



CITY PLANNING COMMISSION

March 10, 2008/Calendar No. 7

C 070289 ZMM

IN THE MATTER of an application submitted by Real Estate Industrials, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section 8c:

1. changing from an M1-5 District to an R8 District property bounded by West 49th Street, the easterly boundary line of the Amtrak right-of way, a line midway between West 48th Street and West 49th Street, a line 450 feet westerly of Tenth Avenue, West 48th Street, and a line 175 feet easterly of Eleventh Avenue; and
2. establishing within the proposed R8 District a C2-5 District bounded by West 49th Street, the easterly boundary line of the Central Rail Road right-of-way, a line midway between West 48th Street and West 49th Street, a line 450 feet westerly of Tenth Avenue, West 48th Street, and a line 175 feet easterly of Eleventh Avenue;

as shown on a diagram (for illustrative purposes only) dated October 15, 2007, and subject to the conditions of CEQR Designation E-203, Borough of Manhattan ,Community District 4.

This application for an amendment to the Zoning Map, Section No. 8c, was filed by Real Estate Industrials, Inc, on January 17, 2007 to facilitate the development of two, seven-story residential buildings at 542 W. 49th Street and 545 W. 48th Street, and a public parking garage, in Community District 4, Borough of Manhattan.

RELATED ACTIONS

In addition to the application for the amendment of the Zoning Map which is the subject of this report (C 070289 ZMM), implementation of the proposed development also requires action by the City Planning Commission on the following applications which are considered concurrently with this application:

C 070290 ZSM: A Special Permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to permit a public parking garage with a maximum of 88 spaces; and

N 070539 ZRM: A Zoning Text Amendment creating Section 96-31 of the Zoning Resolution within the Special Clinton District.

BACKGROUND

The proposed actions would facilitate the development of two new residential buildings and a public parking garage. The project site is one zoning lot consisting of nine tax lots (8, 9, 10, 18, 19, 20, 43, 55 and 56) of Block 1077 and is a through lot located between West 48th and West 49th streets and Tenth and Eleventh avenues. The applicant owns eight of the nine tax lots within the zoning lot (8, 9, 10, 18, 19, 20, 55 and 56 of Block 1077). A portion of the project site is zoned M1-5 and is located in the Other Area of the Special Clinton District and the remainder of the zoning lot is zoned R8 and is located in the Preservation Area of the Special Clinton District. Current land uses on the project site include a four-story loft building that was recently renovated to house Red Cross' New York operations and which will remain; four single-story garage buildings that will be demolished and replaced with two residential buildings; and a surface parking lot that will be replaced with one residential building.

Land uses around the project site include a mix of residential, commercial, transportation and light industrial uses. Tenth Avenue and the areas to the east are primarily residential with small, local retail uses located on the ground floors of the buildings along Tenth Avenue. Development on the blocks to the north and south of the project site is predominantly residential uses with some automotive and other industrial uses on the midblocks, residential use with ground floor retail on Tenth Avenue, and larger commercial uses along Eleventh Avenue. West of Eleventh Avenue, the neighborhood is industrial and commercial.

Proposed Development

The proposed actions would facilitate the development of two new residential buildings and a public parking garage. One residential building would be located on tax lots 45 and 56 and have 69 dwelling units, and the second residential building would be located on tax lots 8, 9 and 10 with 55 dwelling units. Twenty percent of the total number of units are proposed to be affordable. The public garage would be located in the shared cellar level of the residential buildings. The applicant also plans to construct an as-of-right residential building on tax lots 18, 19 and 20 that would contain 41 dwelling units. The overall FAR for the zoning lot that would contain the three proposed residential buildings and the existing Red Cross building would be 4.2.

Zoning Map Amendment (C 070289 ZMM)

The rezoning area is currently zoned M1-5, and is within the Other Area of the Special Clinton District. The rezoning area consists of nine tax lots (8, 9, 10, 12, p/o 29, 43, 55, 56 and 57) on Block 1077. Property located immediately to the north, south and east of the rezoning area is zoned R8, and within the Preservation Area of the Special Clinton District. There is a C2-5 commercial overlay along Tenth Avenue. The existing M1-5 district permits commercial, transportation and light manufacturing uses to a maximum FAR of 5.0. Residential use is not permitted.

The proposed Zoning Map amendment would rezone the subject area from an M1-5 zoning district to an R8 zoning district with a C2-5 commercial overlay. The proposed R8 district would permit residential and community facility buildings. The proposed C2-5 commercial overlay would permit neighborhood retail and commercial uses, including public parking and office space.

Bulk regulations within the proposed R8/C2-5 district would be governed by the Special Clinton District regulations as specified in the related text amendment application.

All lots within the rezoning area, except lot 12 which is developed with a seven-story building built to an FAR of 5.6, would comply with the proposed 4.2 FAR, 66-foot height limit and lot coverage regulations. All lots within the rezoning area would conform to the residential and commercial use. The C2-5 commercial overlay would allow the Red Cross use to remain a conforming use and, in conjunction with the related special permit application, allow the operation of the public parking garage, neither of which is permitted in the R8 district.

