



IN THE MATTER OF an application submitted by the NYC Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article III, Chapter 7 (Special Urban Design Regulations) and modifying the Special East Harlem Corridors District (Article XIII, Chapter 8), Borough of Manhattan, Community District 11.

An application for a zoning text amendment (N 190236 ZRM) was filed by the Department of City Planning (DCP) on December 10, 2018, in conjunction with a related action, as a follow-up to the East Harlem Neighborhood Rezoning.

The Special East Harlem Corridors (EHC) District and related rezoning actions were approved in 2017 (N 170359 ZRM, C170358 ZMM). The proposed text amendments are follow-up actions that respond to concerns related to the maximum allowable building heights along portions of Park Avenue and pedestrian circulation at the intersection of East 116th Street and Lexington Avenue.

RELATED ACTIONS

In addition to the proposed amendments to the Zoning Resolution (N 190236 ZRM), which is the subject of this report, implementation of the proposed action by the City Planning Commission is being considered concurrently with this application:

C 190235 ZMM zoning map amendment to change an existing R7B EHC to an R7B district.

BACKGROUND

The East Harlem Neighborhood Rezoning was a comprehensive, community-focused effort aimed at identifying land use and zoning opportunities for the creation of new mixed-income housing and the preservation of existing affordable units consistent with the goals of the Mayor's Housing New York: Five-Borough, Ten-year Plan, and responds to the land use and zoning recommendations included in the East Harlem Neighborhood Plan (EHNP).

This comprehensive effort resulted in the rezoning of approximately 92-blocks in the East Harlem neighborhood of Manhattan, Community District 11, generally bounded by East 104th Street to the south, East 132nd Street to the north, Park Avenue to the west, and Second Avenue to the east. The rezoning increased the affordable housing opportunities in the district by requiring all newly-constructed privately-owned residential buildings to include permanently affordable housing in upzoned areas, provide needed infrastructure, programs and services based on the East Harlem community input, and incentivize economic development and job creation at important transit nodes.

Following the City Planning Commission approval of the East Harlem Neighborhood Rezoning, the City Council approved the rezoning with modifications. However, to address the changes made at the Council level, the maximum allowable heights along portions of Park Avenue needed to be adjusted to match the districts that were finally mapped. These adjustments were memorialized, along with other commitments by various city agencies, in the East Harlem Points of Agreement (POA) document. The East Harlem POA outlined the zoning and non-zoning related commitments made by various agencies to address the comprehensive needs of the district. The document also provides transparency by allowing the public to track the implementation of each commitment. The requested actions would affect development along portions of Park Avenue, East 116th Street and Lexington Avenue and a portion of East 115th Street between Park and Lexington avenues.

Zoning Text Amendments

Park Avenue

The proposed zoning text amendments would establish and reduce the allowable maximum building heights in the C6-4, R8A, and R7D districts mapped along portions of Park Avenue as described below.

The C6-4 District along the western block-fronts of Park Avenue between East 122nd and East 124th streets, subject to this text amendment, was mapped as a tower district with no maximum permitted height. This segment of Park Avenue is mainly characterized by a number of parking lots and institutions, with a few residential uses. The sites that would be affected by the zoning text amendment are currently used as accessory parking lots to the buildings fronting on Madison Avenue. The proposed text amendment would establish a maximum permitted height of 275 feet. This proposed maximum height is consistent with the maximum permitted heights in the zoning districts mapped immediately south of this area in the R10 District and to the west, in the M1-6/R10 District.

In the southern portion of Park Avenue, within the R8A District, on the western block-fronts from midway between East 116th and East 117th streets to East 118th Street, and on the eastern block-fronts of Park Avenue between East 117th and East 118th streets, the maximum permitted height of 215 feet was put into scope and approved in 2017. The proposed text amendment would reduce the maximum permitted height as allowed under the underlying zoning district mapped. In R8A Districts, mapped within a Mandatory Inclusionary Housing Area (MIHA), there is a maximum base height of 105 feet and a maximum building height of 145 feet (or 14 stories) with a Qualifying Ground Floor.

