



April 6, 2026

Sideya Sherman, Chair  
City Planning Commission  
Director of Department of City Planning  
120 Broadway  
New York, NY

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**232 EAST 11TH STREET**  
**NEW YORK NY 10003**  
**212-475-9585**  
**VILLAGEPRESERVATION.ORG**

**Re: 5 West 13<sup>th</sup> Street, Manhattan**

Dear Chair Sherman:

Congratulations on your appointment as Chair of the City Planning Commission and Director of the Department of City Planning (DCP). I look forward to your leadership helping the Department and Commission to address some of the many pressing issues facing New York City.

I write because of my concern regarding a recent Department of Buildings (DOB) approval at 5 West 13<sup>th</sup> Street. DOB approved a building that DCP told the public was contrary to the intention of the new City of Yes zoning text as it relates to the building form and streetwall location. If the representations made by DCP are correct, then DOB's interpretation is the result of an error in the zoning text.

Fortunately, there is an easy solution. As you may know, your Department has made hundreds of [administrative corrections](#) to the Zoning Resolution since City of Yes passed. As I hope that this DOB interpretation is the result of an error in the zoning text, an administrative correction would resolve the differences in interpretation. As the DOB [has advised](#), DCP administrative corrections to the Zoning Resolution will affect any building prior to the issuance of a final certificate of occupancy. I hope that once you review the facts, DCP will consider an administrative correction so that the zoning text matches the stated intention.

## **Background**

The building at 5 West 13<sup>th</sup> Street is located on a through lot between West 14<sup>th</sup> Street and West 13<sup>th</sup> Street that also has a small interior portion. The zoning lot and the tax lot are conterminous and there are no buildings to remain on the zoning lot. The zoning district is C6-2, which is an R8 equivalent district.

The applicant has elected to use the optional height factor bulk regulations. While the building will be primarily used for residences, it is designed with commercial and community facility uses on the first floor, which makes it a mixed building in a commercial district, subject to Article III, Chapter 5.

The new zoning text from City of Yes for Housing Opportunity (ZR 35-631(a)(1)) reads as follows:

(a) Line-up rules

For *Commercial Districts* mapped within, or with a *residential equivalent* of, R8 through R12 Districts, when located within the *Manhattan Core*, the following *street wall* location provisions shall apply along *wide streets*:

1. The *street wall* shall be located on the *street line* and extend along the entire *street* frontage of the *zoning lot* up to at least the minimum base height specified in Section [23-432](#), or the height of the *building*, whichever is less. To allow articulation of *street walls* at the intersection of two *street lines*, the *street wall* may be located anywhere within an area bounded by the two *street lines* and a line connecting such *street lines* at points 15 feet from their intersection or, for *corner lots* with an angle of 75 degrees or less, at points 30 feet from their intersection.

This text tells us that the streetwall needs to be located at the streetline and extend to the height specified in 23-432, which is 60 feet. The line up rules for 13<sup>th</sup> Street, which is a narrow street, are a little different, but there needs to be a streetwall along at least 70% of the streetline that extends to the minimum base height.

But the proposed building does not meet this requirement. Instead, the applicant is using regulations for a sky exposure plane building (ZR 23-73 and 35-81). While a sky exposure plane building may have the streetwall required by 35-631(a)(1), it would have to be configured much differently than the building that's been approved by DOB.

The approved building was challenged at the DOB, which ruled that the streetwall requirement of 35-631(a)(1) does not apply to sky exposure plane buildings constructed under the optional bulk regulations found in ZR 35-81.

### **DCP is on record disagreeing with DOB's interpretation**

DCP expressly stated that City of Yes text amendments were intended to make height factor buildings like this impractical to prevent this very building at this very location. During the land use review process for City of Yes, Community Board 2 (CB2) debated how this specific site might be developed under the existing zoning and how it might be developed under City of Yes for Housing Opportunity. CB2 found that the new zoning text would NOT allow a building like the one the applicant proposed because of 35-631's streetwall requirement, and this was discussed at length at [CB2's June 24, 2024 public meeting](#). DCP staff actively participated in that meeting and confirmed the Community Board's finding that a sky exposure plane building like the one approved by the DOB could not be built because of 35-631. Specifically, Director of Housing John Mangin said the following:

“For anyone watching the video in the future **I do think** [CB2’s consultant’s] **example of 14<sup>th</sup> Street is a really good one. It shows how Housing Opportunity pushes away from height factor,** the old 1961 zoning, if you can't do height factor, if you can't do the tall buildings, that's a further disadvantage of condo, so away from height factor towards contextual . . . and so when you're thinking about how this proposal might affect Community District 2 think of 8 West 14th Street [aka 5 West 13<sup>th</sup> Street} because that's the type of thing that we're trying to push toward.”

