liberal requirements for mixed-buildings than "C" districts
- o Downzone the preservation areas to FAR 8, which is more generally consistent with their built character and will help to protect them.
- o A simplified two-tier set of bulk regulations based on preserving defined standards of openness and daylight for Midtown's streets and avenues while giving maximum choice and design flexibility to the developer and his architect.
- o The new Midtown regulations to be incorporated in a single chapter of the zoning resolution, and to be administered by the Department of Buildings, but with an "oversight" review committee jointly established by Buildings and City Planning to deal with any problems or "bugs" that may arise, as they frequently do with new legislation before it is seasoned.

The FAR Differential

The stabilization area will be mapped FAR 15 and the growth areas, except Eighth Avenue, will be mapped FAR 18. These will be as-of-right base floor area ratios, but the FAR 18 in the growth areas will be subject to a mandated "sunset" review after five years. Because Eighth Avenue provides a transition between the Midtown CBD and the Clinton residential area, the east side of the avenue will be mapped FAR 15 and the west side will remain at FAR 10-12 pending completion of the review of the Clinton Special District. (or, alternatively, both sides will remain as they are pending the review.)

The recommendation that a sharp, clean-cut density differential be established between the East Side preservation area and the growth areas was one of the most widely made suggestions we received in response to the Draft Report. On reflection, it was also one of the best.

We had proposed keeping the basic FAR 15-18 range throughout Midtown, but targeting bonusable amenities so that it would be relatively easy to reach the top limit on the West Side and relatively difficult on the East Side. The trouble with this is that it tended to fudge the difference between the stabilization and growth areas, and still required a rather elaborate bonus system.

We also considered the proposal, advanced by several responsible groups, that we map the East Side for an FAR range of 12 or 12.5 to 15, and the West Side for an FAR range of 15 to 18. The problem we had with that was our concern that a reduction of this magnitude in the high value East Side could successfully be attacked as an uneconomic down zoning. We would need an elaborate bonus system to virtually guarantee reaching the top limit. A comparable bonus system would be needed to provide a development incentive in the growth areas.

In the end, the proposal to provide a flat density differential between the East Side stabilization area and the growth areas seemed to make the most sense. Base FAR's of 15 for the stabilization area and 18 for the growth areas appear realistic densities for Midtown and provide continuity with the 1961 zoning.

Even so we propose that the base FAR 18 be reduced to FAR 15 after five years unless it is reaffirmed after review and public hearing. This should provide reasonable protection against the growth areas being overbuilt, which is unlikely but not impossible.

The Footprint Cap

A cap or top limit on the amount of floor area that can be built on an actual or "footprint" site is a key recommendation. It is a corollary to maintaining an FAR differential at acceptable limits between the stabilization and growth areas. Without it, limits on the size of new buildings, even with strict application of revised bulk regulations, are so broad as to exceed the limits of practicable predictability.

That is why so many groups called for a cap on the footprint site, particularly to control zoning lot mergers. We are proposing a footprint cap of 20 percent above the base FAR, which incidentally has been recommended by groups with such different interests as the Parks Council and the Real Estate Board of New York.

This limit will govern zoning lot mergers, bonuses or any combination of the two. The only exception is a landmarks transfer which we are not proposing to change.

The 20 percent foot print cap will not permit new buildings to exceed FAR 18 in the stabilization area or FAR 21.6 in the growth areas. These maximums are in contrast to the footprint median FAR 20.9 and an average FAR 22 for 14 buildings approved since 1974 for the East Side, with the highest examples (Trump and Olympic Towers) exceeding FAR 30.

The increased use of zoning lot mergers in the crowded East Side office core played a major role in this recent spate of oversized buildings which have disturbed so many. They are out of scale in relation to their actual building site and contribute to local congestion and overcrowding.

The zoning lot merger is, in effect, one of two ways in which the unused "air-rights" or development rights of another property can be transferred and added to a development site. Unlike the landmark's transfer of development rights which entails a special permit procedure with approval by both the Landmarks Preservation Commission

and the City Planning Commission and has been relatively little used. The zoning lot merger requires no special permit, permission or even advance notice and has been increasingly used.

While the zoning lot merger has a beneficial effect in assuring retention of the low-scale buildings of the merged lot, this needs to be balanced against the harmful impact of the unrestricted merger.

In theory the zoning lot merger prevents the demolition of the small buildings on the merged site and does not increase the density on the overall site. In practice, it most often has been a trafficking in air-rights of buildings that are not available for demolition. Its practical effect is larger buildings with greater density than otherwise would have been built, and certainly a different massing and positioning of the building than would normally be expected if the entire site were really available for development.

In the Draft Report, we had proposed indirectly governing the impact of a merger by a limitation on the amount of unused floor area that could be transferred from the "lending" site. Upon further consideration, we concluded the footprint cap is a more direct and straightforward way of achieving our planning and zoning objectives.

Bonusable Amenities

We have gone much further in simplifying and paring down bonusable amenities than we had originally proposed in the Draft Report. We had then suggested a priority system of targeted amenities. There was general agreement that this represented a big step in the right direction, but that it was too complicated and included items that could and should be required without bonus or need not be included at all.

By pursuing this course, we have developed a lean system of bonusable amenities. Basically it includes three elements: an open-space package (plazas and urban parks), superior subway station connections, and theatre and landmark development-rights transfers.

The provision of usable open space which provides respite to the pedestrian and office worker, and contrast to the crowded and busy streets of Midtown remains a worthwhile public amenity. Our proposal expands the definition of open space and limits its location.

Plazas (as-of-right). A floor-area bonus in the ratio of 3 to 1 will be granted for acceptable plazas. This would give an additional FAR 1 approximately. It is not intended as an inducement for a plaza that otherwise would not be provided, but as an incentive to develop the open space that the builder is providing for any of a variety of reasons to acceptable and usable standards. The standards are the improved standards developed and adopted by the Planning Commission in *date?*. Plazas can provide through-block access (as, for example, Exxon Park) or be glassed-in (as will be the heavily planted and accessible plaza in the new IBM building), but they must meet plaza standards to receive a bonus. And bonuses will not, of course, be given to plazas on avenues which require a street wall and retail continuity.

Urban Parks (special permit). The midblock urban park built to acceptable standards similar to Paley or Greenacre Parks, and maintained by the developer is a true public amenity. The development rights of an approved urban park can be transferred to the development site, limited only by its footprint cap. Because it is not contiguous to the development site, a special permit will be required. The urban park must be located on a midblock, within 1,000 feet of the development site.

Special Subway Entrance (special permit)

Major improvements of access to Midtown's subway stations, which not only permit easier and more direct movement of the great surge of riders who use these stations at rush hour, but open the stations to light and air, are highly desirable. Indeed, the Regional Plan Association gives them a top priority in its comments on the Draft Report. In that report, we had suggested a range of improvements that new buildings within designated transit improvement zones (see Map #) would be

required to make. Most would earn a floor area bonus.

While we received much support for this in principle, two reservations were expressed by many. One, that it might be contrary to current operating policy, of the Transit Authority; and two, that it would require detailed criteria, specification, cost estimates and procedures worked out in advance.

The first is not a problem. Both MTA and the Transit Authority have expressed strong support for requiring such improvements. But the second is valid. A developer cannot reasonably be required to do something which is open-ended as to cost and time. We have agreed with the T. A. to undertake a joint planning and engineering study over the next year, with available Federal UMTA (Urban Mass Transportation Administration) funds to detail these major station improvements. Until then, we will not mandate them.

Meanwhile, however, we would not want to foreclose the possibility of their being made for any building which may be planned in the designated transit improvement zones. A major subway entrance improvement can benefit the building as well as the public. To encourage them, we will sanction a floor area bonus up to the 20 percent maximum, depending upon the nature and cost of the station improvement. Obviously, prior to the study, the amount of bonus cannot be spelled out in advance. It will have to be negotiated. But it is voluntary. And it will require a special permit.

Theatre Transfers (as-of-right)

We have two objectives in the Broadway - Times Square Theatre District. We want to retain the existing, mostly midblock, theatres to the fullest extent possible. And we want to encourage vital new development on the avenues. To accomplish both of these, we propose that existing theatres be permitted to transfer their development rights to designated growth sites anywhere within the mapped theatre district (Map). The transfer would be privately negotiated between property owners and would be limited by the 20 percent footprint cap.

Landmark's Transfers (special permit)

We do not propose any change in the existing procedure for the transfer of development rights of designated landmarks. It has been worked out to help preserve the City's architectural heritage. Development rights may be transferred to sites adjacent to or across the street from the landmark. In the high density (FAR 15) districts of Midtown, there is no restriction on the amount of transfer. But the transfer requires a special permit procedure with approval by both the Landmarks Preservation Commission and the City Planning Commission.

Planning Design Requirements

A clearly defined set of unbonded design requirements aimed at meeting the valid planning goals of Midtown development is proposed for new buildings. There are three categories of such required features.

Pedestrian Circulation Improvements

In the draft report, these were proposed as part of the priority, bonded amenity system to help alleviate sidewalk congestion. There was a surprising consensus from many, including builders, that this was a mistake and just cluttered up the regulations and made them more complicated than they had to be. If these were necessary and desirable improvements - and there was general agreement that they were --we should simply require them. Without bonus. We agree.

A new building will be required to include one or more feature to ease sidewalk congestion--a continuous sidewalk widening, an arcade, a corner arcade or similar designated features. The choice will be up to the developer.

Street Wall and Retail Continuity

On designated avenues and a few major cross streets (see Map) new buildings will be required to include a street wall and retail shops. For the most part, although not entirely, these go together.

This is clearly one of our most controversial proposals. Strong opposition to it (as proposed in the Draft Report) was voiced by responsible groups that we take very seriously. It was deemed an attempt to impose an aesthetic judgment, in the case of the street wall, and a tinkering with market forces that can regulate themselves, in the case of retail continuity.

We have not disregarded these objections lightly. But in our judgment, the proposed requirements express a valid and proper planning concern with how Midtown, as a whole, functions and contributes to the well being of the City. Much of the strength and vitality of Midtown is centered on its streets. New York is not a city of shopping centers or arcades (above or underground), or even of distinguished public plazas. It is a city of great avenues and streets. The street wall defines the Manhattan grid and helps give the major streets and avenues a sense of identity. Where it is historically strong, it should be maintained.

The retail continuity of the City's great shopping streets contributes greatly both to the street life which helps make New York a vibrant and exciting city, and to its economy. We have been justifiably criticized in the past for encouraging, or requiring, retail frontage off the streets and avenues. We are no longer doing so. Instead we are requiring that this important retail continuity not be broken on the streets where, our consultants assure us the market is strong enough to sustain it.

But, the argument is made, if the market is there won't retail be provided without being required? Not necessarily. The institutional or corporate builder, may have other priorities. He may consider the leasing and management of retail shops a nuisance, not worth the bother, even though it is the most profitable use of ground floor street frontage. His prime concern, unlike ours, is not with how well the avenue functions as an ensemble, how the parts contribute to the whole.

Two other questions have been raised. Does not the street wall requirement conflict with desired sidewalk widenings? And isn't it too rigid, precluding the possibility of occasional, desirable plazas or open spaces? To the first the answer is no. Required street walls may be set back as much as ten feet from the property line. The second question raises a point that has merit. Accordingly, we are providing a procedure where a plaza that meets defined criteria can be permitted to break the street wall. It will not, however, be bonused.

Off-Street Relocation of Subway Stairs

A relocation of subway entrance stairs from the street to within the property line will be required for any development sites adjacent to subway entrances. The standards and procedures for such simple relocation will be spelled out in advance. Certification of compliance by the Transit Authority and City Planning will be within a strict time limit. As with the pedestrian circulation improvements and the street wall and retail continuity, the simple relocation of a subway stairs will not be bonused.

"CR" Mapping for Mixed Buildings

There appears to be definite interest in the development community in constructing mixed commercial and residential buildings in the growth areas, particularly on the West Side. From the developers point of view, the mixed building can provide a good hedge, even though it normally requires separate lobbies and elevators. There is some concern that the market for office space on the West Side, initially at least, may still be limited. The market for Manhattan market-rate housing, however, is strong, even powerful.

From a planning point of view, the mixed building in this area also makes sense. Its market is CBD oriented. It consists largely of individuals and couples who work in mid-Manhattan and who thus help to ease the strain on the transit system without greatly burdening other municipal services.

Mixed buildings are permitted in "C" (commercial) districts, but are penalized by the residential lot area per room requirement. In the mixed "CR" district, this penalty is reduced, making it possible to utilize much more of the total permissible floor area. Accordingly, we propose to map all of the growth areas "CR".

Downzoning the Preservation Areas

In order to meet our development strategy goal of preserving the few special midblock areas of unique value to Midtown, we propose to downzone them (Map). We consulted closely with the Landmarks Preservation Commission in this,

and in particular asked that they explore the possibility of designating the area north of the Museum of Modern Art a historical district. Although, there are a number of architecturally distinguished buildings, particularly on 54th Street, which have recently been designated as individual landmarks, the area as a whole apparently does not quite meet their historic district criteria. They are in agreement with us, however, that this and the other midblock areas east of Fifth Avenue because of their combination of quality buildings, townhouses, low scale, and street front shops are unique in their contribution to Midtown and that it is in the City's interest to preserve them. We are proposing that they be zoned C- ?, with a maximum FAR 8. This generally reflects their built character.

The "Two-Tier" Bulk Regulations

It is not only the total size or bulk of a building that determines its impact, it is also how that bulk is arranged on its site. The disposition of bulk on the site is governed by the technical bulk regulations. New York's pioneering 1916 zoning, brought about in large part in reaction to 120 Broadway which rose straight up from its lot line, dealt with bulk purely in terms of its disposition -- that is with height and setback rules, tower coverage and the like.

The 1961 zoning added the element of floor area ratio (FAR) which set the floor area of a building as a multiple of lot size. FAR is as closely related to the size of a building as it is to its density of population, if not more so. But the FAR of a building, by itself, cannot measure its impact on its surroundings, or how it is perceived by the person in the street.

The breakdown of the bulk regulations, their increasingly frequent waiver and the growing reliance on FAR alone, imbalanced the system and led to the widespread concerns that were a major factor in bringing about this effort.

