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Charles Weinstock
300 West 109th Street
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RE: Zoning compliance at
497 Hudson Street
Block 605, Lot 28
DOB Job Number: M01264489

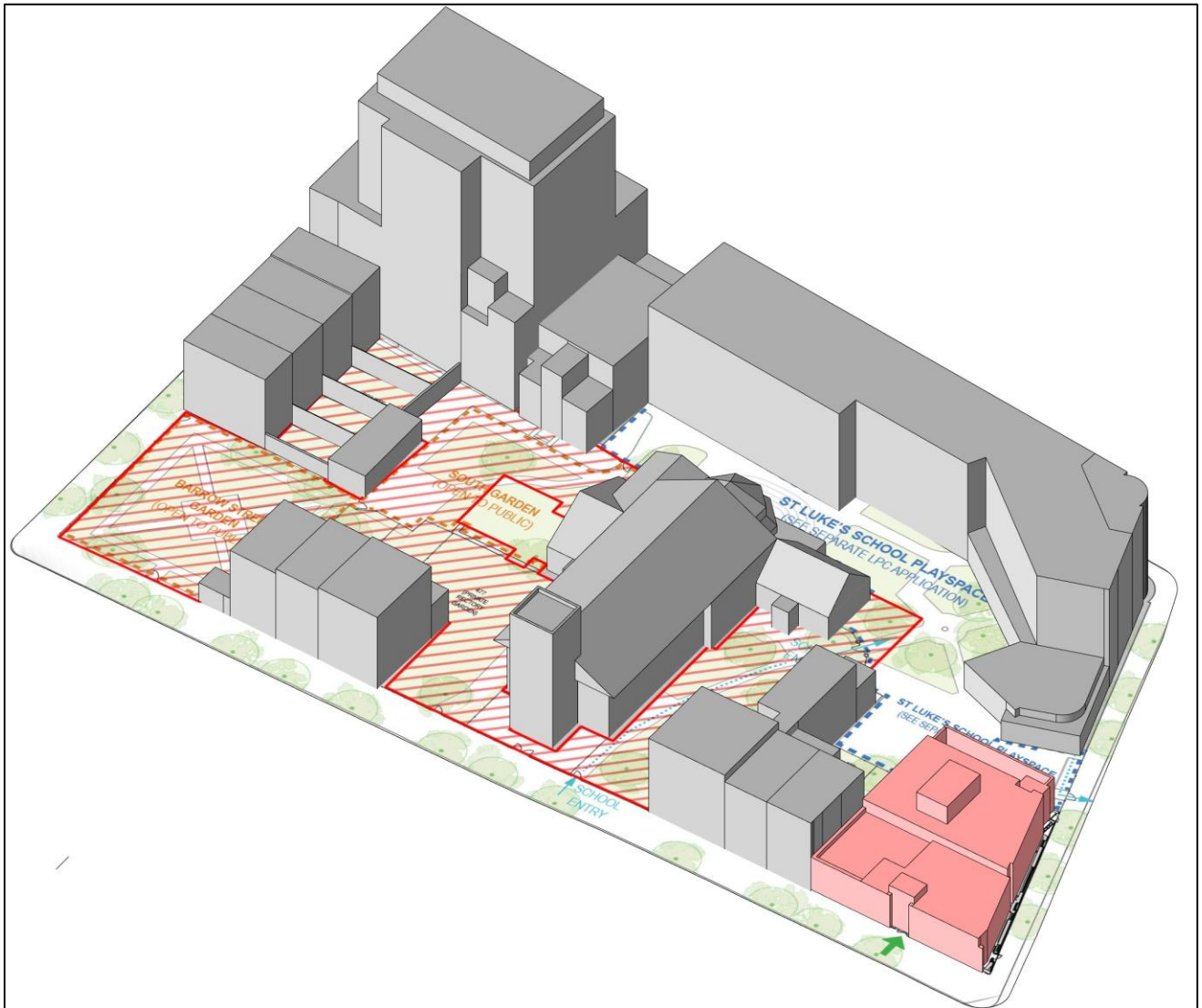
Dear Mr. Weinstock:

You have asked my office to analyze the accepted ZD1 for the proposed building at 497 Hudson Street and to determine whether the development described on the zoning lot is compliant with the New York City Zoning Resolution. We have found an issue that impacts the entire zoning lot: there is far too little open space on the lot.

Project summary and background

The proposed 497 Hudson Street would be a single-story community facility building at the corner of Hudson and Christopher Streets. The building is associated with, and controlled by, the neighboring church. The entire block has been declared a single zoning lot, and the zoning district is R6. If we include sheds and garages, the block has 18 buildings, nine of which have residential floor area. The block has been developed using the R6 height factor zoning regulations. In addition to 497 Hudson, two other recent buildings on the zoning lot, 100 Barrow Street and 657 Greenwich Street, have received zoning approvals under the R6 height factor zoning regulations. While these regulations were modified recently, all buildings on the zoning lot must still comply with the R6 height factor requirements.

