

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION

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36 West 66th Street, Borough of Manhattan

Public Hearing

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1 MS. MATIAS: 2019-94-A, 36 West 66th Street,
2 Manhattan.

3 CHAIR PERLMUTTER: Okay. So we had a submission --

4 COMMISSIONER OTTLEY-BROWN: Madam Chair --

5 CHAIR PERLMUTTER: Oh, I'm sorry.

6 COMMISSIONER OTTLEY-BROWN: -- I must recuse.

7 MS. MATIAS: Yes.

8 CHAIR PERLMUTTER: Indeed, so sorry, thank you.

9 Okay. So, we had the last -- this a closed hearing, uh, and we did have a submission on
10 this, which was limited in page count to ten pages including, uh, exhibits. Uh, both, uh,
11 property owner and appellant submitted. Uh, and so we're just going to, uh, explain our
12 votes, because now we'll vote. So, uh, I, I did, I read the submissions, and, uh, I, I hear
13 the argument of appellant that somehow or other, uh, the Department of Buildings, uh,
14 didn't look adequately at the mechanical space and that it should be looking at, at the
15 amount of equipment that's in the mechanical area, and that it should be looking
16 somehow more closely. And property owner's argument that there's kind of a, a limit to
17 how closely they can look and that there's, there's also no kind of fixed standard that can
18 be used because buildings are all different.

19 And so I, I have to say that I'm, I'm, there's -- I have sympathy on two, on both
20 sides of this argument. On, on the one, uh, I appreciate that perhaps the Buildings
21 Department is, doesn't have a clear enough standard for how, uh, you decide whether the
22 mechanical rooms, the areas designated as mechanical space are equipped.

23 And I'm very much aware and, uh, of the, the technology that is involved in a

1 mechanical space because in fact when we look at it, at plan, when we look at the
2 mechanical drawings in plan, and the plan collapses all of the mechanical equipment and
3 ductwork and so on, onto one drawing, it's not an accurate representation of what's
4 actually happening in the room because in fact, I just happened to be walking by a big
5 construction site yesterday and reminding myself about the layers of the piping and the
6 ductwork and so on. And so to say that ductwork sits on the floor and needs to be, uh,
7 sort of precludes the use of the floor below isn't accurate.

8 The, the fact is that in so many rooms, just for instance, this room, there's
9 ductwork in the ceiling. It's very high up. There's piping in the ceiling. It's very high up
10 and it's not precluding the use of the lower level for, uh, for some other activity besides
11 mechanical, right, like we don't even know where the boiler is in this building, for
12 example. But so -- it's probably City Steam. So the, but, but the, but at the same time,
13 um, when I look at those, the drawings that were provided, I see a lot of floor based
14 mechanical equipment. And as I said at the last hearing, I actually looked at a lot of what
15 that equipment was and that it sits on the floor, it sits on pads, there needs to be clearance
16 for it.

17 And, uh, so I would say that though the Department of Buildings, and this is the
18 part that's a little bit confusing, the Department of Buildings has a mechanical engineer
19 who looks at the drawings. But I, I, I don't know, but I'm assuming the mechanical
20 engineer at DOB is looking at the drawings for different reasons. They're not looking at
21 the drawings for zoning reasons. And so it, to the extent that mechanical spaces are being
22 used for a deduction, there really does need to be a connection at the Department of
23 Buildings between the mechanical engineer who's looking at whatever criteria they're

1 looking at, because it's mechanical issues, and the, the zoning analyst, who's checking
2 whether or not the mechanical space, uh, is legitimately being deducted, reasonably
3 deducted.

4 In kind of in the old days of doing these things, we used to just have a room and
5 you designated the room mechanical room and that was kind of it, and the Buildings
6 Department looked at it and said okay, it's a mechanical room, therefore you don't count
7 it. The electrical goes in there and so on. And, and now, in this kind of dispute, uh, you're
8 more -- we're forced to be more aware of every single piece of equipment.

9 So, so my reaction to this is that I think the Buildings Department, under its
10 current methodology was doing something reasonable. It was looking at the equipment,
11 not doing a dissection of whether it's two pieces of equipment or three that should be on
12 that floor, that it's reasonable that there's many different floors, and as we saw from the
13 presentation from the zoning consulting, the, uh, there are buildings that have 12
14 mechanical floors. And, so this one has four mechanical floors. It falls within the range of
15 what we see in other buildings.

