

Response Zoning Public Challenges (**ZCR-0000000150**)

Project Address: 497 Hudson Street, MN (Block 605, Lot 28, CD 2)

BIN # **1091882**, DOB NOW Job # **M01264489**

ZR Sections cited by Challenger: **ZR 12-10, ZR 23-732.**

Zoning Challenge to a new Zoning Diagram (ZD1) accepted on **02/06/2026.**

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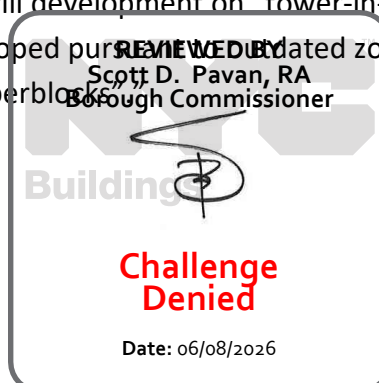
*This final determination confirms that, the New York City Department of Buildings (the "Department") has received and reviewed your zoning challenge, filed pursuant to 1 RCNY §101-15, the Department's rule regarding public challenges.*

The zoning lot consists of fourteen (14) tax lots (1, 29, 30, 31, 33, 38, 39, 40, 44, 46, 47, 48, 49, and 7501) with eighteen (18) buildings, the church and its accessory buildings, eight (8) townhouses, the Luke's School, 19-story residential mixed building and a new one-story community facility building. The zoning lot is located within R6 zoning district. The subject building (new tax lot 28) has been developed under the standard provisions following the applicable rules of the Zoning Resolution as of December 5, 2024.

The challenger states that:

- 1. The zoning lot has been developed using the height factor zoning regulations including two recent buildings on the zoning lot. While these regulations were modified with the City of Yes text amendments, all buildings on the zoning lot must comply with the height factor requirement.*

Response: A review of the application records indicates that the proposed one-story community facility building is not subject to the open space requirements of the previous height factor zoning lot. The existing residential building at 100 Barrow Street has a final certificate of occupancy and is not subject to the requirements of "sky exposure plane building" as defined in ZR 12-10 which applies only to post-City of Yes buildings. The COY text amendment to the Zoning Resolution (N 240290 ZRY) replaced the complex infill "mixing rules" and restrictive open space and height regulations with a simpler regime based on FAR, infill height limits, and lot coverage maximums that allows standard residential infill development on zoning lots with existing Height Factor buildings in non-contextual districts. The following is from page 5 of the City Planning report, "In medium- and high-density non-contextual districts, the Proposed Action would eliminate barriers to contextual, height-limited infill development on "tower-in-a-park" residential campuses and other zoning lots with existing buildings developed pursuant to updated zoning regulations originally intended for Urban Renewal projects on cleared "superblocks."



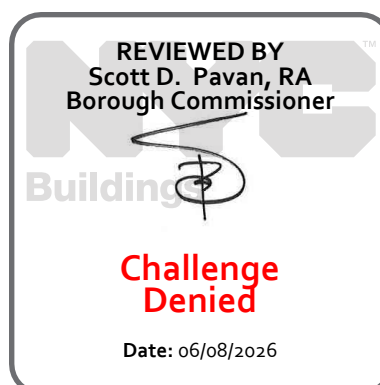
The bulk regulations of ZR 24-04 for the proposed community facility are required to comply with ZR 23-43 for standard residential bulk.

**This portion of the challenge is denied.**

- 2. According to the ZR 12-10 definition, 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. Much of the open space provided is private and not accessible to all residents of the zoning lot and therefore could not be considered residential open space. In that, the proposed community facility building is located in an open space that could be used to relieve the zoning lot's open space non-compliance.*

Response: A review of the application records indicates that the proposed text amendment to the Zoning Resolution (N 240290 ZRY) replaced the open space ratio, a formula that determines the amount of required open space on a Height Factor zoning lot, with yard regulations and lot coverage maximums to provide more opportunities for infill developments on zoning lots with significant amounts of underutilized open space. Existing height factor buildings are no longer subject to the previous open space requirements.

