

Appeal #18041

Steuart Investment Company Combined Lot Development Analysis

April 6, 2010

BOARD OF ZONING ADJUSTMENT
District of Columbia

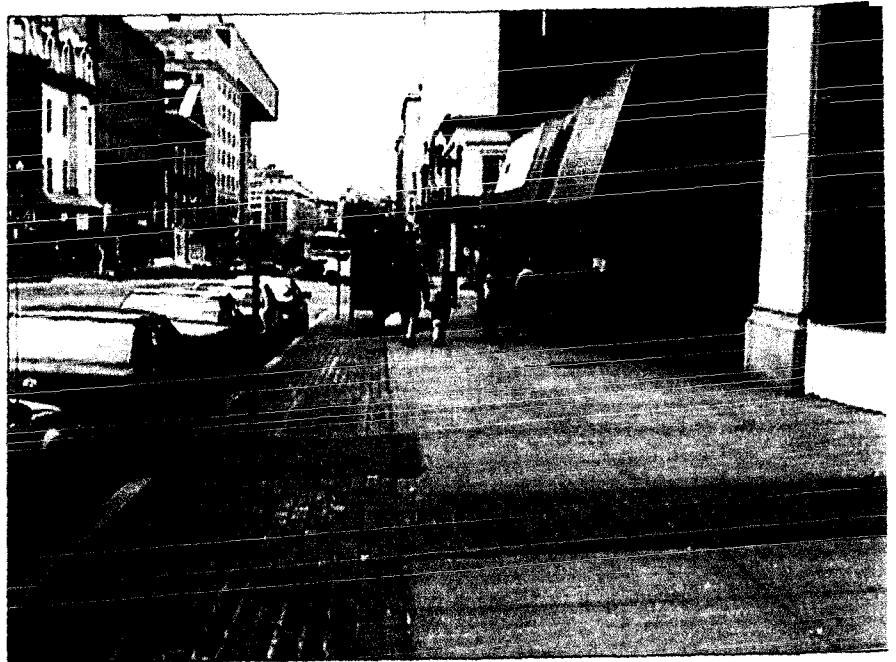
CASE NO. 18041

EXHIBIT NO. 21

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Background of DDD Overlay

- ◆ By late 1970's, the traditional Downtown, was in trouble
- ◆ Most new investment after 1968 had been in K Street area
- ◆ But development was moving east



Downtown Plan = Living Downtown

- ◆ 1982 - Downtown Plan articulates the need for a “Living Downtown”
 - Mixture of uses to achieve 24 hour city
 - Preserve distinct “neighborhoods”
 - Importance of housing
- ◆ Becomes part of first Comp Plan in 1984

DDD Overlay – created to implement Living Downtown



- ◆ ZC Case 89-25
- ◆ Adopted in 1991
- ◆ Covered the area in blue – 88 blocks
- ◆ Requirements for housing, arts, retail, preservation
- ◆ Design requirements

Most controversial – housing requirements

- ◆ Fierce resistance from development community to housing requirements
- ◆ Expert testimony that downtown housing would not work, negative land value
- ◆ Compromise – impose housing requirements on top of existing commercial entitlements – allow “swaps” between properties
- ◆ CLD agreements to be left to the private sector with maximum flexibility

How Combined Lot Works

Since each lot in Housing Priority Areas now had both commercial entitlements and housing requirements, CLD was invented to allow for horizontal integration

- ◆ Sites transfer housing requirement
- ◆ Assumed payment from commercial “sending” site to residential “receiving” site to have office subsidize housing
- ◆ Two lots to be considered as one; covenant required
- ◆ No C/O for office till C/O of paired housing issued

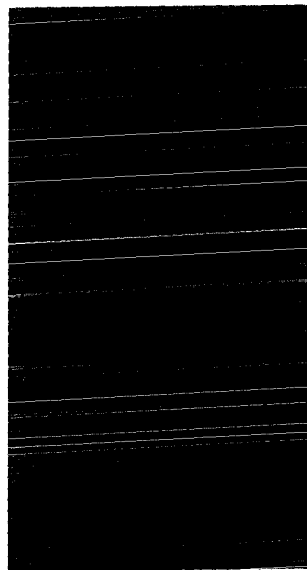
CLD Regs in DD 1708.1

Two (2) or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses as follows:

- (e) **The maximum permitted gross floor area for all uses, the minimum required gross floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum gross floor area requirements;**