16 And, and, so for me, the owner was, was reasonable to rely on the Department of
17 Buildings analysis and the Buildings Department was reasonable in, uh, in looking at
18 mechanical space like this in this way, because it, it doesn't have a, it hasn't developed a
19 more fine-tuned analytical method. So with respect to this case, I'm, I'm okay with what
20 was represented as mechanical space operated by, occupied by mechanical equipment.
21 But I'm aware that the Buildings Department really does need to improve its analytical
22 method going forward. It needs to be, it needs to tie in whatever its mechanical engineers
23 are looking at in terms of following code and so on, which is probably what they're

1 looking at, is it meeting the mechanical codes. And tie that into the zoning department,
2 the zoning desk that's analyzing whether the building complies with zoning and that there
3 isn't an extreme, um, of underutilized space in that situation that kind of as is suspected
4 here is just being used to increase the, the height of the building with non-, with non-floor
5 area.

6 So, in, in my situation, uh, I, I would be in favor of this application and it's truly, I
7 didn't make a motion, but this is my explanation for why I would vote not to grant the
8 appeal.

9 MS. MATIAS: Vice Chair?

10 COMMISSIONER CHANDA: Thank you. Uh, so I
11 reviewed the latest submission that was submitted by the appellant and the owner's
12 representative. Uh, in the documents provided, uh, and that were presented at the last
13 hearing, a lot of emphasis was put on the 230, uh, 2013 draft bulletin of DOB. And, uh,
14 as we have gathered that this draft bulletin was never adopted, and DOB was consist- --
15 and as we have also heard from DOB, from various other LEED cases, that DOB has
16 consistently not relied on draft bulletin as the final determination. It's just as DOB sees it
17 as a work in progress, and therefore I see no reason in this case why 2013 draft bulletin
18 should be applied in analyzing mechanical space for floor area analysis.

19 As we have heard, and as we know, each building has different needs in terms of
20 mechanical space. Uh, there are many factors, uh, to be considered in considering space
21 allocation for mechanical space. And of course, program driven is a big part of -- each
22 building has its own program need and especially now with lot of LEED certification and
23 other things, that kind of takes the mechanical space requirement at a different level.

1 So simply looking at a footprint of a mechanical space and access route is not
2 enough. For one, technology is changing, and to ensure 24/7 availability of energy and
3 some , um, and to build in some redundancy, there are a lot of backup equipment that is
4 provided in some instances. And again, as I say, these are all each building's, you know,
5 list of criteria and it varies from one project to the other. So the efficiency -- and also the
6 efficiency on mechanical equipment is another factor with regards to the cost, energy
7 efficiency, sustainability, etc.

8 So what I'm getting at is there are many, many layers to look at in analyzing a
9 need for a space for mechanical, how much mechanical space and how much mechanical
10 space -- space around the mechanical equipment should be considered towards, uh, not,
11 as not floor area.

12 So, at this rate, should we then question how much even energy is too much for a
13 building to be used. I mean if you're getting down this road, we are really going down a
14 questioning someone's right to how much energy one should be using. So I, I think we
15 have to be careful in how we regiment the mechanical space. DOB, I understand, has a
16 draft bulletin. They, they need to improve upon it.

17 How -- what the developer's engineer has provide, uh, and what, how DOB has
18 reviewed it and the various building analysis that's been provided, what I see is there is a
19 consistency in terms of how DOB has, had reviewed the Sky View and how it has
20 reviewed this.

21 CHAIR PERLMUTTER: *Sky House*.

22 COMMISSIONER CHANDA: Sorry, thank you. *Sky*
23 *House*. Uh, and, so DOB has applied a consistent method in analyzing the use of the

1 mechanical space, in this case as it has done in other, other cases. So I'm going to use
2 that as the consistency until DOB comes up and should DOB come up with a more
3 consiste- another program, program requirement.

4 So based on that, and as you mentioned, you know, uh, the analysis also showed
5 that their typical buildings, I mean most of the buildings that are being built today, um,
6 have, uh, mechanical spaces, uh, in the range, floors ranging three to four, some, I mean
7 we know other, uh office spaces even have more. So it varies and, uh, and I think in this
8 case, this particular project falls within the range of similar buildings that we are seeing
9 built over the last few years. And I would say, uh, that I would agree with you and not
10 recommend a, a revocation.

11 MS. MATIAS: Madam, vice chair, can you repeat that?

12 COMMISSIONER CHANDA: Sorry.

13 CHAIR PERLMUTTER: Yeah, you have to speak up into
14 the mic, please.

15 COMMISSIONER CHANDA: Myapologies, and
16 therefore, I would not recommend a revocation of permit.

17 COMMISSIONER SHETA: Thank you Chair and Vice
18 Chair.

19 MS. MATIAS: Commissioner Sheta.

20 COMMISSIONER SHETA: I, I did very much the same. I
21 did look at the documents submitted from, from day one, in this case and on the other
22 case.