**This portion of the challenge is denied.**



## Challenge Request

### Challenger Information

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**Last Name:**

Weinstock

**First Name:**

Charles

**Middle Initial:****Affiliated Organization:**

West Village Citizens for Preservation

**Email:**

cweinstock@mac.com

**Contact Number:**

3237911500

### Description of Challenge

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**Indicate relevant Zoning Resolution section(s) below. Improper citation of the Zoning Resolution may affect the processing and review of this Challenge:**

ZR 12-10, ZR 23-732

**Describe the Challenge in detail below:**

The applicant church proposes to build an accessory mission building, but the zoning lot does not provide the open space required by ZR 23-732. For more detail, please see the attached letter and accompanying memorandum from planning consultant George M. Janes & Associates.

CHARLES WEINSTOCK

Attorney at Law  
300 West 109th Street  
New York, New York 10025  
(323) 791-1500  
cweinstock@mac.com

March 20, 2026

John Raine, R.A.  
Borough Commissioner  
Manhattan Office  
N.Y.C. Department of Buildings  
280 Broadway  
New York, NY 10007

**Zoning Challenge – 497 Hudson Street  
Manhattan Block 605, Lot 28 – Job No. M01264489**

Dear Commissioner:

I am an attorney for the West Village Citizens for Preservation, and submit this letter in opposition to the Department's issuance of a ZD1, posted on February 6, 2026, approving the plans of the Church of St. Luke in the Fields to construct a one-story community facility at the northeast corner of the block. Using even the Church's numbers, the zoning lot fails to provide the minimum open space required by ZR 23-732. Moreover, the land on which the Church plans to build is the only land on the zoning lot that could plausibly be converted to open space, thereby curing the violation. We request that the Department revoke zoning approval of the project, and the approval of any other permits it may have issued in connection with the application.

I have attached a zoning analysis of the project prepared by the planning and land use consultant George M. Janes & Associates, which supports the analysis here.

**Facts**

The proposed building is on the block bounded by Barrow Street to the south, Christopher Street to the north, Hudson Street to the east, and Greenwich Street to the west.

The block is a single zoning lot with eighteen buildings – the church and its accessory buildings; eight townhouses; the St. Luke's School; and 100 Barrow

Street, a 12-story, multi-family residential building. Mr. Janes’s report includes a 3D model of the block with the proposed building.

The block is in an R6 zoning district and was developed using the R6 height factor regulations in ZR 23-732.<sup>1</sup>

It is also in the Greenwich Village Historic District. On October 28, 2025, the Landmarks Preservation Commission approved the project, subject to a final certificate of appropriateness.

Only the townhouses and 100 Barrow have residential floor area.

### **The *Peyton* Decision and Residential Open Space**

The definition of “open space” in the Zoning Resolution could not be clearer: “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 (emphasis added).

Despite the clarity of this language, the Court of Appeals has held that the owner of one building in a multi-owner zoning lot is free to exclude persons residing in another building from the owner’s open space. *Peyton v. Board of Standards and Appeals*, 36 N.Y.3d 271 (2020). It can do so, the Court wrote, through a proportional allocation of the lot’s open space: “[T]he residents of each building on a multi-owner zoning lot [must] have access to at least the amount of open space that would be required if the building were on a separate zoning lot.” 36 N.Y.3d at 285.

