



## CITY PLANNING COMMISSION

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January 28, 2008 / Calendar No. 10

C 070531(A) ZSM

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**IN THE MATTER OF** an application submitted by 685,700,708 First Realty Company, LLC, pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06( c) (1) of the Uniform Land Use Review Procedure, for the grant of a special permit\* pursuant to the following Sections of the Zoning Resolution:

1. Section 74-743(a)(1) – to allow the distribution of the total allowable floor area within the general large-scale development without regard for the zoning lot lines or district boundaries;
2. Section 74-743(a)(2) – to modify the height and setback requirements of Sections 23-652, 23-632, 23-633, and 33-432; and
3. Section 74-743(a)(5)(i) - to modify the requirements of Section 23-942 to allow a portion of the lot area that contains a wholly commercial building to be excluded from the calculation of floor area for any other buildings on the remainder of the zoning lot;

in connection with a proposed mixed use development on property located at 685, 700, and 708 First Avenue (Block 945, Lots 23 and 33, Block 970, Lots 1 and 2), in a C5-2 District, within a General Large-Scale Development, Community District 6, Borough of Manhattan.

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\*197-d(b)(2) eligible

This application for a special permit pursuant to Section 74-74 “General Large Scale Development” and to Section 74-743 “Special Provisions for Bulk Modification,” was filed by 685,700,708 First Realty Company, LLC, also known as East River Realty Company (ERRC), on June 12, 2007, and revised on August 14, 2007, to facilitate the development of a mixed-use project totaling over 4 million zoning square feet along First Avenue between East 38<sup>th</sup> Street and East 41<sup>st</sup> Street, in Manhattan Community District 6. On October 31, 2007, pursuant to Section 2-06(c)(1) of the ULURP rules, the applicant filed a modification of the certified special permit application (C 070531(A) ZSM) for public hearing and consideration by the City

Planning Commission. On the same date, the applicant withdrew related applications C070524 ZSM and C070526 ZCM. On January 28, 2008, the applicant withdrew related applications C 070532(A) ZSM and N 070535 ZCM.

## **RELATED ACTIONS**

In addition to the proposed zoning special permit (C 070531(A) ZSM), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

C 070522 ZMM	Zoning Map Amendment from M1-5 and M3-2 to C4-6
C 070523(A) ZSM	Special Permit pursuant to Section 74-74 to modify height and setback and inclusionary housing requirements
C 070525 ZSM	Special Permit pursuant to Sections 13-562 and 74-52 for an attended public parking garage
N 070527 ZCM	Commission Certification pursuant to Section 26-17 for streetscape modifications
N 070528 ZCM	Commission Certification pursuant to Section 37-015 to modify retail continuity requirements
C 070529 ZMM	Zoning Map Amendment from C1-9 and M3-2 zoning districts, to a C5-2 district
N 070530(A) ZRM	Zoning Text Amendment relating to the definition of General Large-Scale Development, the Inclusionary Housing Program and provisions for bulk modifications in General Large Scale developments
C 070533 ZSM	Special Permit pursuant to Section 13-561 for an attended accessory parking garage
C 070534 ZSM	Special Permit pursuant to Sections 13-562 and 74-52 for an attended public parking garage
N 070536 ZCM	Commission Certification pursuant to Section 26-17 for streetscape

modifications

N 070537 ZCM Commission Certification pursuant to Section 26-15 to permit curb cuts on a wide street

N 070538 ZCM Commission Certification pursuant to Section 37-015 to modify retail continuity requirements

## **BACKGROUND**

The applicant, 685,700,708 First Realty Company, LLC, also known as East River Realty Company (ERRC), proposes major new mixed-use developments on two large sites comprising a total of 9.7 acres in mid-Manhattan's east side. The sites are former Con Edison properties located along First Avenue between East 35<sup>th</sup> and 41<sup>st</sup> streets that once contained steam and electrical generating facilities and other support functions. Those facilities have been demolished and the properties are currently vacant. The proposal would transform the former power generating facilities, now vacant land, into two mixed-use developments of seven new towers and two new large open spaces.

The development would contain approximately five million zoning square feet of floor area and consist of six predominantly residential towers totaling approximately 3.5 million square feet and 4,173 new dwelling units, one commercial tower of approximately 1.37 million square feet, and approximately 4.8 acres of open space. The build program also includes over 70,000 square feet of retail space and 1,557 parking spaces in both public and accessory parking garages.

### **Site Description**

The two large development sites are referred to in this report as the "North Site" and "South Site." The North Site straddles First Avenue and contains 357,822 square feet and three development parcels. The South Site, made up of one development parcel, contains 68,770

square feet of lot area. Altogether, the two large development sites have a total lot area of 426,592 square feet, or approximately 9.7 acres. The site parcels are identified by address and are described below.

### The North Site

The proposed General Large Scale Development is located on both the west and east sides of First Avenue. On the west side of First Avenue, the site is bounded by East 39<sup>th</sup> Street, Entrance Street (the Midtown Tunnel Access Road), and East 40<sup>th</sup> Street. On the east side of First Avenue, the site is bounded by East 38<sup>th</sup> Street, the Franklin D. Roosevelt (FDR) Drive Service Road, and East 41<sup>st</sup> Street. The site contains two zoning lots: 685 First Avenue and 700/708 First Avenue. The 700/708 First Avenue zoning lot contains two development parcels, 700 First Avenue and 708 First Avenue. Together, the three development parcels on the two zoning lots comprise 357,822 square feet of lot area.

*685 First Avenue* (Block 945, Lots 23, 33) is located on the west side of First Avenue. It is a 32,365 square foot development parcel located between East 39<sup>th</sup> Street, East 40<sup>th</sup> Street, First Avenue, and Entrance Street (the Midtown Tunnel Access Road). It is part of a larger 80,677 square foot zoning lot that includes a Con Edison substation and an open area used for servicing the substation. The lot is subject to a special permit (257-81BZ) granted by the Board of Standards and Appeals (BSA) that authorizes development of the substation. 685 First Avenue is located in a C1-9 zoning district that allows up to 10 FAR for residential or community facility uses and up to 2 FAR for commercial use. The maximum floor area for residential use may be increased to 12 FAR through the provision of Inclusionary Housing.

*700/708 First Avenue*, a superblock located on the east side of First Avenue, contains 277,145 square feet of lot area. 700 First Avenue (Block 970, Lot 1) is bounded by First Avenue, East 38<sup>th</sup> Street, the FDR Drive Service Road, and the southern boundary of the 708 First Avenue parcel to its north. The 700 First Avenue parcel contains 162,489

square feet. Until 2006, the site was occupied by the Con Edison Waterside Electrical Generating Plant. As part of Con Edison's long-range plan for restructuring and modernization of its power generation business, Con Edison retired the Waterside Power Plant and shifted its steam and electrical energy output to the station located on East 14<sup>th</sup> Street. 700 First Avenue is located within an M3-2 district, a mid- to high-level manufacturing district that allows a maximum 2.0 FAR. Residential use is not allowed in an M3-2 district.

708 First Avenue (Block 970, Lot 2) is bounded by First Avenue, East 41<sup>st</sup> Street, the FDR Drive Service Road, and the northern boundary of the 708 First Avenue parcel. 700 First Avenue is a 114,656 square foot parcel. The site formerly contained a 10-story office building used by Con Edison. This office building has been demolished, and the site is currently vacant. The site is also located in an M3-2 zoning district.

#### The South Site

*616 First Avenue* (Block 967, Lot 1) encompasses the entire block bounded by East 36th Street, the FDR Drive Service Road, East 35th Street, and First Avenue. The zoning lot has an area of 68,770 square feet. This parcel formerly contained the Kips Bay Steam Generating Station and fuel oil storage facility. These structures have been demolished and the site is currently vacant. The western portion lot, for a depth of 200 feet, is located in an M1-5 zoning district, a light manufacturing district that allows 5 FAR. The remainder of the lot is located in an M3-2 zoning district, a mid to high level manufacturing district that allows 2 FAR. Residential uses are not allowed.

#### **Area Description**

The subject property is located along First Avenue, near the Kips Bay and Murray Hill neighborhoods and the East River waterfront in Manhattan's East Side. The area within a half mile radius of the subject properties is characterized by mid- to high- density developments of a mix of residential, commercial, and institutional uses. Buildings in the

area include a mix of older lower- and mid-rise buildings along the side streets, and tall residential and commercial towers along the avenues.

The Murray Hill neighborhood is a predominantly residential area generally bounded by East 34<sup>th</sup> and 40<sup>th</sup> streets and Madison and Second avenues. The neighborhood has a variety of building types, historic brownstones and mansions on the side streets and newer residential high-rises on the avenues. The Kips Bay neighborhood is generally bounded by East 27<sup>th</sup> and 34<sup>th</sup> streets and Third Avenue and the East River. Kips Bay contains several high density residential towers, several with bonused plazas at their bases, and a number of institutional uses. Some of the residential towers along First Avenue near the subject properties are the 512-ft tall Corinthian tower between East 37<sup>th</sup> and 38<sup>th</sup> streets, and the 378-ft tall Horizon Building between East 37<sup>th</sup> and 38<sup>th</sup> streets, and the 317-ft tall Manhattan Place between East 36<sup>th</sup> and 37<sup>th</sup> streets.

There are several major campus and enclave developments in the area including the United Nations, Tudor City, NYU Medical Center, and Bellevue Hospital. Tudor City, located between First and Second Avenues and East 40<sup>th</sup> and 44<sup>th</sup> streets, is a residential community of 12 apartment buildings constructed in the 1920s ranging in height between 10 and 32 stories. The United Nations complex, located on the east side of First Avenue between East 42<sup>nd</sup> and 48<sup>th</sup> streets, is an 18-acre campus containing four buildings including the United Nations Secretariat, an iconic building that rises to a height of 503 feet.

The East River waterfront in this area is separated from the neighborhoods by the FDR Drive and the FDR Drive's elevated viaduct off ramp to East 42<sup>nd</sup> Street. Glick Park, a segment of the East River waterfront that is improved with seating and landscaping, runs alongside the water between where East 36<sup>th</sup> and 38<sup>th</sup> streets would meet the river. Two full-block parks, St. Vartan Park and Robert Moses Playground are adjacent to the ERRC

development parcels. The Queens Midtown Tunnel entrance occupies the full block west of First Avenue between East 36<sup>th</sup> and 37<sup>th</sup> streets.

The street pattern in the area follows the traditional Manhattan grid except at the superblocks of the Union Nations, NYU Medical Center, Bellevue, and the former Con Edison Waterside Power Plant, now ERRC, properties.

The area contains a range of residential, commercial, and manufacturing zoning districts. M1-5 (5 FAR) and M3-2 (2 FAR) zoning districts occupy a significant amount of land between First Avenue and the East River. C1-9 (10-12 FAR) is mapped along parts of First Avenue, between East 34<sup>th</sup> and East 40<sup>th</sup> streets. Along the west side of First Avenue, an R8 (6 FAR) district is mapped between East 35<sup>th</sup> and 37<sup>th</sup> streets, and an R10 (10-12 FAR) with commercial overlay is mapped north of East 40<sup>th</sup> Street. A C5-2 (10-12 FAR) district is mapped along First Avenue north of East 41<sup>st</sup> Street.

### **The North Site: 685 and 700/708 First Avenue**

#### **Proposed Development**

On the North Site, the applicant is proposing to develop an ensemble of five new buildings, four residential and one commercial, that would provide 3,343 new residential units, 1.37 million square feet of new office space, ground floor and cellar level retail space, public and accessory parking, and a large landscaped public open space. The property would contain a total of 4,293,864 square feet of floor area, for a total of 12 FAR on the 357,822 square foot site. At the time of certification, the proposal consisted of a base maximum 10 FAR plus an additional 2 FAR generated by a bonusable Public Plaza. Under the “A” applications, the project would be built as of right to the base 9 FAR, plus an additional 3 FAR generated by the provision of both Public Plaza and Inclusionary Housing, for a total of 12 FAR.

*Buildings:* The proposed buildings on the North Site are designed to be tall and relatively slender towers in the north-south direction, ranging in height from 606 feet to 721 feet tall. The majority of the site not occupied by building footprint would be designed and provided as a “Public Plaza.” The prolongations of the former East 39<sup>th</sup> and East 40<sup>th</sup> streets, which were demapped in 1947, would provide visual, pedestrian, and limited vehicular access through the site.

On the west side of First Avenue, at 685 First Avenue, the applicant proposes to build a predominantly residential tower that would rise without setback to a height of 721 feet. It would contain 912,325 square feet of floor area, consisting of 907,858 325 square feet of residential floor area (1,068 units) and 4,465 square feet of ground floor retail. An as-of-right accessory parking garage with 110 parking spaces would be located in the cellar of the building. The Con Edison substation located on the western portion of the zoning lot would remain.

On the east side of First Avenue, at 700 First Avenue, the applicant would construct three predominantly residential towers. All would rise sheer without setback. Building WS1-1, proposed for the northeast corner of East 38<sup>th</sup> Street and First Avenue, would rise to a height of 705 feet and contain 714,026 square feet of residential floor area (840 units) and 8,121 square feet of retail space. Building WS2-1, proposed for northeast corner of First Avenue and the extension of East 39<sup>th</sup> Street, would rise to a height of 606 feet and contain 613,954 square feet of residential floor area (723 units) and 1,185 square feet of retail space. The third building, Building WS1-2, located at the easterly end of the parcel would rise to a height of 650 feet and contain 605,317 square feet of residential area (712 units). The cellar level of 700 First Avenue would contain approximately 36,279 gross feet of retail space.

To the north of 700 First Avenue, at 708 First Avenue, the applicant proposes to develop a 47-story commercial office building that would reach a height of 688 feet. The proposed building, Building 708-1, would be 320 feet wide in the east-west direction, and 145 feet wide in the



north-south direction. This building would contain 1.37 million square feet of office floor area and 3,338 square feet of ground floor retail space.

*Parking:* The applicant is proposing 1,263 parking spaces within the General Large Scale Development. 685 First Avenue would contain an as-of-right accessory garage for 110 cars. The cellar and sub-cellar levels of 700/708 First Avenue would contain 651 public parking spaces and 499 accessory spaces.

*Open Space:* The central feature of the development is a 122,932 square foot (approximately 3.2 acres) landscaped Public Plaza situated between the proposed buildings of 700 and 708 First Avenue and directly across the street from 685 First Avenue. The proposed Public Plaza has over 230 linear feet of frontage onto First Avenue and extends the full east-west length of the zoning lot, over 400 feet. At certification, the 2 FAR bonus generated by the Plaza was proposed to be distributed to all five buildings in the GSLD plan. Under the “A” applications, the applicant proposes that bonus floor area be distributed to only 685 First Avenue and 708 First Avenue. The plaza would provide extensive seating, landscaping, lighting, and other amenities. The plaza is proposed to be open to the public daily from 6 am to midnight.

The applicant has stated that the design of the plaza provides a series of unique public outdoor areas, generally provided along linear, east-west “corridors” from First Avenue to the eastern edge of the site overlooking the FDR Drive and the East River. The connections include a 60 foot wide tree- and bench-lined “allee,” a 70-foot wide lawn directly accessible from First Avenue, a 300-foot long water feature that leads to a large reflecting pool, and a pathway along the eastern edge that provides for views towards the river. A 5,000 square foot pavilion with a café, public rooftop observation deck, and public restrooms would be provided at the eastern end of the plaza. A children’s play area would be provided near the eastern edge, to the east of the residential tower of WS1-2.

The plaza would be built upon a deck, with parking and other uses underneath that would gently rise easterly across the site and eventually elevate pedestrians to the height of the FDR Drive's elevated off-ramp viaduct to 42<sup>nd</sup> Street, which is approximately 30 feet above the grade of the FDR Drive. The applicant has stated that the design of the open space and the deck elevation would provide increased access to waterfront views and would allow for the possibility of new access points to the waterfront if an esplanade is built at this location, in line with the City's long-standing objective of increasing public access to the waterfront.

*East 39<sup>th</sup> and 40<sup>th</sup> Street "Extensions"*: The prolongations of these former streets through the superblock would be kept open as view corridors and pedestrian ways. The East 40<sup>th</sup> Street prolongation would be a gravel path for pedestrians. The western end of the East 39<sup>th</sup> Street extension would also serve as a driveway for residents and visitors to the three residential buildings at 700 First Avenue. Both prolongations and the path located along the eastern edge of the plaza would allow for emergency vehicle access.

### **Requested Actions**

In order to construct the proposed development on the North Site the following actions are required:

#### **Zoning Map Amendment (C 070529 ZMM)**

The applicant is requesting a rezoning of (a) the 700/708 First Avenue zoning lot from an M3-2 zoning district to a C5-2 zoning district, and (b) the 685 First Avenue zoning lot from a C1-9 zoning district to a C5-2 zoning district

M3-2 districts are intended for mid to heavy industries that generate noise, traffic and pollutants such as electric plants and other utilities of the former Waterside complex. The existing M3-2 zoning district is a remnant of the industrially zoned districts that had previously housed the area's large industrial uses such as power plants, breweries, and slaughterhouses. The M3-2 allows a maximum density of 2.0 FAR. The M3-2 permits a

range of commercial and manufacturing uses of Use Groups 6 through 14, and Use Groups 16 through 18, with limitations on types of retail and service establishments permitted. Residential uses are not permitted.

The existing C1-9 district permits high-density residential and community facility development with some neighborhood retail and service uses. C1-9 districts allow a maximum FAR of 10 for residential and community facility uses. Commercial use is limited to 2.0 FAR in a C1-9. Residential floor area may be increased to 12 FAR through the Inclusionary Housing bonus. The plaza bonus, also 2 FAR, is applicable only to community facility or mixed-use buildings in C1-9 districts. C1-9 districts generally require either a “tower-on-base” building form, where 55 percent of the floor area must be located below a height of 150 feet, or a height and setback building. Sheer rising towers are permitted only if at least 125 feet away from the avenue.

The applicant is proposing to rezone the M3-2 and C1-9 districts to a C5-2 zoning district. An existing C5-2 zoning district is mapped to the north of the subject properties and would be extended to cover the subject area. C5 districts are “Restricted Central Commercial Districts” and are designed to provide for high-density residential, commercial, and/or community facility development. C5-2 districts allow a maximum base density of 10 FAR, which may be increased to 12 FAR through the Inclusionary Housing and/or Plaza bonuses. Towers are permitted in C5-2 districts for mixed-use and community facility buildings.

