



June 9, 2021/Calendar No. 5

C 200352 ZSM

IN THE MATTER OF an application submitted by 311 West 42nd Street Associates LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-104 of the Zoning Resolution to modify the height and setback requirements of Section 96-104 (Height and setback regulations) for a portion of a proposed mixed use building within the Preservation Area, on property located westerly of Eighth Avenue between West 42nd Street and West 43rd Street (Block 1033, Lots 22, 25 & 41), in an C6-2 and C6-4 District, within the Special Clinton District and partially within the Special Midtown District, Borough of Manhattan, Community District 4.

This application was filed by 311 West 42nd Street Associates LLC on June 12, 2020 for a zoning special permit pursuant to Section 96-104 of the Zoning Resolution (ZR) to modify the height and setback requirements within a portion of the Special Clinton District Preservation Area. The proposed action would facilitate the development of a seven- and 31-story mixed-use building with approximately 321 residential units and commercial retail on the first and second floors located at 314 West 43rd Street (Block 1033, Lots 22, 25 and 41) in the Clinton/Hell's Kitchen neighborhood of Manhattan, Community District 4.

BACKGROUND

The development site (Block 1033, Lots 22, 25 and 41), coterminous with the project area, is comprised of three contiguous lots located on the north side of West 42nd street. Block 1033 is bounded by West 43rd Street to the north, Eighth Avenue to the east, West 42nd Street to the South and Ninth Avenue to the west. The development site is located within the Preservation Area of the Special Clinton District, within the larger Special Clinton District that is generally bounded by West 41st Street, West 59th Street, Eighth Avenue and Twelfth Avenue. The Preservation Area of the Special Clinton District was adopted by the City Planning Commission in 1974 (CP-22758 and CP-22759) to further the special district's overall goal to preserve the residential core of the Clinton community and balance the small-scale and mixed-use character of the neighborhood. The Preservation Area includes regulations for height limits on wide and narrow streets and specific provisions for the demolition or alteration of existing buildings. The

Preservation Area height limitation was intended to encourage the construction of buildings that matched the existing context of the neighborhood.

The development site is located at the edge of the Special Clinton District with the surrounding area split between the Midtown West/Hell's Kitchen neighborhood in Manhattan Community District 4 (west of Eighth Avenue) and the Midtown/Times Square neighborhood in Manhattan Community District 5 (east of Eighth Avenue). West 42nd Street and Eighth Avenue are the major thoroughfares surrounding the development site, providing access. The area east of Eighth Avenue is characterized by commercial and office towers with large floorplates and heights ranging between 15 and 46 stories. This area also contains several commercial and mixed-use buildings with heights ranging between four and six stories, some of which are theaters. The Theater Subdistrict of the Special Midtown District begins at the northeast portion of the surrounding area, at the intersection of West 43rd Street and Eighth Avenue, and continues north and east of the surrounding area for a number of blocks. The area is predominantly located within commercial zoning districts, including C6-2, C6-4, and C6-7 districts.

West of Eighth Avenue are varied land uses that include residential and commercial buildings with heights ranging between 12 and 60 stories interspersed among low-rise multi-family four to five-story walk-ups and five to six-story elevator buildings, primarily within the Special Clinton District. The Eighth Avenue and 42nd Street corridors are occupied primarily by larger residential and commercial towers, with the areas to the northwest and west of the development site generally of a lower scale with buildings between three and seven stories. Directly south of the development site is the Port Authority Bus Terminal. The area is well connected to transit, and is served by the 42nd Street Port Authority Bus Terminal A,C,E station, located approximately 1 block east of the development site and the Times Square 42nd Street 1,2,3,7 station located two blocks southeast of the development site. The area is also served by several bus routes.

The development site is a through-block parcel located west of Eighth Avenue between West 42nd and 43rd streets, with small interior lot portions located along West 42nd Street at the easternmost portion of the development site, and along West 43rd Street at the westernmost portion of the site. Along the north side of West 43rd Street, building heights range from

approximately 10 to 208 feet, and along the south side of West 43rd Street, building heights range from approximately 44 to 99 feet. Lot 25 is improved with an existing 13-story (193 feet), 62,416 square-foot commercial building constructed in 1970. Until recently, the building, known as the Martin Luther King Jr. Union Building, served as the headquarters for the 1199 Service Employees International Union (SEIU). Lot 41 currently contains a surface parking lot with 102 spaces. Lots 25 and 41 would be consolidated for the development of the proposed new building.

