



## CITY PLANNING COMMISSION

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December 22, 2004 | Calendar No. 17

C 050053 ZSM

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**IN THE MATTER OF** an application submitted by the Department of Housing Preservation and Development and the Dermot Company pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to:

- 1) Section 74-743(a)(1), to allow the distribution of floor area and dwelling units without regard for zoning lot lines;
- 2) Section 74-743(a)(2), to allow the location of buildings without regard for the applicable yard, distance between buildings and height and setback regulations; and
- 3) Section 96-40 and Section 74-743, to allow the modification of open space requirements of Section 23-14 (Minimum Required Open Space, Open Space Ratio, Maximum Lot Coverage and Maximum Floor Area Ratio);

to facilitate the development of two mixed buildings (Block 1080, part of Lot 25, Block 1081, Lot 39 and part of Lot 29), within a general large-scale development, generally bounded by West 53rd Street, Tenth Avenue, West 51st Street and a line 275 feet westerly of Tenth Avenue, in a C6-3 District, within the Special Clinton District, in the Clinton Urban Renewal Area, Community District 4, Borough of Manhattan.

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The application was filed by the Department of Housing Preservation and Development (HPD) and The Dermot Company on August 9, 2004, for a special permit pursuant to Section 74-743 of the Zoning Resolution to allow for the distribution of floor area and modification of height, setback, minimum distance between buildings, open space, and yard regulations in a proposed general large-scale development on property generally bounded by West 53<sup>rd</sup> Street, Tenth Avenue, West 51<sup>st</sup> Street, and a line located approximately 275 feet west of Tenth Avenue in the Special Clinton District Excluded Area, within the Clinton Urban Renewal Area.

## RELATED ACTIONS

In addition to the special permit which is the subject of this report (C 050053 ZSM), implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

**C 050050 ZMM:** a zoning map amendment to rezone M1-5 and R8 portions of the project site to C6-3 to facilitate the construction of a mixed-use development;

**N 050051 ZRM:** zoning text amendment to allow for modification of open space requirements within general large-scale developments in the Special Clinton District;

**C 050052 ZSM:** a special permit, pursuant to Section 74-681, for development within or over a railroad right-of-way or yard;

**C 050054 ZSM:** a special permit, pursuant to Section 74-744(b), to allow for location of residential and commercial uses without regard to the requirements of Section 32-42;

**C 050055 HAM:** UDAAP designation and project approval and disposition of City-owned property.

## BACKGROUND

The 69,990 square foot project site occupies portions of two blocks (1080 and 1081) bounded by West 51<sup>st</sup> Street, Tenth Avenue, West 53<sup>rd</sup> Street, and Eleventh Avenue within the Special Clinton District Excluded Area and also within the Clinton Urban Renewal Area (CURA; Sites 8A & 9C). The south parcel is a City-owned, approximately 22,900 square foot midblock parcel located approximately 125-250 feet west of Tenth Avenue between West 51<sup>st</sup> and West 52<sup>nd</sup> Streets. The north parcel is approximately 47,061 square feet in area, is also City-owned and is located on the midblock between West 52<sup>nd</sup> and West 53<sup>rd</sup> Streets and includes the West 53<sup>rd</sup> Street frontage extending east to Tenth Avenue. An approximately 4,400 square foot City-owned community

garden adjacent to the north parcel is proposed to be included in the proposed general large-scale development.

The 53<sup>rd</sup> Street frontage of the north parcel currently contains a 3-story vacant building, two vacant 1-story buildings (including an unoccupied gas station), and two occupied buildings -- one 5-story and a 1-story -- occupied by the INTAR Theater. The West 52<sup>nd</sup> Street frontage of the north parcel contains one 1-story building occupied by a lumber wholesaler and the city-owned Oasis Community Garden. The midblock portion of the north parcel and the entirety of the south parcel are occupied by the below-grade Amtrak rail cut. The rail line itself is located approximately 30 feet below grade on the project site and is open to the sky and in active use.

The portions of both the north and south parcels located to the east of the Amtrak right-of-way are located in a C6-3 district, which allows 7.52 FAR for residential development, 6.0 FAR for commercial development, and 10.0 FAR for community facility or mixed development. The western portion of the south parcel is located within an R-8 district, which allows for 6.02 FAR for residential development. The western portion of the north parcel is located within an M1-5 district, which permits 5.0 FAR for high-performance light industrial, manufacturing, and commercial uses.

A Request for Proposals for development of the project site was issued by HPD in 2001. The RFP called for the provision of on-site amenities including retail space, cultural facilities, and publicly-accessible open spaces. In 2003, HPD announced the selection of The Dermot Company as

developers for the Clinton Green project.

