



CITY PLANNING COMMISSION

January 27, 2010 / Calendar No. 6

C 100053 ZSM

IN THE MATTER OF an application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681(a)(1) 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 in connection with a proposed mixed-use development on property located at 592-608 Eleventh Avenue a.k.a. 507-533 West 44th Street a.k.a. 508-558 West 45th Street (Block 1073, Lot 1), within a General Large Scale Development, in R8/C2-5 and R10/C2-5 Districts, within the Special Clinton District (Excluded Area), Borough of Manhattan, Community District 4.

The application for the designation of an Urban Development Action Area and Project and for the disposition of city-owned property was filed by the Department of Housing Preservation and Development on August 5, 2009. Approval of this application would facilitate approximately 1,350 residential units, of which approximately 675 would be affordable, in addition to commercial and community facility uses.

RELATED ACTIONS

In addition to the special permit (C 100053 ZSM) which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following which are being considered concurrently with this application:

C 100051 ZMM	Zoning Map Amendment from M1-5 to R8/C2-5 and R10/C2-5 zoning districts
N 100052 ZRM	Zoning Text Amendment relating to Article IX, Chapter 6 (Special Clinton District)
C 100054 ZSM	Special Permit pursuant to Section 74-743 to waive height and setback, distance between buildings and open space regulations
C 100055 HAM	UDAAP designation, project approval and disposition of City-owned property

BACKGROUND

A full background discussion and description of this application appears in the report on the

related application for a zoning map amendment (C 100051 ZMM).

ENVIRONMENTAL REVIEW

The application (C 100053 ZSM), in conjunction with the application for the related actions (C 100051 ZMM, N 100052 ZRM, C 100054 ZSM, C 100055 HAM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09HPD022M. The lead agency is the Department of Housing Preservation and Development.

It was determined that the proposed action may have a significant effect on the environment and that an Environmental Impact Statement would be required. A summary of the environmental review and the Final Environmental Impact Statement appears in the report on the related application for a zoning map amendment (C 100051 ZMM).

UNIFORM LAND USE REVIEW

This application (C 100053 ZSM), in conjunction with the application for the related actions (C 100051 ZMM, C 100054 ZSM, C 100055 HAM), was certified as complete by the Department of City Planning on September 8, 2009, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP application (N 100052 ZRM), which was referred for review and comment.

Community Board Public Hearing

Community Board 4 held a public hearing on this application and the related actions on October 7, 2009, and on that date, by a vote of 35 in favor, none opposed with no abstentions, adopted a resolution recommending approval with conditions.

A summary of the recommendations of Community Board 4 appears on the related application

for a zoning map amendment (C 100051 ZMM).

Borough President Recommendation

This application (C 100053 ZSM), in conjunction with the related actions, was considered by the Borough President, who issued a recommendation on November 30, 2009 recommending approval with conditions.

A summary of the recommendations of the Borough President appears on the related application for a zoning map amendment (C 100051 ZMM).

City Planning Commission Public Hearing

On November 18, 2009 (Calendar No. 5), the City Planning Commission scheduled December 2, 2009, for a public hearing on this application (C 100053 ZSM). The hearing was duly held on December 2, 2009 (Calendar No. 16) in conjunction with the public hearing on the applications for the related actions.

There were twenty speakers, as described in the report for the related zoning map amendment (C 100051 ZMM), and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a special permit (C 100053 ZSM), in conjunction with the related applications, is appropriate.

A full consideration and analysis of the issues, and reason for approving this application appear in the related report for a zoning map amendment (C 100051 ZMM).

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Section 74-681 of the Zoning Resolution:

1. the streets providing access to all uses pursuant to paragraph (a) of Section 74-681 are adequate to handle traffic resulting therefrom; and
2. the distribution of floor area and the number of dwelling units or rooming units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development or enlargement, including any portion of the development of enlargement located beyond the boundaries of such railroad or transit right-of-way or yard; and
3. all uses, developments, or enlargements located on the zoning lot or below a platform do not adversely affect one another; and
4. if such railroad or transit right-of-way or yard is deemed appropriate for future transportation use, the site plan and structural design of the development does not preclude future use of, or improvements to, the right-of-way for such transportation use.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on January 13, 2010, with respect to this application (CEQR No. 09HPD022M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act & regulations, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of

the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681(a)(1) 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 in connection with a proposed mixed-use development on property located at 592-608 Eleventh Avenue a.k.a. 507-533 West 44th Street a.k.a. 508-558 West 45th Street (Block 1073, Lot 1), within a General Large Scale Development, in R8/C2-5 and R10/C2-5 Districts, within the Special Clinton District (Excluded Area), Borough of Manhattan, Community District 4, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 100053 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 Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-3	Site Plan	12.29.2009
Z-4	Zoning Calculations	07.31.2009
Z-4a	Zoning Analysis Table	07.31.2009
Z-5	Required Yards	12.29.2009
Z-6	Distance Between Buildings	12.29.2009
Z-7	Open Space	12.29.2009
Z-8	Height and Setback Sections	12.29.2009
Z-9	Height and Setback Sections	12.29.2009
Z-10	Height and Setback Sections	12.29.2009

Z-11	Height and Setback Isometric View	12.29.2009
Z-11.1	Height and Setback Plan at Street	12.29.2009
Z-11.2	Height and Setback Plan at Rear Yard	12.29.2009
Z-11.3	Rear Yard Plan	12.29.2009
Z-18	Rail R.O.W	07.31.2009

- 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 and the attached 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 attached restrictive declaration.

- 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 100053 ZSM), duly adopted by the City Planning Commission on January 27, 2010, (Calendar No. 6), 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.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, NATHAN LEVENTHAL, ANNA HAYES LEVIN,
SHIRLEY A. McRAE, KAREN A. PHILLIPS, Commissioners