The applicant is requesting the C5-2 zoning district in order to facilitate the proposed development program of high density residential and commercial towers that total 12 FAR, utilizing a basic maximum of 10 FAR as-of-right and a 2 FAR bonus generated by the Public Plaza for certain buildings within the proposed development.

While the map amendment is for a C5-2 zoning district, the related proposed text amendment (N 070530(A) ZRM) would establish the ERRC sites on the east side of First

Avenue as an “Inclusionary Housing Designated Area” and would limit the as-of-right FAR to 9. The maximum allowed FAR would be allowed to increase, up to a maximum of 12 FAR, if affordable housing were provided under the Inclusionary Housing program as set forth in Section 23-90.

**Zoning Text Amendment (N 070530(A) ZRM)**

On October 31, 2007, ERRC submitted modified applications to the previously certified applications for the text amendment, the special permits for General Large Scale Development, and the special permit for modifications for Residential Plaza on the North Site. The primary purpose of the alternative applications is to introduce a text amendment that would make the City’s new program for Inclusionary Housing applicable on the ERRC sites east of First Avenue. At the time of certification, there was no affordable housing component in the proposal and the applicant proposed increasing density on all development parcels from 10 to 12 FAR through a Plaza bonus. In the “A” applications, the applicant would seek an increase in FAR from 9 to 12 FAR through both Inclusionary Housing and Plaza bonuses.

The applicant is proposing amendments to the Zoning Resolution governing the (a) the definition of a General Large Scale Development in Section 12-10, (b) provisions governing the Inclusionary Housing program, to establish an Inclusionary Housing designated area, and (c) special provisions for bulk modifications in a General Large Scale Development in 74-743.

*(a) Definition of General Large Scale Development:* As detailed below, the applicant is seeking a special permit as a General Large Scale Development (GLSD) for the site. The special permit would give relief from zoning regulations to developments on large sites provided that, among other findings, the proposed development results in a better site plan. In a General Large Scale Development, the subject properties must be contiguous except for their separation by a street, the properties must have a total area of at least 1.5

acres, ownership requirements must be satisfied, and the properties must be developed as a unit. The definition also states that an existing building on land within a proposed General Large Scale Development may only be included if the existing building is to be an “integral part” of the development program.

The 685 First Avenue zoning lot contains a Con Edison substation that will continue its use after the construction of the proposed development. Since the substation is not an integral part of the proposed development, this site does qualify as part of a General Large Scale Development.

The applicant therefore proposes to amend the definition of a General Large Scale Development (GLSD) in Section 12-10 so that for sites of at least 5 acres in C5 and C6 districts, an existing building that is not proposed to be an integral part of the resulting plan may be included in the General Large Scale Development provided that such building covers less than 15 percent of the total lot area of the General Large Scale Development and provided that there is no bulk distribution from a zoning lot containing such existing building.

The applicant chose the proposed thresholds of 5 acres and 15 percent in order to ensure that the new text language would only apply where an existing non-integral building is a minimal part of the overall GLSD and its inclusion in the plan will not fundamentally affect the scale or programming of the GLSD.

*(b) Inclusionary Housing:* The modified text amendment would establish an “Inclusionary Housing Designated Area” on the east side of First Avenue, between East 35<sup>th</sup> and 36<sup>th</sup> streets, and between East 38<sup>th</sup> and 41<sup>st</sup> streets. The as-of-right FAR would be 9, which would be bonusable to 12 FAR through the inclusionary housing regulations of Section 23-90.

The proposed inclusionary housing program on the ERRC sites generally follows the

principles of the City’s recent policy for rezonings to encourage significant residential and/or mixed use development. These rezonings such as in Hudson Yards and West Chelsea have established a lower base FAR of 9 FAR in R10 equivalent districts, bonusable up to 12 FAR if affordable housing is provided. The bonus is equal to 1.25 square feet for every 1 square foot of affordable housing provided, subject to a maximum of 20 percent of total floor area of a building. Developments may satisfy the affordable housing requirement by providing affordable units on or off-site, in new units or by preserving existing housing off-site at affordable rents. Off-site affordable units must be located within the same community district or within one-half mile of the bonused development in another community district.

For zoning lots that contain both residential and community facility or mixed buildings, the floor area ratios of Section 23-942 would apply only within a GLSD. The 685 First Avenue site is not proposed to be included in the Inclusionary Housing Designated Area because the site is already located in an R10 equivalent zoning district in which the existing Inclusionary Housing program regulations provide a 2 FAR bonus for affordable housing. It should be noted that the existing Inclusionary Housing Program for sites in R10 and equivalent zoning districts not in designated areas provides less affordable housing than what would be required for developments in the designated areas. It should be noted that the applicant does not propose to utilize the existing Inclusionary Housing program to achieve a floor area bonus on 685 First Avenue; rather, as discussed below, the applicant proposes to generate bonus FAR from a public plaza located on the 700/708 First Avenue site.

In addition to establishing 700/708 and 616 First Avenue as an “Inclusionary Housing Designated Area,” the proposed text would also allow Community Facility floor area to be excluded from the calculation of amount of affordable housing required for the Inclusionary Housing Designated area and would apply the floor area ratios of Section 23-942 to mixed buildings located in General Large Scale Developments within an Inclusionary Housing Designated Area.

(c) *Special provisions for bulk modifications in a GLSD:* This text amendment would allow, for developments greater than 5 FAR in C5 and C6 districts, the distribution of floor area bonus generated by a Public Plaza to be located anywhere on the General Large Scale Development without regard for zoning lot lines.

685 First Avenue and 708 First Avenue are proposed to have an overall FAR of 12 , which is based upon the basic maximum residential FAR of 10 permitted in a C5-2 district and a 2 FAR bonus generated by the provision of a Public Plaza. The applicant proposes that the Public Plaza generating the floor area bonus for 685 First Avenue be located on the 700/708 First Avenue zoning lot. The applicant is requesting this amendment because site constraints on 685 First Avenue, (the Con Edison substation occupies the majority of the zoning lot), preclude a plaza of a substantial size on that zoning lot. The Public Plaza on the 700/708 First Avenue site is proposed to contain 122,932 square feet which would generate a bonus of 737,592 square feet. The applicant is proposing to use 390,666 square feet of the bonus.

The applicant is also requesting a text amendment to Section 74-743 to permit the exclusion of community facility and commercial floor area from the calculation of required lower-income housing pursuant to Section 23-942. The proposed development contains an office tower at 708 First Avenue. A community facility building is proposed to be located at 616 First Avenue, which is subject to the related application (C 0705523(A) ZSM. The applicant stated that these uses would be discouraged through strict application of existing Section 23-942 which states that the maximum floor area bonus may be achieved by providing 20 percent of the floor area in a building as affordable housing (excluding only non-residential floor area on the ground floor level). The proposed text change would allow the Commission, by special permit, to permit: (i) that a portion of the lot area that contains a wholly commercial building be excluded from the calculation of floor area for any other buildings on the remainder of the zoning lot; and (ii) that community floor area located above the ground floor to be excluded from the

calculation of the amount of lower income housing required pursuant to Section 23-942.

**Special Permit to modify height and setback, location of a public plaza, distribution of floor area, and lower-income housing calculation (C 070531(A) ZSM)**

The applicant is requesting a special permit pursuant to Section 74-74 to allow: (a) height and setback modifications, (b) a Public Plaza to be located anywhere within a GLSD without regard to zoning lot lines, pursuant to the text amendment described above, (c) distribution of floor area without regard for zoning lot lines, and (d) that commercial floor area to be excluded from the calculation of the amount of lower income housing that is required to qualify for the maximum FAR bonus.

*(a) Height and Setback:* In C5-2 districts, a mixed development is required to have a street wall no taller than 85 feet or nine stories, whichever is less, and above that, the building may not penetrate a sky-exposure plane of 2.7:1 on a narrow street or 5.6:1 on a wide street. For zoning lots of at least 20,000 square feet, the C5-2 allows a mixed-use tower to penetrate the sky exposure plane if it does not occupy more than 40 percent of the lot area. The buildings in the proposed development are designed as sheer-rising towers that rise to their full height without setbacks. They do not comply with either the applicable height and setback regulations or the tower regulations of the proposed C5-2 zoning district.

Each of the three buildings on the 700/708 First Avenue site that front along First Avenue, shown on the drawings as WS1-1, WS2-1, and 708-1 (the commercial tower), is set back five feet from First Avenue and penetrate the sky exposure plane on the avenue. Two of the buildings, WS1-1 and WS1-2, penetrate the sky exposure plane on East 38<sup>th</sup> Street, a narrow street. WS1-1 has no setback on East 38<sup>th</sup> Street and WS1-2 is set back 120 feet. The WS1-2 building is set back 28.8 feet from the FDR Drive Service Road and the 708-1 building is set back 84.0 feet from the FDR Drive Service Road. Both these buildings penetrate the sky exposure plane from the FDR Drive. The 685 First Avenue building is proposed to set back



20.25 feet from First Avenue and 14.0 feet from East 40<sup>th</sup> Street, and have no setback on East 39<sup>th</sup> Street, penetrating all three sky exposure planes on the streets it fronts.

The applicant is requesting the waiver for height and setback in order to develop towers that rise sheer near or at the street line so that the narrow tower silhouettes and smaller footprints allow for more generous public open space on the ground level and provide generous view corridors through the site towards the East River.

*(b) Public Plaza Location:* The applicant is proposing that the floor area bonus generated by the Public Plaza on 700/708 First Avenue be utilized to increase allowable floor area on the 685 First Avenue site, pursuant to the proposed text amendment to Section 74-743. As noted above, the 122,932 square foot Public Plaza generates 737,592 square feet of bonus floor area. The applicant is proposing to use a total of 390,666 square of that amount, 229,312 square feet at 708 First Avenue, which is on the same zoning lot as the Public Plaza, and 161,354 square feet at 685 First Avenue, which is located across First Avenue, on a separate zoning lot. The applicant believes that a plaza of a substantial size cannot be provided on the 685 First Avenue site since it is constrained by the existing Con Ed substation and servicing space. Instead, the applicant is proposing a small, bi-level, L-shaped landscaped area along East 40<sup>th</sup> Street and First Avenue.

*(c) Distribution of Floor Area:* The application indicates that in the event that the building at 685 First Avenue is the first building constructed, it would not be practical to build the deck and public plaza at 700/708 First Avenue at the same time as the 685 building. In order to accommodate a phasing schedule that permits the 685 First Avenue to be built to 12 FAR in advance of the plaza which generates 2 FAR bonus for 685 First Avenue, the applicant requests to transfer a portion of the base floor area permitted on the 700/708 First Avenue site to the 685 First Avenue site until the time the plaza is completed. When the plaza on 700/708 is completed, then the 2 FAR transferred to 685 First Avenue would be transferred back to the superblock.

*(d) Low-Income Housing Calculation:* The applicant is requesting a waiver under the General Large Scale Development special permit to exclude the portion of the zoning lot that contains a wholly commercial building from the amount of lower-income housing required pursuant to Section 23-942.

Section 23-90 states that the amount of lower income housing required to generate the maximum available floor areas bonus need not exceed 20 percent of the total floor area in a building on a zoning lot, excluding only ground floor non-residential floor area. All of the floor area in the commercial office tower on 700/708 First Avenue, other than on the ground floor, would therefore be included in this calculation. The applicant proposes that the total floor area in only the three residential buildings of the 700/708 First Avenue zoning lot be included in determining the amount of affordable housing that must be provided to achieve the maximum FAR.

This exclusion would promote a more diverse and desirable mix of uses on the property. Specifically, the applicant requests that 114,656 square feet of the zoning lot of 700/708 First Avenue, the amount of lot area intended for the commercial building, be excluded from the calculation of floor area of the buildings on the 700/708 zoning lot for purposes of calculating required affordable housing units. In order to grant the General Large Scale Development special permit for the waivers requested above, the CPC must make findings related to a General Large Scale Development including that distribution of floor area, open space, and location of buildings will result in a better site plan and a better relationship among buildings and open areas to the surroundings and that the distribution of bulk will not unduly increase the bulk of buildings or unduly obstruct access to light and air.

**Special Permit for a Public Parking Garage (C 070534 ZSM),**

The applicant seeks approval of a special permit, pursuant to Sections 13-562 and 74-52, for a 106,664 gross square foot attended public parking garage with 651 spaces in the cellar level of 700/708 First Avenue. Two-hundred parking spaces would be provided on stackers. Access and egress would be provided by a 22 foot-4 inch wide curb cut located 214 feet north of East 38<sup>th</sup> Street on the southbound FDR Drive Service Road, and by

another 23 foot-3 inch wide curb cut located on East 41<sup>st</sup> Street. The public parking garage would provide 33 reservoir spaces. No pedestrian warning devices such as sound alarms or lights are proposed at the entrance/exits of the garage.

The applicant is proposing the public parking spaces in anticipation of a significant additional demand for parking by guests, patrons, and visitors of the buildings and neighborhood. The accessory parking garage provided on 700/708 First Avenue site would be restricted to the exclusive use of residents, tenants, and employees of the building in the proposed development. In order to grant the special permit, the Commission must make findings related to the garage that it will not be incompatible with the growth and development of the area, will not seriously create or contribute to serious traffic congestion and will not unduly inhibit traffic and pedestrian flow, and that such uses are located to draw minimal traffic through local streets and residential areas.

**Special Permit for an Accessory Parking Garage (C 070533 ZSM),**

The applicant seeks a special permit for a 499-space attended accessory parking garage in 110,451 gross square feet of the cellar level of the 700/708 First Avenue site with entry/exits located near the midblocks on both East 38<sup>th</sup> Street and East 39<sup>th</sup> Street. No pedestrian warning devices such as sound alarms or lights are proposed at the entrance/exits of the garage. The proposed accessory garage exceeds the maximum amount of as-of-right spaces, which is the lesser of either 200 spaces or 20 percent of the total number of units (in this case 3,343 units).

In order to grant the special permit, the Commission must make findings related to the need for parking by occupants and visitors, customers, or employees of the related use, that there are insufficient parking spaces available in the area, and that the garage will not create or contribute to serious traffic congestion or unduly inhibit vehicular and pedestrian movement.

**Special Permit to Modify Residential Plaza Regulations (C 070532(A) ZSM),**

The applicant seeks a special permit, pursuant to Section 74-91, to modify certain regulations of the Public Plaza guidelines set forth in Section 37-70.

At the time of certification, the applicant submitted an application for a bonusable Residential Plaza, pursuant in Section 27-70. Subsequent to certification, the City Planning Commission and City Council adopted new regulations related to bonusable plazas, replacing the Residential Plaza regulations with those of “Public Plazas,” as set forth in new Section 37-70. ERRC’s modified application for special permit addressed this change by revising its requested waivers to match the requirements for Public Plazas instead of Residential Plaza. The proposed size, design, and amenities of the plaza remained the same. The Commission notes that this application C 070532(A) ZSM was withdrawn on January 28, 2008.

The Public Plaza is a large space, containing 122,932 square feet. The applicant states that strict compliance with the standard plaza regulations in Section 37-70, which are intended for plazas of a much smaller size (as small as 2,000 square feet), would result in amounts of amenities in excess of what is practicable or desirable in a large open space where the key feature is an expansive lawn.

In certain zoning districts including a C5-2, the CPC may permit modifications to Section 37-70 provided that it finds that the plaza’s usefulness and attractiveness will be assured by the proposed layout and design and that the development as a whole will produce a superior relationship with surrounding buildings than that achieved through the guidelines provided in Section 37-70.

