



CITY PLANNING COMMISSION

March 4, 2015, Calendar No. 15

C 140409 ZSM

IN THE MATTER OF an application submitted by 1818 Nadlan LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-32(c) of the Zoning Resolution to modify the height and setback requirements of Sections 96-32 (Special Regulations in R9 Districts) and 23-633 (Street wall location and height and setback regulations in certain districts), the rear yard setback requirements of Section 23-663 (Required rear setbacks for tall buildings in other districts), the permitted obstructions requirements of Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), and the planting requirements of Section 23-892 (In R6 through R10 Districts), in connection with a proposed residential building with two 16-story segments on property located at 505-513 West 43rd Street a.k.a. 506-512 West 44th Street (Block 1072, Lot 24), in an R9 District, within the Special Clinton District (Preservation Area), Borough of Manhattan, Community District 4.

This application for a special permit was filed by 1818 Nadlan LLC on June 2, 2014 to facilitate the development of an approximately 149,614 square foot, 15-story residential building, with segments along both West 43rd and West 44rd streets, over an open rail cut in the Special Clinton District.

RELATED ACTIONS

In addition to the 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:

N 140407 ZRM

A proposed amendment to the Zoning Resolution to create a special permit in Section 96-32 (Special Regulations in R9 Districts) for the purposes of waiving the applicable height and setback regulations of Sections 23-633, rear yard regulations of Section 23-663, planting regulations of Section 23-892, and permitted obstruction within rear yard regulations of Section 23-44.

C 140408 ZSM

A special permit pursuant to Section 74-681 of the Zoning Resolution to allow development over a railroad transit right-of-way.

BACKGROUND

1818 Nadlan LLC proposes several land use actions to facilitate construction of a 15-story, 149,614 square-foot residential building at 505-513 West 43rd Street (Block 1072, Lot 24) in the Hell's Kitchen/Clinton neighborhood in Manhattan Community District 4.

The development site comprises a 20,083 square foot through-lot which is 125 feet west from Tenth Avenue, with 100 feet of frontage on West 43rd Street and 100 feet of frontage on West 44th Street. It is bisected by an approximately 56-foot wide, active, Amtrak railroad right-of-way located approximately 26 feet below curb level and open to the sky. There are currently approximately 26 trains per day (13 in each direction) passing through the right of way. There are no other uses on the site and there is currently no access to the site from the surrounding streets.

The site was rezoned in June 2011 as part of the West Clinton Rezoning (C 110177 ZMM), which affected all or portions of 18 blocks. Under the rezoning the western 15,825 square foot portion of the development site, located in the Western Subarea C2 (located within the Other Areas) of the Special Clinton District, was zoned R9 and the eastern 4,090 square foot portion of the site, located in the Preservation Area of the Special Clinton District was zoned R8 with a C2-5 overlay. Pursuant to Section 77-11, the R9 Special Clinton District regulations apply to the entire development site.

In Western Subarea C2 of the Special Clinton District, R9 zoning allows 6.0 FAR of residential use, bonusable to 8.0 FAR with the provision of inclusionary housing. Sites within R9 districts in this Subarea must also comply with R9A height and setback regulations – a base height of between 60 and 95 feet, a setback from the street wall of 15 feet, and a maximum building height of 135 feet.

The area surrounding the development site is characterized by a mix of land uses, including light industrial, commercial, residential, institutional, transportation and public utilities. The areas to the south and east are primarily residential and include a building stock that ranges from

high-rise towers of between 35 and 44 stories that front on West 42nd and 43rd streets across the street from the development site to three-to-nine-story tenements and apartment buildings east of Tenth Avenue. Blocks to the north, which retain many industrial uses, are also becoming increasingly residential with developments like the mixed residential/commercial Gotham West on the block north of the development site. The west side of Eleventh Avenue is generally characterized by low-rise, larger footprint buildings with some office space, utilities, auto dealerships and parking.

The development site block contains a diversity of uses. It is bounded by West 43rd and 44th Streets, and Tenth and Eleventh Avenues. Immediately east of the development site, the Tenth Avenue end of the block includes tenements of four- to five-stories and a single story retail building. West of the development site the West 43rd Street frontage includes a three-story auto rental, a through-block loft building being converted to a high school, a 20,000-square foot surface parking lot being developed for residential use, a garage and auto repair, a seven-story self- storage facility and a diner on Eleventh Avenue.

As certified, the proposed actions would have facilitated construction of a 16-story, 160,664-sf residential building, with a 35-space accessory garage. It was to contain 192 rental dwelling units of which approximately 38 units, or roughly 32,000 square feet, would be inclusionary. The building would have been constructed on a platform stretching across the entire width of the development site covering the entire rail cut.

The building was proposed to comprise a single story ground floor with two 16-story segments fronting on West 43rd and West 44th streets. The building would have been set back at curb level by eight feet on each frontage to allow NYC Department of Transportation (DOT) access to maintain road bridges on West 43rd and West 44th streets. The 16-story segments would rise to 164 feet, with a setback at the 10th floor at approximately 93 feet.

The ground floor of the proposed building would contain lobby, accessory recreation space, bike rooms, mechanical space and an accessory parking area containing 35 spaces. Parking would be

accessed by a 12-foot wide curb cut at the western edge of the West 43rd Street frontage. Residential units would be located on floors two through 16.

The platform over the Amtrak rail line would incorporate ventilation shafts and an exit stair from track level to grade at West 44th Street as required by the New York City Fire Department. The platform would include removable concrete panels to provide access to DOT street bridges per DOT requirements within the 8-foot setbacks from the street line. These panels would be of a same or similar material as the sidewalk. In light of DOT's access requirements, the area between the street line and the building cannot be landscaped (in accordance with Section 23-892). In lieu of such planting, removable planter boxes would be provided. The West 43rd Street frontage would have nine and the West 44th Street frontage would have eleven three-foot by three-foot planter boxes.

The proposed rail ventilation system would include an active vent on each building segment rooftop, which would vent air from the rail tunnel when the fan system is triggered by the pollutant sensor system within the rail tunnel. A passive vent would also be provided on the second floor terrace. This vent would be completely sealed under normal operating conditions. The vent structure would be 22 feet wide, 17 feet deep and eight feet high. The vent presents an obstruction in the rear yard equivalent and would require modification by the proposed Section 96-32(c) special permit. In compliance with the special permit requirements, the vent would be fully screened by a four-foot deep landscaped strip densely planted with evergreen shrubs at least four feet high at time of planting, expected to form a year-round screen at least six feet high within three years.

Actions Necessary to Facilitate the Project

The applicant proposes the following actions:

- Zoning text amendment to create Section 96-32(c) (Special Regulations in R9 Districts.) that would allow, via special permit, a waiver of height and setback, planting and rear yard regulations.
- Special permit pursuant to the proposed Section 96-32(c).

- Special permit pursuant to Section 74-681 (Development within or over a railway or transit right of way or yard).

ZONING TEXT AMENDMENT (N 140407 ZRM)

The zoning text amendment would create a special permit, which is the subject of this report, that would allow, specifically for sites located within R9 districts of Western Subarea 2 of the Special Clinton District and subject to Section 74-681 (Development within or over a railway or transit right-of-way or yard), a waiver of the height and setback regulations of Sections 23-633, rear yard regulations of Section 23-663, planting regulations of Section 23-892 and permitted obstruction within rear yard regulations of Section 23-44. With regards to waivers of height and setback, the Commission must find that the modification of height would result in a better distribution of bulk on the zoning lot and permit adequate access of light and air to surrounding streets and adjacent properties. The special permit would provide that the height waiver would be limited to a maximum of 165 feet. With regards to waivers of the planting requirement, the Commission must find that the modification of the requirement will facilitate access to DOT bridge structures, and that the area between the street wall and street line of the building would be improved with moveable planters. With regards to the rear yard waivers, the Commission must find that any obstruction permitted in a rear yard or rear yard equivalent is necessary to accommodate the ventilation needs of a railroad or transit facility, that such obstruction shall be fully screened by a landscaped strip at least four feet wide, densely planted with evergreen shrubs at least four feet high at time of planting, and of a type that is expected to form a year-round dense screen at least six feet high within three years. Such screening must be maintained in good condition at all times.