In the southern portion of Park Avenue, within the R7D Districts, on the eastern block-fronts from midway between East 116th and East 117th streets and on both the eastern and western block-fronts from a line midway between East 115th Street and East 116th Street, the maximum permitted height of 215 feet was put into scope and approved in 2017. The proposed text amendment would reduce the maximum permitted height to 125 feet. The proposed height would allow for reasonable building envelopes adjacent to the Park Avenue Viaduct, where the minimum base height has been lowered to 40 feet. The R7D Districts mapped on other streets within MIHA have a minimum base height of 60 feet, a maximum base height of 95 feet and a maximum building height of 115 feet (or 11 stories) with a Qualifying Ground Floor.

Lexington Avenue and East 116th Street

Within the EHC District, at the intersection of Lexington Avenue and East 116th Street, the proposed text amendment would require any development or enlargement at this location to relocate a subway entrance or entrances from the street onto the zoning lot. Given the unique physical character of this intersection, as part of the East Harlem Neighborhood Rezoning, a different approach was taken compared to the rest of Lexington Avenue. While Lexington Avenue has the appearance of being narrow between the carriage and sidewalk right-of-way, the portion of Lexington Avenue where East 116th Street intersects is wide. This intersection also serves as a major transit node with the Lexington Avenue number 6 train and as a retail destination for community residents. As a result of these characteristics, this area was mapped with an R9 District that has a maximum Floor Area Ratio (FAR) of 8.5 for community facility and residential uses under the Inclusionary Housing program. Pursuant to the special bulk provisions of the EHC, a development would have contextual Quality Housing and Quality Housing tower bulk options. For the Quality Housing option, at this intersection the maximum base height would be 125 feet and the maximum building height would be 205 feet after the required setback above the base height. For the Quality Housing tower option, the maximum base height would be 85 feet and the maximum residential tower lot coverage would be between 40 and 50 percent depending on the size of the zoning lot. The maximum commercial and community facility tower lot coverage would be 50 percent. The proposed text amendment would require, pursuant to Section 37-40, any development or enlargement constructed on a zoning lot of 5,000 square feet or more of lot area that fronts on a portion of a sidewalk containing a stairway entrance or entrances into a subway station at this intersection, to relocate the subway entrance from the street onto the zoning lot.

Zoning Map Amendment

In addition to the proposed text amendments, there is also a zoning map amendment to remove the special district designation from an existing R7B District. The midblock fronting on the northern portion of East 115th Street between Park Avenue and Lexington Avenue was included

in the Special EHC District in error. The special bulk, ground-floor design and parking regulations were not intended for the medium density R7B districts mapped as a part of the preservation efforts of the East Harlem Neighborhood Rezoning. The proposed zoning map amendment would correct this error by removing this area from the special district and allowing development in this area pursuant to the underlying zoning.

The proposed actions are a part of the Administration’s commitment to ensure that the East Harlem Neighborhood Rezoning continues to meet the needs of the residents of East Harlem. The proposed actions would specifically address concerns related to the allowable maximum heights along portions of Park Avenue, appropriately adjust special district boundaries and provide opportunities to improve the pedestrian circulation at the intersection of East 116th Street and Lexington Avenue by potentially moving the subway entrance from the street into any new development’s building envelope.

ENVIRONMENTAL REVIEW

This application (N 190236 ZRM), in conjunction with the related action (C 190235 ZMM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 17DCP048M. The Lead Agency is the Department of City Planning.

A Technical Memorandum to the East Harlem Neighborhood Rezoning Final Environment Impact Statement (FEIS) reflecting the proposed actions discussed herein (TM 004) was issued on December 14, 2018. The Technical Memorandum concludes that the proposed actions would not have any new or different significant adverse impacts not already identified in the FEIS.

