

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PENN COMMUNITY DEFENSE FUND, 251 WEST  
30TH STREET RESIDENTIAL TENANTS  
ASSOCIATION, CITY CLUB OF NEW YORK, and  
RETHINKNYC,

*Petitioners-Plaintiffs,*

- against -

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE  
DEVELOPMENT, and NEW YORK STATE PUBLIC  
AUTHORITIES CONTROL BOARD,

*Respondents-Defendants.*

Index No.  
IAS Part

**AFFIDAVIT OF  
GEORGE M. JANES, AICP**

State of New York            )  
  ) ss:  
County of New York         )

GEORGE M. JANES, duly sworn, deposes and says:

1. I am the principal of George M. Janes & Associates (GMJ&A), which I founded 15 years ago. GMJ&A is an urban planning and zoning consultancy with public, private, and not-for-profit clients in and around New York City. I hold a master’s degree in Urban Planning from Wayne State University and have 30 years of experience in my field. Prior to founding GMJ&A, I spent six years as the Executive Director of the Environmental Simulation Center, a pioneer in visualization and simulation in planning and development.

2. I testify regularly before the New York City Council and Board of Standards and Appeals on zoning and environmental issues, and have been involved in many of the most significant land-use lawsuits in the City. My office has produced or commented on

hundreds of environmental assessments and impact statements prepared under the State Environmental Quality Review Act (“SEQRA”).

3. I submit this affidavit in support of the Verified Petition and Complaint. This affidavit has three major parts: First, it demonstrates that the development sites in the General Project Plan (“GPP”) of Empire State Development (“ESD”) cannot be considered “blighted” under the Urban Development Corporation Act (“UDCA”), as they do not meet the statute’s definition of a “substandard and insanitary area,” a necessary condition to qualifying as a “Land Use Improvement Project.” Second, the affidavit shows that the environmental review under SEQRA made the erroneous assumption that the “No Action Scenario” would result in no development. Finally, it describes the history of the City’s careful planning and zoning efforts in the Project Area, which would be nullified by this action.

4. I note at the outset that this would be a *very* significant increase in development. As the following table shows, the increase in gross floor area would be 133 percent:<sup>1</sup>

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<sup>1</sup> The Zoning Resolution regulates zoning floor area, which is gross floor area minus cellars, space for accessory building mechanicals and several other typically small deductions. While this table assumes a 10 percent deduction from gross floor area that is not regulated by zoning, it can be higher or lower depending on building design.

	With-Action Development (GFA)*	With-Action Development (ZFA)**	No-Action Maximum Floor Area (ZFA)	Existing GFA	Percent Increase in Maximum ZFA	Percent Increase in Maximum GFA
Site 1A & 1B	1,219,866	1,097,879	552,885	242,369	98.6%	121%
Site 2A & 2B	5,362,706	4,826,435	1,190,351	1,157,648	218.7%	254%
Site 3	1,612,820	1,451,538	533,232	746,897	76.9%	97%
<b>Subtotal Non Vornado</b>	<b>8,195,392</b>	<b>7,375,853</b>	<b>2,276,468</b>	<b>2,146,914</b>	<b>155.4%</b>	<b>184%</b>
Sites 4 & 5***	5,529,145	4,976,231	2,812,918	2,739,863	79.0%	99%
Site 6	2,079,849	1,871,864	838,500	226,232	123.2%	148%
Site 7	2,600,000	2,340,000	1,264,000	1,213,324	85.1%	106%
Site 8	2,600,000	2,340,000	1,264,032	1,105,991	85.1%	106%
<b>Subtotal Vornado</b>	<b>12,808,994</b>	<b>11,528,095</b>	<b>6,179,449</b>	<b>5,285,410</b>	<b>87.6%</b>	<b>108%</b>
<b>TOTAL</b>	<b>21,004,386</b>	<b>18,903,947</b>	<b>8,455,917</b>	<b>7,432,324</b>	<b>109.3%</b>	<b>132.5%</b>

\* Gross Floor Area

\*\* Zoning Floor Area — 10% deduction from GFA

\*\*\* Includes Penn 1 — with GFA taken from City's Pluto Data

It would also be disproportionately commercial space. According to Table 2-3 of the Final Environmental Impact Statement (“FEIS”), 78 percent of the gross floor area would be commercial. At a time when midtown Manhattan is glutted with office space and developers grow anxious about the rise of work from home, ESD’s plan is puzzling.

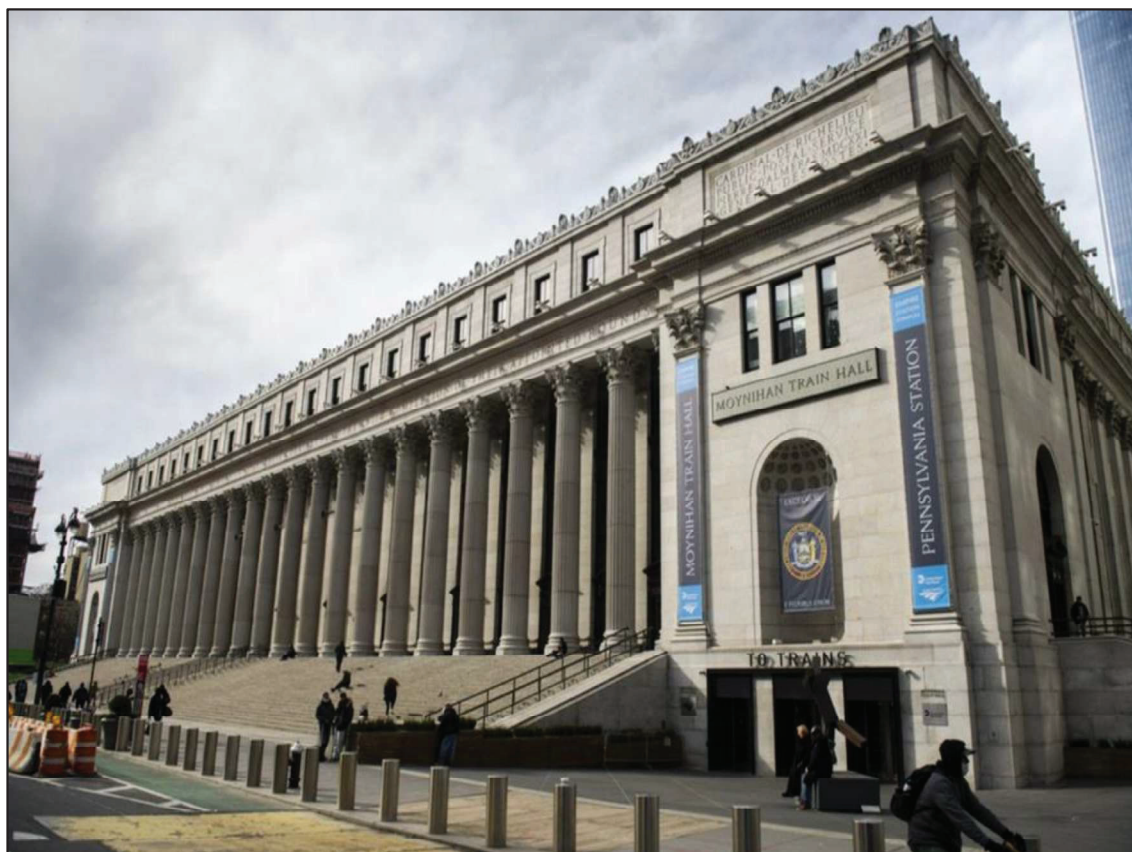
### **The Development Sites Are Not Blighted and the Area Cannot Be Defined as a Substandard and Insanitary Area**

5. To qualify as a Land Use Improvement Project, the GPP requires the Respondents to demonstrate that the area is “a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality.” UDCA § 10(c)(1). A “substandard and insanitary area” is defined as “a slum, blighted, deteriorated or deteriorating area, or an area which has a blighting influence on the surrounding area.” *Id.* § 3(12).