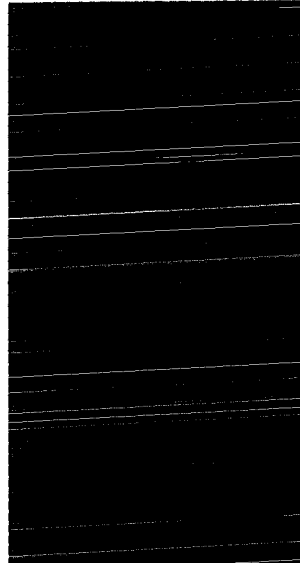
Combined Lot Density Concept Illustrated

The concept of combined lot development (CLD) is to allow the shifting of densities from one site to another, even if the resulting FAR values would exceed the minimums or maximums of the individual lots, because the lots are to be considered as one lot.



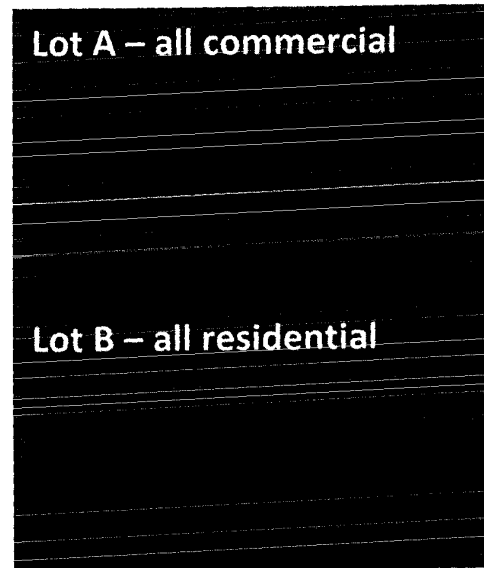
Lot A

+



Lot B

=



Combined Lot – satisfies requirements

CLD Regs – Sect.1708.1 (f)

no limit on individual lots

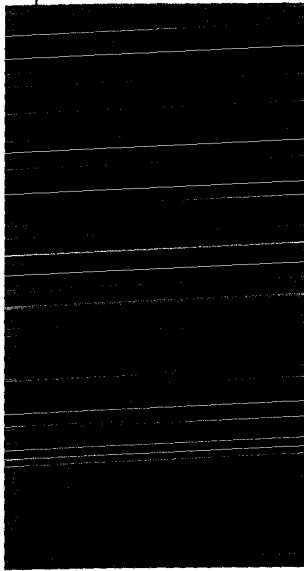
The required gross floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required gross floor area for preferred uses shall be incorporated into the building design and occupied.

1708.1 (k) (Order 681, Case 89-25)

The instrument of transfer [the covenant] shall increase the development rights under this zoning ordinance otherwise available to the receiving lot, to the extent of the rights transferred;

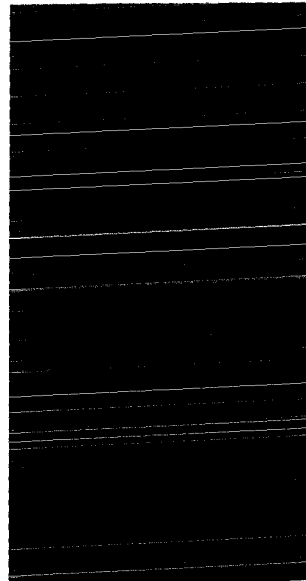
Combined Lot Density – correct interpretation

Under the correct interpretation of 1708.1, all the matter of right entitlements are used; one site is under the maximum FAR limits and one is over, but the total project conforms with the maximum and minimum requirements.



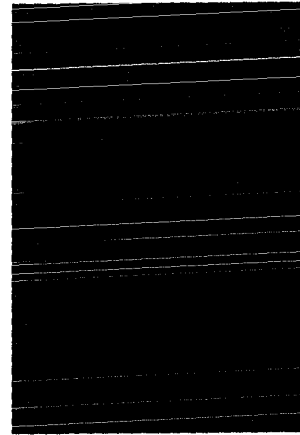
Lot A
100,000 sq.ft.
3.5 FAR commercial (max)
4.5 FAR residential (min)

+



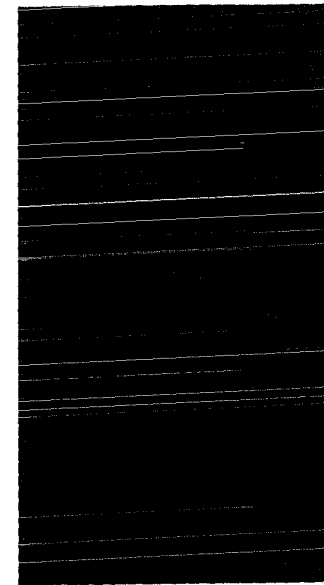
Lot B
100,000 sq.ft.
3.5 FAR commercial (max)
4.5 FAR residential (min)

=



Combined Lot – satisfies requirements
Across 200,000 sq.ft.