Lot 22 is improved with a five-story tenement building constructed in 1920 containing commercial use on the ground floor and 14 residential dwelling units above, which would be preserved as part of the proposed development. The building contains approximately 9,203 square feet of floor area, 7,603 of which are used for residential uses with the remaining 1,600 square feet used for commercial uses. The building on Lot 22 has a height of approximately 57 feet and an existing legal non-compliance for the northernmost 10 feet that project into the area where a rear yard would be required under current zoning controls.

The proposed development would consist of two building segments separated by a rear yard equivalent on a through-block site. The northern building segment, the subject of the special permit height waiver, is located along West 43rd Street within the Special Clinton District predominantly within the Preservation Area, with the easternmost 25 feet located in the Eighth Avenue Perimeter Area of the Special Clinton District and also within the Special Midtown District. The northern building segment would be part of a larger development constructed on tax lots 25 and 41 which includes an approximately 31-story building (the southern building segment) along West 42nd Street.

Because the development site involves multiple zoning districts and special districts with multiple subareas, the site is broken down into Lot Portion A, B and C.

Lot Portion A encompasses the portion of the development site beyond 150 feet of Eighth Avenue and within approximately 100 feet of West 43rd Street. Lot Portion A is located within a C6-2 zoning district in the Preservation Area of the Special Clinton District. ZR Section 96-104 restricts the height of a building or portion of a building to no more than seven stories or 66 feet if located beyond 100 feet from a wide street. The special permit would modify this regulation to permit the portion of the northern building segment on Lot Portion A to rise an

additional approximately 23 feet to an overall maximum height of approximately 89 feet. The special district regulations permit a maximum floor area ratio (FAR) of 4.2 in the Preservation Area. The Preservation Area also requires that a minimum of 20 percent of the lot area must be usable, landscaped open area for residents.

Lot Portion B encompasses the portion of the development site beyond 150 feet of Eighth Avenue and within approximately 100 feet of West 42nd Street. Lot Portion B is located within a C6-4 zoning district in Perimeter Area B and the 42nd Street Perimeter Area, Subarea 1 of the Special Clinton District. The C6-4 zoning district, an R10 equivalent, permits a maximum FAR of 12.0 when paired with the Voluntary Inclusionary Housing regulations. A 40 percent tower lot coverage maximum is required pursuant to ZR Section 33-45. The subarea also includes street wall continuity regulations requiring a base height of between 45 to 85 feet; and retail continuity regulations detailing transparency requirements and requiring that at least 50 percent of the ground floor shall be limited to use groups 4A, 6A, 6C, 10A, 11, 12A and 12B.

Lot Portion C encompasses the portion of the development site within 150 feet of Eighth Avenue. Lot Portion C is located within a C6-4 zoning district in the Eighth Avenue Perimeter Area of the Special Clinton District and also within the Theater Subdistrict – Eighth Avenue Corridor of the Special Midtown District. The maximum FAR allowed in this portion is 12.0 pursuant to the Special Midtown District regulations.

Regulations applicable to Lot Portions A and C govern the northern building segment of the proposed development. Regulations applicable to Lot Portions B and C govern the southern building segment.

In total, the proposed development would contain approximately 295,070 square feet of floor area (including approximately 20,923 square feet of unused development rights from Lot 22). The proposed development would contain 25,193 square feet of commercial use and 269,877 square feet of residential use with 321 residential units. Of the 321 units, approximately 81 (25 percent) would be affordable to households with incomes ranging from approximately 40 percent to 120 percent of the Area Median Income (AMI). The proposed development would consist of two building segments separated by a rear yard equivalent with a minimum depth of 60 feet in the form of a landscaped garden that

would provide required open space and occupy a minimum of 20 percent of Lot Portion A. The garden would be available for use by the residential tenants of both the northern building segment and the southern building segment. The northern segment along West 43rd Street would contain the northern half of Lots 25 and 41. The southern segment along West 42nd Street would contain the southern half of Lots 25 and 41 and Lot 22.

The portion of the northern building segment within Lot Portion A would contain a total of 63,265 square feet, with 54,163 square feet of residential use and 9,102 square feet of retail use. The northern building segment would contain approximately 77 residential units, 32 (42 percent) of which would be affordable to households with incomes ranging between approximately 40 to 120 percent AMI. The portion of the northern building segment within Lot Portion A would contain seven stories and would rise to a maximum height of approximately 89 feet beyond the permitted seven stories or 66 feet, with mechanical space qualifying as a permitted obstruction located above the proposed 89 feet. The northern building segment would have a maximum lot coverage of 60 percent on Lot Portion A.