The applicant seeks to waive the following requirements:

	Requirement	Proposed Plaza
Section 37-712 – Area Dimensions	<p>An open area which does not qualify for bonus floor area may not be located between two public plazas or between a public plaza and a building wall or arcade of the development.</p> <p>Such non-bonused areas must either be separated from public plaza by a wall, decorative fence, or plantings of min. 6' in height, or meet all the requirements for the minor portions related to size, configuration and orientation of Section 37-716.</p>	open areas are provided between public plaza boundaries and certain building walls, to allow for height and setback “envelope”
Section 37-713 – Locational restrictions	No public plaza or portion of public plaza can be located within 175' of an existing publicly accessible open area or public park.	The northern edge of the public plaza is within 60' of the existing Robert Moses Playground located on 1st Ave. between E. 41st and 42nd St.
Section 37-715 – Major Portion	Major portions shall occupy no less than 75% of the total public plaza area = 92,199 sf	Major portion is 65.7% of public plaza (80,600 sf of 122,9323 sf)
Section 37-716 – Minor Portion	<p>Minor portions shall occupy not more than 25% of the total public plaza area = 30,733 sf</p> <p>All points within the minor portions must be visible from the major portion</p>	<p>Minor portion is 34.3% of public plaza ( 43,332 of 122,932 sf)</p> <p>Some portions of playground within minor portion are not visible from major portion</p>
Section 37-721 – Sidewalk Frontage	<p>Within 15' of a street line, at least 50% of street frontage of the major and minor portions shall be free of obstruction to public access to the plaza from adjacent sidewalk:</p> <p>Major portion: 1<sup>st</sup> Ave = 100'-6"; FDR = 100'-1"</p> <p>Minor portion: FDR = 254"; 38<sup>th</sup> St. = 17'-9"; 41<sup>st</sup> St. = 26'-6"</p>	Major portion complies on 1 <sup>st</sup> Ave (246' of street frontage on 1 <sup>st</sup> Ave is free of obstructions), but all street frontage on FDR Drive Service Road, E. 38 <sup>th</sup> St., and E. 41 <sup>st</sup> St. is above grade
Section 37-722 – Level of Plaza	<p>Plaza elevation may be not more than 2' above the average elevation of curb level of the nearest adjoining street in front of the public plaza: Average elevation is 24.19', such that plaza elevation may be not more than 26.19'</p> <p>If a public plaza is more than 10,000 sf, not more than 20% its area may be more than 2' above, but not more than 4' above, curb level of the nearest adjoining street</p>	<p>Highest point of the plaza is 36'.</p> <p>Elevation changes an average of 7 feet and rises to level of FDR Drive</p>

	<p>in front of the public plaza, provided that such higher portion may not be located within 25 feet of any street line:</p> <p>Not more than 24,586sf ( 20% of 122,932 sf) of plaza may be at an elevation between 2' to 4' above elevation of 24.19'</p>	
Section 37-723 – Circulation Paths	All paths must have a minimum width of 8'	Some paths are 7' wide
Section 37-725 – Steps	Step tread minimum is 17"	Steps have a 15" tread
Section 37-726 – Permitted Obstructions	If garage entrances, parking spaces, passenger drop-offs, driveways, loading berths or buildings trash storage facilities are located near or adjoin a public plaza, they shall be separated by a barrier that can conceal these facilities and any vehicles when viewed from a any point in the public plaza.	A portion of the passenger drop-off provided between buildings WS1-1 and WS 1-2 can be viewed from the playground area.
Section 37-727 – Hours of Access	Public plaza shall be accessible to the public at all times	Plaza will be open to the public from 6am-midnight
Section 37-741 – Seating	<p>1 linear foot per 30 sf of public plaza area (122,932 sf) = 4,078 linear feet</p> <p>A minimum of 50% of required seating (2,039 lf) shall have backs.</p> <p>One movable chair required per 200sf of public plaza; movable chairs may be credited as 24 inches of linear seating per chair: 615 movable chairs = 1230 lf</p> <p>One table required for every 4 chairs = 154 tables</p> <p>One lf of seating required for every two lf of street frontage, located within 15' of the street line. At least 50% w/ backs and 50% of seating w/ backs must face street: 100 lf of seating required within 15' of street line, 50 lf w/ backs and 25 lf w/ backs and facing street</p>	<p>2,759 lf of seating is provided</p> <p>1374 lf of seating has backs</p> <p>224 movable chairs provided, accounting for 448 lf of seating</p> <p>6 tables provided</p> <p>78 lf of seating provided within 15' of street line; 100% w/ backs but 0% facing the street</p>
Section 37-742 – Planting and Trees	<p>Planting bed walls: maximum of 18" above walking surface</p> <p>Street trees: one 4" caliper tree per 25' of street frontage, excluding frontage occupied by driveways:</p> <p>2,192' of street frontage = 88 trees required</p>	<p>Planters on plaza reaches a maximum height of 24"</p> <p>41 street trees are provided at 28' spacing. It is not possible to provided street trees along the FDR drive Service Road. DOT commissioner to determine infeasibility.</p>

Section 37-743 – Lighting	Minimum average level of 2 foot candles in walkable and sitting areas	1.45 foot-candle average provided
Section 37-744 – Litter Receptacles	<p>If plaza greater than 6,000 sf:  4 litter receptacles required + 1 receptable for each additional 2,000 sf of public plaza =  62 litter receptacles required</p> <p>Public plazas that contain that contain open air café or kiosks:  1 additional litter receptacle per 1,500 sf of area occupied open air café or kiosk.  Open air café area = 600 sf: 1 litter receptacle required</p> <p>Minimum volume of litter receptacles = 25 gallons</p>	<p>27 litter receptacles provided</p> <p>Additional litter receptacles not provided</p> <p>Volume of litter receptacles = 18 gallons</p>
Section 37-745 – Bicycle Parking	Parking spaces shall be located on the sidewalk directly adjacent to the public plaza	Bicycle racks are located within the plaza, adjacent to the commercial office building
Section 37-751 – Entry Plaques and Information Plaques	<p>One entry plaque required per 40' of linear street frontage of plaza = 5 entry plaques required</p> <p>Entry plaques must be mounted on a wall or a permanent free-standing post within 5' of the sidewalk, with its center 5' above the elevation of the nearest sidewalk pavement</p> <p>Information plaques must be located within 5' of the sidewalk and all required lettering located above a height of 3'</p>	<p>2 entry plaques provided at 1<sup>st</sup> Ave frontage. 3 additional signs provided at entrances on E. 38th St., 1<sup>st</sup> Ave (outside the plaza), and E. 41<sup>st</sup> St.</p> <p>1 entry plaque located directly parallel to sidewalk, second entry plaque is located within 12'-6" of the sidewalk</p> <p>1 plaque located directly parallel to sidewalk, second entry plaque is located within 12'-6" of the sidewalk</p>
Section 37-76 – Mandatory Allocation of Frontages for Permitted Uses	Principal entrances to building associated with the plaza shall be located within 10' of the major portion of the plaza	Building entrances face adjacent public areas, or farther than 10' from plaza due to building envelope

**Chairperson’s Certification of a Residential Plaza (N 070535 ZCM)**

The applicant seeks a Chairperson’s certification, pursuant to Section 37-70, for a Public Plaza pursuant to Section 37-70. Where a Public Plaza is proposed to generate a floor area bonus, the Chairperson of the CPC must certify that the proposed size, orientation, and amenities of the open space comply with the guidelines set forth in Section 37-70.

The Commission notes that this application N 070535 ZCM was withdrawn on January

28, 2008.

The applicant is providing the Plaza at 700/708 First Avenue for a floor area bonus of 2 FAR to be used in the buildings within the GLSD plan. The total area of the plaza is proposed to be 122,932 square feet. All together, the plaza generates 737,592 square feet of bonus floor area. The applicant is requesting to use 347,939 square feet of the bonus, 2 FAR in 685 First Avenue and 2 FAR in commercial building at 708 First Avenue.

The plaza is proposed to contain a variety of required amenities such as seating, landscaping, bicycle parking, litter receptacles, lighting, and drinking fountains. Except for the features described in the request for special permit above, the proposed plaza meets or exceeds the requirements in Section 37-70.

#### **Commission Certification for Curb Cuts (N 070537 ZCM)**

*Curb Cuts on a Wide Street:* Section 26-15 prohibits curb cuts on wide streets. The applicant is proposing curb cuts along the FDR Drive Service Road (a wide street) to access a loading area and public parking garage. The CPC may modify the restriction against curb cuts on wide streets, , pursuant to Section 26-15, provided that it determines that such a modification enhances the design quality of the development. The proposed curb cut for the loading area would be 22 feet-3 inches wide, and the curb cut for the public parking garage, would be 22 feet-4 inches wide. These curb cuts are proposed to be located along the FDR Drive Service Road, which is located at a lower level of the proposed development, in order to provide direct access to these facilities from the service road and minimize the impact of the vehicular activity generated by these facilities on the surrounding street network.

*Multiple Curb Cuts on a Narrow Street:* Curb cuts on a narrow street are limited by Section 26-15, to one curb cut per zoning lot. For lots greater than 30,000 square feet, the Commission may modify this restriction, provided that it determines that additional curb cuts will not result in conflict between pedestrian and vehicular circulation and will result in a good overall plan.



Along East 39<sup>th</sup> Street at 685 First Avenue, curb cuts are proposed to access the loading area and for a through-block drive that provides ingress/egress for the 110-space accessory parking garage. The curb cut for the loading area is proposed to be 18 feet-6 inches wide, excluding splays, and the curb cut for the parking is proposed to be 20 feet-6 inches wide, excluding splays. The through block drive will enable cars to enter East 40<sup>th</sup> Street (eastbound) and exit at East 39<sup>th</sup> Street (westbound), thereby avoiding First Avenue.

Along East 41<sup>st</sup> Street, along the northern edge of the 700/708 First Avenue site two curb cuts are proposed. One would provide access to a loading area and the other would provide ingress/egress to the 651-space public parking garage. The curb cut for loading would be 25-feet wide, excluding splays, and the curb cut for the public garage would be 23'-3" wide, also excluding splays. The curb cuts along East 41<sup>st</sup> Street are in addition to two curb cuts proposed for the loading area and parking garage to be located along the FDR Drive Service Road. According to the applicant, creating two separate loading areas and two separate entrances for parking will serve to disperse traffic generated by the large site.

### **Commission Certification for Streetscape Modifications (N 070536 ZCM)**

Predominantly residential buildings in certain zoning districts including a C5-2 district are required to have 50 percent of the surface area of the street wall of the building to be transparent between curb level and the height or 12 feet of the ceiling of the ground floor, whichever is higher. In addition, any portion of such street walls that is more than 50 feet in length and that is not transparent must be covered in ivy, similar planting, or artwork. The Commission may modify this requirement, by certification pursuant to Section 26-17, provided that it determines that such modification will enhance the design quality of the development.

The subject properties exhibit a significant grade change, a change in elevation from 22-28 feet at First Avenue, to an elevation of approximately 9 feet at the FDR Drive Service Road. Rather

than following the street elevation, the proposed development would sit atop a platform with two levels of parking, retail space, and storage space underneath. The applicant proposes that the portion of the street wall that encloses the development below the platform be clad in stone rather than transparent material. The applicant states that providing transparency into the parking garage would not serve to enliven the streetscape.

**Commission Certification to modify Retail Continuity requirements (N 070538 ZCM)**

Where the front wall of a building is at least 50 feet in length and fronts on a wide street, a minimum of 50 percent of the front wall is required to be occupied by retail use. The CPC may waive this requirement, by certification pursuant to Section 37-015, provided that it determines that such commercial uses already exist at the ground floor in the surrounding area.

The building at 685 First Avenue is proposed to contain retail uses for only 56 feet of the building's 169 feet of First Avenue frontage (33 percent). However, all of the buildings with frontage on the eastern side of First Avenue will contain retail frontage in excess of 50 percent of the front wall length: In Building WS1-1, approximately 176 feet of the total 196 foot frontage (90 percent) will have contain retail uses; in Building WS2-1, 49 feet of the 70 foot frontage (70 percent) will have retail; and in the 708 First Avenue building, 90 feet of that's building's 135 feet frontage (67 percent) will contain retail use. In addition to the retail proposed along First Avenue, the development will also provide retail fronting the prolongations of East 39<sup>th</sup> and 40<sup>th</sup> streets. No retail frontage is proposed to front on the FDR Drive Service Road given that no significant pedestrian activity currently exists or will exist in this area upon completion of the proposed development.

## **The South Site: 616 First Avenue**

### **Proposed Development**

On the South Site, the applicant proposes to construct a new mixed-use development consisting of two predominantly residential towers, one with ground floor retail and the other with a low-rise community facility wing, a Plaza, and a public parking garage. The property would contain a total of 825,240 square feet of floor area, representing a total FAR of 12. At the time of certification, the 12 FAR consisted of a base maximum 10 FAR plus an additional 2 FAR generated by the bonusable plaza. Under the modified application, ERRC is requesting 12 FAR consisting of an as-of-right base 9 FAR and a 3.0 FAR bonus for providing affordable housing.

On the western portion of the block, fronting First Avenue, the applicant proposes a 47-story (506 feet tall) building that would contain 417,414 square feet of residential floor area (830 dwelling units) and 4,478 square feet of ground floor retail. On the eastern portion of the block, the applicant proposes a 37-story (433 feet tall) tower with 288,246 square feet of residential floor area and 113,063 square feet of community facility in a five-story wing of the building. The community facility wing would rise to 121 feet. The public parking garage would be located below grade with 294 spaces.

At the time of certification, the applicant had proposed a 19,373 square foot Residential Plaza to generate bonus for the buildings on 616 First Avenue. The applicant has withdrawn its application for a chairperson's certification for a Residential Plaza. The open area, however, will remain on the site as a public open space. It will be open and accessible to the public at all hours and would include amenities such as seating and landscaping.

### **Requested Actions**

In order to build the proposed program, design, density, and height, the applicant is

requesting the following actions from the City Planning Commission for the South Site:

**Zoning Map Amendment (070522 ZMM)**

The applicant is requesting a rezoning of the 616 First Avenue site from M1-5 and M3-2 zoning districts, to a C4-6 district. The westernmost portion of the site, for a depth of 200 feet from First Avenue, is located in the M1-5. The remainder of the block, the eastern portion, is located in the M3-2.

M3-2 districts are intended for mid- to heavy industries that generate noise, traffic and pollutants, electric plants and other utilities such as the former Waterside complex. The M3-2 permits a range of commercial and manufacturing uses of Use Groups 6 through 14, and Use Groups 16 through 18, with limitations on types of retail and service establishments permitted. The M3-2 allows a maximum density of 2.0 FAR. Residential uses are not allowed.

The existing M1-5 is a light manufacturing district that permits a range of retail, entertainment, hotel and office uses (Use Groups 5-11 and 16), recreation and amusement (UGs 12-14), and manufacturing uses (UGs 17 and 18) as-of-right, though with certain limitations. Use Group 4 Community Facilities are allowed in M1-5 zoning districts by special permit. The M1-5 allows a maximum density of 5.0 FAR. Residential uses are not allowed.

The applicant is proposing to rezone the manufacturing districts to a high density district that allows residential and commercial development, stating that the C4-6 zoning district would permit uses and densities that are consistent with the existing pattern of development in the neighborhood.

C4-6 is a high-density zoned classified as a “General Commercial District” and permits residential, community, and commercial use. C4-6 allows a basic maximum density of 10

FAR for residential and CF uses. The maximum FAR for commercial use is 3.44 FAR. Manufacturing uses are not permitted. Residential floor area may be increased to 12 FAR through the either the Inclusionary Housing program or through the Residential Plaza bonus. The FAR of community facility or mixed CF and commercial buildings may be increased through the provision of an urban plaza or arcade. Under the proposed zoning to a C4-6 district, the maximum floor area would be 233,818 square feet (3.44 FAR) for commercial, 687,700 square feet (10 FAR) for residential or community facility uses, and 825,240 square feet (12 FAR) should the Inclusionary Housing and/or Plaza bonuses be utilized.

Mixed-use developments in C4-6 zoning districts must have a streetwall with a maximum height of 85 feet or nine stories, whichever is less, above which the building may not project into a sky exposure plane of 2.7:1 on a narrow street or 5.6:1 on a wide street. C4-6 also permits the development of mixed-use towers with residential and commercial uses which may penetrate the sky exposure plane if they do not occupy more than 40 percent of the total zoning lot area.

The applicant has stated that the C4-6 is appropriate for redevelopment of this site because it will permit the proposed development to have a site plan that utilizes towers and maximizes the amount of publicly accessible open space.

While the map amendment is for C4-6, the related text amendment would establish the ERRC sites that are east of First Avenue as an “Inclusionary Housing designated area” establishing the as-of-right maximum FAR of 9, bonusable up to 12 FAR through existing inclusionary housing regulations of Section 23-90, et seq.

**Special Permit to modify height and setback and lower-income housing calculation  
(070523(A) ZSM)**

At the time of certification, the proposed development did not contain an affordable housing component. Under the applicant's modified applications, the development would achieve 12 FAR through the provision of affordable housing under the inclusionary housing program, instead of through the Public Plaza bonus. The special permit application was modified to request an additional waiver to reflect this change and to request an additional waiver.

The applicant is requesting a General Large Scale Development special permit pursuant to Section 74-74 to allow for (a) height and setback modifications for buildings within the project, and (b) modification of calculation of required lower-income housing pursuant to the Inclusionary Housing provisions of Section 23-90, to permit exclusion of community facility floor area from such calculations.

*(a) Height and Setback:*

The buildings on the site are subject to the height and setback restrictions which require compliance with the applicable maximum front wall height and sky exposure plane provisions described above, or the alternative height and setback provisions which require compliance with the applicable minimum front open area and sky exposure plane provisions, or, alternatively, the tower regulations of Section 23-65. However, the buildings in the proposed development are designed as towers that do not comply with the applicable height and setback restrictions or the tower regulations.

The building on the western portion of the block, "Building 616-1", is set back five feet from First Avenue, a wide street, and 20 feet from both East 35<sup>th</sup> and 36<sup>th</sup> Streets, and rises to its full height without setback, penetrating the applicable sky exposure planes. The community facility portion of "Building 616-2" is set back 1.75 feet from the FDR Drive Service Road, a wide street, and set back 20 feet from East 36<sup>th</sup> Street, and rises to its full height without setback,

penetrating the applicable sky exposure planes. The proposed development requires waivers to modify the otherwise applicable height and setback restrictions for the new buildings on the site. Under the proposed zoning, utilization of all the floor area available on the site in compliance with the applicable height and setback regulations would dictate either compliance with the tower regulations or a building design with high lot coverage and little open space. Development of the subject property with a single building would result in an overly bulk building while development of multiple buildings even if they utilize the tower regulations would preclude the development of a large open space. In contrast, development of the subject floor area in two towers, under the requested height and setback waivers, will enable the remainder of the Subject Property to be improved with nearly 23,000 square feet of contiguous publicly accessible open space.

*(b) Low-Income Housing Calculation*

The applicant is proposing that the total floor area in the residential buildings be increased from base maximum FAR of 9 to 12 through the provision of affordable housing in accordance with the IH program regulations set forth in Section 23-90. This section states that the amount of lower income housing required to generate the maximum available floor areas bonus need not exceed 20 percent of the total floor area in a building, excluding ground floor non-residential floor area.

The proposed development would contain a community facility of 113,063 square feet in five floors of the 616-2 building. The applicant will enter into a School Design, Construction, Funding and Purchase Agreement with the School Construction Authority to develop a public school with approximately 630 seats for kindergarten through grade 8. The public school would occupy approximately 92,500 sf of community facility floor area, with the remaining approximately 20,000 sf available for other community facility use. Because the community facility is located on the same lot as the proposed residential development, the community facility floor area above the ground floor would be included in the calculation of the required lower-income housing as per 23-942 to generate the maximum 3.0 FAR bonus. The applicant is

requesting a waiver under the GLSD special permit that would allow the community facility to be excluded from the calculation that determines the amount of affordable housing required.

### **Special Permit for a Public Parking Garage (070525 ZSM)**

The applicant seeks approval of a special permit for an 85,959 gross square foot, attended public parking garage with 294 spaces in the cellar level of 616 First Avenue. Access and egress would be provided by a 20'-6" curb cut, excluding splays, to be located on East 35<sup>th</sup> Street, approximately 280 feet east of First Avenue. The public parking garage would provide 15 reservoir spaces. Provision of these reservoir spaces is required to ensure that cars will be held within the garage and not in the street, where they may impede traffic flow on the surrounding streets.

The public parking garage would serve primarily the residents of the proposed development and their guests, as well as workers and patron of the community facility portion of the development. An accessory parking garage, which would be permitted on the site with a size of up to 200 spaces as-of-right would be restricted to the exclusive use by residents of the residential buildings and employees of the CF use. The applicant anticipates that a significant number of the users of the parking garage will be guests of residents and patrons of the CF, therefore seeks a public parking garage.