PUBLIC REVIEW

This application (N 170236 ZRM) was referred for information and review in accordance with the procedures for non-ULURP matters on December 17, 2018, in conjunction with the related action (C 190235 ZMM), which were certified as complete by the Department of City Planning, and duly referred to Community Board 11 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 11 held a public hearing on this application (N 190236 ZRM) on February 6, 2019 and on February 19, 2019, by a vote of 31 to 0 and with one abstention, adopted a resolution recommending approval.

Borough President Recommendation

This application (N 190236 ZRM) was considered by the Manhattan Borough President, who issued a recommendation approving the application on March 25, 2019.

City Planning Commission Public Hearing

On March 13, 2019 (Calendar No. 10), the City Planning Commission scheduled March 27, 2019, for a public hearing on this application (N 190236 ZRM) and related action. The hearing was duly held on March 27, 2019 (Calendar No. 34), in conjunction with the application for the related action.

During the public hearing, only one speaker testified on the proposed actions. The speaker was opposed to one of the proposed zoning text amendments; specifically, the text amendment related to the subway stairs relocation requirement. The speaker stated that he owned a site within the rezoning area and that this proposed text amendment would limit the development potential of his site because of the cost that would have to be incurred to provide subway access. He also stated that the text amendment would disincentatize the development of additional affordable housing because of the potential loss of groundfloor commercial floor area. In response to questioning, the speaker also acknowledged that he had not spoken to Metropolitan Transit

Authority (MTA) and does not have information about the proposed subway entrance footprint or buildout.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the proposed amendments to the Zoning Resolution, in conjunction with the related zoning map amendment action, are appropriate.

The proposed actions are in response to concerns voiced by elected officials and the public during and following the approval of the East Harlem Neighborhood Rezoning, which was approved by the Commission in 2017. These concerns regarding building heights along portions of Park Avenue and pedestrian circulation and subway access at East 116th Street and Lexington Avenue, along with other commitments made by various agencies, were memorialized in East Harlem POA. The East Harlem POA outlined the zoning and non-zoning related issues and concerns raised by the community and elected officials, and created a timeline of when those commitments would be addressed by the various agencies.

The Commission believes the proposed text amendments address the concerns related to the heights along portions of Park Avenue. The proposed text would establish a maximum building height of 275 feet in the C6-4 District mapped in the northern portion of Park Avenue between East 122nd and East 124th streets. The Commission finds this proposed height appropriate as it is consistent with the other maximum permitted building heights in the surrounding zoning districts immediately south of 125th Street and Park Avenue, and given its proximity to a high density commercial and transit node.

The Commission also believes that reducing the maximum building heights in the R8A and R7D districts in the lower portion of Park Avenue between East 115th and East 118th streets addresses the concerns raised by elected officials and the community following the approval of the East

Harlem Neighborhood Rezoning. The reduction in the maximum building height from 215 feet to 145 feet in the R8A District and to 125 feet in the R7D District is consistent with the required maximum allowable building heights permitted in these districts. The Commission believes that these changes to the allowable maximum building heights are appropriate given the surrounding area and the presence of the Park Avenue viaduct. These changes would also allow for more predicatable building envelopes along this portion of Park Avenue.

The Commission acknowledges the concerns raised by the property owner at East 116th Street and Lexington Avenue. While the proposed text is intended to create better sidewalk circulation, the Commission recognizes that the cost associated with providing a subway entrance, which is incurred by property owners, can potentially limit the type and scale of development. The Commission believes that, as a first step, the property owner should meet with the MTA, and asks the Department to help facilitate such a meeting. The Commission also recognizes the exceptional characteristics of this intersection. While East 116th Street is a wide street, the sidewalk right-of-way along Lexington Avenue is narrow. Further, this intersection serves as a major transit and retail node for the area. The community and elected officials believe that the East Harlem Neighborhood Rezoning would add to the additional pedestrian traffic at this location. As part of the public review process, community leaders and elected officials asked the Department to address these conditions through a subway relocation text amendment. The Commission believes that the unique character of this intersection, which is distinct from the rest of Lexington Avenue, warrants this approach and would create better pedestrian circulation along this constrained portion of Lexington Avenue. The Commission believes that discussions with the MTA will help the property owner to better understand how this requirement can be accommodated in any proposed development.