SPECIAL PERMIT BULK MODIFICATION (C 140409 ZSM)

Section 96-32 states that for buildings in R9 districts in Western Subarea C2, Section 23-633 height and setback regulations apply. The proposed building would be required to set back 15 feet from a street wall above a base of 60 to 95 feet on a narrow street. This is due to the DOT requirements to service the street bridges adjacent to the development site, the street wall of the building must set back eight feet. The applicant proposed a building that at a height of 93 feet

would setback at seven feet, which would not, at 95 feet and above, meet the 15-foot requirement. The proposed special permit would waive the remaining eight-foot encroachment above the maximum base height of 95 feet.

Section 23-633 requires a maximum building height of 135 feet. As certified the applicant proposed that the building rise to 164 feet and so the height waiver would be required for the 29 additional feet of height.

Section 23-663 requires that for Quality Housing buildings (which this building is proposed to be) in R9 districts the building must set back from the rear yard line by 10 feet above the maximum base height (of 95 feet). The proposed building is proposed to set back five inches and so the special permit would be required to waive this setback requirement and allow a nine foot seven inch encroachment for each segment within the rear yard setback above the maximum base height of 95 feet. The rear yard equivalent of the lot would measure 60 feet from tower to tower.

Planting modification

Section 23-892, made applicable to this site via Section 96-32, requires that the entire area of the zoning lot between the street line and street wall be planted at ground level, or in raised planting beds that are permanently affixed to the ground. Since DOT needs to service the adjacent street bridges with the eight foot setback of the applicant's property, the applicant is requesting a waiver of this requirement and, in lieu of such planting, nine removable planter boxes would be provided for the West 43rd Street frontage and eleven would be provided for the West 44th Street frontage.

Rear Yard Obstruction modification

Section 23-44, made applicable to this site via Section 96-32, lists permitted rear yard obstructions but "vents" is not one of the listed obstructions. Given Amtrak's requirement for an emergency vent at this location, the proposed special permit would legalize the vent, formalize its dimensions, and require screening as described above.

SPECIAL PERMIT PURSUANT TO SECTION 74-681(C140408ZSM)

As noted previously, the site is located over a 56-foot wide active Amtrak right-of-way. Where a development is located partially or entirely within a railroad right-of-way or air space, the Commission may permit the area of the platform covering the right-of-way or air space to be included in the lot area for the development. Floor area generated from the site is required for this development to be built. The Commission must make certain findings with regards to whether the streets providing access to the site are adequate to handle traffic, whether the concentration of units or floor area on the site adversely affects the character of the area, whether the uses on the site adversely affect one another, and whether the site plan and structural design of the development affects the future use of the right-of-way for transportation.

ENVIRONMENTAL REVIEW

This application (C 140409 ZSM) in conjunction with the applications for the related actions (N 140407 ZRM and C 140408 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 14DCP183M. The lead is the City Planning Commission.

On February 17, 2015, a Revised Environmental Assessment Statement (EAS) was issued which describes and analyzes modifications to the Proposed Actions. The Revised EAS concluded that the proposed actions with modifications would not result in any new or different significant adverse environmental impacts not already identified in the previous Negative Declaration. A Revised Negative Declaration was issued on March 2, 2015. The Revised Negative Declaration reflects the modified application.

UNIFORM LAND USE REVIEW

This application, along with the related ULURP application (C 140408 ZSM), was certified as complete by the Department of City Planning on September 29, 2014, and duly referred to Manhattan Community Board 4 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 action (N 140407 ZRM), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Manhattan Community Board 4 held a public hearing on this and related actions on November 12, 2014 and, on December 3, 2014, by a vote of 35 in favor, 3 opposed, and none present but not eligible to vote, adopted a resolution recommending approval of the application with the following conditions:

- The proposed heights of the building will be reduced from 164 feet on West 43rd and West 44th Streets to 154 feet on West 44th Street and 154 feet and 144 feet on West 43rd Street;
- A minimum of 6 permanently affordable apartments would be on-site and 18 permanently affordable apartments will be off-site within the Special Clinton District. On-site units will be affordable condominiums at 80% of area median income; off-site units will be affordable rentals between 50% to 80% of area median income;
- The on-site permanently affordable apartments will be distributed equally between the West 43rd Street and West 44th Streets building segments on upper and lower floors with no more than one affordable unit per floor;
- The applicant will work with the Community Board to maximize the number of two-bedroom units and agrees to at least a minimum of 50% two bedroom units;
- All building amenities (other than parking) will be accessible to inclusionary unit owners at no cost;
- The on-site Inclusionary units will have the same fixtures, finishes, and appliances as the market rate units;
- Parking will be reduced from 35 to 23 spaces;
- The applicant will continue to work with the Community Board to make the façade more contextual with the neighborhood and adjacent building. These changes will be made through consultation with the Board and agreed to prior to the City Planning Commission hearing;
- As part of the standard inclusionary housing review process, the Applicant will refer its application to the Community Board for both on-site and off-site inclusionary units. The

off-site application will provide the Community Board with the building location and related apartment finishes, building amenities and apartment distribution of the potential sites.

- The applicant will revise its ULURP application to reflect the reduced height and agreed upon commitments.
- The applicant shall revise its application for the Zoning Text Amendment which amended the text so that the text would not permit a modification of the height of a building to more than 155 feet. The Community Board requested the City Planning Commission make that modification to the proposed Zoning Text.

Borough President Recommendation

This application and the related actions were considered by the Manhattan Borough President, who issued a recommendation on January 7, 2015 approving the application, with the following conditions:

- Revised the ULURP application as per the Community Board's requests.
- Ensure fair treatment of all inclusionary unit owners, including providing that:
 - The by-laws will provide that one member of the Board of Managers must be an owner of an inclusionary unit;
 - The condominium declaration and by-laws will provide that there cannot be any distinction between market rate owners and affordable owners regarding access to building amenities;
 - The condominium declaration and the by-laws will clearly state that they cannot be amended in any way that would affect the inclusionary unit owners without the consent of HPD;
 - Determine interior floor plans prior to City Council approval of the ULURP application so that the approved application indicates the final number of on-site affordable units; and
 - Include more than six on-site affordable condominiums.

City Planning Commission Public Hearing

On January 7, 2015 (Calendar No. 7) the City Planning Commission scheduled January 21, 2015 for a public hearing on this application (C 140409 ZSM). The hearing was duly held on January 21, 2015 (Calendar No. 31) in conjunction with the public hearings on the applications for the related actions (N 140407 ZRM and C 140408 ZSM).

There were eight speakers in favor of the application and none in opposition. The applicant's land use attorney explained the proposal as certified, and as proposed to be revised based on the recommendations of the Community Board and Borough President received during the public review process. He explained that the site had changed owners prior to certification. The proposed revisions affected a reduction in building height, floor area, the number of residential units, a change from rental units to condominiums, and a reduction in the number of parking spaces. The reduced height alternative would have both segments of the building rise to 154 feet. As originally certified, both segments of the building would rise to 164 feet. The number of residential units would be reduced from 192 to 105. The square footage on the site would be reduced from approximately 160,664 to approximately 149,614 and the number of parking spaces would be reduced from 35 to 23. Additionally, whereas the certified proposal would be a rental building, the reduced height alternative would be composed of condominium units. The applicant's affordable housing attorney then explained the number of inclusionary/affordable units to be developed on-site (approximately 6) and off-site (approximately 12); that the on-site inclusionary units would have the same amenities as the market rate owners; and that HPD would be involved in the creation of the units and management of them.