## **AREA DESCRIPTION**

The area immediately surrounding the project site contains a mix of residential, commercial, industrial, and transportation uses. Clinton Manor, a residential development consisting of two, 8-story buildings, is located directly to the west of the south parcel. To the west of the north parcel are located one, 7-story and one, 4-story commercial building. Twenty-six units of recently renovated subsidized housing are located in four walkup buildings directly adjacent to, and east of, the north parcel. To the north of the project site, across West 53<sup>rd</sup> Street, is a 25-story Verizon utility facility and an adjacent accessory parking lot for storage of Verizon maintenance vehicles. Directly to the south of the project site, across West 51<sup>st</sup> Street, are a 38-story residential development and Park West High School. Across Tenth Avenue, to the east of the project site, are 5 and 6-story residential walkup buildings with ground floor retail use and Public School 111 which includes a paved playground fronting on Tenth Avenue.

The larger area surrounding the project site is characterized by a similar mix of uses. Tenth Avenue generally divides the residential portion of Clinton, located east of Tenth Avenue, from the light industrial, manufacturing, and auto-related uses located to the west along and west of Eleventh Avenue. The blocks between Tenth and Eleventh Avenues are typically a transitional zone between these residential and manufacturing areas and contain a wide variety of uses. While Eleventh Avenue is predominantly manufacturing in nature, some residential uses do exist on Eleventh

Avenue within the Clinton Urban Renewal Area and additional residential projects are under construction north of West 54<sup>th</sup> Street on Eleventh Avenue. DeWitt Clinton Park, a 5.8 acre city park, is located west of Eleventh Avenue between West 52<sup>nd</sup> and West 54<sup>th</sup> Streets. The City of New York Passenger Ship Terminal and Hudson River Park are to the west of the project site, across Route 9A.

## **PROJECT DESCRIPTION**

The developer proposes to demolish all existing buildings on the project site and platform over the Amtrak rail cut to allow for the construction of a multi-block, mixed-use development. Proposed development on the south parcel would consist of a 24-story, approximately 324-foot residential building with ground floor and mezzanine retail and potential health-club use. Proposed development on the north parcel would include one 24-story, approximately 325-foot residential tower located on the midblock and a lower-scale (approximately 111-foot) structure on the West 53<sup>rd</sup> Street and Tenth Avenue frontages containing four theaters for two not-for-profit organizations and retail use with condominium townhouses above. The proposed development would contain approximately 526,000 square feet of residential floor area containing up to 650 residential units (both market rate and for tenants at 50 percent of area median income), 23,000 square feet of commercial floor area, and 60,000 zoning square feet of floor area for not-for-profit use.

The developer also proposes to create publicly-accessible open space areas on both parcels of the proposed development. The south parcel would contain a 7,000 square foot, throughblock open

space to the east of the proposed 24-story residential tower. This linear open space would contain walkways, plantings, seating, and a children's play area. The north parcel would contain a 6,500 square foot open space on the midblock frontage of West 52<sup>nd</sup> Street, adjacent to and integrated with the adjacent Oasis Community Garden. The northern open space would contain a raised gravel seating area with movable and fixed seating, walkways, and plantings. These two open spaces would be aligned in north-south orientation and would create a throughblock linear open space. A covered, midblock arcade would connect the north parcel open space with Tenth Avenue and would contain secondary entrances to the proposed theaters and retail space. An additional 6,612 square feet of recreation space for tenants of the residential units would be provided on rooftop spaces of the new development.

The two parcels are located within the Clinton Urban Renewal Area (sites 8A and 9C) and the proposed development would be consistent with the land use designation (residential with accessory commercial) of the urban renewal area plan.

The proposed development also includes an 83-space, as-of-right accessory parking garage to be located on the north parcel below grade. The garage would be accessed via West 53<sup>rd</sup> Streets and would comply with parking regulations for the C6-3 zoning district.

## **REQUIRED ACTIONS**

### **Zoning map amendment (C050050 ZMM)**

The applicant seeks a zoning map amendment to rezone a portion of the project site located within and west of the Amtrak right-of-way from M1-5 and R8 districts to a C6-3 district. M1-5 districts do not permit residential uses and R8 districts do not permit commercial uses. The C6-3 district would permit a maximum residential FAR of 7.52, a maximum commercial FAR of 6.0, and a maximum community facility FAR of 10.0. The proposed rezoning would bring the entire project site into a single, C6-3 zoning district.

### **Zoning text amendment (N 050051 ZRM)**

The applicant also seeks a zoning text amendment to facilitate the development of the project. The amendment would create a new Section 96-40 (MODIFICATION OF GENERAL LARGE-SCALE DEVELOPMENT PROVISIONS) within Chapter 6 (Special Clinton District) of Article IX of the Zoning Resolution. The proposed amendment would permit modification of open space requirements specified in Section 23-14 (Minimum Required Open Space, Open Space Ratio, Maximum Lot Coverage and Maximum Floor Area Ratio) for parcels located within the Clinton Urban Renewal Area that are part of a general large-scale development and are located on more than one block. Such sites would be eligible for modification of open space requirements pursuant to Section 74-743 (General Large-scale Development). Such modifications would be permitted provided that the City Planning Commission finds that the amount of open space being provided would be sufficient to meet the needs of the residents of the general large-scale development and that the modification results in improved site planning. The proposed action that is the subject of

this report (C 050053 ZSM) includes a modification of open space requirements pursuant to the proposed Section 96-40.

