



## **CITY PLANNING COMMISSION**

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October 7, 2008/Calendar No. 25

C 080281 ZSM

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**IN THE MATTER OF IN THE MATTER OF** an application submitted by the New York City Department of Sanitation pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the requirements of Section 43-40 (Height and Setback Regulations) and Section 43-20 (Yard Regulations) to allow a proposed garage building to be located without regard for the applicable height and setback and rear yard regulations, on property located at 500 Washington Street (Block 596, Lot 50), in an M2-4 District, within a General Large-Scale Development, Borough of Manhattan, Community District 2.

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The application for a special permit was filed on February 7, 2008, by the Department of Sanitation (DSNY) and the Department of Citywide Administrative Services (DCAS) for height, setback, and rear yard waivers to facilitate the construction of a new multi-story sanitation garage complex.

### **RELATED ACTIONS**

In addition to the special permit which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with these applications:

1. C 080279 PSM - Site selection for a Salt Shed
2. C 080280 PCM - Site selection and acquisition for a Garage Complex for Districts 1, 2, and 5
3. N 080282 ZAM - Authorization to allow curb cuts on wide streets.

### **BACKGROUND**

A description of the proposed new multi-story sanitation garage complex and the associated request for waivers pursuant to a General Large Scale Plan is included in the report on the related action for site selection and acquisition of privately-owned property (C 080280 PCM).

### **ENVIRONMENTAL REVIEW**

This application (C 080281 ZSM), in conjunction with the applications for the related actions (C 080279 PSM and C 080280 PCM), 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 07DOS003M. The lead agency is the New York City Department of Sanitation.

A summary of the environmental review and the Final Environmental Impact Statement (FEIS) appears in the report on the related site selection and acquisition application (C 080280 PCM).

### **UNIFORM LAND USE REVIEW**

This application (C 080281 ZSM), in conjunction with the applications for the related actions (C 080279 PSM and C 080280 PCM), was certified as complete by the Department of City Planning on May 5, 2008, and was duly referred to Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York Section 2-02(b).

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application (C 080281 ZSM) on June 12, 2008, in conjunction with the applications for the related actions (C 080279 PSM and C 080281 ZSM), and, on June 14, 2008, by a vote of 40 to 0, with zero abstentions, adopted a resolution recommending disapproval of this application with the modifications.

A full discussion of this resolution and the modifications appears in the report on the related Site Selection and Acquisition application (C 080280 PCM).

### **Borough President Recommendation**

This application (C 080281 ZSM), in conjunction with the related applications (C 080279 PSM and C 080280 PCM), were considered by the Borough President of Manhattan, who issued a recommendation on August 11, 2008 approving this application (C 080281 ZSM) with the following condition:

...that the portion of Block 595 proposed for the salt shed be included to minimize the proposed waivers and improve the plan's relationship to the surrounding community.

## **City Planning Commission Public Hearing**

On August 11, 2008, Cal. No. 3, the City Planning Commission scheduled August 27, 2008, for a public hearing on this application (C 080281 ZSM). The hearing was duly held on August 27, 2008, Calendar No.38., in conjunction with the hearings on the related applications (C 080279 PSM and C 080280 PCM).

There were a number of speakers, as described in the report on the related application for site selection and acquisition, (C 080280 PCM), and the hearing was closed.

## **CONSIDERATION**

The City Planning Commission believes that the application of the Department of Sanitation for a special permit to modify certain height and setback provisions to facilitate the construction of a DSNY garage complex located in Community District 2, Borough of Manhattan, is appropriate.

A full consideration and analysis of the issues, and the reasons for approving this application, appear in the report on the related site selection and acquisition application (C 080280 PCM).

## **FINDINGS**

The City Planning Commission hereby makes the findings pursuant to Sections 74-743 (General Large Scale Development) and 74-746 of the Zoning Resolution:

### Section 74-743

- (1) The distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances, show windows and signs will result in a better site plan and a better relationship among buildings and open area to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the general large scale development, the neighborhood, and the City as a whole;
- (2) The distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air, to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;
- (3) Not applicable;
- (4) Considering the size of the proposed general large-scale development the streets

providing access to such general large-scale development will be adequate to handle traffic resulting therefrom;

(5) Not applicable; and

(6) Not applicable.

(7) Not applicable.