Zoning Text Amendment (N 070539 ZRM)

The text amendment application would require that new residential developments in R8 districts in the Other Area of the Special Clinton District west of Tenth Avenue comply with certain bulk regulations of the Preservation Area of the Special Clinton District. These include the provisions of Sections 96-101 (Floor area regulations), 96-104 (Height regulations) and 96-103 (Lot coverage regulations). The maximum FAR would be limited to 4.2, the maximum building height to 66 feet or seven stories, whichever is less, and the maximum lot coverage to 60 percent,

or 70 percent on lots in the Other Area more than 100 feet from a wide street. Also, 20 percent of open area on a lot would be required to be landscaped for tenant use. These regulations would ensure that future development within the rezoning area better matches the context of the existing built character found on midblocks in West Clinton.

Public Parking Garage (C 070290 ZSM)

The application for a special permit pursuant to Zoning Resolution Sections 13-562 and 74-52 would facilitate the development of an attended, 88-space, public parking garage on the ground and cellar levels of the proposed residential development. Thirty-one of the 88 spaces would be accessory spaces reserved for tenants of the three proposed residential buildings. The garage would comprise 1,784 square feet on the ground level and 15,883 square feet on the cellar level. Twenty-nine car stackers would be located on the cellar level.

Access to the proposed parking garage would be via a two-way driveway within one of the proposed buildings on West 48th Street. There would be one 20-foot curb cut leading to a ramp to the cellar and ten required reservoir spaces. West 48th Street is one-way, east-bound street. A flashing light and ringing bell will be placed at the entrance and exit of the garage to alert pedestrians of entering and exiting cars.

The special permit application also requests that 892 square feet of the garage on the ground level be exempted from the definition of floor area. The subject zoning lot, on which the garage would be placed, also includes the existing Red Cross office building and the requested exemption is needed because the existing office building utilizes all of the available commercial floor area on the lot.

ENVIRONMENTAL REVIEW

This application (C 070289 ZMM), along with the related actions (N 070539 ZRM and C 070290 ZSM), 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 07DCP043M. The lead agency is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Conditional Negative Declaration, signed by the applicant, was prepared on October 12, 2007 stating the following:

The applicant agrees via restrictive declarations to prepare hazardous materials sampling protocols, including health and safety plans, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocols and, if any such impact is found, submit hazardous material remediation plans including health and safety plans to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plans.

The applicant signed the conditional negative declaration on October 10, 2007. The conditional negative declaration was published in the City Record on November 2, 2007 and in the New York State Environmental Notice Bulletin on October November 7, 2007. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq., a 30-day comment period followed. No comments were received and the conditional negative declaration was issued on March 10, 2008.

The proposed rezoning includes (E) designations for noise and air quality on the project site (Block 1077, Lots 8-10, 55, 56) and (E) designations for noise, air quality, and hazardous materials on the Salvation Army property (Block 1077, Lot 12), as described below. In addition, the applicant has entered into a restrictive declaration for the project site to ensure that the appropriate hazardous materials sampling protocols, including health and safety plans, will occur prior to construction, which would be submitted to the Department of Environmental Protection (DEP) for approval.

The (E) designation for noise would be mapped on Block 1077, Lots 8-10, 12, 55, 56. The text of the (E) designation is as follows:

In order to ensure an acceptable interior noise environment, future residential uses must provide a closed window condition with a minimum of 30 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.

With the implementation of the above (E) designation, no significant adverse impacts related to noise would occur.

The (E) designation for hazardous materials would be placed on Block 1077, Lot 12. The (E) designation would require that the fee owner of the sites conduct a testing and sampling protocol, and remediation where appropriate, to the satisfaction of the NYCDEP before the issuance of a building permit by the Department of Buildings pursuant to the provisions of Section 11-15 of the Zoning Resolution (Environmental Requirements). The (E) designation will also include a mandatory construction-related health and safety plan which must be approved by NYCDEP. The text of the (E) designation is as follows:

Task 1

The fee owner(s) of the lot(s) restricted by this (E) designation will be required to prepare a scope of work for any soil, gas, or groundwater sampling and testing needed to determine if contamination exists, the extent of the contamination, and to what extent remediation may be required. The scope of work will include all relevant supporting documentation, including site plans and sampling locations. This scope of work will be submitted to DEP for review and approval prior to implementation. It will be reviewed to ensure that an adequate number of samples will be collected and that appropriate parameters are selected for laboratory analysis.

No sampling program may begin until written approval of a work plan and sampling protocol is received from DEP. The number and location of sample sites should be selected to adequately characterize the type and extent of the contamination, and the condition of the remainder of the site. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of the sampling data. Guidelines and criteria for choosing sampling sites and performing sampling will be provided by DEP upon request.

Task 2

A written report with findings and a summary of the data must be presented to DEP after completion of the testing phase and laboratory analysis for review and approval. After receiving such test results, a determination will be provided by DEP if the results indicate that remediation is necessary.

If DEP determines that no remediation is necessary, written notice shall be given by DEP.

If remediation is necessary according to test results, a proposed remediation plan must be submitted to DEP for review and approval. The fee owner(s) of the lot(s) restricted by this (E) designation must perform such remediation as determined necessary by DEP. After completing the remediation, the fee owner(s) of the lot restricted by this (E) designation should provide proof that the work has been satisfactorily completed.

A DEP-approved construction-related health and safety plan would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This Plan would be submitted to DEP for review and approval prior to implementation.

With the implementation of the above (E) designation, no significant adverse impacts related to hazardous materials would occur.