3.5 ~~7.0~~ FAR commercial
4.5 ~~9.0~~ FAR residential



Fast forward to 1999

- ◆ Market starting to pick up but no housing yet developed in DD
- ◆ Task Force identifies problem with C/O timing requirement, works on alternative mechanism
- ◆ Notes that housing has lower floor heights, could fit more units on each site if FAR cap were eliminated to create bonus units

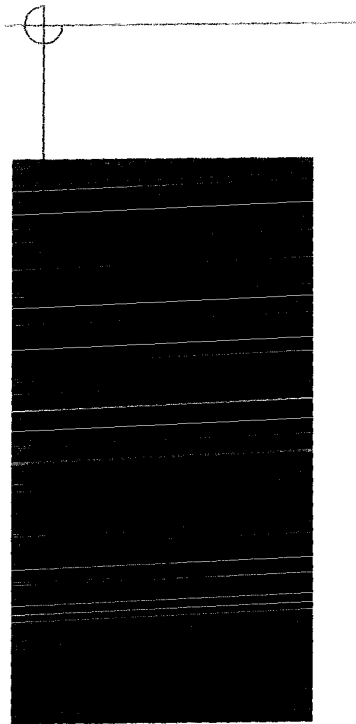
Zoning Case 00-30TA

- ◆ OP proposes escrow mechanism to make CLD compliance easier
- ◆ OP proposes lifting cap on maximum density for housing with limits:
 - Can't use "bonus" density to generate additional commercial in combined lot
 - Can't use resulting "bonus" density to generate TDRs

1706.7(b)(2)

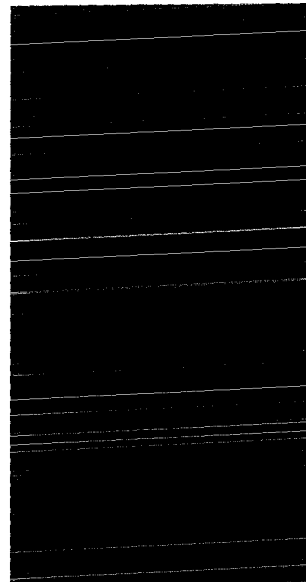
- ◆ Provides that the density limitations otherwise applicable for development in DD/C-2-C, C-3-C and C-4 areas, do not apply if the extra, or bonus, density above those limits is devoted to residential uses “provided that” the extra density is not used to reduce residential requirements or generate TDR’s. The chart about accepting residential density is irrelevant, because it was aimed at controlling the bonus density in 1706.7(b), which is not a factor here.

Combined Lot Density after 00-30TA



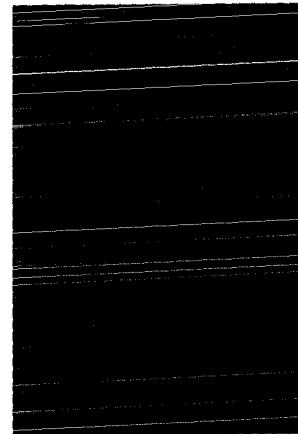
Lot A
 100,000 sq.ft. lot
 3.5 FAR commercial (max)
 4.5 FAR residential (min)
 800,000 sf total

+



Lot B
 100,000 sq.ft. lot
 3.5 FAR commercial (max)
 4.5 FAR residential (min)
 800,000 sf total

=



Combined Lot – satisfies requirements
 200,000 sq.ft. of lots
 7.0 FAR commercial
 9.0 FAR residential plus 1.1 FAR bonus
 residential. Total residential 1,120,000 sf