6. No disinterested person, lay or professional, would use the term “blight” to describe the area covered here. One must begin with Moynihan Train Hall. Designated as a New York City Landmark in 1966, the Landmarks Preservation Commission (“LPC”) described the building as follows:

It is the Eighth Avenue front with its majestic colonnade of 20 Corinthian columns 53 feet high that creates the greatest architectural effect. The scale and monumentality inherent in this colonnade, with its attic story terminating in square pavilions at either end, is unparalleled among classic buildings in this City. When viewed with the 31 steps which lead from the street level to the main entrance 22 feet above, the sweep of the steps is overpowering.

New York Landmarks Preservation Commission, Designation Report for the United States General Post Office (1966).



*Moynihan Train Hall*

7. This McKim, Mead & White masterpiece was one of the first New York City Landmarks that the LPC designated. The success of the State and Amtrak in incorporating a train hall into this Landmark, while still preserving the building's character, is a testament to its value to the City. It remains one of the City's treasures.

8. On the commercial side, Vornado Realty Trust's ("Vornado") Penn 1 (57 stories) and Penn 2 (31 stories) are premier office towers, whose tenants include corporate giants like Verizon, AT&T, DirectTV, and Cisco Systems. Both towers are now undergoing extensive renovations.

9. The massings for Vornado's redesign of Penn 2 (below) show a bustling economic area surrounding a glass office tower. The current Penn 1 building, pre-renovation, stands tall amid other office buildings in the area.



*Vornado's redesign of Penn 2*



*Penn 1 today, pre-renovation*

In addition, there is Penn 11, the Equitable Life Assurance Company Building across the street, a 26-story Renaissance Revival structure that still maintains its original grand interior:



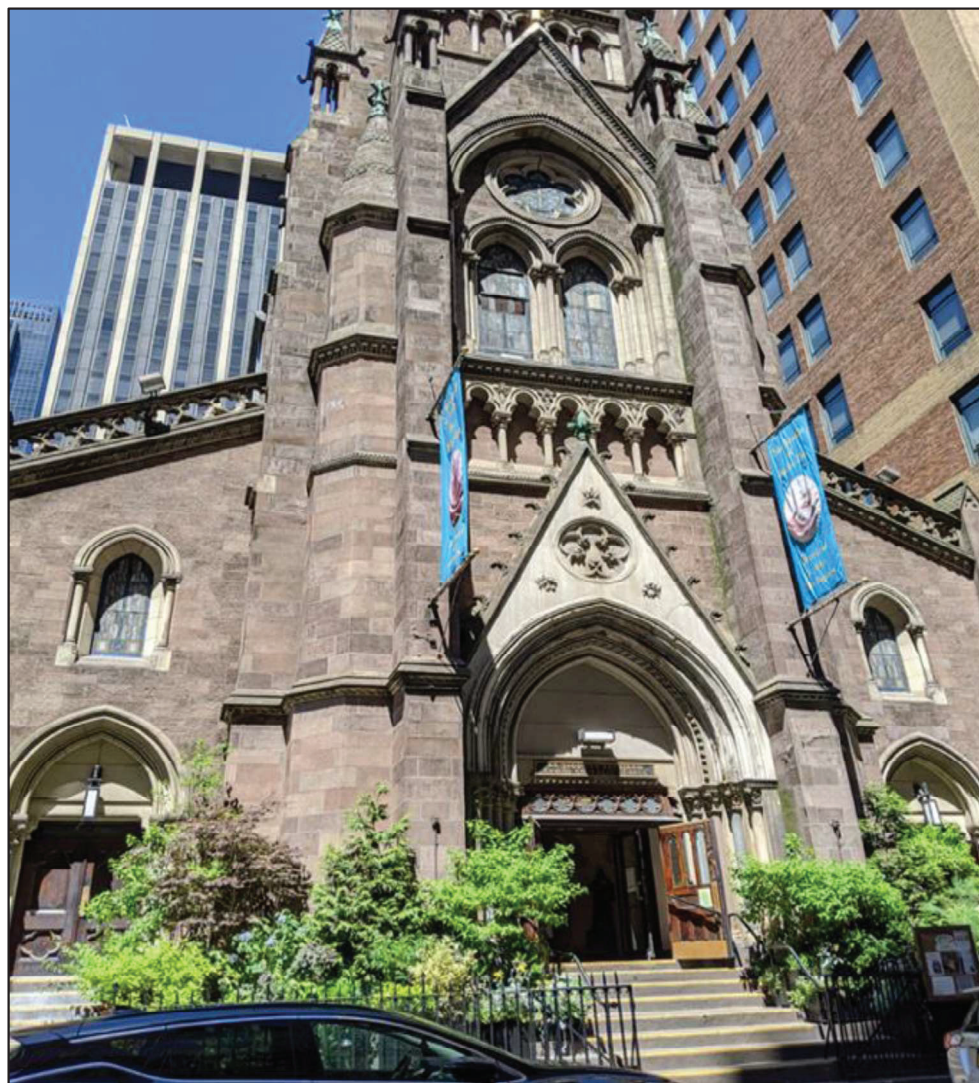
*The Equitable Life Assurance Company Building (Penn 11)*

These are buildings that cannot possibly be described as blighted.

10. The development sites also include several historic structures that are listed or eligible for listing in the State and National Registers of Historic Places. Perhaps the most notable is St. John the Baptist Roman Catholic Church on 30th Street, a French Gothic structure built in 1871-72 by the architect Napoleon LeBrun. Other examples:

- The Stewart Hotel on Seventh Avenue, a 25-story Italianate hotel built in 1929, designed by Murgatroyd & Ogden, the firm that designed the Barbizon Hotel on Lexington Avenue, a City Landmark;
- The Penn Terminal Building, also on Seventh Avenue, a 17-story Neoclassical brick office building constructed in 1920;
- The Penn Station Service Building on 31st Street, a granite McKim, Mead & White structure, the last surviving element of the old Penn Station;

- The Fairmont Building, also on 30th Street, a six-story Neoclassical structure built in honor of the founder of the Plumber's Trade Journal;
- The 1925 Gimbel Brothers Skybridge, a copper-clad bridge extending across 32nd Street, at the third floor designed by Shreve and Lamb, who designed the Empire State Building;
- The 22-story Hotel Pennsylvania on Seventh Avenue, another McKim, Mead & White, now midway through demolition, as the owner anticipates the completion of the Land Use Improvement Project.