23 CHAIR PERLMUTTER: I'm sorry. I have to interrupt

1 you. Can you please speak clearly into the mic?

2 COMMISSIONER SHETA: Yes, sure. I, I did look at all
3 the submissions that were, uh, obtained by the BSA since the like the initiation of these
4 two cases, the one that was closed back in September and this current case, and I just
5 want to make it clear that when we closed and voted on the previous portion of this whole
6 case, it was my understanding that the issue of the utilization of the mechanical floor area
7 was raised in the initial submission. I did look at the initial statement of facts by
8 Landwest Mark and it clearly indicates the issue of utilizing the mechanical space and,
9 and it talks about whether this mechanical space is, is appropriate to how much
10 equipment is used. So I just want to make this crystal clear and put it in the record.

11 The second thing, I would, I would love to get peace of mind and look at the
12 submissions from the DOB and say we're good and, and there are a procedure that's
13 adapted by the DOB in judging whether a certain mechanical equipment is sufficient to
14 accommodate a certain mechanical floor deductions. Unfortunately in this case, that
15 wasn't the case. We, we did ask the DOB to give us analysis, comparing this building to
16 similar sit- situated buildings. We did ask for explanations on the procedure of how the
17 mechanical deduction is looked at. I didn't get that. Probably other commissioners did.
18 But I didn't get that.

19 I -- when, when we asked the DOB during the last hearing about the procedure
20 they followed to judge whether a mechanical floor deduction is appropriate or not based
21 on the equipment shown on the plans, that the feedback I understood and I got was it's
22 based on the building code. Again, I want to clarify this building code is to say whether
23 an elbow sit right, whether a valve sit right, whether the diameter of a pipe. It's not to

1 judge whether a mechanical floor deduction or space is made right or, or not.

2 And let me, let me use, uh, the submission from Mr. Luigi Russo of, who is a
3 partner actually in one of the, like, the most reputable architects in the city. And, and he
4 is by the way, he is the architect of record as I, as I understand of this project. He
5 indicated that he goes to the DOB since 2002 I guess, and he reviews buildings and
6 mechanical floor deductions and he said the concern with the DOB never been how much
7 mechanical floor deductions is, is going to be decided upon and whether the mechanical
8 floor space that assigned to the equipment shown on the plans is suitable or not. He said
9 usually the DOB look at the, not the preservation of the mechanical floor space, they look
10 at the code requirements. And, and this case is not about the building code requirement,
11 this case about the Zoning Resolution. If it was about the building code, it should have
12 not been here. It should have been at the DOB.

13 But because it's here because of the Zoning Resolution, I believe the first concern
14 for the DOB on a case like this is to look at how much mechanical space is utilized is
15 claimed as floor deductions. And I, I, I didn't get any answer with respect to that, so for
16 me now, it sounds like there is no procedure in place that could be utilized. This is one
17 thing.

18 The other thing, the consequence of this is I believe unfairness of the process. If,
19 if, let's say I have a small building, two story or three story building and I'm going to the
20 DOB, I have a room, a bedroom or something and I'm claiming that you know what, I'm
21 going to put AC unit in here, and this entire room is mechanical space. DOB would say
22 no, you can't do that. It's not. But with a gigantic building like this, yes, we -- probably
23 because of -- it's because of that complexity of the mechanical, uh, plans, it could be

1 something like that.

2 But I would urge the DOB to work sooner than later to adapt a procedure. I
3 understand that that 2013 bulletin and the updates after that are not applicable.
4 Understood. But if these two bulletins are not applicable, what is applicable there? What
5 is, what is the methodology that's been in place and utilized?

6 The, the other thing is, is when, when I, I started thinking about this. I, I said let's
7 listen to the testimony from both the mechanical engineers, the one that ruled by the
8 owner and the other one. And when, when the mechanical engineer brought by the
9 building start, started explaining the case, I was, I was listening and I, I got it. I believe
10 that the mechanical floor area that's assigned to, to the mechanical equipment is kind of
11 exaggerated. And when he laid] out the equipment, I actually was tending to believe in
12 what he's saying, but I said let me listen to the other engineer. Let's wait and listen to the
13 other engineer. I want to make this clear, because at last hearing, probably I seemed like
14 I'm throwing reasons for people to, to adapt. That wasn't the case. And I explain myself
15 in a minute.