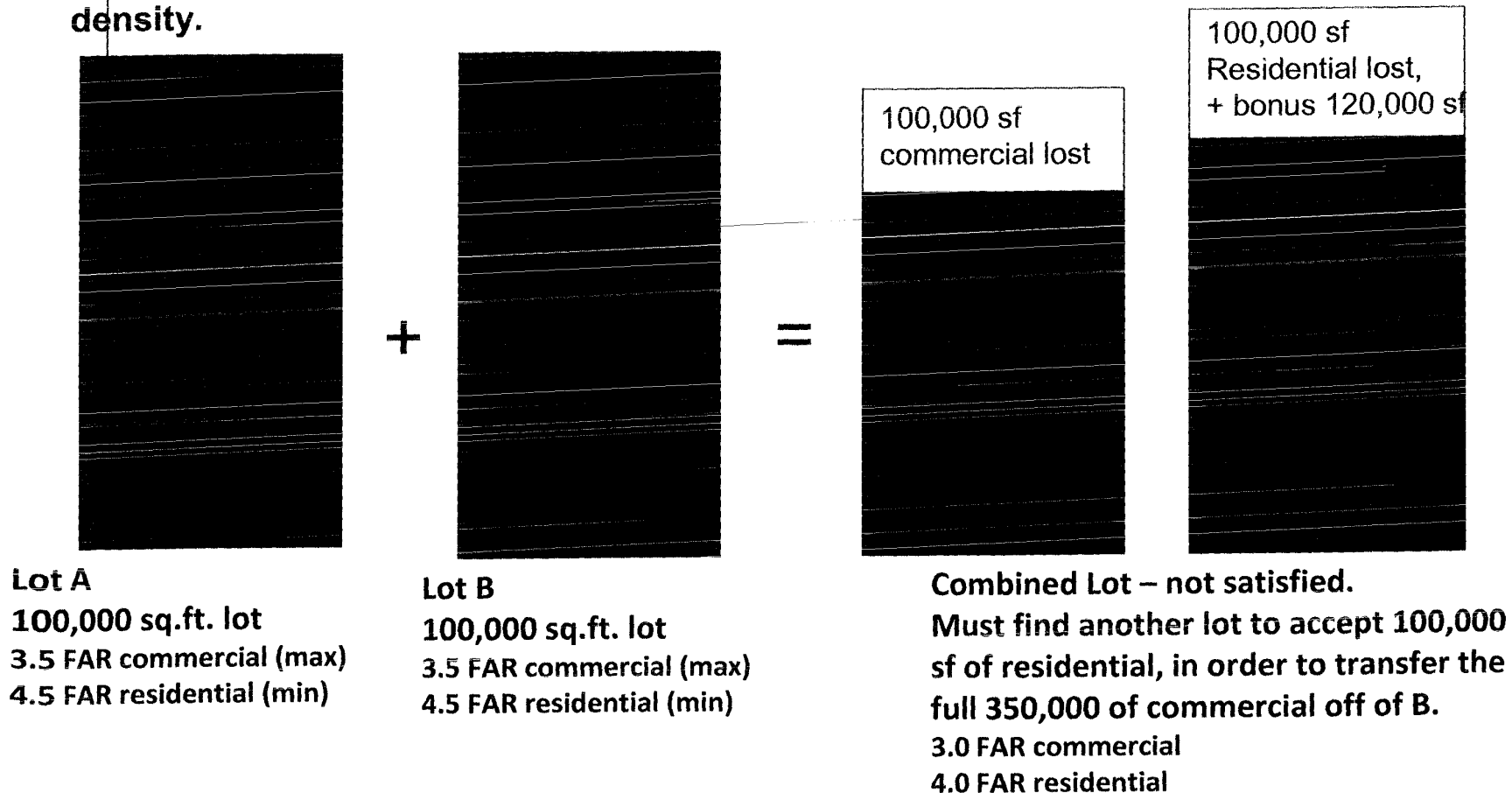
220,000 sf
 density bonus not
 eligible for CLD

Restrictions on Bonus Density

- ◆ Only applied to bonus generated by lifting FAR cap – “free” density
- ◆ Designed to assure bonus led to more housing units, not undue commercial