*St. John the Baptist Roman Catholic Church*





*The Stewart Hotel*



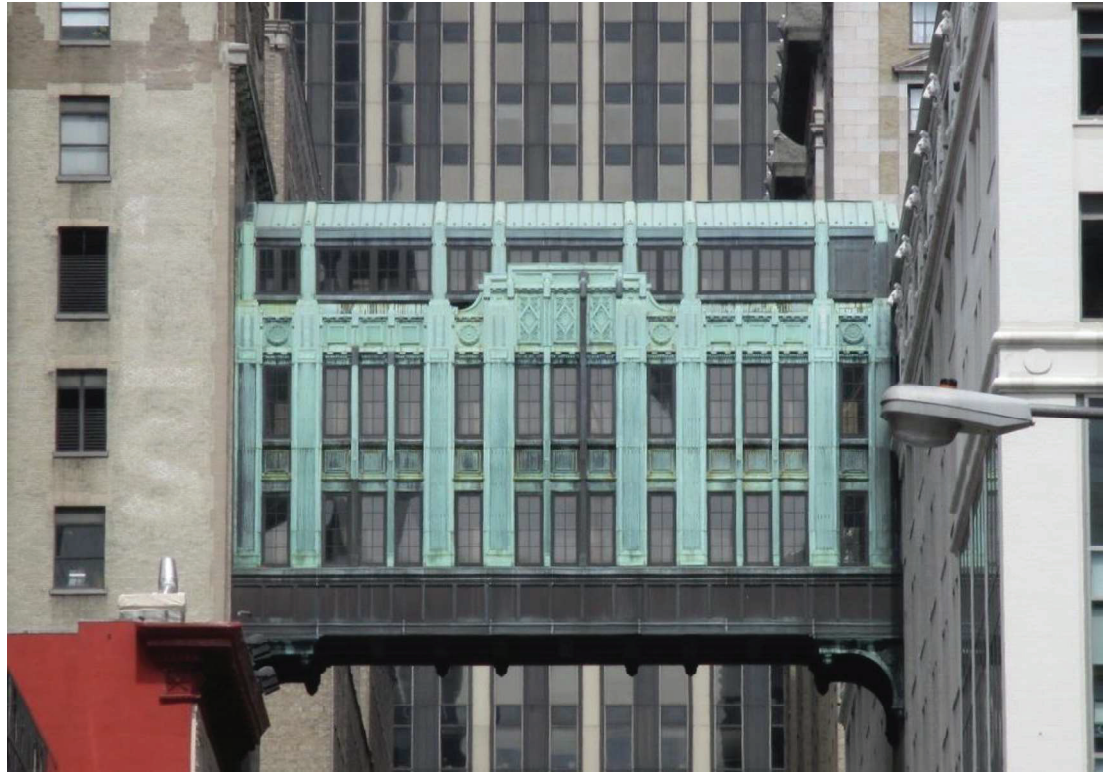
*The Penn Terminal Building*



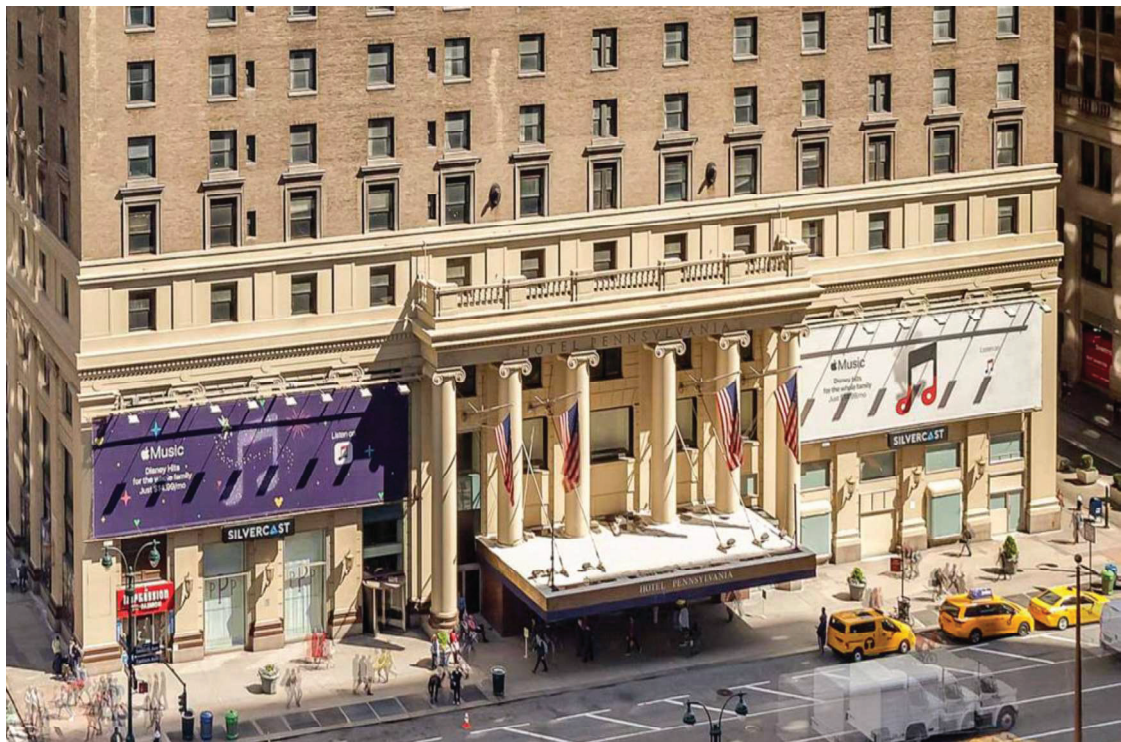
*The Penn Station Service Building*



*The Fairmont Building*



*The Gimbel Brothers Skybridge*



*Hotel Pennsylvania*

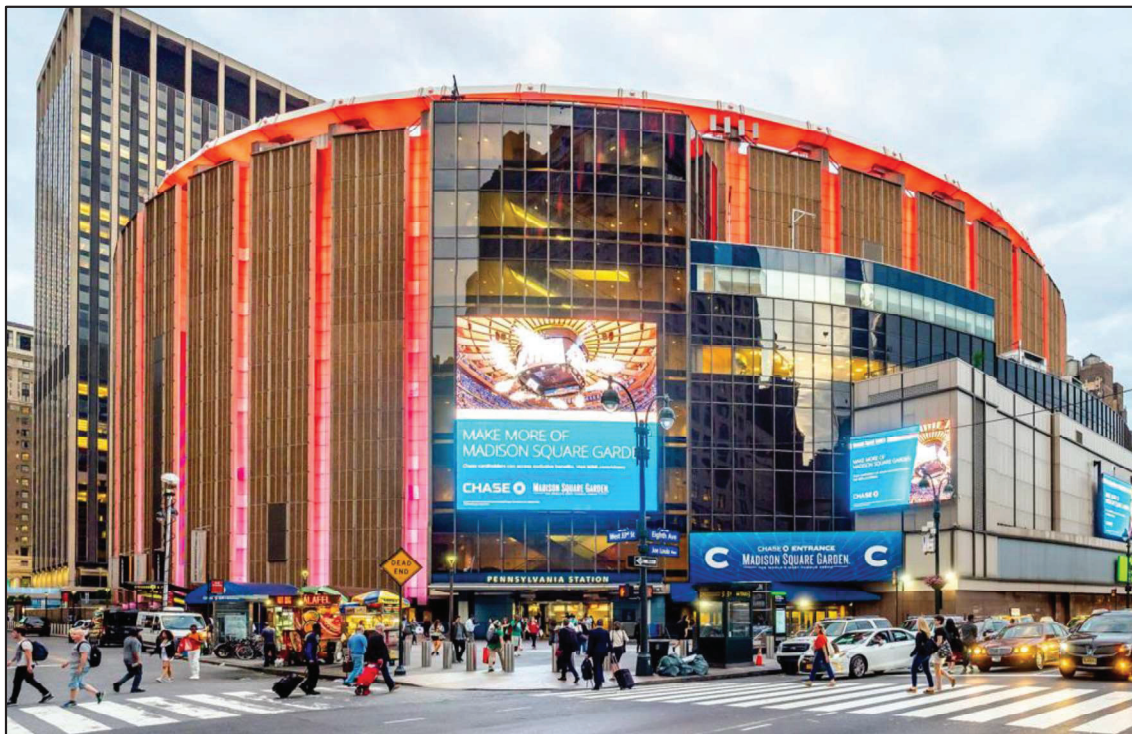
11. While not listed in the State or Federal Register, another notable structure slated for demolition is the 1929 14-story Art Deco-style Industrious Building at 251 West 30th Street.



*Industrious Building*

12. All of these historic structures would be gone under the GPP. Yet, they all exist and make up a vibrant area around Penn Station that is neither “substandard and insanitary” nor “blighted.”

13. Madison Square Garden (“MSG”) is a focal point of activity within the area of the development sites, an active venue for sports and entertainment.



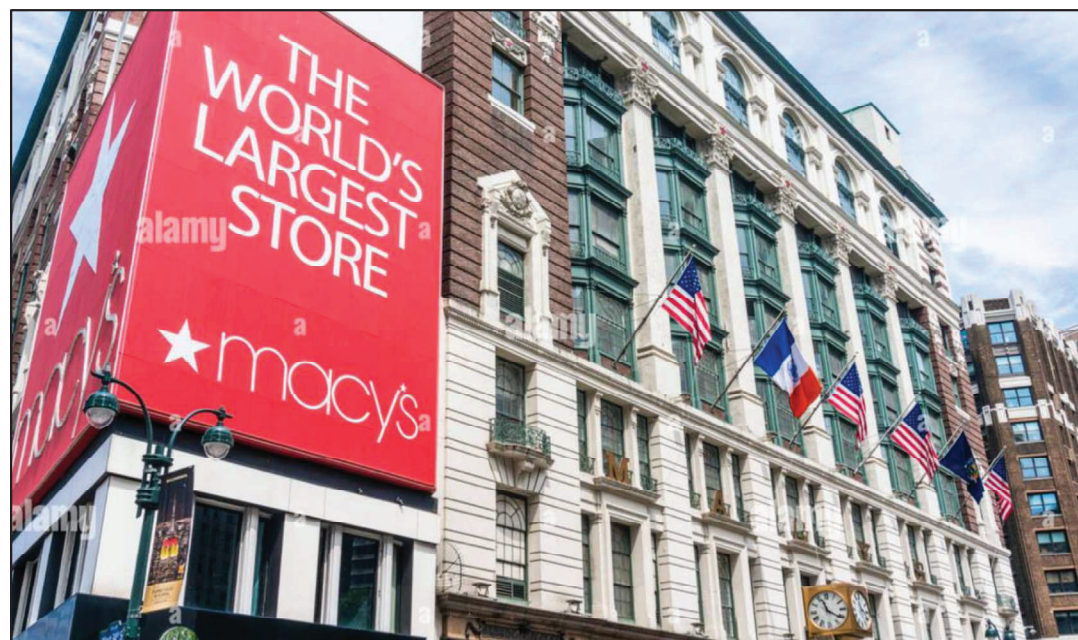
*Madison Square Garden*

14. Herald Square is an area adjacent to the Project Area, and further contributes to the vital atmosphere. One particularly notable—and relevant—building there is the Hotel Martinique, an 1898 Beaux-Arts hotel. This year, after an extensive restoration, Hilton reopened the hotel, and it is a model for the adaptive reuse of the historic structures ignored by the ESD Plan.

15. Also in Herald Square is the 1902 flagship store for Macy's, a National Historic Landmark.



*Hotel Martinique*



*Macy's*

16. Anchored by Macy's, and served by New York City Transit, the PATH train, and Penn Station, the Herald Square area is one of the City's premier shopping destinations, including both local New York stores and chains like H&M, Old Navy, Urban Outfitters, Forever 21, Target, and a host of others that would not be found in blighted areas. Refuting ESD's claim that the Project Area is blighted, Old Navy and Target opened branches in the Atlantic Terminal Mall *after* ESD completed its Land Use