The two-tiered system initially developed by our architectural consultants -- Davis, Brody in association with Kwartler/Jones -- as presented in the Draft Report,

created much confusion and no little opposition. In part, that was because of the new idiom in which it was couched.

In larger measure, it was our own fault. We had rushed the consultants, who had been taken on late in the study, to meet our deadline. Despite the brilliance of their analysis of how Midtown had been shaped by the evolution of zoning since 1916, which provided a solid basis for the underlying values of their proposal, their system had not yet been fully thought through. The "prescriptive" tier which they had developed at our insistence, was rigid and complicated. It distracted from their "performance" tier. Technical differences between their proposals and those favored by our technical staff got blown up out of all proportion. In short, all the messiness and birth pains of a new system were exposed before the umbilical cord was cut.

Even so, it was worth it, especially in the help we got in shaping the final proposal. In particular, we are indebted to the special zoning committee established by the New York Chapter of the American Institute of Architects. It met almost on a weekly basis for more than three months. There was a regular exchange of views with our technical staff and zoning consultants, who were invited to participate in most of these meetings. And some of the busiest and most distinguished architectural firms in the City tested the system in detail on projects they had on the drawing boards in their own shops. There is no price that can be put on this practical expertise that the AIA marshalled for us.

The final bulk proposal, which drew heavily on this expert advice, was developed jointly by our technical staff and consultants. It is presented in detail in the next chapter. Here are some of its major points.



City of New York

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OFFICE OF TECHNICAL OPERATIONS

Julius Spector, P.E., *Director*

March 30, 1981

M E M O R A N D U M

TO: Herbert Sturz

FROM: Julius Spector *JS*

RE: Revised Tower Proposal

Attached is a revised Tower prescriptive tier proposal utilizing the principles enunciated in the consultants report and which addresses the concerns of the Manhattan office.

The height cap on the 55% tower has been raised to 400 feet from 300 feet and a width of front tower wall to width of front lot line factor has been incorporated into the set back requirement. If acceptable, this proposal would become the prescriptive tier. The Manhattan office and consultant's proposals would be the performance tiers.

cc: R. Bernstein
P. Bhattacharji
B. Davis
N. Marcus
M. Parley
K. Halpern

Revised Tower Proposal

Height limit 400 feet

55% coverage for entire zoning lot

40% coverage for portion of zoning lot more than 100 feet
from wide streets.

Initial setback

wide street: $35' - \frac{(FLLW - FTWW \times 100 \times .75')}{FLLW}$

not less than 15 feet

narrow street: $45' - \frac{(FLLW - FTWW \times 100 \times .80')}{FLLW}$

not less than 20 feet

FLLW = Front lot line width

FTWW = Front tower wall width

Above 400 feet

40% coverage

setback

wide street: $35' - \frac{(FLLW - FTWW \times 100 \times .38')}{FLLW}$

not less than 15' feet

narrow street: $45' - \frac{(FLLW - FTWW \times 100 \times .40')}{FLLW}$

not less than 20' feet





City of New York

Department of City Planning

2 Lafayette Street, New York, N.Y. 10007 Telephone: 566-8569

OFFICE OF COUNSEL
Norman Marcus, Counsel

February 20, 1981

M E M O R A N D U M

TO: Herbert Sturz

FROM: Norman Marcus and Julius Spector

RE: Dick K. Bernstein's Midtown Recommendations, dated February 5, 1981
Zoning Lot Mergers

cc: Dick Bernstein, Ken Halpern, Michael Parley, Bob Davis

While we are in sympathy with Dick's goals and substantive recommendations for Midtown, we take strong exception to his implementation strategy -- that of an arbitrary cap on zoning lot mergers which retain existing buildings, of 20 percent above base foot-print FAR.

A foot-print FAR is an uncertain way of measuring permissible floor area which will be new to our ordinance as it is to most zoning ordinances in the country. The confusion it introduces into what heretofore has been a simple measurement calculation is nowhere more apparent than in Dick's own memo. It bases permissible floor area calculations not on lot area declared as a single zoning lot but rather on a cleared sub-area of the zoning lot which will be used for building purposes. A double standard of permissible floor area on a zoning lot is therefore created. A lower floor area is mandated where retention of existing buildings occurs on the zoning lot with substantially higher floor area possible (beyond the net gain from demolition) where existing buildings are cleared.

One of the basic legal reasons for an FAR control, is a satisfactory relationship between permissible floor area and city infrastructure. Arbitrary consequences in the nature of penalties flow from a double FAR standard for foot-print development on a uncleared site as opposed to

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Executive Director: WILLIAM DONOHUE

development on a cleared site. Presumably the impact on sidewalk congestion, subways, buses, and air quality will be proportionate to the total floor area of the development whether or not it is composed in part of existing buildings on the zoning lot.

To the extent that discriminatory floor area allocations prejudice the retention of existing buildings on a zoning lot, one can expect loss of small space, lower rent accommodations in existing buildings which house many of Midtown's diverse uses, to flow from such a concept.

Zoning lot mergers serve to preserve buildings and speed up new development thereby lowering construction and other costs. An FAR foot-print cap has a built-in incentive to enlarge the foot-print because the permitted floor area in a building is the product of the FAR multiplied by the area of the foot-print. The only way to increase permitted floor area in this situation for a proposed building is to increase the area of the foot-print which was done in the case of the "monster" ATT and IBM buildings. This is accomplished by purchasing, vacating, demolishing and clearing adjoining buildings and properties. It is a much longer and more expensive process which will be worthwhile for the developer because the new building will contain more floor area and be significantly larger than a lot merger with existing buildings on the same size lot.

One can anticipate the introduction of similar "anti-development" FAR double standards in city areas outside Midtown.

Other unanswered questions raised by Dick's proposal include FAR consequences in the event of demolition of pre-existing buildings subsequent to the certificate of occupancy of the new development, for both the footprint building and the now cleared portion of the zoning lot.

It will be very difficult if not impossible to define foot-print as it relates to:

- a) zoning lot,
- b) enlargements,
- c) existing buildings,
- d) curb level,
- e) interior, corner or through lots,
- f) rear yards,
- g) side yards,
- h) plazas,
- i) residential regulations involving rooms, courts, building spacing window to lot line, etc.

The introduction of a modified form of zoning lot overlaid on the present definition would create havoc in the administration and enforcement of this new term called "foot-print" as well as the present zoning lot definition.

If the proposed height and setback prescriptive controls allow a foot-print FAR 24, any separate foot-print FAR 18 cap invites variances by the Board of Standards and Appeals on the rationale that performance standards of light and air and relationships to other buildings are served by a building with 33 percent more floor area than the allowable foot-print FAR 18 structure. And, any such gap between a height and setback performance standard, and a more restrictive FAR cap invites legal challenge of the cap as arbitrary and capricious.

Our present predicament was created by having unsynchronized FAR and height and setback standards. Since the FAR control was perceived as the dominant control, zoning lot mergers with existing buildings forced discretionary modifications of height and setback controls from the Planning Commission and the Board of Standards and Appeals since overall "dominant" FAR controls were not pierced. Dick's solution to this problem couples more restrictive FAR controls with relatively more lenient height and setback regulations. We can be certain, that where there is such a double standard in the ordinance, development will seek out the more permissive provision.

Under Dick's approach, foot-print FAR relates neither to infrastructure adequacy nor to light and air standards. It will therefore be cut down at the first opportunity as not in accord with a comprehensive plan -- the legal standard laid down in the Zoning Enabling Act.

The answer seems simple: develop height and setback controls which accommodate no more FAR than the desired amount and measure the permissible FAR through use of the desired multiple (e.g., 15, 18, etc.) of the zoning lot, not through techniques (i.e., foot-print) foreign to zoning law.

A-10 MIDTOWN DEVELOPMENT PROJECT REVIEW AT WAVE HILL



City of New York

Department of City Planning

2 Lafayette Street, New York, N.Y. 10007

To: Members of the Commission
From: Richard K. Bernstein
Re: Midtown Development Project Review - Wave Hill
Date: April 10, 1981

Attached is the annotated agenda and summary of recommendations for the Wave Hill Review on Thursday, April 16, 1981.

The agenda is in three parts. Part I covers the overall planning strategy, including special incentives, public investments and services. Part II covers basic zoning and urban design controls and Part III covers the zoning bulk regulations. We will try to cover parts I and II in the morning and part III after lunch.

As you can see, there is a lot of material to go over, so we would like to get started promptly at 9:30. Coffee and bagels will be available at 9 o'clock to give us the strength to get through the morning.

att.

To: Wave Hill

By Car: Henry Hudson to 246th Street exit; continue to 252nd Street; turn left 2 blocks to Independence Avenue. Turn left on Independence Avenue to Wave Hill gate at 249th Street.

By public transportation: #1 IRT 7th Avenue subway to Broadway and Van Cortlandt; on north west corner of 231st Street and Broadway, take #10 or #100 bus to 252nd Street. Walk down the hill to Wave Hill at 249th Street.

CITY PLANNING COMMISSION

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Executive Director: ALANNE BAERSON

Wave Hill

Thursday, April 16, 1981

I. PLANNING STRATEGY

✓ A. Three-Area Strategy

We are recommending that the three basic types of planning areas proposed for Midtown - growth, stabilization and preservation - be adopted and used explicitly as a basis for planning and zoning controls. The widespread acceptance of this concept gives us a useful and clearly understood planning tool.

The only significant issues raised are whether midtown expansion should be to the south as well as the west, and whether we are providing adequate incentives for expansion, and controls for stabilization. These issues are discussed under separate headings.

✓ B. Boundaries

With minor refinements, we are staying with the same basic boundaries for the growth and stabilization areas proposed in the draft report. Stabilization area: 40th to 60th Streets, Third to Sixth Avenues. Growth areas: 42nd to 60th Streets, Sixth to Eighth Avenues; Fifth Avenue corridor, 34th to 40th Streets; Sixth Avenue corridor, 34th to 42nd Streets; 34th Street corridor, Fifth to Eighth Avenues; Herald Square area; Columbus Circle area. In addition to the theatres in the theatre district and the 54th-56th Street midblock preservation area, we are proposing the following midblock areas for preservation: between Madison and Park, both sides of 60th Street and south side of 61st Street; between Park and Lexington, north side of 54th Street and both sides of 55th and 56th Streets.

Issues raised were whether project boundaries should be expanded to provide greater growth or protection areas (Fifth Avenue to 23rd Street; Park Avenue South 17th-32nd Streets; east of Third Avenue; west of Eighth Avenue into Clinton), or contracted (Fifth Avenue, 34th to 40th Streets; Sixth Avenue 34th-42nd Streets) to protect

department stores, the garment district and landmarks. Developers assembling sites in newly proposed preservation areas raise question of "fairness."

C. Special Incentives

A special incentive package is being proposed for the growth areas. This is in response to the most widespread criticism of the draft report, that it did not provide adequate means to implement the proposed strategy.

1. Tax Incentives

- ✓ a. As-of-right ICIB tax exemption
- ✓ b. J-51 exclusions
- ✓ c. 421-a exclusion

2. "Turn-around" Projects

- ✓ a. 42nd Street Development Project
- ✓ b. Portman Hotel and Broadway Plaza
- ✓ c. Theatre District Preservation/Development

3. Site Assemblage and Development Assistance

- ✓ a. UDC
- ✓ b. N.Y.C. Economic Development Corporation

4. Zoning Incentives

- ✓ a. As-of-right zoning
- ✓ b. Differential densities
 - East Side - Base FAR 15 (12 midblock)
 - West Side - Base FAR 18* (15 midblock)

*With 5-year "sunset" clause

5. Mixed Buildings and Housing

- ✓ a. "CR" designation throughout
- ✓ b. Clinton District re-study
- ✓ c. New high-density "R" district (future)

D. Public Investments and Services

The major public projects and service programs now under way or in planning in Midtown, in addition to those covered above, are related to our development strategy, to the basic problems of the different areas and to fundamental planning issues. They are organized under three headings: East Side, West Side; Midtown in General.

1. West Side

- a. Convention Center. Issue is whether we are doing advance planning for area. We are and it suggests a go-slow approach in making any zoning changes until we see how Convention Center traffic patterns work.
- b. Station and terminal projects (Descriptive)
 - Port Authority Bus Terminal
 - 42nd Street-8th Avenue Subway Station
 - Herald Square Station improvements
- c. Service Projects (Descriptive)
Included: Mayor's Office of Midtown Enforcement; CETA "Sweep-up"; Operations Crossroads; 45th Street demo block; 42nd Street Local Development Corporation efforts; 8th Avenue commercial revitalization.

2. East Side

- a. Conceptual planning to deal with pedestrian and vehicular circulation
- b. Specific feasibility studies
 - Madison Avenue)
 - 56th Street) Issues are impact
 - Grand Central area (on traffic, air
 - 53rd Street) pollution and
 - 49th-50th Streets) costs
- c. Fifth Avenue Association Plan
- d. Street Peddlers and Spillback
 - Issue is food peddlers and traffic controllers
- e. Bryant Park Restoration (Descriptive)

3. Midtown in General

- a. Subway service - urgency of priority for maintenance and upgrading of existing system as CPC proposed in "A New Direction in Transit," December 1978.
- b. Express Buses - Issue: can service be cut back to reduce congestion; response: not until subways much improved.

- c. 63rd Street Tunnel (Descriptive)
- d. LIRR West Side Storage Yard (Descriptive)
- e. Empire Line Penn Station Proposal (Descriptive)
- f. Airport access - Carry Bus Terminal
- g. West Side Highway - importance to plan for re-organization of traffic patterns and surface transportation in Manhattan CBD when a west side highway gets built.

II. BASIC ZONING AND URBAN DESIGN CONTROLS

A. Density (FAR) Limits

Changes in density limits are proposed to draw a clear distinction between the stabilization area and the growth areas, particularly on the West Side, and to retain and enhance New York's traditional development pattern of higher bulk on the avenues and lower on the midblocks. These are appreciable changes since the draft report, responsive to Midtown needs and public comment.

1. Growth Areas

- a. Avenues in theatre district (Sixth, Seventh and Broadway) are proposed to be increased to Base FAR 18 subject to 5-year "sunset" provision, i.e., they will revert to FAR 15 without positive action.
- b. Midblocks will remain at FAR 15.
- c. Fifth Avenue, Sixth Avenue and 34th Street growth corridors will be increased to Base FAR 15 from Base FAR 10.
- d. Eighth Avenue will remain at FAR 10 Base.