The easternmost 25 feet of the northern building segment (Lot Portion C) is not subject to the requested modification, and would rise to a maximum height of 66 feet, consistent with underlying zoning regulations. This portion would serve as the residential entry to the proposed development. The ground floor of the northern building segment would also contain retail use, with two entrances along West 43rd Street. A curb cut for vehicular access to a commercial loading dock would be located along West 43rd Street at the western end of the development site. The two building segments would be separated by a rear yard equivalent with a minimum depth of 60 feet in the form of a landscaped garden at a height of 23 feet which would provide the required open space in the Preservation Area. The garden would be accessible to all residential tenants.

The southern building segment along West 42nd Street is not subject to the special permit waiver and would be constructed pursuant to underlying zoning regulations. It would have approximately 31 stories with a maximum building envelope height of approximately 460 feet with the bulkhead. As currently proposed, the illustrative building would rise to a height of approximately 400 feet including the bulkhead. The tower portion of the southern building

segment would not occupy the entirety of the maximum envelope, and would be limited to a maximum lot coverage of 40 percent of the portion of the development site outside of Lot Portion A. The tower would have a lot coverage of 23 percent of the entire development site. The ground floor and second floor of the southern building segment would contain retail uses. No changes are proposed for the lot 22 portion of the zoning lot. The existing residential and commercial uses would remain, as would the existing legal non-compliance with respect lot coverage and rear yard regulations.

To facilitate the proposed development, the applicant seeks approval of a special permit pursuant to ZR Section 96-104 to modify the bulk regulations of ZR Section 96-104(c) within Lot Portion A to allow a portion of the northern building segment along West 43rd Street to rise to a height of 89 feet within the Preservation Area of the Special Clinton District.

ENVIRONMENTAL REVIEW

This application (C 200352 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 20DCP091M.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on February 1, 2021.

UNIFORM LAND USE REVIEW

This application (C 200352 ZSM) was certified as complete by the Department of City Planning on February 1, 2021 and was 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).

Community Board Public Hearing

Community Board 4 held a public hearing on this application on February 10, 2021, and on March 3, 2021, by a vote of 40 in favor, one against, and none abstaining, the Community Board

voted to approve the application with conditions. The conditions in their recommendation are as follows:

“Development Process

Clarify that only developments rights will be purchased from the site over Kaufman’s Army & Navy surplus store at 319 W 42nd Street, and that the building will not be demolished.

Review its affordable housing plan and to return to the Housing, Health, and Human Services Committee to present the proposal within 60 days, and to come to an agreement before the City Council action on the Special Permit request.

Building Design

Work with the Board and the Department of City Planning to determine if it is possible to remove the recess in the Eastern portion of the building, to prevent the area becoming a location for drug activity.

Work with the Board to come to an agreement on an appropriate commemoration or art installation prior to the grant of the Special Permit by the City Council.

Return to MCB4 Transportation Committee to recommend alternate locations for four street trees that will be located offsite, in proximity to the Development Site.

Construction

Prior to demolition and construction, the Applicant will produce a two-week construction look ahead to be distributed to the MCB4 District Manager and all other owners and neighbors on the block.

Building Operations

Develop a garbage management plan for storage and management of trash on-site, to avoid over-burdening the sidewalk.”

Borough President Recommendation

This application (C 200352 ZSM) was considered by the Manhattan Borough President, who on April 26, 2021 recommended approval of the application with the following conditions: that the applicant 1) work with Manhattan Community Board 4 to develop an appropriate affordable housing plan; 2) work with the Department of City Planning and Manhattan Community Board 4 to improve the design of the eastern portion of the proposed building; and 3) work with 1199 SEIU and Manhattan Community Board 4 to include an art installation in the proposed building.

City Planning Commission Public Hearing

On April 21, 2021 (Calendar No. 1), the City Planning Commission scheduled May 5, 2021 for a public hearing on this application (C 200352 ZSM). The hearing was duly held on May 5, 2021 (Calendar No. 10).

Representatives from the applicant team summarized the requested action and described the development site.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a zoning special permit (C 200352 ZSM) is appropriate.

The proposed special permit will facilitate the development of a mixed-use building with approximately 321 residential units, 81 of which will be permanently affordable, and commercial retail use. The northern building segment will be located entirely beyond 100 feet of a wide street. The special permit will allow the westernmost 150 feet of the northern building segment to have a maximum height of 89 feet. The easternmost 25 feet of the northern building segment would rise to a maximum height of 66 feet, consistent with underlying zoning regulations.

The Commission notes that the proposed heights of the northern building segment are reflective of the varying heights of buildings along West 43rd Street within the Special Clinton Preservation Area. Along the north side of West 43rd Street, building heights range from approximately 10 to

208 feet, and along the south side of West 43rd Street, building heights range from approximately 44 to 99 feet. Given the varying heights of buildings surrounding the development site as a result of its unique location at the border of the Special Clinton District and the higher density Special Midtown District, the proposed development's increased height is appropriate.