The project also includes (E) designation for air quality on Block 1077, Lots 8-10, 12, 55 and 56. The text of the (E) designation is as follows:

Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are located at least 56 feet for Natural Gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

With the implementation of the above (E) designation, no significant adverse impacts related to air quality would occur.

UNIFORM LAND USE REVIEW

This application (C 070289 ZMM), in conjunction with the related special permit application (C 070290 ZSM), was certified as complete by the Department of City Planning on October 15, 2007, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the application for the related text change amendment (N 070539 ZRM) which was referred to Manhattan Community Board 4 and the Manhattan Borough President in accordance with the procedure for referring non-ULURP matters.

Community Board Public Hearing

Community Board 4 held a public hearing on this application (C 070289 ZMM), in conjunction with the related actions (C 070289 ZSM and N 070539 ZRM), on December 5, 2007, and on that

date, by a vote of 38 in favor, 0 opposed, and 0 abstaining adopted a resolution recommending disapproval of the application subject to the following conditions:

- The C2-5 commercial overlay is eliminated;
- All of the provisions of ZR Section 96-10 relating to the Preservation Area are made applicable to the rezoned area;
- Parking is limited to accessory spaces only; and
- The low income units are permanently reserved for low-income households.

Borough President Recommendation

This application (C 070289 ZMM), in conjunction with the related actions (C 070289 ZSM and N 070539 ZRM), was considered by the Manhattan Borough President, who issued a recommendation on January 10, 2008. The Borough President recommended approval of the Zoning Map amendment application (C 070289 ZMM) subject to the condition that the proposed C2-5 overlay is removed. Because he recommended removal of the proposed C2-5 overlay, the borough president did not submit a recommendation on the special permit application to allow an 88-space public parking garage (C 070290 ZSM). The Borough President recommended approval of the zoning text amendment application (N 070539 ZRM).

City Planning Commission Public Hearing

On January 30, 2008, Cal. No. 17, the Commission scheduled February 13, 2008 for a public hearing on this application (C 070289 ZMM). The hearing was duly held on February 13, 2008, (Cal. No. 49) in conjunction with the hearing for the related action (C 070290 ZSM) and was continued. The continued hearing was duly held on February 27, 2008 (Calendar No. 38) in conjunction with the hearings on the related applications (C 070290 ZRM and N 070539 ZRM).

At the hearing on February 13, 2008 there was one speaker in favor and two speakers in opposition.

The applicant's representative described the project and stated that most customers of the proposed public parking garage would be area residents.

A representative from Community Board 4 reiterated the board's recommendations. The Director of Land Use for the Manhattan Borough President also reiterated the recommendations of the Borough President.

On February 27, 2008, there were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this application for an amendment to the Zoning Map (C 070289 ZMM), in conjunction with the application for an amendment to the text (N 070539 ZRM) and the application for a special permit for a public parking garage with a maximum of 88 spaces (C 070290 ZSM), is appropriate.

Zoning Map Change (C 070289 ZMM) and Zoning Text Amendment (N 070539 ZRM)

The Commission believes the Zoning Map change, in conjunction with the amendment to the text, will encourage residential development that best reflects the existing character found in the midblocks of the Clinton neighborhood. The extension of the R8 district and C2-5 commercial overlay into the midblock between Tenth and Eleventh avenues and West 48th and West 49th streets will permit medium-density residential uses, like those found to the north and east of the project site, and also permit local retail services and office uses, like those found in the existing Red Cross office building on the project site. In addition, the commercial overlay, in conjunction with the related special permit application (C 070290 ZSM) will facilitate the proposed public parking garage on the site.

The Commission understands that the proposed text amendment would make certain Special Clinton District Preservation Area regulations applicable in R8 districts in the Other Area west of Tenth Avenue. The provisions include a maximum building height of 66 feet or seven stories, whichever is less, a maximum Floor Area Ratio of 4.2, and a maximum lot coverage of 60 percent, or 70 percent of lots in the Other Area that are more than 100 feet from a wide street. Twenty percent of the open area must be usable, landscaped area for the residential tenants. Extending these bulk regulations to R8 districts in the Other Area west of Tenth Avenue will

ensure that future development will closely mirror the typical existing building types found in the Clinton neighborhood.

The Commission carefully considered the concerns of the community board and the Borough President that the C2-5 commercial overlay should not be extended to the midblock and that all of the Preservation Area regulations be applicable in R8 districts in the Other Area west of Tenth Avenue. The Commission determined that the C2-5 commercial overlay would reflect the existing Red Cross office use on the project site. It would also permit a public parking garage use on the project site. The Commission has also determined that making all Preservation Area regulations applicable in R8 districts in the Other Area west of Tenth Avenue requires a broader examination of the Preservation Area provisions and their potential impacts on the Clinton neighborhood. The Commission further notes that such extension is beyond the scope of the subject applications. The Commission is aware that Department of City Planning is currently undertaking a rezoning study of the broader West Clinton neighborhood and that will consider extending the Preservation Area in the Special Clinton District.

In response to the Community Board's recommendation that the low income units in the residential buildings be permanently reserved for low-income households, the Commission notes that this recommendation is outside the purview of the its review

Public Parking Garage (C 070290 ZSM)

The Commission believes that the proposed public parking garage use is compatible with, and would not adversely affect, the uses in the area of the project site. The Commission understands the proposed garage would be located in an R8 residential district with a C2-5 commercial overlay, immediately adjacent to an M1-5 manufacturing district. The Commission notes that land uses to the west of the development site are primarily commercial and industrial, with a number of auto-related uses. Land uses to the east of the site are predominantly residential.