Mangin stated that the continuous streetwall up to the minimum base height in commercial districts was intentional and purposely did not permit a sky exposure plane building like the one proposed by the applicant. Of course, an applicant can still design a sky exposure plane building, but it would look nothing like the building discussed at the meeting and approved by the DOB. A building complying with 35-631 would be much more likely to use the standard height and setback requirements of 23-432. Either way, DCP said that the new zoning does not permit a building anything like the one approved by the DOB, which suggests that the zoning text is not functioning the way it was intended, which means that there is an error in the text.

To be clear, the question of the applicability of 35-631 is about more than building bulk and street vitality. This is an issue of affordability. Affordability was the key pillar to the support for City of Yes throughout the process, which also reflect goals you articulated at your first Public Meeting. The building approved by the DOB is designed as a condominium tower with just 36 dwellings that will be enormous, ultra-luxury units. A building that complied with ZR 35-631 would be exactly like Mangin said: it would disadvantage condominium ownership and encourage a rental building on this site. If it was a rental, then it could then take advantage of 485-x and the Universal Affordability Preference (UAP). A building so constructed would be larger than the proposed building, but not as tall. It would produce a building that has about 150 units, with 30-40 of them being income-restricted and permanently affordable. That’s the kind of building the community expected, DCP confirmed, and much more in line with what is needed by the city. The last thing New York City needs at this location is another luxury tower that makes the City less affordable, especially in a district that the City labeled a “limited affordability area” in *Where We Live 2025*, our new fair housing plan.

## **Close**

I strongly encourage you to review the CB2 meeting record closely to see how DCP represented the zoning and how it should work and compare that to DOB’s interpretation of the zoning text. There is clearly a disconnect, which DCP has the power to correct right now through the administrative correction process. I urge you to instruct your staff to make the necessary corrections quickly, so that the planned building cannot move ahead in the current form, in clear contravention of the stated intention of the City of Yes zoning text amendments and the clear needs of the City of New York.

It should be noted that if the current Department of Buildings interpretation is allowed to stand and the administrative corrections are not made to the zoning text, it means that City of Yes and our current zoning text not only allows on sites like this these kinds of developments – very tall towers that violate streetwall requirements and neighborhood context with a small number of ultra-expensive very large residential units and no affordable housing .It means that City of Yes and our current zoning actually incentivizes such buildings, and allows them to be bigger and taller than previous rules allowed.

Thank you for your attention to this matter. If you have any questions about this issue, or would like to discuss, please contact me at [andrew@villagepreservation.org](mailto:andrew@villagepreservation.org) or (212) 475-9585 x380

Sincerely,



Andrew Berman  
Executive Director

Attachment: ZD1

Cc: Manhattan Borough President Brad Hoylman-Sigal  
City Councilmember Harvey Epstein  
State Senator Brian Kavanagh  
Assemblymember Deborah Glick  
Community Board 2, Manhattan  
George M. Janes

1. ISOMETRIC DIAGRAM A

2. ISOMETRIC DIAGRAM B

3. HEIGHT & RETROFIT DIAGRAM - NORTHSOUTH SECTION BE

4. HEIGHT & RETROFIT DIAGRAM - NORTHSOUTH SECTION AA

5. KEY SITE PLAN

**NYC Buildings**

ZD1 Zoning Diagram  
Must be typewritten

Check and affix BIS job number label here

Submitted to resolve objections stated in a notice of intent to revoke issued pursuant to rule 101-15.  Yes  No

**Location Information**

House No(s) 5  
Street Name WEST 13 STREET

Borough MANHATTAN  
Block 577  
Lot 34  
BIN 1009716

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Name (please print)  
FORTH REGISTERED ARCHITECT  
Signature: \_\_\_\_\_ Date \_\_\_\_\_  
STATE OF NEW YORK  
P.E. / R.A. Seal and date over seal

**Internal Use Only**

BIS Doc # \_\_\_\_\_

PLAN EXAMINER SIGN AND DATE

**NYC Buildings** ZD1 Zoning Diagram  
Must be typewritten  
Sheet \_\_\_ of \_\_\_

**1 Applicant Information** Required for all applications.

Last Name BAGLEY First Name FORTH Middle Initial \_\_\_\_\_  
Business Name KPF Business Telephone \_\_\_\_\_  
Business Address 11 WEST 42ND STREET Business Fax \_\_\_\_\_  
City NEW YORK State NY Zip 10036 Mobile Telephone \_\_\_\_\_  
E-Mail FBAGLEY@KPF.COM License Number 036831