The related application for a zoning map amendment (C 190235 ZMM) is appropriate, and this action would correct an error that would make the zoning map consistent with the development patterns found in the surrounding area. The Commission recognizes that the R7B District was included in the Special EHC District in error. The special bulk, ground-floor design and parking regulations were not intended for the medium density district. The Commission acknowledges

that removal of this zoning district from the Special EHC District would allow unencumbered development in this district.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment, and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently modified, is further amended as follows:

- Matter underlined is new, to be added;
- Matter ~~struck-out~~ is to be deleted;
- Matter within # # is defined in Section 12-10;
- * * * indicates where unchanged text appears in the Zoning Resolution.

**ARTICLE III
COMMERCIAL DISTRICT REGULATIONS**

**Chapter 7
Special Urban Design Regulations**

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**37-40
OFF-STREET RELOCATION OR RENOVATION OF A SUBWAY STAIR**

Where a #development# or an #enlargement# is constructed on a #zoning lot# of 5,000 square feet or more of #lot area# that fronts on a portion of a sidewalk containing a stairway entrance or entrances into a subway station located within the #Special Midtown District# as listed in Section 81-46, the #Special Lower Manhattan District# as listed in Section 91-43, the #Special Downtown Brooklyn District# as listed in Section 101-43, the #Special Long Island City Mixed Use District# as described in Section 117-44, the #Special Union Square District# as listed in Section 118-50, the #Special East Harlem Corridors District# as described in Section 138-33, and those stations listed in the following table, the existing entrance or entrances shall be

relocated from the #street# onto the #zoning lot#. The new entrance or entrances* shall be provided in accordance with the provisions of this Section.

* * *

**ARTICLE XIII
SPECIAL PURPOSE DISTRICTS**

**Chapter 8
Special East Harlem Corridors District**

* * *

**138-20
SPECIAL BULK REGULATIONS**

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**138-21
Floor Area Regulations**

Within the #Special East Harlem Corridors District#, the underlying #floor area# regulations shall apply as modified in this Section, inclusive.

**138-211
Special floor area regulations**

- (a) In certain #Commercial Districts# and in #Manufacturing Districts# paired with a #Residence District#, as shown on Map 2 of the Appendix to this Chapter, for any #zoning lot# containing #residential floor area#, the maximum #residential floor area ratio# shall be modified as follows:
 - (1) for #zoning lots# complying with the applicable provisions of paragraph (d)(3) of Section 23-154 (Inclusionary Housing) or, for #affordable independent residences for seniors#, the maximum #residential floor area ratio# set forth on Map 2 shall apply;
 - (2) for #zoning lots# utilizing the provisions of paragraphs (d)(4)(i) or (d)(4)(iii) of Section 23-154, the maximum #residential floor area ratio# shall apply as modified in the table below:

Maximum #residential floor area ratio# shown on Map 2	Modified maximum #residential floor area ratio#
8.5	7.52
9.0	7.52
10.0	9.0

- (3) except in C2 Districts subject to the provisions of paragraph (b) of this Section, the maximum #floor area ratio# for any combination of #uses# shall be the maximum #floor area ratio# specified in paragraphs (a)(1) or (a)(2) of this Section, whichever is applicable; and
 - (4) in C4-6 Districts and in C2 Districts mapped within an R9 or R10 District, the #floor area# provisions of Sections 33-13 (Floor Area Bonus for a Public Plaza) or 33-14 (Floor Area Bonus for Arcades) shall not apply.
- (b) In C2 Districts mapped within an R7D District that is also located within 100 feet of Park Avenue, the maximum #community facility floor area ratio# shall be 6.5, except that the applicable provisions of paragraph (d) of Section 33-121 (In districts with bulk governed by Residence District bulk regulations) shall apply to #zoning lots# containing philanthropic or non-profit institutions with sleeping accommodations or #long-term care facilities#.
- (c) Any floor space occupied by a subway entrance provided pursuant to the provisions of Section 138-33 (Off-street Relocation or Renovation of a Subway Stair) shall not count as #floor area#.

