



CITY PLANNING COMMISSION

July 14, 2010 / Calendar No. 32

C 100050 ZSM

IN THE MATTER OF an application submitted by 401 Hotel REIT, LLC and 401 Commercial, L.P. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 81-541 and 74-634 of the Zoning Resolution to allow a floor area bonus not to exceed 20 percent of the basic maximum floor area ratio permitted by the underlying district regulations for subway station and/or rail mass transit facility improvements, in connection with a proposed commercial development on property located at 15 Penn Plaza (Block 808, Lots 40, 1001 and 1002) in a C6-6 District, within the Special Midtown District (partially within the Penn Center Subdistrict), Borough of Manhattan, Community District 5.

This application for a special permit pursuant to Section 81-541 (“Rail mass transit facility improvement”) and 74-634 (“Subway station improvements in Downtown Brooklyn and in commercial zones on 10 FAR and above in Manhattan”) was filed by 401 Hotel REIT, LLC, and 401 Commercial, L.P. on August 5, 2009 to facilitate the development of a commercial office building of over 2 million zoning square feet on the western half of the block bounded by West 33rd & West 32nd streets, and Seventh and Sixth avenues. The application was revised on July 8, 2010 with respect to the amenities and configuration of the Gimbel's/33rd Street Passageway.

RELATED ACTIONS

In addition to the proposed special permit 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 100047 ZMM	Zoning Map Amendment from a C6-4.5 district to a C6-6 district
N 100048 ZRM	Zoning Text Amendment to Sections 81-066 and 81-254 to allow an application for a Special Permit to modify height and setback for sites wholly or partially in the Penn Center Subdistrict of the Special Midtown District and an amendment to Section 81-541 to modify the procedure for obtaining a transit bonus in the Special Midtown District and permit the reservation of bonus floor area obtained via the transit bonus
C 100049 ZSM	Special Permit pursuant to Sections 81-066 and 81-254 to modify: the height and setback regulations of Section 81-27; the Mandatory District Plan Elements of 81-42, 81-43, 81-45, and 81-47, and the design standards of Section 37-53(f)
C 100237 PQM	City Acquisition of easements related to the transit improvements

BACKGROUND

A full background discussion and description of this application appears in the report for a special permit (C 100049 ZSM).

ENVIRONMENTAL REVIEW

This application (C 100050 ZSM) in conjunction with the applications for the related actions (C 100047 ZMM, C 100049 ZSM, N 100048 ZRM, and C 100237 PQM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09DCP019M. The lead is the City Planning Commission.

A summary of the environmental review appears in the related report for a special permit (C 100049 ZSM).

UNIFORM LAND USE REVIEW

On February 8, 2010, the application (C 100050 ZSM), in conjunction with the applications for the related actions (C 100047 ZMM, C 100049 ZSM, and C 100237 PQM) was certified as complete by the Department of City Planning, and was duly referred to Manhattan Community Board 5 and the Manhattan Borough President in accordance with Title 62 of the rules of the City of New York, Section 2-02(b), along with the related non-ULURP application (N 100048 ZRM) which was referred for information and review.

Community Board Review

Community Board 5 held a public hearing on this (C 100050 ZSM) and related applications (N 100047 ZMM, N 100048 ZRM, C 100049 ZSM, and C 100237 PQM) on April 15, 2010 and on that date, by a vote of 36 in favor, 1 opposed, and 1 abstaining, adopted a resolution recommending disapproval of this application.

A summary of the recommendations of Community Board 5 appears in the related report for a special permit (C 100049 ZSM).

Borough President Recommendation

The application (C 100050 ZSM) and the related applications (C 100047 ZMM, N 100048 ZRM, C 100049 ZSM, and C 100237 PQM) were considered by the Manhattan Borough President who recommended conditional approval of the applications on May 19, 2010.

A summary of the recommendations of the Borough President appears in the related report for a special permit (C 100049 ZSM).

City Planning Commission Public Hearing

On May 12, 2010 (Calendar No. 5) the City Planning Commission scheduled May 26, 2010, for a public hearing on this application (C 100050 ZSM) in conjunction with the hearing on the related actions (C 100047 ZMM, N 100048 ZRM, C 100049 ZSM, and C 100237 PQM). The hearing was duly held on May 26, 2010 (Calendar No. 16).

There were a number of appearances, as described in the report on the related application for a special permit (C 100049 ZSM) and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of the special permit is appropriate.