2. Stabilization Area

- a. Avenues will be zoned Base FAR 15 with rare opportunity to get to maximum FAR 18. No more FAR 21.6 for Fifth Avenue.
- b. Midblocks will be reduced to FAR 12.

3. Preservation Areas

- a. The three East Side midblock preservation areas will be reduced to FAR 8.
- b. Theatres will be protected from demolition.

B. Mandated Planning and Urban Design Requirements

Six planning and urban design features are proposed to be mandated without any bonus. The major issue and controversy will center on the requirements for street wall and retail continuity on specific avenues and streets. Despite considerable opposition we have retained these as a fundamental planning responsibility to protect and enhance the streets and avenues of Midtown.

1. Retail continuity on specified streets
2. Street wall continuity on specified streets
3. Curb cut prohibitions on specified streets
4. Relocation of adjacent subway stairs from street to within development site
5. Alleviating sidewalk congestion
6. Continuing through-block circulation networks

C. Bonusable Amenities

The number of bonusable amenities and, in general, the amount of bonus they can get have been considerably reduced since the draft report. A lean system is the result.

1. Midtown-Wide

- a. Open plaza - maximum bonus of FAR 1 at 6:1 ratio
- b. Covered plaza - same. This is an outside plaza that meets all plaza requirements, but is glassed-in so that it can be used for a greater part of the year than an open plaza and in inclement weather. It is not an interior space.
- c. Urban park - An off-site urban park in specified areas by special permit can transfer development rights. Maximum bonus - FAR 3.
- d. A superior subway connection improvement that meets TA and CPC standards can provide, by special permit, maximum bonus of FAR 3.

2. Theatre District

- a. New theatre -- the bonus for new theatres by special permit is being retained, but with additional requirements. Maximum bonus - FAR 3.
- b. Theatre preservation bonus for reconversion or substantial reconstruction of theatres to maximum bonus - FAR 3.
- c. Transfer of theatre development rights to maximum bonus - FAR 3.
- d. Through-block galleria to maximum bonus - FAR 1.

III. ZONING BULK REGULATIONS

A. Principles and Criteria

The bulk regulations being proposed are based on principles and criteria evolved by actual midtown development under the 1916 and 1961 zoning regulations. The emphasis is on providing an acceptable degree of daylight or openness to the sky for the street and for respecting the context of existing development. We have two proposed sets of bulk regulations, each of which is intended to give maximum design flexibility to the developer and his architect. The "prescriptive" tier in the draft report has been dropped.

1. Performance System

The performance system is based on the use of a Daylight Evaluation Chart to objectively measure the amount of sky left open or unblocked by a proposed building, together with standards for street walls related to the height and length of those adjacent buildings. These elements are interrelated. An acceptable point score must be achieved. There is a small optional bonus for reflectivity, i.e., light-colored rather than dark buildings. Because it represents a new way of regulating building bulk (even though based on historic standards), it has been and will probably continue to be controversial. It has been simplified and somewhat liberalized since the draft report.

2. Daylight Compensation System

This is a new system, developed on the strength of the performance system's analysis. It is based on a straightforward set of rules for compensating for any portions of a building that extend beyond the basic daylight curve in some places by pulling back in others. Context is provided by the basic street wall continuity requirements as noted previously, and by limiting maximum street wall height to $1\frac{1}{2}$ times street width or 150 feet. Fifth Avenue is limited to $1\frac{1}{4}$ times street width.

3. Administration

Both systems would be as-of-right and will be administered by the Department of Buildings. We have discussed with Irwin Fruchtman setting up a joint staff group to regularly review experience under the new regulations.

Any new system is bound to have bugs that won't show up until it is actually used. Any changes required should consider both planning goals and administrative needs.

A-11 MIDTOWN DEVELOPMENT PROJECT/ZONING (4/27/81)

YR ZONING

Goals

The proposed zoning revisions have four chief goals in support of our basic Midtown development strategy.

1. To help stabilize the prime East Side core area, perhaps the world's most valuable piece of real estate and certainly the heart of the City's economy, and to provide direction and incentives for its growth and expansion to the west and to the south.
2. To make the zoning regulations as simple, direct, predictable and as-of-right as possible, drastically reversing the recent trend to negotiated zoning.
3. To emphasize the valid planning concern of zoning with the impact of buildings on the streets and avenues of Midtown-- not only in terms of their openness to light and air, but in how well the streets serve the movement of people, define Midtown as a special place and enhance its role as the world's preeminent "downtown".
4. To protect the theatre district (by helping to preserve existing theatres) and a few other unique areas which make a special contribution to the function and ambiance of Midtown and are unlikely to be replaced if destroyed.

Recommendations

A comprehensive revision of Midtown zoning is proposed to achieve these goals. It consists of a package of closely knit recommendations for

- 1) density limits, 2) mandated planning and urban design requirements,
- 3) bonusable amenities, 4) special districts, 5) bulk regulations, and
- 6) administration.

1. Density (FAR) Limits

Changes in density limits are proposed to draw a clear distinction between the stabilization area and the growth areas, particularly on the West Side, and to retain and enhance New York's traditional development pattern of higher bulk on the avenues and lower on the midblocks. These are appreciable changes since the draft report, responsive to Midtown needs and public comments.

Growth Areas

- Avenues in theatre district (Sixth, Seventh and Broadway) are proposed to be increased to base FAR 18 subject to 5-year "sunset" provision.
- Midblocks will remain at FAR 15.
- Fifth Avenue, Sixth Avenue and 34th Street growth corridors will be increased to base FAR 15 from base FAR 10.
- Eighth Avenue will remain at FAR 10 base.

Stabilization Area

- Avenues will be zoned base FAR 15 with rare opportunity to get to maximum FAR 18. This includes reducing Fifth Avenue from its present FAR 21.6.
- Midblocks will be reduced to FAR 12.

Preservation Areas

- The East Side midblock preservation areas will be reduced to FAR 8.
- Theaters will be protected from demolition.

2. Mandated Planning and Urban Design Features

Six planning and urban design features are proposed to be mandated without any bonus. These include three that had been proposed in the draft report as part of a bonusable priority ~~amenity~~ system, which we have dropped in favor of a more simple and direct system. The major issue will center on the requirements for street wall and retail continuity on specific avenues and streets. Despite considerable opposition we have retained these as a fundamental planning responsibility to protect and enhance the streets and avenues of Midtown.

- Retail continuity on specified streets
- Street wall continuity on specified streets
- Curb cut prohibitions on specified streets
- Relocation of adjacent subway stairs from street to within development site
- Alleviating sidewalk congestion
- Continuing through-block circulation networks

3. Bonusable Amenities

The number of bonusable amenities and, in general, the amount of bonus they can get have been considerably reduced since the draft report. A lean system is the result.

Midtown-Wide

- Urban plaza. An urban plaza can achieve a maximum bonus of FAR 1 at a ratio of six feet of floor space for one foot of plaza.

It is as-of-right but must meet current plaza requirements.

It may be glassed-in to provide greater use throughout the year, but does not include an interior space.

- Urban park. An off-site urban park where permitted can generate a maximum bonus of FAR 3 through transfer of its development rights. A special permit is required.
- Subway station connection. A superior subway station connection (other than a simple stairway relocation) built to Transit Authority and City Planning Commission standards may provide a maximum bonus of FAR 3. There are a limited number of mapped sites eligible. Until detailed specifications and cost estimates have been developed by a federally funded study recently initiated, a special permit will be required.

Theatre District

- New theater. The bonus for new theaters by special permit is being retained, but with additional requirements. Maximum bonus is FAR 3.
- Theater preservation. A bonus for reconversion or substantial reconstruction of theaters will allow a maximum bonus of FAR 3.
- Transfer of theater development rights will allow a maximum bonus of FAR 3.
- Through-block galleria built to prescribed standards in mapped locations will permit a maximum bonus of FAR 1.

4. Special Districts

Two special districts are being retained, but with sharply defined objectives. The sacrifice of light and openness to the street by waiver or modification of the bulk regulations will no longer be permitted.

- Theater District. The emphasis has been shifted to the preservation of existing theaters, as noted above.
- Fifth Avenue District. The maintenance and strengthening of Fifth Avenue as one of the world's great shopping boulevards continues to be emphasized. The special Fifth Avenue retail use group is retained and retail continuity extended south to 34th Street. Incentives to buildings out of scale and character with the Avenue's architectural heritage have been eliminated.

5. Bulk Regulations

The bulk regulations being proposed are based on principles and criteria evolved by actual midtown development under the 1916 and 1961 zoning regulations. The emphasis is on providing an acceptable degree of daylight or openness to the sky for the street and for respecting the context of existing development. The bulk regulations are intended to give maximum design flexibility to the developer and his architect.

6. Administration

The Midtown zoning regulations, to the greatest extent practicable, will be incorporated in a single new chapter in the Zoning Resolution to make them as easy as possible to use and administer, and to minimize the need for cross references. They will be administered by the Department of Buildings. Any new system is likely to have "bugs" that will not show

up until it is actually in use. We are proposing to set up a joint staff oversight group with the Department of Buildings to regularly review experience under the new regulations and to insure that any changes or modifications required will consider both planning goals and administrative needs.

A Density (FAR) Differential

The recommendation that a sharp, clean-cut density differential be established between the East Side preservation area and the growth areas was one of the most widely made suggestions we received in response to the draft report. On reflection, it was also one of the best.

We had proposed keeping the basic FAR 15-18 range throughout Midtown, but targeting bonusable amenities so that it would be relatively easy to reach the top limit on the West Side and relatively difficult on the East Side. The trouble with this is that it tended to fudge the difference between the stabilization and growth areas, and still required a rather elaborate bonus system.

We also considered the proposal, advanced by several responsible groups, that we map the East Side at a base FAR of 12 or 12.5, and the West Side at a base FAR of 15. Bonusable amenities would permit a 20 percent increase in both areas. The problem we had with that was the need to continue an elaborate bonus system when our goal was to strip it down.

In the end, the proposal to retain FAR 15 for the East Side avenue frontages while reducing the midblocks to FAR 12, and upzoning the West Side avenue frontages to FAR 18 while keeping their midblocks at FAR 15 seemed to make the most sense. It provides a clear differential between East and West Sides.

and 18 FAR 15 on the avenue frontages appear realistic densities for Midtown and provide continuity with 1961 zoning. An extensive bonus system is not needed. The uniformly lower midblock zoning is in accord with the traditional development pattern of New York.

Even so we proposed that the base FAR 18 on the West Side avenue frontages be reduced to FAR 15 after five years unless it is reaffirmed after review and public hearing. This should provide reasonable protection against the growth areas being overbuilt, which is unlikely but not impossible.

The growth corridors to the south, along Fifth Avenue and the Avenue of the Americas are proposed to be zoned FAR 15, a 50 percent increase over their current zoning. Eighth Avenue in the theatre district is not now proposed to be changed from its existing FAR 10. It is a natural part of the West Side growth area, probably more for mixed buildings, hotels and housing than office buildings. We believe it warrants and should receive the maximum possible tax incentives. But as a transition to the Clinton residential area -- indeed, the West Side of the avenue is within the Clinton Special District -- we think that any zoning changes should await completion of the Clinton re-study which is now being undertaken in consultation with the community.

"CR" Mapping for Mixed Buildings

There appears to be definite interest in the development community in constructing mixed commercial and residential buildings in the growth areas, particularly on the West Side. From the developers' point of view, the mixed building can provide a good hedge, even though it normally requires separate lobbies and elevators. There is some concern that the market for office space on the West Side, initially at least, may still be limited. The market for Manhattan market-rate housing, however, is strong, even powerful.

From a planning point of view, the mixed building in this area also makes sense. Its market is CBD oriented. It consists largely of individuals and couples who work in mid-Manhattan and who thus help to ease the strain on the transit system without greatly burdening other municipal services.

Mixed buildings are permitted in "C" (commercial) districts, but are penalized by the residential lot area per room requirement. In the mixed "CR" district, this penalty is eliminated, making it possible to utilize much more of the total permissible floor area. Accordingly, we proposed to map all of the growth areas "CR".

Downzoning the Preservation Areas

In order to meet our development strategy goal of preserving the few special midblock areas of unique value to Midtown, we propose to downzone them. We consulted closely with the Landmarks Preservation Commission in this, and in particular asked that they explore the possibility of designating the area north of the Museum of Modern Art an historical district. Although, there are a number of architecturally distinguished buildings, particularly on 54th Street, which have recently been designated as individual landmarks, the area as a whole apparently does not quite meet their historic district criteria. They are in agreement with us, however, that this and the other midblock areas east of Fifth Avenue because of their combination of quality buildings, townhouses, low scale, and street front shops are unique in their contribution to Midtown and that it is in the City's interest to preserve them. We are proposing that they be zoned to FAR 8. This generally reflects their built character.

Zoning Lot Mergers and Development Rights Transfers

No consideration of FAR limits can disregard the impact of the use of "air rights", that is the unused development potential of landmarks or of existing low-rise buildings whose zoning lots are technically "merged" with that of the actual development site.

Both types of transfer have in the past resulted in buildings that were oversized and out of scale on their actual building site. The pressure they put on existing as-of-right bulk regulations has contributed to the erosion of the as-of-right regulations.

There is general acceptance that landmark transfers serve a public purpose in helping to preserve our architectural heritage. In any case they require a special permit with approval by both the Landmarks Preservation Commission and the City Planning Commission. There is ample opportunity for the public to be heard and we have not considered any change in current procedures.

Zoning lot mergers are another story, however. They are private transactions which require neither public approval nor notice. Although recorded, they normally do not even come to light until an application for a building permit is filed with the Department of Buildings. While they can serve a useful purpose in preserving existing low-scale buildings, they can also create difficult problems. Their increased use in recent years as it became more difficult to assemble sizeable building sites in the prestigious East Side core area led to the so-called "shoehorning" and "piggybacking" that helped create the demand for revising Midtown zoning.

In the draft report we had proposed indirectly governing the impact of a merger by a limitation on the amount of unused floor area that could be transferred from the "borrow" site. Many groups, however, called for a "cap" on the actual development or "footprint" site as a better and more direct control. Such differently oriented groups as the Real Estate Board and the Parks Council, each proposed a 20 percent foot print cap in their thoughtful and detailed responses to the draft report.

