

**200 Amsterdam Avenue  
Manhattan Block 1158, Lot 133**

**STATEMENT OF FACTS**

**I. Introduction**

On behalf of the Committee for Environmentally Sound Development (the “Committee”), Rosenberg & Estis, P.C. submits this application pursuant to Section 666.7(a) of the New York City Charter and Section 1-06 of the Board of Standards and Appeals (the “Board” or “BSA”) Rules of Practice and Procedure, to request that the Board revoke building permit No. 122887224-01-NB (the “Permit”), issued by the New York City Department of Buildings (“DOB”) on September 27, 2017, for a new building (the “New Building”) to be constructed at 200 Amsterdam Avenue (Block 1158, Lot 133) (the “Development Site”) in the Lincoln Square neighborhood in the Borough of Manhattan. The Permit is not a validly issued building permit because the purported “zoning lot” of which the Development Site is purported to be a part, does not comply with the requirements of the definition of a zoning lot in Zoning Resolution Section 12-10. Accordingly, the Permit should – in fact, must be – revoked.

**II. Background**

A Declaration of Zoning Lot Subdivision and Restrictions, describing itself as a “Declaration for Subdivision creating Tower and Gerrymander Parcel,” dated April 10, 1987, and recorded in the Office of the City Register, New York County (the “City Register’s Office”), on April 16, 1987, at Reel 1217 Page 1402 (the “1987 Declaration and Subdivision”): (1) declared all of the lots then known as Lots 1, 30, 70, 80 and 90 in Block 1158 to be a single zoning lot, and then (2) subdivided the zoning lot into two zoning lots, consisting of a “Vacant Parcel” zoning lot (presumably the “Gerrymander” parcel) consisting of vacant land made up of parts of Lots 1, 30, 70 and 80, and a “Towers Parcel” zoning lot consisting of the other parts of Lots 1, 30, 70 and 80 and all of Lot 90 (the “Towers Zoning Lot”), and containing four existing 29-story high rise apartment buildings and one existing 42-story apartment building (collectively, “Lincoln Towers”).

Concurrently, pursuant to a Declaration of Zoning Lot Restrictions, also dated April 10, 1987, and recorded in the City Register’s Office on April 16, 1987, at Reel 1217 Page 1438 (as amended by an Amendment to Declaration of Zoning Lot Restrictions, dated May 26, 1987, and recorded in the City Register’s Office on June 3, 1987, at Reel 1239 Page 1366 (the “1987

Gerrymander Declaration”), the Vacant Parcel zoning lot was merged with Lots 10, 12 and 65 to create an enlarged zoning lot (the “Gerrymandered Zoning Lot”).

Also concurrently, two Zoning Lot Development Agreements were executed and recorded, one for the Towers Zoning Lot (the “Towers ZLDA”) and one for the Gerrymandered Zoning Lot (the “1987 Gerrymander ZLDA”).<sup>1</sup> Both ZLDAs were dated April 10, 1987 and recorded in the City Register’s Office on April 16, 1987 – the Towers ZLDA at Reel 1221 Page 1970 and the Gerrymander 1987 ZLDA at Reel 1221 Page 1929.

For the Gerrymandered Zoning Lot, a Zoning Lot Description and Ownership Statement, dated May 26, 1987, was recorded in the City Register’s Office on June 3, 1987, at Reel 1239 Page 1343 (the “1987 Gerrymander Description”).

In the 1987 Gerrymander Declaration, 1987 Gerrymander ZLDA and 1987 Gerrymander Description, the Gerrymandered Zoning Lot is described as being “for Gerrymander & Commercials” parcels. In the 1987 Gerrymander ZLDA, the Gerrymandered Zoning Lot is described as consisting of two parcels: the “Developers Lands” and the “Vacant Zoning Lot.” As shown on the zoning lot diagram of the 1987 Gerrymander Description, attached hereto as Attachment A, the Developer’s Lands consisted of Lots 10 and 12,<sup>2</sup> located on the Amsterdam Avenue side of the block, and Lot 65, located on the West End Avenue side of the block, and the “Vacant Zoning Lot” consisted of parts of Tax Lots 1, 30, 70 and 80 that, as shown on Attachment A, snake and meander across the block.

In 2007, pursuant to a Declaration of Zoning Lot Restrictions, dated August 31, 2007, and recorded in the City Register’s Office on December 12, 2007, at CRFN 2007000609689, the Gerrymandered Zoning Lot was enlarged to add Lots 133 and 134<sup>3</sup> (as well as Lot 18, which had been reapportioned from Lot 12). In conjunction therewith, a Supplemental Zoning Lot Development Agreement for the enlarged zoning lot, dated August 31, 2007, was recorded in the City Register’s Office on December 12, 2007, at CRFN 2007000609688.

In 2015, pursuant to a Declaration With Respect to Subdivision of Zoning Lot, dated June

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<sup>1</sup> While the 1987 Gerrymander ZLDA states that Lots 1, 30, 70, 80 and 90 “heretofore” constituted a single zoning lot, which it defined as the “Old Zoning Lot,” because the 1987 Declaration and Subdivision declaring them a single zoning lot (and simultaneously subdividing it) was likely recorded only minutes before the 1987 Gerrymander ZDLA, “heretofore” and “Old” are obviously used in a relative sense.

<sup>2</sup> On or about 2007, Tax Lot 12 was subdivided by tax lot reapportionment into Tax Lots 12 and 18.

<sup>3</sup> On September 9, 2015, Tax Lots 133 and 134 were combined by tax lot reapportionment and assigned Tax Lot number 133. On March 31, 2016, Tax Lot 133 was subdivided by tax lot reapportionment to create Tax Lot 9133, an “air rights” parcel above Tax Lot 133 (the fee parcel).

11, 2015, and recorded in the City Register's Office on June 18, 2015 at CRFN 2015000209093, the Gerrymandered Zoning Lot was subdivided to make Lots 10, 12, 18 and parts of former lots 1 (now 1001-1007) and 30 (now 1401-1405) one zoning lot, and Lots 133, 134, 65 (now 1501-1672) and the gerrymandered portion of the Gerrymandered Zoning Lot (consisting of parts of former Lots 1 (now 1001-1007), 30 (now 1401-1405), 70 (now 1101-1107) and 80 (now 1201-1208)) a second zoning lot (as subdivided, the "Gerrymandered Zoning Lot"). Separate Zoning Lot Description and Ownership Statements were recorded for each of the subdivided zoning lots. The zoning lot diagram from the Zoning Lot Description for the Gerrymandered Zoning Lot is attached hereto as Attachment B, showing the Gerrymandered Zoning Lot as it currently exists.