(8) A declaration with regard to ownership requirements in paragraph (b) of the general large-scale development definition in Section 12-10 has been filed with the Commission.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on September 26, 2008 with respect to this application, the City Planning Commission finds that, consistent with social, economic, and other essential considerations:

1. From among the reasonable alternatives thereto, the actions to be approved are ones which minimize or avoid adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts revealed in the Environmental Impact Statement will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval those mitigative measures that were identified as practicable.

**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 and findings described in this report, the applications of the Department of Sanitation New York City Department of Sanitation pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the requirements of Section 43-40 (Height and Setback Regulations) and Section 43-20 (Yard Regulations) to allow a proposed garage building to be located without regard for the applicable height and setback and rear yard regulations, on property located at 500 Washington Street (Block

596, Lot 50), in an M2-4 District, within a General Large-Scale Development, Borough of Manhattan, Community District 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 080281 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 Dattner Architects/Weisz + Yoes Architecture and incorporated in this resolution:

<u>Title</u>	<u>Last Date Revised</u>
Site Plan	April 25, 2008
Height, Setback & Rear Yard Waiver Diagrams	April 25, 2008
Plan, Sections & Zoning Calculations	April 25, 2008

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 plan 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. The Special Permit shall not be exercised until a restrictive declaration, in substantially the form set forth in Exhibit A attached hereto, with such modifications and containing such other attachments as are acceptable to Counsel's Office to the Department of City Planning, has been executed, filed and recorded in the Office of the Register of the City of New York, New York County. This provision shall not be applicable in the event that the property that is the subject of this application is in single ownership/control of the City of New York, as determined by the General Counsel to the Department of City Planning.
5. Upon the failure of any party having any right, title or interest in the property that is the subject of these applications, 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 permits hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permits. 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 these 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 these special permits is 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 these special permits.

The above resolution (C 080281 ZSM), duly adopted by the City Planning Commission on October 7, 2008 (Calendar No. 25), 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, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,  
BETTY Y. CHEN, MARIA M. DEL TORO, RICHARD W. EADDY,  
NATHAN LEVENTHAL, SHIRLEY A. MCRAE, JOHN MEROLO, Commissioners**

**ANGELA R. CAVALUZZI, AIA, Commissioner, Voting NO**

**EXHIBIT A**

**DECLARATION OF GENERAL LARGE-SCALE DEVELOPMENT**

THIS DECLARATION, made as of this [insert day] of [month], [year] by [                    ],  
having an address at \_\_\_\_\_ ("Declarant").

WITNESSETH:

WHEREAS, the \_\_\_\_\_, a \_\_\_\_\_, having its principal  
office at \_\_\_\_\_ is the fee owner of certain real property located in the  
Borough of Manhattan, City and State of New York, designated for real property tax purposes  
as Block 593 , Lot 50, located at 500 Washington Street, which real property is more  
particularly described in Exhibit "A" annexed hereto and made a part hereof (the "Subject  
Property"): and

WHEREAS, Declarant desires to improve the Subject Property as a "general large-  
scale development" meeting the requirements of Section 12-10 of the Zoning Resolution  
(Definition) definition of "general large-scale development" (such proposed improvement of the



Subject Property the "Large Scale Development Project"); and

WHEREAS, applications were filed with the New York City Department of City Planning (hereinafter "City Planning") for (1) Site Selection of property for a salt storage facility (C 080279 PSM); (2) Site Selection and Acquisition for a Garage Complex for Districts 1, 2 and 8 (C 080280 PCM); (3) Special Permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the requirements of Section 43-40 (Height and Setback Regulations) and Section 43-20 (Yard Regulations) to allow a proposed garage building to be located without regard for the applicable height and setback and rear yard regulations (C 080281 ZSM)(item 3, the "Large Scale Special Permit"; and (4) Authorization pursuant to Sections 13-50 (Special Permits and Authorizations ) and 13-553 (Curb Cuts) for curb cuts on a Wide Street (N 080282 ZAM) (items 1-4 collectively, the "Land Use Applications"); and

WHEREAS, [insert title company name] has certified in a certification attached hereto as Exhibit "B" and made a part hereof, that as of [insert date of title cert] \_\_\_ and \_\_\_ are the only "Parties in Interest" to the Subject Property as "Parties in Interest" as defined in subdivision (c) of the definition of "zoning lot" in Section 12-10 of the Zoning Resolution; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

NOW THEREFORE: Declarant hereby declares covenants and agrees as follows:

1. Designation of General Large Scale Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in Section 6 hereof), the Subject Property shall be treated as a general large-scale development site and shall be developed and enlarged as a single unit.