We gave long and careful consideration to this proposal. It appeared to have the virtue of simplicity and directness. But it turned out to be entangled in a web of zoning, legal and definitional complications. Nevertheless, we did not give it up until we devised the midblock zoning strategy which we believe will sufficiently inhibit zoning lot mergers as to make other controls on them unnecessary.

The zoning regulations which govern "split lots" -- that is, lots that are in two zoning districts -- do not permit a transfer of floor area across the district boundary line unless the line was mapped across an existing lot that was formerly in a single district. In that case, the permissible floor areas may be averaged, on a pro rata basis, to permit architectural uniformity. These regulations should serve to keep zoning lot mergers within predictable and close limits and obviate the need for other controls.

Bonusable Amenities

We have gone much further in simplifying and paring down bonusable amenities than we had originally proposed in the Draft Report. We had then suggested a priority system of targeted amenities. There was general agreement that this represented a big step in the right direction, but that it was too complicated and included items that could and should be required without bonus or need not be included at all.

By pursuing this course, we have developed a lean system of bonusable amenities. Basically it includes three elements: an open-space package (plazas and urban parks), superior subway station connections, and theatre district preservation bonuses.

The provision of usable open space which provides respite to the pedestrian and office worker, and contrast to the crowded and busy streets of Midtown remains a worthwhile public amenity. Our proposal expands the definition of

open space but limits its location.

Plazas (as-of-right). A floor-area bonus in the ratio of 6 to 1 will be granted for acceptable plazas. The maximum bonus will be an additional FAR of one. It is not intended as an inducement for a plaza that otherwise would not be provided, but as an incentive to develop the open space that the builder is providing for any of a variety of reasons to acceptable and usable standards. Plazas can provide through-block access (as, for example, Exxon Park) or be glassed-in (as will be the heavily planted and accessible plaza in the new IBM building), but they must meet plaza standards to receive a bonus. And bonuses will not, of course, be given to plazas on avenues which require street wall and retail continuity.

Urban Parks (special permit). The midblock urban park built to acceptable standards similar to Paley or Greenacre Parks, and maintained by the developer is a true public amenity. The development rights of an approved urban park can be transferred to the development site, limited to a maximum FAR 3. Because it is not contiguous to the development site, a special permit will be required. The urban park must be located on a midblock, within 1,000 feet of the development site.

Special Subway Entrance (special permit). Major improvements of access to Midtown's subway stations, which not only permit easier and more direct movement of the great surge of riders who use these stations at rush hour, but open the stations to light and air, are highly desirable. Indeed, the Regional Plan Association gives them a top priority in its comments on the draft report. In that report, we had suggested a range of improvements that new buildings within designated transit improvement zones would be required to make. Most would earn a floor area bonus.

While we received much support for this in principle, two reservations were expressed by many: one, that it might be contrary to current operating policy of the Transit Authority; and two, that it would require detailed criteria specifications, cost estimates and procedures worked out in advance.

The first is not a problem. Both MTA and the Transit Authority have expressed strong support for requiring such improvements. But the second is valid. A developer cannot reasonably be required to do something which is open-ended as to cost and time. We have agreed with the T. A. to undertake a joint planning and engineering study over the next year, with available Federal UMTA (Urban Mass Transportation Administration) funds to detail these major station improvements. Until then, we will not mandate them.

Meanwhile, however, we would not want to foreclose the possibility of their being made for any building which may be planned in the designated transit improvement zones. A major subway entrance improvement can benefit the building as well as the public. To encourage them, we will sanction a floor area bonus up to FAR 3, depending upon the nature and cost of the station improvement. Obviously, prior to the study, the amount of bonus cannot be spelled out in advance. It will have to be negotiated. But it is voluntary. And it will require a special permit.

Theatre District Bonuses - We have two objectives in the Broadway-Times Square Theatre District. We want to retain the existing, mostly midblock, theatres to the fullest possible extent; and we want to encourage vital new development on the avenues. To accomplish both of these we proposed to list 37 theatres in the zoning resolution which cannot be demolished without a special permit. However, adjacent avenue development sites could receive a bonus up to FAR 3 as an incentive to help preserve the theatres.

This could be for the reconversion of a theatre that was in some other use, for the substantial reconstruction of a theatre that badly needed it, or for the transfer of unused theater development rights. A transfer would be permitted across a zoning district line provided the theatre remained in theater use. Bonuses would still be available for new theatres, but only if there was a lease or contract for their use from a legitimate operator, and if their construction resulted in a net increase in the number of theatres. An advisory committee of professional theatre people would be established to help guide the Commission. Because of the special characteristics of the district, a bonus up to FAR 1 would also be allowed for through-block galleria in suitable locations. Bonuses could be combined, but could not exceed a limit of FAR 3. 250 -

Mandated Planning and Urban Design Features

A clearly defined set of unbused design requirements aimed at meeting the valid planning goals of Midtown development is proposed for new buildings. There are six such required features.

Street Wall and Retail Continuity. On designated avenues and a few major cross streets new buildings will be required to include a street wall and retail shops. For the most part, although not entirely, these go together. This is clearly one of our most controversial proposals. Strong opposition to it, as proposed in the draft report, was voiced by responsible groups that we take very seriously. It was deemed an attempt to impose an aesthetic judgment, in the case of the street wall, and to tinker with market forces that can regulate themselves, in the case of retail continuity.

We have not disregarded these objections lightly. But in our judgment, the proposed requirements express a valid and proper planning concern with how Midtown, as a whole, functions and contributes to the well being of the City. Much of the strength and vitality of Midtown is centered on its streets. New York is not a city of shopping centers or arcades (above or underground), or even of distinguished public plazas. It is a city of great avenues and streets. The street wall defines the Manhattan grid and helps give the major streets and avenues a sense of identity. Where it is historically strong, it should be maintained.

The retail continuity of the City's great shopping streets contributes greatly both to the street life which helps make New York a vibrant and exciting city, and to its economy. We have been justifiably criticized in the past for encouraging, or requiring, retail frontage off the streets and avenues. We are no longer doing so. Instead, we are requiring that this important retail continuity not be broken on the streets where our consultants assure us the market is strong enough to sustain it.

But, the argument is made, if the market is there won't retail be provided without being required? Not necessarily. The institutional or corporate builder may have other priorities. He may consider the leasing and management of retail shops a nuisance, not worth the bother, even though it is the most profitable use of ground floor street frontage. His prime concern, unlike ours, is not with how well the avenue functions as an ensemble, how the parts contribute to the whole.

Two other questions have been raised. Does not the street wall requirement conflict with desired sidewalk widenings? And isn't it too rigid, precluding the possibility of occasional, desirable plazas or open spaces? To the first the answer is no. Required street walls may, with few exceptions, be set back as much as ten feet from the property line. The second question raises a point

that has merit. Accordingly, we are providing a procedure where a plaza that meets defined criteria can be permitted to break the street wall. It will not, however, be bonused.

Alleviating Sidewalk Congestion. In the draft report, this was proposed as part of the priority, bonused amenity system to help alleviate sidewalk congestion. There was a surprising consensus from many, including builders, that this was a mistake and just cluttered up the regulations and made them more complicated than they had to be. If these were necessary and desirable improvements - and there was general agreement that they were -- we should simply require them. Without bonus. We agree.

A new building will be required to include one or more feature to ease sidewalk congestion -- a continuous sidewalk widening, an arcade, a corner arcade or similar designated features. The choice will be up to the developer.

Off-Street Relocation of Subway Stairs. A relocation of subway entrance stairs from the street to within the property line will be required for any development sites adjacent to subway entrances. The standards and procedures for such simple relocation will be spelled out in advance. Certification of compliance by the Transit Authority and City Planning will be within a strict time limit. As with the pedestrian circulation improvements and the street wall and retail continuity, the simple relocation of a subway stairs will not be bonused.

Continuing Through-Block Pedestrian Networks. We have dropped through-block arcades as a bonusable amenity. However, in the long blocks west of Fifth Avenue (920 feet between Fifth and Sixth, and 800 feet between Sixth and Seventh) it makes sense to continue the existing through-block pedestrian network that has developed through a combination of planning and happenstance.

Accordingly, we are requiring that through-block buildings within three mapped areas provide at least simple passageways, either inside or out, to continue an existing network.

Curb-cut Prohibitions. Curb-cuts for vehicular access are ordinarily prohibited on the avenues and wide crosstown streets in order to minimize friction between vehicles and pedestrians.

5/11/81

The New Bulk Regulations

It is not only the total size or bulk of a building that determines its impact, it is also how that bulk is arranged on its site. The disposition of bulk on the site is governed by the technical bulk regulations. New York's pioneering 1916 zoning, brought about in large part in reaction to 120 Broadway which rose straight up from its lot line, dealt with bulk purely in terms of its disposition--that is with height and setback rules, tower coverage and the like.

The 1961 zoning added the element of floor area ratio (FAR) which set the floor area of a building as a multiple of lot size. FAR is as closely related to the size of a building as it is to its density of population, if not more so. But the FAR of a building, by itself, cannot measure its impact on its surroundings, or how it is perceived by the person in the street.

The breakdown of the bulk regulations and their increasingly frequent waiver and the growing reliance on FAR alone threw the system out of balance and led to the widespread concerns that were a major factor in bringing about this rezoning effort.

The two-tiered system initially developed by our architectural consultants -- Davis, Brody in association with Kwartler/Jones -- as presented in the draft report, created much confusion and no little opposition. In part, that was because of the new idiom in which it was couched.

The daylight evaluation chart, the so-called Waldrum diagram, which was at the heart of the performance system, provided an objective way to measure how much sky or daylight a building blocked when viewed from a given vantage point on the street. This "pedestrian's eye view" of a building when plotted on the chart, however, seemed strange and distorted compared to the "bird's eye view" of the normal architect's rendering or isometric. The first Mercator projection of the globe undoubtedly seemed as strange and got the same reaction before it proved an indispensable tool for mapping and navigation.

The street district, while a valid concept, established a different set of rules for street walls than those set forth in our planning and urban design standards. The prescriptive tier was excessively rigid and mathematical, not visual.

Above all, there had not been time to sufficiently test the system prior to release of the draft report. Our bulk consultants had been taken on late in the study and had rightly concentrated on first thoroughly analyzing the problem. Their perceptive analysis of the historical development of Midtown under the pioneering 1916 zoning resolution and the major 1961 revision provided a solid foundation for their recommendations. It revealed once again the consistent set of values that underlay the zoning governing more than half a century of Midtown development-- namely, the arrangement of building bulk so that it would not excessively block daylight from the streets or from neighboring buildings.

Their analysis also provided the means for establishing the standards and criteria of an objective system; it was not based on arbitrary or abstract values but on the degree of daylight or openness that reasonably can be expected under the actual conditions of Midtown's historic dense development. But when the draft report was released, the proposed system still had many rough edges and needed much more testing and evaluation.

A major portion of our time and energy since then has been devoted to its improvement. In this we have been aided not only by the continued technical advice of our consultants, but by the generous help we got from the professional development community.

In particular, we are indebted to the special zoning committee established by the New York Chapter of the American Institute of Architects. It met almost on a weekly basis for more than three months. There was a regular exchange of views with our professional staff and zoning consultants, who were invited to participate in most of these meetings. And some of the busiest and most distinguished architectural firms in the City tested the system in detail on projects they had on the drawing boards in their own shops. There is no price that can be put on this practical expertise that the AIA marshalled for us.

Based on this work, evaluation, advice and criticism we have made major changes in the proposed bulk regulation system.

- . The prescriptive tier has been scrapped.
- . An entirely new "Daylight Compensation" tier has been devised which utilizes the basic daylight curve developed by our consultants. It is based on a straightforward set of rules

for compensating any portions of a building that extend beyond the daylight curve in some places by pulling it behind the curve in other places.

- . . The performance tier has been simplified by focusing it on the essential and new element it brings to the bulk regulations-- an objective measure of daylight, of how much of the sky as viewed from the street will be cut off and how much left open by a building. The option of getting a small reflectivity bonus by the use of a light building exterior rather than a dark building exterior is retained.
- . The rules governing required street wall continuity in the basic planning and urban design regulations provide a common contextual basis for both tiers.

In this new two-tier system, the tiers complement each other. They are closely coordinated. Both are based on equivalent standards of daylighting, that is the degree to which the streets of Midtown must be kept open to the sky. In turn, these standards are derived from existing conditions in Midtown. They again reflect the values that two trail-blazing zoning resolutions helped to create in more than a half-century of high density development.

Both tiers are flexible. They permit trade offs in meeting the basic standards. They recognize the requirements of modern office buildings and the realities of available site sizes. There has been some concern expressed because they make it easier to develop small sites within the as-of-right regulations. What they permit on small sites are small buildings with practical floor sizes. We have seen that when as-of-right regulations do not permit the practical development of small sites, variances and special permits do. And too often with large buildings, not small ones.

Neither system is based on a preconceived or ideal building for the architect. Contrary to the view of a few critics, the performance system is not biased in favor of low, fat buildings. Tall, slim towers score just as well. Variations in between will depend on the developer's program and the architect's creativity. What the system will not allow are buildings both tall and fat, rising straight up from the lot line, turning the street into a dark canyon.

The choice of which tier to use is left to the builder and his architect. Because the two-tier system is based on objective standards and gives great flexibility and choice, it offers few valid reasons for exceptions or variances. In light of recent history this is a significant consideration.

A-12 CONSULTANTS LETTER RE: EDITING DRAFT OF 5/11/81

The draft of The New Bulk Regulations has been reviewed. The following are the consultants' comments, keyed to the attached line-numbered copy of the draft:

Line

18 "The two-tier performance and "shorthand" prescriptive system developed by..."

21 "...that was because of the new daylighting idiom in which ^{it} was couched."

22-23 "The daylight evaluation chart, a modification of the Waldram diagram, which with the contextual street district concept was at the heart of the performance..."

33-34 The prescriptive tier requested by the Department as a "quick-and-dirty" alternative, while perceptually based, proved to be too restrictive.

49-50 "...the proposed performance tier still required additional fine tuning ."

51-52 "Much of our time and energy since then has been devoted to the refinement of the performance tier . In this way..."