Two speakers from the Community Board's land use committee spoke, explaining their support for the reduced height alternative and why it was important for the Community Board to ensure that the proposed building's height, pursuant to a revised text amendment, would not be permitted to exceed 155 feet. They explained that the midblock section of the block where the proposed development is located serves as a transition area between taller buildings located in the Perimeter Area of the Special Clinton District (just to the south of the site) and the areas to the north of the site such as the Preservation Area. They explained that inclusionary housing would still be provided on- and off-site pursuant to the Inclusionary Housing Program. Another of the applicant's land use attorneys spoke of the proposal, specifically with regards to how the number of units and square footage varies from the certified proposal and the reduced height proposal.

The architect for the project spoke of how the design is intended to fit into the design diversity of the neighborhood and also about the building's sustainable elements. A representative of the

Manhattan Borough President's Office reiterated the points of the Borough President's recommendation.

A representative of HPD spoke generally about inclusionary condominium units (as the proposed building would have) with specific details regarding how common charges and other costs are allocated in a building that contains both market and inclusionary condominiums.

CONSIDERATION

The Commission believes that the grant of this special permit (C140409ZSM), in conjunction with the related applications (C140408ZSM and N140407ZRM), is appropriate.

As originally certified, the proposed actions would have facilitated the construction of a 16-story, approximately 160,664 square foot rental residential building, with a 35-space accessory garage. The building would have risen to a height of 164 feet and contained 192 units, of which approximately 38 units, or roughly 32,000 square feet, would have been affordable through the Inclusionary Housing Program. After certification, the applicant revised its development from a rental building to a condominium and, to address concerns from the Community Board and Borough President regarding building height, agreed to modify its proposal to reduce the height of the building from 164 feet to 154 feet. This reduction in height would result in a decrease in floor area from approximately 160,664 square feet to 149,614 square feet (8.0 FAR to 7.4 FAR). The project, as revised, would provide 105 residential units. Also, the number of parking spaces would be reduced from 35 to 23. The applicant has submitted a revised application dated February 27, 2015 which proposes the 154-foot tall building and proposes a text that would limit the height available pursuant to the special permit to 155 feet.

The Commission is disappointed that the various changes proposed result in a loss of 85 potential dwelling units and, in particular, 12 affordable units at a time when there is a pressing need for housing, both market-rate and affordable, in New York City. Given the unique constraints that are a result of the site's location above the active Amtrak rail cut, the height waiver sought is necessary to permit the incorporation of the full floor area of the project,

including the inclusionary housing floor area and associated affordable housing units. The Commission encouraged the developer during the public review process to make best efforts to maximize the number of inclusionary units on site in light of the height reduction as proposed. The applicant has expressed in a letter to the Commission dated January 29, 2015, that it proposes to increase the number of inclusionary units from the 18 committed to the Community Board to 26 units, with approximately 8 units being on-site and 18 being off-site, for a total of 26 inclusionary units. The Commission is disappointed that the applicant was not able to accommodate a greater number of inclusionary, affordable housing units in the proposed project and that the compromise will require that a majority of the reduced number of affordable units will be located offsite, but nonetheless acknowledges that a greater number of affordable units will be located on site than what was originally proposed to the Community Board.

The Commission acknowledges that the change to a condominium project means that the remaining 8 on-site affordable units will provide valuable ownership opportunities for lower-income households. However it is unfortunate that the applicant and Community Board were unable to reach a consensus that would have allowed for the provision of the 38 inclusionary units originally proposed at certification. This is especially so in view of the modest reduction in height in the revised proposal, the impact of which is the loss of 11,000 square feet of floor area and consequent loss of residential units, on a block that the Community Board acknowledges is a transitional block between the very high density towers across the street to the south and the medium density blocks to the north. Nevertheless, the Commission recognizes that the proposed modification to the zoning text amendment would allow the height for the proposed development to increase from 135 feet, the maximum allowable in Western Subarea C2 of the Special Clinton District, to 155 feet, thereby acknowledging the transitional nature of the subject block.

The Commission notes that the applicant has expressed that it will fulfill all of the conditions of the Community Board expressed in its recommendation. In a memo to the Manhattan Borough President's Office dated December 23, 2014, the applicant also agreed that the condominium declaration and by-laws would provide that one member of the board of managers would be an inclusionary owner that those documents could not be modified without the consent of HPD, that the initial carrying charges of the inclusionary apartment would not exceed 30% of 80% of

AMI, that the market rate owners would absorb any increases in common expenses that exceed HPD-permissible amounts, and that the quality of amenities would have no distinction between market and inclusionary owners.

Text amendment to Section 96-32

The Commission believes that the proposed revised text amendment is narrowly tailored to provide appropriate relief to this site and this particular site appears to be the only one where this amendment may apply as it is the only one which is subject to the provisions of Section 74-681 (Development within or over a railway or transit right-of-way or yard) in an R9 district within the Clinton District. The Commission also believes that the text is appropriate given the physical constraints common to developments that are built over transit right-of-ways. Specifically, the sidewalks in front of the building on both West 43rd and West 44th Street must be effectively widened by eight feet to allow for maintenance of the street bridges over the rail cut by the DOT. Additionally the building will not have a cellar and Amtrak requires that the building provide sizeable ventilation and exhaust systems on site. It is for these reasons that the Commission believes that relief from the height, setback, rear yard and planting requirements available in this proposed text, so floor area could be better placed and distributed on the site, are appropriate and why it supports this text amendment.

Special Permit pursuant to Section 96-32(c)

The Commission believes that the applicant has demonstrated that the proposal meets the findings of the proposed text. The waivers provide a better distribution of bulk on the lot in that if underlying height and setback regulations were applied, in conjunction with the aforementioned required setbacks from the street line for bridge maintenance, then the result would be significantly narrower towers which could not accommodate the allowable floor area. The Commission also notes that since there is no cellar due to the presence of the Amtrak rail cut beneath the subject property, the 23 parking spaces as well as mechanical space normally placed in a cellar would need to be placed at or above grade. Given that, a significant amount of what

would otherwise be residential floor area would need to be devoted to those uses, further increasing the difficulty of providing usable floor area on the site. The Commission also notes that, with regard to the rear yard waiver, the distance between the two towers in the locations of the towers where the dwelling units are located, would still be at least 60 feet wide, which would provide adequate light and air to residents.

The proposed building would permit adequate access to light and air to surrounding streets and adjacent properties. As the building would set back eight feet from the street line on either street frontage to a height of 93 feet, and a full 15 feet from the street line above the street wall by including the setback, the building would allow more light to reach the street and sidewalks than a typical building that would be built to the street line. As noted earlier, the rear yard equivalent would be a full 60 feet between the towers providing light and air to the buildings directly to the west and east. The Commission notes that although the building would be taller than other buildings on the block, it would be substantially lower than the buildings on the block immediately to the south (which include 500 West 43rd Street at 41 stories, 520 West 43rd Street at 35 stories and 555 West 42nd Street at 44 stories) and so would still contribute to this block's role in transitioning between the large residential towers of the 42nd Street Perimeter Area of the Special Clinton District to the District's lower-rise Preservation and Other Areas.