Improvement Project there. Plain and simple, these are not substandard and insanitary conditions. Daniel Biederman, the co-founder of the 34th Street Partnership and Bryant Park Corporation, said: "The neighborhood has its problems, but it is not blighted." Kathryn Brenzel and Rich Bockmann, "Vornado's Penn Plan, Decades in Making, Reaches Inflection Point," *The Real Deal* (Mar. 3, 2022).

17. ESD's Neighborhood Conditions Study found that only 6.8 percent of the land in the Project Area, and only eight of the area's 61 lots, were in "poor" or "critical" condition. And the *only* building in "critical" condition, the Penn Station Service Building, is owned by Amtrak. My office prepared the following map, based on the visual assessment of building and site conditions in the "Study Area" defined in the Neighborhood Conditions Study (coterminous with the GPP's "Project Area"), using data from the July 2022 addendum to the survey:



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18. Moreover, according to the FEIS, “blight” conditions in the area have *improved* since the Neighborhood Conditions Survey was conducted in February 2021—despite the downward economic pressures of the pandemic. In the July 2022 Addendum, ESD changed two of the lots from “fair” to “good,” and one of the lots from “poor” to “good,” removing 14,875 square feet of lot area and 136,711 square feet of floor area from “blighted” status.

19. ESD’s assertion that this area is blighted and requires radical intervention demonstrates a terrible cynicism about the role of government in urban renewal. In the 1970s, as businesses disinvested in the City, large areas *were* blighted and insanitary, and local government policies and planning could not, on their own, be expected to change the



direction of those areas. Drastic measures were necessary. No doubt there is a role for the State to play in curing genuinely blighted conditions. But the role it attempts to play here is wrong.