The northern building segment would replace an existing 193-foot tall building currently located on the development site at West 43rd Street with one that is approximately 104 feet shorter at 89 feet tall, improving access to light and air for this portion of the development site.

The northern building segment is part of a larger development including an approximately 31-story building along West 42nd Street which is not subject to any zoning waivers (the southern building segment). The Commission recognizes that West 42nd Street consists of higher density buildings reflective of the Special Midtown District. The envelope of the southern building segment will be limited to a lot coverage of 40 percent of the lot area within Lot Portions B and C, allowing adequate access to light and air to the surrounding streets and buildings.

The Commission believes that, when considered together, the combination of the lower building along West 43rd Street and the tower along West 42nd Street with the open garden, results in a distribution of bulk that permits adequate access to light and air along the midblocks of West 43rd and West 42nd streets.

Regarding the condition noted by the Manhattan Borough President and Community Board 4, the recessed eastern portion of the West 43rd Street frontage of the proposed building is subject to the Special Midtown District's pedestrian circulation zoning controls. The Commission acknowledges that the owner has committed to incorporating design elements to improve the safety of the recessed frontage.

FINDINGS

The Commission hereby makes the following findings pursuant to Section 96-104 (Height and Setback Regulations) of the Zoning Resolution:

The distribution of bulk permits adequate access of light and air to surrounding streets

and properties and the maximum height does not exceed 99 feet beyond 100 feet of a wide street, and 115 feet within 100 feet of a wide street.

The Commission may prescribe appropriate conditions and safeguards to protect and minimize any adverse effects on the character of the surrounding area.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant adverse 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 and findings described in this report, the application submitted by 311 West 42nd Street Associates LLC for the grant of a special permit pursuant to Section 96-104 of the Zoning Resolution to modify the height and setback requirements of Section 96-104 (Height and setback regulations) for a portion of a proposed mixed use building within the Preservation Area, on property located westerly of Eight Avenue between West 42nd Street and West 43rd Street (Block 1033, Lots 22, 25 & 41), in an C6-2 and C6-4 District, within the Special Clinton District and partially within the Special Midtown District, Borough of Manhattan, Community District 4 is approved, pursuant to Section 96-104 of the Zoning Resolution, subject to the following conditions:

1. The property that is the subject of this application (C 210352 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 Handel Architects LLP, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
U-001.00	Zoning Lot Site Plan	12/07/2020
U-002.00	Zoning Analysis	12/07/2020
U-003.00	Waiver Plan	12/07/2020
U-004.00	Zoning Sections	12/07/2020

U-005.00	Zoning Sections	12/07/2020
U-006.00	Zoning Sections	12/07/2020

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. 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, sublessee or occupant.

5. 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 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.

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

The above resolution (C 200352 ZSM), duly adopted by the City Planning Commission on June 9, 2021 (Calendar No. 5), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

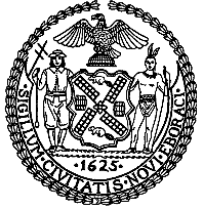
MARISA LAGO, *Chair*

DAVID BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III,

JOSEPH DOUEK, RICHARD W. EADDY,

HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN,

LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners*



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

P.O. Box 2622 New York, NY 10108
tel: 212-736-4536
www.mcb4.nyc

Lowell D. Kern
Chair

Jesse Bodine
District Manager

March 25, 2021

Marisa Lago, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Special Permit for 314 West 43rd Street (8/9)

Dear Chair Lago,

At its regularly scheduled Full Board meeting on March 3, 2021, Manhattan Community Board 4 (MCB4), voted 40 in favor, 1 opposed, 0 abstaining and 0 present but not eligible to vote to recommend the approval of an application, with conditions, for a Special Permit to increase height in the Preservation Area of the Clinton Special Zoning District.

311 West 42nd Street Associates LLC (the "Applicant") has applied for a Special Permit under Section 96-104 (Height and Setback Regulations) of the Special Clinton District to allow a portion of a building along West 43rd Street, where building height is capped at 66 feet, to rise an additional 23 feet, to a maximum height of 89 feet. This project was presented to the Clinton / Hell's Kitchen Land Use Committee at its February 10th meeting.

Background

The current site is comprised of a surface parking lot and office building owned by 1199 SEIU since 1970 and has been ground leased to the Applicant, to provide an ongoing source of income for the labor union and its work. The zoning lot also contains the development rights from a tenement at 319 West 42nd Street, owned and operated by Kaufman Army & Navy. That building will be preserved and not demolished.

