CITY OF NEW YORK



Jesse Bodine District Manager

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036 tel: 212-736-4536 fax: 212-947-9512 www.nyc.gov/mcb4

April 25, 2016

Hon. Margery Perlmutter Chair NYC Board of Standards & Appeals 250 Broadway, 29th Floor New York, NY 10007

> Re: 432-434 West 31st Street Proposed BSA Variance Block 728, Lots 50 and 55

Dear Chair Perlmutter:

Manhattan Community Board 4 (MCB4) is writing regarding the proposed BSA Variance submitted by the owner of 432-434 West 31st Street for the construction of a new hotel. After reviewing the plans for the proposed new building at that address, the Board has determined that the owner meets the requirements set forth in Section 72-21 of the Zoning Resolution, and as such **recommends the approval of the BSA application for a variance with conditions**.

Existing Site

432 West 31st Street (Block 728, lot 55) is a 4 story building and open storage lot located between Dyer and 9th Avenues. The building contains a ground floor commercial space and 3 dwelling units on the remaining floors. The owner has filed and received DOB approval for the demolition of this building. The open lot is used for the storage of non-motorized vehicles. 434 West 31st Street (Block 728, lot 50) is currently undeveloped land. Directly to the east of the site are a 16 story dormitory and one story garage which are owned by the Fashion Institute of Technology (FIT). The site is located in Subdistrict B of the Special Hudson Yards District and has a Floor-to-Area ratio (FAR) of 19.

As-of-Right Building

Under the current height and setback and lot coverage requirements set forth in the Zoning Resolution, the building that could be constructed as-of-right on the site would have a base

1

¹ See DOB Application No. 122665464, filed on March 14, 2016. http://a810-bisweb.nyc.gov/bisweb/JobsQueryByNumberServlet?requestid=6&passjobnumber=122665464&passdocnumber=0

height of 134 feet and 4 inches, or 13 stories, with its overall height reaching 471 feet and 2 inches, or 47 stories.²

The owner of the site filed for a Zoning Resolution Determination. That determination states, in part:³

"With respect to (1), the portion of Dyer Avenue, that bounds the subject site to the west, connects two mapped streets (West 30th and West 31st Streets) and based on evidence submitted, was established as a public way prior to 12/15/61 and therefore is a "street" as defined by ZR 12-10(D)"

Further, the same Zoning Resolution Determination states that the portion of the Lincoln Tunnel Approach leading to Dyer Avenue and West 30th Street are collectively considered a wide street. The building would therefore be set back 15 feet from the wide street, along West 30th Street and 20 feet back along both Dyer Avenue and West 31st Street at the narrow streets. The resulting floorplates would be the following:

- Floors 1 through 10 would be 4,252 square feet
- Floors 11 and 12, would be 4,252 and 1,859 square feet, respectively.
- Floors 13 through 42 would be 1,859 square feet.

Proposed Building with BSA Variance

The narrow lot, which is created by unique circumstances of the midblock Dyer Avenue Lincoln Tunnel Approach, allows a narrow building that would rise to 47 stories to use all of its FAR. This building would contain 199 hotel rooms. The owner has instead proposed the construction of a 27 story building with 220 hotel rooms. The proposed building would have no setback for its entire height and for the floors that contain hotel rooms (floors 3-22), the floorplate would be 4,252 square feet

The currently proposed design does not meet the following provisions set forth in the Zoning Resolution:

1. Base height and setback requirements defined in Section 93-42 (a) and (b)

Per Section 93-42, the maximum base height for the building would be 138 feet and 6 inches. The setback floors would have to be set back 15 feet along West 30th Street and 20 feet back along both Dyer Avenue and West 31st Street. However, the proposed design does not include any setbacks for any of its 27 stories.

2. Lot coverage requirements defined in Section 94-32(c)

The Owner has requested to have the lot coverage requirements waived. Because the building will be taller than 150 feet and contain only commercial uses, the Zoning

2

² For purposes of easy comparison, MCB4 is using a standard 10-foot floor height to describe the number of stories. Actual number of stories may differ.

³ Per Zoning Resolution Determination Dated November 14, 2012

Resolution requires that the building limit lot coverage for all floors above 150 feet to 70% of the overall lot area. However, under the proposed building design, all of the floors above this height would constitute about 84.2% of the lot area.

The as-of-right building would be a sliver building, whereas the one proposed by the owner has a high streetwall of 277 feet, which is much more comparable to the adjacent FIT building. Brookfield, a 70 story development located directly across the site, has a streetwall of 700 feet.

Waivers Requested by Owner

The proposed design of the hotel would require two waivers for applicable provisions of the New York City Zoning Resolution. MCB4 believes the owner meets the requirements to be considered for these waivers.

1. Base Height and Setback

The proposed building is required to be set back from its property line per Section 93-42 of the Zoning Resolution. However, among its unique circumstances are that the lot abuts three streets, and as such it must be set back from all of these. This requirement is a burden that few other buildings in the Special Hudson Yards District have to face and it presents, as will be demonstrated below, significant difficulties in making the proposed building financially feasible.

2. Lot Coverage

The site in question faces a series of limitations that would make the 70% or lower lot coverage requirement a hardship on the owner. The lot itself is inherently small, making all of the zoning-compliant floors above 150 feet so small that floors 14 through 38 would each contain 4 guest rooms, as opposed to the 11 guest rooms in floors 3 through 22 currently proposed by the owner. The building would have to rise to 47 stories to use all of its available floor area. This layout would result in more expensive construction with a lesser number of income-producing hotel rooms.

Findings to Support Waivers

Under Section 72-21 of the Zoning Resolution, an owner must meet the following five findings in order to be eligible for a variance:⁴

1. Unique Physical Conditions

It is important to note that the unique circumstances presented by the Zoning Resolution requirements are not due to the requirements themselves, but rather the fact that the lot faces a unique set of circumstances that make it difficult to adhere to the Zoning Resolution. Firstly, it is a small and narrow lot that abuts 3 streets and is nonetheless required to set back from all three streets. At 42 feet wide, it is the second narrowest lot in Subarea B2 of the Special Hudson Yards District. Lot 15R on Block 729 has a 25 foot width, but it is part of the two block Brookfield development site to the north. The setback portion of the building would be 22 feet wide and have a floorplate of about

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⁴ See Appendix A, Zoning Resolution 72-21

1,859 square feet. With a floorplate of that size, in order to use all of the floor area that is available to the site, the building would rise to 47 stories.

