



STATE OF NEW YORK



CITY OF NEW YORK



March 16, 2017

Marisa Lago, Chair
and Members of the
New York City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Dear Chair Lago and Members of the City Planning Commission:

We – Manhattan Borough President Gale Brewer, Councilmember Daniel Garodnick, Councilmember Ben Kallos, State Senator Liz Krueger and the East River Fifties Alliance (a coalition representing 45 member buildings, civic groups and over 1900 individual supporters from 279 buildings within and beyond the rezoning area) – write to brief you on our proposal to rezone the “East River Fifties Area.” The proposed rezoning would establish contextual protections and advance the City’s affordable housing goals by increasing the number of affordable units required of developers seeking bonus floor area for new developments in the district. We are hopeful that this proposal, which we have been discussing with the Commission’s staff for more than 18 months, will be certified for public review at the Review Session scheduled for March 20, 2017, and, following that review, will be approved by the Commission.

The purpose of this letter is to address certain objections that have been raised by the Commission’s staff with respect to our proposal and to explain why we believe it merits your support.

Background: The East River Fifties – roughly the area between 52nd and 58th/59th Streets east of First Avenue -- is the only residential neighborhood¹ in the entire City zoned R10 without any type of contextual protection. It is thus uniquely vulnerable to the development of supertall towers, a building form that was neither contemplated nor feasible when the R10 district was created in 1961. This vulnerability is more than theoretical; a large merged zoning lot has been assembled on East 58th Street and has been marketed as the future site of an 850 to 1000 foot tower – more than four times the height of the predominant built context. And assemblages in other locations within the proposed rezoning area are a real risk.

¹ Outside the East River Fifties Area there are less than a handful of partial blocks still subject to R10 zoning without any contextual protections.

Developers in this neighborhood (and in mixed use districts where R10 rules apply) are not required to contribute in any meaningful way to the City's affordable housing goals. The 1987 Inclusionary Housing Program for R10 areas continues to award floor area bonuses of up to 2 FAR in exchange for dedicating less than 5 percent of floor area to affordable housing. Nor do supertalls do much to address the City's need for additional market rate units because they produce fewer apartments (often for absentee owners) than more modestly scaled buildings with comparable square footage.

The Pending Proposal: To address these concerns, we, with assistance from some of the City's most experienced planners and environmental consultants, developed a rezoning proposal that embraces the City's goals of planned growth, increased affordability and contextual protection for residential neighborhoods. We believe it is among the first, if not the first, proposal from a neighborhood coalition to combine all of these goals.

The Proposal would amend the R10 height and bulk regulations for the East River Fifties Area, designate the Area as a modified Inclusionary Housing Designated Area ("IHDA"), and allow a 3 FAR bonus for participation in the IHDA program, which would require 20% of FAR to be dedicated to affordable units. As required by state law, maximum residential FAR would remain at 12, though total FAR would increase to 13 through the inclusion of community facility space. The Proposal sets base heights of 210 on narrow streets and 235 on wide streets (exceeding current quality housing height limits by 25 feet in each case), but would increase those heights to 260 feet on both narrow and wide streets with the IHDA bonus.

Staff Concerns: The Commission's staff has told us it has three concerns about this proposal. We respectfully differ, for the reasons noted briefly below:

Context: The staff has advised that they do not believe the Rezoning Area is appropriate for a contextual rezoning because it includes some buildings that exceed the proposed height limits. However, the height of over 86% of the buildings² in the Rezoning Area is equal to or less than the proposed 260 foot maximum limit, a compliance rate that in past Commission practice has typically supported contextual rezoning. Moreover, many of the purportedly non-complying buildings are located on or close to the wide commercial corridors of First Avenue or 59th Street, which are expressly excluded from the proposal in keeping with the City's practice of allowing more height and density on such corridors.^{3,4}

² This compliance rate is based on street frontage.

³ Virtually every contextual rezoning involves some level of non-compliance of existing buildings; indeed, the development of out-of-scale buildings has often been the impetus for contextual protection in rezonings, as illustrated by the R8B district across First Avenue from the Rezoning Area. At the time it was remapped from R8 to R8B, some 39.4 percent of that area's street frontage was occupied by noncompliant buildings, with 34 percent of the total frontage occupied by buildings that were, and remain, at least 50 percent taller than the new R8B height limit of 75 feet. In the currently proposed Rezoning Area, only one-tenth of one percent of the street frontage would exceed the proposed 260-foot height limit by 50 percent or more. That kind of compliance rate has never been a basis for rejecting contextual rezoning anywhere in New York City.