The existing 1199 office building will be demolished, and on that site and parking lot to the west, the applicant proposes to build a new 31-story residential building with ground floor commercial space. With a main residential entrance on West 43rd Street and commercial space on West 42nd, the development would produce 330 new apartments, including 83 affordable apartments under

the Voluntary Inclusionary Housing (VIH) and 421-a programs. The current affordability regime ranges between 40-120% of the Area Median Income (AMI). Under VIH, the applicant will return to MCB4 with a proposed plan for apartment distribution, AMI bands, apartment finishes and amenities. That plan is expected to be submitted to HPD and referred to MCB4 for review within 60 days.

Site & Zoning (Appendix A)

- Development Site is Comprised of tax lots 41 & 25
- Zoning Lot is comprised of tax lots 41, 25, & 22
- Zoning Lot is located within multiple Zoning Districts:
 - Lot Portion A: C6-2 Special Clinton District, Area A - Preservation Area
 - Lot Portion B: C6-4 Special Clinton District, Area B - Perimeter Area, 42nd Street Perimeter Area - Subarea 1
 - Lot Portion C: C6-4 Special Clinton District, Area B - Perimeter Area & With a Zoning Overlay of the Special Midtown District - Theater Subdistrict, Eighth Avenue Corridor

The Southern (West 42nd Street) portion is in compliance with the Perimeter Area, Subarea 1 Area requirements of the Special Clinton District. The Eastern (Eighth Avenue) portion is in compliance with the Perimeter Area B of the Special Clinton District and Special Midtown District requirements. The Northern Building portion (West 43rd Street) has a full frontage of 175-foot along West 43rd Street. That frontage is split between 149.66 feet in the Preservation Area A, Special Clinton District and 25 feet in the Perimeter Area B with a zoning overlay of the Special Midtown District - Theater Subdistrict, Eighth Avenue Corridor. The request is to increase the height from the 66 feet to the approximately 89 feet height, with seven stories in the Preservation Area.¹

The Special Permit would allow:

- All floor area available on Lot Portion A to be fully utilized
- Allow for an additional floor of residential use
- Allow for residential floor-to-floor heights of approximately 10.67 feet, for the residential floors of West 43rd Street.
- Additional height for a retail base for the Proposed Development with an approximately 17-foot floor-to-ceiling height

The existing building to be demolished on the site on West 43rd Street is approximately 193 feet. The applicant presented renderings of streetscapes on both sides of West 43rd Street to demonstrate the impact of the proposed increase in height, in context with the existing streetscape and building heights, currently between 44 feet to 99 feet. Only one building is taller, 311 West 43rd Street, a large loft building directly across the development site, a 14-story building with a height of approximately 208 feet.

¹ Actual building height, with mechanical space is a permitted obstruction located above that height.

The façade design also seeks to manage the transition to the adjacent tenement to the west, with a setback of approximately the depth of a sill, so the building’s masonry façade aligns with the tenement’s masonry façade to the west.

When the Applicant initially briefed the Board on November 4th, 2020, the façade was primarily glass. Now, the West 43rd Street portion of the façade is now predominantly masonry in response to Board’s request to better fit into the context of the block.

CHKLU Committee Deliberation

- *Development Process*
 - *Development Rights, 319 West 42nd Street* – The Committee discussed the need to clarify that only the development rights will be purchased from the tenement building 319 West 42nd Street, as opposed to the building itself.
 - *Affordable Housing Plan – VIH and 421-a Affordable Apartments*
The full complex, known by the address 314 West 42nd, will contain two types of affordable apartments. The first produced under New York City’s Voluntary Inclusionary Housing² program will be permanently affordable governed under a regulatory agreement recorded against the land. The other, produced under New York State’s 421-a program, will be affordable for 40 years, governed through a real estate tax abatement. However, even after expiration of the abatement, they will remain regulated through Rent Stabilization to any affordable tenant residing in the building at the expiration of this 40-year period until they vacate the unit.