The proposed development will contain 830 residential units in 705,660 square feet of floor area, 113,063 square feet of community facility use and 2,000 square feet of retail use. According to the calculations in the SEIS, such uses would generate demand for 254 parking spaces at the peak midday and will be 86 percent occupied by project-specific demand at the peak midday hour. Parking in the area of the Proposed Development is currently provided by 47 off-street public parking lots or garages and a very limited number of on-street spaces.

Pursuant to Section 74-52 "Public Parking Garages and Public Parking Lots, Public Parking Garages, or Public Parking Lots in High Density Central Areas," the CPC may



permit public parking facilities of any capacity provided that certain findings are met:

**Commission Certification for Streetscape Modifications (N 070527 ZCM)**

Predominantly residential buildings in certain zoning districts including a C4-6 district are required to have 50 percent of the surface area of the street wall of the building to be transparent between curb level and the height or 12 feet of the ceiling of the ground floor, whichever is higher. In addition, any portion of such street walls that is more than 50 feet in length and contains no transparent element must be covered in ivy, similar planting, or artwork. The CPC may modify this requirement, by certification to the Commissioner of Buildings, provided that it determines that such modification will enhance the design quality of the development.

Section 37-017 requires that 50 percent of the street wall of the FDR Drive Service Road be transparent. The applicant is requesting a waiver from this requirement given that the FDR Drive Service Road does not currently and is not expected to have significant pedestrian traffic.

**Commission's Certification for Retail Continuity (N 070528 ZCM)**

Where the front wall of a building is at least 50 feet in length and fronts on a wide street, a minimum of 50 percent of the front wall is required to be occupied by retail commercial use. The CPC may waive this requirement, by certification to the Commissioner of Buildings, provided that it determines that such commercial uses already exist at the ground floor in the surrounding area.

The proposed development would front on two wide streets, First Avenue and the FDR Drive Service Road. The development would include 89 feet of retail frontage along First Avenue, which is more than the 50 percent of total 157.5 feet of street frontage on the Avenue. However, the applicant proposes that no retail uses be located on the FDR Drive Service Road since no significant pedestrian activity is expected to exist at this location.

## **COMMUNITY BOARD 6 197-A PLAN**

Manhattan Community Board 6 submitted a proposal for a 197-a Plan to the Department of City Planning in March 2004. The Plan was revised and resubmitted in June 2004, August 2005, and October 2007. The 197-a plan covers the eastern section of Community District 6, an area generally bounded by the East River, East 59th Street, a line 100 feet west of Second Avenue, and East 14th Street. The plan's primary goals are to (i) increase the amount of useful open space, (ii) improve access to the waterfront and complete the East River Esplanade, (iii) enhance and reclaim the street network to restore the street grid and improve transportation systems and access to the waterfront, (iv) implement land use policies consistent with historical trends in the area, and (v) preserve significant residential developments and individual buildings. The 197-a plan addresses ongoing changes in a part of Manhattan that is experiencing substantial transformation and growth.

A number of the Community Board 6 197-a Plan recommendations are for the same area that the ERRC proposes to redevelop. Community Board 6 recommended:

- that the density on the First Avenue Properties be capped at 10 to 10.5 FAR,
- that the extensions of 39<sup>th</sup> and 40<sup>th</sup> streets be remapped to restore the street grid or that easements be provided on the roadbeds and the extensions should be treated as streets for zoning purposes and provide pedestrian and vehicular access,
- that the height of buildings on the First Avenue Properties be capped at 400 feet in deference to the UN Secretariat building which rises to 503 feet, that buildings be required to be built as tower-on-a-base buildings,
- that an overlook park be included along the eastern edge of the ERRC property
- that no new high-density office buildings be constructed east of the midline between Second and Third avenues, that affordable housing be provided within new developments, and
- that ERRC provide an easement along the eastern edge of the property to better accommodate future off-site waterfront improvements.

Since Community Board 6 and ERRC had differing recommendations for the same area, the City Planning Commission, to ensure that both proposals would be afforded equal treatment in the public review process, decided to consider both proposals at the same time and invoked Section 7.012 of *Rules for the Processing of Plans Pursuant to Charter Section 197-a*. Section 7.012 states that “if the Commission finds that it is unable to vote” within 60 days after its public hearing on a 197-a plan, “it shall give a written statement of explanation to the sponsor.”

## **ENVIRONMENTAL REVIEW**

The certified application (C 070531 ZSM) and the modified application (C 070351(A) ZSM), in conjunction with the application for the related actions (C 070529 ZMM, N 070530 ZRM, N 070530(A) ZRM, C 070531(A) ZSM, C 070532 ZSM, C 070532(A) ZSM, C070533 ZSM, C 070534 ZSM, N 070535 ZCM, N 070536 ZCM, N 070537 ZCM, and N 070538 ZCM) were 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 lead agency is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on October 3, 2005, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Supplemental Environmental Impact Statement (DSEIS) was issued on January 20, 2006. Public scoping meetings were held on the Draft Scope of Work on March 28, 2006 and May 16, 2006. A Final Scope of Work, reflecting the comments made during the scoping, was issued on August 14, 2007.

The applicant prepared a DSEIS and a Notice of Completion for the DSEIS was issued August 17, 2007. On December 5, 2007, a public hearing was held on the DSEIS pursuant to SEQRA and other relevant statutes. A Final Supplemental Environmental Impact Statement (FSEIS) was

completed and a Notice of Completion for the FSEIS was issued on January 18, 2008. The FSEIS identified significant adverse impacts and proposed mitigation measures that are summarized in the Executive Summary of the FSEIS attached as Exhibit A hereto. On January 25, 2008, a Technical Memorandum was issued which describes and analyzes the other modifications to the Proposed Actions, adopted herein. The Technical Memorandum concluded that the Proposed Actions with the modifications would not result in any new or different significant adverse environmental impacts not already identified in the FSEIS.

## **UNIFORM LAND USE REVIEW**

On August 20, 2007, the original application (C 070531 ZSM), in conjunction with the applications for the related actions (C 070522 ZMM, C 070523 ZSM, C 070524 ZSM, C 070525 ZSM, C 070529 ZMM, C 070532 ZSM, C070533 ZSM, and C 070534 ZSM), was certified as complete by the Department of City Planning, and was duly referred to Community Board 6 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b). The related non-ULURP applications (N 070526 ZCM, N 070527 ZCM, N 070528 ZCM, N 070530 ZRM, N 070535 ZCM, N 070536 ZCM, N 070537 ZCM, and N 070538 ZCM), were also referred for information and review.

On November 2, 2007, the modified applications (C 070523(A) ZSM, C 070531(A) ZSM, C 070532(A) ZSM, ) were duly referred to Community Board 6 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b). The related non-ULURP application (N 070530(A) ZRM) was also referred for information and review.

### **Community Board Review**

Community Board 6 held a public hearing on this and related actions on September 20, 2007, and on that date, by a vote of 31 in favor, 3 opposed and 0 abstaining, adopted a resolution recommending disapproval of this application with conditions. The full recommendation is attached. The Community Board's Resolution of the recommendation stated:

**“Whereas**, the ULURP application and DSEIS for zoning changes to redevelop Con Edison’s former Waterside Generation Station along First Avenue between 35 and 41 Streets is the third act in a decade long history in which:

1. In response to New York State’s program to deregulate the electric industry Con Edison proposed in 1998 to dispose of its steam system, including the Waterside and East River Generating Stations, to a new operator and to dispose of three sites along First Avenue between 35 and 41 Streets, specifically 708 First Avenue, 685 First Avenue, and 616 First Avenue, for redevelopment, and in 1999 modified its proposal so as to retain the steam system, relocate power generation from Waterside to East River, and add Waterside to the properties to be disposed of for redevelopment; and
2. The public review of this project has been segmented into three parts: (i) an application to “repower” the East River Generating Station at 14 Street so as to be able to decommission the Waterside Generating Station, (ii) an application to dispose of the Waterside properties for redevelopment, and, now, (iii) an application to rezone the Waterside properties to allow high density residential and mixed use development; and
3. Recognizing that absent the opportunity to sell the Waterside properties Con Edison would have little incentive to relocate power generation from Waterside, business activities from 708 First Avenue, and parking from the garage on the bottom three floors of 708 First Avenue and parking lots on the riverfront and at 616 and 685 First Avenue, CB6 in a November 1999 resolution and consistently since then has argued that all of these actions are inextricably interrelated and must be considered together, rather than segmented, in order to best understand their consequences and opportunities; and
4. Although important planning issues, such as remapping 39 and 40 Streets east of First Avenue, providing a site for the proposed expansion of the United Nations, and providing a wider right-of-way for rebuilding the FDR Drive and improving access to and along the riverfront at both the East River and Waterside facilities, were raised during the review of the applications to “repower” and to dispose, the Public Service Commission focused its review on the production of energy and the use of the proceeds of the disposition; and
5. The two previous environmental reviews did not anticipate that the consolidation of Con Edison’s activities at the East River Generating Station would result in closing 14 and 15 Streets east of Avenue C, including the southbound exit from the FDR Drive at 15 Street and the southbound entrance at 14 Street, in response to post 9/11 concerns for security; and

**Whereas**, CB6 has prepared a 197a plan (N 060273 NMP) for the area between the waterfront and west of Second Avenue between 14 and 59 Streets addressing the future of many sites including Bellevue and Stuyvesant Town, which received threshold approval by the City Planning Commission on 23 January 2006 but has been held in abeyance to be considered at the same time as the ULURP application by ERRC for the rezoning of the Waterside properties; and

**Whereas**, the application submitted by ERRC, dated 12 June 2007, for the rezoning of the Waterside properties, which is limited to the site and has not coordinated with the rebuilding of the FDR Drive, the development of a riverfront esplanade, or the proposed construction of a new building for the United Nations, has been described to CB6 on several occasions as outlined in the selected attached memos:

- Con Ed Site – Open Space II, dated 15 Feb 07
- Con Ed Site – Zoning, dated revised 24 Jan 06
- Con Ed Site – Bulk, dated revised 4 Jan 06
- Con Ed Site – Parking, dated revised 1 Nov 05

reflecting discussions at the Land Use Committee; and

**Whereas**, the ERRC proposal is inconsistent with good planning practices and precedents by the City in that:

- It fails to restore demapped streets in order to reestablish small walkable blocks, as is being done at the former World Trade Center; and
- It fails to continue the practice of remapping former manufacturing sites to C19, as was done to allow residential development on other sites along First Avenue between 34 and 40 Streets; and
- It departs from a decades long series of rezonings designed to encourage the Midtown central business district to grow toward the west, where there is more transit capacity and relative underdevelopment compared to the east side; and
- It fails to use the redevelopment of waterfront land to provide waterfront open space, in contrast to the recent rezoning of Greenpoint Williamsburg and the earlier rezoning of Riverside South; and
- It rejects affordable housing in spite of the growing trend to its inclusion in rezonings such as Greenpoint – Williamsburg and Hudson Yards; and
- It adopts the inelegant construct of permissive remapping and special permits combined with restrictive declarations to try to achieve results better accomplished through a special zoning district; and

**Whereas**, to provide a comprehensive, coordinated, and enlightened alternative approach to rezoning the Waterside properties based on the foundation of the 197a plan, CB6 prepared a 197c plan (C 060394 ZRM) for a special zoning district in the area bounded by 34 and 41 Streets and First Avenue and the East River which was submitted to the Department of City Planning on 13 March 2006; and

**Whereas**, the ULURP application of the ERRC and the DSEIS prepared for the City Planning Commission have been certified for review by CB6 and have been commented on as attached:

- Housing and Homeless Services Committee, dated 9 October 2007
- Health, Senior & Disability Issues Committee, letter dated 28 February 2007
- Parks, Landmarks & Cultural Affairs Committee, dated 26 October 2007
- Public Safety, Environment & Human Rights Committee, dated 26 October 2007
- Transportation Committee, dated 26 October 2007
- Youth & Education Committee, dated 26 October 2007

by various committees of the Board; now

Therefore, be it

**Resolved that CB6 strongly opposes the application by ERRC for the rezoning of the former Con Edison Waterside properties unless the plan is modified to conform to the principals and goals of CB6's 197a and 197c plans; and**

Be it further

**Resolved** that for the redevelopment of the former Con Edison properties CB6 would **support**, as provided in its 197c plan for a special district:

1. Residential use with supporting retail, service, and community facility uses but not office use and, therefore, rezoning to C1-9 instead of C5-2 and C4-6; and
2. Treating 39 and 40 Streets as streets for all zoning purposes, including lot area, height and setback, and open space, so as to ensure views along the streets and public access between First Avenue and the waterfront, which is best accomplished by mapping as City streets; and

3. 685 First Avenue retaining its currently designated C19 zoning and not being a part of the General Large Scale Development Plan (GLSD); and
4. A total density including any bonus floor area of no more than 10.0 FAR, excluding from lot area the formerly mapped portions of 39 and 40 Streets and the remaining transformer station, which is consistent with the greatest density of the surrounding areas; and
5. Buildings no taller than 400 feet so as to be in scale with the existing urban context, including other apartment buildings that have been developed between First Avenue and the river, and so as to be deferentially shorter than the United Nations Secretariat; and
6. As much permanent public open space as possible, but especially space with access to and along the waterfront and with public participation in the design and operation of the public open space through a formal agreement between ERRC and an organization such as the Department of Parks or a local parks conservancy; and
7. Making at least 20% of the apartments permanently affordable and mixed throughout each of the apartment buildings, encouraging a socially and economically diverse community; and
8. Including space for schools, day care, and activities for seniors, and
9. A minimum of parking, no more than one space per ten apartments, to discourage traffic; and
10. Coordination of the design of the waterfront esplanade between 34 and 59 Streets, including:
  - a possible new building for the United Nations,
  - the new ferry landing at 35 Street and another landing at 42 Street and their connections to cross town transit,
  - the redesign of the FDR Drive including the possible shortening or elimination of the northbound exit ramp to 42 Street,
  - pedestrian bridges and potentially decks above the highway, and
  - an easement on the east edge of the former Con Edison properties to allow the highway to move a bit west and leave the maximum amount of space along the waterfront for people; and

Be it further

**Resolved** that with respect to the specific actions included in the ULURP applications CB6:

<b>Opposes</b>	<b>Recommends</b>
1. (C 070522 ZMM) rezoning the block between 35 and 36 Streets east of First Avenue, aka 616 First Avenue, from M15 and M3-2 to C4-6	That it be rezoned to C1-9
2. (C 070523 ZSM) a special permit (section 7474) to modify height and setback for 616 First Avenue unless the buildings are limited in height to 400 feet	
3. (C 070525 ZSM) a special permit (7452) for a public parking garage at 616 First Avenue	That parking be limited to spaces accessory to 10% of the dwelling units
4. (C 070529 ZMM, part 1) rezoning the block between 39 and 40 Streets on the west side of First Avenue, aka 685 First Avenue, from C1-9 to C5-2	That it remain C1-9 and not be a part of the GLSD
5. (C 070529 ZMM, part 2) rezoning the blocks between 38 and 41 Streets east of First Avenue, aka 700 and 708 First Avenue, from M3-	That they be rezoned to C1-9

2 to C5-2	
6. (C 070531 ZSM, part 1) a special permit (section 74-74) to modify height and setback for 685, 700, and 708 First Avenue unless the buildings are limited in height to 400 feet	
7. (C 070531 ZSM, part 2) a special permit (section 74-74) concerning the transfer of bonus floor area from a plaza at 700 and 708 First Avenue to a building at 685 First Avenue	That, as would be the case under C1-9, the plaza not be bonused, but be provided as mitigation, and affordable housing be provided for a bonus and that 685 First Avenue not be included in the GLSD
8. (C 070532 ZSM) a special permit (section 74-96) concerning a plaza at 700 and 708 First Avenue	That, as would be the case under C1-9, the plaza not be bonused, but be provided as mitigation, and affordable housing be provided for a bonus
9. (C 070534 ZSM) a special permit (section 74-52) for a public parking garage at 700 and 708 First Avenue	That parking be limited to spaces accessory to 10% of the dwelling units
10. (C 070535 ZCM) a certification (section 27-01) to modify design standards for plazas at 700 and 708 First Avenue for limited hours of access, less seating and fewer trees	That the plaza be provided as mitigation and not bonused
11. (C 070537 ZCM, part 2) a second curb cut for 685 First Avenue on 39 Street	
12. (C 070538 ZCM, part 2) reducing retail continuity from 50% to 33% on the First Avenue frontage of 685 First Avenue	
13. (C070524 ZSM) a special permit (section 74-96) concerning a plaza at 616 First Avenue	That, as would be the case under C1-9, the plaza not be bonused, but be provided as mitigation, and affordable housing be provided for a bonus
14. (C070533 ZSM) a special permit (section 13-561) for an accessory parking garage at 700 and 708 First Avenue	That parking be limited to spaces accessory to 10% of the dwelling units
15. (N 07053ZRY, part 1) a text change (section 12-10) to allow the remaining transformer station to be included in the lot area of the GLSD	That 685 First Avenue be excluded from the GLSD
16. (N 07053ZRY, part 2) a text change (section 74743) to allow bonus floor area from a plaza to be transferred to 685 First Avenue	That 685 First Avenue be excluded from the GLSD
<b>Supports</b>	<b>Recommends</b>
1. (C 070526 ZCM) a certification (section 2701) to modify design standards for plazas at 616 First Avenue for a mixture of tree sizes	But that the plaza be provided as mitigation and not bonused
2. (C 070527 ZCM) a certification (section 2617) to omit required streetwall transparency along the FDR service road at 616 First Avenue	
3. (C 070528 ZCM) a certification (section 37-015) to omit required retail continuity along the FDR service road at 616 First Avenue	
4. (C 070536 ZCM) a certification (section 26-17) To omit required streetwall transparency along the FDR service road and reduce street wall transparency along 38 and 40 Streets at 700 and 708 First	



Avenue	
5. (C 070537 ZCM, part 1) a certification (section 26-15) to allow curb cuts at 700 and 708 First Avenue along the FDR Drive service road and a second curb cut on 41 Street	
6. (C 070538 ZCM, part 1) a certification (section 37-015) to omit retail continuity along the FDR service road at 700 and 708 First Avenue	