Additionally, because a large portion of the 1,859 square foot floor plate would be dedicated to fire stairs and elevators, only 4 hotel rooms would be created on each setback floor. The resulting guestroom total under the Zoning-compliant 47 story building would be 199. The Owner's proposed design presents a more efficient floorplan which results in 220 rooms contained within 27 stories.

2. Reasonable Return

MCB4 is not qualified to question the McQuilkin Report findings, however, it reports that the height difference presents a discrepancy in construction costs, with the 47 story building requiring \$6,318,000 in hard costs and \$1,052,000 in soft costs compared to the owner's proposed 27 story building.

In addition, MCB4 agrees that the additional air rights to be purchased from the Hudson Yards District Improvement Fund mitigates against costs to the site, be it a conforming alternative or the proposed building. The fact such a purchase is necessary to make the proposed building work, not to mention the conforming alternative, suggests to us that the findings in the McQuilkin Report that a conforming alternative is just not financially feasible given the uniqueness of the site is correct.

3. Essential Character of Neighborhood

The site is near the large-scale developments of Hudson Yards, which will include several hotels, as well as large commercial and residential buildings. Manhattan West, a large scale mixed use project that is currently in development across the street from the site, will contain no setbacks. Two buildings facing the site will rise to 700 feet. Additionally, the FIT dormitory located on the lot directly to the east of the proposed building is 175 feet tall and contains no setbacks. Therefore, the proposed building would not have a great impact on the pedestrian experience.

4. Self-Created Practical Difficulties

The unique circumstances are practical difficulties that are solely attributable to the unique site conditions under which the owner is attempting to develop the lots. The Owner in fact tried to ameliorate these circumstances by purchasing the adjacent lot in order to allow for a larger floorplate. However, the site is still limited by its small size and the fact that it faces three streets.

5. Minimum Variance Necessary

Given the fact that due to unique circumstances the proposed building is significantly smaller in height than a conforming alternative MCB4 believes the variance requested is the minimum necessary to afford relief.

Conditions of Approval

MCB4 recommends approval of the variance is based on the following conditions, all of which have been agreed to by the developer:⁵

- No curb cuts will be located along West 31st Street
- Developer will plant at least 2 street trees with 5 feet by 10 feet tree pits that include planted shrubs and perennials along West 31st Street in front of proposed development
- Developer agrees to work with MCB4 and the Port Authority to gain the Port Authority's permission to build a sidewalk in the roadway along the Dyer Ave and West 30th Street frontages. Pending agreement with the Port Authority, the developer will fund the construction of such a sidewalk.
- Developer will construct the building in accordance with façade elevations dated September 11th, 2015⁶
- Developer will execute license agreements for Support of Excavation (SOE) with adjacent landowners, FIT and the Port Authority.
- There will be no illuminated signage at the top of the building
- The owner will not apply for a liquor license or have amplified music in the southern outdoor terrace adjacent to the 25th floor.
- Developer will coordinate construction deliveries with its eastern neighbor, the Fashion Institute of Technology
- Owner will coordinate with FIT'S Office of Communications and External Relations regarding move-in and move-out days, which take place in August and May, respectively.
- Developer will coordinate with the construction manager of the Manhattan West Project.
- The Applicant will cooperate with MCB4 by forming a Construction Task Force to deal with construction effects (noise, hours of construction, sanitation pickup, rat baiting, etc.) to mitigate the impact of construction on the surrounding community, including the Fashion Institute of Technology (FIT) and nearby residential owners and tenants.

Additionally, MCB4 will support the lane closure in front of the property during construction and work with DOT to establish hotel loading and unloading zone after construction is complete.

Conclusion

Since 2004, MCB4 has put ongoing and serious effort into collaborating with the Department of City Planning in order to establish and maintain the Special Hudson Yards District. This Board holds neighborhood preservation as one of its highest priorities and has used zoning as a tool to ensure that new development in our district maintains the character of these west side neighborhoods. MCB4 does not usually support requests for a variance from zoning, especially in a special zoning district such as Hudson Yards. However, given the facts and conditions faced by 432-434 West 31st Street, the Board arrived at the conclusion that a variance is warranted to waive both base height and setback and lot coverage requirements. The proposed variance to

⁵ See Attachment B, Letter dated April 6, 2016

⁶ See Attachment C, Proposed Conditions Plans

waive both base height and setback and lot coverage actually creates a building that is more in character with both its existing and future surroundings.

MCB4 would like to thank you for the opportunity to respond to this proposed variance. We look forward to working with you to arrive at a solution that enables the development of the site.

Sincerely,

Delores Rubin MCB4 Chair Jean Daniel Noland, Chair Clinton Hell's Kitchen Land Use and Zoning Committee

cc: Hon. G. Brewer, Manhattan Borough President

C. Johnson, Councilmember

E. Hsu-Chen, Department of City Planning

C. Holme, Department of City Planning

M. Rebholz, Department of Buildings

M. Lipkis, Arisa Realty Co X LLC

72-21

Findings Required for Variances

When in the course of enforcement of this Resolution, any officer from whom an appeal may be taken under the provisions of Section 72-11 (General Provisions) has applied or interpreted a provision of this Resolution, and there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such provision, the Board of Standards and Appeals may, in accordance with the requirements set forth in this Section, vary or modify the provision so that the spirit of the law shall be observed, public safety secured, and substantial justice done.