* * *

**138-23
Height and Setback Regulations in Commercial Districts**

In #Commercial Districts#, the underlying height and setback provisions are modified as follows:

(a) Basic Height and Setback Regulations

In #Commercial Districts#, the maximum height of #buildings or other structures# shall be as set forth in Sections 35-652 (Maximum height of buildings and setback regulations) or 35-654 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors), as applicable, except that:

- (1) the minimum base heights shall be modified by the provisions of Section 138-22 (Street Wall Regulations);
 - (2) in C2 Districts mapped within an R9 District that is also located within 100 feet of Third Avenue, the maximum #building height# for #buildings# utilizing the provisions of Section 35-654 shall be modified to 215 feet and the maximum number of #stories# in permitted pursuant to such Section shall not apply be 21;
 - (3) in C4-6 Districts whose maximum #residential floor area ratio# is 9.0, as set forth on Map 2 of the Appendix to this Chapter, the applicable provisions of Sections 35-652 or 35-654 for R9 Districts shall apply, except that the minimum base height as set forth in Section 138-22 shall apply, ~~and~~ the maximum #building height# for #buildings# utilizing the provisions of Section 35-654 shall be modified to 215 feet and the maximum number of #stories# in permitted pursuant to Section 35-654 shall not apply be 21; and
 - (4) in a C2 District mapped within an R7D District that is also located within 100 feet of Park Avenue, the maximum #building height# for #buildings# utilizing the provisions of Section 35-654 shall be modified to 125 feet and the maximum number of stories permitted pursuant to such Section shall be 12; and
- (4)(5) where applicable, in lieu of the provisions of this paragraph, the provisions of paragraph (b) of this Section may be applied.

The regulations of paragraph (b)(2) of Section 35-652 relating to requirements for #qualifying ground floors#, where otherwise applicable, shall not apply. In lieu thereof, the provisions of Section 138-30 (STREETSCAPE REQUIREMENTS), inclusive, shall apply.

(b) Alternate Height and Setback Regulations in Certain Districts

In C2 Districts mapped within an R9 or R10 District, or in C4-6 or C6-4 Districts, ~~or in C2 Districts mapped within an R7D or R8A District that are also located within 100 feet of Park Avenue,~~ as an alternative to the provisions of paragraph (a) of this Section, the provisions of this paragraph may be applied to #zoning lots# meeting the applicable criteria set forth in paragraph (a) of Section 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors), or to #zoning lots# where 50 percent or more of the #floor area# is occupied by non-#residential uses#.

(1) Setbacks

At a height not lower than the minimum base height specified in Section 138-22 (Street Wall Regulations), nor higher than a maximum base height of 85 feet, a setback shall be provided in accordance with paragraph (c) of Section 23-662

(Maximum height of buildings and setback regulations). Above such required setback, any portion of such #building# shall be considered a “tower.”

(2) #Lot coverage# requirements for towers

Each #story# of a tower containing #residential floor area# shall not exceed a maximum #lot coverage# of 40 percent, except that, for #zoning lots# of less than 20,000 square feet, such #lot coverage# may be increased in accordance with the table in Section 23-65 (Tower Regulations). Each #story# of a tower containing exclusively non-#residential floor area# shall not exceed a maximum #lot coverage# of 50 percent. However, where dormers are provided within the required setback, such portions of #buildings# shall not count toward the maximum allowable tower #lot coverage# set forth in this paragraph.

(3) Maximum tower height

(i) The maximum tower height shall be set forth on Map 3 of the Appendix to this Chapter.

(ii) In C2 Districts mapped within R9 Districts that are also located within the #Special Transit Land Use District#, for #zoning lots# which include a transit easement in accordance with the applicable provisions of Article IX, Chapter 5 (Special Transit Land Use District), the maximum tower height shall be:

(a) 325 feet for #zoning lots# which include ancillary facilities with emergency egress and/or ventilation structures as specified in Section 95-032 (Determination of transit easement at other stations); and

(b) 215 feet for #zoning lots# which include only transit facilities specified in Section 95-032 other than ancillary facilities with emergency egress and/or ventilation structures.