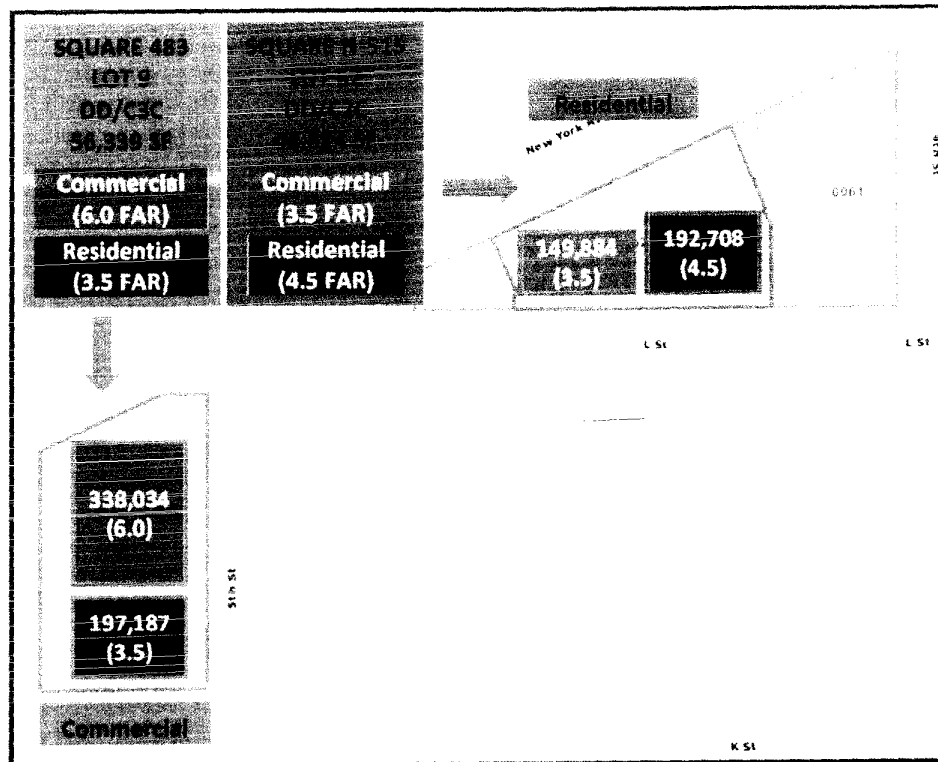
Combined Lot Density as Interpreted by ZA

Under the ZA's interpretation, even if one had identical size lots in the same C-2-C zone, since only 3.5 FAR can be accepted by the receiving lot, even though the properties have a total of 1.6 M sf as a matter of right (700,000 + 900,000), 200,000 sf of residential would be lost in MOR density, plus another 220,000 sf of bonus density.