Where it is alleged that there are practical difficulties or unnecessary hardship, the Board may grant a variance in the application of the provisions of this Resolution in the specific case, provided that as a condition to the grant of any such variance, the Board shall make each and every one of the following findings:

- (a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular #zoning lot#; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the #use# or #bulk# provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the #zoning lot# is located;
- (b) that because of such physical conditions there is no reasonable possibility that the #development# of the #zoning lot# in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such #zoning lot#; this finding shall not be required for the granting of a variance to a non-profit organization;

- (c) that the variance, if granted, will not alter the essential character of the neighborhood or district in which the #zoning lot# is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;
- (d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however where all other required findings are made, the purchase of a #zoning lot# subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and
- (e) that within the intent and purposes of this Resolution the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

It shall be a further requirement that the decision or determination of the Board shall set forth each required finding in each specific grant of a variance, and in each denial thereof which of the required findings have not been satisfied. In any such case, each finding shall be supported by substantial evidence or other data considered by the Board in reaching its decision, including the personal knowledge of or inspection by the members of the Board. Reports of other City agencies made as a result of inquiry by the Board shall not be considered hearsay, but may be considered by the Board as if the data therein contained were secured by personal inspection.

Arisa Realty Co., X LLC 265 Canal Street, Suite 222 New York, New York 10013

April 6, 2016

Delores Rubin, Chair Manhattan Community Board Four 330 West 42nd Street, 26th Floor New York, New York 10036

Re: 432 West 31st Street

Block 728, Lots 50 & 55 (the "Site")

BSA Cal. No 99-14-BZ

Dear Chair Rubin:

The undersigned, Mordechai Lipkis, hereby agrees, on behalf of Arisa Realty Co., X LLC (the "Owner"), to comply with the following stipulations if the Board of Standards and Appeals ("BSA") approves the subject variance application:

- 1. No curb cuts will be located along the Site's West 31st Street frontage.
- 2. If feasible, Owner will plant at least 2 street trees with 5 feet by 10 feet tree pits that include planted shrubs and perennials along West 31st Street in front of proposed development.
- 3. Owner agrees to work with Manhattan Community Board 4 and the Port Authority to gain the Port Authority's permission to build a sidewalk in the roadway along the Dyer Avenue and West 30th Street frontages. Pending agreement with the Port Authority, the developer will fund the construction of such a sidewalk.
- 4. Developer will construct the building in accordance with façade elevations dated September 11th, 2015, as may be modified in connection with the BSA's review and approval of the subject variance application.
- 5. Developer will seek to negotiate a reasonable license agreement for Support of Excavation (SOE) with the adjacent landowner, the Fashion Institute of Technology ("FIT").
- 6. There will be no illuminated signage at the top of the building.
- 7. Developer will regularly communicate with FIT concerning construction deliveries.

¹ See Attachment A, Proposed Conditions Plans

- 8. Owner will communicate with FIT'S Office of Communications and External Relations regarding move-in and move-out days.
- 9. Developer will regularly communicate with the construction manager of the Manhattan West Project.

ARISA REA

Signature:

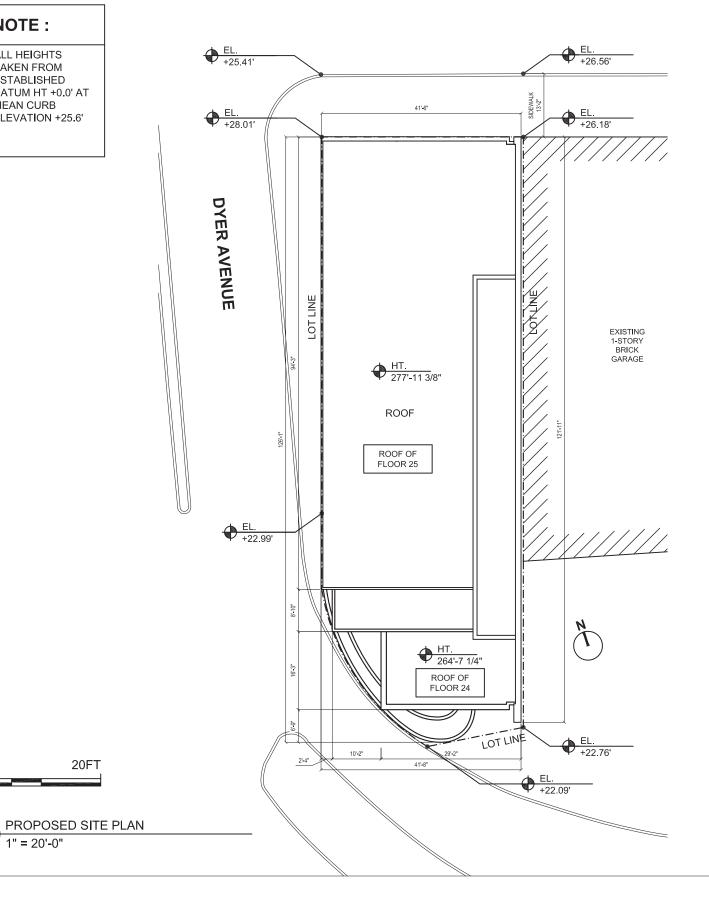
Mordechai Lipkis Title: Managing Member

ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'

20FT

1" = 20'-0"

WEST 31 ST STREET



CEN	IEDAI	ZONING	DATA
GEN	IERAL	LUNING	DAIA

BLOCK 728 LOTS 50 & 55 ZONING DISTRICT C6-4

ZONING MAP 8D

HUDSON YARDS (HY) SPECIAL DISTRICT

SUBDISTRICT CENTRAL BLOCKS: SUBAREA B2

COMMUNITY BOARD 4 (MANHATTAN) **USE GROUP** 5 (PROPOSED)

FIRE DISTRICT INSIDE FIRE DISTRICT

LOT SIZE LOT 50 = 1,277.2133 SF GROSS

LOT 55 = 3,771.29 SF GROSS

5,049 SF TOTAL LOT SIZE

PROPOSED ZONING DATA

	ZR SECTION	MAX. PER.	MIN. REQ.	PROPOSED	COMPLIES
FAR	93-22(a)	19		18.99	YES
FLOOR AREA	93-22(a)	95,923		95,906	YES
LOT COVERAGE (above 150')	93-22(c)	70%		87.4%	NO
WALL HEIGHT	92-42(a)	138'-6"		N/A	NO
TOTAL HEIGHT	N/A	N/A		277'-11 3/8"	YES
FLOOR COUNT				23 + 2 MECH.	YES
FRONT YARD	N/A		0	0	YES
SIDE YARD	33-25		0	0	YES
SIDE YARD	33-25		0	0	YES
REAR YARD	33-301		0	0	YES
SETBACK(S)	93-42 (b)		15'/20'	0	NO
SKY EXP. PLANE (SLOPE)	N/A	N/A		N/A	N/A