~~(iii) In C6-4 Districts, no height limit shall apply to towers.~~

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**138-30
STREETSCAPE REQUIREMENTS**

The provisions of this Section, inclusive, shall apply to #developments# or #ground floor level enlargements# in all districts. In #Commercial Districts# mapped within R7D Districts, the underlying provisions of Section 32-434 (Ground floor use in C4-5D and C6-3D Districts and in certain C2 Districts) shall not apply. Any portion of a #ground floor level# that is within a transit

easement required pursuant to the provisions of Article IX, Chapter 5, or any portion of a #ground floor level# that contains a subway entrance required pursuant to the provisions of Section 138-33 (Off-street Relocation or Renovation of a Subway Stair), need not comply with the streetscape requirements of this Section, inclusive.

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**138-32
Special Streetscape Provisions for Blank Walls**

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**138-33
Off-street Relocation or Renovation of a Subway Stair**

Where a #development# or #enlargement# is constructed on a #zoning lot# of at least 5,000 square feet that fronts on a portion of sidewalk containing a stairway entrance or entrances into the 116th Street Station of the Lexington Avenue subway line, such #development# or #enlargement# shall be subject to the regulations of Section 37-40 (OFF-STREET RELOCATION OR RENOVATION OF A SUBWAY STAIR).

**138-40
OFF-STREET PARKING AND LOADING REGULATIONS**

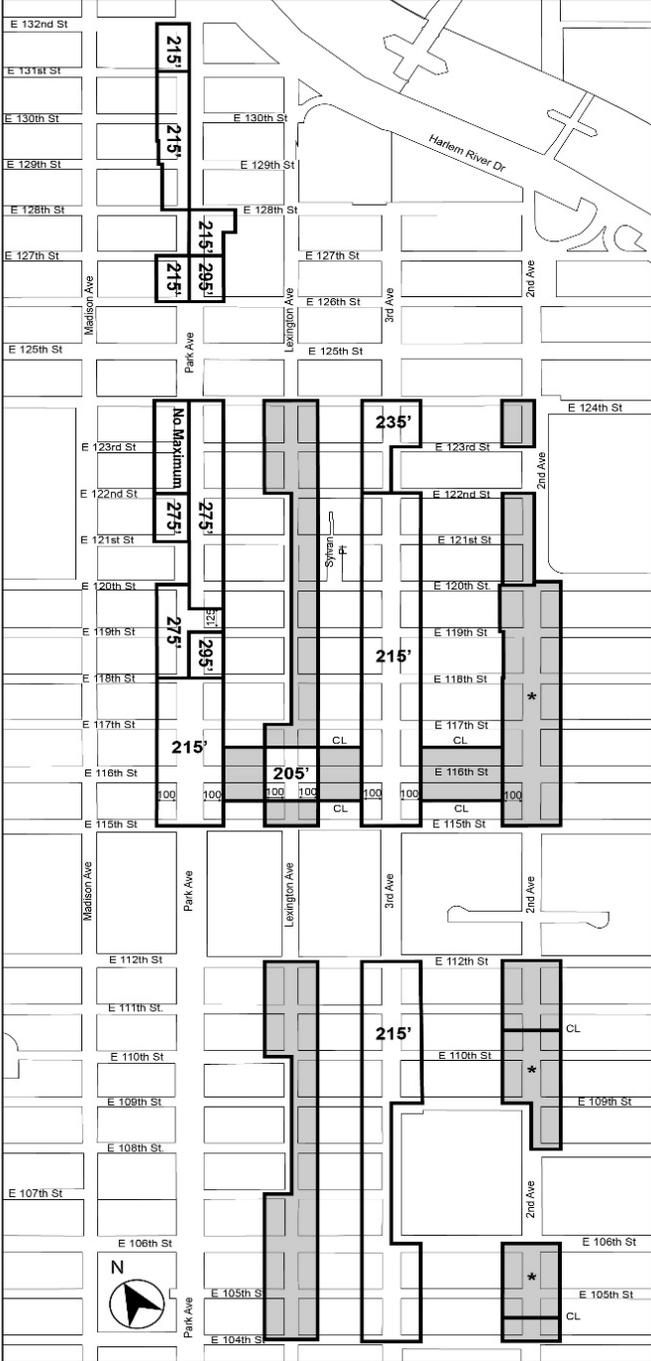
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**APPENDIX
Special East Harlem Corridors District Plan**