20. There are established criteria for measuring blight; the presence of a few empty storefronts that need repainting does not make the list. Among the common indicators of blight are vacant and abandoned lots, homes, and buildings; mortgage and tax foreclosures; and of course, property values.<sup>2</sup> There are no abandoned buildings or lots in the area, and the last foreclosure was 30 years ago, in 1992. Land values in this area are simply too high for an owner to abandon a building or allow the property to revert to the bank or the City.

21. There is only one property on the development sites that might be considered blighted using standard indicators, and that is the Penn Service building, owned by Amtrak. Designed to support operations at Penn Station, the building is functionally obsolete and largely empty. My research has revealed no efforts by Amtrak to redevelop, sell, rent, or otherwise exploit the building. Rather, Amtrak appears to be land-banking the property, perhaps in anticipation that it would prove useful as improvements to Penn Station are being made.

22. In sum, the assessment that the area around Penn Station is blighted is ludicrous on its face. The area suffers from *none* of the commonly used indicators of blight, and ESD should not expect the public to accept such designation at face value. The only

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<sup>2</sup> I draw these criteria from “The Basics of Blight,” available at [vacantpropertyresearch.com/wp-content/uploads/2016/03/20160126\\_Blight\\_FINAL.pdf](https://vacantpropertyresearch.com/wp-content/uploads/2016/03/20160126_Blight_FINAL.pdf).

reason ESD has made this claim is to meet the UDCA's requirement for qualifying as a Land Use Improvement Project. The area does not qualify.

**Area Conditions Do Not Tend to Impair or Arrest the Sound Growth and Development of the City**

23. ESD also failed to demonstrate that the condition of the area “tends to impair or arrest the sound growth and development of the municipality.” UDCA § 10(c)(1). The area is alive at all hours with a vibrant mix of uses, which is notable because at its center is a sports arena that is not in continuing operation. Again, high property values reflect the economic activity in the area.

24. The pace and scale of new construction and renovation further contradict ESD's stagnation argument. In 2013, the owners of Madison Square Garden completed a billion-dollar renovation of the arena. The owner of the former garment factory loft at 251 West 30th Street recently completed a multimillion-dollar overhaul of the space. And Vornado itself is now in the midst of a \$2.4 billion renovation of Penn 1, Penn 2, and the Farley Building. In November 2021, after MSG signed a 20-year lease at Penn 2, Vornado's chairman proudly announced: “MSG's commitment to PENN 2 continues the momentum we are generating in the PENN DISTRICT, where we are creating a one of a kind, next generation work environment at the heart of New York City's thriving West Side.” Steven Roth, Chairman's Letter 2020, at 14. Outside the Project Area, in Herald Square, the painstaking restoration of the 1898 Hotel Martinique demonstrates how successfully these historic buildings can serve contemporary needs.

25. Even if there were no recent construction activity, the premise of ESD's stagnation argument—that a dearth of new Class A construction signals blight—is incorrect.

The existing conditions of the area fail to meet the standards for either “substandard or insanitary conditions” or “economic stagnation.”

### **The No Action Scenario in the Draft and Final Environmental Impact Statements Is Wrong**

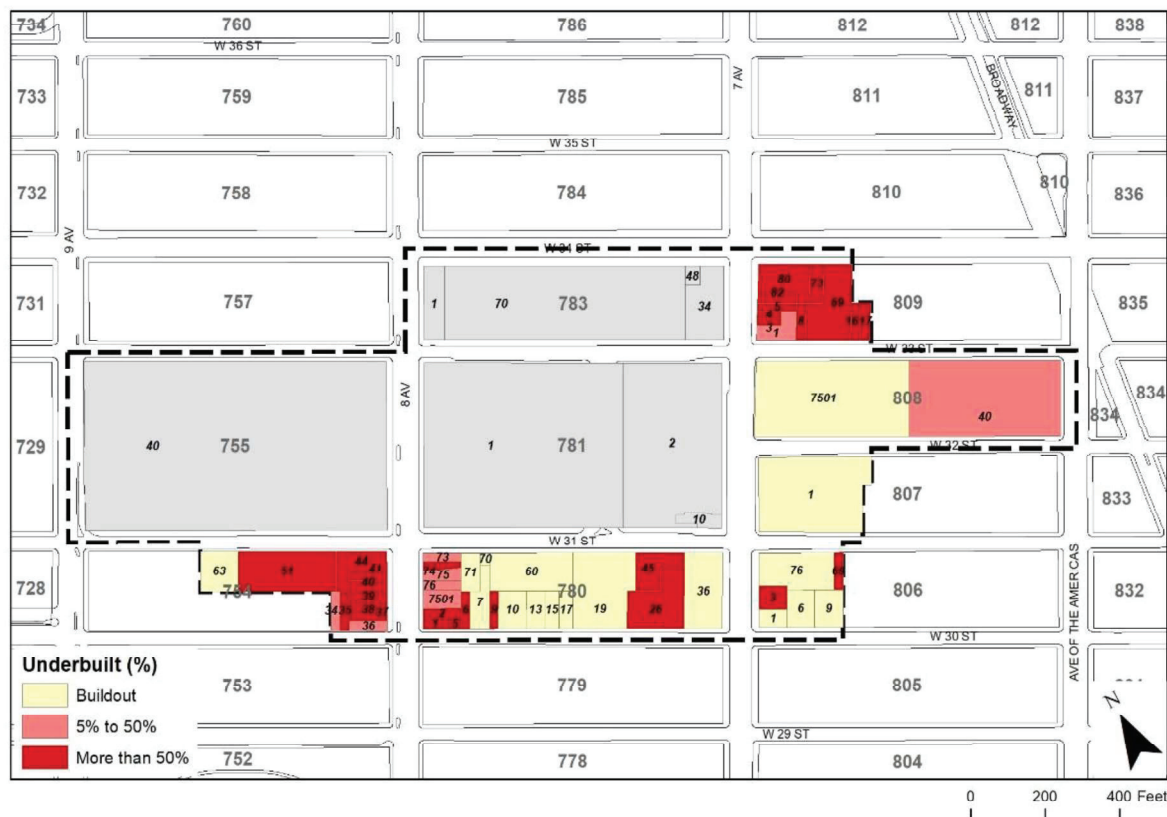
26. Environmental reviews in New York State must (1) analyze the significance of the environmental impacts of discretionary land use actions, (2) disclose those impacts to the public, and (3) mitigate any significant impacts to the extent practicable. Impacts are measured based on “incremental” development, the difference between the amount that would occur with the project and without.

27. To determine the increment, the lead agency develops a “With Action” scenario describing a future with the proposed development and a “No Action” scenario describing a future without the action. Inexplicably, the lead agency here, ESD, said that there would be no new development—through 2044—in the No Action scenario.

Considering the development potential of some of the sites, this was a substantial error.

28. Sites 1 and 6 clearly have sites that should have been included in the No Action Scenario. Chapter 2, Section 410 of the *City Environmental Quality Review (CEQR) Technical Manual* lists “soft site” criteria to use when determining if a site will be redeveloped in the No Action Scenario. While those criteria are guidance and not hard rules, there are clearly sites that should have been included here.