PROPOSED ZONING FLOOR SCHEDULE

FLOOR TYPICAL (ZSF) FLOOR COUNT TOTAL (ZSF)				
FLOOR	TTFICAL (251)	FLOOR COUNT	101AL (231)	
SUBCELLAR	0	1	0	
CELLAR	0	1	0	
1ST FLOOR	3,128	1	3,128	
2ND FLOOR (MECH.)	0	1	0	
3-22 FLOORS	4,252	20	85,040	
23 FLOOR (MECH.)	0	1	0	
24TH FLOOR	4,666	1	4,666	
25TH FLOOR	3,072	1	3,072	
TOTAL ZSF			95,906	
PERMITTED ZSF			95,923	
ABOVE/BELOW			(17)	



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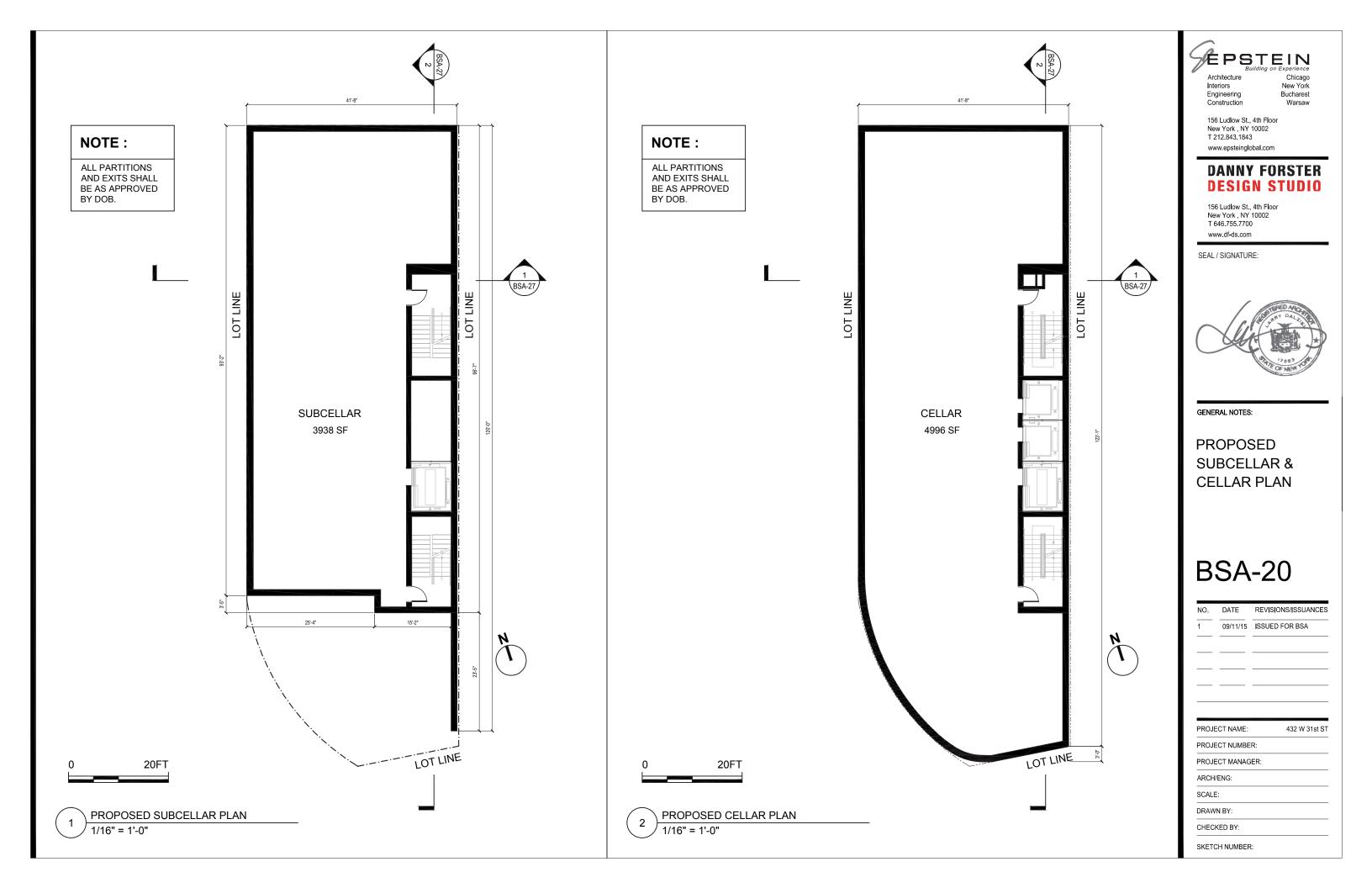