The Committee requested the Applicant clarify unit mix, distribution, and AMI levels to be presented to the Housing, Health, and Human Services (HHHS) Committee. The Applicant responded that there will be a total of 83 units affordable with proposed AMI levels between 40-120%:

2020 Area Median Income (AMI) Band Distribution

AMI Tier	Family of one	Family of Two	Family of Three	Family of Four
40% AMI	\$31,840	\$36,400	\$40,960	\$45,480
60% AMI	\$47,760	\$54,600	\$61,440	\$68,220
120% AMI	\$95,520	\$109,200	\$122,880	\$136,440

² Under the Special Clinton District, VIH is the as-of-right only zoning bonus available, unless otherwise specifically mapped for the Mandatory Inclusionary Housing Program

Apartment AMI Distribution

AMI Tier	VIH	421a	Number of Units
40% AMI	14	19	33
60% AMI		33	33
120% AMI		17	17
		Total	83

VIH Affordable Apartment Calculation

The majority of the site, not subject to this Special Permit, is located in the Perimeter Area of the Clinton Special District, with a zoning bonus through Voluntary Inclusionary Housing. New developments in the Perimeter Area, with underlying zoning of C6-4³, can receive a floor area bonus of up to 20%, increasing the maximum floor area ratio (FAR) of 10.0 to 12.0. For each square foot of floor area dedicated to affordable housing, the development receives 3.5 square feet of bonus floor area. In this case, the 20% increase is 40,166 SF, as calculated below:

	FAR	Area
C6-4 Lot Area		20,083 SF
Basic FAR	10.0 FAR	200,831 SF
Inclusionary Increase	+2.0 FAR	+40,166 SF
Residential with Inclusionary Housing	12.0 FAR	240,997 SF

To receive that 40,166 SF, that number is divided by 3.5 bonus ratio, requiring 11,476 sf of Inclusionary Housing (IH) floor area. That square footage yields, in accordance with HPD apartment design requirements, 14 permanently affordable VIH residential units.

The VIH plan will be presented to the HHHS Committee within 60 days.

- *Height Increase* – The Committee discussed the Applicant’s request for a 23-foot increase in height for the seven-story building within the Preservation Area of the Special Clinton District. The buildings across the street on West 43rd Street, such as 311 West 43rd Street has a height of approximately 192 feet, while tenements such as 325 West 43rd Street has a height of approximately 66 feet. Buildings to the west of the Development Site, including the Holy Cross School have heights from 78 to 99 feet. As part of a prior Special Permit, 360 West 43rd Street was allowed a height increase to 99-feet, as a

³ C6-4 zoning is an R10 residential equivalent, therefore it is able to receive a bonus under VIH

mechanism to preserve existing tenements on Ninth Avenue between 42nd and 43rd Streets.

- *Building Design*

- *Ground Floor Recess* – The Applicant presented the recess as a requirement of the zoning overlay of the Special Midtown District - Theater Subdistrict, Eighth Avenue Corridor. The Committee asked questions on the location of the recess, as there is an ongoing issue of drug activity on this location. There was concern that the recess will provide a location for that activity. Committee members noted that West 43rd Street is the boundary between Midtown North and Midtown South Precincts, and there has been difficulty in managing enforcement of street drug activity. Committee members raised concerns about phonebooths, and planters used to store drugs, and are concerned this recess would offer another opportunity for that activity. The Applicant responded that the recess would be transparent and well-lit and viewed from the lobby front desk. They also agreed however, that they would prefer it not be part of the project and would work with MCB4 and the Department of City Planning to determine if it could be eliminated.
- *1199 Labor Mural Mosaic* – The Committee discussed the potential for preserving the mosaic, which is an important piece of history for the union. Debra Pucci, Chief of Staff of 1199 SEIU United Healthcare Workers East, stated that the union had done due diligence to determine if the mosaic could be removed and re-installed. After receiving detailed reports, it was determined that the mosaic could not be moved. Therefore, the union decided to recreate the mosaic at its new location at 498 Seventh Avenue. 1199 engaged mosaic artisan Stephen Miotto to recreate the mural, which can be seen from the street.⁴ Miotto's godfather created the original mural with two partners.

There followed, an extensive and robust discussion regarding the importance of the 1199 labor mosaic mural as an important part of the history of Hell's Kitchen. The Committee recommended for there to be an installation of art or commemoration outside the building or in the building lobby to recognize both the long-term location of the union building and the mural's importance. The Applicant agreed to work with the Board to come to an agreement on an appropriate commemoration or art installation prior to the grant of the Special Permit by the City Council.

- *Street Tree Planting* – Questions around street trees and conflicts with ConEdison vaults were raised by the Committee. It was confirmed that there is no conflict with the ConEd vaults. The Applicant responded that pursuant to Special Clinton District ZR Section 96-51, street trees would be planted. Current planning anticipates 10 trees planted on site and 4 trees to be located offsite. The Board requests for the applicant to return to the MCB4 Transportation Committee to recommend alternate locations for those street trees, in proximity to the Development Site.

