



## **CITY PLANNING COMMISSION**

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January 21, 2009/Calendar No. 14

C 090072 PPM

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**IN THE MATTER OF** an application submitted by the Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter, for disposition to 303 West 46th Street, LLC of a negative easement interest on city-owned property located at 304 West 47th Street (Block 1037, Lot 37), Community District 4, Borough of Manhattan.

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The application by the Department of Citywide Administrative Services for the disposition of a negative easement interest and the removal of a community facility use only restriction from the unused development rights on city-owned property was filed on August 12, 2008. The application was revised on December 12, 2008 to eliminate the removal of a community facility use only restriction action. The disposition of a negative easement interest on city-owned property would facilitate the sale of unused development rights from the city-owned property to an adjacent property proposed to be developed with three mixed-use buildings.

### **BACKGROUND**

The city-owned zoning lot is located in a C6-4 zoning district on the south side of West 47<sup>th</sup> Street, 100 feet west of 8<sup>th</sup> Avenue, and is within the Perimeter Area of the Special Clinton District. An existing four-story building sits on the lot and currently houses the Puerto Rican Traveling Theater Company theater and offices, and was previously a fire house. The building was designated a New York City Landmark by the Landmarks Preservation Commission on November 18, 2008 (Designation List 404, LP-2299).

The negative easement would restrict future construction on the City's property of any structure above the highest elevation of the existing 4-story building. There are currently approximately 14,250 square feet of unused development rights on the city-owned property that would be transferred to an adjacent landowner. The subject disposition application (C 090072 PPM) would facilitate the sale of those development rights.

The city-owned lots would be merged with an adjacent assemblage of lots for a proposed 230,000 square foot mixed-use hotel, residential and commercial building on Block 1037, Lots 26, 28, 33 and 34. This site fronts the west side of Eighth Avenue between West 46<sup>th</sup> Street and West 47<sup>th</sup> Street. The negative easement would provide light and air to the building developed by the adjacent landowner.

On April 17, 2002 (Cal. No, 17), the City Planning Commission approved an application (C 020108 PPM) for the disposition of the city-owned building to the New York City Economic Development Corporation (EDC), which facilitated the long-term lease with the Puerto Rican Traveling Theater Company. The disposition restricted the use of the property to community facility use. Since it was determined that the restriction does not apply to the development rights transfer, the original application was revised on December 12, 2008.

#### **ENVIRONMENTAL REVIEW**

This application (C 090072 PPM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 08DME002M. The lead agency is the Office of the Deputy Mayor for Economic Development.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on September 4, 2008.

#### **UNIFORM LAND USE REVIEW**

This application (C 090072 PPM) was certified as complete by the Department of City Planning on September 8, 2008, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

## Community Board Public Hearing

Community Board 4 held a public hearing on this application on November 5, 2008, and on that date, by a vote of 39 to 1 with 0 abstentions, adopted a resolution recommending conditional disapproval of the application unless the following conditions can be met:

1. The developer has indicated that at this time, one tenant remains in occupancy in the building within the Site at 301 West 46<sup>th</sup> Street. HPD and DCP must verify, prior to taking any action to facilitate the Project, that tenancy and relocation issues have been resolved, as required by ZR Section 96-24.
2. The building at 301 West 46<sup>th</sup> Street has a documented history of severe tenant harassment, and a certificate of no harassment was formally denied by HPD on May 21, 2007. Subsequently, a stop-work order was issued by the Department of Buildings on March 4, 2008, and photos of conditions inside the building on March 6, 2008 appear to show demolition activities in this occupied building. HPD and DCP must verify, prior to taking any action to facilitate the Project, that no additional tenant harassment has occurred as a result of the Application.
3. It is by no means clear that the project proposed by Tribeach Holdings will proceed. The land use proposal is convoluted, the credit markets have collapsed and the demand for new hotels has evaporated. Market reports suggest to us that Tribeach is now simply assembling the Site and all necessary approvals for sale to a new developer. The City should not participate in enhancing the value of a development site for future sale. The Development Rights should be considered for transfer only when the many problems associated with the project have been resolved, and a concrete development proposal is ready to proceed.
4. The Project's inclusionary housing must comply with CB4's Inclusionary Housing Policy. In particular, the inclusionary housing must be open to all income-qualified households. It must not be restricted by age or special need.
5. The restrictive covenant currently requires that the Development Rights be used for a community facility use; rather than strip the community of this valuable resource, this covenant must run with the disposition of the Development Rights, for the term remaining on the covenant.
6. We understand that the building at 304 West 47<sup>th</sup> Street continues to be in need of basic capital improvements. The proceeds of the sale of the Development Rights must be used to fund those repairs.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on December 10, 2008, approving the application with the following conditions:

1. The City should heighten the lower horizontal plane of the negative easement while retaining a corresponding amount of air rights to allow a modest future expansion of the Puerto Rican Traveling Theater building;
2. The City should commit funding for improvements to the former firehouse to protect its historic features and ensure its long-term usability as an accessible community facility; and
3. The City should place a restrictive declaration on Lot 37 restricting use of the property to community facility uses that serve local needs.