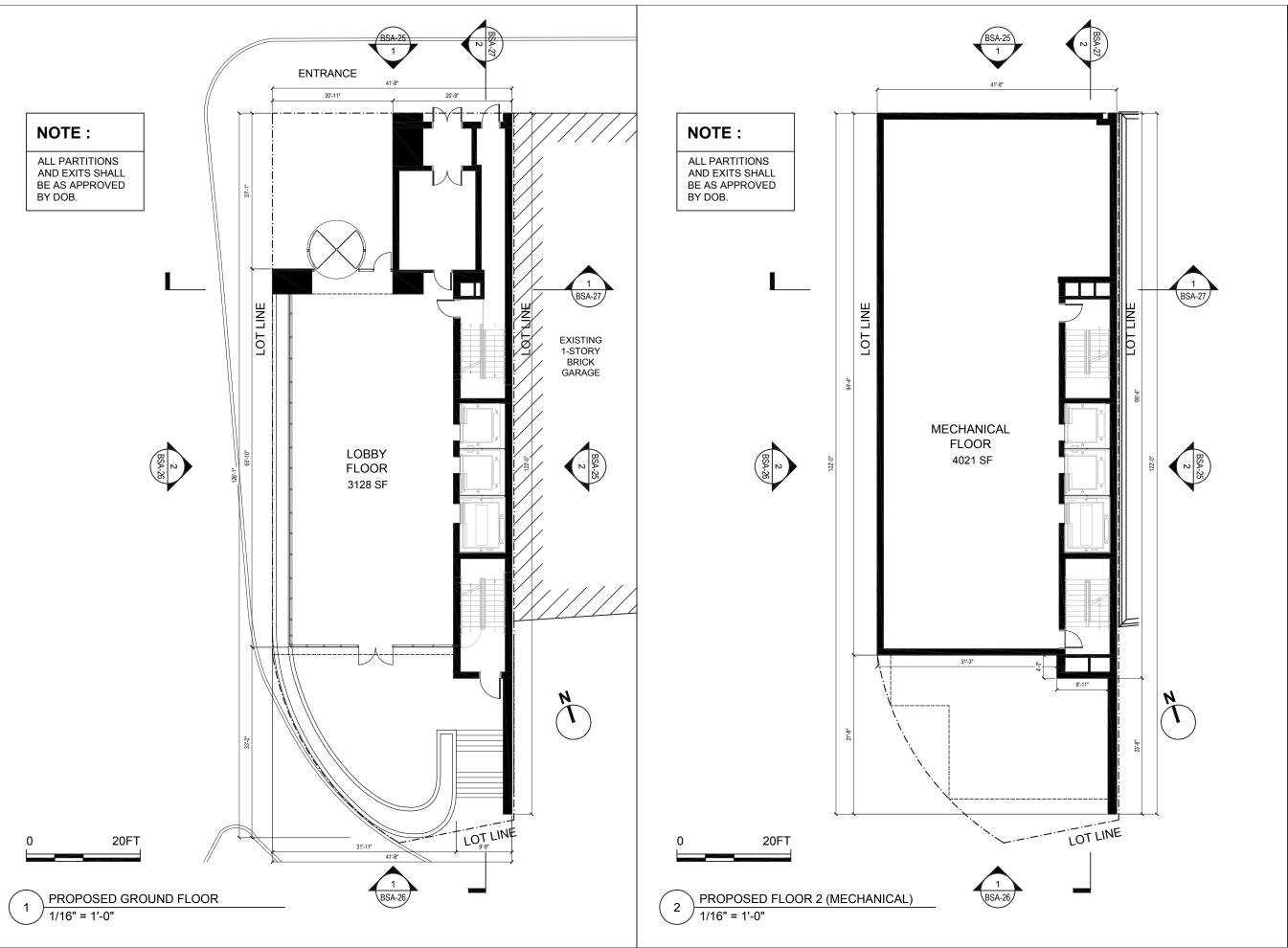
GENERAL NOTES:

PROPOSED SITE PLAN

BSA-19

1	09/11/15	ISSUED FOR BSA
—		
—		
—		
—		
PROJE	ECT NAME:	432 W 31st ST
PROJE	ECT NUMBE	R:
PROJE	ECT MANAG	ER:
ARCH	/ENG:	
SCALE	≣:	
DRAW	N BY:	
CHEC	KED BY:	
SKETO	₹:	







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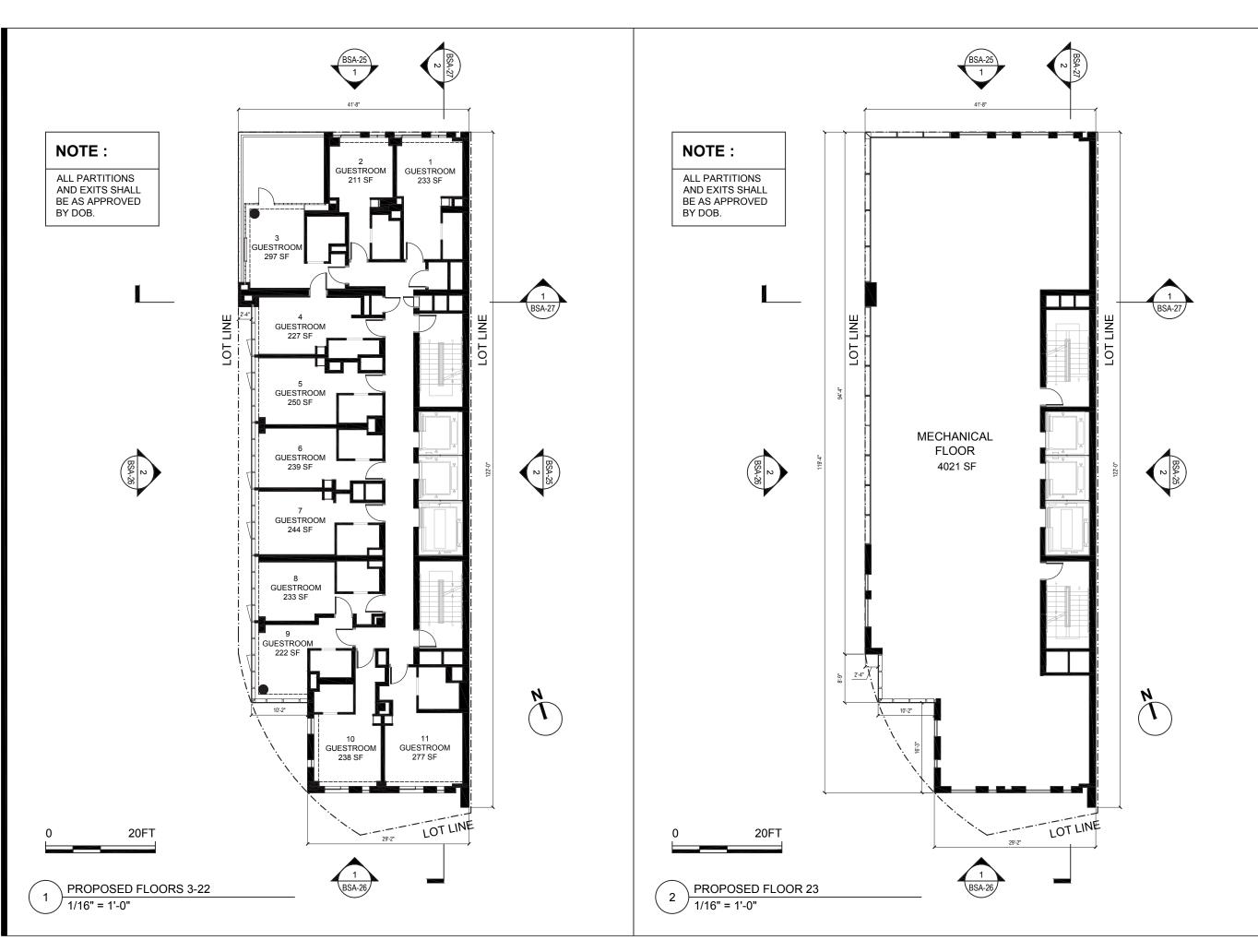