⁴ Applicants have advised the staff that they would be open to reasonable adjustments in the 260' height limit.

Housing Construction: The staff suggests that the proposed contextual height limits would discourage housing construction in the Rezoning Area. However, as indicated in the Reasonable Worst Case Development Scenario (“RWCDS”) approved by the staff, the Proposal is expected to generate 823 units of new housing, almost as many as projected under the existing R10 zoning (888 units), and more units if the recent DOB filings by a 58th Street developer are taken into account (proposing 118 units compared to the 298 units assumed in the RWCDS). As noted above, “supertall” luxury buildings typically provide fewer (and larger) units than more modestly scaled buildings with similar FAR.

Affordable Housing: Finally, staff raised several concerns about the proposed modified IHDA, suggesting that affordability programs should only be imposed in conjunction with significant increases in residential density. We respectfully disagree. That approach has only been followed by the City in connection with the Mandatory Inclusionary Housing (MIH) program, not the optional IHDA program. In fact, the Rezoning Area is already subject to the R10 Inclusionary Housing Program, and no development rights would be taken away by the proposed rezoning. Rather, the bonus would be changed from the one currently implicit in the R10 program (which yields less than 5% affordable area) to the current Inclusionary Housing Designated Area program (which yields 20% affordable area), a change that the staff has acknowledged is appropriate in other areas of the City.⁵

Finally, the staff objects that the Proposal would create a new branch of the IHDA program applicable only to one neighborhood, and that the Department would prefer to come up with Citywide amendments to the voluntary programs. But we were willing to adopt the existing 2005 IHDA program without modification, and our proposal to do so was rejected by the staff. This left us in the peculiar position of having the City Administration agree with us on the need to change the current IHDA program but, because of government inaction, allowing inappropriate development to go forward under a clearly inadequate program that does not advance the City’s own affordable housing goals. We therefore sought to make minor changes to the IHDA program in the Rezoning Area to address the staff’s concerns while ensuring that new developments would create more affordable housing than currently possible. This Proposal, which is largely in line with the existing IHDA program, could serve, at the very least, as a placeholder while the staff develops more general modifications to advance its ambitious affordable housing goals – and as a signal that at least one community welcomes and is willing to implement those goals.

Tower on a Base Alternative: The staff have suggested that we withdraw the Proposal and instead pursue a modified version of the existing “tower-on-a-base” zoning, to apply to narrow streets in the Rezoning Area. Although we had significant concerns about the appropriateness of this wide-street zoning technique on narrow streets in a residential area, we pursued this possible resolution in good faith discussions with the staff for nearly half a year.

⁵ See, e.g., the Special 125 Street District created in 2008, which mapped some R10-equivalent areas previously subject to the 1987 bonus program into an IHDA, with its stricter bonus requirements. The staff has also objected that the reliance on at least 1 FAR of community facility space to achieve the floor area bonus breaks the nexus between the creation of housing and incorporation of affordable units as part of that housing. However, a developer may want to devote less valuable ground and first floor space to a community facility use with or without the bonus and make the three FAR bonus fully residential.

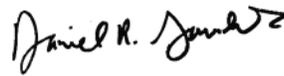
However, at the end of the day, the Department's offers of "compromise" were not acceptable, as they lacked an improved affordable housing component as well as any effective height limits to protect neighborhood context.⁶

We appreciate your attention to this overly long letter, but as you can see we have devoted a great deal of time, thought and resources to the Proposal. We now ask the Commission to certify it promptly for public review and to consider its merits as that process goes forward. As the staff knows, we continue to be open to constructive approaches to address any remaining concerns in order to implement what we believe is a significant step forward by the community and its elected officials to carry out the City's affordable housing goals while protecting neighborhood character and context in a manner consistent with the City's historic zoning standards and practice.

Sincerely,



Manhattan Borough President Gale Brewer



NYC Council Member Daniel Garodnick



NYC Council Member Ben Kallos



NYS Senator Liz Krueger



East River Fifties Alliance

cc: Edith Hsu-Chen, Director
Manhattan Office
Department of City Planning

⁶ The City's offered compromise would have allowed the construction of buildings over 500 feet tall – a height that is 200 to 300 feet taller than the predominant building heights (86% below 260') and more than 110 feet higher than the tallest building in the Rezoning Area.