The Commission believes that the vehicles using the proposed garage would not unduly inhibit traffic and pedestrian flow. The Commission notes that the proposed residential development would displace approximately 125 existing public parking spaces from the project site and that

31 of the 88 proposed spaces would be accessory spaces reserved for tenants of the new residential development. According to the EAS prepared for the project, the proposed public parking garage would generate 12 vehicular trips during the p.m. peak traffic period and less traffic at other times. The Commission understands that this is less than the threshold of 50 vehicular trips set by the CEQR Technical Manual. Warning signals and buzzers located on the garage ramp would also alert pedestrians to the presence of a vehicle exiting the garage.

The Commission understands that cars would approach the garage from the west, and that the area west of the project site is wholly commercial and industrial in character and traffic would therefore not affect local streets in residential areas.

According to the environmental assessment statement prepared for the applications, the traffic resulting from the creation of this 88-space public parking garage would not significantly alter traffic conditions on the local street network. In addition, the Commission notes that the garage provides the required ten reservoir spaces.

The Commission understands that 892 square feet of garage floor area at the ground level would need to be waived. The subject zoning lot, on which the garage would be placed, also includes the existing Red Cross office building. The Commission believes that, because the office building is a pre-existing condition that utilizes all of the available commercial floor area on the lot, the waiver of garage floor area is appropriate. The overall floor area on the site remains at the maximum allowed. The Commission also understands that the proposed development would displace 125 existing public parking spaces from the site and the floor area exemption would permit the development to include 88 public parking spaces on the site, of which 31 would be reserved for accessory use. Because of the reduction of public parking spaces on the site, and the limited number of on-street parking in the vicinity of the development site as described in the EAS, the Commission believes the floor area exemption is needed to prevent excessive on-street parking demand and relieve traffic congestion.

RESOLUTION

RESOLVED, the City Planning Commission finds the action described herein will have no significant impact on the environment subject to the following conditions:

The applicant agrees via restrictive declarations to prepare hazardous materials sampling protocols, including health and safety plans, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocols and, if any such impact is found, submit hazardous material remediation plans including health and safety plans to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plans.

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter and Section 5-430 et seq. of the New York City Administrative Code, 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 by changing the Zoning Map, Section No. 8c:

1. changing from an M1-5 District to an R8 District property bounded by West 49th Street, the easterly boundary line of the Amtrak right-of way, a line midway between West 48th Street and West 49th Street, a line 450 feet westerly of Tenth Avenue, West 48th Street, and a line 175 feet easterly of Eleventh Avenue; and
2. establishing within the proposed R8 District a C2-5 District bounded by West 49th Street, the easterly boundary line of the Central Rail Road right-of-way, a line midway between West 48th Street and West 49th Street, a line 450 feet westerly of Tenth Avenue, West 48th Street, and a line 175 feet easterly of Eleventh Avenue;

Borough of Manhattan, Community District 4, as shown on a diagram (for illustrative purposes only) dated October 15, 2007, and which includes CEQR Designation E-203.

The above resolution, duly adopted by the City Planning Commission of March 10, 2008 (Calendar No. 7), is filed with the Office of the Speaker, City Council, and Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,
ANGELA R. CAVALUZZI, R.A., ALFRED C. CERULLO, III, BETTY Y. CHEN,
MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,
SHIRLEY A. MCRAE, JOHN MEROLO, KAREN A. PHILLIPS, Commissioners



CITY OF NEW YORK

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Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

OFFICE OF THE
CHAIRPERSON

DEC 14 2007

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December 6, 2007

Hon. Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, New York 10007

Re: 540 W. 49th Street – Real Estate Industrials, Inc. - ULURP Application Nos. 0702892ZMM and 070539ZRM

Dear Chair Burden:

At the recommendation of its Clinton/Hell’s Kitchen Land Use Committee, Manhattan Community Board No. 4, having held a duly noticed public hearing on ULURP application numbers 0702892ZMM and 070539ZRM, unanimously adopted the following resolution by roll call vote at its meeting on December 5, 2007. Though we support the proposed development, the resolution recommends conditional denial of the applications.

BACKGROUND: THE APPLICANT AND THE ZONING LOT

The applicant, Real Estate Industrials, Inc., is a family-owned business that has owned part of this zoning lot since 1938 (the rest was acquired in 1947). For many years the family operated a laundry on the property on the site, servicing hotels in the area. (Well before the current enthusiasm for sustainability measures such as co-generation, the facility generated its own electricity from the laundry’s steam.) Seeking to make the property newly productive in a manner worthy of the family’s roots in the area, the laundry building at 514 W. 49th Street, a classic Clinton industrial building with art deco qualities, was sold to The American National Red Cross in 2005 and renovated as the new headquarters of The American Red Cross in Greater New York. The Red Cross has quickly established itself as an active and constructive member of our community.

The applicant continues to own the remainder of the zoning lot, consisting of a garage at 540 W. 49th Street (next to the Red Cross building, a parking lot at 545-551 W. 48th Street (next to the Salvation Army dormitory), and two small industrial buildings at 521-525 W. 48th St. (with 3 classic Clinton 5-story residential buildings on either side). The first two parcels and the site of the Red Cross building are zoned M1-5 and are in the Other Area of the Special Clinton District. The third parcel is zoned R8 and is in the Preservation Area of the Special Clinton District.

THE PROPOSED DEVELOPMENT

The applicant proposes to develop three new residential buildings using the NYS Housing Finance Authority's 80/20 program. In keeping with the requirements applicable in the Preservation Area of the Special Clinton District, the new buildings will each be 66 feet and 7 stories in height, the overall floor area ratio on the zoning lot will be 4.2, and the number of two-bedroom units will be 20% or more of the total new units. Building 1, at 540 W. 49th St., will have 69 residential units; Building 2, at 551 W. 48th Street, will have 55 residential units; and Building 3, at 521-525 W. 48th St. will have 41 residential units, for a total of 165 new residential units. We welcome this development.

The proposed development also includes a public parking garage for 88 cars, to be located in the cellar of Buildings 1 and 2. As discussed below, we do not welcome this aspect of the project.

THE ULURP APPLICATIONS

The application requests:

- (i) a zoning map amendment to change the zoning from M1-5 to R8 by moving the present boundary between the M1-5 and R8 districts on the block west to a line 175 feet east of Eleventh Avenue, and adding a C2-5 overlay to the rezoned area;
- (ii) A zoning text amendment to make certain of the requirements now applicable in the Preservation Area of the Special Clinton District applicable as well to land in the Other Area that is zoned R8; and
- (iii) A special permit for an 88 car public parking garage, including 31 accessory spaces.

The Zoning Map Amendment – Yes to R8 and Red Cross's Legal Status, No to C2-5 Overlay

The zoning map amendment would apply to the site of proposed Buildings 1 and 2, and to the Red Cross building, all of which are in the same zoning lot, as well as to the Salvation Army dormitory at 535 W. 48th Street, a portion of the Amtrak cut east of the Red Cross building, and a 5-story residential building at 544 W. 49th Street. (The site of proposed Building 3 is already zoned R8; the proposed development there is as-of-right.)

The zoning change from M1-5 to R8 is consistent with the zoning on the eastern portion of the block and in the Preservation Area of the Special Clinton District. It is also consistent with the rezoning that this Board has long been seeking for the blocks between 45th and 50th Streets, Tenth to Eleventh Avenues. We approve.

However, the zoning change to R8 would make the Red Cross a legal non-conforming use, because office use is not allowed in R8 districts. According to the applicant, even though the Red Cross's use of its building would still be legal, this would violate an agreement between the applicant and the Red Cross. In addition, public parking garages are not allowed in R8 zoning

districts. The applicant seeks to address these issues with a C2-5 overlay for the entire rezoned area. This would allow the Red Cross to be a non-complying building, rather than a non-conforming use, which is apparently better under their private agreement and to which we have no objection. It would also allow public parking garages, which is a result that we oppose.

The proposed C2-5 overlay would stick out like a sore thumb on the zoning map. The only other through-block site in the Special Clinton District with a similar commercial overlay is the publicly-owned site of Park West High School two blocks to the north. The overlay could also allow uses inconsistent with the lower-density residential character of the area; we are particularly concerned that it could allow future conversion of the Red Cross building or the Salvation Army dormitory to a hotel.

The private arrangements between the applicant and the Red Cross are not the concern of this Board or the Commission. We agree that office use by the Red Cross of the building at 514 W. 49th Street is a desirable use that should be allowed to continue, and that should the building be damaged or destroyed it should be allowed to be rebuilt to its present density for continued use by the Red Cross or a similar organization. We request that adjustment needed in the building's zoning status to allow such a rebuilding should be accomplished through a zoning text amendment rather than a commercial overlay.

The commercial overlay is also sought to permit the public parking garage. Since we oppose the public parking garage, as discussed below, we also oppose the commercial overlay for this purpose.

The Zoning Text Amendment – Move the Preservation Area Boundary Instead

The zoning text amendment would have the effect of imposing some, but not all, of the requirements now applicable in the Preservation Area of the Special Clinton District in the rezoned area.¹ In particular, Sections 96-101 (limiting floor area ratios to 4.2) and 96-104 (limiting building heights) would apply. These are central provisions of the zoning regulations in the Preservation Area, and we are truly pleased that from the beginning of its discussions with this Board the applicant has been willing to build within these limitations.

Independent of this project, this Board has been in discussions with DCP staff for several years about our request to move the boundary of the Preservation Area west toward Eleventh Avenue, between 45th and 50th Streets. These discussions are now being formalized in the Eleventh Avenue planning and rezoning that is underway pursuant to the agreement between the City and the Speaker of the City Council dated July 10, 2007.

Consistent with that effort, we believe that the proposed zoning text amendment is only a partial solution. It is also poor policy to create this small island of an R8 district with its own special rules. The better approach is simply to make the boundary of the Preservation Area consistent with the boundary of the R8 zoning district, so that the other Preservation Area regulations are

¹ We raise two typographical questions. First, the proposed text amendment is designated Section 96-32. Why isn't it Section 96-31? Second, the cross-reference in subsection (b) should be to "Section 96-102 (Lot coverage regulations)", not Section 96-103.

applicable as well. These include the 20% two-bedroom requirement and the provisions concerning demolition, tenant harassment and cure. Applicant's proposed development would, in fact, comply with these additional provisions, so this change would have little effect on the applicant's plans. The sole impact would be lot coverage; the applicant seeks a 70% lot coverage maximum rather than the 60% maximum in the Preservation Area. We have no objection to the increased lot coverage.

The Special Permit for the Parking Garage - Yes to Accessory Parking spaces; No to additional Public Parking

The applicant seeks a special permit to allow an attended public parking garage in the cellar of Buildings 1 and 2. The entrance and exit would be from West 48th Street, with one 20-foot-wide curb cut leading to a ramp to the garage, and ten reservoir spaces. The garage would contain 88 spaces, including 31 spaces for accessory use for use by the development's residents.

Community District 4 is choked with traffic. It is also well served by mass transit. We therefore generally seek to discourage private car use in the area by any means possible, including reducing the amount of public parking spaces. If we build fewer parking spaces, fewer people will come to Midtown Manhattan by car. This goal consistent with the goals of PlaNYC, and we are pleased that the elimination of public parking is increasing finding its way into a discussion of congestion mitigation. For this reason, we oppose the commercial zoning overlay that the applicant seeks.

If the applicant was seeking a special permit for the 31 accessory parking spaces, representing less than 20% of the development's 165 new residential units, we believe that the findings for accessory parking required by ZR Section 13-561 could be satisfied, and we would recommend approval of such a permit.

However, the applicant is seeking a special permit for a public parking garage, so we address the findings for public parking required by ZR Section 74-52:

a) that such use [i.e., the public parking garage] will not be incompatible with, or adversely affect the growth and development of, uses comprising vital and essential functions in the general area within which such use is to be located

This area is presently so congested at peak commuting hours that vital and essential functions such as emergency services are often adversely affected by traffic. During the times of greatest congestion, public parking that encourages any more people to bring cars to the area is incompatible with emergency services needed in the area.

b) that such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow

There already is serious traffic congestion in the area. Eighty-eight additional cars will make a contribution, if minor, to that serious traffic congestion. There is currently a 125 car public parking lot and parking garage on the development site, and the application argues that the

proposed garage will create fewer trips than the existing uses. That may be true, but it's irrelevant. The existing parking is an opportunistic use of vacant land being held for future development. It is currently contributing to the area's serious traffic congestion and its demise is to be celebrated.

c) that such use is so located as to draw a minimum of vehicular traffic to and through local streets in nearby residential areas

Since the garage entrance would be located on West 48th Street, an eastbound street, we agree with applicant's statement concerning this finding.

d) that such use has adequate reservoir space . . .

We agree that this finding can be met.

f) that, where roof parking is permitted . . .

There is no roof parking; the finding is not applicable.

g) that, where any floor space is exempted from the definition of floor area, such additional floor space is needed in order to prevent excessive on-street parking demand and relieve traffic congestion

Because the existing Red Cross building contains more commercial floor area than would be allowed on the zoning lot with the C2-5 overlay, the application seeks to exempt from the definition of floor area the 892 square feet of floor space located in the entrance and a portion of the ramp to the garage. We do not object.

PERMANENT AFFORDABLE HOUSING

We are pleased that 20% of the new residential units will be reserved for low-income households under the HFA 80/20 program. The difficulty with that program, however, is that the low-income requirement lasts only as long as the HFA bonds are outstanding, typically 20 or 30 years. We request that the applicant agree to maintain these low income units in perpetuity. We recognize that this is not formally within the parameters of the present ULURP applications, but it is a matter of great importance to this community. Because the applicant's land costs are so low (having acquired the property in 1938 and 1947) and the construction costs will have been fully amortized by the time the bonds expire, we do not believe our request threatens the financial viability of the project. We hope that the applicant will agree to make this additional long-term commitment to our community.

Now, therefore, be it RESOLVED that Manhattan Community Board No. 4 recommends denial of ULURP Application number 060334 ZSM unless:

- The C2-5 commercial overlay is eliminated;

- All of the provisions of ZR Section 96-10 relating to the Preservation Area are made applicable to the rezoned area;
- Parking is limited to accessory spaces only; and
- The low income units are permanently reserved for low-income households.

Sincerely,



Jean-Daniel Noland
Chair



Anna Hayes Levin, Chair
Clinton/Hell's Kitchen Land Use Committee

Cc: City Planning Commission, Calendar Information Office, 22 Reade Street, Rm 2E
DCP – Erik Botsford, Erika Sellke
Elected Officials
Applicant, c/o Elise Wagner, Kramer Levin, 1177 Avenue of the Americas, NYNY
10036



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT STRINGER
BOROUGH PRESIDENT

January 10, 2008

**Recommendation on
ULURP Application Nos.: C 070289 ZMM, C 070290 ZSM and N 070539 ZRM
540 West 49th Street
by Real Estate Industrials, Inc.**

PROPOSED ACTIONS

Real Estate Industrials, Inc. seeks approvals for a **Zoning Text Amendment (N070539 ZRM)**, **Zoning Map Amendment (C070289 ZMM)**, and a **Special Permit for a Public Parking Garage (C070290 ZSM)**, to enable a mixed-use development to be constructed on properties facing West 48th Street and West 49th Street, between 10th Avenue and 11th Avenue. The project site is located at 540 West 49th Street (Block 1077, Lots 8, 9, 10, 18, 19, 20, 43, 55, and 56) in the Special Clinton District in Manhattan Community District 4.

The amendment of the Zoning Map would change from an M1-5 district to an R8 district with C2-5 overlay the property bounded by West 49th Street, the easterly boundary line of the Central Rail Road right-of-way, a line midway between West 48th Street and West 49th Street, a line 450 feet westerly of Tenth Avenue, West 48th Street, and a line 175 feet easterly of Eleventh Avenue. The rezoning is intended to facilitate new residential construction, the public parking garage, and continued use conformance of the Red Cross office building. The R8 zoning would be an extension of an existing R8 district.

The proposed R8 zoning would allow residential and community facility development up to 6.02 FAR, whereas the current zoning allows light industrial and commercial uses at up to 5.0 FAR, but does not allow any residential uses. The proposed C2-5 zoning overlay would additionally allow transient hotels, local retail, small amusement establishments, and business services. Public parking facilities are allowed in commercial zones via special permit (which is being considered concurrently). An existing R8 zoning district exists to the north, to the east, and along the eastern portion of the block to the south of the proposed development site. An M1-5 zoning district exists to the west and along the western portion of the block to the south.

The special permit pursuant to ZR § 13-562 and 74-52 would allow a public parking garage with 88 spaces (31 of which would be accessory) to be located on the ground floor and cellar level of portions of the proposed development. In order to grant the special permit, the City Planning Commission must find that the garage will have a minimal impact on surrounding uses, will not contribute to congestion or inhibit pedestrian flow, will not direct traffic through local streets, contains an adequate number of reservoir spaces, and is surrounded by streets that are adequate

for generated traffic. In addition, the applicant seeks an exemption from the building's calculable floor area of garage floor space on the ground floor up to a height of 23 feet above curb level.

The proposed text amendment would modify special regulations governing R8 zoning districts in the "Other Areas" west of Tenth Avenue in the Special Clinton District, in order to apply certain provisions currently pertaining to the special district's Preservation Area to the special district's "Other Areas," where the proposed development site is located.

PROJECT DESCRIPTION

The proposed development consists of three new residential buildings (Buildings 1, 2 and 3), each to be 66 feet tall and rising seven stories; the construction of an 88-space public parking garage; and the preservation of the existing 92,996-square foot Red Cross office building facing West 49th Street. Building 1 would have 52,723 SF and contain 69 dwelling units; Building 2 would have 46,766 SF and contain 55 dwelling units; and Building 3, which is an as-of-right development, would have 30,519 SF and contain 41 dwelling units. Buildings 1 and 2, when treated as one building, contain more than the requisite 20 percent of all dwelling units as two-bedroom, which is in compliance with ZR § 96-105, regulating dwelling units in the Special Clinton District. Building 3 would contain 13 2-bedroom units, which is again in compliance with ZR § 96-105. The 88-space parking garage would be located in the cellar of Buildings 1 and 2; be accessible from West 48th Street; contain 31 accessory spaces; and replace 125 spaces in an existing public parking garage and lot.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on December 6, 2007, Manhattan Community Board 4 unanimously adopted a resolution recommending conditional denial of the applications, unless the C2-5 commercial overlay is eliminated; all of the provisions of ZR § 96-10 relating to the Preservation Area are made applicable to the rezoned area; parking is limited to accessory spaces only; and the low income units are permanently reserved for low-income households.

BOROUGH PRESIDENT'S COMMENTS

Residential demand is growing in Clinton, moving west of 10th Avenue into what had been a largely manufacturing area. The existing manufacturing zoning prohibits residential development and has become outdated. This project recognizes that westward residential expansion by proposing residential zoning, but it also calls for a commercial overlay.

As the City's population continues to grow, new residential development is desperately needed. And, as rents escalate, affordable housing for low- and middle-income working families becomes increasingly difficult to find. The applicant's proposal addresses the demand for new housing and would leave 20 percent of it affordable through the New York State Housing Finance Authority's 80/20 program. As residential use already occurs on the mid-block areas to the north and south of the proposed development site and since the largely residential Preservation Area is to the west, this is an appropriate location for new affordable residential development.

If DCP adopts the proposed R8 zoning, however, the existing Red Cross offices would become a legally non-conforming use and legally non-complying building; and the applicant would not be allowed to maintain a public parking facility on the site. The applicant, therefore, has applied for

the commercial overlay and special permit. The commercial overlay would allow the office to be a partially conforming use as zoning limits commercial buildings in districts governed by residential height and bulk regulations to the lesser of two stories or 30 feet, though even without it the use could remain pursuant to ZR § 52-11. Granting the requested special permit would allow the applicant to operate the proposed 88-space public parking garage (with 31 accessory spaces), as long as the proposed C2-5 overlay were also approved.

The C2-5 overlay, however, is problematic for the following reasons:

- neither West 48th Street nor West 49th Street, neither east nor west of the proposed development site, feature uses consistent with C2-5 zoning;
- besides the north side of West 50th Street, which is occupied by Park West High School as opposed to traditional commercial uses, no nearby mid-block commercial overlay between 10th Avenue and 11th Avenue exists;
- the Red Cross office building, which could otherwise be grandfathered, would utilize all the commercial floor area allowed on the zoning lot;
- the commercial zoning conflicts with local planning goals.