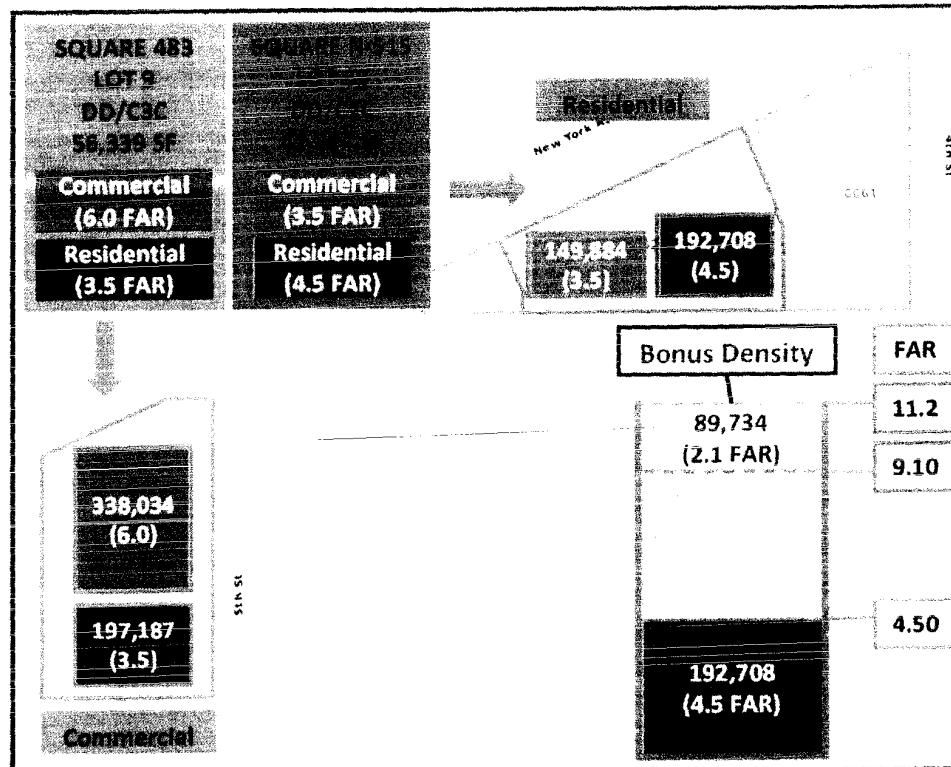


ZA Interpretation – defeats purpose of regulation change

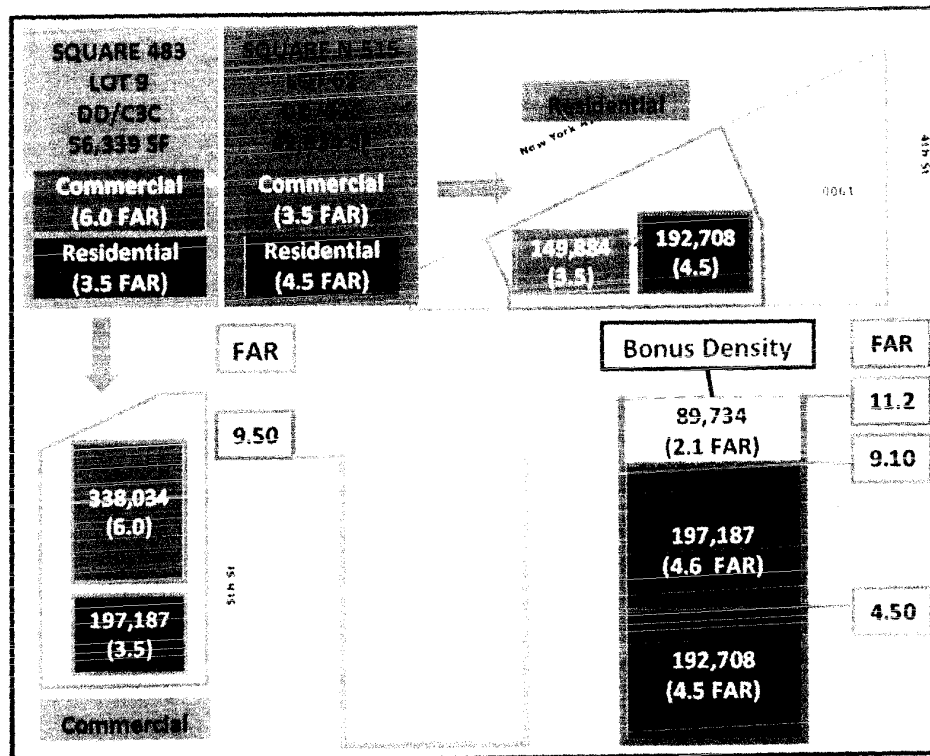
- ◆ Even with two identical lots with identical zoning, current ZA interpretation will result in loss of units
- ◆ Directly counter to intent of 00-30 increase in density for residential construction – to get MORE units