Be it further

**Resolved** That with respect to the DSEIS, which received a notice of completion on 17 August 2007, CB6:

<b>Disagrees</b>	<b>Recommends</b>
1. With the omission in chapter 2, Land Use, Zoning, and Public Policy, of any analysis of the consistency of the project with the City's policies in PlaNYC	That the DSEIS be modified to disclose this information
2. With the omission in chapter 2, Land Use, Zoning, and Public Policy, of any discussion of the public trust doctrine as it concerns the alienation of public lands formerly underwater and the remapping of 39 and 40 Streets	That the DSEIS be modified to disclose this information
3. With the omission in chapter 4, Community Facilities, of any discussion of public safety and security issues that might arise from proximity of the project to the United Nations and	That the DSEIS be modified to disclose this information
4. With the assumption in chapter 6, Shadows, that potential open spaces identified in CB6's 197a plan on the block north of St Vartan Park which contains the portals of the Queens Midtown Tunnel need not be studied	That the DSEIS examine shadow impacts on these spaces
5. With the assumption in chapter 6, Shadows, that shadows on the project's onsite open spaces do not need to be disclosed in the same detail as the shadows on offsite open spaces	That the DSEIS examine shadow impacts on these spaces which are presented as the primary amenity the project would contribute to the community
6. With the determination of chapter 6, Shadows, that the shadows added to St Vartan Park by the proposed development would not be significant because the determination assumes that the fenced lawn at the east end of the park would not be reprogrammed for other uses in the future	That alternative building configurations, including a diagonally oriented tower mirroring Manhattan Place, be studied for 616 First Avenue to minimize shadows
7. With the determination of chapter 6, Shadows, that the shadows added to Robert Moses Playground by the proposed development would not be significant because the determination assumes that space used for active recreation does not benefit from sunlight	That 708 First Avenue be rezoned to C1-9 and limited in height to 400 feet in order to reduce shadows, as would be the case in the CB6 alternative
8. With the omission in both chapter 7, Historic Resources, and chapter 8, Urban Design and Visual Resources, of an analysis of views from the streets and open spaces of Tudor City of the proposed new buildings to identify the extent to which the new buildings would be visible above the existing buildings bounding the Tudor City open spaces	That the proposed buildings be no taller than 400 feet, as would be the case in the CB6 alternative, in order to minimize such views
9. With the determinations in both chapter 7, Historic Resources, and chapter 8, Urban Design and Visual Resources, that the proposed project "would not result in any significant adverse impacts" to the	That the heights of the new buildings be limited to 400 feet in deference to the Secretariat

United Nations	
10. With the omission in chapter 8, Urban Design and Visual Resources, of an analysis of views along the East-west streets, including 39 and 40 Streets, to compare views as they would be with standard sky exposure planes and with the proposed height and setback modifications	That the DSEIS be modified to disclose this information
11. With the omission in chapter 8, Urban Design and Visual Resources, of analyses of microclimates resulting from particularly strong winds that are likely to occur at the bases of the proposed sheer and tall towers and would diminish the usefulness of open spaces	That the DSEIS be modified to disclose this information
12. With the omission in chapter 10, Natural Resources, of an analysis of the numbers of birds likely to be killed by flying into the proposed glass sheathed buildings as opposed to buildings enclosed in other materials	That the DSEIS be modified to disclose this information
13. With the omission in chapter 12, Infrastructure, of a discussion of retaining storm water on site or disposing of storm water through filters and storm sewers rather than through combined sewers in order to reduce overflows during storms	That the DSEIS be modified to disclose this information
14. Is disappointed that the two historic power plants were demolished before the completion of the DSEIS so that the determination of the GEIS that they were not of historic value, which CB6 and others believe to be erroneous, could not be re-examined	

<b>Agrees</b>	<b>Recommends</b>
1. With the determination of chapter 6, Shadows, that the proposed development would add significant shadows to the open spaces at Tudor City, but that the Community Board Alternative would not	That 685 First Avenue remain zoned C1-9 and be excluded from the proposed GLSD in order to reduce shadows, as would be the case in the CB6 alternative
2. With the determination of chapter 4, Community Facilities, that the proposed development would add more than 500 primary and intermediate school students	That the project include space for a new school and that the City consider enlarging PS 116
3. With the determination of chapter 4, Community Facilities, that the proposed development would add more than 100 children requiring public day care	That the project include space for a new day care facility
4. With the determination of chapter 15, Traffic and Parking, that the proposed development would cause significant traffic congestion, but that the Community Board Alternative would cause less significant traffic congestion	That the properties be zoned C1-9 and parking limited to accessory spaces to 10% of the dwelling units, as would be the case in the CB6 alternative, in order to reduce traffic

Be it finally

**Resolved** that CB6 recommends that its proposed 197c plan (C 060394 ZRM) for a special zoning district in the area bounded by 34 and 41 Streets and First Avenue and the East River be adopted in place of all aspects of the ERRC's 197c applications that are in conflict with the community board's 197a and 197c plans."

## **Borough President Recommendation**

This application was considered by the Borough President who issued a recommendation on November 28, 2007, for conditional disapproval of this and the related applications. The full recommendation is attached. The Borough President's Recommendation concluded by stating:

"The properties should be rezoned and redeveloped for high-density mixed-use development. The applicant should be commended for pursuing a development and open space plan of high quality and distinction, and for making recent improvements to the plan to make space available for a public school and contribute to affordable housing. However, concerns remain unaddressed regarding the project's environmental impact and its adherence to desirable urban planning principles and community planning goals, which should be addressed through a series of modifications to the application.

Therefore, the Manhattan Borough President recommends approval of ULURP applications N 070526 ZCM (certification to verify plaza urban design guidelines), N070527 ZCM (certification to modify streetscape guidelines), N 070535 ZCM (certification to verify plaza urban design guidelines), N 070536 ZCM (certification to modify street wall transparency requirements), N 070537 ZCM (certification to allow additional curb cuts on a narrow street), as these actions meet the required findings, but notes that the actions will have to be reconsidered if other actions to which they are intimately related are denied.

Therefore, the Manhattan Borough President recommends approval of the portion of application N 070530(A) ZRY (zoning text amendment) which relates to inclusionary housing, but encourages the affordable housing commitment to be improved by including all properties within the proposed "inclusionary housing designated area," exploring the inclusion of commercial floor area within the bonus structure, and working with the community to satisfy the inclusionary housing commitment in a way that meets community goals and priorities.

Therefore, the Manhattan Borough President recommends conditional disapproval of C 070522 ZMM (zoning map change), C 070523 ZSM (GLSD special permit), C 070524 ZSM (special permit to modify residential plaza requirements), C 070525 ZSM (public parking garage special permit), N 070528 ZCM (certification to modify retail continuity), C 070529 ZMM (zoning map change), C 070531 ZSM (GLSD Special Permit), C 070532 ZSM (special permit to modify residential plaza requirements), (C 070533 ZSM (accessory garage special permit), C 070534 ZSM (public parking garage special permit), N 070538 ZCM (certification to modify retail continuity requirements), and the portion of N 070530(A) ZRY (zoning text change) that relates to the Definition of Large Scale Developments and the relocation of the plaza bonus, conditional on the following changes to the project on the following changes to the project:

- The density of development is reduced to a level that is appropriate for a superblock, and would lessen anticipated environmental impacts.
- The heights of buildings are reduced to lessen or eliminate the anticipated shadow impacts on nearby open spaces and to reflect neighborhood character.
- Comprehensive public open space guidelines are developed in direct negotiation with the community that would treat the proposed pathways through the properties as much like public streets as possible, and create a more activated, pedestrian-friendly open space design.
- The mixture of uses programmed for the site is adjusted to better reflect the residential context of the area.

- The numbers of public and accessory parking spaces are reduced to a level that is consistent with the City's traffic and environmental goals, and will diminish anticipated traffic impacts."

### **City Planning Commission Public Hearing**

On November 14, 2007 (Calendar Nos. 9 and 10), the City Planning Commission scheduled December 5, 2007, for a public hearing on the original application (C 070531 ZSM) and the modified application (C 070531(A) ZSM). The hearing was duly held on December 5, 2007, for these applications (Calendar Nos.36 and 37) and related applications (C 070522 ZMM, C 070523ZSM, C 070523(A) ZSM, C 070525 ZSM, C 070529 ZMM, N 070530 ZRM, N 070530(A) ZRM, 070531 ZSM, C 070532 ZSM, C 070532(A) ZSM, C070533 ZSM, C 070534 ZSM).

The public hearing for the ERRC project was held in conjunction with a continued City Planning Commission Public Hearing on an application for a 197-a plan submitted by Manhattan Community Board 6. A total of 50 speakers testified at the hearing. Of the total speakers, 7 speakers testified in favor of the ERRC proposal.

Four of the seven speakers in favor of the ERRC proposal were representatives of the applicant and gave a presentation on the proposal. The first speaker emphasized that several aspects of the proposal had been significantly changed to respond to concerns raised in public meetings held in recent years. He highlighted, in particular, that the applicant's proposed "A" text amendment to introduce an inclusionary housing program for the development and that the applicant was in positive and ongoing discussions with the New York City School Construction Authority (SCA) to locate a public school within the ERRC project.

The second speaker for the applicant, the project architect, described the proposed development as a new destination for the city and that the buildings, individually and collectively, were designed with the goal of maximizing a sense of light and air on the site.

The third speaker discussed the overall master plan, focusing on the ground plane. She discussed

extensive visual access and pedestrian right of ways through the property, an improvement from when Con Edison occupied the site and provided for no view corridors or physical accessibility towards the river.

The fourth speaker, the project's landscape architect, stated that the nearly 5 acres of proposed open space was designed to draw pedestrians from First Avenue towards the river with a variety of east-west oriented pathways, seating areas, plantings, and a linear water feature, and with a children's playground, café pavilion, and promenade serving as main attractions along the eastern edge of the plaza.

The applicant addressed a number of questions raised during the public review process stating that:

- The applicant believes 685 First Avenue, the largest residential building and the tallest of all buildings in the proposal, is a critical component of the project's site plan and urban design, and that its inclusion in the General Large Scale Development plan is important in order to obtain height and setback waivers and use of plaza bonus floor area, rights which would not be available on an as-of-right basis.
- The applicant believes the proposed buildings heights are appropriate in an area that has numerous high-rise towers, and that the heights are a product of relatively small building footprints which allow for more public open space on the ground plane.
- The applicant's consultant estimated that the parking garages would have a 94% occupancy rate based on projected demands for parking by the residents, office workers, and visitors to the development. The applicant stated that the parking garage would serve visitors to the development as well as to other destinations in the neighborhood.
- The 320 foot width of the proposed commercial building is a result of the placing two 290 foot tower slabs in a shifted configuration. The developer believes that a floor plate of at least 35,000 square feet is desirable in today's commercial market.
- The developer will make legally binding commitments for visual and physical access through the site along the 39<sup>th</sup> and 40<sup>th</sup> Street extensions, among other commitments

related to the design and operation of the public space.

- The various retail depths allow for a variety of retail establishments ranging from newsstand to small café to neighborhood grocery store.
- The developer is willing to incorporate an approximately 650-seat public school, kindergarten through 8<sup>th</sup> grade, on the south site and has been in discussions with the School Construction Authority regarding this subject.

Other speakers in support of the ERRC proposal included a representative from the New York Chapter of the American Institute for Architecture. This speaker supported the overall urban design of the project, building heights, density, and mix of uses. He stated that the proposed commercial building would contribute positively to the area by diversifying visitors to the area and users of the public plaza, especially during the day. A representative from the Real Estate Board of New York expressed its strong support for the project, and for the commercial building in particular, citing the need for the city to increase its office space inventory in order to stay regionally and nationally competitive. She added that the location was good for a commercial building due to its location near Midtown. The last speaker in favor was a representative from New York's Alliance of Union Contractors who discussed job creation and economic benefit resulting from the multi-year construction period of the project.

Speakers who stated opposition to the ERRC proposal included many of the speakers who testified in support of the Community Board 6 197-a Plan. Representatives of the community board testified that while it generally supports development on the former Con Edison power plant sites, they are opposed to many fundamental aspects of the ERRC proposal. The Community Board's objections pertain to density, height, shadows, building form, parking, traffic, and the commercial use. Several speakers testified that the density should be capped at 10 FAR, and should exclude the use of the floor area generated by the 39<sup>th</sup> and 40<sup>th</sup> street extensions and the portion of the 685 First Avenue site occupied by the Con Edison substation; that building heights should be limited to 400 feet in deference to the United Nations Secretariat building and to reduce the impact on nearby open spaces, namely on Tudor City Greens and St. Vartan Park; that the building form should be a tower-on-base instead of sheer-rising towers; and

that the commercial tower should be prohibited because an office tower would be out of character in the residential neighborhood.

Several speakers in opposition to the ERRC proposal urged that East 39<sup>th</sup> and 40<sup>th</sup> streets be remapped as city streets through the superblock and provide public access and that these remapped streets look and function as standard city streets. A speaker from Community Board 6 reiterated that Community District 6 has the lowest ratio of open space per capita of the Manhattan community districts, and stressed the importance of completing the waterfront esplanade and improving access to the waterfront. Several community board members were dissatisfied that ERRC had not included off-site open space improvements, including direct connections from the ERRC site over the FDR Drive to the East River waterfront. A number of local residents, many identifying themselves as residents of Tudor City, testified in opposition to the ERRC proposal focusing on the heights of the proposed buildings and concern about shadows on the Tudor City open spaces.

Several elected officials spoke in favor of the Community Board 6 197-a plan and against the ERRC proposal, including New York City Councilmembers for the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Council Districts, the State Senators for the 26<sup>th</sup> and 29<sup>th</sup> Districts, the State Assemblyman for the 74<sup>th</sup> District, and the U.S. Congressman for the 14<sup>th</sup> District. A representative for the Manhattan Borough President reiterated concerns expressed in the Borough President's recommendation for disapproval with conditions. The Borough President's representative commended the quality of the ERRC design and the developer's proposal to include inclusionary housing and a new public school, but added that the Borough President had outstanding concerns, including shadows on Tudor City, traffic, and the proposed text amendment on plaza bonus transfer.

The Councilmember for the district encompassing the ERRC site and much of the area covered by the 197-a plan shared the community board's opposition to the proposed density, height, and commercial use proposed in the ERRC project. He added that the benefit of a large open space was offset by the shadow impacts on nearby St. Vartan Park and Tudor City Greens. He stressed that active recreation space was needed in the neighborhood, but not provided in the ERRC plan.

He stated that he believed that the developer had not gone far enough regarding affordable housing, and requested, as did other speakers, that affordable housing be provided on-site and distributed throughout the development. He added that the inclusionary housing requirement should apply to all buildings in the ERRC plan, regardless of use.

Other speakers opposed to the ERRC project included representatives of civic groups including the Municipal Art Society and neighborhood civic groups. The representative of the Municipal Art Society urged that new developments facilitate future access to the waterfront in the event the FDR Drive is eventually reconfigured to allow decks and/or pedestrian bridges over the Drive to the waterfront edge.

There were no other speakers and the hearing was closed.

#### **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY**

This application was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et. seq.) The designated WRP number is 07-0007.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.



## CONSIDERATION

The Commission believes that this application for a special permit (C 070531(A) ZSM), as further modified, in conjunction with related applications for a General Large Scale Development special permit (C 070523(A) ZSM), as further modified, zoning map amendment (C 070529 ZMM), zoning map amendment (C 070522 ZMM), zoning text amendment (N 070530(A) ZRM), as further modified, special permit for an accessory parking garage (C 070533 ZSM); special permit for a public parking garage (C 070534 ZSM), as modified herein, and special permit for public parking garage (C 070525 ZSM), is appropriate.

The Commission's consideration of the proposal is made in the context of the Commission's simultaneous review of the Community Board 6 197-a Plan, a comprehensive proposal for Community District 6 which includes recommendations for the East River Realty Company sites. That 197-a Plan, which the Commission has approved, with modifications, is fully described in Report No. N 060273 NPM. In considering the ERRC proposal and the 197-a Plan, the Commission was guided by the principle that the two plans should be reviewed in parallel and accorded equal treatment in the public review process. Through this process, the Commission has gained a detailed understanding of the two proposals, and of the respective viewpoints of the applicants.

The redevelopment of approximately 9.8 acres in Mid-Manhattan's East Side presents a remarkable opportunity to enhance a stretch of First Avenue that has long served an industrial purpose and, as such, contributed little to the livability of the neighborhood. The Commission believes that the applicant has proposed an exciting mixed-use plan for the two sites that features seven new high-rises, totaling 5 million square feet, configured around two large public open spaces and arranged in way to maximize views towards the East River. While the Commission agrees with the developer that high-rise development and a mix of uses are appropriate for the area, the Commission has identified several aspects of the proposal that warrant modification. Those modifications, to be adopted by the Commission as part of this approval, are discussed in detail below. The Commission is confident that the proposed development, as modified, will

enhance the neighborhood with high-quality site planning, urban design, and architecture, much-needed open spaces, and other major amenities including a new 630-seat public school and over six hundred affordable housing units if the developer opts to maximize the development potential on the residential sites.

### **The North Site: 685 First Avenue and 700/708 First Avenue**

#### **Zoning Map Amendment (C 070529 ZMM)**

The Commission believes that the application to rezone the subject area from M3-2 and C1-9 zoning districts to a C5-2 zoning district is appropriate. The C1-9 to be remapped is on the west side of First Avenue, between East 39<sup>th</sup> Street, East 40<sup>th</sup> Street, and the Midtown Tunnel Access Road, encompassing the 685 First Avenue block. The M3-2 to be remapped is on the east side of First Avenue between East 39<sup>th</sup> Street, East 41<sup>st</sup> Street, and the FDR Drive Service Road, encompassing the 700/708 First Avenue superblock.

With the decommissioning and demolition of the Con Edison Waterside power plant as part of the utility provider's modernization and restructuring program, the existing M3-2 in this neighborhood became obsolete. Manufacturing districts in the area are vestiges of the industrial past of Manhattan's east side, an area where large industrial uses such as power plants, stockyards and slaughterhouses, and breweries once thrived. Starting in the 1980s, C1-9 districts replaced many of the manufacturing districts in the area to allow construction of residential buildings such as the Corinthian, the Horizon, and Manhattan Place. The C1-9 district allows 10 FAR for residential or community facility use, bonusable to 12 FAR through provision of inclusionary housing. Commercial density in C1-9 is limited to 2 FAR.