The Commission believes that the modification of the planting requirements would facilitate access to the street bridges in that rather than a required planting bed between the street line and the building, removable concrete panels could be placed which would provide DOT with easier access to the bridges if and when such bridges needed repair. Finally, the Commission believes that the rear yard obstruction of the emergency exhaust vent is appropriate to accommodate the ventilation needs of Amtrak, thereby ensuring passenger as well as employee safety. The Commission notes that the vent would only be operational in the event of fire or smoke in the rail cut and the applicant has stated that the vent would be fully screened with an at least four foot strip that would be planted with year-around shrubs that would grow to a height of at least six feet in three years.

Special Permit pursuant to Section 74-681

The Commission believes that the special permit pursuant to proposed Section 74-681 is also appropriate.

The Commission believes that the streets providing access to the building are adequate. The site would be directly accessed by West 43rd Street (for westbound traffic) and West 44th Street (for eastbound traffic) with the building's accessory parking being accessed by a curb cut on West 43rd Street. Southbound traffic would be adequately accommodated by Ninth Avenue or Eleventh Avenue and northbound traffic would be adequately accommodated by Eighth Avenue or Tenth Avenue. The site is also located close to the West Side Highway and is a few blocks north of the entrance to the Lincoln Tunnel. The Commission also believes that the distribution of floor area or units is not unduly concentrated on a portion of the site because the two tower scheme is nearly symmetrical, with the only substantive difference being the south tower being slightly taller (by ten feet) than the north tower. The ground floor would also be relatively symmetrical, with recreational space and parking provided on both halves of the site. The Commission notes that the uses on the zoning lot do not adversely affect each other. The Amtrak uses below the platform would continue unabated and current uses would continue on the rail cut, and the building, as previously noted, and is designed to accommodate Amtrak's ventilation needs. The Commission is in receipt of a conceptual letter of approval of the project from Amtrak dated August 15, 2013 where Amtrak notes that it "takes no exception to the concept embodied in this development." The Commission acknowledges that, as per the letter, Amtrak will continue to review and approve the developer's drawings and plans to ensure that the design of the building and its construction protect Amtrak's operations. Conversely the building would not be adversely affected by the railroad operations. The platform would provide a secure footprint for the buildings and the ventilation required by Amtrak would be provided by a first floor screened vent as per the requirements of the proposed text amendment.

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Section 96-32(c) of the Zoning Resolution:

- (1) Such modification of height and setback regulations will:
 - (i) Not result in a building that exceeds a height of 155 feet;
 - (ii) Result in a better distribution of bulk on the zoning lot; and
 - (iii) Permit adequate access of light and air to surrounding streets and adjacent properties;
- (2) Such modification of planting requirements will facilitate access to Department of Transportation bridge structures, and that the area between the street wall and street line of the buildings shall be improved with moveable planters; and
- (3) Any obstruction permitted in a rear yard or rear yard equivalent pursuant to this Section is necessary to accommodate the ventilation needs of a railroad or transit facility. In addition, such obstruction shall be fully screened by a landscaped strip at least four feet wide, densely planted with evergreen shrubs at least four feet high at time of planting, and of a type that is expected to form a year-round dense screen at least six feet high within three years. Such screening shall be maintained in good condition at all times.

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 Sections 197-c and 200 of the New York City Charter that based on the environmental determination and the consideration described in this report, the application submitted by 1818 Nadlan, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-32(c) of the Zoning Resolution to modify the height and setback requirements of Sections 93-32 (Special Regulations in R9 Districts) and 23-633 (Street wall location and height and setback regulations in certain districts), the rear yard setback requirements of 23-663 (Required rear setbacks for tall buildings in other districts), the permitted obstructions requirements of Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), and the planting requirements of Section 23-892 (In R6 through R10 District), in connection with a

proposed residential building with two 15-story segments, on property located at 505-513 West 43rd Street a.k.a. 506-512 West 44th Street (Block 1072, Lot 24), in a R9 and R8/C2-5 District, within the Special Clinton District (Preservation Area), of Manhattan, Community District 4, as revised, is hereby approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 140409 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by SLCE Architects, filed with this application and incorporated in this resolution:

<u>Drawing</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-4	ULURP Zoning - Zoning Calculations	Feb. 9, 2015
Z-5	ULURP Zoning - Site Plan	Feb. 9, 2015
Z-6	ULURP Zoning - Ground Floor Plan	Feb. 9, 2015
Z-9	ULURP Zoning - Waiver Plan	Feb. 9, 2015
Z-10	ULURP Zoning - Building Sections	Feb. 9, 2015
Z-11	ULURP Zoning - Building Section	Feb. 9, 2015

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. 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.

5. 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.
6. 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.
7. 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, duly adopted by the City Planning Commission on March 4, 2015 (Calendar No. 15), 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.

CARL WEISBROD, Chairman

KENNETH J. KNUCKLES, *Esq.*, Vice-Chairman

RAYANN BESSER, IRWIN G. CANTOR, P.E.,

MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, BOMEJ JUNG, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, Commissioners



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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

CHRISTINE BERTHET
Chair

Jesse Bodine
District Manager

December 19, 2014

Carl Weisbrod
Chair
NYC Department of City Planning
22 Reade Street
New York, NY 10007

**Re: 505-513 West 43rd Street
Block 1072, Lot 24
ULURP #s: N140407ZRM, 140408ZSM, 140409ZSM**

Dear Chair Weisbrod,

Manhattan Community Board 4 (MCB4) is pleased to provide its recommendation on an application by 1818 Nadlan LLC (the Applicant) for the above referenced applications for a Zoning Text Amendment and Special Permit to facilitate construction of a residential building at 505-513 West 43rd Street. The applicant seeks:

1. a Zoning Text Amendment to Special Clinton Zoning District Resolution Section 96-32 (A) (1), (Special Regulations in R9 Districts) 96-21 (B) (1) (Special Regulations for 42nd Street Perimeter Area) and 23-90 (Inclusionary Housing) (Special Regulations in R9 Districts) to allow modification of the applicable height and setback, planting and permitted obstruction within rear yard regulations;
2. a Special Permit pursuant to the amended Section 96-32;
3. a Special Permit pursuant to Section 74-681 (Development Within or Over a Right-of-Way or Yards).

A public presentation on the proposed development and the required zoning actions was heard by Manhattan Community Board 4's (MCB4) Clinton/Hell's Kitchen Land Use and Zoning Committee on November 12, 2014. Manhattan Community Board 4 at its Full Board Meeting on December 3, 2014, by a vote of 35 for, 3 against, and 0 present but not eligible to vote, recommended **approval** of the application **with** the following **conditions**:

Building Heights

The proposed heights of the building will be reduced from 164 feet on West 43rd and West 44th

Streets to 154 feet on West 44th Street and 154 feet and 144 feet on West 43rd Street. The reduced height of the buildings will reduce the bulk; therefore, the proposed development will not reach the maximum 8.0 FAR under the R9 with the Inclusionary Housing Bonus.