29. A soft site analysis is the first part of any assessment of No Action conditions. A soft site is a property that is substantially underbuilt according to current zoning. The following map shows this, ignoring the Farley and MSG block as well as the block with 1 Penn Plaza, which is subject to a GPP and a CPC special permit.



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30. The dark red sites are the most underbuilt. If buildings are fully built out, or more than 50 percent built out, we assume that they will not be redeveloped. But even if a site is more than 50 percent underbuilt, it might not be a good development site. It might be too small or have a use that would make it unattractive for development. For example, the church on Block 780 is not considered a development site for the purposes of environmental review, even though it is substantially underbuilt, because, as an institutional use, it does not experience the same development pressures as other uses. But Site 1 in the southwest corner of the Project Area and Site 6 in the northeast corner have substantial areas that are underbuilt and need more investigation.

### Site 1

31. First, a short lesson in the City’s Zoning Resolution (“ZR”), which defines the maximum size of a building by the “floor area ratio” (“FAR”). “Floor area” is the total zoning floor area (“ZFA”) of all floors in all buildings on a zoning lot.<sup>3</sup> For each zoning district in the City, the ZR defines the maximum ZFA as a multiple of the lot’s area. That is the FAR.

32. Block 754, Lot 44 is 8,363 square feet in size and a prime development site. It is currently a *surface parking lot*, but has an FAR of 9. In other words, the current floor area is 8,363 square feet—the area of the parking lot—and the owner could erect a building with roughly 75,000 square feet of floor area. There was no reason for ESD to assume that the site would not be developed between now and 2044. Thus, it should have been included in the No Action Scenario as a site that would be developed.



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<sup>3</sup> See footnote 1 above.

33. On Block 754, Lots 39 through 41, there are three contiguous lots that, while held by separate LLCs, appear to be in common control: The title owners are 409 Riggo, 411 Riggo and 413 Riggo, and their tax bills all go to the same address.



34. According to PLUTO, the City's online database, each of these lots has fewer than six residential units and together their lot size is 7,407 square feet. They are built at 2.44 FAR but can be developed to 9 FAR, *i.e.*, the current buildings have a total floor area of roughly 18,000 square feet and the site could be developed to more than 66,000 square feet. This is an excellent development site that may have been overlooked because of the separate tax lots. It too should have been included in the No Action Scenario.

#### Site 6

35. Block 809, Lot 69 is a commercial building now housing Old Navy, and is quite large at nearly 20,000 square feet.



36. The lot is mostly in a C6-6 district, which allows 15 FAR (without bonuses), but it is developed at under 4 FAR. It is another excellent site that should have been included as being developed in the No Action Scenario.

37. Block 809, Lot 80 is smaller than Lot 69, at just over 11,000 square feet, but it is still an excellent development site—also built at under 4 FAR in a 15 FAR district.



Located on top of a subway station, it is exactly the type of site that should be redeveloped, since it does not displace residents and is certainly close to transit.<sup>4</sup>

38. In sum, the No Action Scenario omitted at least four excellent sites that should have been included as being developed in the No Action Scenario. It was not reasonable to assume that none of them would be redeveloped over the next 22 years. The No Action scenario is a fundamental element of any environmental review, as it determines the “increment” studied in the review, and ESD’s is deficient.

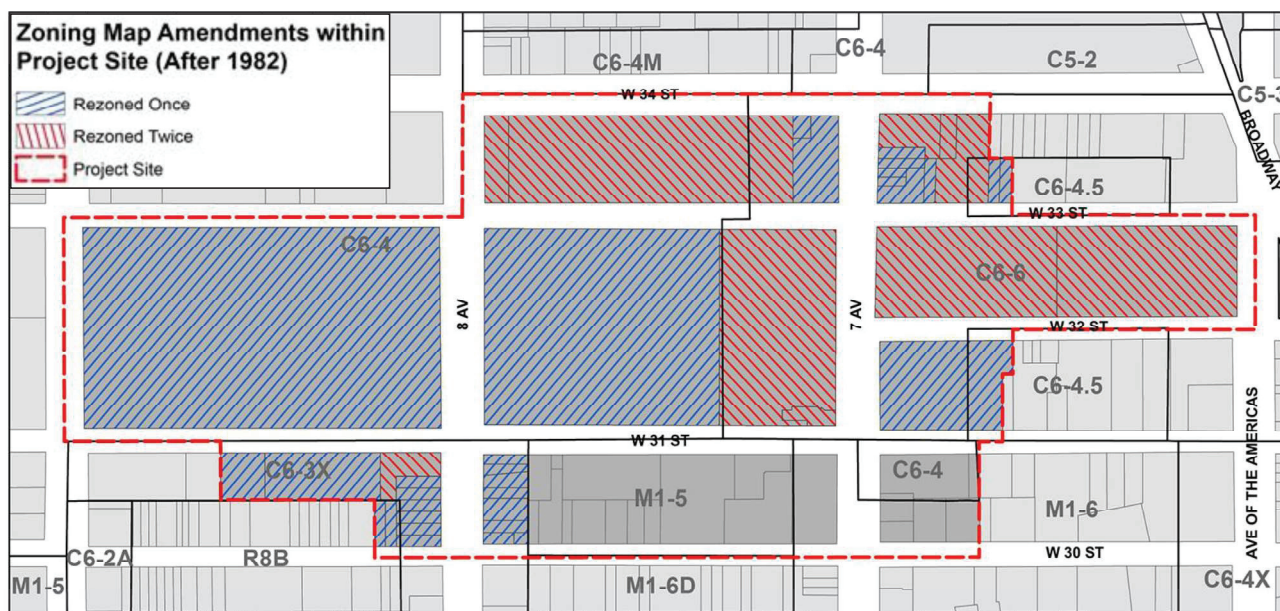
**The ESD’s Action Quashes the City’s Extensive Planning Efforts and Would Remove Its Most Effective Planning Tool**

39. Zoning is NYC’s most effective planning tool, and this action nullifies much of it. Approval of the GPP override would undermine the goals of the many rezoning actions, approved by the City Planning Commission (“CPC”) and the City Council, relating to this Project Area. The majority of the area has been rezoned at least once since the adoption of the Midtown Special District in 1982, as applicants and the City have been active here. The following map shows areas that have been rezoned within the Project Area since 1982:

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<sup>4</sup> The other lots in Site 6 are either built out or small, so they would require either assemblage or the development of a lot less than 5,000 square feet. For that reason, while the sites are vastly underbuilt with a 15 FAR, the *CEQR Technical Manual* states that it is reasonable not to include them in the No Action Scenario.





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40. Since 1975, a change to the zoning map or the issuance of a CPC special permit has had to go through the City’s Uniform Land Use Review Procedure (“ULURP”), which is a standardized process used to solicit feedback from all stakeholders in the land use process: the public, the local Community Boards, Borough Presidents, CPC, the City Council and the Mayor. Zoning text changes go through a nearly identical process, but do not have to follow the same timeline as changes going through ULURP. As part of any land use application, CPC issues a report describing the planning objectives of the action.