The area is a high-density mixed-use neighborhood with high-rise residential buildings and institutional campuses such as the United Nations and NYU Medical Center interspersed with commercial uses. The Commission believes that the rezoning to C5-2 which allows for high-density residential, commercial, and community facility uses, more accurately reflects the uses and densities around ERRC's North Site. The rezoning would extend existing C5-2 districts

located to the north and west of the site. Similar to a C1-9, the C5-2 allows a maximum FAR of 12 including bonuses. However, unlike the C1-9, the C5-2 district allows 10 FAR for commercial use as-of-right, which is bonusable to 12 FAR. The C5-2 also provides a more flexible building envelope.

During the public review process, some speakers urged the Commission to leave the existing C1-9 district on 685 First Avenue and to rezone the 700/708 First Avenue site from an M3-2 to a C1-9. Those who proposed this stated that the C1-9 was more appropriate given that it limits commercial density to 2 FAR and requires, within 125 feet of a wide street, either a tower-on-base building in which 55 percent of the building floor area is required to be below 150 feet in height, or a height and setback building. The Commission notes that the rezoning to C1-9 would be beyond the scope of this application.

The Commission supports commercial use at densities greater than 2 FAR in this area. There are several mid and high density commercial buildings along First Avenue between East 34<sup>th</sup> and 46<sup>th</sup> streets, including the United Nations office complex, a 12-story commercial building located immediately south and adjacent to 685 First Avenue, and an 8-story building located south of 700 First Avenue. The close proximity of 708 First Avenue to the 42<sup>nd</sup> Street corridor and cluster of high-rise commercial buildings in the existing C5-2 to the north makes that site an especially appropriate commercial location. The Commission believes that the 685 First Avenue site should be predominantly residential use, but supports the C5-2 rezoning to achieve a better building form. It notes that the amount of commercial use in the GLSD can be restricted through the special permit.

With respect to the C1-9 building form, the Commission notes that the C1-9 could result in a building form that is atypical of many buildings in the surrounding neighborhood. Notable buildings in the neighborhood such as the Tudor City buildings, the Corinthian, the Horizon, and Manhattan Place do not comply with the current C1-9 bulk regulations. The Corinthian, the Horizon, and Manhattan Place are tower-in-park (more precisely, tower-in-plaza) type developments which were constructed prior to the establishment of the tower-on-base

regulations.

The C5-2 district allows, on sites larger than 20,000 square feet, towers for mixed use buildings as long as the tower is within 40 percent of the total lot area. The Commission believes that the C5-2, which has more flexible bulk regulations than the C1-9, is a better match for the large ERRC development site which is located in an area with numerous towers. The Commission notes that although the proposed development requires height and setback waivers, the C5-2 provides a closer fit to the form of the proposed development than other zoning districts, including the C1-9.

As further discussed below with regard to the related zoning text amendment application, the applicant proposes to establish a new “Inclusionary Housing Designated Area” on the east side of First Avenue, at 700/708 and 616 First Avenue, which would lower the maximum as-of-right density for residential development from 10 to 9 FAR. The allowed density could increase to a maximum of 12 FAR through the provision of affordable housing pursuant to the Inclusionary Housing Program set forth in Section 23-90.

#### **Zoning Text Amendment (N 070530(A) ZRM)**

The Commission believes that the proposed text amendment, as further modified herein, is appropriate. The applicant proposed text changes to (a) Inclusionary Housing provisions, under Sections 23-90, et seq., (b) the definition of a General Large Scale Development, under Section 12-10, and (c) provisions within the General Large Scale Development special permit, under Section 74-743, related to the calculation of required affordable housing and the use of bonus floor area generated by a Public Plaza. The Commission believes that the proposed text amendment pertaining to use of plaza bonus floor area is inappropriate and herein modifies the text amendment to eliminate that aspect of the proposal.

#### *Inclusionary Housing*

The Commission is committed to promoting the development of affordable housing in order to foster economically diverse communities throughout the city. In order to establish powerful

incentives for the creation and preservation of affordable housing in conjunction with market-rate housing development, the Commission has approved the expansion of the inclusionary housing program in area-wide rezonings which introduce new residential use where none had existed or significantly increase residential densities. This program has been a critical tool for addressing the issues of affordable housing and economic integration in rezoned areas such as Hudson Yards, Greenpoint Williamsburg, West Chelsea, Upper West Side, and more recently, Jamaica, Queens. The Commission believes that given the size and scale of the ERRC proposal and the transformative effect the development will have on the neighborhood, the promotion of affordable housing is an important element in the consideration of this development.

At the time of certification, the ERRC proposal did not include an affordable housing component. All apartments in the six residential towers were proposed to be market-rate units. On both the North and South Sites, the proposed development was for 12 FAR, of which 10 FAR was as-of-right and a 2 FAR bonus was generated by Public Plazas.

The Commission notes that in response to concerns raised by the Commission and others during the public review process, the applicant submitted a modified text amendment application that includes extension of the inclusionary housing program to the proposed development in a manner that is consistent with the program incorporated in Department-initiated area-wide rezonings adopted in the past several years. Under this program, the ERRC project could deliver over six hundred affordable housing units.

Under the program, residential developments may receive up to a 33 percent floor area bonus in exchange for 20 percent of affordable housing. In an R10 equivalent district, the new Inclusionary Housing program under the modified text amendment establishes a lower as-of-right density of 9 FAR and a maximum of 12 FAR, which may be achieved through a floor area bonus of 1.25 square feet for every 1 square foot of affordable housing provided, subject to a maximum of 20 percent of total floor area in a building, excluding non-residential ground floor area. Developments may satisfy the affordable housing requirement by providing permanent affordable units on or off-site, or by preserving existing housing at affordable rents. Off-site

affordable units must be located within the same community district or within one-half mile of the bonused development in another community district. Households occupying the affordable housing units could have incomes up to 80 percent of the area median income (AMI). Unlike the older inclusionary housing program applicable in R10 and equivalent districts citywide, the proposed zoning bonus can be combined with housing subsidy programs, in order to produce a substantially higher percentage of affordable housing.

As part of the modified application, the developer proposed to establish an “Inclusionary Housing designated area” on the ERRC properties located east of First Avenue, at 616 and 700/708 First Avenue. The 685 First Avenue property would not be included within the new designated area, since it is located in an R10 zoning district where the original Inclusionary Housing program regulations apply and allow density to be increased from 10 to 12 FAR through the Inclusionary Housing bonus.

The Commission believes that the proposed text amendments are appropriate and consistent with the program as applied elsewhere in the city, allowing for an appropriate degree of flexibility in the method of providing affordable housing and ensuring the consistent administration and effective oversight of affordable housing across areas of the City. The Commission also notes that the incentives of the inclusionary housing program incentives are reinforced by those of the modified 421-a tax abatement program, which in this area, allows development to qualify for 421-a tax benefits only if they provide the 20 percent of affordable housing on-site.

The applicant is also proposing to amend the provisions of Section 74-743 (Special provisions for bulk modifications) to permit in general large scale developments, modification to the inclusionary housing calculations for certain community facility and commercial floor area. Those changes accommodate the mixed-use program elements of the proposed development by allowing community facility floor area on the 616 First Avenue to be excluded from the calculation of required floor area separately from the stand alone commercial building on 708 First Avenue.

The Commission is confident that the modified applications create a strong incentive for the provision of affordable housing. It notes that the inclusionary housing program has been successfully applied in Department-initiated area-wide rezonings with positive results.

In light of the multi-year time frame for the projected build out of the project, however, the Commission believes it is important to link the inclusionary housing bonus to the development of specific buildings on the 700 First Avenue site – the largest of the ERRC development parcels - rather than to the site as a whole. In order to ensure that affordable units are available in early phases of the plan, the Commission has placed a height restriction on each of the three residential buildings on the 700 First Avenue site as further discussed below. These buildings would be allowed to exceed these height restrictions and achieve the maximum permitted heights only if affordable housing is provided. In addition to directly linking the provision of affordable housing to completion of individual buildings, this linkage provides an additional incentive to use the bonus and achieve affordable housing.

#### *Definition of a General Large Scale Development*

Under the existing definition of a General Large Scale Development, an existing building may not be included in the plan if it will not be an integral part of the proposed plan. 685 First Avenue is not eligible for inclusion in a General Large Scale Development under this definition due to the presence of the Con Edison substation on the western portion of the zoning lot which will continue in use as a substation. Therefore, the applicant proposes that the definition for a General Large Scale Development be amended to allow for an existing building to be included in the General Large Scale Development provided that it occupies less than 15 percent of the total lot area General Large Scale Development plan. This allowance for existing buildings would only be applicable to General Large Scale Development in C5 or C6 districts of at least 5 acres.

The Commission believes that the text amendment is appropriate and believes that the threshold requirements that the General Large Scale Development be at least 5 acres, and that the existing

building cover less than 15 percent of the General Large Scale Development, will ensure that the existing buildings are not a significant part of the GLSD. As discussed later in greater detail in this report, inclusion of the 685 First Avenue site in the Large Scale development ensures an appropriately shaped and scaled building in relation to the 700/708 First Avenue site and surroundings, whereas an as-of-right building could result in a development that would be inconsistent with the surrounding context and the ERRC development as a whole.

*Provisions for special permits in General Large Scale Developments*

The applicant proposed two changes to the provisions for a General Large Scale Development-special permit of Section 74-74: (a) to enable the commission to modify the inclusionary housing calculations for portions of the General Large Scale Development that contain a standalone commercial building or community facility floor area and (b) that the bonus generated by a public plaza may be utilized on a zoning lot other than the zoning lot upon which the public plaza is located.

The Commission believes that the proposed amendment to allow commercial and community facility floor area to be excluded from the calculation for the amount of required lower-income housing is appropriate. In order to grant such special permit, the Commission must find that the floor area exemption will facilitate a desirable mix of uses in the General Large Scale Development and results in a plan that is consistent with the objectives of the inclusionary housing program. The text amendment will facilitate the development of the commercial building on the 700/708 First Avenue superblock, and the community facility building on 616 First Avenue, which is proposed to be a new 630-seat public school.

The Commission believes that this proposed provision to allow, by special permit, for the commercial and community floor area exemption from the calculation of required lower-income housing is consistent with the purpose of the recently created existing inclusionary housing program which promotes 20 percent of housing as affordable, and enables use of the program within a proposed mixed use development without placing an undue burden on the developer that might discourage provision of affordable housing. The proposed text would allow the



calculation of floor area for a portion of the lot area containing the commercial building on the 700/708 First Avenue zoning lot as if it were a separate zoning lot, which would exempt this building from the calculation of required affordable housing while also disallowing an increase in floor area through the inclusionary housing program for this portion of the lot area. The exemption of a limited amount of community facility floor area from the calculation of required affordable housing facilitates the inclusion of desirable community facility space within the large scale use development, while maintaining the requirement that 20 percent of housing be affordable in order to earn the full inclusionary housing bonus.

The Commission notes that if the commercial or community facility buildings were on separate zoning lots containing no housing within the General Large Scale Development, their floor areas would not be included in calculating the amount of lower income housing required and that these buildings would be subject to the underlying maximum FAR of 10, bonusable to 12 through a public plaza.

The Commission cannot endorse the second proposed text change to the General Large Scale Development regulations which would allow bonus floor area generated by a public plaza to be used on a zoning lot other than the zoning lot on which the public plaza is located. Specifically, the applicant proposes that 161,354 square feet of the bonus generated by the Public Plaza on the 700/708 First Avenue superblock be moved across the avenue, in order to increase the allowed density on the 685 First Avenue zoning lot from 10 FAR to 12 FAR. The Commission has strong reservations concerning this transfer. The purpose of the bonus plaza mechanism is to incentivize private property owners to include public open space on their property by granting bonus floor area in exchange for the amenity, and the mechanism is designed so that the plaza and the bonus floor area are located on the same lot. The proposed text change would allow for this connection to be severed, on the basis that both zoning lots (the zoning lot with the public plaza and the zoning lot utilizing the bonus floor area generated by the public plaza) are included within a General Large Scale Development; however, the Commission is not persuaded that inclusion of the zoning lots in a GLSD justifies this departure. While the Commission does not believe that the way in which 12 FAR would be achieved on the 685 First Avenue site under this proposed

text amendment is appropriate, it acknowledges that the site is already permitted a maximum 12 FAR today, via the original inclusionary housing bonus, and believes that this maximum density, if achieved in this manner, is appropriate.

**Special Permit to modify bulk, height and setback, and plaza regulations**

**(C 070531 (A) ZSM)**

The applicant requests a General Large Scale Development special permit pursuant to Section 74-743 with regard to (a) height and setback regulations, (b) location of a public plaza, (c) distribution of floor area without regard to zoning lot lines, (d) and the calculation of the maximum amount of lower-income housing required under Section 23-942. The Commission believes the requests to waive the height and setback requirements and the inclusionary housing calculation, as further modified herein, are appropriate. The Commission, however, believes that the requests pertaining to the location of a public plaza and distribution of floor area irrespective to zoning lot lines should be rejected.

The Commission believes that the proposed development, as modified herein, results in a site plan that exhibits a good layout of its buildings and open spaces, and good relationship to surrounding streets and buildings. The Commission believes that the proposal responds well to some of the site's considerable challenges including its size, a significant drop in elevation, and adjacency to the FDR Drive Service Road and an elevated highway off-ramp. The Commission believes the massing of the buildings on the superblock, which presents a narrow profile in the north-south direction, will allow for generous views towards the East River. The Commission is pleased that the plan incorporates ground floor retail space along First Avenue and the East 39<sup>th</sup> Street prolongation, limits vehicular access next to open spaces, and locates parking and loading entrances where there is the least potential conflict with pedestrians. Most of all, the Commission is pleased that the heart of the development proposal is an exceptionally large landscaped open space that will be open and accessible to the public for its free use and enjoyment.

While there is much about the proposed ERRC development to commend, the Commission believes that there are several aspects of the proposal that are not suitable for the site and are not

appropriate for its surroundings. The Commission determines herein that certain land use, urban design, phasing, and operational modifications would enhance the plan. The modifications would do the following:

- On 685 First Avenue: reduce height, require tower-on-base like massing, require additional retail frontage
- On 708 First Avenue: reduce floor area and length of building
- On 700 First Avenue: promote early delivery of inclusionary housing
- On the public open space: extend hours of access, require enhancements to the pavilion and playground

The Commission believes that the site plan of ERRC proposal, with modifications, is superior to what could be built under the Community Board 6 Alternative and 197-a proposal. Community Board 6 requested, among other things, that buildings on the ERRC site be massed as tower-on-base buildings located at the street lines of the East 39<sup>th</sup> and 40<sup>th</sup> street prolongations (the Community Board requested them to be remapped), and that the buildings be restricted to 400 feet in height. While the buildings in the Community Board 6 proposal would be shorter, the overall composition of lower, squatter buildings built at the streetlines would result in diminished light, air, and sense of openness in comparison to the ERRC plan. The buildings in the ERRC site plan have relatively small footprints allowing for the maximization of open space and views towards the East River. The Community Board alternative produces less than an acre of open space on the ERRC sites in favor of off-site unplanned open spaces that may face regulatory, funding, and constructability difficulties. The ERRC site plan, on the other hand, produces nearly 5 acres of open space that would be completed in coordination with the construction of buildings on the ERRC site. The Community Board also restricts commercial development at densities greater than 2 FAR. The Commission believes that this limit on commercial use is too restrictive in an area where mid to high density commercial buildings exist and are appropriate. These and other differences between the ERRC and Community Board 6 plan are discussed further in various sections below.

### ***Height and Setback***

The Commission believes that the requested height and setback waivers, as modified herein, are appropriate. The waivers will allow sheer rising towers arranged in a site plan that results in a strong presence of new buildings along First Avenue, greater sense of openness on the superblock site, more expansive views through the site towards the river, and the aggregation of a large open space. Each of the new towers in the proposed development rises to its full height without setbacks. Without the waivers, the buildings would be required to be located further from the streetline or would be required to have a base of 85 feet in height.

The Commission heard comments during public review that the proposed rezoning in combination with the requested waivers would result in buildings that are too tall and out of character with the neighborhood. In addition, the Community Board 6 197-a plan recommended that the maximum building height on the ERRC sites should be limited to 400 feet in deference to the United Nations Secretariat building. As also noted in the report on the 197-a plan, the Commission believes that a 400 feet tall height limit is unnecessary. The neighborhood contains a number of buildings taller than 400 feet including the Corinthian (512 feet), the United Nations Plaza (488 feet), and the U.N. Secretariat (503 feet). Slightly further north at East 47<sup>th</sup> Street and First Avenue is the 980 foot tall Trump World Tower residential building.

Concern was also expressed about potential shadows cast on the Tudor City open spaces. The Commission notes that the Tudor City open spaces are already heavily shadowed by other existing nearby buildings and by the Tudor City buildings themselves. The ERRC EIS analysis found a significant adverse shadow impact for the ERRC proposal during the December analysis period, when shadows are longest. The analysis indicates that the significant adverse shadow impacts on Tudor City open spaces caused by new development on the ERRC site could only be eliminated if the 685 First Avenue were limited to 320 feet in height, and the commercial buildings building at 708 First Avenue were limited to 360 feet.

The Commission believes that the ERRC site is in many respects an ideal location for tall buildings. The 700/708 First Avenue site is a 277,145 square foot superblock, in a high-rise

neighborhood, with no possible future neighboring development to its east. The scale of the site and the surrounding built context, in combination with the grand sense of openness along the river, accommodates the size of the buildings proposed for the 700/708 First Avenue site. The tallest building on the 700/708 site, the commercial building at 708 First Avenue, is proposed to reach 688 feet. The three residential buildings are proposed to be 705 feet, 650 feet, and 606 feet tall. The Commission believes these heights are appropriate for the site and area. The Commission, however, is of a different opinion with respect to 685 First Avenue. Discussion of the proposed height reduction and other changes to the buildings are discussed below.