III. Procedural History – DOB Job No. 122887224

Applications for building permits for the New Building were submitted to DOB on September 27, 2016. The permit application was disapproval by the DOB plan examiner on October 17, 2016. On March 29, 2017, a zoning diagram (the "Zoning Diagram") was submitted to DOB. The permit application was approved by DOB on May 9, 2017. Pursuant to DOB's Zoning Challenge procedure, once a Zoning Diagram is approved, any member of the public may, within 45 days, challenge DOB's approval. The Committee submitted a Zoning Challenge on May 15, 2017, a copy of which is submitted with this application. In response, DOB commenced an audit of the permit application. On July 11, 2017, DOB issued a ZRD1 Response Form (attached hereto as Attachment C), stating that in response to the claim made in the Zoning Challenge "that the open space for the New Building does not qualify as Open Space as defined in the Zoning Resolution... the Department has issued a notice of objections and an intent to revoke to verify that the zoning lot was properly formed." On September 27, 2017, DOB issued the Permit.

As set forth on the DOB web site,<sup>4</sup> after the DOB Borough Commissioner has reviewed a challenge and rendered a decision, "All decisions will be posted online." However, when the link for "Challenge Results" on the Application Details page for Job No. 122887224 is clicked, the Challenge Results page states, "No Scanned Challenge Results Found For This Job." Printouts of the Challenge Results and Challenge Period Status pages are attached hereto as Attachment D.

IV. Arguments

A. The Gerrymandered Zoning Lot is Improperly Formed

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<sup>4</sup> See <http://www1.nyc.gov/site/buildings/homeowner/challenges.page>

The first question at issue is a simple one: was the Gerrymandered Zoning Lot properly formed in compliance with the definition of a “zoning lot” set forth in Section 12-10 of the Zoning Resolution? For the following reasons, we submit that the answer is no, it does not, and was therefore improperly formed, for which reason the Permit should be revoked.

A “zoning lot” is defined in Section 12-10 of the Zoning Resolution as being one of four things:

“(a) a lot of record existing on December 15, 1961 or any applicable subsequent amendment thereto;

“(b) a tract of land, either unsubdivided or consisting of two or more contiguous lots of record, located within a single block, which, on December 15, 1961 or any applicable subsequent amendment thereto, was in single ownership;

“(c) 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 the filing for a certificate of occupancy) is under single fee ownership and with respect to which each party having any interest therein is a party in interest (as defined herein); or

“(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 made in one written Declaration of Restrictions 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... Each Declaration shall be executed by each party in interest... [and] shall be recorded in the Conveyances Section of the Office of the City Register.”

In addition, the definition provides that “A zoning lot, therefore, may or may not coincide with a lot as shown on the official tax map of the City of New York.”

This definition of a zoning lot, including the provisions of paragraph (d) for declaring two or more lots of record a single zoning lot were created in 1977 by zoning text amendment application N 760226 ZRY, approved by the City Planning Commission (“CPC”) on July 13, 1977

(Calendar No. 27) and by the Board of Estimate on August 18, 1977. Prior to 1977, two or more adjacent parcels could be treated as a single zoning lot only if they were in single fee ownership or were “merged” together by means of a lease having a term of 75 years or more.

As described in the CPC report, there were “serious problems” with such mergers by lease. Because they were private agreements, they could be terminated at any time by breach or bankruptcy. In addition, such lease agreements allowed unused development rights to be shifted from one parcel to another without notice to all affected parties in interest.

As stated in the CPC report, the new requirement of paragraph (d) for the execution and recording of a Declaration of Restrictions by all parties in interest would “prevent the possibility of overbuilding,” “eliminate the current problem of not being able to determine from the public record whether a building has been built in part on the basis of development rights applicable to land on which the building is not physically located,” “protect[] the City’s interest in avoiding overbuilding, and “provide[] private parties with a certainty based on which they can protect their own interests.”

The definition created in 1977 and continuously in effect until today, requires that the lots to be merged by declaration into a single zoning lot must be “lots of record.” Neither “lot,” “of record” or “lot of record” is defined in the Zoning Resolution. The Gerrymandered Zoning Lot was created, enlarged and subdivided apparently in the belief that a “lot of record” can be anything an owner declares it to be. We beg to differ. While a zoning lot may or may not “coincide” with “a lot as shown on the official tax map of the City of New York” – i.e., a single tax lot – it must nevertheless be comprised of tax lots “as shown on the official [City] tax map.”

A zoning lot that coincides with a tax lot shown on the tax map is a zoning lot under paragraph (a) of the Section 12-10 definition. Every individual tax lot under separate fee ownership is, therefore, by definition, a zoning lot. In such case, “lot of record” means, as stated in the definition “a lot as shown on the official tax map.” Furthermore, lots shown on the tax map are entire tax lots, the dimensions of which generally correspond with a deed of ownership recorded in the City Register’s Office. Parts of tax lots are not shown on the tax map.

Logically, then, for paragraphs (b), (c) and (d) of the Section 12-10 definition where a zoning lot may consist of two or more lots, “of record” would have the same meaning as for paragraph (a): tax lots shown on the official tax map. It is illogical that “lot of record” would mean one thing in paragraph (a) but mean something completely different in the other three paragraphs.

Support for such reading of the text is found in the Zoning Resolution itself. As examples: Section 23-96 regarding requirements for Inclusionary Housing bonus generating sites makes repeated reference to “tax lots,” including: “the regulatory agreement shall be recorded against all tax lots comprising the portion of the zoning lot within which the generating site is located” (emphasis added). Section 25-252 regarding affordable independent residences for seniors, similarly provides that “Such requirement shall be reflected in a notice of restrictions recorded against all tax lots comprising such zoning lot” (emphasis added).

Section 74-79 regarding transfers of development rights from individually designated landmarks to adjacent lots, defines an “adjacent” lot as meaning, in addition to a lot that is contiguous to or across a street and opposite the lot containing the landmark building, in certain zoning districts, “lots that except for the intervention of streets or street intersections, form a series [emphasis added] extending to the lot occupied by the landmark building or other structure. All such lots shall be in the same ownership (fee ownership or ownership as defined under zoning lot in Section 12-10).”