41. By voiding the underlying zoning, the GPP would also void the planning and policy objectives the City has been trying to implement. The following discussion reviews the City’s recent objectives and its efforts to realize them.

42. One particularly relevant planning objective for the City is to offer new development and zoning bonuses to encourage improvements to the City’s fixed transit system, and CPC has been responsive to transit agencies seeking zoning changes for this

purpose. Here are some recent changes:

### **2010 Rezoning of Sites 7 and 8**

43. Most of Sites 7 and 8 (Block 808) were rezoned in 2010 to C6-6, which is one of the City's highest-density zoning districts. They were also given a CPC Special Permit to permit additional density in exchange for transit improvements—ranging from the reconstruction and reopening of the former Gimbels/33rd Street Passageway, which had been closed since 1986, to new elevators, escalators, stairs, and entrances to the transit network. In its report on the amendment, CPC wrote that “the rezoning permits the site to take full advantage of its transit-rich location in a manner consistent with the [City's] transit-oriented development policies . . . . C 100049 ZSM, p. 52.<sup>5</sup>

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<sup>5</sup> The full list of improvements is summarized in CPC's Report, C 100049 ZSM:

- Construct new at-grade entrances to the transit network within the 15 Penn Plaza building on West 32nd and West 33rd streets, accessing the proposed 33rd Street Passageway;
- Construct a new elevator at the new entrance at West 33rd Street and Seventh Avenue;
- Widen the stairs that connect the southbound local Seventh Avenue subway line to the 32nd Street Underpass that connects Penn Station to the 15 Penn Plaza site;
- Construct a new stair connecting the express platform of the Seventh Avenue subway line to the 32nd Street Underpass;
- Widen the northbound platform on the Seventh Avenue subway line (along and under the 15 Penn Plaza Seventh Avenue frontage) between West 32nd Street and West 33rd Street and increase the stair width to the 32nd Street Underpass;
- Widen the stairs to 10 feet at the entrance to the PATH trains on Sixth Avenue at West 32nd Street;
- Construct one escalator and 10-foot stairs at the entrance to the PATH trains on Sixth Avenue at West 33rd Street;
- Construct 9-foot stairs from the PATH level to the Sixth Avenue/Broadway subway lines platform near West 32nd Street;
- Construct 15-foot stairs from the PATH level to the Sixth Avenue/Broadway subway lines platform near West 33rd Street; and

44. Ironically, as a direct result of the GPP, the owner of the properties, Vornado Realty, allowed the special permit to expire. The reason is obvious: The GPP would allow even greater development than the permit, and without requiring Vornado to make the transit improvements. Naturally, the company chose to wait for the more generous terms.

45. CPC noted that its amendment was intended to ensure that “adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable.” *Id.*, p. 54. In other words, CPC calibrated the zoning based on its uniquely *local* knowledge of the area and its history, and on its judgment about the balance of costs and benefits. The difference in result was dramatic: CPC’s conclusion was that the FAR should be roughly *half* of what ESD has now proposed.

46. Home Rule is intended to delegate to municipalities the authority to weigh the benefits of development and economic activity against their adverse environmental impacts. On Sites 7 and 8, the City did precisely that balancing, and the GPP would repudiate it. ESD’s indifference to the City’s judgments was reflected in Chapter 3 of the FEIS—“Land Use, Zoning & Public Policy.” The chapter altogether omitted (1) a comparison of these recent rezonings with the open-season development that the GPP contemplates, and (2) an assessment of the GPP’s impact on the City’s objectives. That violates SEQRA.

#### **Penn Center Subdistrict (2001)**

47. The 2001 rezoning added ZR 81-50, creating a new Penn Center Subdistrict running on both sides of Seventh Avenue from 31st to 34th Street—the eastern section of the Project Area here—with “a floor area bonus for mass transit station improvements.” In other

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- Reconfigure the fare turnstiles for increased access to the Sixth Avenue/ Broadway subway lines and to accommodate new stairs.

words, it provided yet another incentive for transit improvements. In its report on the new subdistrict, CPC said that the rezoning's purpose was "to provide a regulatory framework that will foster a cohesive visual identity in order to enhance and expand its role as major destination for retail, commercial, and entertainment activities, and to improve its role as a major transportation center in the city." N 010653 ZRM, p. 15.

#### **Elevate Transit (2021)**

48. The 2021 Elevate Transit rezoning improved the terms of the floor area bonus in the Penn Center Subdistrict rezoning, and also expanded the reach of the program from a limited number of high-density commercial districts, next to subway entrances, to all high-density areas within 500 feet of any part of a subway station. It is well-known that subway stations are in desperate need of physical improvements, including better passenger access, and again, the City used its zoning powers to address the problem. (Providing better access was also a boost to the MTA, which continues not to meet its legal obligations under the Americans with Disabilities Act.) With the passage of Elevate Transit, all entrances to the stations serving the Project Area became eligible for the bonuses.

#### **ARC Rail Road Passenger Station (2009)**

49. The Port Authority and New Jersey Transit requested changes to the CPC special permit for Passenger Railroad Stations, allowing bulk waivers to facilitate a range of improvements to Penn Station—two levels of track and a pedestrian mezzanine below West 34th Street, six station entrances, four fan plants, and related below-grade elements—in connection with the proposed Arc Tunnel, which was to run underneath the Hudson River. Shortly after CPC adopted the amendment, the New Jersey Governor cancelled the tunnel, so the permit was never utilized. But it may soon become useful again with the development of

ARC's replacement, the Gateway Tunnel.

50. Four major zonings in a wider area around Penn Station reflect further efforts by the City to promote these objectives: (1) Midtown Special District (1982) (C 820214 ZMM); (2) the Chelsea Rezoning (1999) (C 990453 ZMM); (3) Old Navy (2000) (C 000126 ZMM); and (4) Hudson Yards (2005) (C 040499a ZMM).

#### **Midtown Special District (1982)**

51. The 1982 Midtown rezoning included the development of a new Special Purpose Zoning District, with novel bulk controls that have reshaped Midtown since their adoption. Rather than define form by traditional height and setback controls, the new rules required developers to ensure that a defined minimum amount of daylight reaches the street, no matter the height or shape of the proposed building.

52. Daylight impact has been a major consideration in the Zoning Resolution. Indeed, the gloomy streets created by the original Equitable Building were the inspiration for the first Zoning Resolution in 1916, which sought to preserve light by requiring developers to "set back" their buildings above a certain height. By contrast, the Midtown bulk controls are performance-based. Developers can choose to build tall, skinny buildings or short, squat ones, as long as they provide the minimum level of street light. CPC's adoption of this new planning tool was the product of long deliberations among planners, architects, engineers, and City officials, and the rules reflected the City's ultimate judgment about what the neighborhood needed.

