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SUPPLEMENTAL STATEMENT OF FACTS

BSA Calendar No: 2019-94-A

Premises:	36 West 66th Street, a/k/a 50 West 66th Street, Manhattan Block 1118, Lot 45 ("the Parcel")
Determination Challenged:	Issuance of Permit No. 121190200-01-NB ("the Permit")

Appellant LandMark West! ("LW!") submits this supplemental statement of facts to address the Board's refusal at the hearing held on August 6, 2019 to address the issue of the subject FAR deductions taken by the Developer for mechanical equipment space without reviewing the mechanical plans, without determining what equipment, if any, the alleged mechanical voids will house, and without analyzing the technical manufacturing requirements of the equipment and the spatial parameters necessary for its proper operation. The appellant requested that the Board divorce this matter from the City Club's appeal and ask the Developer to provide complete shop drawings of the claims mechanical spaces and direct the Department of Buildings to review them for reavaluation of its approval of the FAR deductions.

At the very core of the issue is that of the actual floor space dedicated to the mechanical equipment, which, Developer claims, inexorably leads to the FAR deductions. Frankly, this entire "height" issue is a giant red-herring, a thinly veiled misdirection argued to steer people away from the true nature of the floor deductions. Even Developer recognized this by citing to BSA Application # 2016-4327-A, the Sky House Condominium decision, wherein the Board

recognized the need to evaluate whether the, "…[a]mount of floor space used for mechanical equipment in the Proposed Building is excessive or irregular...." (Citing to Z.R. 12-10). In fact, in its decision the Board specifically reviewed Developer's affidavits describing in great detail the equipment to be used and stated:

> Whereas, the *Board credits DOB's review of the specific mechanical equipment proposed* and, in the absence of contradicting testimony or evidence from a licensed and appropriately experienced engineer, the Board has no basis upon which to question the evidence in the record suggesting that the floor space on the second, third and fourth stories of the Proposed Building is 'clearly incidental' to the principal use of the Proposed Building, in satisfaction of subdivision (b) of the 'accessory use' definition in ZR §12-10 (emphasis added).
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> . . .
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> WHEREAS, in response to an inquiry from the Board regarding whether a standard percentage of floor space dedicated to mechanical equipment has been interpreted as reasonable for similar developments and, thus, properly exempt from floor-area calculations, *DOB states that mechanical floor space deductions are evaluated on a case-by-case basis* and that the deduction of floor space on the second, third and fourth stories of the Proposed Building is consistent with its evaluation of mechanical floor space in comparable mixed-use developments in the City . . . (emphasis added)

So, it is beyond peradventure that the issue of mechanical deductions is not solely defined by height but by the spatial needs of the equipment and its associated elements. Sadly, in the instant case, the plans submitted totally lack any definition of the mechanical equipment, its size and its physical needs (e.g., ventilation), as per the manufacturers. The shop drawing specifications or the shop drawings themselves, produced for the developer would **contain all of these items**. Yet, the plans submitted simply assign types of units to rooms without any offering unit dimensions. The paucity of these plans violates DOB filing requirements. But that argument, much like the height argument, does not fully address the question of allowable mechanical deductions.

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August 21, 2019

As an example, according to your ZD1 Zoning Diagram, the developer deducted the entire 20,478.25 sq. of the 15th floor from the FAR. calculations. Yet, Plan No. A-302.00, offers no support for this deduction, other than room assignments. i.e, Generator room, Mechanical room, etc. How then, can any responsible determination be made regarding the actual use of these spaces and their entire attribution as accessory space under the ZR?

Similar disingenuous ploys were used by developers seeking to subvert the MDL's window requirements by seeking variances for residential buildings that exceeded the underlying district floor area limits. Oftentimes, you would have plans describing single bedroom apartments surrounded by a multitude of storage spaces, which are exempted from the "living space" windows demanded by the MDL. Once the Board saw that ploy, many applications were discarded before they were even filed. It is suggested that the Board look at the shop drawings using the same heedful eye it used to review those bogus plans. No less an investigative standard should be applied to this larger, infinitely more expensive structure, which will have far more deleterious effects on the surrounding community than any of those fraudulent, small-scale multiple dwellings.

With regard to the Developer's objection to addressing the FAR deductions on the ground that Landmark West's initial statement of facts raised only addresses the height of the proposed mechanical space, that is plainly wrong. The first of the two issues presented to the BSA as the last full paragraph on the first page fairly covers all spatial objections (length, width and height) to the FAR deductions:

The Permit should be revoked, because the underlying plans contravene the Zoning Resolution ("ZR") in that:

a) the Owner's attempts to exempt the Voids from floor area should be rejected, as the Voids are neither "used for mechanical equipment," ZR §12-10, nor are they accessory uses to the residential uses in the Tower, ZR §22-12; . . .

Further, the ZRD2 Form, denied November 19, 2018, contained as item numbered 4 a challenge that the "Areas claimed for mechanical use should be proportionate to the mechanical use." This document was annexed as Exhibit F to the Statement of Facts, and is such is part of the Record presented to the Board for review.

The fact that the body of the Statement of Facts addresses the issue of height of the mechanical voids to a much greater extent than the two-deminsional calculation of the foot print of the equipment and resulting FAR deductions is merely borne out by the fact that the DOB failed to procure from the Developer the necessary specifications. Absent the necessary shop drawings, and /or manufacturer's specifications, we cannot address the FAR foot print deductions at great length. The Board is effectively overlooking an issue properly raised simply because the Statement of Facts did not offer and analyze facts that are within the sole possession of the Developer, and which counsel for the Developer has refused to share.

The Board's unwillingness to engage in a thorough review was done under a further pretext that Mr. John Low-Beer, Esq., counsel for City Club Appellant in a related appeal, requested to expedite the hearing, and the Appellant's request for the shop drawings and their subsequent review by the Department of Buildings would only further delay the proceedings. Although we are otherwise in agreement with the arguments presented by the City Club, our arguments are more extensive with regard to the FAR deductions. As a result, Landmark West has a right to be heard independent of any other appellant, and the Board's cavalier "grouping"

of the two appeals without affording each appellant a separate right to have its grievances addressed violates the basic tenets of "due process" and the First Amendment right to "petition the Government for a redress of grievances." Such rights are individual and not communal. Mr. John Low-Beer might have bound his own client to a particular pace of review before the Board, but he is no position to speak for Landmark West.

Accordingly, Landmark West requests that the Board continue its appeal to consider the issue of the propriety of the FAR deductions taken by the Developer on its April 4, 2019 Zoning Diagram.

Dated: August 21, 2019
New York, New York

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