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

On December 3, 2008, (Calendar No. 5) the City Planning Commission scheduled, December 17, 2008, for a public hearing on this application (C 090072 PPM). The hearing was duly held on December 18, 2008 (Calendar No. 27). There were four speakers in favor of the application and one speaker in opposition.

A representative from the Economic Development Corporation explained the action before the Commission and the reason for revising the original application. He described the terms of the lease between the City and the tenant of the city-owned building, the condition of the city-owned building and improvements that have been made to the city-owned building.

A representative of the developer that would acquire the development rights from the city-owned zoning lot responded to concerns raised by the community board and the borough president regarding the denial of the Certificate of No Harassment application issued by the Department of Housing Preservation and Development (HPD) for the building at 301 West 46<sup>th</sup> Street, the cure requirement the development must provide, and the existing tenancies within the building at 301 West 46<sup>th</sup> Street. He explained that HPD denied the application for a Certificate of No Harassment because of an illegal eviction that had occurred in 1984, when the building was under different ownership. The representative detailed how the developer must cure the

harassment that had occurred on the property by providing 20% of the floor area in the Lot 30 development as affordable housing. He further explained that HPD must approve the cure requirement plan before the developer can obtain building permits, and that the developer would like to construct the entire project at one time, pending City approvals.

The architect of the proposed development also appeared in favor.

The Director of Land Use for the Manhattan Borough President reiterated the borough president's recommendation.

The Chair of the Clinton/Hell's Kitchen Land Use Committee of Community Board 4 reiterated the board's recommendation on the application, particularly their concern that the affordable housing that is proposed to be developed on the site will be available only to a special needs population, instead of the general population. She also stated the board's desire for the city-owned building to be used only for non-profit theater use, as the current tenant sub-leases space to commercial theatrical productions.

## **CONSIDERATION**

The Commission believes that the application by the Department of Citywide Administrative Services, as revised, for the disposition of a negative easement interest on city-owned property at 304 West 47th Street (Block 1037, Lot 37), Manhattan, is appropriate.

The Commission understands that the negative easement would restrict any future construction on the City's property of any structure above that certain horizontal plane coincident with the boundaries of the City's property and located above the highest elevation of the building currently existing on the City's property. The negative easement would provide light and air to an adjacent property owner above the horizontal plane.

The Commission understands that the disposition of the negative easement would facilitate the transfer of approximately 14,250 square feet to an adjacent property owner, for which the City would be compensated.

Regarding the recommendation of the community board, the Commission notes that the harassment and cure requirements are not related to the subject application. However, the Commission also notes that, as described in a letter to the Commission from the developer's attorney dated December 18, 2008, the developer is working with HPD to complete a cure requirement plan for the building with a history of tenant harassment, and that the developer is currently in negotiations with the existing tenants in the building at 301 West 46<sup>th</sup> Street for their relocation. The Commission further notes that the Inclusionary Housing units in the proposed development can be restricted to those in special needs populations.

Regarding the recommendations of both the community board and the borough president, the Commission understands that, as described in a letter to the Commission from EDC dated December 22, 2008, the proceeds from the transfer of development rights from the city-owned property to the adjacent property owner cannot directly fund improvements to the city-owned building. The Commission also understands that the Department of Cultural Affairs provides funds for capital improvements to the property.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the application of the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the disposition of a negative easement interest on city-owned property, located at 304 West 47<sup>th</sup> Street (Block 1037, Lot 37), Community District 4, Borough of Manhattan, is approved.

The above resolution (C 090072 PPM), duly adopted by the City Planning Commission on January 21, 2009, (Calendar No. 14), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**  
**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,**  
**ANGELA R. CAVALUZZI, AIA, ALFRED C. CERULLO, III, BETTY Y. CHEN,**  
**MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,**  
**SHIRLEY A. McRAE, JOHN MEROLO, Commissioners**