Note: Other than refinements to the scoring of the profile zone and reflectivity, most of our time was spent working with your staff evaluating their system as it developed. During that time, we developed explanatory material including the guide to the performance system, the daylight map of midtown and additional explanatory graphic written material.

57 "If met on a weekly basis for more than three months evaluating the economic, environmental, civic and bulding design implications of the performance and prescriptive tiers ."

68-69 "...which utilizes the basic daylight curve developed by our consultants for the prescriptive tier ."

74-76 "The performance tier, with the elimination of the street district and the components, street wall length and height, is reduced to the use of the daylight evaluation chart as an objective measure of daylight,..."

Note: The daylight evaluation chart standing by itself is not a performance system. The fixed urban design controls and the limits to floor area transfers between zoning district boundaries reduce its use to an evaluation of how much of the sky is left open. A performance system by definition, requires that the components be integrated, allow for tradeoffs between the components, and freely allow the distribution of building floor area anywhere on the site regardless of district boundaries.

Line

85-88 "In this new two-tier system, each tier presents a different methodology for evaluating daylighting. Each tier is based on its own daylighting standard, that is the degree to which the streets of Midtown must be kept open to the sky. The standard for the daylight evaluation chart is derived from existing conditions in Midtown . It reflects the values..."

Note: The staff and consultants daylighting historic standards are not equivalent. The expectation of daylight is 75% of the sky left unobstructed with a definable worst case of 65% Using the daylight evaluation chart, the building must average 75% in all views with a minimum 65% in any combination of views. The staff proposal averages, after extensive testing, 60-65% of the sky unobstructed. It is equivalent to the worst case, not the typical case.

92-93 "Both tiers offer design flexibility ." (Delete: "They permit tradeoffs in meeting the basic standards.")

Note: Neither tier are tradeoff systems as there is nothing being traded. All the tiers do is measure daylighting according to their own standard and methodology.

101-102 "Contrary to the view of a few critics, the daylight evaluation chart is not biased..."

5/11/81

The New Bulk Regulations

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2 its impact, it is also how that bulk is arranged on its site. The disposition
3 of bulk on the site is governed by the technical bulk regulations. New York's
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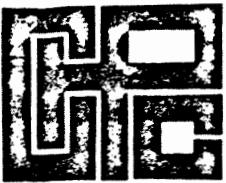
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A-13 SELECTED COMMENTARY BY CIVIC GROUPS



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WILLKIE MEMORIAL BUILDING
20 WEST 40TH ST NY NY 10018
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December 21, 1979

Richard Bernstein
City Planning Commission
14th Floor
2 Lafayette Street
New York, N.Y. 10007

Dear Dick,

Thanks again for your presentation. The work seems to be moving along quite well. I genuinely look forward to the final installment. If you think it appropriate, we could arrange for your final presentation to be to the entire Board.

I've drafted some casual, and personal, thoughts. We will devote our zoning meeting in January to a review of your presentation and I'll forward all additional comments.

You have created a three by four matrix which relates zoning, tax incentives, capital investment and public services to growth, preservation and stabilization areas. It seems a good way to approach the subject.

Did you say that J-51 and 421 would be excluded from stabilization areas? If so, isn't only new construction what you seek to discourage? Residential renovation, which would be encouraged by J-51, would appear to help stabilize an area.

You seemed more optimistic than I about the ability of landmark designation as a development tool. In midtown especially, zoning and the extent to which it allows (hence encourages) considerably greater development than currently exists, creates the pressure to rebuild. Without "down zoning" you can't preserve and with "down zoning" you don't need landmark designation.

I agree with Lew Stone that it would be redundant to seek a review of 421 and J-51 and its effects on midtown. They already must be reviewed and renewed every few years. Any tampering with the legislation prior to its expiration would have a pernicious effect on their reasons for success -- their as-of-right nature. Both programs could be fine tuned when they come up for renewal without adversely affecting midtown's stability or reneging on past commitments.

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I agree that we are not even close to a zoning density that would clog the city. I agree with Gene Morris, however, that the thrust of your work must be to simplify the zoning. Many of the design concerns just aren't worth the administrative morass they require. This is an area in which CHPC may be of greatest value -- perhaps we should talk to Alex.

I think you're right in staying away from the assemblage problem -- a legitimate distinction can be made between this type of operational constraint and the broader land use related policy questions you are concentrating on. Eviction is a can of worms -- you don't have to open it.

I've never heard a good word for the "housing quality" provisions.

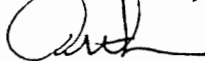
I'm not sure that FAR and the resultant zoning lot mergers are as bad as have been characterized. We should find a way to discuss this in greater detail as your proposals become more specific.

I also agree that amenities must be targeted to certain areas; but before you include too many of them in your proposal, you should recognize that there are some risks. They are made on the basis of a cost-benefit analysis which, if accurate at all, is accurate only for the day it is calculated -- no longer. After that, they generally give away too much or too little -- each presents a problem.

I think Lewis had a good point in the virtues of "upzoning" around the subway stations. There was a federal contract a few years back studying techniques for "joint development." I have that literature if you're interested.

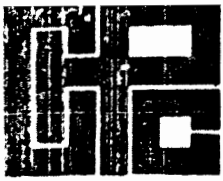
If we can help on details as you proceed, don't hesitate to call. Again, thank you for coming and talking with us.

Best wishes,



Arthur Zabarkes
Executive Director

AZgw



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March 10, 1980

WILLKIE MEMORIAL BUILDING
20 WEST 40TH ST NY NY 10018
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Mr. Herbert Sturz
Chairman
NYC Planning Commission
2 Lafayette Street
New York, N.Y. 10007

Dear Herb,

Negotiating with the City Planning Commission for a zoning change has become an integral part of the development process in New York City. The original (and still desirable) intention behind zoning was to create guidelines within which development could take place without administrative review. Anything other than this as-of-right condition complicates an already difficult development process and undermines the comprehensiveness, legitimacy and legality of zoning.

The automatic nature of zoning has disappeared in New York City for a number of reasons:

- 1) The zoning maps drawn up in 1961, which specify land use and density, are now significantly out of date. Industrial zones are still delineated where there are no prospective industrial users. The allowable density in many residential sites is well below the demand. And commercial zones reflect overlapping and often contradictory objectives.
- 2) In many commercial districts, the height and setback requirements are inconsistent with contemporary building types and community and commission objectives.
- 3) Since the adoption of the new ordinance, virtually all of the residential construction in New York City has been in R-10 zones, with the illegal threes constituting the bulk of what remains. Developers have argued -- and the evidence seems to bear them out -- that only the R-10 zones allow for economically viable development.
- 4) Special districts are only "districts" in a limited sense. Most have been written to permit construction of a single building and have, therefore, inadvertently created guidelines which are inappropriate for subsequent development. Future projects invariably must, therefore, ask for revisions if they are to be built at all.

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5) Finally, in the late 1960s, zoning was increasingly seen as a tool to create "better" design, an objective difficult to define and almost certainly incompatible with the concept of as-of-right legislation.

With the exception of DCP staff and an occasional commissioner, we can find no one to defend the extent of negotiations now required. In defense of negotiation, given the ordinance and maps we now have, an inability to bend the rules would have resulted in fewer buildings and fewer good ones.

Re-mapping is unquestionably required and if stated will prove to be a can of worms. No neighborhood will easily allow anything other than downzoning of allowable bulk and upzoning of allowable uses.

If the city were to re-map, must it re-zone? While this adds another level of complexity to the debate which is certain to follow, if you've entered the fray on re-mapping, there is little more to lose with re-zoning and a great deal to gain.

If New York City is to be re-zoned, the first and most fundamental question is the role zoning is to serve. Our view is simple, historically precedented and easily defended: zoning should serve primarily, if not exclusively, to limit the negative impact of new development on adjoining properties and on the public infrastructure.

There will be considerable pressure to try to turn zoning into a "positive" tool -- a method for assuring good neighborhoods and beautiful buildings and forcing development into areas presently avoided by investors. Our advice is to resist the pressure.

Zoning is at best a "ceiling" on development. It doesn't create opportunities; it can only preclude them. It is possible that a lower ceiling in one area will shift development elsewhere, but even this is somewhat risky -- it may shift development to San Diego.

Design controls and incentives are misleading. They never seem to be easily administered. While architects (and often developers) usually like the general idea of controls to create better buildings, they always -- for good reason -- resist them in each particular instance. After all, what it gets down to is, who is to design the site, the architect for the owner or a central authority? It isn't clear that the central authority, with rules which must by their very nature be general and specified years before they are applied, can do a better job.

An as-of right ordinance tailored to some neighborhood issues but exclusively concerned with the negative impact of potential development

Letter to Mr. Sturz
March 10, 1980
Page 3

seems achievable by revising, thoroughly however, what we have, not necessarily beginning anew. And this could be accomplished with proper direction and within a few years.

Sincerely,



Arthur Zabarkes
Executive Director

AZgw

MEETING OF THE PRESIDENTS' COUNCIL

October 21, 1980 - 9:00 A.M.

The Urban Center - 457 Madison Avenue

A G E N D A

1. Comments from member organizations on Midtown Development Report
2. Strategy for promoting common interests

- 001144

DESIGN COMMITTEE - DISCUSSION DRAFT
Midtown Development Report
October 20, 1980

General Comments

Institutionalize review.

Mandate periodic review of results of these changes in Zoning Resolution.

Establish mechanism, CPC staff responsibility, or some other method of documenting what has happened after implementation.

CPC should play more active, assertive role. And also must learn to say "no" to proposals, permit only as-of-right.

Development Strategy

Growth Areas

seem appropriately defined. Are incentives sufficient to encourage growth, however? Should there be disincentives in stabilization and preservation areas? Perhaps limit the FAR to 15 and require certain desired and targeted amenities.

Agree that image & reality of west side must be changed; however, more than scheduled public sector investment is needed. Perhaps street cleaning, beautification such as street-tree planting; possible improvement in certain city services.

Have buildings in growth area that should be preserved been identified? What techniques will be used?

Disappointed by planning for Convention Center Area. Appears to be lagging. An important opportunity to have a large public investment be taken advantage of, & public benefits from revitalization of area. Need to plan adjacent areas & then can develop a mechanism, such as special district, for guiding and stimulating desired growth.

Stabilization Area

how many sites in prime east side core are still developable?

function of street is better protected than light & air. Our adverse reaction to many newer buildings is to size & distribution of mass on site, also the way they relate to each other, large number of "bulky" buildings.

Limit to FAR 15 & require certain needed amenities; eliminate others, this would also assure more daylight.

Preservation Area

should be looked at carefully by landmark groups.

Bulk Regulations

Why the FAR 15-18 range? Should we limit it to 15 in certain eastside areas, thus encouraging westward growth? "Workable" building needs to be weighted against workable, livable streets & pedestrian spaces.

Daylight regulations - examples would be helpful. Translate into what we have & what would & would not be permitted.

Concerned that many architects find tower configuration more flexible for their designs, hence will not be as concerned by daylight standards which leads to setbacks.

Also are concerned with how the daylight angle relates to sun light on pedestrian space.

Zoning Lot Mergers

Potentially most troublesome; difficult to understand what results will be.

Sliding scale is clearly an improvement, but needs a cap. We should know what maximum is, What are limits? Mid-20's FAR? Should not exceed FAR 18. Needs a limit. Maximum should perhaps be a 20% increase of FAR on the footprint. Precedent in original landmarks legislation.

Transfer of air rights from landmarks also needs a cap on height of building. There should also be limit on height & setback waivers.

Maybe ZLM's should be done away with completely.

Urban Design Controls

Why are plazas being discouraged in so many places? While it's important to maintain street wall on Madison Avenue, for example, a plaza or two might also be an important feature. However, CPC would have to designate where that should be & may not want to plan in that fashion.

Ask for reconsideration.

Large public open space should be planned and mapped & be a long-term goal of Midtown development. This type of space is being built or exists in almost every major city. While the acquisition and construction of such a great square will be expensive to construct & maintain, & will also mean loss of future tax revenue, it will provide long-term rewards. It will take crowds off the city's green parkland. Possibility of providing some funds for construction by considering the public plaza an off-site amenity and transferring floor area to a number of receiving sites.

What is the rationale for street walls on 57, 47, & 53rd Streets? Not clear & again, variety may be a strong plus.

Transit station improvements - how many of these are possible? Shouldn't they be targeted specifically? Are they? Not sure that so much increase in density & pedestrians can be accommodated by improving subway connections.

Priority Needs

Sidewalk Congestion -

will lead to many buildings with "chamfered" corners. Is this such a desirable feature? How else can we reduce congestion? Should there be a further decrease in the FAR? Is that not a more logical conclusion?

Through block circulation -

of questionable merit. How realistic is this network? Do we want to divert avenue pedestrian traffic? Don't these interior spaces create safety problems? Two a block? Why that number?

**Certainly of far less importance than needed open spaces. This should be #2 or 3 priority.

Open Spaces -

move up in priority. Map not clear. Should be targeted much more specifically. Indicate areas where off-site parks are needed. Again CPC should try to be more specific, - lay-out more specific guidelines.

Criteria for new amenities

new "activity space" may be only new name for "galleria", not clear on what assures it being better space. Similarly, through-block circulation space would appear to be no improvement. Increments in bonus for "attractive, in the magnetic sense" - what does that mean? who judges? what is rate of increment? what about quality of management of space?

Purpose of "activity space" not clear. Are there any successful ones except Citicorp? How realistic is threat of removal of certificate of occupancy?

No mention is made of sidewalk plantings of trees & other landscaping. Is this included? Should be encouraged with all amenities. Has space been provided for landscaping?

Good to remove elevated & sunken plazas, which clearly have been failures.

Corner arcades -

won't these become standard feature? Do we want to encourage these at so many corners?

Through block circulation space & activity space

These are of questionable merit. What functions do they serve? How is it possible to assure they will function as intended? Standards for TBCS only describe appearance (except for seating requirement).

Do retail uses in Activity Space/Galleria assure activity? How can a marketing plan be enforced? Who evaluates whether it is an effective one? What happens if retail use is terminated?

Urban Park

Why never on a wide street? Some plazas have been excellent, for example, & flexibility in siting may be a good idea.

What is "adequate access of daylight"?