GENERAL NOTES:

PROPOSED
GROUND FLOOR &
FLOOR 2 (MECH.)

BSA-21

1	09/11/15	ISSUED FOR BSA	
—			
PROJE	CT NAME:	432 W 31st ST	
PROJE	CT NUMBE	R:	
PROJE	PROJECT MANAGER:		
ARCH/E	ENG:		
SCALE:			
DRAWN	I BY:		
CHECK	ED BY:		
SKETC	H NUMBER	:	





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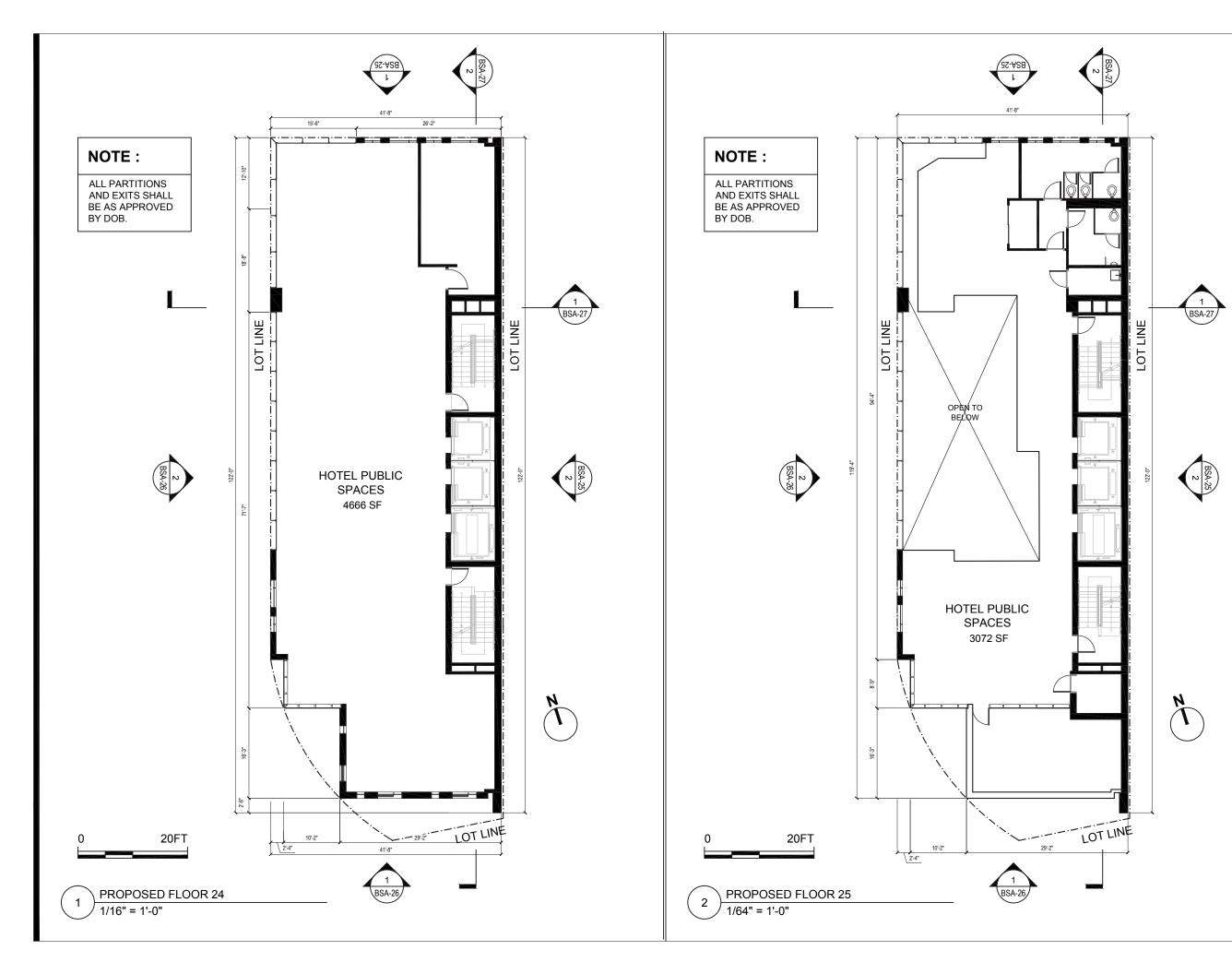


GENERAL NOTES:

PROPOSED FLOORS 3-22 & 23 (MECHANICAL)