2. Development of Large Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permit, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Dattnerr Architects/Weisz + Yoes Architecture, approved as part of the Large Scale Special Permit and annexed hereto in Exhibit "C" and made a part hereof:

<b>Drawing No.</b>	<b>Title</b>	<b>Date</b>
Site Plan		April 25, 2008
Height, Setback & Rear Yard Waiver Diagrams		April 25, 2008
Plan, Sections & Zoning Calculations		April 25, 2008

3. Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing

lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a general large-scale development as set forth herein.

4. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

5. Recordation. Declarant shall File and record this Declaration in the Office of the City Register of the City of New York (the "Register's Office") following approval of the Large Scale Special Permit. Declarant shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarant fails to so

record this Declaration, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by CPC, shall be borne by Declarant.

6. Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 5 above, provided however, that in the event that any administrative, judicial, or other action or enforcement proceeding is brought challenging the validity of the Large Scale Special Permit, the approval of any of the Land Use Applications, or any action undertaken in connection with or related thereto, then the Effective Date shall be deferred to the date of final resolution of such action or proceeding, including any appeals, upholding in all respects the validity of the Large Scale Special Permit, the approval of the Land Use Applications, or such related action(s), as the case may be.

7. Notice. All notices, demands, requests, consents, approvals, and other communications (each, a "Notice") which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

(i) if to Declarant:

to the address at the commencement of this Declaration Attention:

with a copy to:

(ii) if to CPC:

New York City Planning Commission  
22 Reade Street  
New York, New York 10007 Attention: Chairperson

with a copy to:

the general counsel of CPC at the same address

(iii) if to a Party in Interest other than Declarant:

at the address provided in writing to CPC in accordance

with this Section 7

(iv) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section 7

Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 7, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the

Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarant shall also be sent to every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

8. Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Sections 8(c) and 8(d) hereof. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of

occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the Subject Property built pursuant to the Large Scale Special Permit; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

(b) Notwithstanding any provision of this Declaration, only Declarant, and Declarant's successors and assigns and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications.

(c) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant twenty (20) business days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarant commences to effect such cure within such twenty (20) day period (or if cure is not capable of being commenced within such twenty (20) day period, Declarant commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid twenty (20) day period (as such may be extended in accordance with the preceding clause) shall

he extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 7 hereof, and the right to cure shall apply equally to all Declarants.

(d) If Declarant fails to observe any of the terms or conditions of this Declaration, and Declarant fails to cure such violation within the applicable grace period provided in Section 9(c) above, then, upon the expiration of such cure period, prior to institution by the City of any action or proceeding against Declarant, and every Party in Interest shall be given twenty (20) days written notice of such alleged violation by the City, during which period each Party in Interest shall have the opportunity to effect such cure. If any Party in Interest commences to effect a cure during such twenty (20) day period and thereafter proceeds diligently to complete the effectuation of such cure, such cure period shall be extended for so long as any Party in Interest continues to proceed diligently toward such cure. If a Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and the City, as if performed by Declarant.

(e) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, or a Party in Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 9 and



may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

9. Applications.

(a) Declarant shall include a copy of this Declaration with any application made to the New York City Department of Buildings ("Buildings") for a foundation, new building, alteration, or other permit (a "Permit") for any portion of the Large Scale Development Project built pursuant to the Large Scale Special Permit. Nothing in this Declaration including but not limited to the declaration and covenant made in Section 1 hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or Buildings from issuing, any permit for all or any portion of the Large Scale Development Project, in such phase or order as Declarant sees fit in Declarant's sole discretion.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 10(b) shall be construed as superceding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

10. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only upon application by Declarant with the express written consent of CPC or an agency succeeding to CPC's jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

(b) Notwithstanding anything to the Contrary Contained in Section II (a) hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC.

11. Severability. In the event that any of the provisions of the Declaration shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

12. Applicable Law. This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration this [insert

date].

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By:

Name:

Title:

[Standard Acknowledgment]