Under this provision, development rights may be transferred to a property across the street and down the block from the lot containing the landmark building, with the operative requirements being that (a) the lots “form a series” and (b) the series of lots meet one of the definitions of a zoning lot either by virtue of being in single fee ownership or by having been declared a zoning lot by all parties in interest. In other words, to transfer development rights from Lot A to Lot D, (1) Lot B must be across the street and opposite Lot A and (2) Lots B, C and D must constitute a zoning lot.

Logically, where, as here, it is proposed to transfer development rights (whether floor area or open space) from one end or side of a block to the other by zoning lot merger, the intervening lots must likewise “form a series.” However, the Gerrymandered Zoning Lot does not consist of a series of lots, but of disparate, isolated bits and pieces of lots strung together with narrow threads made up of other bits and pieces of lots. While the past and present parties in interest in the Gerrymandered Zoning Lot have evidently asserted that the parts of the tax lots are, in fact, “lots of record” such interpretation is not only contrary to the plain meaning of the text,<sup>5</sup> it defies logic and common sense.

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<sup>5</sup> See, *Majewski v. Broadalbin-Perth Central School District*, 91 N.Y.2d 577, 583 (1998) (“the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof.” See also, *Tompkins v Hunter*, 149 N.Y. 117, 122-123 (1896) (“In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed”).



First of all, most obviously, portions of the various lots that make up the gerrymandered portion of the Gerrymandered Zoning Lot are not “lots.” As explicitly acknowledged in the 1987 Gerrymander Declaration, the gerrymandered portion of the Gerrymandered Zoning Lot consists only of “parts” of the tax lots.

Secondly, the parts of the tax lots were not “of record” prior to creation of the Gerrymandered Zoning Lot. For something to be “of record,” it must be recorded. In the City of New York, lots are “of record” for having been recorded in one of two places: tax lots are “of record” by virtue of being shown on the “official tax map of the City of New York;” and zoning lots are “of record” by virtue of being recorded in the “Conveyances Section of the Office of the City Register.”

A zoning lot cannot be “of record” until it has been declared such by the recording of a Declaration of Restrictions in the Office of the City Register. For two or more lots to be declared a zoning lot, however, they must meet the conditions set forth in paragraph (d) of the Section 12-10 definition: they must be contiguous for a minimum of 10 linear feet and – critically – they must be “lots of record.” If they are not both of these things, they do not qualify and any Declaration that declares them to be a zoning lot is therefore invalid.

Upon recording of the 1987 Gerrymander Declaration, the gerrymandered portion of the Gerrymandered Zoning Lot was a zoning lot of record and, at least arguably, the parts of the tax lots were likewise of record. But it is inarguable that before the 1987 Gerrymander Declaration was recorded, neither the Gerrymandered Zoning Lot nor the parts of the tax lots comprising it were “lots of record.” To assert that the result of the zoning lot merger satisfies the required precondition for such merger plainly set forth in the text is an exercise in illogical circular logic. A thing can’t be both cause and effect.

In any event, because a “lot of record” is an entire tax lot as shown on the tax map, and the parts of Tax Lots 1, 30, 70, 80 and 90 that were declared to be a part of the Gerrymandered Zoning Lot were not shown on the tax map as entire tax lots with lot dimensions generally corresponding to the metes and bounds description on a deed of ownership, they were not lots of record and therefore, the Gerrymandered Zoning Lot was not properly formed.

In support of their interpretation, the past and present parties in interest in the Gerrymandered Zoning Lot – and the Department of Buildings, which approved it – may be expected to cite to the “Minkin Memo.”

The Minkin Memo is a Departmental Memorandum issued by DOB Acting Commissioner Irving Minkin on May 18, 1978, subsequent to the 1977 text amendment creating the current definition of a zoning lot.

The Memo states, in part, that “a single zoning lot... may consist of one or more tax lots or parts of tax lots.” However, that is the only reference to “parts” of tax lots in the Memo itself or in any of the required zoning exhibits established by and attached to the Memo. In fact, the rest of the Memo and its attached exhibits belie such reference.

- Exhibits I and II (Certification of Parties in Interest) require that the “Tax Lot Number(s)” be listed and that the zoning lot diagram “Show Block and Lot numbers and dimensions of each lot.”
- Exhibit III (Zoning Lot Description and Ownership Statement) requires the applicant for a building permit state under oath that “the zoning lot to which the afore-mentioned permit or permits pertain are shown on the Tax Map of the City of New York, County of New York, as Lots \_\_\_\_\_ in Block \_\_\_\_\_ as shown on the Tax Map of the City of New York \_\_\_\_\_ County...” (emphasis added). Exhibit III also requires that the zoning lot diagram “Show Block and Lot numbers and dimensions of each lot.”
- Exhibit IV (Declaration of Zoning Lot Restrictions) requires all parties in interest to state under oath that “the land known as Tax Lot(s) \_\_\_\_\_, in Block \_\_\_\_\_ on the Tax Map of the City of New York... is to be treated as one zoning lot...” (emphasis added).
- Exhibit V (Waiver of Declaration of Zoning Restrictions) requires a party in interest waiving its right to sign the Declaration of Zoning Lot Restrictions to state under oath that “the land known as Tax Lot(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ in Block \_\_\_\_\_ on the Tax Map of the City of New York... is to be treated as one zoning lot...” (emphasis added).

To rely on this one, passing reference to parts of tax lots is to ignore the larger context of the Memo and its attached exhibits. If it was truly the intention of the Memo to allow zoning lots to consist only of “parts” of tax lots, how does one explain the use of the qualifying phrase “as shown on the Tax Map of the City of New York” in Exhibit III and “on the Tax Map of the City of New York” in Exhibit IV and V, and the references to “Tax Lot Number(s)” and “Tax Lot(s)” in all of the Exhibits?

Even if we were to set aside these obvious inconsistencies, the Minkin Memo is flawed because, for all the reasons argued above, under a reasonable reading of the Zoning Resolution text, a zoning lot cannot consist of parts of a tax lots because parts of tax lots are not shown on the tax map and therefore cannot meet the definitional requirement of being “of record.”