BSA-22

1	09/11/15	ISSUED FOR BSA	4
—			
—			
PROJE	CT NAME:	432 W	31st S1
PROJE	CT NUMBE	R:	
PROJE	CT MANAG	ER:	
ARCH/	ENG:		
SCALE	:		
DRAWI	N BY:		
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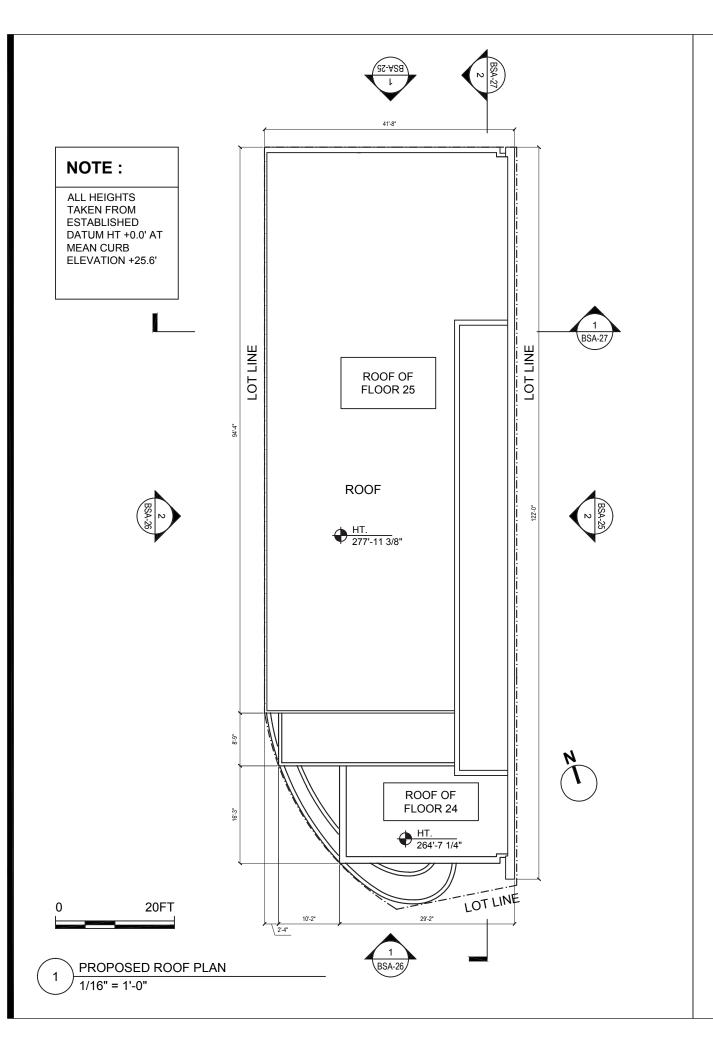


GENERAL NOTES:

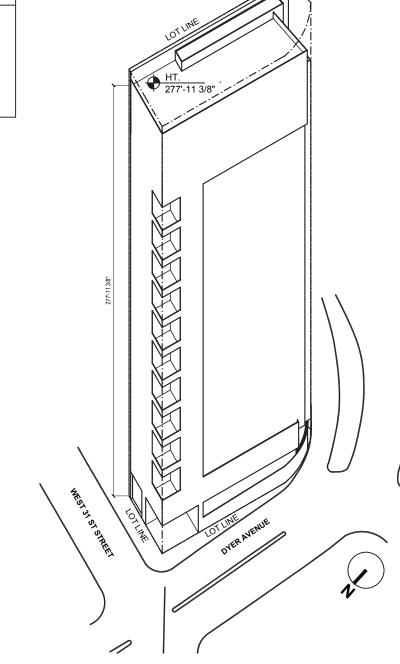
PROPOSED FLOOR 24 & 25

BSA-23

1	09/11/15	ISSUED FOR BSA			
—					
PROJE	CT NAME:	432 W 31st ST			
PROJE	PROJECT NUMBER:				
PROJE	PROJECT MANAGER:				
ARCH/	ARCH/ENG:				
SCALE	SCALE:				
DRAW	DRAWN BY:				
CHECK	CHECKED BY:				
SKETC	SKETCH NUMBER:				



ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'





PROPOSED ISOMETRIC

1/64" = 1'-0"



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GENERAL NOTES:

PROPOSED ROOF PLAN & BUILDING ENVELOPE

BSA-24

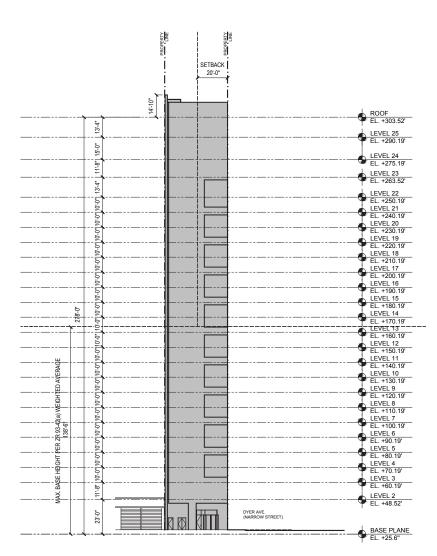
PROJECT NAME:	432 W 31st ST			
ROJECT NUMBER:				
ROJECT MANAGE	ER:			
RCH/ENG:				
CALE:				
RAWN BY:				
CHECKED BY:	<u> </u>			

SKETCH NUMBER:

DATE REVISIONS/ISSUANCES

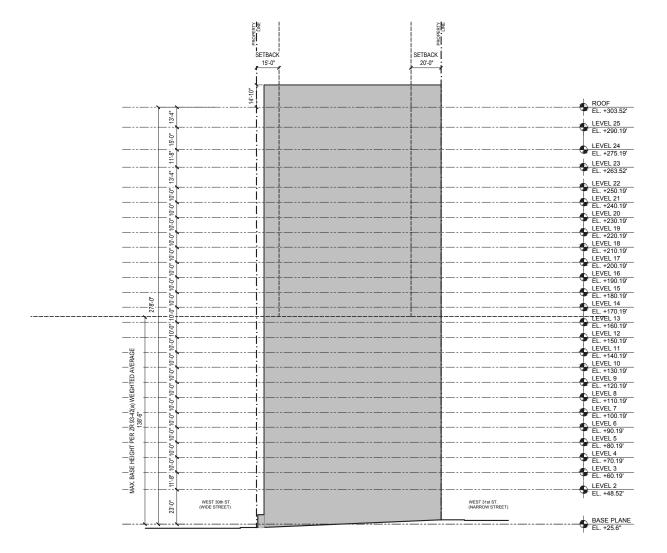
09/11/15 ISSUED FOR BSA

ALL HEIGHTS TAKEN FROM **ESTABLISHED** DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'