### *685 First Avenue*

685 First Avenue is different from the 700/708 First Avenue site in a number of respects. It is the only ERRC development parcel located on the west side of First Avenue; it neighbors two existing buildings, including part of the Tudor City complex, a designated New York City landmark; it is not located next to the river; and the size of its development pad (32,365 square feet of the 80,677 square foot zoning lot) is about 15 percent of the size of the 700/708 First Avenue site, excluding the prolongations of East 39<sup>th</sup> and 40<sup>th</sup> streets. Given these site characteristics, the Commission believes that the building height of 685 First Avenue should be lower than those proposed on 700/708 First Avenue, and that its massing should be more responsive to the existing buildings on the west side of First Avenue.

As proposed by ERRC, the 685 First Avenue building would be a 721-foot tall sheer-rising tower that provides a 20.25 feet setback at grade from First Avenue, 14 foot setback on East 40<sup>th</sup> Street, and no setback along East 39<sup>th</sup> Street. In front of the building, along First Avenue, is a bi-level open space with steps connecting the two levels and bounded by a glass railing. The Commission agrees with the placement of the tower closer to the commercial building to its south rather than the group of residential buildings and open spaces of Tudor City to its north.

The Commission is modifying the plan for 685 First Avenue in several respects: First, the massing of the building is modified herein in order to improve its relationship to the surrounding streets and buildings. In reviewing the site plan and its relationship to other buildings within the

General Large Scale Development and the surrounding area, the Commission believes that while a tall development is appropriate for the site, it must be lower than the heights of buildings proposed for 700/708 First Avenue. Accordingly, the Commission is modifying the application to reduce the height of 685 First Avenue from 721 feet to 600 feet.

Second, the Commission is modifying the lower portion of the building. The Commission believes that tower should rest on a base on the East 40<sup>th</sup> Street side of the lot and that at least 75% of the 685 First Avenue building should be built within five feet of the First Avenue streetline in order to provide a better urban design relationship to the streetwall of Tudor City.

Third, the Commission believes that the bi-level open space should be eliminated. The Commission is requiring that the building's First Avenue street wall be located within 5 feet of the First Avenue streetline, for at least 75 percent of the streetwall, to better match the streetwall of existing buildings to the north and south. In lieu of the bi-level open space, the Commission is requiring one continuous surface, uninterrupted by steps, and that the grade change in the site be accommodated within the building's interior. Finally, the Commission is requiring that retail occupy at least 50% of the building's First Avenue frontage.

The Commission is sympathetic to the applicant's urban design argument that the buildings in the General Large Scale Development should appear as parts of a singular ensemble, and that a similar massing vocabulary be shared by all the buildings in the ensemble. However, variations for 685 First Avenue are necessitated by its specific site characteristics. Overall, the Commission believes that these modifications to the proposed development will result in a better building.

During public review, the Commission also heard comments that the 685 First Avenue site should not be included in the General Large Scale plan. The Commission disagrees. As-of-right alternatives for the 685 First Avenue site could result in inferior plans involving multiple towers or a singular tower that would be even taller than the building proposed by ERRC. The Commission notes that the modifications discussed above to reduce the building height and improve the shape of the building and its ground floor programming are only possible through

the site's inclusion in the General Large Scale Development plan. The Commission believes that the modifications to the 685 First Avenue building will result in a superior building relative to the rest of the GLSD, as well as relative to as-of-right alternatives.

The Commission also heard comments that the portion of the 685 First Avenue zoning lot occupied by the Con Edison substation should not be allowed to generate floor area for use in ERRC's proposed 685 First Avenue building. The Commission notes that the use of floor area generated by the Con Edison portion of the zoning lot is consistent with how maximum floor area is calculated on a zoning lot in an as-of-right situation. Under the provisions of the General Large Scale Development, if the Commission believed the density for the 685 First Avenue building were excessive for the site, it would be allowed to reduce the density. However, as stated above, the Commission believes that the proposed density is appropriate for the site.

#### *700 First Avenue*

700 First Avenue is proposed to have three residential buildings. As shown on the attached plans, Building WS1-1, located on the northeast corner of East 38<sup>th</sup> Street and First Avenue, and Building WS2-1, located between the East 39<sup>th</sup> Street prolongation and the public open space, are setback 5 feet from the avenue and provide 100 percent retail frontage. Building W1-2 is located to the east of WS-1. The Commission is pleased that the public open space will occupy the stretch of First Avenue between the Building WS2-1 and the commercial building at 708 First Avenue. This gives the open space prominent visibility to passersby. The Commission believes that this particular arrangement of the three buildings on the 700 First Avenue site is critical to the success of the open space, and indeed the entire General Large Scale Plan.

The three residential buildings on the 700 First Avenue site have the potential to generate over 450 affordable housing units, on or off site, if the developer opts to maximize the development potential of 12 FAR available in the Inclusionary Housing program. Phasing of affordable housing in a multi-building development such as the ERRC project is, however, an issue of concern to the Commission. Absent special provisions, ERRC could build a substantial amount of market-rate housing before providing any affordable housing. The Commission believes that it

is important that affordable units become available in early phases, concurrently with the development of the market rate units.

In order to promote the early availability of the affordable units, and to ensure the three building configuration of the site plan for 700 First Avenue, the Commission is introducing a restriction on height, related to whether and how much inclusionary housing is provided. The maximum building height for each of the three residential buildings on 700 First Avenue will be capped at 80 percent of the proposed maximum heights unless inclusionary housing is provided. (See table below.) These restricted height limits are sufficient to accommodate the base FAR while maintaining the building forms and urban design relationships of the site plan. Each residential building could achieve the maximum permitted height only if an amount of lower income housing has been provided equivalent to 20 percent of the floor area of that building. By making these changes, the Commission seeks to ensure that affordable housing will be provided on a phased basis in conjunction with the phased development of the residential buildings on the superblock.

During the public review process, the Commissioners heard comments that the affordable housing provided for bonus should be required to be on-site. The Commission notes that the ERRC inclusionary housing proposal is consistent with the city's program for Inclusionary Housing which allows the affordable units to be located either on or off site. The Commission believes that given the sparse off-site affordable housing development and preservation opportunities in Community District 6, coupled with the modified 421-a tax abatement program which eliminates the certificate program for off-site affordable housing, a significant amount of the affordable housing generated by the inclusionary housing program will be provided on the ERRC site.

The Commission believes that this new height limit provision, in conjunction with the requirement to build three residential buildings as per the approved site plan and the revised 421a rules, provides an important and robust incentive to the developer to utilize the affordable



housing bonus. This height restriction measure is described in more detail in the Restrictive Declaration.

700 First Ave: Residential Buildings Height Limits		
Building	<i>Without</i> Inclusionary (12 FAR, full height)	<i>With</i> Inclusionary (9 FAR, 80% height)
WS 1-1	564'	705'
WS 1-2	520'	650'
WS 2-1	485'	606'
Total	485'-564'	606'-705'

**708 First Avenue**

The Commission believes that the commercial use proposed for the 708 First Avenue is appropriate. The Commission notes that the neighborhood contains a significant amount of commercial uses including the United Nations complex, a 12-story commercial building immediately to the south of 685 First Avenue, an 8-story office building immediately south of the 700 First Avenue site, and number of high-rise commercial buildings located around the East Street and First Avenue area including the UN Plaza building and the Ford Foundation. On the 708 First Avenue site itself, before demolition of the Con Edison facilities, there was a 10-story office building housing Con Edison offices. The Commission also notes that the Robert Moses Playground, located immediately to the north of 708 First Avenue may at a future date be proposed as the site for a United Nations office building.

Contrary to statements made by some speakers in opposition to the ERRC project, the Commission believes that the mix of uses in this neighborhood makes the area more, not less, vibrant, and that the addition of new commercial tower on the ERRC site will help to bring

vitality to the proposed open space and surrounding streets, especially during the daytime and into the evening hours as well.

While the Commission supports the commercial building at 708 First Avenue, it nevertheless believes that the proposed floor area and massing should be reduced to improve the building's relationship with the surrounding area.

The applicant proposes a commercial building of 1.37 million square feet, which is equivalent to 12 FAR on its portion of the zoning lot (114,656 square feet). The 708 First Avenue site, while near the predominantly commercial 42<sup>nd</sup> Street corridor, is also adjacent to the predominantly residential neighborhood to the south. The Commission believes that the 708 First Avenue site should serve as a transition point between the two. Accordingly, the Commission has reduced the floor area of the 708 First Avenue building by 20 percent. This reduction will result in the elimination of nearly 230,000 square feet of floor area, and result in a building that is equivalent to 10 FAR on its portion of the lot rather than 12. The Commission also notes that the reduced scale of the commercial building will in turn result in a reduction in the demand for parking and vehicle trips to the site, issues which are of concern for the Commission. Additionally, the reduction of the commercial building from 12 to 10 FAR will render moot the applicant's request for a 2 FAR floor area bonus from the proposed Public Plaza.

With respect to the building's design, the Commission believes that the building's east-west dimension of 320 feet should be reduced. The building as proposed measures 145 feet in the north-south direction, and 320 feet in the east-west direction, and reaches a height of 688 feet. The Commission notes that 320 feet is wider than many corporate headquarter buildings in Manhattan's Central Business Districts, including, for example, One Chase Manhattan Plaza in Lower Manhattan and 9 West 57<sup>th</sup> Street in Midtown, which are both less than 290 feet in width. The Commission believes that the proposed 320 feet length should be reduced for an area which is not a central business district, and that a reduction will result in a better relation to the public open space. The Commission is therefore modifying the maximum tower width to 280 feet in the east-west direction.

While the Commission is not mandating a reduction in the height of 708 First Avenue, the reduction in density from 1.37 to 1.14 million square feet, and the narrowing of the tower width from 320 feet to 280 feet, would likely result in a lower building height.

### *The Open Space*

The applicant has proposed an impressively large landscaped public open space as a central feature of the development. Over 4 acres, or approximately half of the North Site's total of 8.21 acres, has been allocated for use as public open space. The vast majority of the open space (122,932 square feet of 176,264 square feet), was designed as a bonusable Public Plaza, pursuant to Section 37-70, with the exception of waivers for certain amenities sought under a special permit pursuant to Section 74-91.

The Commission believes that this public open space is an absolutely essential feature of the proposed development. The open space - its large size, ample seating and varied recreational areas, landscaping, and expansive views- is a substantial reason for the Commission's approval of the requested height and setback waivers.

The Commission is pleased that the open space provides a number of connections between First Avenue and the site's eastern edge where views of the East River can be enjoyed. (The development will be constructed on a gently rising deck that will elevate the development's ground plane to a height above the 42<sup>nd</sup> Street off-ramp.) The plaza has over 230 linear feet of frontage on First Avenue and extends the full width of the superblock, over 400 feet. The space contains a 70 foot wide lawn, 30 foot tree-lined gravel allee, and water feature stretching from First Avenue to the eastern edge. A children's playground and a destination pavilion with a café, public restrooms, and an overlook are located on the eastern side of the open space.

As certified, the plaza was originally proposed to generate a 2 FAR bonus for all the buildings on the ERRC site. However, under the applicant's modified application, the bonus request for the three residential buildings on 700 First Avenue was dropped and those buildings were proposed

to achieve 12 FAR through the provision of affordable housing. Given the Commission's disapproval of the portion of the text amendment that would have allowed transfer of plaza's bonus floor area from 700/708 First Avenue zoning lot to 685 First Avenue, and the Commission's reduction of the commercial building from 12 FAR to 10 FAR, any bonus generated by the plaza would no longer be usable on any building on the ERRC site. The Commission notes that this open space, while no longer generating bonus floor area, and thus no longer a "Public Plaza" pursuant to Section 37-70, is nonetheless a required public open space under the GLSD, and that it has been designed to meet the Public Plaza standards (with some exceptions as requested in the original special permit for modification from Public Plaza standards, now also moot).

At the time of certification, the Commission indicated its desire that ERRC provide more planting, trees, and seating than originally proposed. A redesigned plaza which included increased amenities was shown at the public hearing. The Commission believes that much of the open space design is commendable; however, it is modifying the open space to address several concerns regarding the design and operation of the space.

The Commission recognizes that nighttime closure is important for maintenance and security purposes. The developer proposed that the public open space be allowed to close from 12 am to 6 am. The Commission believes that the space, essentially a new park for the community, must have hours of public access that be comparable to those of un-gated parks of the NYC Parks Department. The Commission is therefore modifying the hours of the ERRC public open space to 6 am to 1 am. The Commission is also requiring that the closure may only be indicated by signage and that no fences, gates, or other physical barriers may be used to close the public open space at night.

The Commission believes the destination pavilion, located at the eastern end of the plaza, must serve as an amenity to users in the public open space. The Commission is therefore modifying the proposal to require the following: that food and drink be available for purchase for take-out, not just dine-in; that signs be placed in the area around the pavilion indicating that purchase of

items at the pavilion is not required in order to use the moveable tables and chairs; that signs be posted to indicate the restrooms and overlook are available to the public without charge or purchase; that one additional public restroom be provided, increasing the amount from 3 to 4 restrooms; and finally, that the restrooms be directly accessible only from the plaza, and not from the pavilion's interior.

The Commission is also modifying the plan of the public open space to expand the size of the children's playground and to increase its visibility within the open space. As proposed, the playground would have contained approximately 7,500 square feet, with approximately 5,500 square feet of usable surface area and 2,000 square feet of planted area. Since the playground is meant to serve the surrounding neighborhood, the Commission is modifying the plan to enlarge the size of the usable surface of the playground to approximately 10,000 square feet. Planting adjacent to the playground must also be below the height of three feet in order to ensure visibility into the playground. During the public review, the Commission heard suggestions that the playground be moved from the eastern edge of the site and located along First Avenue. The Commission believes that as proposed, the location of the playground is optimal as it will be on the sunniest portion of the site, away from traffic of First Avenue, and close to river views.

Finally, the Commission believes that portions of the public open space must be substantially completed and open to the public as individual buildings on the 700/708 First Avenue site are completed. The Commission believes that a large portion of the open space must be completed with the first building on the superblock, whether it is the commercial building at 708 First Avenue, or a residential building on 700 First Avenue. The Commission is therefore pleased that an Open Space Phasing Schedule which accomplishes this objective has been included in the Restrictive Declaration.

The Commission is confident that this public open space, as modified, will be a very attractive and heavily used public open space in the neighborhood. Several speakers in favor of the Community Board 6 197-a Plan, argued in favor of an open space to be built on a deck over the

FDR Drive rather than the public space proposed as the center of the ERRC site plan. The Commission believes that it would be ill-advised to forego the project's significant on-site open space in favor of open space that would be located on property outside the control of the developer and that can only be developed following extensive feasibility studies and would require additional city and state discretionary reviews and approvals, as well as significant government funding. The Commission endorses planning for future open space improvements in and around the FDR Drive, but believes that it is neither practical nor appropriate to make such improvements a part of this project. The Commission notes that Community District 6 has the lowest open space per capita ratio in the borough, and that it is important to seize this rare opportunity for a major public amenity. The Commission notes further that the design of the ERRC does not preclude the future connection of the public space to the connections to the East River Esplanade.

During the public review of this project, some speakers suggested that East 39<sup>th</sup> Street and East 40<sup>th</sup> Street should be remapped through the 700/708 First Avenue property, largely in order to secure public access through the site, but also to reduce the amount of floor area available to ERRC. Remapping of the streets, typically a multi-year process, is not necessary to achieve these objectives. With respect to reducing the floor area, the Commission notes that the provisions of the General Large Scale Development special permit allow the Commission to make decisions that approve, reject, or adjust the scale and density of a proposed development, as it has done in this application with the reduction of the commercial building on 708 First Avenue. As for the concern that East 39<sup>th</sup> and 40<sup>th</sup> Street prolongations would be closed off, built upon, or otherwise inappropriately appropriated by the private property owner, the Commission notes that the prolongations of East 39<sup>th</sup> and 40<sup>th</sup> streets will be required as part of the General Large Scale Development special permit and under the associated restrictive declaration to provide unobstructed visual and pedestrian access through the site. The Commission also notes that mapping the streets would not be within scope of the application.

### **Special Permit for Public Parking Garage (C 070534 ZSM)**

The Commission believes that the special permit for a proposed parking garage, as modified

herein, is appropriate. The public garage would be located in the sub-cellar level of 700/708 First Avenue with entrances/exits located on East 41<sup>st</sup> Street and the FDR Drive Service Road. The public parking garage is proposed in conjunction with a 499-space accessory parking garage on the 700/708 First Avenue site, which also requires a special permit (discussed below), and a 110-space as-of-right accessory garage on the 685 First Avenue site. In order to minimize any potential for traffic congestion related to the public parking garage, the Commission has modified the maximum capacity from 651 to 400 spaces.

The Commission recognizes that visitors to the retail, office, or residential buildings are not allowed to use the accessory parking facility, and that a considerable number of visitors will seek public parking on site. The Commission notes that that seven existing parking facilities in the immediate vicinity have capacities in the 60 to 208 vehicle range, with occupancy levels between 75 and 100 percent during the weekday. There are very limited on-street parking opportunities in the area between East 34<sup>th</sup> and 42<sup>nd</sup> streets. A public parking facility at the ERRC will allow for greater flexibility in accommodating on-site parking demand. During periods when the public garage is not fully utilized by project demand, there would be opportunity to accommodate demand from nearby off-site users such as visitors to the United Nations and the NYU Medical Center.

The Commission notes that it has reduced the size of the commercial building and thus the project –generated demand for parking. The Commission has been concerned about the potential for traffic conflicts from the garage, in particular, along the FDR Drive Service Road. The FDR Drive Service Road is a three-lane, 33-foot wide road at the point where the south bound “slip ramp” off the FDR Drive meets the service road. The FDR Drive Service Road then quickly narrows to a two-lane, 23-foot wide road, where the ingress/egress curb cut to the parking garage is located. At that point, the right lane would serve as both a through lane and a right-turn lane. The Commission believes that a reduction of the parking would better assure adequate flow in and out of the public garage and on the FDR Drive Service Road, and is modifying the public parking garage to limit the maximum capacity to 400 spaces. The proposed 33 reservoir spaces would still be required.

The Commission believes that the garage, as modified, will not result in serious traffic congestion or inhibit surface traffic or pedestrian movement, or create a burden on local streets. The entrances/exits to the garage are located to minimize vehicular traffic in nearby residential areas. Drivers utilizing the garage are expected to arrive and depart by way of the FDR Drive Service Road or First Avenue which are not quiet, local streets in residential areas.