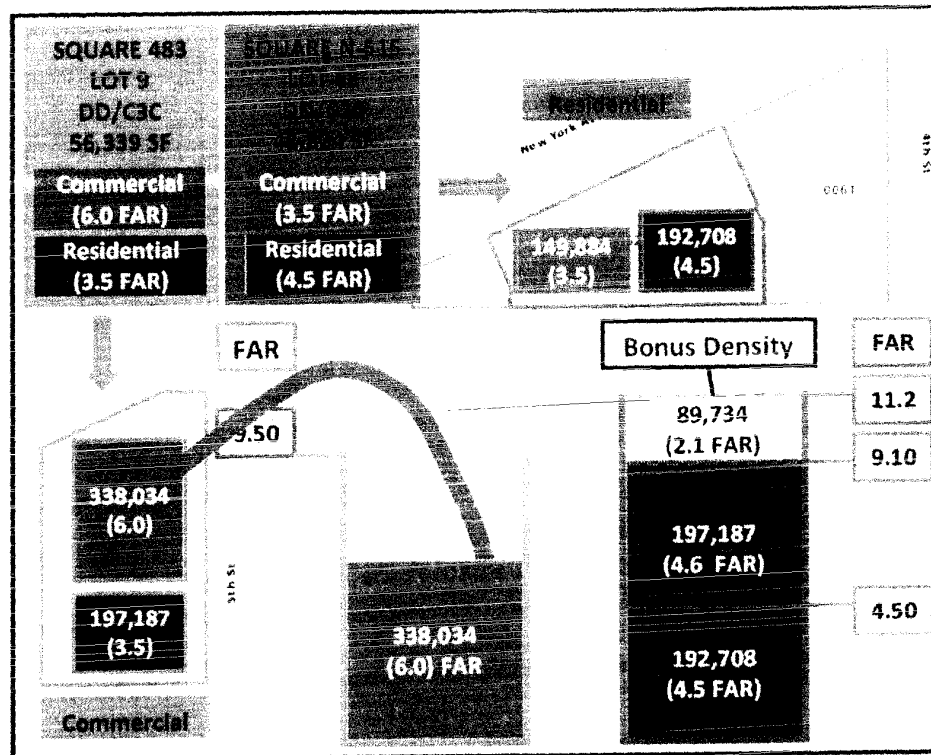
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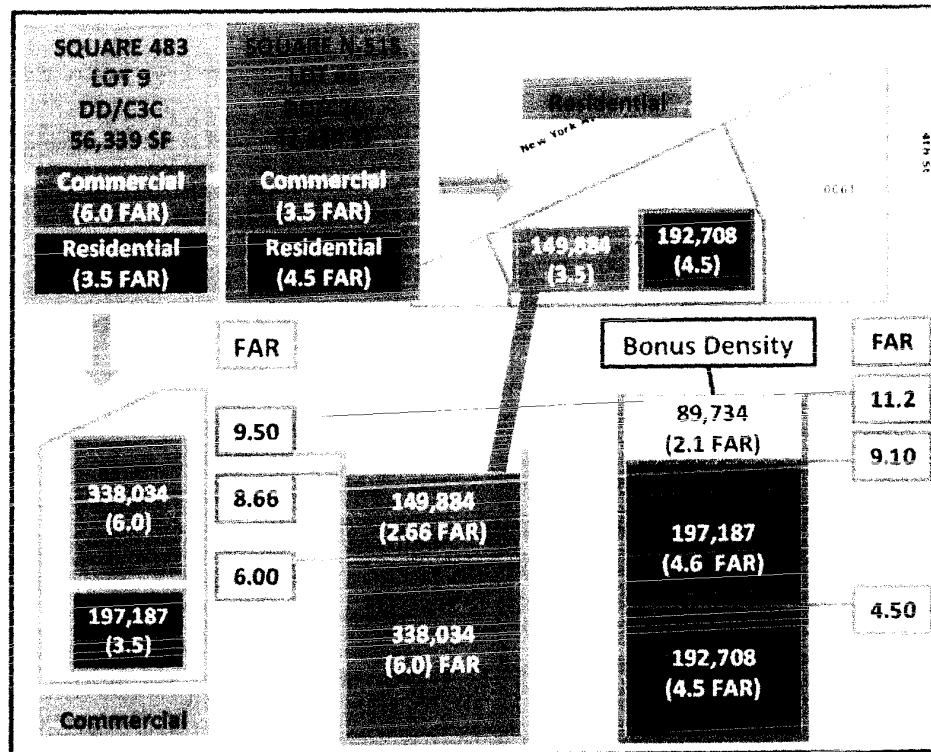
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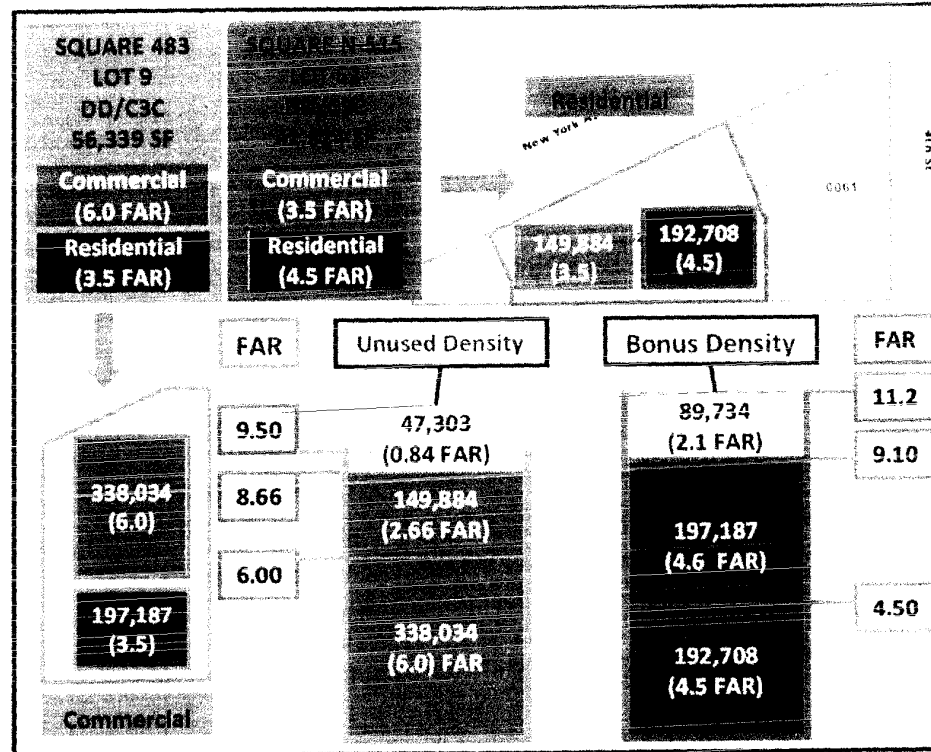
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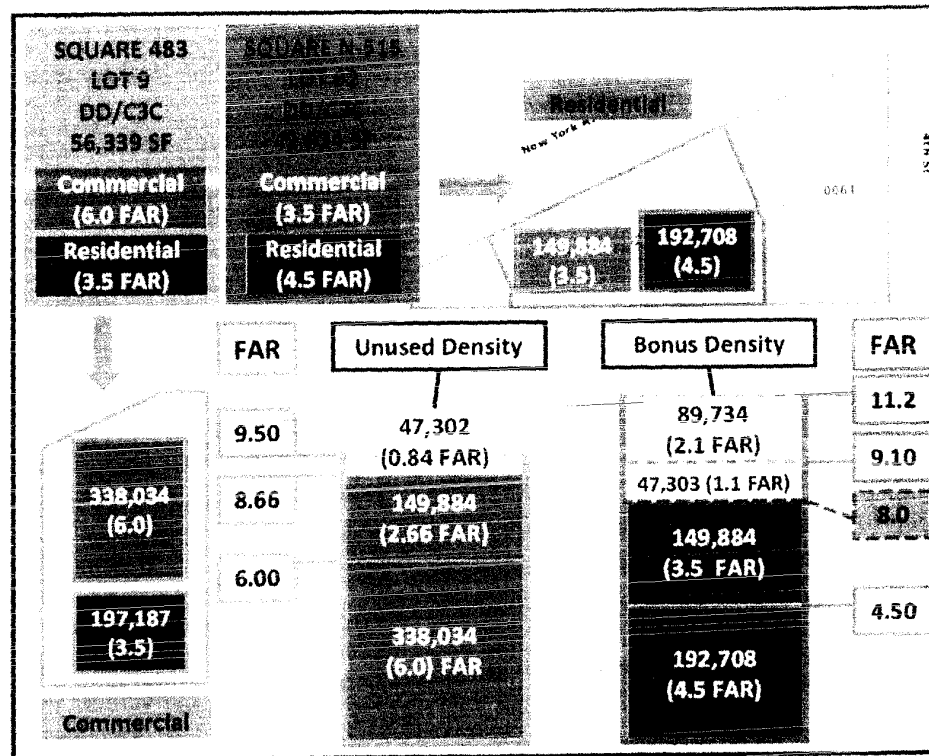
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Conclusion: ZA erred