A full consideration and analysis of the issues, and reasons for approving this application appears in the related report for a special permit (C 100049 ZSM).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-634(d) of the Zoning Resolution:

- (i) the general accessibility and security of the subway station/rail mass transit improvements will be improved by the provision of new connections, additions to or reconfigurations of circulation space, including provision of escalators or elevators; and
- (ii) significant improvements to the subway station/rail mass transit improvement environment by provision for direct daylight access, or improvements to noise control, air quality, lighting or rider orientation and satisfactory integration of the street level entryway into the development or enlargement will occur.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on July 2, 2010, with respect to this application (CEQR No. 09DCP019M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act & regulations, has been met and that,

1. Consistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and

2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration, dated July 13, 2010, those mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FEIS, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the application submitted by VNO 100 West 33rd Street, 401 Hotel REIT, LLC and 401 Commercial, L.P., pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to Sections 81-541 and 74-634 of the Zoning Resolution to allow a floor area bonus not to exceed 20 percent of the basic maximum floor area ratio permitted by the underlying district regulations for subway station and/or rail mass transit facility improvements, in connection with a proposed commercial development on property located at 15 Penn Plaza (Block 808, Lots 40, 1001 and 1002) in a C6-6 District, within the Special Midtown District (partially within the Penn Center Subdistrict), Borough of Manhattan, Community District 5 is approved subject to the following conditions:

1. The subway station/rail mass transit improvements that are the subject of this application

(C 100050 ZSM) shall be developed pursuant to the following plans, prepared by Stantec and Pelli Clarke Pelli Architects, filed with this application and incorporated in this resolution, subject and in accordance with the provisions and procedures set forth in the Restrictive Declaration:

Single/Multi Tenant Transit Drawings

<u>Drawing</u>	<u>Title</u>	<u>Last Date Revised</u>
G-001	Cover Sheet	February 8, 2010
G-007	Key Plan Street Level	February 8, 2010
G-008	Key Plan Lower Level 1 (LL1)	February 8, 2010
G-009	Key Plan Lower Level 2 (LL2)	February 8, 2010
A-102	Area 1 IRT Platform Level (LL1) Floor Plan	February 8, 2010
A-103	IRT Underpass Level (LL2) Floor Plan	February 8, 2010
A-201	Street Level Floor Plan	February 8, 2010
A-202	IRT Platform Level (LL1) Floor Plan	February 8, 2010
A-203	IRT Underpass Level (LL2) Floor Plan	February 8, 2010
A-301	Area 3 Street Level Floor Plan	February 8, 2010
A-302	IRT Platform Level (LL1) Floor Plan	July 8, 2010
A-400	Area 3 to 7 Passageway Spatial & Design Requirements	July 8, 2010
A-401	Area 4 Street Level Floor Plan	July 8, 2010
A-402	Area 4 Passageway Level (LL1) Floor Plan	July 8, 2010
A-502	Area 5 Passageway Level (LL1) Floor Plan	July 8, 2010

A-602	Area 6 Passageway Level (LL1) Floor Plan	July 8, 2010
A-701	Area 7 Street Level Floor Plan	February 8, 2010
A-702	Area 7 Path Mezzanine Level (LL1) Floor Plan	February 8, 2010
A-703	Area 7 IND Mezzanine Level (LL2) Floor Plan	February 8, 2010
A-801	Area 8 Street Level Floor Plan	February 8, 2010
A-802	Area 8 PATH Mezzanine Level (LL1) Floor Plan	February 8, 2010
A-803	Area 8 IND Mezzanine Level (LL2) Floor Plan	February 8, 2010
A-S01	Area 3 to 7 Passageway Longitudinal Section	July 8, 2010
A-S02	Area 1 to 3 Miscellaneous Sections 1 of 2	February 8, 2010
A-S03	Area 3 to 8 Miscellaneous Sections 1 of 2	July 8, 2010

2. The subway station/rail mass transit improvements which are the subject of this application shall conform to all applicable laws and regulations relating to their construction, operation and maintenance.

3. Development of subway station/rail mass transit improvements pursuant to this resolution shall be allowed only after it has been recorded in the Office of the Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

4. Bonus floor area authorized pursuant to this resolution in connection with the development of subway station/rail mass transit improvements shall be incorporated in the building which is the subject of special permit (C 100049 ZSM), in accordance with the terms of such special permit and the Restrictive Declaration, and may in addition be utilized elsewhere on the zoning

lot to the extent not incorporated in such building and retained in a manner authorized pursuant to Section 81-541 of the Zoning Resolution, subject to the provisions of such Restrictive Declaration and any applicable review and approval process for the development or enlargement which incorporates such retained bonus floor area.

5. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

6. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

7. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or

any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the restrictive declaration.

8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city or such employees or agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 100050 ZSM), duly adopted by the City Planning Commission on July 14, 2010 (Calendar No. 32), is filed with the Office of the Speaker, City Council, and the 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, FAICP, Chair

KENNETH J. KNUCKLES, ESQ., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER, BETTY Y. CHEN,
MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,
ANNA HAYES LEVIN, KAREN A. PHILLIPS, Commissioners

ALFRED C. CERULLO, III, Commissioner, RECUSED