Affordable Housing

Two-thirds of the inclusionary housing requirement (12 apartments) will be off-site, within the Special Clinton District, in accordance with the Special Clinton District Regulations, and one-third of the permanent affordable housing requirement will be on-site and consist of a minimum of six apartments. However, without the full Inclusionary Bonus on-site the Applicant will voluntarily forgo 421-a real estate tax exemption. On-site units will be affordable condominiums at 80% of area median income; off-site units will be affordable rentals between 50% to 80% of area median income.¹

Equal Distribution

The on-site permanently affordable apartments will be distributed equally between the West 43rd and West 44th Streets building segments on upper and lower floors with no more than one affordable unit per floor;

Maximize Two-Bedroom Apartments

The applicant will work with MCB4 to maximize the number of two-bedroom units and agrees to at least a minimum of 50% two bedroom units;

Accessible Amenities

All building amenities (other than parking) will be accessible to Inclusionary unit owners at no cost;

Finishes and Fixtures

The on-site Inclusionary units will have the same fixtures, finishes, and appliances as the market rate units;

Parking

Parking will be reduced from 35 to 23 spaces;

Façade

The applicant will continue to work with MCB4 to make the façade more contextual with the neighborhood and adjacent building, These changes will be made through consultation with the Board and agreed to prior to the City Planning Commission hearing;

Inclusionary Application

As part of the standard Inclusionary Housing review process, the Applicant will refer its application to MCB4 for both on-site and off-site Inclusionary units. The off-site application will provide MCB4 with the building location and related apartment finishes, building amenities

¹ To further this compromise plan, MCB4 has consulted with HPD Inclusionary Housing to secure its assistance in reviewing an on-site Inclusionary Housing Plan of less than 10 units.

and apartment distribution of the potential sites.

Revised Application

The applicant will revise its ULURP application to reflect the reduced height and agreed upon commitments.

It should be noted that the original application filed by the applicant with the Department of City Planning included a Zoning Text Amendment which amended the text as follows:

96-32

Special Regulations in R9 Districts

(c) Height and setback modifications

(1)(i) not result in #building# that exceeds a height of 165 feet;

With agreed upon height reduction of the buildings to 155 and 144 feet on West 44th and West 43rd Streets, respectively, the applicant has agreed to change the above text proposed as follows:

96-32

Special Regulations in R9 Districts

(c) Height and setback modifications

(1)(i) not result in #building# that exceeds a height of 155 feet;

The Applicant plans to revise its application to reflect the reduced height and its agreement to the above commitments. MCB4 requests the City Planning Commission make that modification to the proposed Zoning Text.

MCB4 further requests the City Planning Commission allow Applicant to make changes in information in the Special Permit application under the further modified proposed Zoning Text under ZR 96-32(c) relating to height, setback and parking to meet the agreement reached with MCB4.

BACKGROUND & CONTEXT

The Development site, with exception to the Tenth Avenue frontage, is within the 2009 Eleventh Avenue Rezoning (the “Rezoning”). The Rezoning was a joint application between Department of City Planning (DCP) and MCB4 which resulted from part of the Western Railyards Points of Agreement. The Rezoning took a year and a half investigation and extensive study undertaken by DCP and MCB4. The Action:

- Extended the Preservation Area district from Tenth Avenue to the east of Eleventh Avenue;

- Increased density on the East side of Eleventh Avenue and permitted residential use;
- Increased density west of Eleventh Avenue, while prohibiting hotel use;
- Increased density on the block between West 43rd and West 44th Street and permitted residential use providing a transitional zone from the high density high rise corridor along West 42nd Street;
- The Rezoning also established street wall requirements and height limits throughout the rezoned areas.

The Development Site previously had a previous Special Permit approval for a hotel use. That permit lapsed and was not renewed; therefore, the Development Site became subject to the provisions of the 2009 Eleventh Avenue Rezoning.

MCB4 commends the Applicant for repositioning the Development Site for residential development with the Inclusionary Housing Zoning requirement for affordable housing and understands a number of zoning waivers for the Development are justified given the constraints of the site over the rail of way, including:

- Department of Transportation's required setback for viaduct structure inspections; and,
- Increased ventilation requirements by Amtrak over the usual standard requirements and base parameters mandated by Amtrak taking up floor area.

MCB4 also notes the Development application for affordable housing exceeds the requirements of inclusionary housing with the following being provided:

- Full distribution of all inclusionary housing apartments across all floors and to all exposures; and,
- The same finishes used for both market rate and inclusionary housing apartments.

Therefore, MCB4 needed to reconcile its overarching priority for the production of affordable housing within the Clinton Special District (CSD), while supporting developments which reflect the carefully negotiated and calibrated Eleventh Avenue rezoning.

Following the presentation of the Development Site to MCB4 negotiations were undertaken between MCB4 and the Applicant regarding height and setbacks of the development. During these negotiations, the Applicant referred to Gotham West development (West 44th to 45th Streets, Tenth to Eleventh Avenues) as a benchmark precedent for the Application's height and setbacks. MCB4 noted the Gotham West development was part of a large scale plan which provided 650 affordable apartments while allowing additional height and reduced setbacks and therefore not a precedent for this Application.

To reconcile these central community needs, MCB4 and the Applicant both agreed to reduce the height of the proposed development and to locate the Inclusionary Housing both on-site (as affordable home ownership) and off-site within the Clinton Special District (as affordable rentals) consistent with long existing regulations of the CSD.

MCB4 commends the Applicant for their continued approach to work with MCB4 in this Special

Permit application and will continue to work with Applicant to support the appropriate zoning waiver for this Development Site.

DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed actions would allow the Applicant to construct a residential building with a 23-space accessory parking garage on Block 1072, Lot 24, also known as 505-513 West 43rd Street. The actions are necessary to construct a platform and the building, over the railroad right-of-way, to accommodate the access and ventilation requirement of the Department of Transportation and Amtrak.

The proposed building would be constructed on a platform stretching across the entire width of the property and covering the entire cut in which the railroad easement is located. The proposed development would consist of a residential building consisting of two segments connected by a one-story ground floor. One segment would front on West 43rd Street and one would front of West 44th Street.

The structures would be setback 8 feet from the West 43rd and West 44th Street lines. These setbacks are provided to allow access by DOT to its road bridges on West 43rd and West 44th Streets. According to DOT, at least 8 feet of horizontal clearance is required to allow for personnel and equipment to access the bridge structure.

The platform over the Amtrak rail line would incorporate ventilation shafts for Amtrak and an exit stair from track level to grade at West 44th Street as required by the NYC Fire Department.

Ground Floor Parking

The ground floor of the proposed building would contain lobby, accessory recreation space, bike rooms, mechanical space and an accessory parking area containing 23 spaces. A driveway, accessed by a 12-foot wide curb cut, would be located on the western edge of the West 43rd Street frontage to provide access to the accessory parking area from West 43rd Street. Residential units would be located on and above the second floor.

The proposed building would have no cellar and, since they would be located on the second floor and above, residential units would be buffered from the train traffic below.

Façade and Landscaping

The façade would be composed primarily of a window wall system from the second floor up. The pedestrian level would be composed primarily of stone with a granite water table, but would also have storefront glass at the residential lobbies and recreation space, and would have metal panel systems in front of those mechanical areas fronting the street.

The Board appreciates the architect's study of the forms, colors, and construction materials used in buildings throughout the Clinton/Hell's Kitchen neighborhood in an attempt to design a building compatible with the larger neighborhood context. And we are grateful for the architect's incorporating some of our concerns into a new design. Nevertheless, we feel the further

discussion will result in a building design no less desirable for the architect and more acceptable to the community.

In light of DOT's access requirements, the area between the street line and the building cannot be landscaped in accordance with ZR section 23-892, which requires that the entire area of the zoning lot between the street line and the street walls of the building be planted at ground level, or in raised planting beds that are permanently affixed to the ground. In lieu of such planting, removable planter boxes would be provided. The West 43rd Street frontage would have nine three-foot by three-foot planter boxes and the West 44th Street frontage would have eleven three-foot by three-foot planter boxes over the remainder of the frontage.

MCB4 would like to thank — and commend — the Applicant for his engaged consultation with the Board to agree on a development acceptable to the community.