16 So I did ask the engineer brought by the appellant, do you think it was a structural
17 reason for that. If, if -- have you ever interacted with a structural engineer, asking him to
18 take all the mechanical equipment and put them in a corner of the building. Did any of
19 the structural engineers you interacted with say, said no, it can be done. And when I said
20 that, actually that was a clue, not for that engineer, it was a clue for the other engineer,
21 the one who testified after that.

22 I wanted to see whether the second engineer has a reasonable, has, has a good
23 reason for not doing that or not. And if he had, he would have put this, his, his viable

1 reason, number one reason on the table. But that first engineer said no, I never got that.
2 And then when the second engineer came, he started talking about mechanical efficiency
3 and when I started talking about the pressure drop and what kind of efficiency you're
4 talking about, he then went to the other reason, the structural reason.

5 And by the way, the structural reason is again in the submission for this hearing.
6 The structural reason is a fake reason. I invented this reason actually. I throw this as a
7 trap for the second engineer to see if he has a good reason, valid reason to put it before us
8 or not. And he didn't. It sounded like for me, it sounded like he doesn't have a good
9 reason to base his claim that all the mechanical floor should be used, and the only reason
10 he put in front of me during my interaction with him was yeah, we interacted with the
11 structural engineer and he said no, it's not doable.

12 For this kind of building, and what kind of foundation used for this building by
13 the way, I'm familiar with the kind of, the quality of the structural engineering that's
14 done on this project. I'm not a structural engineer. I did work with them on, on a project
15 that's probably one and half taller than this current project. I worked with a very talented
16 structural engineer. And even it doesn't need a talented structural engineer to gather all
17 the mechanical equipment, put them in a corner of a building and come up with an
18 economic, cost effective structural design for the building.

19 So, the structural reason for me is not acceptable. It, it's not true. And they didn't
20 for a reason for why the DOB should accept all these mechanical deductions, I, I couldn't
21 find and, and therefore, I'm with the appeal, and I believe if, I believe if I don't vote no,
22 if, if I don't support this appeal, I believe we're going to see cases in the near future
23 similar to this. And, and since I'm not willing to give that kind of debate that continues

1 for four hearings and five hearings, I believe DOB should, should immediately start
2 moving forward, coming up with a procedure to put in place and start looking at the
3 mechanical floor deduction issue.

4 CHAIR PERLMUTTER: Okay.

5 COMMISSIONER SCIBETTA: Commissioner, are you in
6 favor or against the appeal?

7 COMMISSIONER SHETA: I am in favor of the appeal.

8 MS. MATIAS: Commissioner Scibetta?

9 CHAIR PERLMUTTER: And, and please turn the mic to
10 you, so you speak loud into it. Loudly.

11 COMMISSIONER SCIBETTA: The question before us is
12 whether or not the floor area of the floors in question are legitimately counted as space
13 used for mechanical equipment and therefore do not count towards floor area. It is in this
14 vein the Board is tasked with determining the meaning of the word used. In *C.*
15 *Appelbaum v. Deutch*, where the Court of Appeals held that it is reasonable for the BSA
16 to construe a term in light both its own experience and the stated purpose of the
17 resolution.

18 It is my interpretation that mechanical space that does not count towards floor
19 area applies when the space is what the equipment reasonably requires, that the space is
20 exclusively devoted to housing the mechanical equipment used for the service of the
21 building, that the space has no other use, that the mechanical plans cannot realistically be
22 occupied for purposes other than housing the servicing of said equipment.

23 And we know that to be DOB's position. If the DOB was presented with plans for

1 a one family home that included an entire floor being deducted because mechanical
2 equipment is placed in the center or corner of a floor, they would and they do use the
3 appropriate amount of diligence to determine whether that is an appropriate deduction.
4 The evidence presented, along with the standard of -- the statements of the DOB, which
5 do not merit the statements made in *Sky House*, do not lead me to believe that this done
6 here.

7 Further, pursuant to the testimony before the Board, along with statements made
8 from experts on the Board, it is clear to me that much of the mechanical deductions are
9 without merit. I also fear finding otherwise would institute a precedent that not only
10 would permit a subversion to zoning and the obligations to -- and the obligations of
11 governmental agencies, but would also raise a constitutional question as to whether it is
12 appropriate --

13 CHAIR PERLMUTTER: Sorry, I have to interrupt you,
14 because we're being recorded and there's a lot of loud talking outside. Can somebody
15 make sure that they're quiet outside. Oh, Chief Daley is going out. He'll take care of it.
16 Okay. I'm so sorry. Please go ahead. Speak as loudly as you can into the mic.