It is well-established that statutes may not be interpreted so as to “broaden the scope and application” of the statute. *Bender v. Jamaica Hosp.*, 40 N.Y.2d 560, 562 (1976). *See also*, *Chemical Specialties Mfrs. Assn. v. Jorling*, 85 N.Y.2d 382, 394 (1995) (“new language cannot be



imported into a statute to give it a meaning not otherwise found therein”) and *Matter of Raritan Development Corp. v. Silva*, 91 N.Y.2d 98, 104 (1997) (where “BSA has (sometimes) grafted onto the language of the current Zoning Resolution an addendum of its own... we have declined to uphold such an interpretation”).

The phrase “parts of tax lots” not only does not appear in the text of the Zoning Resolution Section 12-10, it does not appear anywhere in the Zoning Resolution. If it had been the intention of the Department of City Planning to allow zoning lots to be created out of parts of tax lots, when drafting the text, they would have inserted such phrase wherever necessary or applicable. There are examples of a word or phrase appearing in one section of the Zoning Resolution but not in another, in which cases a genuine question as to interpretation may arise, but where a phrase does not appear anywhere in any section of the entire 1,500 pages of text, it cannot be “imported into” the text by interpretation.

Furthermore, the argument that a zoning lot may consist of only parts of tax lots is belied by the fact that the Gerrymandered Zoning Lot is not just exceedingly rare, it may be *sui generis*. According to a survey done by New York University’s Furman Center, issued in 2013, in the eight years between 2003 and 2011 alone, there were 385 zoning lot mergers.<sup>6</sup> The number of zoning lot mergers would obviously be higher – significantly so – if all the zoning lot mergers before 2003 and after 2011 were included. The Gerrymandered Zoning Lot is the only one that we have been able to identify that has purported to create a zoning lot out of disparate bits and pieces of multiple tax lots spread out over almost an entire city block. If it is, in fact, one of a kind, it represents a tiny fraction of a percent of the 385 zoning lot mergers surveyed by the Furman Center, and an even tinier fraction of all zoning lot mergers since 1977 to the present.

This fact is a clear indication that the broadly understood meaning of the Zoning Resolution text is that “lot of record” means a tax lot as shown on the tax map – the entire tax lot and not a part of it – and that a zoning lot must therefore consist of entire tax lots as shown on the tax map that “form a series” of tax lots from the “air rights” lot to the development lot. The Furman Center report’s illustration of a merged zoning lot (Figure 1, below) shows exactly that: a zoning lot consisting of a series of entire tax lots.

Such a reading of the text is further supported by a survey and report on development rights transfers issued by the Department of City Planning in 2015, which describes zoning lot mergers

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<sup>6</sup> Buying Sky: The Market for Transferable Development Rights, Furman Center for Real Estate and Urban Policy, New York University, October 2013 (<http://furmancenter.org/research/publication/buying-sky-the-market-for-transferable-development-rights-in-new-york-city>)

as combining “contiguous tax lots,” noting that tax lots “reflect historic ownership patterns.”<sup>7</sup> Recall that as stated in the CPC report for the 1977 text amendment that created the current definition of a zoning lot, one of the problems with merging lots by long-term lease was that such mergers did not always allow affected parties to know or be aware of how such mergers affected their property rights. The purpose of the new definition was to provide certainty to parties having a property interest in a zoning lot, thereby enabling them to protect their own interests.

Figure 1: Example Merged Zoning Lot



**Figure 1: Lots Included in Zoning Lot Merger for 250 East 53rd Street**

Source: Buying Sky, NYU Furman Center

Finally, the Zoning Handbook, the widely used “plain English” translation and summary of the Zoning Resolution, which is “intended to make zoning more accessible to all,” gives the definition of a zoning lot as “a tract of land comprising a single tax lot or two or more adjacent tax lots within a block” [emphasis added].<sup>8</sup> This is as clear an indication as could be found that it is the understanding and intent of the Department of City Planning itself that “lot of record” means a lot “as shown on the official tax map of the City of New York” – in other words, in plain English, a tax lot. This is critical and cannot be emphasized enough. Therefore, to repeat: in explaining in

<sup>7</sup> A Survey of Transferable Development Rights Mechanisms in New York City, New York City Department of City Planning, February 26, 2015, p. 5-6 (<http://www1.nyc.gov/assets/planning/download/pdf/plans-studies/transferable-development-rights/research.pdf>)

<sup>8</sup> Zoning Handbook, Department of City Planning, New York, 2011, p. 149.

plain English what the Zoning Resolution definition of a zoning lot means by “lot of record,” City Planning clearly and unequivocally states that it means a tax lot. Period. Full stop. Not, “a tax lot or a part of a tax lot.” The entire tax lot. Certainly not, as with the Gerrymandered Zoning Lot, a piece cut off of a corner or notched out of the side, or long, narrow strips sliced off the back or side of a tax lot.

Taken to its extreme, the interpretation of the zoning text that a zoning lot may consist of parts of tax lots, has resulted in the Gerrymandered Zoning Lot. How such a zoning lot affects the property rights of the parties in interest was perhaps not so uncertain when there were only two or three owners and their respective lenders. Now, however, five of the Gerrymandered Zoning Lot’s tax lots have been declared condominiums so they are now comprised of nearly 200 individual condominium tax lots, each owned by a party or parties having a real property interest in the various bits and pieces of their condominium’s land which have been subdivided off and given over to the Gerrymandered Zoning Lot.

Given that the Gerrymandered Zoning Lot has been subdivided, enlarged and then subdivided again and that there are now, as shown on the table attached hereto as Attachment E, a dizzying collection of more than two dozen Declarations, Zoning Lot Descriptions, Certifications, ZLDAs, supplemental ZLDAs, amendments, second amendments, terminations, easements and covenants, it should not surprise anyone that purchasers of units in these five buildings would have a difficult if not impossible time trying to understand what the implications of all this are with regard to their individual rights. This interpretation has recreated the very problem of uncertainty as to a party’s property rights that the 1977 text amendments were intended to address.

B. The Open Space Does Not Comply With the Zoning Definition

The second question at issue is likewise straightforward: does the required open space provided on the Gerrymandered Zoning Lot for the New Building comply with the definition of “open space” set forth in Section 12-10 of the Zoning Resolution. Again, we submit that the answer is no, it does not, and for that reason, separate and apart from the question of the validity of the zoning lot, the Permit should be revoked.