NOTE:

ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'



1/64" = 1'-0"

PROPOSED EAST ELEVATION

PROPOSED NORTH ELEVATION 1/64" = 1'-0"

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GENERAL NOTES:

PROPOSED NORTH & EAST ELEVATION

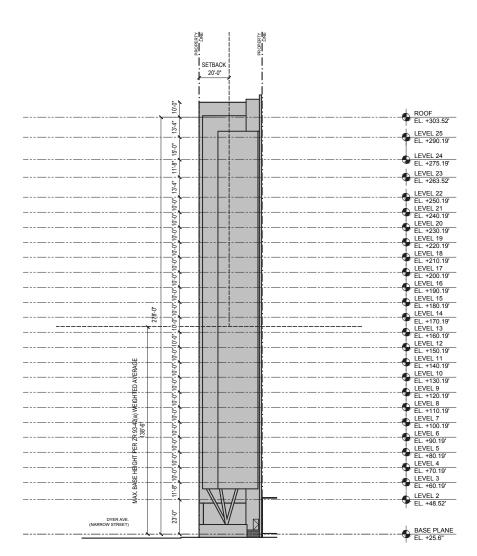
BSA-25

DATE REVISIONS/ISSUANCES

09/11/15 | ISSUED FOR BSA

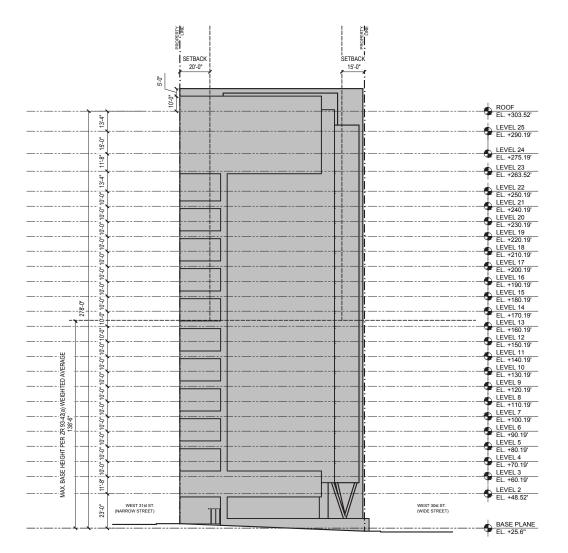
PROJECT NAME:	432 W 31st ST
PROJECT NUMBER:	
PROJECT MANAGER:	
ARCH/ENG:	
SCALE:	
DRAWN BY:	
CHECKED BY:	
SKETCH NUMBER:	

ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'



NOTE:

ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'



2 PROPOSED 1/64" = 1'-0"

PROPOSED WEST ELEVATION

40FT

SEPSTEIN

Building on Experience

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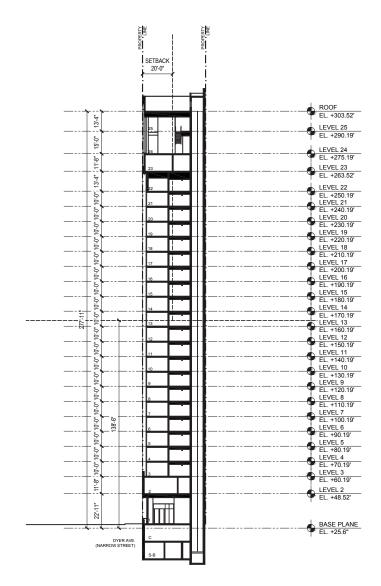
GENERAL NOTES:

PROPOSED SOUTH & WEST ELEVATION

BSA-26

1	09/11/15	ISSUED FOR BSA		
—				
DDO II	TOT NAME:	400 W 04 + 0T		
PROJECT NAME:		432 W 31st ST		
PROJ	ECT NUMBE	R:		
PROJ	ECT MANAG	ER:		
ARCH	/ENG:			
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DRAW	N BY:			
CHEC	KED BY:			
SKET	SKETCH NUMBER:			

ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'

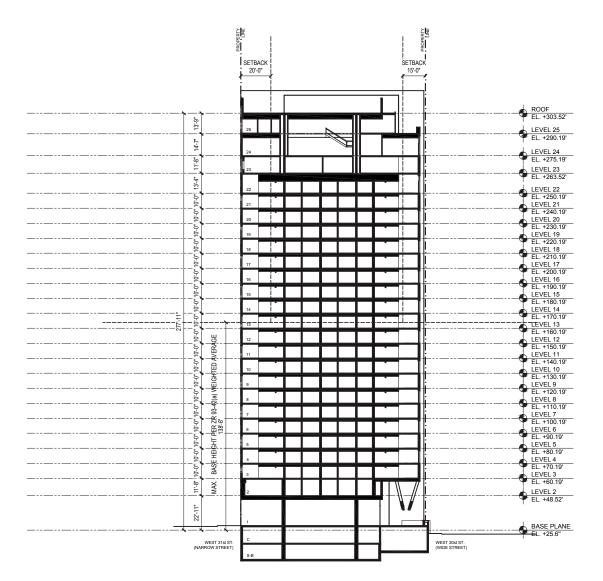




PROPOSED TRANSVERSE SECTION
1/64" = 1'-0"

NOTE:

ALL HEIGHTS TAKEN FROM ESTABLISHED DATUM HT +0.0' AT MEAN CURB ELEVATION +25.6'





PROPOSED LONGITUDINAL SECTION
1/64" = 1'-0"



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SEAL / SIGNATURE:



GENERAL NOTES:

PROPOSED SECTIONS

BSA-27

1	09/11/15	ISSUED FOR BSA
PROJE	CT NAME:	432 W 31st ST
PROJE	CT NUMBE	R:
PROJE	CT MANAG	ER:
ARCH	ENG:	
SCALE	<u>:</u>	
DRAW	N BY:	
CHECKED BY:		

SKETCH NUMBER: