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**IN THE MATTER OF** an application submitted by the 221 W29 Residential LLC pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, establishing Section 42-486 relating to streetscape provisions in M1-6D districts, Community District 5, Borough of Manhattan.

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The application for a zoning text amendment, in conjunction with the related actions, was filed by 221 W29 Residential LLC on December 23, 2015. The requested zoning text amendment would facilitate, by authorization, a reduction in the frontage and depth requirements for ground floor commercial uses within M1-6D districts for zoning lots with street frontage between 50 and 75 feet where parking or loading entrances are also provided. The requested zoning text amendment, in conjunction with the related actions, would facilitate the provision of 45 accessory residential parking spaces within a mixed-use development at 217-221 West 29<sup>th</sup> Street in the Chelsea neighborhood of Manhattan.

**RELATED ACTIONS**

In addition to the zoning text amendment, which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

- C 160148 ZSM      Special permit pursuant to Sections 13-45 and 13-451(a) to allow an attended accessory off-street parking garage with a maximum capacity of 45 spaces on portions of the ground floor and sub-cellar of a proposed mixed-use building at 217-221 West 29<sup>th</sup> Street
  
- N 160149 ZAM      Authorization pursuant to Section 42-486 to allow a reduction in the required frontage and depth of commercial use on the ground floor of a proposed mixed-use building at 217-221 West 29<sup>th</sup> Street

## **BACKGROUND**

217-221 West 29<sup>th</sup> Street (Block 779, Lots 28 and 29) is a 6,896 square foot site located on the north side of West 29<sup>th</sup> Street between 7<sup>th</sup> and 8<sup>th</sup> Avenues. The site was previously used as a surface public parking lot since the 1960s and was licensed by the Department of Consumer Affairs (DCA) to contain 48 parking spaces, including stackers, but the use discontinued in 2014. The site has 69' 10" of street frontage along West 29<sup>th</sup> Street, which is a narrow street that carries westbound traffic with a painted bicycle lane. The prior public parking lot was served by a curb cut that spanned the full length of the site.

The site is located in the City's first M1-6D zoning district, which was established in 2011 pursuant to a zoning map amendment (C 100063 ZMM) and zoning text amendment (N 110285 ZRY), that was intended to preserve affordable office and light industrial space and to facilitate contextual, infill residential development with ground floor retail. The bulk regulations for this zoning district, which is mapped on the midblock portions of two blocks bounded by West 28<sup>th</sup> Street, 8<sup>th</sup> Avenue, West 30<sup>th</sup> Street, and 7<sup>th</sup> Avenue, were intended to ensure that new development or enlargements complement the existing built context and architectural expression of the larger pre-war loft buildings that characterize the area. The district's use regulations encourage the mixing of residential and commercial uses, the provision of affordable housing, and the provision of active and visible ground floor commercial uses.

Section 42-485 requires, within the M1-6D district, that zoning lots on narrow streets with street frontage of 50 feet or more dedicate at least 50% of such street frontage to retail uses for a minimum depth of 30 feet. The minimum 30-foot depth requirement, however, may be reduced on an as-of-right basis to the minimum extent necessary to accommodate vertical circulation cores or structural columns. The remainder of the street frontage may be occupied by any permitted uses, lobbies, or entrances to parking spaces.

The proposed actions would facilitate the provision of 45 attended accessory residential parking spaces on portions of the ground floor and sub-cellar levels of a new 21-story mixed-use development containing 95 residential units. The building would be developed pursuant to the as-

of-right bulk M1-6D regulations of Section 43-624, and will dedicate 20% of its residential floor area to permanently affordable housing in order to achieve an overall FAR of 11.47. Of the building's approximately 70 feet of street frontage, 16 feet would be dedicated to a parking entrance and exit, approximately 11 feet would be dedicated to a residential lobby, and approximately 26 feet would be dedicated to retail use; the balance will be occupied by egress required by the Building Code and structural columns.

*Zoning Text Amendment (N 160147 ZRM)*

The applicant's proposed ground floor configuration at the site, which includes a parking entrance, a lobby with just enough room for a revolving door and fixed door for accessibility, and required egress, causes the amount of ground floor frontage that would be available for retail use to fall below the 34' 10" of frontage required by Section 42-485. Furthermore, the applicant has indicated that the building's core placement, which is constrained by the depth of the floor plates resulting from the M1-6D bulk regulations, prevents the retail space from achieving the required depth of 30 feet. The applicant has indicated that this issue is not unique to this site of relatively narrow frontage where parking may be provided as-of-right. After a review of projected and potential development sites within the M1-6D district, the applicant determined that zoning lots within the M1-6D district with street frontage less than 75 feet, such as this site, could find it challenging to provide the amount of retail frontage required by Section 42-485, an entrance to a residential lobby, and an entrance to a parking facility.

The existing M1-6D zoning regulations do not provide a mechanism to modify the amount of retail frontage required by Section 42-485. As such, the applicant proposes a zoning text amendment to create a new Section 42-486 that would allow the City Planning Commission to modify by authorization, for zoning lots between 50 and 75 feet of frontage, the retail frontage and depth dimensions required by Section 42-485 in order to provide sufficient space for access to a parking or loading facility. As referred, in addition to finding that the modifications are necessary for providing access to a parking or loading facility, the Commission must also find that the modifications will not adversely affect the streetscape experience, will not impact the viability of such use, and the resulting ground floor frontage will contribute to a vibrant mixed-use district.

*Sections 13-45 and 13-451(a) Special Permit (C 160148 ZSM)*

Section 13-11(a) allows a maximum number of accessory off-street parking spaces for residential use in an amount equal to 20% of the total number of dwelling units. The proposed development would contain 95 residential units, which would allow 19 accessory parking spaces as-of-right. The applicant requests a special permit pursuant to Sections 13-45 and 13-451(a) (Additional parking spaces for residential growth) to provide an attended, accessory residential parking facility with a total of 45 spaces (26 beyond the 19 allowed as-of-right) on the development site.

The entrance to the proposed garage would occupy 16 feet of frontage along the ground floor and would be accessed by a 20-foot wide curb cut (15 feet without splays). The ground floor portion of the proposed garage would contain three surface parking spaces, two reservoir spaces, and a car elevator. On the sub-cellar level (the cellar level would be occupied by residential amenities, so the elevator would skip that level and go directly to the sub-cellar level) there would be a total of 42 surface and lifted parking spaces. Of the 42 spaces located in the sub-cellar, 19 spaces would be located at the surface level and 23 spaces would be elevated; four of the 23 moveable post-lifted trays would have no parking spaces below the trays. Compared to standard stackers, moveable post-lifted trays use a heavier overhead frame to lift vehicles to the top level without leaving a post behind, and the lower level of vehicles does not rest on a frame or palette, making it easier for vehicles to maneuver around and through the lift structure. The garage would be fully attended.

*Section 42-486 Authorization (N 160149 ZAM)*

The requested authorization pursuant to new Section 42-486 would allow the Commission to modify the streetscape provisions of Section 42-485 to allow retail frontage with a length of 25'11.5" and a depth of 27'4.5" (with a portion having a depth of 18'10-5/8") to accommodate a parking garage entrance of 16 feet along the street frontage and vertical circulation behind the retail space. The resulting retail space would have an area of 721 square feet.

**ENVIRONMENTAL REVIEW**

This application (N 160147 ZRM), in conjunction with the related applications (C 160148 ZSM and N 160149 ZAM), 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 16DCP091M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on April 11, 2016. On September 2, 2016 a Revised Environmental Assessment Statement (EAS) was issued which analyzed the CPC modifications and concluded that the proposed zoning text amendment would not result in any significant adverse impacts or alter the conclusions identified in the previous Negative Declaration. A Revised Negative Declaration was issued on September 6, 2016. The Revised Negative Declaration reflects the changes to the proposed action and supersedes the Negative Declaration issued on April 11, 2016.

## **PUBLIC REVIEW**

On April 11, 2016 the application (N 160147 ZRM), in conjunction with the application for a related action (N 160149 ZAM), was referred to Community Board 5 and the Borough President in accordance with the procedure for referring non-ULURP matters. The related ULURP action (C 160148 ZSM) was certified as complete by the Department of City Planning on April 11, 2016, and was duly referred to Community Board 5 and the Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

## **Community Board Public Hearing**

Community Board 5 held a public hearing on this application (N 160147 ZRM), in conjunction with a related application (N 160149 ZAM), on June 9, 2016, and on that date, by a vote of 41 to 0 with 1 abstention, adopted a resolution recommending disapproval of the applications. Community Board 5 also held a public hearing on the related application for a special permit (C 160148 ZSM) on June 9, 2016, and on that date, by a vote of 21 to 20 with 1 abstention, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

This application (N 160147 ZRM), in conjunction with a related application (N 160149 ZAM), was considered by the Borough President, who issued a recommendation on July 18, 2016 to approve the applications. The Borough President also considered the related application for a special permit and issued a recommendation on July 18, 2016 to disapprove the application.

On the proposed zoning text amendment and related authorization, the Borough President believed that the proposed actions would provide more flexibility in the length and depth of retail spaces on narrow lots and will allow for a higher-quality streetscape experience in this district. On the proposed special permit, the Borough President reiterated stated concerns with the parking study methodology, and cited the area's access to multiple transit options and alternatives to car travel and the potential for added traffic congestion as part of the recommendation for denial.

### **City Planning Commission Public Hearing**

On July 13, 2016 (Calendar No. 5), the City Planning Commission scheduled July 27, 2016 for a public hearing on this application (N 160147 ZRM). The hearing was duly held on July 27, 2016 (Calendar No. 35), in conjunction with the public hearing on the application for the related action (C 160148 ZSM). There were seven speakers in favor of the application and none in opposition.

The applicant's land use attorney provided an overview of the proposed zoning text amendment and related authorization, and described the dimensions of the retail space that will result. He stated that there are multiple ground floor commercial spaces in the surrounding area with street frontage equal to or less than what is proposed in the development, and that the approximately 26 feet of retail frontage would be suitable for local, small service establishments. The land use attorney also stated that, at the time of the public hearing, approximately 15 of the development's 21 stories had already been erected.

A representative for the applicant's architect described the physical constraints that do not allow the required amount of retail frontage to be provided on the ground floor of the proposed development. The representative noted that the proposed clear lobby frontage, which is proposed

to be approximately 11 feet before encountering a structural column, is the minimum amount of clear frontage needed to accommodate a revolving door for energy efficiency and a swinging door for ADA accessibility.

A representative for the applicant provided a timeline of the overall project, noting that the building had been designed and engineered prior to the public review of the Zoning for Quality and Affordability zoning text amendment that would have made it easier to accommodate a ground floor level that is taller than what is proposed at this site, and that redesigning and re-engineering the building would not be economically feasible. She acknowledged that the height of the ground floor will be 10'4" to the top of the second floor slab, but clarified that a qualifying ground floor – which is required to have a height of 13 feet to the top of the second floor slab – is not required but elective under the recently-enacted Zoning for Quality and Affordability text amendment, and that the resulting ground floor height of 10'4" would not be non-compliant under existing zoning regulations. The representative noted that an as-of-right option for the building that could include 19 parking spaces and the retail frontage required by Section 42-485 would result in a residential lobby with only four feet of clear frontage. She also noted that the proposed garage opening of 16 feet is the minimum necessary for efficient garage operations based on the operator's experience with parking facilities in Manhattan.

The applicant's developer described the design and operation of the proposed garage, and noted that the proposed parking garage with 45 spaces would result in a nominal decrease in the amount of parking spaces that previously existed on the site (48). He clarified that the developer is the ground lessor, and that the operator of the previous parking lot is the fee owner and will operate the proposed parking garage. In addressing comments made by the Community Board and Borough President regarding the need for parking given the site's proximity to Penn Station, the developer noted that the parking lot operator, who operates two parking lots on the subject block, has identified a significant demand for monthly parking, and that such demand is expected to increase for residential parkers in the proposed building and nearby residences by virtue of its location inside a building.

The applicant's environmental consultant described the parking study and environmental review that were performed for the proposed parking special permit, zoning text amendment, and authorization.

A representative for the developer spoke in favor of the project.

A representative for the Manhattan Borough President reiterated the Borough President's comments and recommendations, and expressed interest in the Commission's concerns regarding the height of the ground floor retail space.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that this application for a zoning text amendment (N 160147 ZRM), as modified herein, in conjunction with the related application for a special permit (C 160148 ZSM), is appropriate.

In its consideration of the zoning text amendment and zoning map amendment that established the M1-6D zoning district in 2011, the Commission found it appropriate to require ground floor retail uses on zoning lots with more than 50 feet of frontage to help activate the streetscape and provide needed neighborhood services for the new residential population within the new district. The Commission still believes that ground floor retail uses are important in creating a vibrant mixed-use district and linking the district to surrounding areas.

The Commission acknowledges that, absent the proposed zoning text amendment, there is no mechanism that would allow a modification of the retail frontage requirements set forth in Section 42-485. While the provision of ground floor retail is a goal of the M1-6D district, the Commission also acknowledges that parking is allowed as-of-right, and that the narrowest lots could find it challenging to provide the required retail frontage, a parking entrance, and a visible residential



lobby. Furthermore, the bulk regulations of the M1-6D district may dictate the placement of structural columns that would affect the clear width available for certain uses on the ground floor.

The Commission believes that any modification of the required retail frontage in this district should be reviewed on a case-by-case basis, and that the proposed authorization – and its associated findings – is appropriate. While the Commission does not intend to discourage the provision of as-of-right parking, where the entrance to such use would conflict with the required retail frontage, the Commission should have the opportunity to evaluate the dimensions of the resulting retail space to ensure that such space will be viable and will contribute to the creation of a vibrant mixed-use district, which has always been a goal of the M1-6D district.

While the text amendment is theoretically broad, the Commission notes that a related application pursuant to the proposed authorization (N 160149 ZAM) would allow a reduction in the required retail frontage at 217-221 West 29<sup>th</sup> Street in order to provide an entrance and exit to an off-street parking facility. The Commission understands that the proposed zoning text amendment only concerns the length and depth dimensions of a retail space, but in its review of the proposed retail space at the applicant's site the Commission expressed concerns with the height of the ground floor, which is proposed to be 10'4" to the top of the second floor slab and have a clear height of 9'8". The Commission acknowledges that the provision of a qualifying ground floor (which has a height of 13' to the top of the second floor slab) is elective and not mandatory, and that the adopted version of the Zoning for Quality and Affordability text amendment only allows an increase in the overall building height for buildings that provide a qualifying ground floor when certain requirements for the provision of inclusionary housing are met. In its review of that zoning text amendment, the Commission noted that low-ceilinged retail spaces may be difficult to rent and that the streetscape experience could be negatively affected.

The Commission heard testimony that the proposed building at 217-221 West 29<sup>th</sup> Street had been designed and engineered before the public review of the Zoning for Quality and Affordability text amendment, and that the applicant sought and received building permits for an as-of-right development before the added height was made available so that the applicant can vest his rights

under the 421-a tax exemption program, which expired in 2015, and that compliance with the bulk regulations available at the time forced the ground floor height to the level that is currently proposed. The Commission is also in receipt of a letter from the applicant's representative, dated August 5, 2016, explaining the physical constraints of removing the second floor slab to provide a taller ground floor, but also noting that the length and height of the proposed ground floor space is not inconsistent with lengths and heights of other tenanted retail spaces in the City, citing specific examples. The letter indicates that the applicant intends to tenant the retail space with a coffee shop, as has been done in other residential rental projects.

The Commission has considered requiring the height requirement of a qualifying ground floor as a condition of the authorization being created in this proposed text amendment, but acknowledges that there may be instances where inclusionary housing may not be provided that would not make available an overall building height increase with the provision of a qualifying ground floor. While a goal of the Zoning for Quality and Affordability text amendment was to encourage quality ground floor spaces, it also intended to eliminate the trade-off between usable ground floor height and quality residential floor-to-ceiling heights. In balancing these concerns, the Commission is modifying the proposed zoning text amendment to add a finding to the proposed authorization that would encourage, to the greatest extent feasible, the provision of a ground floor that meets the height requirement of a qualifying ground floor. The Commission understands that the height requirement of a qualifying ground floor is not required for any as-of-right development, but where the required retail frontage is being reduced by the authorization being created by the proposed text amendment, efforts should be made to provide a ground floor height that will only help ensure the viability of the resulting retail space. Requiring a qualifying ground floor without a corresponding increase in overall building height would be inappropriate. As the modification relates to the concurrent application for an authorization, the Commission believes that the applicant has sufficiently demonstrated that increasing the height of the ground floor would not be feasible.

The Commission believes that the proposed text amendment, as modified herein, will ensure that any and all retail spaces that are facilitated by the authorization will continue to meet the M1-6D district's goals of creating a vibrant mixed-use district.

*Sections 13-45 and 13-451(a) Special Permit (C 160148 ZSM)*

The Commission believes that the grant of the special permit to allow 26 accessory residential parking spaces beyond the 19 spaces permitted as-of-right, for a total of 45 accessory residential parking spaces in an attended parking facility on the ground floor and sub-cellar levels of the development at 217-221 West 29<sup>th</sup> Street is appropriate.

The Commission notes that the site was previously used as a surface public parking lot with 48 spaces, and that the curb cut that served the public parking lot spanned the full length of the site's 69'10" of street frontage. The Commission observes that there are other two surface parking lots on the north side of the subject block and one on the south side of the block; that southern lot is expected to be developed with a new mixed-use building with parking that was permitted by a special permit. The proposed parking facility at 217-221 West 29<sup>th</sup> Street would be served by a 20 foot curb cut (15 feet without splays) and a 16 foot garage opening within a new mixed-use building. The Commission believes that the proposed entrance and exit on the ground floor level would have less of a visual impact than the previous open parking lot and will not be inconsistent with the character of the existing streetscape.

The applicant documented the new and eliminated residential units and off-street parking spaces within one-third of a mile from the development site between 2005 and 2017, the project's expected build year, to demonstrate that the request for 26 additional accessory residential parking spaces is reasonable and not excessive in regard to recent trends in residential development and the provision of parking. Using data from the Department of Buildings, the Department of Consumer Affairs, and additional research performed by the applicant, the study found that between 2005 and 2017, the ratio of the change in off-street parking spaces to the change in residential units without the proposed development containing a total of 45 accessory residential parking spaces and 95 residential units is 9.24%. With the proposed development, that ratio would

increase to 10.5%. The Commission notes that the ratio is well-below 20%, which is the ratio of new off-street parking spaces to new residential units permitted in developments in Manhattan Community District 5.

The Commission acknowledges the comments made by the Community Board and the Borough President regarding the site's proximity to Penn Station and concerns regarding possible traffic congestion. As it relates to this particular application, the Commission notes that the proposed 45 parking spaces will result in a reduction in the nominal amount of parking spaces that previously existed on the site, and does not expect that the proposed parking facility would result in any increased traffic congestion or inhibit surface traffic and pedestrian flow. More generally, the Manhattan Core is well-served by mass transit – also acknowledging that some areas of the Manhattan Core are further from the subway than others – but the Commission has not been presented with data or information indicating that immediate access to multiple forms of mass transit will eliminate the demand for residential parking. Furthermore, the findings set forth in Sections 13-45 and 13-451(a) do not give the Commission the ability to consider the level of access to certain types of mass transit in granting or denying a particular special permit. In regards to the requested special permit, the Commission believes that the ratio of new off-street parking spaces to new residential units with the proposed project demonstrates that the request for 26 additional residential parking spaces is reasonable and not excessive in regard to recent trends in residential development and the provision of parking.

## **RESOLUTION**

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

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

Matter in underline is new, to be added;  
Matter in ~~strikeout~~ is to be deleted;  
Matter within # # is defined in Section 12-10;  
\* \* \* indicates where unchanged text appears in the Zoning Resolution

**ARTICLE IV  
MANUFACTURING DISTRICT REGULATIONS**

\* \* \*

**Chapter 2  
Use Regulations**

\* \* \*

**42-40  
SUPPLEMENTARY USE REGULATIONS AND SPECIAL PROVISION APPLYING  
ALONG DISTRICT BOUNDARIES**

\* \* \*

**42-48  
Supplemental Use Regulations in M1-6D Districts**

\* \* \*

**42-486  
Authorization for modification of streetscape provisions**

For #zoning lots# that have a #street# frontage of less than 75 feet, where entrances to off-street parking or loading facilities are located along such #street# frontage, the City Planning Commission may modify the dimensions of the frontage and depth requirements for ground floor #commercial uses# set forth in Section 42-485 (Streetscape provisions), provided that the Commission finds that such modifications:

- (a) are the minimum necessary to provide sufficient space for access to off-street parking or loading facilities;
- (b) will not adversely affect the streetscape experiences or impact the viability of such #uses#, and the resulting ground floor frontages will effectively contribute to a vibrant mixed-use district; and
- (c) to the greatest extent feasible will result in a ground floor that meets the height requirements for #qualifying ground floors#.

\* \* \*

The above resolution, duly adopted by the City Planning Commission on September 7, 2016 (Calendar No. 17), is filed with the Office of the Speaker, City Council in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD**, Chairman  
**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman  
**RAYANN BESSER, IRWIN G. CANTOR, P.E.**,  
**ALFRED C. CERULLO, III, MICHELLE R. DE LA UZ,**  
**JOSEPH DOUEK, CHERYL COHEN EFFRON,**  
**ANNA HAYES LEVIN, ORLANDO MARIN**, Commissioners

**LARISA ORTIZ**, Commissioner, abstaining

# MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

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Wally Rubin, District Manager

June 10, 2016

Hon. Carl Weisbrod  
Chair of the City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: Application # C 160148 ZSM - 217-221 West 29th Street, application by 221 W29 Residential LLC for a Zoning Text Amendment to add a new ZR Section 42-486 with respect to streetscape requirements in M1-6D districts (the “Text Amendment”), and an authorization to reduce required ground floor retail requirement pursuant to the proposed ZR Section 42-486 from the Commission (the “Authorization”)**

Dear Chair Weisbrod:

At the regularly scheduled monthly Community Board Five meeting on Thursday, June 9<sup>th</sup>, 2016, the following resolution passed with a vote of 41 in favor; 0 opposed; 1 abstaining:

WHEREAS, The applicant 221 W29 Residential LLC is seeking a Text Amendment to the Zoning Resolution to alter the streetscape requirements in M1-6D districts and an authorization from the City Planning Commission pursuant to the proposed Text Amendment to reduce the ground floor retail requirement at 217-221 West 29th Street; and

WHEREAS, The project is located in an M1-6D district in an Inclusionary Housing Designated Area, and would contain 95 units, including 19 affordable housing units (though 20 are mentioned in the application); and

WHEREAS, The affordable units will serve households at no more than 60 percent of Area Median Income (AMI) for 35 years pursuant and then the owner intends to have the affordable units serve higher income households with income at up to 80 percent of AMI for the remaining life of the building; and

WHEREAS, The project site was rezoned only five years ago in 2011 from an M1-5 district to an M1-6D district, with the goal of preserving neighborhood character while encouraging residential growth and enlivening the streetscape with a requirement that sites with 50 ft or more of street frontage set aside at least 50 percent of building frontage for ground floor retail; and

WHEREAS, The requirement that sites with 50 ft of frontage or more be required to provide at least 50 percent of their frontage for retail was carefully considered as part of the planning, environmental and political action of creating and mapping the M1-6D district; and

WHEREAS, The proposed Text Amendment to add ZR Section 42-486 would allow the City Planning Commission to modify, by authorization, the dimension of the minimum frontage and depth of the required

ground floor commercial use zoning lots that have a street frontage of less than 75 ft, but more than the base of 50 ft; and

WHEREAS, The Text Amendment would affect all zoning lots that have frontage of greater than or equal to 50 feet and less than 75 feet within the subject M1-6D district as well as any future district mapped as M1-6D; and

WHEREAS, The applicant mentioned specific challenging conditions on the site, including problems due to construction that impacted the foundation of the adjacent building, as well as high groundwater levels that led to issues with the construction of the building's foundation; and

WHEREAS, CB5 believes that there may be particular challenges associated with developing a conforming building on the subject site that includes below-grade parking and believes that the aforementioned conditions may meet the threshold for constituting unique physical conditions for purposes of the granting of a variance pursuant to ZR Section 72-21; and

WHEREAS, The proposed Text Amendment is sought by a developer and we have no evidence that the Department of City Planning believes that it erred its finding five years ago that the retail requirement was appropriate; and

WHEREAS, If the Department of City Planning believes that it erred five years ago in supporting the ground floor retail requirement in the M1-6D district it should carefully study the issue and put forth a modification, if need be, that is carefully tailored to the instances where the requirement does not allow for a feasible as-of-right development; and

WHEREAS, Community Board Five sees no rationale for a new provision of the Zoning Resolution to be added for the purposes of benefiting a single developer when such a modification to the Zoning Resolution would reduce the provision of ground floor retail envisioned as part of the carefully negotiated rezoning of 2011; and

WHEREAS, Community Board Five finds that adding a new provision to the Zoning Resolution for the benefit of a single owner five years after the creation and mapping of the M1-6D district is antithetical to sound planning principles as it favors a single property owner at the expense of the broader community and city; therefore be it

**RESOLVED**, Community Board Five **recommends denial** of the application by 221 W29 Residential LLC for a Zoning Text Amendment to alter the streetscape requirements in M1-6D and for an Authorization from the Commission to reduce required ground floor retail pursuant to that proposed Amendment

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero  
Chair



Eric Stern  
Chair, Land Use, Housing and Zoning Committee



# MANHATTAN COMMUNITY BOARD FIVE

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Vikki Barbero, Chair

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Wally Rubin, District Manager

June 10, 2016

Hon. Carl Weisbrod  
Chair of the City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: Application # C 160148 ZSM - 217-221 West 29th Street, application by 221 W29 Residential LLC for Special Permit to permit an attended accessory 45 space parking garage on the sub-cellar and ground floors of a new residential building;**

Dear Chair Weisbrod:

At the regularly scheduled monthly Community Board Five meeting on Thursday, June 9<sup>th</sup>, 2016, the following resolution passed with a vote of 21 in favor; 20 opposed; 1 abstaining:

WHEREAS, The applicant 221 W29 Residential LLC seeks a special permit to allow an attended 45 space accessory parking facility on a portion of the ground floor and in the sub-cellar of a newly constructed 210' tall, 21-story apartment building with ground floor retail at 217-221 West 29<sup>th</sup> Street; and

WHEREAS, In 2013 the applicant entered into a 99-year ground lease for the development site from 29 Park LLC, which operated a 48-space parking lot from the 1960's up until 2014, and subsequently entered into an agreement in which 29 Park LLC would continue as operator of a new 45-space lot on the proposed facility; and

WHEREAS, The requested 45 parking spaces exceeds the 19 spaces permitted as-of-right under the Zoning Resolution; and

WHEREAS, The requested 45 parking spaces are less than the previous amount of parking spaces that have existed on site for decades; and,

WHEREAS, The project site is located in one of the most transit-accessible parts of Manhattan, one block 154 from the 28th 1 line stop; two blocks south of Penn Station, with service to the A,C,E and 1,2,3 subway lines, 155 Long Island Railroad, New Jersey Transit and Amtrak; five blocks from Herald Square, with access to the D, 156 F, N, Q, R, B, and M subway lines, as well as access to multiple MTA bus lines; and

WHEREAS, While Community Board Five has ongoing concerns about traffic congestion in the district and believes tradeoffs need to be carefully considered when increasing the amount of off-street parking permitted, this proposed action would result in a reduction of parking spaces as compared with what currently exists on the site; and,

WHEREAS, There are members of the community who desire to keep such parking facilities available for use in the neighborhood as their presence serves a need for destination-based car storage as opposed to daily use; and,

WHEREAS, The net reduction of 3 spaces on the existing site resulting in the operation of 45 parking spaces, although in excess of as-or-right amount, is viewed as favorable to the neighborhood; therefore be it

**RESOLVED**, Community Board Five **recommends approval** of the application by 221 W29 Residential LLC for a special permit to allow an attended 45 space accessory parking facility at 217-221 West 29<sup>th</sup> Street.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero  
Chair



Eric Stern  
Chair, Land Use, Housing and Zoning Committee



OFFICE OF THE PRESIDENT  
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THE CITY OF NEW YORK

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**Gale A. Brewer, Borough President**

July 18, 2016

**Recommendation on  
ULURP Application Nos. N 160147 ZRM, C 160148 ZSM, and N 160149 ZAM –  
217 West 29<sup>th</sup> Street  
by 221 W29 Residential LLC**

### **PROPOSED ACTIONS**

221 W29 Residential LLC (the “applicant”) seeks approval of a special permit pursuant to Section 13-45 and Section 13-451 of the Zoning Resolution (ZR) to allow an attended accessory off-street parking garage with a maximum capacity of 45 spaces on portions of the ground floor and sub-cellar of a proposed mixed-use building at 217 West 29<sup>th</sup> Street (Block 779, Lots 27 and 28), in a M1-6D District in Manhattan Community District 5. The applicant also seeks a related text amendment to add a new ZR Section 42-486 to allow for an authorization to modify the dimensions of frontage and depth requirements for ground floor commercial uses, and an authorization pursuant to the amended text.

The special permit requires that all of the applicable conditions of ZR § 13-20 (SPECIAL RULES FOR MANHATTAN CORE PARKING FACILITIES) be met and that the findings of §13-45 and 13-451 have been met. These findings are as follows:

- (1) the location of the vehicular entrances and exits to such parking facility will not unduly interrupt the flow of pedestrian traffic associated with uses or public facilities, including access points to mass transit facilities in close proximity thereto, or result in any undue conflict between pedestrian and vehicular movements, due to the entering and leaving movement of vehicles;
- (2) the location of the vehicular entrances and exits to such parking facility will not interfere with the efficient functioning of streets, including any lanes designated for specific types of users or vehicles, due to the entering and leaving movement of vehicles;
- (3) such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow;
- (4) for public parking garages, 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;
- (5) such parking facility will not be inconsistent with the character of the existing streetscape; and

- (6) the number of off-street parking spaces in such proposed parking facility is reasonable and not excessive in relation to recent trends in close proximity to the proposed facility with regard to:
  - (a) the increase in the number of dwelling units; and
  - (b) the number of both public and accessory off-street parking spaces, taking into account both the construction, if any, of new off-street parking facilities and the reduction, if any, in the number of such spaces in existing parking facilities.

In evaluating the proposed text amendment to add a new Section 42-486 to the City of New York's Zoning Resolution, this office must consider whether the proposed language meets the underlying premise of the Zoning Resolution of promoting the general health, safety and welfare of the city and whether the proposals it will facilitate will be appropriate to the neighborhood.

The authorization the applicant requests for streetscape modifications requires that the following findings are met: (a) such modifications are the minimum extent necessary to provide sufficient space for access to off-street parking or loading facilities and (b) will not adversely affect the streetscape experience or impact the viability of such uses, and the resulting ground floor frontages will effectively contribute to a vibrant mixed-use district.

## **PROJECT DESCRIPTION**

The project site is comprised of Tax Lots 27 and 28 on Block 779, which is bounded by West 30<sup>th</sup> Street to the north, Seventh Avenue to the east, West 29<sup>th</sup> Street to the south, and Eighth Avenue to the west. The applicant is seeking a special permit pursuant to ZR § 13-45 and 13-451 to build an accessory parking garage with a maximum of 45 spaces in a proposed mixed-use building. The applicant is also seeking a text amendment and related authorization by the City Planning Commission ("CPC") to modify streetscape provisions in order to facilitate the construction of the building and garage. The project site was being used as a 48-space public parking lot.

### **Background**

In 2011, the project site was rezoned from an M1-5 district to an M1-6D district (C 100063 ZMM and N 110285 ZRY). The rezoning, which encompassed the midblocks beyond 100 feet from 7<sup>th</sup> and 8<sup>th</sup> avenues, and between the north side of 28<sup>th</sup> Street to the south side of 30<sup>th</sup> Street, was intended to preserve the neighborhood's character while allowing for residential growth and the creation of affordable housing through the Inclusionary Housing program.

In 2013, the applicant entered into a 99-year ground lease for the project site from 29 Park LLC, the owner and operator of the site as a 48-space at grade parking lot. As "Little Man Parking," they have been in business since 1999 and have experience managing 22 garages throughout New York City and northern New Jersey, and would continue as operator of the proposed garage within the new building.

### **Proposed Development**

The applicant proposes to construct a new 21-story apartment building with ground floor retail and 45 accessory residential parking spaces on the ground floor and sub-cellar. The building would have 95 rental apartment units, including 19 affordable units at 60 percent of Area Median Income (AMI) for the first 35 years of the building's life. After 35 years, the 19 units will remain permanently affordable at 80 percent of AMI.

The building would have a street wall along West 29<sup>th</sup> Street which would rise to a height of 125 feet, be set back 15 feet as per the M1-6D district regulations, and then continue to rise to the maximum permitted height of 210 feet. The building would contain 79,105.9 square feet (11.47 FAR), slightly less than the maximum 82,752 (12.0 FAR) permitted on the zoning lot with the provision of affordable housing.

The special permit would allow for a 45-space attended accessory residential parking garage. The maximum number of accessory parking spaces permitted as-of-right for 95 dwelling units is 19. The proposed parking garage would be 11,444.7 square feet, with 7,829.4 square feet and 42 spaces in the sub-cellar and 3,615.3 square feet and 3 spaces on the ground floor. The garage would be accessible via a 20-foot-wide curb cut, including splays, on West 29<sup>th</sup> Street.

The building's frontage along West 29<sup>th</sup> Street would be 69.84 feet, and the proposed ground floor retail space would be 721 square feet. The retail space would have a depth of 18.89 square feet at its shallowest and 27.38 feet at its deepest, and a width of 25.96 feet. ZR § 42-485 provides that the project site shall have a minimum depth of 30 feet and a minimum width of 34.92 feet.

### **Area Context**

The project site is located in a M1-6D zoning district in Manhattan Community District 5 on the north side of West 29<sup>th</sup> Street between 7<sup>th</sup> and 8<sup>th</sup> Avenues. The predominant zoning around the project site are M1-6 and M1-5. The Special Hudson Yards District is located about 600 feet north of the project site and includes C6-4 and C6-6 zoning districts.

Buildings in the area range in height and type, although early 20<sup>th</sup> Century loft architecture is common. Adjacent to the project site on the east side is a 7-story residential building with catering use on the ground floor, and to the west is a 2-story building used as a fur/leather showroom. Across the street is a 16-story commercial office/wholesale building, and next to it a 14-story commercial office building with a health center. To the immediate north of the project site are two 2-story buildings containing a fur wholesaler and a music store. To the west of the project site and across 29<sup>th</sup> Street is the "Edison Site," where two new 20-story residential buildings with ground floor retail, office use, and 350 parking spaces have been proposed.

The area is served by mass transit for local, regional, and national lines, as Penn Station is two blocks north on 31<sup>st</sup> Street. This provides access to the A-C-E and 1-2-3 subway lines, along with regional and national rail access by the Long Island Rail Road, New Jersey Transit, and Amtrak, respectively. The project site is also proximately located to the 28<sup>th</sup> Street station on Broadway of the 1 train, while the M20 bus route runs north along 8<sup>th</sup> Avenue and south along 7<sup>th</sup> Avenue.

In addition, to the northeast, .4 miles away, or less than a 10 minute walk, the MTA Herald Square station is situated with access to the N, Q, R, B, D, M, and F lines, along with a connection to the PATH train.

### **Proposed Actions**

In order to facilitate the construction of a 21-story apartment building with a 45-space accessory parking garage, the applicant seeks:

- (1) A Parking Special Permit (C 160148 ZSM) pursuant to ZR § 13-45 and 13-451 to allow additional accessory parking spaces for residential growth in order to construct a 45-space accessory residential parking garage. Only 19 spaces are permitted as-of-right for a 95 dwelling unit building.
- (2) A Zoning Text Amendment (N 160147 ZRM) to add a new Section 45-486 to the Zoning Resolution, which would allow the City Planning Commission to modify, by authorization, the dimension of the minimum frontage and depth of the required ground floor commercial use of Section 42-485 (Streetscape provisions) for zoning lots that have a street frontage of more than the base of 50 feet but less than 75 feet. The proposed project does not meet the current requirement of 50 percent retail frontage and 30 feet minimum depth.
- (3) An Authorization (N 160149 ZRM) pursuant to the proposed Section 45-486 which would allow CPC to modify the streetscape provisions of Section 42-485. Under Section 42-485 for 50 percent of street frontage to be occupied by retail use, the retail space would need to be 34.2 feet in length; the applicant proposes 25.96. Section 42-485 also requires such retail space to have a minimum depth of 30 feet from the streetwall; the applicant requests a waiver of this requirement as the proposed retail depth will range from 18.89 to 27.38 feet.

### **COMMUNITY BOARD RECOMMENDATION**

At its Full Board meeting on June 9, 2016, Manhattan Community Board 5 (CB5) approved a resolution recommending **approval** of the application for a special permit to allow a 45-space accessory parking garage, by a vote of 21 in favor; 20 opposed; and 1 abstaining. CB5 cited the 48 parking spaces that had existed on the site for decades, and members of the community expressed a desire to keep such parking facilities for destination-based car storage as opposed to daily use.

However, CB5 also recommended **denial** of the text amendment to allow authorization to modify streetscape requirements in M1-6D districts. CB5 raised the relatively recent rezoning of the project site in 2011, and sees insufficient rationale to change streetscape requirements from only five years ago.

## **BOROUGH PRESIDENT'S COMMENTS**

Recommendations from the Borough President on prior parking special permits have continued to call on the Department of City Planning and the City Planning Commission to consider a more robust set of factors aside from the parking methodology analysis, including the absolute availability of parking, the supply of parking prior to the ten-year look-back and the current capacity and utilization rate of parking facilities in the neighborhood, and access to mass transit.

In light of these concerns with the parking study methodology, and following a discussion with this office, it is appreciated that the applicant has provided us with recent and historical parking utilization data for two sites within the immediate area. The existing parking lot on the project site and the one nearby on the same street have enjoyed high utilization rates, and nearly 50 percent of spaces on the two lots have been occupied by monthly users. Thus, the data supports the assumption of the parking study, and also shows that a significant share of customers are local rather than transient users.

However, the project site is also two short blocks away from Penn Station -- the heart of the entire New York regional transportation system. Not only does it provide great access to multiple lines of the New York City subway system, it also has connections to the Long Island Rail Road, New Jersey Transit, and Amtrak, giving residents expansive access to the greater New York metropolitan area and beyond. With the upcoming West Side Access project to Penn Station, the surrounding area would also connect to the Metro-North Railroad. With the proximate location of Herald Square, the site has access to all but a few lines in the entire transit system. In terms of mass transit, it is perhaps the most incredibly well-served area in all of North America.

Members of the community raise a valid point that there are different profiles for car users, and that parking spaces can serve as storage for destination-based car usage as opposed to everyday commuting. But unlike other transit-oriented locations that might only have access to the subway, the Penn Station area provides the full range of transit options in the region. We believe that in such a case, there is much less need for destination-based car storage for residents, as there are ready alternatives to car travel.

The applicant might very well meet the individual findings for a special permit pursuant to ZR §13-45 and 13-451. However, our office believes that these findings are too narrowly focused and do not take into account the very important factor of access to mass transit. Excessive car congestion certainly has adverse effects on the character of Midtown Manhattan. It is within the Commission's powers to act in order to minimize adverse effects on the character of the surrounding area, and we recommend denial of this special permit application in such a transit-rich area.

In regard to the applications for a text amendment to modify streetscape requirements and for an authorization pursuant to that text amendment, we believe they are appropriate for the project site and its context. Our office has consistently expressed the importance of having appropriate spaces for the small-scale commercial tenants that are crucial to our neighborhoods. This text amendment and authorization would provide more flexibility in the length and depth of retail

spaces on narrow lots. Furthermore, according to information from the applicant, there are 57 ground floor commercial spaces with frontages of no more than 26 feet in the mapped M1-6D district. We do not believe that the proposed retail frontage will be out of context in its surroundings.

We also recognize the Community Board's concern about modifying the requirements of a relatively recent rezoning. Our office is also generally wary of such modifications. However, in conversations with the staff of the Department of City Planning, it was acknowledged that were these changes raised at the time of the original rezoning, they would have been considered appropriate by the Department. We believe that these changes will ultimately allow for more flexibility and a higher-quality streetscape experience in the district.

### **BOROUGH PRESIDENT'S RECOMMENDATION**

Therefore, the Manhattan Borough President recommends **denial** of ULURP Application No. C 160148 ZSM for a 45-space parking garage, and **approval** of ULURP Application Nos. N 160147 ZRM creating a new CPC authorization and N 160149 ZAM for modifications to the streetscape provisions.



Gale A. Brewer  
Manhattan Borough President