- ◆ Combined lot was always intended to apply only to the sum of the two lots, and not to each individual lot:
 - Order 681- DD - “increase the development rights”
 - 1708.1(e) shows that ZC would have made restrictions on each lot if it so desired
 - ◆ “The required gross floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required gross floor area for preferred uses shall be incorporated into the building design and occupied; **provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;**”

Interpretation of 03-30TA flawed

- ◆ Restrictions in 1706.7(b)(2) clearly refer only to use of “bonus density” created by 1706.7(b)
- ◆ Restriction on bonus density designed only to prevent its being used to relieve a site of matter of right residential requirement;
- ◆ ZA interpretation contradicts purpose results in less housing production, not more

OAG Pre-Hearing Statement is Incorrect

- ◆ Says that ZC included (b)(2) “to ensure that FAR limits would not be exceeded by CLD” – No, it was to keep bonus from reducing housing units
- ◆ OP – “Since the goal of this zoning change is to encourage the development of additional housing downtown, the bonus residential FAR should not be permitted to relieve other commercial sites of their housing requirement through combined lot development. Residential FAR eligible for transfer should be limited to the amount of non-residential FAR permitted on the residential lot under the current regulations” – ie., only the amount of transfer permitted under the regs before 03-30 is allowed. Bonus density can not be used to increase the amount of commercial on another site, above what was permitted as a MOR. (p. 4)

OP Report cited supports Steuart

- ◆ OP – p. 10 “Finally, if the FAR bonus proposed were given credit in a combined lot development no net increase in housing units would be achieved. . . [The] ability to complete combined lot transfers should be limited to the original target DD density.”

OP Report cited supports Steuart

- ◆ Attachment 3, p. 3: “The increase in GFA ...may not be used to accomplish the transfer of residential use through a CLD, nor to meet the minimum residential requirement on the site.”
- ◆ “The maximum Combined Lot a residential site may accept is equal to the residential density achieved by the project minus the minimum housing requirement, but in no case greater than the FAR listed in the table below.”
- ◆ $1,120,000 - 900,000 = 220,000 \text{ sf} / 100,000 \text{ sf} = 2.2 \text{ FAR}$

The End