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Map 3: Maximum Height

[EXISTING MAP]



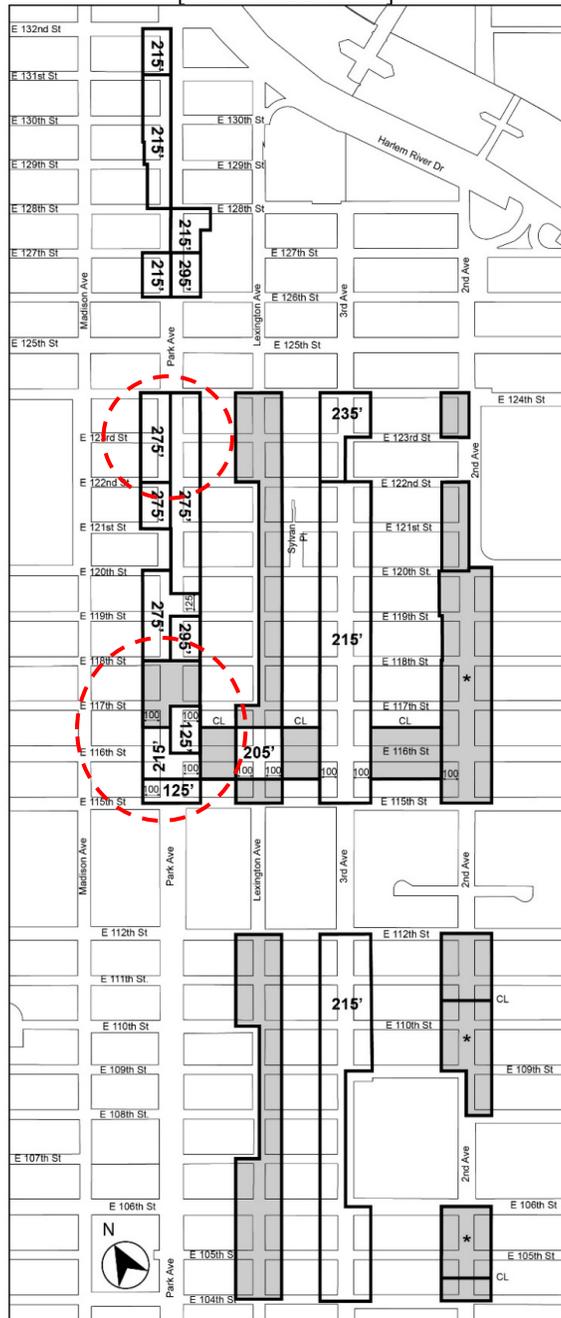
EAST HARLEM DISTRICT PLAN

MAP 3. MAXIMUM HEIGHT

* Subject to 138-23(b)(3)(ii)

Underlying Maximum Height Applies

[PROPOSED MAP]



EAST HARLEM DISTRICT PLAN

MAP 3. MAXIMUM HEIGHT

* Subject to 138-23(b)(3)(ii)

Underlying Maximum Height Applies

* * *

The above resolution (N 190236 ZRM), duly adopted by the City Planning Commission on April 24, 2019 (Calendar No. 13) is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, *Esq.*, *Vice-Chairman*

ALLEN P. CAPELLI, ESQ., ALFRED C. CERULLO, III,

MICHELLE de la UZ, JOSEPH I. DOUEK, HOPE KNIGHT,

ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ,

RAJ RAMPERSHAD, *Commissioners*