⁴ [James S Russell. The Union Moved. The Beloved Mosaic Mural Couldn't, New York Times, Feb. 25, 2021.](#)

- *Construction Effects on Adjacent Buildings, West 42nd and West 43rd Streets* – The Committee requested the Applicant to work with the District Manager when demolition and construction begins, to provide two-week construction lookahead reports so adjacent residents can be informed.
- *Building Operations* – The Committee discussed the difficulty of trash removal and management in large residential buildings without off street garbage storage. The Applicant agreed to develop a garbage management plan to be shared with the MCB4 Transportation Committee.

Approval Conditions

MCB4 requested and the Applicant agreed to provide to the Board, a commitment in writing⁵, regarding the conditions listed below:

Development Process

- Clarify that only developments rights will be purchased from the site over Kaufman's Army & Navy surplus store at 319 W 42nd Street, and that the building will not be demolished.
- Review its affordable housing plan and to return to the Housing, Health, and Human Services Committee to present the proposal within 60 days, and to come to an agreement before the City Council action on the Special Permit request.

Building Design

- Work with the Board and the Department of City Planning to determine if it is possible to remove the recess in the Eastern portion of the building, to prevent the area becoming a location for drug activity.
- Work with the Board to come to an agreement on an appropriate commemoration or art installation prior to the grant of the Special Permit by the City Council.
- Return to MCB4 Transportation Committee to recommend alternate locations for four street trees that will be located offsite, in proximity to the Development Site.

Construction

- Prior to demolition and construction, the Applicant will produce a two-week construction look ahead to be distributed to the MCB4 District Manager and all other owners and neighbors on the block.

Building Operations

- Develop a garbage management plan for storage and management of trash on-site, to avoid over-burdening the sidewalk.

MCB4 recommends that the application for a Special Permit under Section 96-104 of the Special Clinton District be approved with conditions, as numerated above. The Board looks forward to working with the Applicant to bring this proposal to final approval.

⁵ Letter dated March 3, 2021, copy attached.

Sincerely,



Lowell D. Kern
Chair
Manhattan Community Board 4



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

Enclosure

cc: Hon. Brad Hoylman, NYS Senate
Hon. Robert Jackson, NYS Senate
Hon. Richard Gottfried, NYS Assembly
Hon. Linda Rosenthal, NYS Assembly
Hon. Corey Johnson, NYC Council Speaker
Hon. Gale Brewer, Manhattan Borough President
Hon. Scott Stringer, NYC Comptroller
Hon. Jumaane Williams, NYC Public Advocate
Andrew Lassiter, Project Manager, Land Use Division, NYC Council



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
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

April 26, 2021

**Recommendation on the ULURP Application No. C200352 ZSM
314 West 43rd Street Clinton Special Permit
by 311 West 42nd Street Associates LLC**

PROPOSED ACTION

311 West 42nd Street Associates LLC (the “Applicant”) is seeking an approval for a special permit pursuant to Section § 96-104 of the Zoning Resolution (ZR § 96-104) to allow a portion of the building at 314 West 43rd Street (the “Proposed Building”) to have a height beyond what is permitted in the Preservation Area of the Special Clinton District. The Proposed Building would be located in the Clinton/Hell’s Kitchen neighborhood of Manhattan Community District 4.

ZR § 96-104 states the following:

[T]he City Planning Commission, by special permit, may modify the special height and setback regulations set forth in this Section. In order to grant such special permit, the Commission shall find that the distribution of bulk permits adequate access of light and air to surrounding streets and properties and that the maximum height does not exceed 99 feet beyond 100 feet of a wide street, and 115 feet within 100 feet of a wide street.

The Commission may prescribe appropriate conditions and safeguards to protect and minimize any adverse effects on the character of the surrounding area.

BACKGROUND

Special Clinton District

The Special Clinton District was created in 1974 with the purpose of preserving the residential character of the Clinton/Hell’s Kitchen neighborhood. That action was in part a response to the westward growth of the Midtown business district. The Special District includes provisions that outline streetwall, height and bulk requirements. At the core of the Special District is a Preservation Area that is generally bound by West 43rd and West 56th Streets between 150 feet west of Eighth Avenue and Tenth and Eleventh Avenues. Owners of residential properties within the Preservation Area must obtain a special permit from the City Planning Commission prior to commencing the demolition of more than 20 percent of a building’s residential floor area.

ZR § 96-104 requires that streetwall heights within the Preservation Area be between 50 and 66 feet in height. Setbacks are required to have a minimum depth of 15 feet if they are located on a narrow street. This section of the zoning resolution, however, allows streetwalls to rise up to a height of 99 feet via a City Planning Commission special permit.