Report suggests replication of Greenacre and Paley Parks. Specific design criteria "musts" should be kept to a minimum. There should be an attempt to establish new and interesting designs appropriate to specific sites.

The location of off-site parks should be mapped more specifically.

Administration

Is consolidation of Midtown Office, Urban Design Group into Manhattan Office sufficient to ensure effective processing?

Enforcement

What is status of special zoning enforcement unit? What is required in order to create it?

American
Society of
Landscape
Architects
New York
Chapter

The Urban Center
57 Madison Avenue
New York, N.Y. 10022
212/838-9350

MEMORANDUM

To: ASLA Executive Committee
From: ASLA Advisory Committee
Date: October 20, 1980
Re: Midtown Development Project
cc: President's Council

I. Boundaries

- A. Fifth Avenue between 34th-40th Streets is considered a growth area (p. 36). We regard this avenue along its entire length to have a special character; as such it should be categorized a stabilization area or the incentives "to improve it as a premier shopping street" should be more clearly defined and strictly enforced.

II. Urban Design Controls

A. Mandated Urban Design Features

1. Retail streets include Madison from 34th-59th (p. 54) elsewhere in the report these streets are considered congested with pedestrians (p. 66) and additional circulation space is required. We would urge that the method used to alleviate congestion (see pp. 68-70) not include the continuous arcade solution but rather continuous sidewalk widening open to the sky.
2. Maintain existing street wall (p. 57-61): we question the reason for omitting 3rd Avenue from this street wall requirement. Will 3rd Avenue become the next 6th Avenue if street wall is not maintained and the desirable open space in the form of plazas is along the avenue (Map p. 76)?

3. Transit station improvement options include direct major connection to station (p. 63). We suggest that the description of the improvement emphasize the necessity of direct visual access between plaza (entry point/exit point) and station entry (specifically token booth/turnstile) and where possible integrate retail and other activities to help police the entrance.

Limited connection to station improvement should specify more clearly the desirability of integrating transit entrance with building lobby to give greater sense of safety to the user.

Simple stair relocation should not result in increased length of tunnel between entry point and token booth, and preferably should create better visual access as stated above.

B. Target Priorities

1. Alleviating sidewalk congestion (p. 66-70). We think there is a qualitative difference between sidewalks which are too narrow and ones which are too crowded: x e.g., Lexington is too narrow and 47th Street is congested with pedestrians due to intense commercial activity. To alleviate crowding on narrow streets we recommend the responsibility be placed on the city (as the situation was not produced by a developer/private owner) by widening the sidewalk into the street by removing a lane of parking (see W.H. Whyte, p. A.148).

Levels "A" and "B" (p. 68) of bonusable amenity improvements both include arcades (further clarified pp. 80-83). We think that arcades do not effectively increase the usable portion of sidewalk because generally only building related users walk under them. When retail occurs under arcade, it acts to limit daylight penetration and creates visual and physical

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obstructions which further impede connection between passerby and shop. If arcades are to be permitted or encouraged then only columnless (illustration p. 85) ones should receive a bonus.

In general the use of arcades should be more thoroughly examined. Perhaps they should only occur in certain locations such as adjacent to bus stops, at building entrances or where an adjacent building already has an arcade. Perhaps the model of an arcade which straddles the sidewalk (e.g. Bologna, Roosevelt Island) should be explored in certain special locations? We are concerned about the zig zag effect which will result when a new building which comprises less than an entire block constructs an arcade and the arcade terminates in a setback or if the "knock-out" panel is never knocked-out. (p. 81).

2. Continuing through block arcades (pp. 70-74). Our comment is to encourage retail along the connection to add vitality and policing to the through block.

C. Additional Bonusable Amenities: Off-Site Urban Park (pp. 102-104)

1. How can adequacy of daylight be ensured if there is no restriction on adjacent or opposite new building heights/bulk to protect existing daylight access to urban park? (e.g. new tower will shade Paley Park). We suggest that an existing urban park cannot be enlarged to "function as a single park" (p. 102). This violates the original design concept of the park and would probably destroy its unity. We would suggest that the city preselect sites for larger urban parks which could be designed as a unit even if several different buildings receive a bonus for its creation. The need for a major urban space in Midtown can certainly be demonstrated.

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2. How can the users be protected against inadequate maintenance of urban park?
Is a performance bond sufficiently powerful tool?

3. Design Requirements

We question the desirability of requiring a water feature. This should be an option. Tree requirement is excessive and would result in an unnecessarily dense canopy

D. Additional Comments

1. We suggest that the manual contain a guideline to developers and city agencies regarding the streetscape. This would include guidelines regarding types, locations and quantities of street furnishings (benches, planters, kiosks, trash receptacles, signage) lighting (style, heights, location) bus stops (location, shelters, visibility) sidewalk widening and street tree planting.

2. The Draft Report is somewhat confusing and difficult to follow. Specific issues are frequently discussed in several different places and for a full understanding, it is necessary to find all of them.

We suggest that the final law be supplemented by explanatory "instruction manuals."

3. We were extremely impressed by the scope and imagination contained in this report and congratulate City Planning in their intentions and on the way in which the work was done.

Regional Plan Association

235 East 45th Street • New York, New York 10017 • Telephone: (212) 682-7750

MIDTOWN MANHATTAN DEVELOPMENT POLICY

Outline of Major Themes:

1. Procedural: too much reliance on discretionary approvals--need more as-of-right zoning (agree, as per Urban Space for Pedestrians)
2. Geographic: westward expansion of office district (agree, as per Urban Design Manhattan; zoning map changes very timid, could go further west, more cautiously south)
3. Aims of Bonuses: (a) subway station improvements, (b) sidewalk space, (c) through-block in selected places, (d) landscaped open space--but not indoor spaces (agree),
Disagreement on dimensions of proposed bonusable improvements (subway entrances too modest; arcades too narrow, walkway space sacrificed to "building wall continuity.")
4. Magnitude of Bonuses at issue, and therefore distribution of floorspace: uniform, as now, or clustered near stations, as per Urban Design Manhattan "access tree." Clustering of floorspace raises issue of what limits density. City proposal says--essentially--sky exposure. We say: also consider pedestrian space, view from windows, in addition to infrastructure requirements. This calls for higher density in places but not overall. Related issue--how much air-rights transfers can be allowed. Real estate and architecture groups will focus on sky exposure and air-rights transfers; we will on pedestrian space and subway access.

Proposal: Memorandum to Department of City Planning; an issue of The Region's Agenda; and joint statement with members of the Presidents' Council.

BP/lc

MEMORANDUM

To: Herbert Sturz, Chairman, City Planning Commission
From: The Ad-hoc Committee on Midtown Zoning, N.Y. Chapter,
American Planning Association
Subject: Comments on the Draft Report of the Midtown Development Project

It has become increasingly clear over the past few years that Midtown's present zoning is ill-equipped to deal with development proposals for high-rise buildings. Both professionals and the public are concerned about the height and bulk of recent buildings, their impact on services and infrastructure in the surrounding area, and their tendency to locate together in heavily-developed East Midtown. The Committee shares these concerns.

Our review of the Midtown report has sought to answer the following questions:

- 1) Are the proposed building densities in keeping with the physical capacity of their surroundings?
- 2) Are the proposed regulations clear and capable of being administered simply?
- 3) Are the boundaries of the recommended areas for growth, preservation, and stabilization advisable and workable?
- 4) Are the incentives to steer development away from East Midtown sufficient to accomplish their purpose, without inhibiting aggregate development in Manhattan?

It is commendable that the Department of City Planning has expended considerable resources to define a comprehensive approach to Midtown zoning for the 1980's. There is a pressing need for a reasonable alternative to existing as-of-right regulations and procedures. The Department's Midtown report wisely recommends a coherent approach to bulk regulation, rather than continuing to rely on special legislation to meet specific situations. Equally important, the report makes concrete and useful statements about such important architectural elements as retail continuity, transit station improvements, and "street walls." Most fundamentally, the report faces the need to redirect office development away from the

impacted East Midtown area. At a technical level, the report and its appendices offer a valuable compilation of data, especially the listing and description of all major office buildings erected since 1960. All of these are steps in the right direction.

The Committee has found, however, that there is a need to refine and reexamine a number of the report's policy recommendations and regulatory techniques. These relate to all four of the questions listed above.

Density - The report seeks to ameliorate density through a creative technique for maximizing on-street light and air. Yet our understanding of these height and bulk proposals leads us to believe that they will prove permissive enough to encourage, rather than discourage, the development of high-rise buildings on small sites. We fear that this will have the effect of increasing development in East Midtown, where such sites are under intense pressure. Nowhere in the report do we see an analysis of this possibility. Nor do we see a survey or inventory that documents and analyzes the impact of the real densities implied. Impact should be measured by such environmental factors as pedestrian and vehicular congestion, and the availability of personal and business services. Furthermore, it is not clear how bonuses will be reduced in special districts, without losing many of their positive features. We understand the pragmatic reasons for largely continuing the established level of densities, but we strongly recommend a more systematic analysis of the relative ability of Midtown's subareas to carry additional development.

Administrative Clarity - We agree with the report that the present special districts have proven hard to administer. They need to be simplified and related to a more comprehensive concept of Midtown development. While the report attempts to supply such a concept, we feel that it has dwelled upon issues of bulk, at the expense of larger planning concerns. The bulk regulations suggested may prove even more difficult to administer than the present ones. Successful administration may, in fact, require a two-tier system employing a new cadre of design professionals in the Department.

Boundaries - The report's recommendation to steer development away from East Midtown is in keeping with longstanding City efforts. We endorse this policy thoroughly. It is the most effective way of redeveloping Times Square and of tapping the West Side's superior subway capacity. Shifting development westward has more logic than shifting it southward, for five reasons: 1) land is less expensive in West Midtown, 2) no department stores would be displaced from there, as they might from lower Fifth Avenue and 34th Street, 3) Few garment manufacturing jobs would be threatened by the rebuilding of West Midtown, 4) Few landmarks would be threatened there, and 5) West Midtown is more convenient to commuters and visitors, as well as subway riders. These advantages should be considered and studied before the dual westward and southward policy recommended in the report is decided upon.

Incentives - The intentions of the incentives proposed are laudible. We have concluded, however, that these incentives do not appear sufficient to discourage development from occurring in East Midtown, where tenants prefer to be. City incentives must be strong enough to overcome the lower rent structure of the West Side. They must also help to reduce the cost of development there, possibly through the use of condemnation or UDAG. Incentives must permit a more significant height and bulk differential between the West and East Sides, as well. We recommend a thorough reworking of the incentive provisions of the Midtown report, so that the West Side becomes much more competitive with the East Side for new construction.

The Committee recognizes that the Department and its consultants had only a limited time to formulate new zoning policies addressing a wide array of issues. Our comments are offered in a positive spirit, as suggestions to be considered in the revision of the study and the drafting of legislation. We appreciate the opportunity you have given APA and other professional organizations to review these draft proposals. It is our hope that the review process will allow for additional input at later stages. In the meantime, we would like to meet with you to explain our recommendations further and to

offer our continued assistance and support for your important effort to rationalize development in Midtown.

Robert Ponte, Chairman
Jonathan Barnett
Donald Elliott
Frank Fish (ex officio)
George Raymond
Arthur Zabarkes

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January 5, 1981

To Members of Committee on Planning and Zoning
of the City Club and Speakers on November 18, 1980 Forum

Re: Zoning Forum - City Club of the City
of New York - November 18, 1980

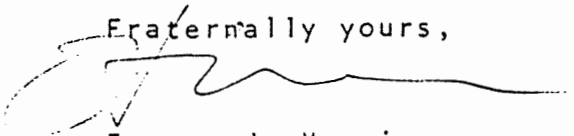
Dear Committee Member and Speakers:

Enclosed please find my suggested report based upon
the presentations made at the Forum and the previously
expressed views of the committee members.

A meeting of this Committee and those of the speakers
at the Forum who wish to attend will be held at this office
on Tuesday, January 27, 1981 at 4 P.M. for the purpose of
discussing the proposed report and making arrangements for
putting it into final form for submission to the Board of
Directors of the City Club for their consideration. It is
also contemplated that after the City Club acts upon the report
it will be submitted to the Real Estate Board of New York,
the Citizens Housing and Planning Council, the Committee on
Housing and Urban Development of the Association of the Bar
of the City of New York and Citizens Union for such action
as they wish to take.

If you cannot attend the meeting, please submit your
comments to me before the meeting.

Fraternally yours,



Eugene J. Morris

EJM:EG

CONFIDENTIAL - FOR DISCUSSION PURPOSES ONLY

PROPOSED REPORT OF THE COMMITTEE ON
PLANNING AND ZONING TO THE BOARD
OF DIRECTORS OF THE CITY CLUB OF NEW YORK

A - The Zoning Forum

A copy of the notice announcing the "Forum on Updating the New York City Zoning Resolution" held on November 18, 1980 is annexed hereto. It sets forth the speakers and subjects covered as well as the purpose of the Forum which was as follows:

"The City of New York has changed materially since the enactment of the present Zoning Resolution in 1961. Consequently, consideration should be given to revision of the ordinance to accommodate to the City as it exists today and will in the foreseeable future. The Committee on Planning and Zoning of the City Club, in association with representatives of the Real Estate Board of New York, the Citizens Housing and Planning Council, the Committee on Housing and Urban Development of the Association of the Bar of the City of New York and Citizens Union, has been studying the problem with a view to making recommendations as to what action should be taken. However, because of the complexity of the subject, it was decided that before preparing these recommendations, the views of various specialists and the interested public should be considered. This All-Day Forum has been organized for that purpose. Upon its completion, it is contemplated that formal recommendations as to revisions in the zoning governing the City of New York will be made."

The presentations of the various speakers were digested and reviewed by the members of the Committee and this report contains suggested recommendations as to revisions in the zoning governing the City of New York.

The keynote speaker at the Forum characterized zoning as follows: "Zoning should be a continuing process rather than a 'product'; an efficient truly deliberative and non-piecemeal means of assessing the need for change, and a response drawn from an informed public pursuant to democratic procedures."

Notwithstanding the short span of time since 1961 when the new zoning ordinance was enacted, life in the City has changed radically and these initial considerations have rarely been reexamined and reevaluated; instead we have merely added encrustations which constitute a serious impairment of the basic purposes of zoning and land use regulation.