17 COMMISSIONER SCIBETTA: I fear that find- finding
18 otherwise would institute a precedent that not only would permit a subversion to zoning
19 and the obligations of governmental agencies, but would also raise a constitutional
20 question as to whether it is appropriate to scrutinize an owner of a one family home more
21 stringently or otherwise hold them to a different standard than the owner of a tower.

22 As an ancillary issue, repeated requests were made for the prior mechanical plans.
23 These plans were never provided. While I will not opine as to the reason why same

1 wasn't provided, I believe that not only are these plans relevant, but they would have
2 been quite probative in this case. For the reasons I just stated, I must vote yes and support
3 the appeal.

4 CHAIR PERLMUTTER: Okay. So, so now I need to
5 officially make a motion, so it's a motion to grant the appeal.

6 MS. MATIAS: Chair Perlmutter?

7 CHAIR PERLMUTTER: No.

8 MS. MATIAS: Vice Chair Chanda?

9 COMMISSIONER CHANDA: No.

10 MS. MATIAS: Commissioner Sheta?

11 COMMISSIONER SHETA: Yes.

12 MS. MATIAS: Commissioner Scibetta?

13 COMMISSIONER SCIBETTA: Yes.

14 CHAIR PERLMUTTER: So the effective of that is it's not
15 an approval.

16 MS. MATIAS: It's a denial.

17 CHAIR PERLMUTTER: Because it's a denial by effect of
18 stalemate, and, and to try to figure out going forward what needs to be done because it
19 isn't an approval is I, I would recommend that the, the Buildings Department set forward
20 -- set forth immediately, a system where both the zoning and the mechanical, uh, the
21 zoning reviewers and the mechanical engineers at the Department of Buildings work
22 together to review the plans and that the -- and that the owner of course works rapidly
23 with the Department of Buildings on, on this and that whatever system DOB uses in this

1 case, it uses going forward, uh, and then, you know, whatever happens, it's no longer
2 before us. So, uh. Right, yeah.

3 COMMISSIONER SHETA: I, I have an advice to the
4 mechanical engineers from the DOB. I used to -- I'm a geotechnical and structural
5 engineer and I used to design concrete pads for equipment such as generators, pump
6 stations and so on. And, and since I'm not an experienced mechanical engineer, when I
7 get the mechanical engineering drawings from the mechanical engineer, I look at them
8 and I ask the mechanical engineer, how much space you think the pad should be. And
9 most of the time he says I don't know. And then what I used to do is call the
10 manufacturer of the equipment for which I'm designing this concrete pad, or this house
11 and ask that manufacturer how much clearance you believe that we need around this
12 equipment and then I start putting that clearance around the equipment and dimensioning
13 my concrete pad based on that, giving myself some cushion. I believe if this is done by
14 the engineers from the DOB, it could be step zero looking for how much space is
15 suitable. This is one thing. But even with this, I believe a mechanical engineer could be in
16 favor of something and the same mechanical engineer or another mechanical engineer
17 could be opposing to it. So I believe DOB needs immediately to put some sort of -- it
18 could be an issue it could be a peer reviewer inside the DOB. It could be somebody who
19 knows. But it's not possible to think of drawings coming to the DOB, and if, if I feel like
20 I'm in a good mood today, okay, I'll let it go. And if I'm feeling mad and bad mood, no, I
21 don't like that. It should be a standard. We're looking at engineering drawings. It should
22 be a quantification for that, please.

23 CHAIR PERLMUTTER: Mm-hmm. And not, and the

1 other thing is we have another case before us where we got, uh, sections through the
2 mechanical space, which was really, really informative. And it's, I don't know whether
3 the DOB looks at sections, but when you're looking at the sections, you see exactly the
4 heights of the ductwork, the heights of the piping, all of that. And the argument in this
5 case that the piping needs to be low, you know. That's something that they would be
6 looking at from the code perspective because that's the technical aspect of it and then
7 there's the zoning guy who's going to be looking at it and determining whether, uh, it's
8 legitimately deductible space. But it's really, this is for DOB and the owners to work out.
9 Otherwise, we'll end up having an appeal of an appeal of an appeal and I hope not to see
10 that.

11 MS. MATIAS: Okay.

12 CHAIR PERLMUTTER: Okay.

13 MS. MATIAS: Alrightie.

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CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of the Public Hearing of New York City Board of Standards & Appeals on January 28, 2020 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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