PROPOSED DEVELOPMENT

Area Context

The Proposed Building is situated between the Clinton/Hell's Kitchen neighborhood and Times Square/Midtown. Clinton/Hell's Kitchen is a residential neighborhood located west of Eighth Avenue. The blocks west of the Proposed Building site are zoned R8 with C1-5 and C2-5 overlays. Times Square and Midtown are east of Eighth Avenue and are characterized by larger commercial developments. That area is largely zoned C5 and C6. A C6-4 zoning district is generally mapped along West 41st and West 43rd Streets between Eighth and Twelfth Avenues.

The area is well served by both train and bus routes, including the 42nd Street Times Square Station, which is located less than a block from the Proposed Building and provides service to the 1, 2, 3, 7, A, C, E, N, Q, R, W and crosstown shuttle trains. The M42 bus provides crosstown service while the M11, M12, and M104 buses provide the area north/south service. The Port Authority Bus Terminal, which is a hub for many inter-city bus lines, is located one block south of the Proposed Building.

Site Description



■ Proposed Building Site

The development site that will contain the Proposed Building is comprised of three lots as shown above. The development site is zoned C6-2 and C6-4. Lot 41 contains a 102 space through-block surface parking lot. Lot 25, which is also a through-block lot, contains a 13-story office building that was occupied by 1199 SEIU until July 2020. The union has relocated to an office building in

Times Square. Lot 22 contains a 5-story tenement building that includes 14 dwelling units and a ground floor commercial space.

Project Description

The Proposed Building would be built on Lots 25 and 41. The residential building on Lot 22 would be preserved and provide 20,923 square feet of development rights to the Proposed Building. The building would contain 330 dwelling units, of which 83 would be affordable. The Applicant plans to provide 14 units affordable at 40% AMI through the City's Voluntary Inclusionary Housing Program (VIH), and in exchange would be able to build an additional 40,166 square feet of residential space. The remaining 69 affordable units (19 at 40% AMI, 33 at 60% AMI, and 17 at 120% AMI) would be provided through the State's Affordable New York Program (formerly known as 421-a), thus enabling the developer to receive a property tax abatement. The 14 units provided through VIH would be permanently affordable, while the remaining 69 units would have a proposed length of affordability of 40 years.

The Proposed Building would have a northern and southern portion, which would be separated by a landscaped garden to meet the rear yard requirement. The northern portion, which is the subject of the Application, would rise to 7 stories and range in height from 66 feet to 89 feet. The easternmost segment of the northern portion is within the Special Midtown District and would include a setback in order to comply with sidewalk widening requirements. The southern portion would be 31 stories and would rise to an approximate height of 399 feet.

The additional height allowed by the special permit would accommodate an additional floor of residential use, thus enabling the Applicant to use all of the development rights from Lot 22. The action would also allow more generous floor-to-ceiling heights (approximately 17 feet for the ground floor retail space, and 10 feet 8 inches for the residential floors).

COMMUNITY BOARD RECOMMENDATION

Manhattan Community Board 4 held a hearing on the application on February 10, 2021. At its March 3, 2021 Full Board meeting, the Board voted to recommend approval of the application but outlined several conditions for approval, including the removal of the recess at the northern portion of the Proposed Building, which members of the Board noted could be used for drug activity. The Board also requested that the Applicant work on an art installation to commemorate 1199 SEIU's history at the site and that they present their affordable housing plan to its Housing, Health and Human Services Committee.

BOROUGH PRESIDENT'S COMMENTS

The Applicant's proposed use of the Special Permit would facilitate a better development that maximizes the amount of housing on their development site. I also believe that the additional height is harmonious with the surrounding area. However, when I met with the Applicant, I made it clear that my primary concern was the expiring affordability of the 69 residential units that

would be provided through the Affordable New York Program. I have seen scores of residents displaced from the Normandie Court on the Upper East Side as a result of such expirations. I understand that since 2017, the program requires that any affordable units remain rent stabilized until permanently vacated by the resident. The Applicant has committed to return to Manhattan Community Board 4 this spring to present its affordable housing plan and I urge them to work with the Board to arrive at a plan that provides the greatest length of affordability and protection for residents.

I also share Manhattan Community Board 4's concern regarding the recess at the northern portion of the Proposed Building, especially given the potential for that portion of the site to attract illicit activity. I urge the Applicant to design a building that eliminates features that might contribute to concerns about public safety.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C200352 ZSM if the applicant meets the following conditions:

1. Work with Manhattan Community Board 4 to develop an appropriate affordable housing plan;
2. Work with the Department of City Planning and Manhattan Community Board 4 to improve the design of the eastern portion of the Proposed Building; and
3. Work with 1199 SEIU and Manhattan Community Board 4 to include an art installation in the Proposed Building.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President