Sincerely,



Christine Berthet
Chair



Jean-Daniel Noland
Chair, Clinton / Hell's Kitchen Land Use Committee

cc : Manhattan Borough President Gale A. Brewer
NYC Council Member Corey Johnson
NYS Assembly Member Linda Rosenthal
NYS Senator Brad Hoylman
U.S. Congressman Jerry Nadler
Louise Carroll, Asst Commissioner Inclusionary Housing, HPD
James Power, Kramer, Levin, Naftalis, and Frankel LLP
Michelle DeMilly

Borough President Recommendation

City Planning Commission
22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Docket Descriptions: C 140408 ZSM, C 140409 ZSM, and N 140407 ZRM

C 140408 ZSM and C 140409 ZSM - IN THE MATTER OF applications submitted by 1818 Nadlan LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to:

C 140408 ZSM – Section 74-68 l of the Zoning Resolution to allow that portion of the railroad or transit right-of-way which will be completely covered over by a permanent platform to be included in the lot area; and

C 140409 ZSM – Section 96-32(c) of the Zoning Resolution to modify the height and setback requirements of Sections 93-32 and 23-633, the permitted obstructions requirements of Section 23-44, and the planting requirements of Section 23-982;

in connection with a proposed residential building with two segments, on property located at 505-513 West 43rd Street a.k.a. 506-512 West 44th Street (Block 1072, Lot 24), in an R9 and R8/C2-5 District, within the Special Clinton District (Preservation Area), Borough of Manhattan, Community District 4; and

N 140407 ZRM - IN THE MATTER OF an application submitted by 1818 Nadlan LLC pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York concerning Article IX, Chapter 6 to create a special permit in Section 96-32 (Special Regulations in R9 Districts) for the purposes of waiving the applicable height and setback regulations of Sections 23-633 and 23-663, planting regulations of Section 23-892 and permitted obstructions within rear yard regulations of Section 23-44.

COMMUNITY BOARD NO: 4

BOROUGH: Manhattan

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached



BOROUGH PRESIDENT

1/07/15

DATE



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

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
163 West 125th Street, 5th floor, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

January 7, 2015

**Recommendation on
ULURP Application Nos. N 140407 ZRM, C 140408 ZSM, and C 140409 ZSM
505-513 West 43rd Street by 1818 Nadlan LLC**

PROPOSED ACTIONS

1818 Nadlan LLC¹ seeks a zoning text amendment and two special permits to facilitate the development of a 16-story, 160,664 square foot residential building with a 35-space parking garage at 505-513 West 43rd Street in the Clinton neighborhood of Manhattan Community District 4. The applicant seeks a text amendment to Section 96-32 of the Zoning Resolution (“ZR”) to allow modification of the applicable height and setback, planting, and permitted obstruction within rear yard regulations. The applicant seeks a special permit pursuant to ZR § 96-32 as amended and a special permit pursuant to § 74-681 to allow development over a railroad right-of-way.

Pursuant to ZR § 74-681, where a development is located partially or entirely within a railroad right-of-way, the City Planning Commission (“CPC”) may permit that the portion of the railroad right-of-way which will be completely covered by a permanent platform be included in the lot area of the development. As a condition of granting the special permit, the CPC must find that:

1. the streets providing access to the proposed development are adequate to handle traffic resulting from the development;
2. the distribution of floor area and the number of dwelling units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of the development, including any portion of the development located beyond the boundaries of the railroad right-of-way;
3. all uses on the zoning lot and below the platform do not adversely affect one another; and
4. if the railroad right-of-way is deemed appropriate for future transportation use, the site plan and structural design of the project do not preclude future use of, or improvements to, the right-of-way.

In conjunction with the special permit pursuant to ZR § 74-681, pursuant to § 96-32, as amended, the CPC may grant a waiver of height and setback, planting, and permitted obstruction within rear yard regulations provided that:

¹ 1818 Nadlan LLC is a subsidiary of the El Ad Group, which is managed by Orly Daniell, President and Chairwoman

1. the height and setback waivers will not result in a building taller than 165 feet, will result in a better distribution of bulk, and will permit adequate access to light and air to surrounding streets and properties;
2. the modification of planting requirements will facilitate access to Department of Transportation (“DOT”) bridge structures, and that the sidewalk will be improved with moveable planters; and
3. any permitted rear yard obstruction is properly screened with vegetation and is necessary to accommodate the ventilation needs of a railroad or transit facility.

PROJECT DESCRIPTION

The applicant is seeking a zoning text amendment and two special permits to facilitate the construction of a 16-story residential building above an Amtrak right-of-way. The site is currently an open rail cut between West 43rd and West 44th Streets, on the block between Tenth and Eleventh Avenues. While certified as a rental building with 119 residential units, the ownership of the development changed hands just prior to certification and the new owner plans a condominium building, within the same building envelope, with 127 units.

Previous Actions

In 2006, the CPC issued a special permit for the development site pursuant to ZR § 74-681 (C 060334 ZSM). At the time, the western portion of the lot was located in an M1-5 (CL) district, and by the split lot regulations the entire lot was subject to M1-5 regulations. The approved special permit would have allowed two separate hotels with a total zoning floor area of 100,414 square feet. The hotels were never constructed and the special permit lapsed in 2010.

In 2011, the development site was rezoned as part of the West Clinton Rezoning (C 110177 ZMM), which was intended to address a recent trend of increased residential development between Tenth and Eleventh Avenues and commercial, office and manufacturing-district compatible development between Eleventh and Twelfth Avenues. The rezoning generally affected 18 blocks, from West 43rd Street to West 55th Street. Blocks east of Eleventh Avenue were rezoned for contextual residential development with affordable housing, and blocks west of Eleventh Avenue were rezoned to allow manufacturing-district uses in contextual building envelopes. The development site was rezoned at this time to R9 (CL).

In 2010, the CPC approved a series of actions in connection with the Gotham West project, a multi-building development immediately north of the development site (C 100051 ZMM et al). The actions facilitated a project, proposed by the Department of Housing Preservation and Development, which was comprised of multiple buildings with approximately 1,350 residential units, 10,800 square feet of retail space, parking for 204 cars, and a 630-seat public school. As part of a larger suite of actions, the applicant sought a special permit pursuant to ZR § 74-681 to facilitate development over the

railroad right-of-way and a special permit to modify bulk and height requirements. The buildings to be located over the railroad cut were set back eight feet from the property line, with a nine-story base, after which there was an additional seven-foot setback with five stories above, for a total height of 14 stories.

Area Context

The development site is located in the Clinton Neighborhood of Manhattan Community District 4. The surrounding area is characterized by a mix of uses and building forms, but recent development is primarily residential in nature. The block to the south of the development site includes a number of high-rise residential buildings, up to 46 stories tall. Gotham West, the large-scale mixed-use development, described above, is currently under construction to the north of the project area. Though the blocks to the north and south contain tall residential buildings, the project block itself is largely lower in scale. On the eastern end of the block are four- and five-story residential buildings with ground-floor retail facing on Tenth Avenue. To the west of the development site is a row of automotive repair shops fronting on West 44th Street and a three-story rental car facility on West 43rd Street. One through-block building in the midblock is currently occupied by the New York City School Construction Authority, which is to be converted to a high school. West of this is a 20,000 square foot, through-block, surface parking lot, which is a proposed residential development site. West of that is another three-story automotive facility. The western side of the block contains a seven-story self-storage warehouse, an auto repair shop, a 6,832 square foot vacant lot, and a diner.

Area Zoning

The development site is a split lot located in the Western Subarea C2 and the Preservation Area of the Special Clinton District (CL). Established in 1974, the district was created to preserve and strengthen the residential character of the community, maintain a broad mix of income, and ensure that the community is not adversely affected by new development. The district established a “Preservation Area,” from West 43rd to West 56th Streets between Eighth and Tenth Avenues, with an R7 zoning and a six-story height limit on new buildings. To the east and south of the Preservation Area is a perimeter area designed to provide appropriate transitions between the lower-scale side streets and the Special Hudson Yards District to the south and the Special Midtown District to the east. The Other Area, to the west and north of the Preservation Area, was established to maintain a mix of residential, industrial, and waterfront uses.