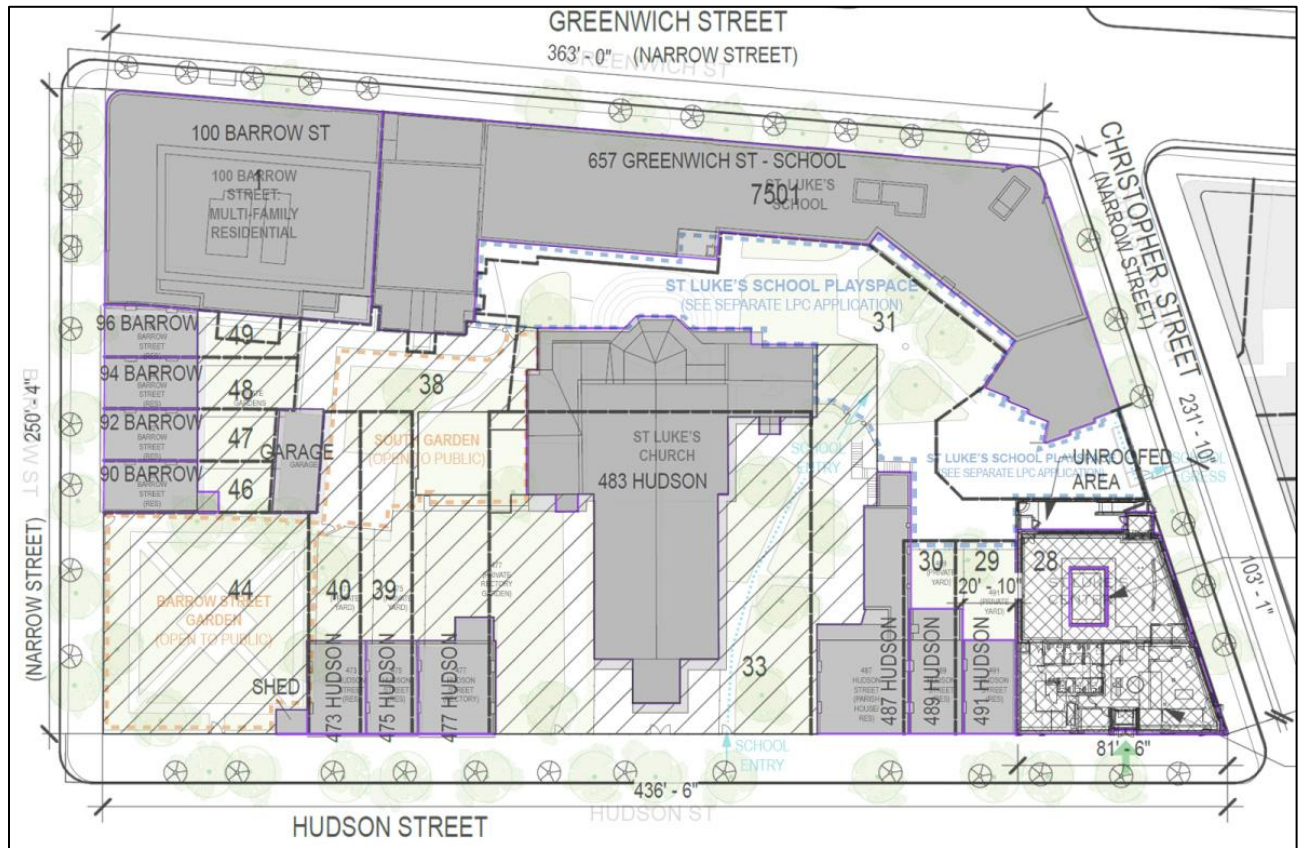
As is our practice, we have modeled the buildings on the zoning lot:



3D model of proposed building (in red) shown with all the other buildings on the zoning lot.

Residential open space

The plans for 497 Hudson show the same residential open space that is shown in the plans for 100 Barrow Street. That plan is replicated and enhanced as follows. The hatched areas are claimed as residential open space.



Plan for 497 Hudson with claimed residential open space shown in hatch.

Open space is a defined term in the Zoning Resolution, which reads in relevant part: ““Open space” is that part of a zoning lot, including courts or yards, which is open and unobstructed from its lowest level to the sky **and is accessible to and usable by all persons** occupying a dwelling unit or a rooming unit on the zoning lot.” (ZR 12-10 Open Space. Emphasis added.)