Thus, we are at the point where it is appropriate to make a new evaluation, in light of existing conditions and those reasonably to be anticipated in the foreseeable future, of how the restrictions and limitations of zoning should be applied to both foster and control the development of the City.

The New York State Enabling Act empowers municipalities to regulate and limit height, bulk, use and density by dividing the City into districts; even the modern revision of land development concepts contained in the Model Land Development Code published by the American Law Institute in 1975 confirms this as the proper legal method of land use regulation in urban areas. Nowhere is there any authorization, however, to dictate aesthetics and design. This power has been arrogated by the professional planners in government to themselves by means of the substitution for "as-of-right" zoning of discretionary review of amenity bonuses, incentive zoning and special districting.

This has led to the situation where today we find only one new office building in Manhattan being built as of right -- all others are "negotiated." This subjective form of zoning substitutes the taste of a small group of government officials for the standards set forth in the legislation enacted to regulate land use and for the economics of the marketplace which should govern development. Under these concepts we see the high tower, open space type of design fashionable in the 1960s and early 1970s currently being phased out in favor of less open space and lower buildings induced by the discretionary control power of the government planners.] !

Special use districts also represent a sharp cutting edge against the traditional free enterprise, marketplace influence upon land use. Attempts to preserve and perpetuate a Broadway theatre district or a Fifth Avenue shopping district, for example, disregard the fact that these areas became that way in the first place strictly as a result of marketplace and free enterprise factors, not as a result of the intellectual preconceptions of self-designated arbitrators of taste and development standards.

The need for a comprehensive review of the City's land use controls at this time is underlined by the profound demographic changes that have occurred in the areas outside of the central and downtown Manhattan cores. The City of 1961, which the existing zoning ordinance was designed to deal with, no longer exists. The core areas of Manhattan have become boomtown and have been characterized as "the capitol of the world" whereas many of the outlying sections of the City have become "bombed out" areas. This phenomenon has rendered many of the provisions of the existing ordinance obsolete and accentuates the need for their comprehensive reevaluation at this time.

(3) However, irrespective of which procedure is followed reevaluation should develop into a continuing process where, by the time all areas are initially covered, sufficient time has elapsed and changes have occurred to justify restudy of many of the areas over again as part of an ongoing process of updating zoning. This proposed process of continual updating is necessitated by the fact that the city is at all times a changing and developing organism which must be dealt with on a flexible basis. It is not static so that it can at all times be contained within the rigid mold of a fixed zoning resolution. These continuing reviews should then be performed as part of the permanent functions of the City Planning Commission and its staff.

(4) This zoning reevaluation process should be performed in full cooperation with the local Community Boards in each of the areas studied and with full opportunity for all persons and groups affected by it to participate in the process.

(5) Citywide factors such as transportation systems, street patterns, infrastructure, demographic factors, financial limitations, parks and recreation areas, schools, congestion, coastal management, etc. should be evaluated initially to set overall objectives for development of the city as a whole. Then the complex interrelationship of the many factors which affect each area should be analyzed and be integrated into the elements involved in the overall pattern of the city's development. These evaluations should be made based on past history and existing conditions but should remain within the traditional areas of zoning controls.

(6) Based upon these studies specific legislative proposals should be developed and be submitted through the Urban Land Use Review Procedure (ULURP) prescribed by the City Charter for approval. Any modification of the zoning procedures and controls should be made effective only through the political - legislative process.

(7) All zoning regulations should set limits only on use, height, bulk and density and these should be the minimum limitations needed to accomplish the result the zoning seeks to accomplish, thereby permitting the marketplace and the taste of the individual owner/developer/architect to determine design, layout, amenities, etc. All development should be as-of-right subject only to provision for accommodating special situations through the conventional form of zoning amendments, special permits and variances in the manner provided by existing law. As a concomitant the present procedures involving use of post 1965 amenities and bonuses which involve extensive and frequently protracted negotiation between the developer and the personnel of the City Planning Commission should be abolished.

(8) Zoning should be limited to setting ceilings within which development may proceed freely and the nature of the limitations on any site should be clearly spelled out in detail in the public record

A-14 CONSULTANTS' MEMOS

January 13, 1981

Mr. Richard K. Bernstein
Director, Midtown Development Project
City Planning Department
2 Lafayette Street
New York, N. Y.

Dear Dick:

This letter summarizes the consultant's general recommendations for this contract, regarding bulk regulation for commercial buildings in Midtown. While we have concentrated on explaining both the basis and methodology employed in arriving at our daylighting figures and the weighting of the profile zone for the Daylight Evaluation Diagram (DED), we have also re-examined the interactive components of the performance tier (Daylighting, Reflectivity, and Street Wall Length and Height). As a result of continued testing, re-examination, and work done and issues raised by the Special AIA Committee and your staff, we have refined the preliminary performance tier zoning text of June 1980. While some finessing of language is undoubtedly necessary to the appended text, we are confident that the system is workable and implementable.

The following is a short summary of our recommendations, many of which are expanded upon in this letter or were discussed in previous letters, notably our letter of November 3, 1980.

Summary Recommendations

1. Daylighting

- a. The 1916 and 1961 zoning resolution produced an expectation of daylighting. The overwhelming character of Midtown is that a minimum of 66% of the sky left open and an average of 75% of the sky left open above 70 degrees. The 75% figure is actually a reduction as an average although it still lies within the range of historical expectations. The 66% is a definable "worst case".
- b. The 75% average (45 points) of the performance system assumes full compliance with the Street Wall Length and Height components. Therefore the loss in points due to higher than typical street walls must be compensated for by a higher average daylight score.
- c. Practically all as-of-right and many special permit and/or variance commercial buildings built in Midtown under both the 1916 and 1961 resolution have daylighting scores commensurate with the above.
- d. The profile curve with the revised weighting corresponds to historical and perceptual expectations of tower location.

- e. The amount that a building can penetrate the profile curve and still meet historic and perceptual expectations is a function of:
 - i) the angle subtended by the penetration (height and setback)
 - ii) the distance from adjacent properties and corners
 - iii) the requirements for street wall height and length which require new street walls to be in scale with existing street wall heights and lengths

The first two factors operate regardless of site size (instant view); the third operates in proportion to site size (immediate environment)

- f. The Daylight Evaluation Diagram (DED) was developed to be used in conjunction with the Street Wall Height and Length components of the performance system. If they are not used, prescriptive controls such as mandatory setbacks are necessary to discourage sheer lot-line towers or tower portions on medium and large sized lots. We feel this compromises a performance approach.
- g. The overall daylight score should be calculated by averaging out scores in proportion to the length of the street line for each side of the lot fronting a street if daylighting evaluation diagram is to stand alone. Otherwise, the Street District computations require such a procedure.
- h. The tools for measuring daylighting and the street profile are objective tools. The values on the diagram, and those of the scoring, are derived from existing conditions. The tools could also be used, utilizing lower values, but such values would not reflect derived values from Midtown. The lowering of daylighting standards for Midtown may raise questions regarding the legality of an ordinance which effectively lowers the environmental quality of Midtown vis a vis "light and air".

2. Reflectivity

Reflectivity as an optional add-on to the daylighting score has been retained and refined. It can now be used to assist a building achieve a minimum score (66% or 40 points) or to exceed it.

3. Sunlighting

- a. The sunlighting option has been deleted.

4. Contextual Considerations

- a. The Street Wall Length and Height components should be retained as part of an integrated performance system of building evaluation. The performance components as a whole correspond to the Street Wall Length and Height, tower coverage and placement, sky exposure planes and encroachment provisions of the previous resolutions which, in concert produced the daylighting expectations discussed above as well as the spatial definition of the public streets in Midtown.
- b. Retain the Street District as the mechanism for:
 - i) generating localized values based on previous generations of buildings and zoning resolutions. This approach reinforces the specificity of "places" (5th Ave., Madison Ave., etc.) in Midtown and avoids homogenization.
 - ii) automatically recording changes in the dominant street wall height for future buildings, thus allowing for sequential change over time.
 - iii) as a catchment area for the transfer of development rights from Landmark structures
 - iv) as a catchment area for the provision of off-site amenities
 - v) computing daylighting
 - vi) conserving existing smaller scale buildings through the partial transfer of development rights to the development lot. This approach conceptualizes such preservation as a bonusable urban amenity rather than a Zoning Lot Merger (ZLM).

5. On a Performance System:

- a) We caution against mixing and matching prescriptive and/or mandatory controls with a performance system because contradictions will undoubtedly be created which cannot be reasonably resolved. Without the possibility to freely trade-off between components the flexibility of the performance system is severely compromised, if not made ineffective.

We hope that the re-examination, testing and fine tuning of the performance tier has responded to perceived professional, community and building industry criticism of the original proposal. Much of the background methodological and analytical work is described in the detailed explanatory text illustration charts, tables, maps and revised zoning text are appended to this letter.

As you know, we have gone beyond the scope of present services by further "fine tuning" and testing of the performance tier. It is our hope that the work will not only be useful to you and your staff but that it will be recommended, as drafted, for adoption by the City Planning Commission.

We have enjoyed working on this provocative project with you and look forward to a continuing role in the Midtown Development Project.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Alan Schwartzman". The signature is fluid and cursive, with a large loop at the end.

Alan Schwartzman
AS:hh

Enclosures

Davis, Brody & Associates
Kwartler/Jones, Associated Architects & Planners

ENCLOSURE TO LETTER OF 1/13/81

Methodology

Numerous examples of as-of-right zoning built under the 1916 and 1961 zoning resolutions were re-examined with the intention of organizing the buildings into generic groups, e.g., sheer tower, tower and base, alternate setback, etc. This analysis was further augmented by the re-examination of recent special permit buildings which have tended to be sheer lot line towers with higher coverage. The daylight analysis of generic buildings coupled with a similar analysis of special permit structures allowed us to generalize about daylighting conditions in Midtown.

Daylighting in Midtown

The accompanying map of Midtown summarizes our findings of a street-by-street analysis. The map graphically demonstrates that the historical and perceptual expectation of daylight for practically of all of Midtown is a minimum of 66% of the sky open or unobstructed above 70 degrees. The average is between 75-80% of the sky unobstructed above 70 degrees. The areas of the map which are less than 66% unobstructed primarily are the older pre-1916 blocks in the low 40,s around Grand Central Station. Typical recent special permit buildings, some of which are individually mapped, also fall below the 66% minimum expectation.

Table B and Diagram 1 should help the reader visualize the meaning of the percentages of openness or daylighting derived above. Diagram 1 organizes commercial building types in Midtown by zoning resolutions and the dominant building configurations produced under those resolutions; e.g., Alternate Setback building (1961), Sheer Tower building (1961) etc. Table B is a representative sampling of buildings and blocks evaluated with the current Daylight Evaluation Chart (DEC) with revised profile weighting.

The Worst Case Condition

The equivalent "worst case" condition approximates the original "2" TIMES Height District of the 1916 Resolution. Before its revision in 1934, one could build street walls up to a height of 2 times the street width in these Districts. As indicated in Table A, buildings built to that height rising from their street lines and continuous for the length of the street line subtend an angle of approximately 77 degrees and have approximately 2/3 or 66% of the sky unobstructed above 70 degrees. This condition is typical of many buildings in the Madison Avenue/Grand Central area, and some post-war Park Avenue "wedding cakes" for their first 100' along the narrow side street.

A very few 1916 Resolution buildings have some frontages which drop below the 66% "worst case", but statistically they are insignificant in the overall perception of daylight in Midtown. It should be recalled that the original "2" Street District had produced street wall heights that were considered too excessive, producing street spaces that were too dark and confining. Consequently, in 1934, the maximum street wall height in the "2" Height District was reduced to 1-1/2 times the width of the street, and corresponding reductions to the maximum street wall height for other Height Districts were also made.

The Zoning Resolution of 1961 did not diminish the amount of daylight in Midtown when compared to the 1916 Resolution but in many instances increased it. (see Table B and map of Midtown).

The Profile Zone

The weighted profile zone is derived from the tower placement provisions of the 1916 and 1961 regulations. In 1916 all towers had to be located a minimum of 75' back from the center line of fronting streets, resulting in towers set a minimum of 45' back from the street line on 60' wide street streets, 35' back on 80, wide streets. and 25' back on 100' wide streets. Only the tower portions of buildings (a maximum of 25% of the lot area) could come that close to street lines. The result was openness at the street corners and a general sense of openness at the sky. Although somewhat more permissive regarding tower location, the 1961 resolution allowed towers to be no closer than 10' to the street line on wide streets or 15' to the street line on narrow streets. The aggregate street wall requirements typically forced the location of the tower farther back from all street lines than the absolute minimum. The setbacks for medium to large buildings on narrow streets is more typically around 40'.

The profile zone of the DEC establishes the corners and side lot lines as zones of critical importance to the perception of openness and daylight in Midtown. Unlike the 1916 and 1961 sky exposure planes, setbacks and street wall regulations, which are planar and two dimensional, the profile zone on the DEC operates three dimensionally in restricting tower location. This mechanism does allow some penetration of the historic street profiles in two ways, each of which is perceptually based. First, the location of the curve with its weighted values discourages extreme penetrations of the profile curve close to side lots lines and corners. The closer that portions of the building (rising above 70 degrees at the street wall) come to side lot lines and corners, the greater the penalty. This insures that additional space and daylight on more than a one to one basis will compensate for building in this sensitive zone.

The values are not punitive against height per se, but operate three dimensionally by encouraging the location of upper portions of a building away from corners and side lot lines. Penetrations are therefore allowed but progressively discouraged by the weighting because the perceptual impact of building in the profile zone on a distant view is absolute regardless of lot size.

Secondly, on medium to large sites, the area of the DEC which is not close to the profile zone (corresponding to the center of the street line, allows for encroachment forward of a strict sectional profile curve while avoiding the profile zone of the DEC. A strict sectional profile curve would be equivalent to the daylight curve of the proposed Prescriptive Tier. This area of the chart or "bulge" is best explained by examining the Empire State Building and Citicorp. Both buildings' towers would penetrate the profile curve in strict section, but because these towers are held back from side lot lines and corners, they appear to be set further back from the street line than they measurably are.