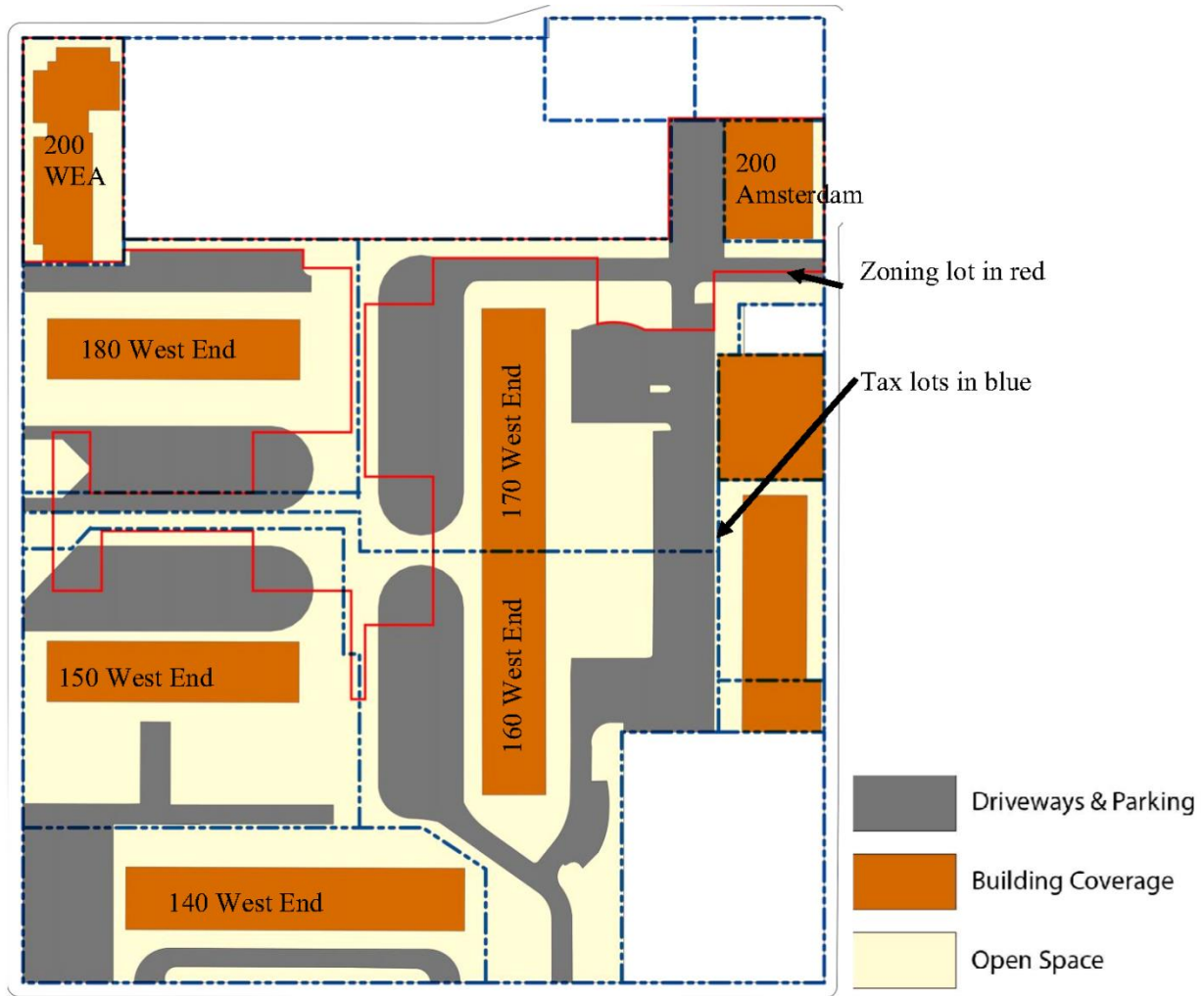
“Open space” is defined in Section 12-10 of the Zoning Resolution as:

“that part of a zoning lot, including courts or yards, which is open and unobstructed from its lowest level to the sky and is accessible to and usable by all persons occupying a dwelling unit or a rooming unit on the zoning lot.”

The key phrase here is “accessible to and usable by.” As shown by the figure included in the Zoning Challenge (see Figure 2, below) portions of the Gerrymandered Zoning Lot’s open

space are occupied by parking lots and driveways providing accessory residential parking for the dwelling units in the Lincoln Towers buildings located on the Towers Zoning Lot.

Figure 2: Zoning Challenge Open Space Diagram



The parking lots and driveways were all developed in conjunction with and for the Lincoln Towers buildings, prior to 1987 when the Gerrymandered and Towers Zoning Lots were created. None of the ZLDAs, Supplemental ZLDAs, ZLDA Amendments, Declarations or Covenants allocate any of the parking spaces to the occupants of buildings located on the Gerrymandered Zoning Lot in any of its configurations. The 200 West End Avenue building on the formerly Lot 65 portion of the Gerrymandered Zoning Lot has its own below grade parking facility, and according to the Zoning Diagram, no accessory parking spaces are being provided for the New Building. Therefore, the parking lots and driveways, including the portions located on the

Gerrymandered Zoning Lot, may be presumed to provide accessory parking for the occupants of the Lincoln Towers buildings.

Because the parking spaces are accessory to and used by persons occupying dwelling units in the Lincoln Towers buildings, they cannot also be used by persons occupying dwelling units in the New Building. It is arguable whether they are even “accessible to” occupants of the New Building’s dwelling units.

Based on the information shown on the Zoning Diagram, the Gerrymandered Zoning Lot contains 87,076 sf of open space (110,794 sf of lot area minus 23,718 sf of lot coverage). The Zoning Challenge calculated the area occupied by such driveways and parking lots as being 33,983 sf. This area should be subtracted from the Gerrymandered Zoning Lot’s open space not only because it is not “accessible to and usable by” persons occupying dwelling units in the New Building (and in any event, according to the Zoning Diagram, no accessory parking is provided for the New Building), but also because the parking spaces are not permitted open space obstructions on the Gerrymandered Zoning Lot.<sup>9</sup>

Although pursuant to Zoning Resolution Sections 23-12 and 25-64, driveways and open accessory off-street parking spaces are permitted obstructions in required open space, provided they do not occupy more than 50% of the open space, pursuant to the definition of “accessory use” in Zoning Resolution Section 12-10, accessory uses – including accessory parking” – must be “conducted on the same zoning lot as the principal use to which it is related.” An exception is accessory parking, which, pursuant to Zoning Resolution Section 25-52, may be located on a different zoning lot not located in a residence district or in a joint facility serving two or more buildings, provided such joint facility is not in an R1 or R2 zoning district and the facility is on the same zoning lot as at least one of the buildings to which it is accessory.