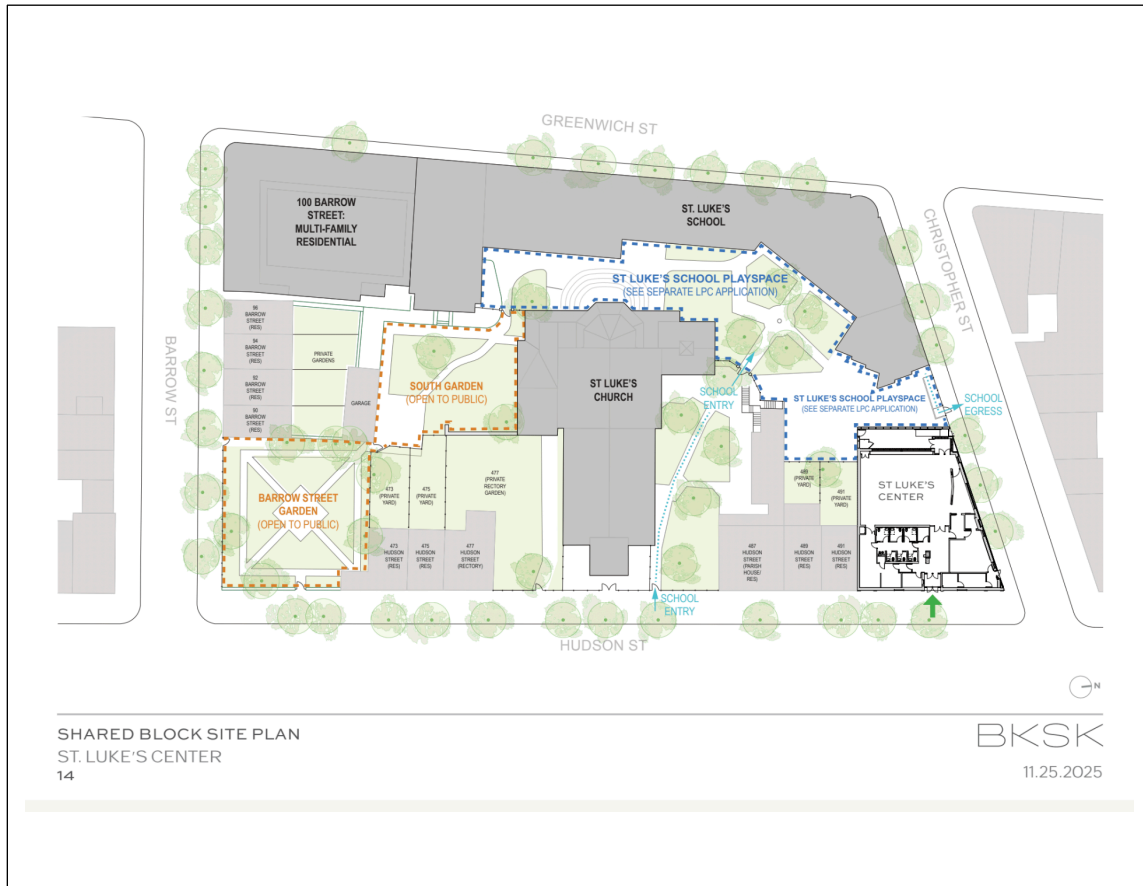
#### **1. Actual Open Space**

The ZD1 claims a total of 28,472 SF of open space on the lot. As Mr. Janes explains, though, 10,584 SF of that space does not qualify.

The site plan in the Church’s own Landmarks application acknowledges that nine of the included spaces are private, not open.