Much of the open space shown in the ZD1 for 497 Hudson would not meet the “plain language” interpretation of this definition, since it is not “accessible to and usable by all persons” in residence on the zoning lot. The drawing that the applicant created for the Landmarks Preservation Commission clearly marks certain parts of the open space as “Private Gardens,” “Private Yards,” and “Private Rectory Gardens.” Further, a portion of lot 31 is in St. Luke’s School playspace, access to which is restricted to students and employees of the school. Restricted access to claimed residential open space has been confirmed by those associated with the school and who are often on the block.

The following image shows claimed residential open space color-coded using the “plain language” definition of residential open space. Green areas meet the zoning definition of open space, while tan areas are private and not accessible to all residents of the zoning lot, and therefore could not be considered residential open space.



Plan for 497 Hudson with qualifying residential open space shown in green.

Open space claimed on each lot is shown in the table below. Fully 10,584 SF of the claimed residential open space, or about 37% does not meet the “plain language” definition of residential open space.

Lot	Open space claimed (sf)	Accessible Open Space (sf)	Private Open Space (sf)
38	4,347	3,208	1,139
44	6,706	6,706	0
31	2,569	1,914	655
33	8,929	4,282	4,647
39	1,777	938	840
40	1,603	840	762
46	501	0	501
47	609	0	609
48	765	0	765
49	416	0	416
1	249	0	249
TOTAL	28,472	17,888	10,584

Table showing residential open spaces claimed and qualifying on the zoning lot by lot.

While private open space is improperly claimed as open space, there is still 17,888 SF of residential open space on the lot. But that 17,888 is not remotely close enough to meet the requirements of this R6 district.

How much residential open space is necessary?

While the ZD1 for 497 Hudson Street shows the residential open space claimed on the lot, it does not show the height factor calculations. Height factor calculations were included in the ZD1 for another development on the zoning lot, 657 Greenwich Street, developed at the same time as 100 Barrow Street. The following pulls from both documents.¹

The zoning lot has 91,260 SF of residential floor area. The residential coverage is 14,670 SF, which creates a height factor of 6.22, which is rounded down to 6. According to ZR 23-732, the open space ratio for buildings with a height factor of 6 is 30%. Consequently, the amount of residential open space required on the lot is: $91,260 * 0.30$, which is 27,378 SF. This is 9,490 SF more than the 17,888 SF actually provided on the zoning lot.²

What about proportional allocation?

A recent judicial decision permitted the proportional allocation of open space on a large housing estate with homogenous residential buildings. While it is unclear if that would apply on a block with such different residential buildings, the block would still not have enough open space. Proportional allocation still requires the same total amount of open space, but it may be allocated among the residents of the lot. The residents of each building must have access to at least the amount of open space that would be required if the building were on a separate zoning lot.

Most residential buildings on the lot are small, high coverage buildings with private yards. Those small buildings have low height factors and open space ratios, but the open space in their private yards and gardens is high relative to their open space zoning requirements, and so these small buildings consume more open space than they need. As a result, 100 Barrow Street, which has a height factor of 8, and contains 80% of the residential floor area on the zoning lot, does not have enough open space for the residents of their lot.

100 Barrow has 72,909 SF of residential floor area. If we were to remove all the private yards and gardens used by buildings other than 100 Barrow Street and just calculate the required amount of open space for the 100 Barrow residents, the building has a height factor of 8 and a required open space ratio of 31. As a result,

¹ The amount of residential floor area in the 497 Hudson's ZD1 (91,260 SF) is about 3,546 SF less than the amount of residential floor area in 657 Greenwich Street's ZD1 (94,806 SF). While this difference is concerning, it is not material to the findings detailed herein.

the development would need 22,602 SF of open space. The zoning lot provides 17,888 SF. The zoning lot is short 4,879 SF of open space.

What does this have to do with 497 Hudson Street?

As a one-story community facility building less than 23 feet in height, 497 Hudson does not need any open space, and is not even counted as coverage in the zoning calculations. Its problem, however, is that it would go in an open space that could be used to relieve the zoning lot's open space non-compliance. At 6,062 SF, the land used for 497 Hudson Street would be enough to meet the requirements of a proportional allocation of the open space.³ It is my opinion that the Department cannot approve this plan while the zoning lot is in a state of obvious non-compliance and this parcel is key to the lot's zoning compliance.

Should you have any questions or would like to discuss, please feel free to contact me at george@georgejanes.com or 917-612-7478.

Sincerely,



George M. Janes, AICP
George M. Janes & Associates

Attachments: ZD1s for 497 Hudson, 657 Greenwich and 100 Barrow.

³ It would not, however, be enough to solve the zoning non-conformance using the "plain language" reading of the "open space" definition in the Zoning Resolution.