Within Western Subarea C2 the underlying zoning regulations apply, except for special floor area, height, and setback regulations in R8, R8A, R9 and M2-4 districts. Inclusionary Housing bonuses are available to residential developments in R8A and R9 districts. The blocks between Eleventh and Twelfth Avenue are mapped M2-4, which allows medium intensity industrial and some commercial uses. Within the CL, M2-4 permits a floor area ratio (“FAR”) of 5.0, a street wall of between 50 and 95 feet, and a maximum height of 135 feet. R8 and R8A districts are widely mapped in the surrounding area, particularly to the north and east of the project area. Within the Western Subarea C2

and the Preservation Area, special regulations apply to R8 districts. The maximum FAR for all uses is 4.2. Within 100 feet of a wide street, buildings must have a street wall height of between 50 and 66 feet, and a maximum building height of 85 feet. On narrow streets, no building may exceed a height of seven stories or 66 feet, whichever is less. R8A districts within the Western Subarea C2 are Inclusionary Housing designated areas with a base FAR of 5.2, bonusable to 7.2 with the provision of affordable housing. They are subject to a required base height of between 60 and 85 feet and a maximum building height of 120 feet.

Proposed Development Site

The development site is a through-block site between Tenth and Eleventh Avenue with 100 feet of frontage on both West 43rd and West 44th Streets. At the eastern edge of the lot, a 4,090 square foot portion of the 20,083 square foot lot is located in the Preservation Area of the CL and is zoned R8 with a C2-5 overlay. Under ZR § 77-11, because the distance from the zoning boundary is less than 25 feet and because this portion comprises less than 50 percent of the lot area, the R9 (CL) regulations of the western portion of the lot may be applied to the entire lot. Under the R9 regulation, the building is limited to a maximum height of 135 feet. R9 districts in Western Subarea C2 allow 6.0 base FAR, which can be bonused to 8.0 FAR through the provision of affordable housing.

Proposed Project

The proposed actions, as described in the ULURP application, would facilitate a 16-story residential building with a 35-space accessory parking garage. The proposed building would be constructed on a platform covering the entire cut of the Amtrak right-of-way. The building will be set back eight feet from the property line on both West 43rd and West 44th Streets because of access requirements by the DOT. In order to accommodate the full 8.0 FAR on the site given this constraint, the building, as certified, will rise to a height of 164 feet with a setback at the tenth floor.

The proposed development would consist of two building segments, one fronting on each street, connected by a one-story ground floor. The ground floor would consist of a lobby, accessory recreation space, bike rooms, mechanical space, and a parking area. A driveway, accessed by a 12-foot curb cut, would be located at the western edge of the lot on West 43rd Street. A passive ventilation system will be provided on the second floor terrace which will be triggered by a fire or smoke condition in the rail tunnel. This vent, 22 feet wide and 17 feet deep, will have a height of 8 feet.

As currently delineated in the application, the building would have a total zoning floor area of 160,664 feet, which would accommodate a maximum of 192 dwelling units. Twenty percent of the building's floor area would be dedicated to affordable housing, but because some of the market rate units would be large, this would constitute 38 percent of the total number of units. Since the project was initially planned, the land has come into new ownership, however, and the current applicant is proposing a condominium, rather than rental, building. Under the condo scenario, with the certified building envelope, the

applicant proposes 127 units, 26 of which would be affordable. According to the applicant, all apartments in the building would be ownership units and the affordable units would be distributed throughout the building. The number and mix of units has been further altered, however, in negotiations with Community Board 4, to be described in greater detail below.

Proposed Actions

In order to facilitate the proposed project, the applicant seeks (1) a text amendment to ZR § 96-32 (Special Regulations in R9 Districts) to allow modification of height and setback, planting, and permitted rear yard obstruction regulations; (2) a special permit pursuant to the amended § 96-32(c); and (3) a special permit pursuant to § 74-681 (Development Within or Over a Right-of-Way or Yards). The actions are necessary to construct a platform over the rail cut, to accommodate the access and ventilation requirements of the railway and the DOT bridge, and to allow the full 8.0 FAR, including the 2.0 FAR Inclusionary Housing bonus within the proposed building envelope.

The proposed zoning text amendment would allow modification of the applicable regulations for height and setback, planting, and permitted obstruction with rear yard for all sites developed pursuant to a § 74-681 special permit within R9 districts in Western Subarea C2. First, because of the required eight foot setback on both streets for DOT access, the height and bulk waivers are needed to fit the full FAR on the site. The DOT access requirements also prevent the installation of street trees that would be required by ZR § 23-892. The special permit would allow waiver of these requirements provided that the area between the street wall and street line will be improved with moveable planters. Finally, the modification of rear yard obstruction requirements is necessary to accommodate the emergency ventilation structure which will sit in the building's rear yard equivalent, on the second floor terrace. The proposed text amendment will require that the obstruction be fully screened by a landscape strip at least four feet wide, densely planted with evergreen shrubs at least four feet high at the time of planting, and of a type that is expected to form a year-round, dense screen at least six feet high within three years. The building will conform to all other applicable height, setback, and floor area regulations.

The special permit pursuant to ZR § 74-681 is required to include the area of the platform over the rail cut in the building's floor area calculations. This special permit is needed as the majority of the lot area of the development site is located in air space above the rail line. In order to approve for the CPC to approve the special permit the applicant must show that the project will not create traffic congestion, that the bulk is appropriately distributed and will not harm the character of the neighborhood, and that the development will not hinder the current or future use of the right-of-way.

COMMUNITY BOARD RECOMMENDATION

At a Full Board meeting on December 3, 2014, Manhattan Community Board 4 ("CB4") voted on a resolution recommending **approval with conditions** of the application by a

vote of 35 for, 3 against, and 0 present but not eligible to vote. The recommendation of approval is based on negotiations between the Community Board and the applicant which resulted in a revised proposal with a reduced building height. The revised proposal will reduce the size of the building by approximately one floor, roughly ten feet, and will relocate some of the affordable units to an off-site location, to be determined, within the Clinton neighborhood.

The full, agreed upon changes to the proposal are as follows:

Building Height

The proposed height of the building will be reduced from 164 feet on both West 43rd and West 44th Streets to 154 feet on West 44th Street and 154 feet and 144 feet on West 43rd Street. The reduced height will decrease the FAR of the building from 8.0 to 7.39.

Affordable Housing

Because of the reduction of the building's size, the total number of affordable apartments will be reduced from 26 to 18. A minimum of six of these units will be located on-site and an additional 12 units will be located off-site. On-site units will be affordable condominiums available to households earning 80 percent of the area medium income ("AMI"). Off-site units will be affordable rentals available to households earning between 50 and 80 percent of AMI.

Further, the applicant has agreed that the on-site affordable units will be distributed equally between both building segments, on upper and lower floors, with no more than one unit per floor. The on-site units will have the same fixtures, finishes, and appliances as the market-rate units, and all building amenities (other than parking) will be accessible to affordable owners at no cost.

Parking

The applicant has agreed to reduce the size of the parking garage from 35 to 23 spaces.

Ongoing Consultation

The applicant has agreed to an ongoing dialogue with CB4 as the ULURP process continues. The applicant will work with CB4 to make the façade of the building more contextual with the neighborhood and adjacent buildings, and will agree upon changes prior to the City Planning Commission hearing. Additionally, the applicant will refer its HPD applications for Inclusionary Housing to CB4 for both the on- and off-site units.