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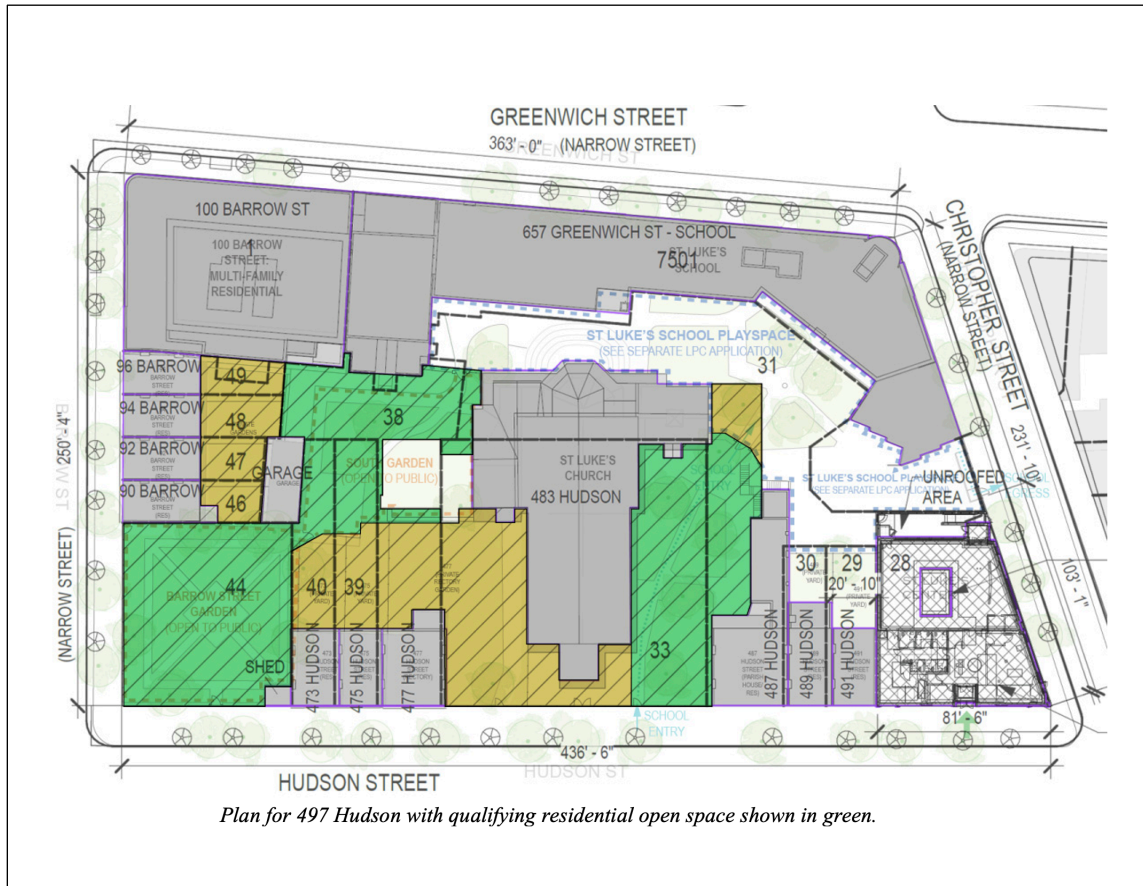
<sup>1</sup> Although the City of Yes amendments modified the R6 height factor regulations, the old regulations continue to apply here, as the Church’s ZD1 acknowledges.



The site plan denotes the area behind the four townhouses on Barrow Street as “Private Gardens” (Tax Lots 46 to 49), and the area behind the four townhouses on Hudson Street as “Private Yards” (Lots 29-30 and 39-40). Immediately north of the Hudson Street “Private Yards” is the “Private Rectory Garden” (Lots 33 and 38), and connecting to it, the entrance to the Church (Lot 33), which is locked except during services.<sup>2</sup> Finally, although the area in front of the School is denoted as “St. Luke’s School Playspace” (Lot 31), the ZD1 claims a portion of that playspace as open space.

Mr. Janes has colored the ZD1 site plan to distinguish the above private spaces (in yellow) from the spaces that do, in fact, qualify as open (in green):

<sup>2</sup> The designation of the Hudson Street “Private Yards” and “Private Rectory Garden” also violates the Church’s 2015 Zoning Lot Development Agreement, which states that, except for space on the Barrow townhouse parcels and the 100 Barrow parcel, all claimed open space must be accessible to the public. See Corrected Declaration of Zoning Lot Development and Easement Restrictions (“ZLDA”), dated Feb. 25, 2015, recorded Apr. 30, 2015, ¶ 2(l)(3) (CRFN 2015000144993).



The total area of the private spaces (yellow) is 10,584 SF. When that amount is subtracted from the 28,472 SF that the ZD1 claims as open space, the number drops to 17,888 SF.<sup>3</sup>

<sup>3</sup> Moreover, the Church frequently padlocks the two large spaces – the “Barrow Street Garden” and the “South Garden” (Lots 38 and 44) – that we *have* counted as qualifying open space. The locks exclude not only lot residents but the general public as well, although signs posted in front of the gardens expressly invite them. In addition to violating the Zoning Resolution, the locks violate the ZLDA, which enumerates only the following justifications for closing the gardens to lot residents and the public: to “mitigate hazardous conditions or emergency conditions”; “to abate any public nuisances or violations of public safety”; “to prevent a public dedication of the space”; “for the conduct private events”; and to maintain or repair the open space itself, the buildings, and the pipes and utilities below them. See ZLDA, ¶ 2(1)(4). There is no such justification here, nor any comparable one. When these gardens – a total of 9,914 SF – are also deducted, the actual qualifying open space on the lot drops from 17,888 SF to 7,974 SF. That is a far cry from the required 27,378 SF.