**2 Additional Zoning Characteristics** Required as applicable.

Dwelling Units 36 Parking area 2450.00 sq. ft. Parking Spaces: Total 7 Enclosed 7

**3 BSA and/or CPC Approval for Subject Application** Required as applicable.

**Board of Standards & Appeals (BSA)**

Variance Cal. No. \_\_\_\_\_ Authorizing Zoning Section 72-21 \_\_\_\_\_  
 Special Permit Cal. No. \_\_\_\_\_ Authorizing Zoning Section \_\_\_\_\_  
 General City Law Waiver Cal. No. \_\_\_\_\_ General City Law Section \_\_\_\_\_  
 Other Cal. No. \_\_\_\_\_

**City Planning Commission (CPC)**

Special Permit ULURP No. \_\_\_\_\_ Authorizing Zoning Section \_\_\_\_\_  
 Authorization App. No. \_\_\_\_\_ Authorizing Zoning Section \_\_\_\_\_  
 Certification App. No. \_\_\_\_\_ Authorizing Zoning Section \_\_\_\_\_  
 Other App. No. \_\_\_\_\_

**4 Proposed Floor Area** Required for all applications. One Use Group per line.

Floor Number	Building Code Gross Floor Area (sq. ft.)	Use Group	Zoning Floor Area (sq. ft.)				FAR
			Residential	Community Facility	Commercial	Manufacturing	
CELLAR	17,198.38	II	0	0	0	0	0
001	7,704.31	II	4,509.44	0	0	0	0.25
001	2,494.86	VI	0	0	2,417.75	0	0.13
001	534.31	III	0	518.15	0	0	0.03
002	8,426.05	II	0	0	0	0	0
003	5,295.01	II	4,900.17	0	0	0	0.27
004	5,033.12	II	4,598.42	0	0	0	0.25
005	5,104.14	II	4,643.99	0	0	0	0.26
006	5,104.14	II	4,643.99	0	0	0	0.26
007	5,104.14	II	4,643.99	0	0	0	0.26
008	5,104.14	II	4,643.99	0	0	0	0.26
009	5,104.14	II	4,643.99	0	0	0	0.26
010	5,104.64	II	0	0	0	0	0

**ZD1** Sheet \_\_\_ of \_\_\_

**4 Proposed Floor Area** Required for all applications. One Use Group per line.

Floor Number	Building Code Gross Floor Area (sq. ft.)	Use Group	Zoning Floor Area (sq. ft.)				FAR
			Residential	Community Facility	Commercial	Manufacturing	
011	4,866.91	II	4,404.17	0	0	0	0.24
012	4,866.91	II	4,404.17	0	0	0	0.24
013	4,866.91	II	4,404.17	0	0	0	0.24
014	4,866.91	II	4,404.17	0	0	0	0.24
015	4,961.21	II	4,520.43	0	0	0	0.25
016	4,961.21	II	4,520.43	0	0	0	0.25
017	4,961.21	II	4,520.43	0	0	0	0.25
018	4,961.21	II	4,520.43	0	0	0	0.25
019	4,966.49	II	1,298.94	0	0	0	0.07
020	4,655.36	II	4,244.58	0	0	0	0.23
021	4,655.36	II	4,244.58	0	0	0	0.23
022	4,655.36	II	4,244.58	0	0	0	0.23
023	4,655.36	II	4,244.58	0	0	0	0.23
024	4,655.36	II	4,244.58	0	0	0	0.23
025	4,655.36	II	4,244.58	0	0	0	0.23
026	3,481.32	II	3,460.77	0	0	0	0.19
027	3,480.48	II	3,105.26	0	0	0	0.17
028	3,565.26	II	3,168.71	0	0	0	0.18
029	3,472.03	II	3,115.08	0	0	0	0.17
030	1,974.99	II	1,668.08	0	0	0	0.09
ROOF	1,350.24	II	0	0	0	0	0
BLKHD	1,863.60	II	0	0	0	0	0
Total	169,070.63		114,210.70	518.15	2417.75		6.48
5% Ultra	Low Energy	Deductions	-5,438.70	-24.50	-114.80		
Totals	169,070.63		108,772.00	493.65	2302.95		5.17
Total Zoning Floor Area						111,568.60	