53. The GPP would nullify these regulations as well, allowing as-of-right towers covering between 60 and 70 percent of their zoning lot—at 75 percent of their height. The towers would utterly fail Midtown's daylight performance standards and undermine the

policy informing it. In stark contrast to CPC's open process, ESD made no attempt to consider how its changes would impact the City's planning objectives regarding light. In fact, it would gut them.

### **Chelsea Rezoning (1999)**

54. The Chelsea Rezoning in 1999 was the first community-based plan leading to a neighborhood zoning change. The rezoning targeted "height factor zoning"—a complex formula encouraging taller, thinner buildings surrounded by open space. Instead, it deployed contextual zoning, intended to preserve the character of the surrounding neighborhood—in this case, encouraging "high-coverage," loft-style buildings. At the same time, the amendment set different rules for the avenues, based on a different policy, where it sought to encourage new housing and nonresidential development. As CPC wrote, "For all of these areas, the Commission believes that, by mapping contextual zoning districts, increased densities can be achieved without impairing neighborhood character." N 940614 NPM, pp. 15-16.

55. Part of Site 1 is within the Chelsea district, and the GPP would permit a tower with no height restriction. It would be unlike anything in Chelsea and would again subvert the City's essential planning objectives for the neighborhood.

### **Hudson Yards (2005)**

56. The 2005 Hudson Yards rezoning impacted much of the western part of Manhattan between 30th and 41st Streets, Eighth Avenue, and the River. It was a plan to transform the west side of Manhattan from a low-rise industrial neighborhood to a high-rise, mixed-use neighborhood. As CPC explained, there were four key public sector actions that were necessary to transform the area and attract private investment:

- Extending the subway system to provide seamless transit access to the heart of the area;
- Rezoning the area for significant commercial and residential development;
- Creating a new open space network to make the area attractive; and
- Creating a Convention Corridor to attract more events and increase tourism.

N 040500(A) ZRM.

57. The rezoning was the culmination of a years-long effort to implement the vision of a new central business district on the west side of Manhattan. The Planning Commission made a deliberate decision not to rezone Block 780, *i.e.*, Sites 2 and 3. It made another deliberate decision to make only modest changes in zoning on the north side of Block 754, where Site 1 is located, directly south of the Farley Building: "The proposed requirements for a 60 to 120 foot streetwall height limit, and maximum building height of 160 feet are appropriate and would control building heights across from the historic Farley Post Office building." The GPP, on the other hand, would double the allowable density of Site 1 and allow towers of unlimited height, eviscerating the existing regulations. N 940614 NPM, pp. 21-23.<sup>6</sup>

### **CPC Special Permits**

58. Like zoning map actions, CPC special permits require applications to go through the City's ULURP process. Special permits and bonuses are one of the City's most

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<sup>6</sup> Another rezoning, the 200 Old Navy rezoning, impacted only a portion of one block, part of Site 6, and was principally about signage. While most zoning discussions relate to the size of buildings, proper planning must define the character of a neighborhood more broadly — "like uses," streetwalls, transparency, parking, and signs — which is why it is so important to clarify the objectives of a rezoning. Here, CPC noticed a change in the character of the area, embodied by the "greater diversity of uses" around Herald Square, and addressed it. Once more, the City was able to attend to granular changes that only a local government — on the ground — will identify.

effective planning tools to encourage public spaces, transit improvements, affordable housing, and other public benefits. They are possible, however, only where there is an agency to oversee the application process and to consider the pros and cons of the application. There would be no such thing under ESD's plan. The Design Guidelines set the rules in stone and deny both the developers and the public the flexibility needed to tailor the rules to the circumstances of an individual project. (Moreover, the City cannot change the GPP since it was set by a State agency.)

59. There have been several CPC special permits in the Project Area, but the most consequential is the 2013 Special Permit for Madison Square Garden. ZR 74-41 requires a CPC special use permit for arenas with more than 2,500 seats, and MSG secured a 50-year permit in 1963. In 2013, as the expiration approached, MSG asked CPC for an extension. CPC, however, had concluded that any new Penn Station must be above-ground—where the Garden is—and agreed to extend the permit for only ten years, with the understanding that MSG would use that time to find a new home:

The Commission strongly believes that a comprehensive planning process and funding plan should be undertaken, with the goal of building a new arena on another site and the full redevelopment of Penn Station into a modern train facility with improved track and station capacity and public amenities. Such an effort will require the coordination of Federal, State, and City agencies, as well as the close participation of the private sector, most importantly including MSG.

C 130139 ZSM, p. 61.

60. CPC was under no illusion that its plan would be easy to realize; it would require coordination among City agencies, and a long, uncertain negotiation with MSG.

The Commission is fully aware of the complexities and difficulties that would need to be overcome. However, the Commission believes this can be accomplished with clear coordination, realistic planning, and reliable



funding — provided the public and political will exists to do so. Further, the Commission believes that such a project is not only possible but that there is no more important initiative to consider for the future of the region, the City and Midtown Manhattan. The Commission hopes in the near future to work with all stakeholders, including MSG, in the development of a plan that meets the needs of all parties and results in the development of a station and arena befitting New York City.

*Id.*

61. By renewing the permit for only 10 years, CPC gave itself the leverage to pressure MSG to move: It could refuse to grant another extension at the end of the ten years. But ESD’s plan to settle for a below-ground station, with its entrance sandwiched between the current MSG and Penn 2 on Seventh Avenue, would likely scuttle the City’s strategy. Instead of a more ambitious, and altogether superior, above-ground station, like the original McKim, Mead & White station, the GPP would go for the quick fix.

62. In addition, CPC granted a special permit to the owner of 1 Penn Plaza—again, Vornado—allowing it to eliminate a portion of the public arcade and plaza on its property, which had earned it a zoning bonus back when the building was constructed in 1972. CPC is typically responsive to such requests when they further the planning goals in the area, and found that the changes there would “dramatically improve the safety, accessibility and user experience of the plaza area,” as well as improve signage, pedestrian circulation, and ADA access—while also making the plaza more usable with new seating and amenities. C 190273 ZSM, p. 21.

### **Conclusion**

63. The City has done extensive planning in and around this Project Area over the past decades, and it continues to do so. The GPP would wipe out what the City has already accomplished and hobble its efforts going forward. In addition to overriding the use and


bulk rules the City has set, the GPP would end another local zoning power—the ability to grant discretionary bonuses and special permits conditioned on the provision of transit improvements or public plazas, to name two benefits. Instead, the GPP would simply freeze the rules and strip the City of its discretionary power.

64. Moreover, the City is changing at an ever more rapid pace, and as it does, it will be necessary to periodically amend the zoning rules to reflect those changes. But once Vornado has its towers, and once the station is completed, can the City count on ESD to make the necessary changes? The City and its elected officials are alert to the changes in a way that State agencies are not.

65. The GPP is a mistake. If this area were blighted, or if the City had been negligent in the exercise of its zoning authority, there might be a role for ESD. But those conditions simply do not exist. There is no justification for the State’s intervention in a neighborhood that is economically and physically sound, and that continues to receive the City’s close planning attention.

  
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GEORGE M. JANES, AICP

Sworn to before me this October 24, 2022

  
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NOTARY PUBLIC  