However, because, the portions of the driveways and parking lots located on the Gerrymandered Zoning Lot are accessory to the Lincoln Towers buildings on the Towers Zoning Lot, they may only be located on the Gerrymandered Zoning Lot if the Gerrymandered Zoning Lot were not in a residence district or such portions were to be considered a “joint facility” for either or both the 200 West End Avenue building or the New Building. But the portions of the driveways and parking lots located in the Gerrymandered Zoning Lot are within a residence district

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<sup>9</sup> The entire required rear yard of the interior lot portion of the Gerrymandered Zoning Lot on which the New Building is located is occupied by parking accessory to the Lincoln Towers buildings. Therefore, for the same reasons – that the parking spaces are not located on the same zoning lot as the primary use to which they are accessory, they are an impermissible rear yard obstruction in the 200 Amsterdam interior lot portion of the Gerrymandered Zoning Lot and therefore in non-compliance with Zoning Resolution Section 23-44.

and the driveways and parking lots located on the Gerrymandered Zoning Lot are not a joint facility because, as already noted, the 200 West End Avenue building has its own below grade accessory parking facility, and the New Building does not require and will not provide any parking.

Subtracting the 33,983 sf of driveways and parking on the Gerrymandered Zoning Lot leaves 53,093 sf of open space that is theoretically “accessible to and usable by” to persons occupying dwelling units in the New Building, albeit not for parking. However, based on the information shown on the Zoning Diagram, pursuant to Zoning Resolution Section 23-151, for a zoning lot having a height factor of 25 (592,688 sf of residential floor area divided by 23,718 sf of lot coverage), a minimum open space ratio of 13.1% is required, which requires 77,642 sf of open space. Thus, at 53,093 sf (excluding the open space not accessible and usable to the occupants of dwelling units on the Gerrymandered Zoning Lot (including both the New Building and the 200 West End Avenue building), the Gerrymandered Zoning Lot would have 24,549 sf less open space than required by zoning. In fact, even if only 9,435 sf of the open space were occupied by driveways and parking used by the occupants of the Towers Zoning Lot and therefore, also impermissible open space obstructions, the Gerrymandered Zoning Lot would not have enough open space to comply with Section 23-151.

Other portions of the Gerrymandered Zoning Lot’s open space, in particular, the long, narrow strips that connect the New Building and the 200 West End Avenue building to the more rectangular but nevertheless irregular open spaces in the middle of the block may be accessible in a strict sense, are not “usable” in any meaningful sense of the word.

While “usable” is not a defined term and Section 23-151 only makes provisions as to the quantity and not the quality of open space, other sections of the Zoning Resolution give some indication of the intended purpose and use of required unobstructed open space. For example, Section 78-52 provides that in large-scale residential developments, “common open space” not occupied by permitted obstructions “shall include both active and passive recreation space providing a range of recreational facilities and activities... Passive recreation space shall be landscaped.” As noted in the Zoning Challenge, Zoning Resolution Section 21-00(d) provides that one of the general purposes of the residence district regulations is “to encourage the provision of additional open space by permitting moderately higher bulk and density with better standards of open space” and “to provide open areas for rest and recreation.”

It is difficult if not impossible to imagine that any of the non-obstructed open spaces on the Gerrymandered Zoning Lot could be said to meet these general purposes. The standard of these open spaces is not better but worse: narrow strips unusable for anything but walking across to get from point A to point B, small blocks of space wedged between parking lots, with playgrounds, ball fields or courts, no benches, chairs or tables. It seems clear that this “open space” was created



for one purpose and one purpose only: to achieve “higher bulk and density” but avoid the *quid pro quo* of “better standards of open space”. It is open space in name only, meeting the merest letter of the law but none of its purpose and intent.

V. Conclusion

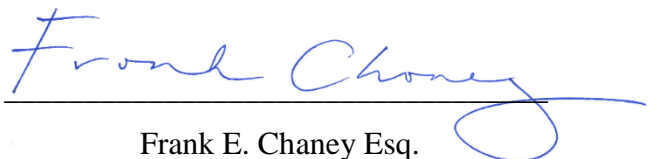
The Permit was invalidly issued and should be revoked because:

1. the Gerrymandered Zoning Lot does not consist of “lots of record,” meaning entire tax lots as shown on the official tax map of the City of New York; and
2. even if the Gerrymandered Zoning Lot were not improperly formed, it does not comply with the open space requirements of Section 23-151 because at least a substantial portion of the open space is not “accessible to and usable by” occupants of the New Building’s dwelling units and are occupied by impermissible obstructions in non-compliance with Sections 12-10, 23-12, 23-44, 25-52 and 25-64.

The interpretations of DOB with respect to “zoning lot,” “open space,” permitted obstructions and off-site parking are all in conflict with both the letter and purpose of the Zoning Resolution and cannot be sustained.