BOROUGH PRESIDENT COMMENTS

The applicant is proposing to fill a longstanding gap in this block of West 43rd and West 44th Streets with a residential building. Unlike the previously-approved project that would have brought two new hotels to the neighborhood, the proposed project fits in with the goals of the West Clinton Rezoning with its residential use and the inclusion of affordable housing. The permanent platform over the Amtrak right-of-way will reduce noise in the neighborhood, will reintroduce a street wall to the block, and will help the

neighborhood's transition from an industrial to a residential character. The need to set back the building for DOT access and the cost of the platform over the railway makes the applicant's request for a text amendment to create bulk, height, and other waivers appropriate. It is important, however, to balance the goals of residential infill and affordable housing with the other important goal of the Special Clinton District: maintaining the low-scale built character of the Clinton neighborhood.

These blocks of West 43rd and West 44th Streets are very much transition zones. From the high-rises of West 42nd Street, buildings here step down to match the lower scale to the north. And from the medium density commercial and manufacturing uses to the west, these blocks act as a buffer for the residential row house heart of Clinton. The development site itself is a transition zone. Part of the site sits in the R9 Western Subarea C2, while part of the site sits in the R8 Preservation Area. For this reason, Community Board 4 sought to minimize any increase in height on this site, which will set the context for the continued redevelopment of this block. The applicant and the Community Board have reached a middle ground that will provide for the redevelopment of this site with market rate and affordable housing, while reducing the total height of the building. The community effort on this matter should be respected and strengthened.

Due to the reduction in total floor area of the building, to include all affordable units on-site would potentially result in a building with less market-rate floor area than the non-bonused, as of right alternative. It is therefore reasonable for a portion of the affordable units to be located off site. The number of on-site units, however, should be maximized as these will provide the greatest benefit to the public in terms of creating a diverse, mixed-income community. Furthermore, with a condominium building such as this, the fewer affordable owners in the building, the less power those owners will have in future decision-making in the building. It is important that we do not create a scenario in which future owners do not feel that they have a voice in decisions about their home.

In discussions with the Borough President's Office, the applicant has clarified how the condominium declaration and the condominium board by-laws will be strengthened to protect the owners of the inclusionary units. First, the by-laws will provide that one member of the Board of Managers must be an owner of an inclusionary unit. Additionally, the condominium declaration and by-laws will provide that there cannot be any distinction between market rate owners and affordable owners regarding access to building amenities. Finally, the condominium declaration and the by-laws will clearly state that they cannot be amended in any way that would affect the inclusionary unit owners without the consent of HPD. All of these commitments, as well as clarification regarding the applicable HPD and ZR regulations that would affect affordable owners in the building are laid out in a memo dated December 23, 2014 to the Borough President's Office attached to this recommendation.

In addition to these protections for affordable unit owners, the applicant should do everything possible to maximize the number of on-site affordable units, while also maintaining the commitment to the CB4 to maximize the number of two-bedroom units. The reduced height alternative will include 148,538 square feet of floor area, of which

28,040 square feet is bonus floor area. If the applicant included six 800 square foot two-bedroom units, this would account for only 17 percent of the bonus floor area, and only three percent of the building's total zoning floor area. By minimally reducing the size of the 99 market rate units anticipated to be included in the building, the applicant could add additional two-bedroom units on-site without dramatically altering these percentages. Ten such units, for example, would account for 28.5 percent of the bonus floor area, or only five percent of the building.

Because of the change in ownership of this development that occurred just prior to certification of the project, the interior of the proposed building is not yet designed. While the applicant has committed to at least six on-site units, as the public process continues it should clarify the affordable housing plan for the building, which should include more than six on-site units. In a letter to the Borough President dated January 6, 2015, the applicant has committed to maximize the number of on-site units.

The reduced height alternative agreed upon with the Community Board, if altered to maximize the number of on-site units, will meet all of the applicable finding of both requested special permits. The unique conditions of sites that include rail rights-of-way warrant the additional relief that would be provided by the proposed text amendment as the rights-of-way impose their own unique constraints.

BOROUGH PRESIDENT RECOMMENDATION

In consideration of the above, the Manhattan Borough President recommends approval with conditions of ULURP application numbers N 140407 ZRM, C 140408 ZSM, and C 140409 ZSM provided that the applicant:

1. **Revise the ULURP application to reflect all changes outlined in the November 20, 2014 letter to Community Board 4;**
2. **Ensure fair treatment of all inclusionary unit owners, as outlined in the December 23, 2014, memo to the Borough President's Office, including that:**
 - a. **the by-laws will provide that one member of the Board of Managers must be an owner of an inclusionary unit;**
 - b. **the condominium declaration and by-laws will provide that there cannot be any distinction between market rate owners and affordable owners regarding access to building amenities; and**
 - c. **the condominium declaration and the by-laws will clearly state that they cannot be amended in any way that would affect the inclusionary unit owners without the consent of HPD;**
3. **Determine interior floor plans prior to City Council approval of the ULURP application so that the approved application indicates the final number of on-site affordable units; and**
4. **Include more than six on-site affordable condominiums.**



Gale A. Brewer
Manhattan Borough President

SEIDEN & SCHEIN, P.C.

ATTORNEYS AT LAW

570 LEXINGTON AVENUE
NEW YORK, NEW YORK 10022

TELEPHONE: (212) 935-1400
FACSIMILE: (212) 593-4545

MEMO

DATE: December 23, 2014

**TO: James Caras, Basha Gerhards, Michael Sandler
Office of the Manhattan Borough President**

FROM: Alvin Schein

**RE: 505-513 West 43rd Street
Plan for Mixed-Income Home Ownership**

My firm represents the owner of the above property in connection with inclusionary housing matters regarding 505- 513 West 43rd Street, which is currently being considered by your office in accordance with the City's Uniformed Land Use Review Procedure. This memo is in response to questions that arose at our recent meeting about the project regarding certain aspects of inclusionary home ownership within a mixed-income condominium.

1. The unit owners of the inclusionary apartments (at least 6 onsite) would have the same rights as all other unit owners.
2. The owners of the inclusionary units will have a direct say in the operation of the building. Specifically, the condominium by-laws will provide that one member of the Board of Managers must be the owner of an inclusionary unit.
3. The initial carrying charges (i.e. common charges and debt service on unit mortgages) for the inclusionary apartments will not exceed 30% of 80% of AMI, on an annualized basis. In other words, the carrying charges will be the same as inclusionary rent, if the inclusionary apartments were being offered as rental units.
4. Owners of inclusionary apartments will be protected from excess increases in common charges. In order to keep these units truly affordable, HPD rules control the amount by which common charges can be increased or by which assessments can be made to owners of inclusionary apartments. The market rate unit owners will absorb any increases in

common expenses or in assessments that exceed HPD-permissible amounts. These protections will be built into the condominium declaration and/or by-laws.

5. The condominium declaration and/or by-laws will provide that all unit owners must have the right of access to building amenities. There will not be any distinction between market rate owners and inclusionary apartment owners regarding access to building amenities.
6. The condominium declaration and by-laws will clearly state that they cannot be amended in any way that would affect the inclusionary unit owners in any way, without the consent of HPD. Before HPD issues an Inclusionary Housing Regulatory Agreement for this project, it will review and approve the condominium declaration and by-laws.
7. With respect to the affordable apartments (approximately 12) to be provided off-site, the development team is currently in discussion regarding potential sites within the Special Clinton District and will provide the location and related details when they become available.

Thank you for the opportunity to respond to your questions. Please let us know if you would like to discuss further or have additional questions.

Sincerely,



Alvin Schein