Perceptually, a certain rhythm or openness and closure produces a sense of mass and space, as one moves along a street. A rhythm of thirty feet of openness and thirty feet of closure is qualitatively different from a rhythm of 300 feet of openness and three hundred feet of enclosure. The Citicorp building appears to be further back from the street line than it is because the tower has sufficient amount of surrounding open space and low street walls which help reinforce the illusion. Several narrow tall sheer street line towers interspersed with several vest pocket parks would actually block more light and feel much more restrictive in the street space than Citicorp, even if the total amount of building frontage and open space frontage were the same.

The revision of the weighting of the profile zone is based on the fact that the effect of building incursions in the profile zone are not uniform for each vertical angle. As a result the weighting is diminished for squares -in the profile zone both vertically and horizontally (with the side lot line or corner at 90 degrees the most weighted - see revised DEC's). A simple example will explain the conceptual basis of the revision.

Example: For the AT&T Building on its 60' wide street, the ratio of street wall height to street width is 10:1 (note: compare this to the maximum 2nd Height District for Midtown with the ratio of 1 1/2:1). Let us move this building wall back in 10' increments from the street line and compare the resulting openness ratios. The resulting ratios for the 60' wide street would be: 10:1 if the street line, 7.5:1 if 10' back, 6:0 if 20' back, 5:1 if 30' back, and 4.3:1 if 40' back. Assuming the increment increase in apparent street width is taken at the center line of the street - the first 10' back increases the street openness by an additional 33%.

The second 10', back increases the street openness by 25%), the third 10', by 20%, and the fourth 10' by only 14.3%. The first 10' has a much greater effect on increasing street openness than the second 10' and the second more than the third 10' and so on. The revised profile weights reflect this perceptual reality. For simplicity the increment decrease in weight has been made uniform.

The effect of this revision is to allow staged incursions into the profile zone, but it still prohibits very high street walls rising sheer from their street lines at corners or side lot lines in cases. The Pahlavi building, for example, does not benefit from this revision on W. 52nd Street, as the tower rises sheer from the street line. In both the view toward the corner and the view toward the side lot line, a major encroachment occurs in the profile zone on the DEC. (The average daylighting score for W. 52nd Street goes from - 57% to 31.25% under the revised weighting). On Fifth Avenue the building scores a full 100% due to the depth of the tower setback. On the other hand, the Greenwich Saving Bank Building at 57th Street and 3rd Avenue which is set back from the street line would go from non-complying to complying on 3rd Avenue due to the profile revisions.

The Daylighting Evaluation Chart as an Independent Measure

The preceding discussion of daylighting and the profile zone indicate that the historical expectation of daylighting in Midtown was a function of the interaction of as-of-right regulations regarding: The ratio of street width to Street Wall Height, tower coverage and location, sky exposure planes, outdoor public space (bonusable and pre-bonusable, e.g., Seagrams), and FAR limits. The orchestration of these elements produced both the building form as well as the resulting daylighting and openness of the street, both locally and in the distant view down a street. While many different types of buildings were built under the 1916 and 1961 regulations, the buildings held common equivalencies regarding overall daylighting and tower location.

It was in recognition of this historical pattern and the fact that the daylighting and profile values were determined and are perceived on a district basis that the consultants utilized the Street District concept for Midtown. As the expectations of daylighting was derived from the interplay of Street Wall Height, Length, and location regulations, reason follows that the proposed Street Wall Heights and Lengths should bear some relationship to previous developments. The performance system of Street Wall Length and Height allows for the local derivation of these values within a flexible trade-off system. Without the interaction of Street Wall Height and Daylighting, excessively tall portions of street walls may rise uninterrupted from street lines the full height of the structure. Loss of points in Street Wall Height would be so severe as to prevent such a possibility -- even on larger sites, as the points could not be totally made up with increase in Daylighting. As noted earlier, on larger sites, the DEC is more permissive, and if Street Wall Length and Height components are removed from the performance system substantial portions of buildings may rise close to sheer from their lot line without being "seen" as encroaching into the profile zone. Here, the

Street Wall Length and Height components become a major check against excessive profile violation. Without the interaction of the Street Wall Length and Height components, there is nothing to prevent towers or portions of towers from rising uninterrupted from the street line in the middle zone of the DEC thereby avoid the severe penalties of the profile zone.

The DEC cannot stand alonewithout the interplay between the proposed components unless prescriptive controls such as mandatory setbacks are included. This situation would be analogous to having a 40% tower maximum, without sky exposure planes, maximum Street Wall Height, and tower location provisions. Furthermore, it is our considered opinion that mixing prescriptive mandatory controls with the remnants of a performance system produces a hybrid which has all the problems of a prescriptive system with few of the benefits of a performance system. Without the ability to freely trade-off between components (e.g., Street Wall Length for Daylighting or Daylighting for Street Wall Height) the system is severely compromised.

Street walls are a significant part of the midtown environment. If most left to their own devices, developments on medium to large lots will likely be sheer towers with sidewalk widenings and plazas. In Boston, for example, where no FAR bonuses are granted for plazas or sidewalk widening, most buildings provide them merely as a result of the fashion for detached buildings, for uniform floors, and simple building shapes. If street walls are not encouraged (performance) or required (prescriptive-staff proposal), they will only emerge on small sites.

Revisions have been made in the zoning text for the Street Wall Length and Height components which exempt bonusable open space from the preferred Street Wall Length and Height. The revision recognizes market forces insofar as the amount of street wall is not mandated but rather encouraged. Of equal importance, the entire performance tier as proposed is sensitized to changing site sizes. The performance system is self-equalizing, allowing for automatic shifts in methods to achieve a passing score, so that Citicorp on a 65,000 sf lot and the Abercrombie renovation on a small lot could both be built as-of-right under the same three pages of bulk regulations, and be equivalent in the quality of their urban design gestures toward the City's streets and people.

THE PROPOSED ZONING TEST - Revision of 1/13/81

B. PERFORMANCE TIER

1. a. Daylighting. To maximize daylighting on the public sidewalks and other outdoor public amenities, and to preserve the openness of the streets above the street walls.

Maximum points 60.0 Minimum points 40.0

Requirements for full compliance: The proposed building shall obscure none of the daylighting squares above 70 degrees as determined on the Daylight Evaluation Chart (DEC).

Computation

$$(60.0) \times af - qf/A$$

Where: A = Total available daylight squares
 a = Number of squares blocked by the development
 q = Number of squares below 70 degrees left open by development
 f = Importance factor of squares

Special Conditions

1. For sites exceeding 250', in street line lengths, the DEC shall be extended by attaching an opposite hand diagram to the vertical 90 degree line.
2. For sites exceeding 250', the number of available squares(A) shall be the number of squares between the far lot line and near lot line.
3. Where existing on-site buildings occur, those squares blocked above 70 degrees by the existing building(s) shall be subtracted from A, and they shall not be included in the compliance calculations.
4. Buildings utilizing the Building Reflectivity component (1b) shall apply the reflectivity score to the street district in which the points are generated and these points shall be applied toward the minimum daylighting compliance score.

1. b. Building Reflectivity (optional). To maximize daylighting on the public sidewalks and amenities by utilizing a Building Reflectivity higher than normal. Buildings utilizing the Building Reflectivity component shall apply the reflectivity score to the street district in which the points are generated, and these points shall be applied toward the minimum daylighting compliance score.

Maximum Points 5.0 in any street district.

Computation

$$a/v \times O/v \times (r/v - .15)$$

Where: O/v = Orientation Value of building surface
R/v = Reflectance Value of building surface
a/v = Number of squares blocked by proposed development of the same orientation value

Special Conditions:

For building surfaces of more than one material, the surface reflectance R/v shall be computed as the average reflectance of the surface as seen in perpendicular elevation.

2. Street Wall Length . To conserve the pedestrian scale of the street by establishing continuity between the street wall of existing buildings and the street walls of the proposed development.

Maximum Point 25.0

Requirements for Full Compliance

The length of the building walls of the proposed development falling within 15' of the street lines and projected perpendicularly from the street line shall equal the preferred length along the street line within a single Street District.

Computation

$$25.0 \times b/BF$$

Where: B = Total Street Line Length
b = Street Wall Length of proposed development
f = Street Wall factor, taken as:
0.85 for all streets greater than 60' in width
0.75 for all streets less than or equal to 60' in width

Special Conditions

Optional: Where existing buildings occur on the development site, that portion of the lot line which they occupy shall be subtracted from B and they shall not be included in calculations for compliance.

3. Street Wall Height. To conserve the pedestrian scale of the street by establishing continuity between the street wall of existing buildings and on the street wall of the proposed development.

Maximum Points 15.0

Computation

$$15.0 \times c/C \times b/Bf$$

Where: c = Proposed Street Wall Height
C = Preferred Street Wall Height
b = Street Wall Length of proposed development
B = Total Street Line Length
f = Street Length factor (see B.2, above)

Special Conditions

- 1 Where c/C is greater than 1, then C/c shall be used in place of c/C in the calculations.
 - 2 Where the Street Wall of a proposed building occurs at more than one height, then each portion of the building shall be computed separately, as in $15.0 \times c_1/C_1 \times b_1/Bf + 15.0 \times c_2/C_2 \times b_2/Bf$.
 - 3 Where the total Street Wall Length of a proposed building is greater than Bf , then the denominator Bf shall become b .
 - 4 Where a portion of a proposed development occurs opposite a public open space of 200 feet in depth or greater, then the maximum preferred Street Wall Height C can be 150 feet, or as calculated, whichever is greater.
 - 5 Optional: Where existing buildings occur on the development site, that portion of the lot line which they occupy shall be subtracted from B and they shall not be included in the Street Wall Height calculations.
4. Sunlighting (Optional). Delete in its entirety.

PROPOSED ZONING TEXT - 1/13/81

DEFINITIONS

DAYLIGHT ANGLES

The "daylight angles" control the disposition of building bulk on the zoning lot. All angles are taken at the centerline of the street perpendicular to the street line.

DAYLIGHT EVALUATION CHART

The Daylight Evaluation Chart (DEC) is a diagram upon which a building or buildings is drawn for evaluating daylight compliance. The building or buildings are drawn on the diagram by using a fixed vantage point (V) in the street and recording all horizontal and vertical angles subtended by all edges of the building from the vantage point. The building or buildings are translated to the corresponding angle lines on the diagram. A DEC is required for each intersection of a lot line. The area of the building or buildings evaluated by each diagram is that area depicted from the far lot line to the center of the near perpendicular lot line.

- a In each street district the building shall be evaluated using DEC for each view toward an intersecting lot line. A view toward a lot line shall be taken from a point at a distance of 250', from the far lot line, at the centerline of the street.
- b The number of squares A to be used for scoring any building view shall be the number of squares above 70 degrees between the far lot line and a vertical line projected from a point in the near lot line at 100' back from the street line.

ORIENTATION VALUE

The orientation value O/v shall be taken from the Orientation Table, or interpolated between the two closest values if the building surface orientation is not listed on the table.

RANGE, EXISTING STREET WALL

The "Existing Street Wall Range" is an index of the variation of the existing Street Wall Heights on the same side of the street as the zoning lot and in the Street District. It is determined by first finding the average existing Street Wall Heights on the same side of the street as the zoning lot, that are above the average existing Street Wall Height. The range is determined by dividing the total elevational area of buildings above the average existing Street Wall Height by the total length of Street Line. The Range shall be in no case less than 10'.

REFLECTANCE

The reflectance of materials shall be the reflectance value as established by the manufacturer, the National Bureau of Standards, or as computed from the Munsell Color designation. For reflectance values not established, the New York City Bureau of Standards and Appeals shall establish the reflectance value of the material.

STREET DISTRICT

A "Street District" is the perceptual locus of the zoning lot. The length of the "Street District" is determined by extending the centerline of the street on which the zoning lot fronts from each side lot line to the intersection of the centerline of the street of equal or greater width, except in the case of 100 foot wide crosstown streets where the street district shall extend 1,000 feet from the lot line, regardless of intersecting streets. In no case, however, shall the length of a "Street District" from one side lot line be greater than 1,000 feet.

The depth of the "Street District" is equal to the distance between the centerlines of the blocks on either side of the street on which the zoning lot fronts.

There shall be a "Street District" for every street fronting on a site.

STREET WALL HEIGHT, EXISTING

The "existing Street Wall Height" is the median or predominant height of the street walls of existing buildings which fall within the Street District containing the proposed development and are on the same side of the street as the development. The "Street Wall Height" for existing building shall be measured along the building wall which occurs within 15 feet of the street line. When less than 40 percent of the total adjoining street lines have no qualifying street wall, the "existing street wall height" shall be the median height of all the street walls of existing buildings falling within the street district containing the proposed development.

STREET WALL HEIGHT, PREFERRED

Any height falling within the range of existing Street Wall Heights within a Street District, as determined above.

February 24, 1981

Mr. Richard K. Bernstein
City Planning Commission
2 Lafayette Street
New York, N. Y. 10007

Re: Midtown Zoning Study

Dear Dick:

We conclude our services as consultants to CPD as of February 20th, with assurance that we will comply with your request to provide a design in isometric form for each of 3 sites to be selected by CPD, utilizing the performance system. We will also submit one view of one of these resulting building designs on the Daylight Evaluation Chart. These drawings will be submitted hard-line in pencil for final graphic work by CPD.


The performance regulation will be further modified as a result of work done with CPD staff over the past several weeks by reducing the penalty for encroachment into the lower portion of the Profile Zone. Revised diagrams, showing the final version of the Daylight Evaluation Chart, will be provided.

We have enjoyed the close personal and working relationships developed over the past year on the two phases of our contract. The results of our work, once final revisions noted above are submitted, are the property of CPD and may be used as you wish. We would expect proper credit be given for any portions of our work which may be published.

Parenthetically, we worked very hard to achieve a rapprochement with the CPD prescriptive regulation recently developed (and still in process of revision). We have tested a myriad of site configurations, have made suggestions as to means for approaching a parallel system and have most recently suggested that the system (as of February 16th) could be utilized within certain specific limitations. As of this writing it appears that a satisfactory conclusion cannot be reached on the extent of application of the prescriptive system. We cannot continue to suggest even further modifications to permit universal application of the system and therefore do not feel that further effort in this direction, whether or not compensated, will be of help.

Again, our best wishes for successful completion of the Report.

Sincerely yours,



Alan Schwartzman, FAIA
AS:hh

Davis, Brody & Associates
Kwartler/Jones, Associated Architects and Planners

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