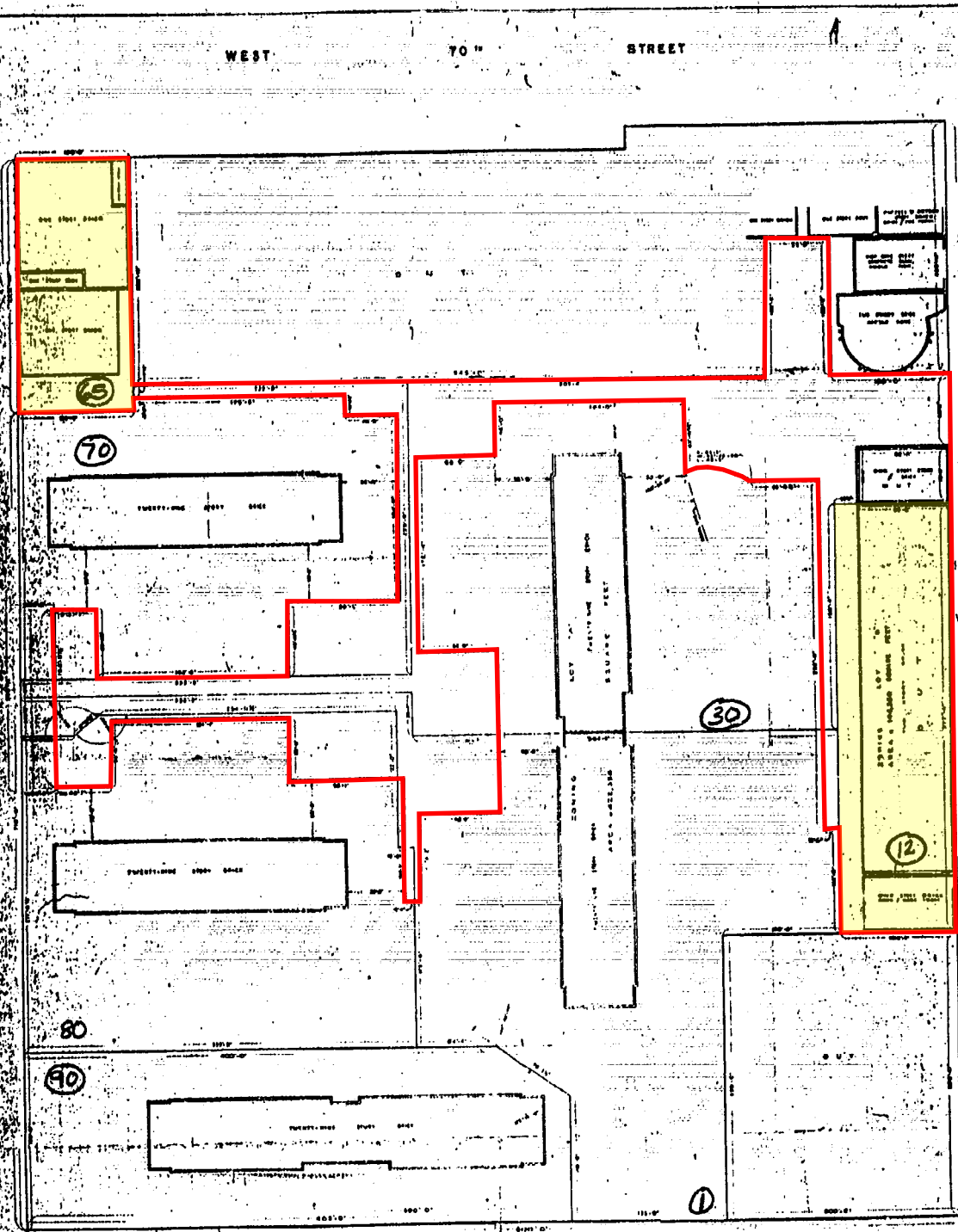
Therefore, for the reasons set forth herein, it is respectfully requested that the Board revoke the Permit.

Dated: October 25, 2017

By:   
Frank E. Chaney Esq.

Attachment A

1987 Gerrymander Description Zoning Lot Diagram



STREET  
Combined Zoning Lot  
Developers Lands

EARL B. LOVELL - S.R. BELCHER, INC.  
Zoning & Planning

DRAWING  
NO. 34

Attachment B

2015 Zoning Lot Description Zoning Lot Diagram



Attachment C

ZRD1 Response Form





Scan Code ESHS2296448

## ZRD1/CCD1 Response Form

## Location Information (To be completed by a Buildings Department official if applicable)

House No(s) 200

Street Name AMSTERDAM AVENUE

Borough Manhattan

Block 733

Lot 1158

BIN

Job No. 122887224

## DETERMINATION (To be completed by a Buildings Department official)

Request has been: ☒ Approved ☐ Denied ☐ Approved with conditionsFollow-up appointment required? ☐ Yes ☒ No

Primary Zoning Resolution or Code Section(s): ZR 12-10

Other secondary Zoning Resolution or Code Section(s): ZR 23-62, ZR 23-44, MDL 4.35(a) &amp; (b)

## Comments:

Zoning Challenge Accepted/Denied:

The Department is in receipt of a zoning challenge which claims that the open space provided does not qualify as Open Space as defined in the Zoning Resolution. The challenge also alleges that the mechanical space at the top of the building does meet the definition of a permitted obstruction per the Multiple Dwelling Law.

The challenge claims that the open space dimensions provided, does not qualify as Open Space as defined in the Zoning Resolution, because residents of the existing building on the zoning lot do not have access to the space.

In response to this claim, the Department has issued a notice of objections and an intent to revoke to verify the open space ratio and that the zoning lot was properly formed.

Further, the challenge claims that four floors of mechanical space at the top of the building do not meet the definition of a permitted obstruction, as such an interpretation is inconsistent with the New York State Multiple Dwelling Law.

The Department disagrees with the challenge. Definitions in the New York State Multiple Dwelling Law should not be used as a reference to interpret the New York City Zoning Resolution. The four floors of mechanical space at the top of the buildings meet the definition of a permitted obstruction pursuant to ZR 23-62.

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Note: If approved determination is not scanned or microfilmed, it will be deemed invalid.

Name of Authorized Reviewer (please print): MARTIN REBHOLZ, RA

Title (please print): MANHATTAN BOROUGH COMMISSIONER

Authorized Signature:

Date: 7-10-17

Time:

Issuers: write signature, date and time on each page of the request forms; and attach this form.

Note: Determination will expire if construction document approval is not obtained within 12 months of issuance.

Attachment D

Challenge Results and Challenge Period Status Web Pages



 [CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings

## Challenge Results

### No Scanned Challenge Results Found For This JOB

When multiple challenge documents are listed, click on the one with latest "Date Scanned" Date to see the most current version.

For more information on Zoning Diagrams & Challenge Process, click [here](#).

Premises: 200 AMSTERDAM AVENUE MANHATTAN

BIN: [1030358](#) Block: 1158 Lot: 133

Job No: [122887224](#)

Job Type: NB - NEW BUILDING

[Zoning Documents](#)

[Challenge Period Status](#)

<a href="#">FORM NAME</a> ↓	<a href="#">Form ID</a>	<a href="#">Doc No.</a>	<a href="#">PAA</a>	<a href="#">DATE SCANNED</a>	<a href="#">SCAN CODE</a>
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If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.