The character of West 48th Street and West 49th Street is not commercial and are in fact becoming even more residential in nature as a result of projects like this one. The C2-5 overlay as proposed would serve mostly to allow the public parking garage to receive consideration for the special permit. This, in addition to making the Red Cross office building a conforming use, does not sufficiently justify the proposed commercial overlay. Appropriate zoning decisions must precede any consideration of special permit findings. Without a commercial overlay, a public parking garage would not be permitted at this site, rendering consideration of the requested special permit moot.

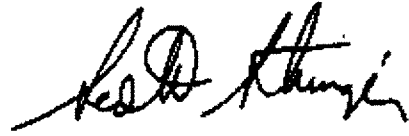
Red Cross office use could remain with or without the commercial overlay, since it would be grandfathered in as a pre-existing use. And, it should be noted that even under the proposed C2-5 overlay, Red Cross office use would still remain partially non-conforming. The Zoning Resolution restricts commercial buildings in districts governed by residential height and bulk regulations to two stories or 30 feet, whichever is less. At four stories and well more than 30 feet tall, the upper two stories of the building would remain in non-compliance.

Finally, the proposed zoning text amendments do seem logical for the proposed development site, since it would in many ways result in development that is contextual with the Preservation Area. However, the applicant and DCP should consider applying all Preservation Area regulations to the site, in order to allow provisions such as those regulating harassment to be applied as well.

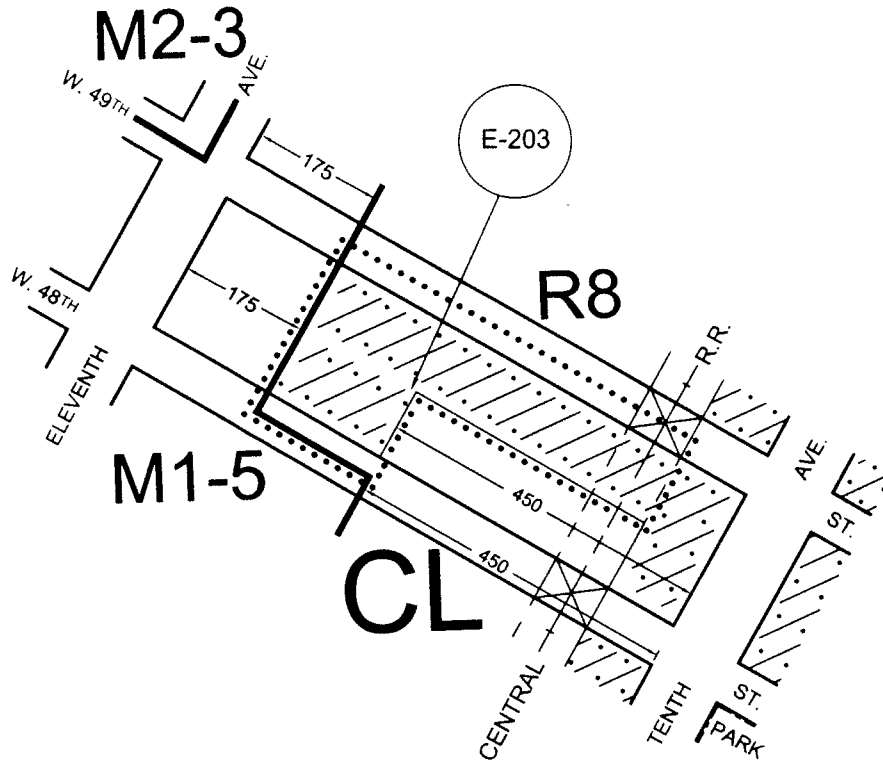
BOROUGH PRESIDENT'S RECOMMENDATION

As residential use expands into the area of Clinton west of 10th Avenue, it should be consistent with the adjacent Preservation Area, where zoning provisions have succeeded in maintaining a thriving, mostly low-rise residential neighborhood. The proposed map change is sensible and warranted, with the exception of the proposed commercial overlay. Commercial rezoning of this mid-block site largely to allow a public parking garage would not respect the initial intent of the subsequent special permit, which was to encourage public parking only in existing commercial districts.

Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application No. C 070289 ZMM, allowing R8 zoning so long as the proposed C2-5 overlay is rejected; takes no action on ULURP Application No. C 070290 ZSM; and recommends approval of N 070539 ZRM but urges that all provisions of the Preservation Area be extended.

A handwritten signature in black ink, appearing to read "Scott M. Stringer". The signature is fluid and cursive, with a large initial "S" and "M".

Scott M. Stringer
Manhattan Borough President



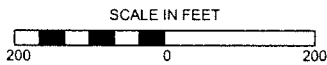
CITY PLANNING COMMISSION
 CITY OF NEW YORK
 DIAGRAM SHOWING PROPOSED
ZONING CHANGE
 ON SECTIONAL MAP

8c

BOROUGH OF
MANHATTAN

Director of Technical Review

New York, Certification Date
OCTOBER 15, 2007



NOTE:

- Indicates Zoning District Boundary.
- The area enclosed by the dotted line is proposed to be rezoned by changing from an M1-5 District to an R8 District and by establishing a C2-5 District within a proposed R8 District.
- Indicates a C2-5 District.
- Indicates a Special Clinton District.

THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.