### **Special Permit for Accessory Parking Garage (C 070533 ZSM)**

The special permit would allow an attended accessory parking garage with a maximum capacity of 499 spaces. The subject garage would be located in the cellar level of 700/708 First Avenue. The accessory parking garage will be used by occupants, customers, visitors, and employees on the premise. Access to the garage would be from a two-way, 30-foot wide curb cut (including splays) on East 38th Street.

The Commission notes that there is a demand for the spaces from residents, customers, visitors and employees of the building. As noted above, parking facilities in the immediate vicinity have capacities in the 60 to 208 vehicle range, and are operating at occupancy levels between 75 to 100 percent range during the weekday and that the on-street parking is very limited.

The Commission believes the proposed garage would not result in serious traffic congestion or inhibit surface traffic or pedestrian movement. Drivers utilizing the garage are expected to arrive and depart by way of the FDR Drive Service Road or First Avenue which are not quiet, local streets in residential areas.

The parking facility would provide the required 25 reservoir spaces. The accessory parking garage would have a stop line on the pavement when exiting from the garage to help avoid conflicts between vehicles and pedestrians.



### **Commission Certification for Curb Cuts (N 070537 ZCM)**

The Commission believes that the applicant's request for curb cuts along the FDR Drive Service Road is appropriate. Normally, curb cuts are prohibited on wide streets. The applicant is proposing two curb cuts on the FDR Service Drive Road, one for loading and the other for the public parking garage. The Commission notes the FDR Drive Service Road is not a pedestrian oriented street, and that as reflected in its name, is indeed a service road. The Commission believes that the location of these curb cuts at this location will help minimize vehicular activity and potential conflict with pedestrians.

The Commission believes that the request for curb cuts along East 39<sup>th</sup> Street and East 41<sup>st</sup> Street are appropriate. Normally, a zoning lot may only have one curb cut on a narrow street. On East 39<sup>th</sup> Street, at the 685 First Avenue site, the Commission notes that the additional curb cut, which will allow for access to the loading area and for a through-block drive that provides ingress/egress for the 110-space accessory parking garage. The through block drive will enable cars to enter East 40<sup>th</sup> Street (eastbound) and exit at East 39<sup>th</sup> Street (westbound), thereby avoiding First Avenue. The Commission notes that the site plan will not result in conflict between pedestrian and vehicular circulation. Along East 41<sup>st</sup> Street, along the northern edge of the 700/708 First Avenue site two curb cuts are proposed. One would provide access to a loading area and the other would provide ingress/egress to the 651-space public parking garage. The Commission concurs with the applicant that creating two separate loading areas and two separate entrances for parking will serve to disperse traffic generated by the large site.

### **Commission Certification to modify Retail Continuity requirements (N 070538 ZCM)**

The applicant requested a certification that would allow 685 First Avenue to provide less than the 50 percent requirement. The Commission does not believe this request is appropriate. As stated in the discussion above related to Commission modifications to the 685 First Avenue site, retail frontage along First Avenue is an important component for a building on the west side of First Avenue, a major pedestrian thoroughfare.

On the other hand, the Commission believes that the request to provide no retail frontage on the FDR Drive Service Road is appropriate. Given character of the FDR Drive Service Road and that it does not currently, nor is expected, to have significant pedestrian traffic, the Commission believes that retail along the FDR Drive Service Road is not necessary.

### **Commission Certification for Streetscape Modifications (N 070536 ZCM)**

The Commission believes that the request to allow less than the required amount of transparency on East 38<sup>th</sup> Street, East 41<sup>st</sup> Street, and the FDR Service Road is appropriate. Normally, 50 percent of the surface area of a street wall of a predominantly residential building in a C5-2 district is required to be transparent between curb level and the height or 12 feet of the ceiling of the ground floor, whichever is higher. The Commission notes that much of the streetwall along East 38<sup>th</sup> and East 41<sup>st</sup> Street and the FDR Service Road will be the walls for a parking garage. The Commission believes that transparency into a parking garage does not serve to enliven the streetscape, and supports the applicant's proposal to clad portions of the wall with stone.

### **The South Site: 616 First Avenue**

#### **Zoning Map Amendment (C 070522 ZMM)**

The Commission believes that the application to rezone the block bounded by First Avenue, East 35<sup>th</sup> Street, East 36<sup>th</sup> Street, and the pier-head line in the East River, from M3-2 and M1-5 zoning districts to a C4-6 zoning district is appropriate.

As discussed earlier, manufacturing zoning districts in the Mid-Manhattan's East Side are obsolete and no longer reflect the actual or best uses for the area. The M districts were mapped when there was still a sizable presence of industrial uses in the area. The ERRC South Site was until recently occupied by Con Edison. The Con Ed facilities have been demolished as part of the utility provider's modernization and restructuring program.

The proposed C4-6 district would allow development that is consistent with land uses and densities of the neighborhood. A range of residential, commercial, and community facility uses are allowed in the C4-6. In a C4-6, residential and community facility uses are allowed 10 FAR, which is bonusable to 12 through inclusionary and/or public plaza bonuses. Commercial uses are limited to 3.4 FAR. In the related application for a zoning text amendment, discussed above, the applicant proposes to include 616 First Avenue in a new “Inclusionary Housing Designated Area” which would set the maximum as-of-right density at 9 FAR for residential use which would then be allowed to increase to 12 FAR through the provision of affordable housing pursuant to the Inclusionary Housing Program.

Buildings in a C4-6 district are required to have a street wall with a maximum height of 85 or nine stories, whichever is less. Towers are allowed for mixed use buildings provided that they not occupy more than 40 percent of the lot area. The Commission notes that although the proposed development requires height and setback waivers, the C4-6 provides a closer fit to the form of the proposed development than other zoning districts, and the requested waivers do not represent a sizable deviation from the requirements of the C4-6 zoning district.

### **Special Permit for Height and Setback and Lower-Income Housing Calculation**

#### **(C 070523(A) ZSM)**

The applicant requests a General Large Scale Development special permit pursuant to Section 74-74 with regard to (1) height and setback regulations, and (b) the calculation of required lower income housing. ERRC’s proposal for the South Site comprises two residential buildings, separated by an approximately 30,000-square foot public open space, and a low-rise community facility wing. The development represents 12 FAR which will be achieved by utilizing the inclusionary housing floor area bonus. The proposed residential buildings are sheer rising towers that do not comply with the height and setback regulations of the C4-6 zoning district. The building fronting First Avenue is set back 5 feet from First Avenue streetline, and 20 feet from East 35<sup>th</sup> and 36<sup>th</sup> streets. The building on the eastern end of the block is set back only 1.75 feet from the FDR Drive Service Road, and 20 feet from East 35<sup>th</sup> and 36<sup>th</sup> streets.

The Commission recognizes that the compliance with the applicable height and setback regulations of the C4-6 would result in inferior site plans compared to the proposed plan. Development of the property with a single building would result in an overly bulky building, while the development of multiple buildings, even if they utilize the tower regulations, would preclude the development of the large open area.

The Commission believes that the public open space is an essential feature of the site plan. The public open area will provide a large park-like setting for enjoyment by the public, an especially useful amenity in a community district that has the lowest open space per person ratio in the borough. Similar to the open space on the North Site, the South Site public open space was originally proposed as a bonusable Public Plaza. While open space is no longer a bonusable Public Plaza, the public open space is a primary reason for the Commission's determination of a good site plan.

#### *Community Facility*

The proposed development contains a community facility building of approximately 113,000 square feet. The Commission was very pleased to hear from the developer at the time of the public hearing that it had been in active discussions with the City of New York School Construction Authority to provide a 630-seat public school for kindergarten through Grade 8.

During the review process, the Commission raised concerns about the timing of the delivery of the public school, which under the original schedule would have been in 2014. The Commission is pleased that the applicant and the School Construction Authority have entered into a Letter of Intent pursuant to which the anticipated schedule for completion of the school will allow for a school opening by September 2012, and that the restrictive declaration includes provisions which will help ensure that this schedule is met.

#### *Lower-Income Housing Calculation*

Under the Inclusionary Housing provisions of Section 23-942, because the community facility is located on the same zoning lots as the proposed residential development, this community facility

floor area above ground would have to be included in the calculation of the required lower-income housing pursuant to inclusionary housing rules in Section 23-942.

The Commission supports the mix of uses on the site. The Commission believes that the public school is a major public benefit to the neighborhood and that its floor area should be exempted from the calculation for lower-income housing.

### **Special Permit for Public Parking Garage (C 070525 ZSM)**

The Commission notes that the project site would contain an attended 294-space public parking garage located in the cellar level and sub-cellar level within 616 First Avenue. Access to the garage would be from a two-way, 23-foot 6-inch wide curb cut (including splays) on East 35<sup>th</sup> Street, approximately 280 feet east of First Avenue. It would support the essential functions and be compatible with uses in the general area which include a mix of residential, commercial and community facility uses.

The Commission believes the proposed garage would not result in serious traffic congestion or inhibit surface traffic or pedestrian movement. The street system in the area provides no less than two moving lanes traveling west along East 35<sup>th</sup> Street and two moving lanes traveling north on First Avenue and south on Second Avenue. Drivers utilizing the garage are expected to arrive and depart by way of the FDR Drive Service Road and First Avenue which are not local streets in residential areas. Drivers would also use the regional network of the Queensborough Bridge, the FDR Drive, the Queens Midtown Tunnel and notably East 34<sup>th</sup> and 42<sup>nd</sup> streets to arrive and depart from the proposed development. The parking facility would provide the required 15 reservoir spaces at the cellar level entrance. The public parking garage would have a stop line on the pavement to help avoid conflicts between vehicles and pedestrians.

### **Commission Certification for Streetscape Modifications (N 070527 ZCM)**

The Commission believes that the request to allow the streetwall of Building 616-2 fronting the FDR Drive Service Road to have less than the required amount of transparency is appropriate. Normally, 50 percent of the surface area of a street wall of a predominantly residential building

in a C4-6 district is required to be transparent between curb level and the height or 12 feet of the ceiling of the ground floor, whichever is higher. Additionally, any non-transparent portion of the street wall that is longer than 50 feet must be covered in ivy, similar planting, or artwork. Given that the FDR Drive Service Road does not currently and is not expected to have significant pedestrian traffic, the Commission believes this type of treatment of the streetwall facing the FDR Drive Service Road is not necessary.

### **Commission's Certification for Retail Continuity (N 070528 ZCM)**

The Commission believes that the request for the 616-2 building to provide less than the required retail frontage along the FDR Drive Service Road is appropriate. Normally, a front wall of at least 50 feet in length fronting on a wide street is required to have a minimum of 50 percent of its length occupied by retail. The Commission believes that the retail frontage on the FDR Drive Service Road is unnecessary given that the street has little pedestrian activity, and given that ground floor retail in surplus of the amount required has been provided along First Avenue.

### **Conclusion**

The Commission's review of ERRC's applications, in conjunction with the review of the Community Board 6 197-a Plan application, has been a deliberative and constructive process. A number of significant improvements have been made to the ERRC plan since certification. The ERRC proposal will result thousands of new apartments, including several hundred affordable units, a new office building, ground floor retail, a K-8 public school, large landscaped public spaces, and views through the site and across the East River. The Commission is confident that these applications, as modified by the applicant and by the Commission herein, result in two large scale mixed use developments that will contribute positively to the livability and built character of the neighborhood.

## FINDINGS

The Commission hereby makes the following findings pursuant to Section 74-743:

- (1) the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas 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) where a zoning lot of a general large-scale development does not occupy a frontage on a mapped street, appropriate access to a mapped street is provided;
- (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) when the Commission has determined that the general large-scale development requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable;

- (6) Not applicable;
- (7) Where the Commission permits the exclusion of lots area or floor area in accordance with the provisions of paragraph (a)(6) of this Section, such modification will facilitate a desirable mix of uses in the general large-scale development and plan consistent with the objectives of the Inclusionary Housing program.
- (8) a declaration with regard to ownership requirements in paragraph (b) of the general large-scale development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Supplemental Environmental Impact Statement (FSEIS), for which a Notice of Completion was issued on January 18, 2008, with respect to this application (CEQR No. 06DCP039M), together with the Technical Memorandum, dated January 28, 2008, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FSEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to a Restrictive Declaration, dated January 28 2008, those mitigative measures that were identified as practicable

This report of the City Planning Commission, together with the FSEIS and the Technical



Memorandum, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

**RESOLVED**, the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by 685,700,708 First Realty Company, LLC, pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, for the grant of a special permit pursuant to the following Sections of the Zoning Resolution:

1. Section 74-743(a)(1) – to allow the distribution of the total allowable floor area within the general large-scale development without regard for the zoning lot lines or district boundaries;
2. Section 74-743(a)(2) – to modify the height and setback requirements of Sections 23-652, 23-632, 23-633, and 33-432; and
3. Section 74-743(a)(5)(i) - to modify the requirements of Section 23-942 to allow a portion of the lot area that contains a wholly commercial building to be excluded from the calculation of floor area for any other buildings on the remainder of the zoning lot;

in connection with a proposed mixed use development on property located at 685, 700, and 708 First Avenue (Block 945, Lots 23 and 33, Block 970, Lots 1 and 2), in a C5-2 District, within a General Large-Scale Development,, Community District 6, Borough of Manhattan.

The property that is the subject of this application (C 070531(A) 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 Skidmore, Owing & Merrill LLP, Richard Meier & Partners Architects, and Field Operations Landscape Planning, filed with this application and incorporated in this resolution:

<u>Drawing</u>	<u>Title</u>	<u>Last Date Revised</u>
		January 28, 2008 for all drawings
T -1	Title Sheet	
Z -3.0	General Large Scale Plan and Zoning Actions	
Z -3.1	Site Plan and Zoning Calculations	
Z -4	Average Curb Level Diagram and Calculations	
Z -5	Height and Setback Diagrams – 685 First Avenue	
Z -6	Height and Setback Diagrams – 685 First Avenue/Waterside 1	
Z -7	Height and Setback Diagrams – Waterside 1 and 2	
Z -8	Height and Setback Diagrams – 708 First Avenue	
Z -9	Height and Setback Diagrams – Waterside 1, 2 and 708 First Avenue	
Z -10	Height and Setback Diagrams – Waterside 1, 2 and 708 First Avenue	
Z -11	Height and Setback Diagrams – Waterside 1 and 708 First Avenue	
Z -14	Cellar 1 Plan – 708 First Avenue and Waterside (Accessory Parking)	
Z -16	Cellar 1 Plan – 708 First Avenue and Waterside (Public Parking)	
Z -17	Cellar 2 Plan – 708 First Avenue and Waterside (Public Parking)	
Z -26	Enlarged Ground Floor Elevations of Deck at FDR Service Drive	
Z -27	Enlarged Ground Floor Elevations of 708-1, WS1-1 and WS2-1	
Z -28	Enlarged Ground Floor Elevations of 708-1 and Deck	
Z -29	Enlarged Ground Floor Elevations of WS1-1, Deck, WS1-2 and WS 2-1	
Z -30	Enlarged Ground Floor Elevations of WS2-1 and WS1-2	
Z -31	Enlarged Ground Floor Elevations of WS2-2 Pavilion	

Z L-1	PUBLIC PLAZA DESIGNATIONS: WS708
Z L-2	PUBLIC PLAZA STREET FRONTAGE DIAGRAMS: WS708
Z L-3	PUBLIC PLAZA SHADOW DIAGRAM
Z L-4.0	PUBLIC PLAZA COMPLIANCE NOTES
Z L-4.1	PUBLIC PLAZA COMPLIANCE NOTES
Z L-4.2	PUBLIC PLAZA COMPLIANCE NOTES
Z L-5	PUBLIC PLAZA PLAN: WS/708
Z L-6	PUBLIC PLAZA SEATING PLAN: WS/708
Z L-7	PUBLIC PLAZA FURNISHING PLAN: WS/708
Z L-8	PUBLIC PLAZA PLANTING PLAN: WS/708
Z L-9	PUBLIC PLAZA OBSTRUCTIONS: SEATING WS/708
Z L-10	PUBLIC PLAZA OBSTRUCTIONS: FURNISHING WS/708
Z L-11	PUBLIC PLAZA OBSTRUCTIONS: PLANTING WS/708
Z L-12	PUBLIC PLAZA GRADING PLAN: WS/708
Z L-13	PUBLIC PLAZA SURFACE MATERIAL PLAN: WS/708
Z L-14	PUBLIC PLAZA PAVING PLAN: WS/708
Z L-15	PUBLIC PLAZA LIGHTING PLAN: WS/708
Z L-16	PUBLIC PLAZA LIGHTING PHOTOMETRICS: WS/708
Z L-17.0	INDIVIDUAL LIGHTING PHOTOMETRICS / FIXTURES AND DETAILS
Z L-18.0	PUBLIC PLAZA LANDSCAPE DETAILS: SEATING
Z L-18.1	PUBLIC PLAZA LANDSCAPE DETAILS: SEATING
Z L-18.2	PUBLIC PLAZA LANDSCAPE DETAILS: SEATING
Z L-18.3	PUBLIC PLAZA LANDSCAPE DETAILS: SEATING CONFIGURATIONS
Z L-18.4	PUBLIC PLAZA LANDSCAPE DETAILS: FURNISHING
Z L-18.5	PUBLIC PLAZA LANDSCAPE DETAILS: FURNISHING
Z L-18.6	PUBLIC PLAZA LANDSCAPE DETAILS: PAVING
Z L-18.7	PUBLIC PLAZA LANDSCAPE DETAILS: PLANTING

1. 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.
2. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
3. Development pursuant to this resolution shall be allowed only after the restrictive declaration dated January 28, 2008, executed by 616 First Realty Company LLC, 685 First Realty Company LLC, 700 First Realty Company LLC and 708 First Realty Company LLC, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York..
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 (C 070531(A) ZSM), duly adopted by the City Planning Commission on January 28, 2008 (Calendar No. 10), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, AICP, Chair**

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

**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,**

**BETTY Y. CHEN, MARIA DEL TORO, RICHARD W. EADDY,**

**NATHAN LEVENTHAL, JOHN MEROLO, Commissioners, Voting Yes**

**ANGELA R. CAVALUZZI, R.A., KAREN A. PHILLIPS, Commissioners, Voting No**

**SHIRLEY A. McRAE, Commissioner, Abstaining**