## 2. Proportional Allocation

According to *Peyton*, 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. Applying that rule here, the plan falls short of providing the necessary space for the largest residential building on the site, 100 Barrow.

The building has 72,909 SF of residential floor area, fully 80 percent of the lot's 91,260 SF of residential floor area. Treated as a separate zoning lot, it would have a height factor of eight and an open space ratio of 31. Multiplying the residential floor area for the building (72,909 SF) times the open space ratio (.31), as ZR 23-732 requires, the minimum open space for 100 Barrow residents would be 22,602 SF.

But the total open space on the entire zoning lot is only 17,888 SF. Even if 100 Barrow claimed all of that space, it would still be 4,879 SF short of what is required. Plain and simple, the lot is illegal.

\* \* \*

We are not aware of any post-*Peyton* New York case that has interpreted the proportional allocation rule, but it is fair to ask whether the *Peyton* court really intended to apply the rule across the board – to any multi-owner lot – or only to lots like the one there, where the size of the residential buildings was roughly the same, and therefore none of the residents on the lot would be excluded from too large a percentage of the open space.

The facts here are different, where the residential buildings vary wildly in size. To apply *Peyton* in a case like this would be to obliterate the access of residents in small buildings on multi-owner lots to the bulk of the open space on the lot. We would encourage the Department to honor the language of ZR 12-10: All open space must be “accessible to and usable by all persons occupying a dwelling unit or a rooming unit on the zoning lot.”

The ZD1 claims a total of 91,260 SF of residential floor area on the lot, and a total of 14,670 SF of residential coverage. Based on the table in ZR 23-732, this creates a height factor of 6.22 and an open space ratio of 30 percent. Using these numbers, the amount of required open space is 27,378 SF (91,260 SF x .30).

As we have explained, the actual qualifying open space on the lot is only 17,888 SF. Therefore, if we follow the plain meaning of the statute, there is a shortfall of 9,490 SF, roughly double the shortfall using the *Peyton* rule.

Whether or not one relies on *Peyton*, the result is the same: The lot fails to meet the open space requirement.

### **Open Space and the Proposed Building**

The zoning lot is illegal, period. Unless the Church either (1) creates more open space on the lot or (2) obtains a variance from the Board of Standards and Appeals under ZR 73-60, it cannot proceed with its plan.

Might the Church find more qualifying open space on the lot (without violating the terms of its leases to the townhouses, 100 Barrow, and the School)? Yes – by putting this project to rest and converting the area where it would have been built into accessible open space. That would give the Church another 6,062 SF, which more than makes up for the 4,879 SF shortfall under the *Peyton* rule.

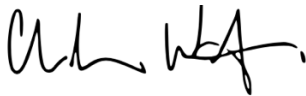
There is no other plausible way for the Church to claim the necessary additional open space. The effect of a decision by the Department to approve this ZD1 would be to ratify and preserve a manifestly illegal condition, one that the Church itself created when it leased the 100 Barrow site and enabled the development of a building with 72,909 SF of residential floor area.

### **Conclusion**

The Department should revoke its zoning approval of the project and any permits it may have issued on the basis of that approval.

Thank you for your consideration. If you have any questions, feel free to contact me at (323) 791-1500 or [cweinstock@mac.com](mailto:cweinstock@mac.com).

Sincerely,



Charles Weinstock

cc: Rev. Caroline Stacey, Church of St. Luke in the Fields  
Brad Hoylman-Sigal, Borough President  
Mark Diller, CB2 District Manager  
Valerie De La Rosa, Chair, Community Board 2  
Eugene Yoo, Chair, Community Board 2 Land Use Committee  
Chenault Spence, Chair, Community Board 2 Landmarks Committee  
Andrew Berman, Greenwich Village Society for Historic Preservation  
Mona Seghal, Esq., DOB General Counsel