 [CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings

**Challenge Period Status**

For more information on Zoning Diagrams & Challenge Process, click [here](#).

Premises: 200 AMSTERDAM AVENUE MANHATTAN

Job No: [122887224](#)

BIN: [1030358](#) Block: 1158 Lot: 133

Job Type: NB - NEW BUILDING

**Last Action:** PERMIT ISSUED - PARTIAL JOB 09/27/2017 (Q)

**Application Approved on:** 05/09/2017

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[Zoning Documents](#)

[Challenge Results](#)

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**Challenge Status**

**Appeal Status**

Closed on 05/13/2017

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

Attachment E

Recorded Documents Affecting Gerrymandered Zoning Lot, 1987-2017

<b>Date</b>	<b>Reel/Page or CRFN</b>	<b>Type of Agreement (Description)</b>	<b>Lots Affected (f/k/a)</b>
2/3/1987	1190/9	Zoning Lot Description and Ownership Statement	1, 30, 70, 80, 90
4/16/1987	1217/1402	Declaration of Zoning Lot Subdivision and Restrictions (Declaration for Subdivision creating Tower & Gerrymander Parcel zoning lots)	1, 30, 70, 80, 90
4/16/1987	1217/1438	Declaration of Zoning Lot Restrictions	1, 10, 12, 30, 65, 70, 80, 90
4/16/1987	1217/1475	Zoning Lot Description and Ownership Statement (Combined Gerrymandered Parcel and Commercial Parcels)	1, 10, 12, 30, 65, 70, 80, 90
4/16/1987	1217/1498	Zoning Lot Description and Ownership Statement (Towers Parcel zoning lot)	1, 30, 70, 80, 90
4/28/1987	1221/1929	ZLDA (Gerrymander & Commercial parcels)	1, 10, 12, 30, 65, 70, 80, 90
4/28/1987	1221/1970	ZLDA (Towers Parcel zoning lot)	1, 30, 70, 80, 90
6/3/1987	1239/1343	Zoning Lot Description and Ownership Statement (Combined Gerrymandered Parcel and Commercial Parcels)	1, 10, 12, 30, 65, 70, 80
6/3/1987	1239/1366	Amended Declaration (Gerrymander & Commercial)	1, 10, 12, 30, 65, 70, 80
6/3/1987	1239/1394	Sundry Agreement (Amendment to Zoning Lot Development Agreement: Amended ZLDA for Gerrymander & Commercial)	1, 10, 12, 30, 65, 70, 80
6/3/1987	1239/1422	Amendment to ZLDA (Towers zoning lot)	1, 30, 70, 80, 90

<b>Date</b>	<b>Reel/Page or CRFN</b>	<b>Type of Agreement (Description)</b>	<b>Lots Affected (f/k/a)</b>
6/3/1987	1239/1447	Amended Zoning Lot Description and Ownership Statement by Building Permit Applicant	1, 30, 70, 80, 90
6/3/1987	1239/1470	Amendment to Declaration of Zoning Lot Subdivision Restrictions	1, 30, 70, 80, 90
12/4/2002	3676/1295	Declaration of Covenants, Conditions and Restrictions	65
5/9/2006	2006000281432	Declaration of Development Covenants and Restrictions	10, 12, 65
8/31/2007	2008000171223	Declaration of Zoning Lot Restrictions	10, 12, 133, 18, 65, 1001-1007 (1), 1101-1107 (70), 1201-1208 (80), 1401-1405 (30)
8/31/2007	2007000609689	Declaration of Zoning Lot Restrictions (Enlargement)	10, 12, 133
8/31/2007	2007000609688	Supplemental Zoning Lot Development Agreement	10, 12, 133
9/9/2011	2011000334157	Amendment to Supplemental Zoning Lot Development Agreement,  Termination of Third Amended and Restated Declaration of Covenants, Conditions and Restrictions, and  Declaration of Covenants, Conditions and Restrictions	10, 12, 133
8/29/2012	2012000403589	Zoning Lot Description and Ownership Statement	10, 12, 18, 133, 1101-1107 (70), 1401-1405 (30), 1201-1208 (80), 1501-1672 (65)



<b>Date</b>	<b>Reel/Page or CRFN</b>	<b>Type of Agreement (Description)</b>	<b>Lots Affected (f/k/a)</b>
6/18/2015	2015000209093	Declaration With Respect to Subdivision of Zoning Lot	133, 1001-1007 (1), 1401-1405 (30), 1101-1107 (70), 1201-1208 (80), 1501-1672 (65)
6/16/2015	2015000218679	Zoning Lot Description and Ownership Statement (Gerrymandered Zoning Lot)	133, 1001-1007 (1), 1401-1405 (30), 1101-1107 (70), 1201-1208 (80), 1501-1672 (65)
6/16/2015	2015000216833	Zoning Lot Description and Ownership Statement (Amsterdam Commercial Zoning Lot)	10, 12, 18, 1001-1007 (1), 1401-1405 (30)
10/15/2015	2015000378635	Declaration and Agreement With Respect to Zoning Rights)	133
10/15/2015	2015000378634	Declaration of Restrictions	10, 133
10/15/2015	2015000378632	First Amendment to Amendment to Supplemental Zoning Lot Development Agreement, Termination of Third Amended and Restated Declaration of Covenants, Conditions and Restrictions and Declaration of Covenants, Conditions and Restrictions	10, 12, 133
7/14/2016	2016000248586	First Amendment to Declaration and Agreement With Respect to Zoning Rights	133, 9133
7/14/2016	2016000248583	First Amendment to Declaration of Restrictions	10, 133, 9133

<b>Date</b>	<b>Reel/Page or CRFN</b>	<b>Type of Agreement (Description)</b>	<b>Lots Affected (f/k/a)</b>
7/14/2016	2016000248582	Second Amendment to Amendment to Supplemental Zoning Lot Development Agreement, Termination of Third Amended and Restated Declaration of Covenants, Conditions and Restrictions and Declaration of Covenants, Conditions and Restrictions	10, 12, 133, 9133
1/26/2017	2017000053112	Zoning Lot Description and Ownership Statement	133, 1101 - 1107 (70), 1201-1208 (80), 1501 - 1672 (65), 1001 - 1007 (1), 1401 - 1405 (30), 9133