### **Special permit for bulk modifications (C 050053 ZSM)**

The applicants seek a special permit, pursuant to Section 74-743 (General Large-scale Development) to modify height, setback, minimum distance between buildings, open space, and yard regulations as well as to permit the transfer of floor area without regard to zoning lot lines.

Building envelopes, as proposed, would locate the tallest portions of the development on the western portions of the site and lower portions nearer to Tenth Avenue. This proposed building massing allows the Tenth Avenue streetscape to remain low and consistent with the general four to five-story street walls found throughout Clinton while locating the majority of the project density on the western portion of the site. As such, the applicant is requesting a modification of the requirements for C6-3 districts governing maximum height of street walls (85 feet or nine stories, whichever is less), required setbacks (15 feet for wide streets and 20 feet for narrow streets), and maximum height before setback (governed by a sky exposure plane of 5.6:1 on narrow streets and 2.7:1 on wide streets), as specified in Sections 23-632, 22-432, and 35-62. The proposed envelopes generally consist of a tower-on-a-base forms, with an additional lower envelope on the north parcel extending along the West 53<sup>rd</sup> Street frontage to Tenth Avenue. The envelopes on both the north and south parcels would penetrate the required sky exposure planes and would exceed the maximum allowable street wall height in several locations.



The developer also proposes to construct four theater spaces for two not-for-profit theater groups. These theater spaces would be located along the West 53<sup>rd</sup> Street frontage and would be located between 30 and 41 feet from the residential tower on the north parcel, necessitating modification in the required 50-foot minimum distance between buildings as specified in Sections 23-711 and 23-82.

The developer also proposes to create a unified, publicly-accessible open space on both the north and south parcels. The open space would serve the needs of the residents of the proposed development and would also be a valuable open space resource for the Clinton neighborhood. To facilitate the creation of a contiguous, public open space, the two residential towers would be oriented in a north-south configuration. Such an orientation would prevent compliance with the requirements for rear yards and rear yard setbacks. The provisions of the Sections 23-47, 23-533, 23-663(a), 33-26, 33-281, 33-303, and 35-53 require rear yards on interior lots of 30 feet for residential portions of buildings and 20 feet for commercial or community facility portions of buildings. For interior through lots, the provisions require rear yard equivalents of 60 feet or 30 foot setbacks along street frontages or side lot lines. Additionally, 20-foot building setbacks from the rear yard lines are required. As such, modification of the requirements for rear yards, rear yard equivalents, and rear yard setbacks is required.

Additionally, the developer seeks to a modification of open space requirements, pursuant to the

new Section 96-40 (MODIFICATION OF GENERAL LARGE-SCALE DEVELOPMENT PROVISIONS), as proposed in a related action (N 050051 ZRM). The provisions of Sections 23-142, 35-33, and 35-24 require the provision of 38,948 square feet (7.40 percent of lot area). The applicant proposes to create 28,314 square feet of open space, including 13,939 square feet of at-grade open space and 6,612 square feet of rooftop open space on the north parcel and 7,763 square feet of at-grade open space on the south parcel. The open space provided, while of a reduced area, would be arranged in a contiguous fashion, allowing for the creation of a throughblock walkway and the provision of a large, open seating area with moveable tables and chairs on West 52<sup>nd</sup> Street. The requested modifications to open space requirements would ensure that the open space has a contiguous, unified presence and would connect the two development sites with the associated retail and theater uses in a way that would not otherwise be possible without the requested modifications.

The applicant also seeks the transfer of floor area across zoning lot lines to allow for the distribution of floor area and dwelling units from the larger north parcel to the south parcel. The applicant proposes to transfer approximately 28,500 square feet and up to 71 dwelling units to the south parcel. This distribution would allow for a more desirable balance between the north and south towers and would facilitate the construction of the lower-scale Tenth Avenue frontage on the north parcel.

**Special permit for development over a railroad right-of-way (C 050052 ZSM)**

The project also requires a special permit (C 050052 ZSM), pursuant to 74-681, to allow portions of the railroad right-of-way to be covered by a platform and to allow the platform to be included in the lot area for the development. Approximately 14,000 square feet of the north parcel and 10,000 square feet of the south parcel are located above Amtrak's Empire Line. Constructing the proposed development will require platforming and development over the rail cut on both parcels, thereby requiring the aforementioned special permit.

**Special permit for location of residential and commercial uses (C 050054 ZSM)**

The project also requires a special permit, pursuant to Section 74-744(b) to allow for location of residential and commercial uses without regard to the requirements of Section 32-42 (Location within buildings). The special permit would allow for the location of commercial uses, including a possible health club facility, on the mezzanine level of the south tower while residential use occupies the remainder of the floor.

**Disposition of City-owned property and UDAAP designation (C 050055 HAM)**

The Department of Housing Preservation and Development also proposes the designation of the project site as an Urban Development Action Area and Project and disposition of city property. The project site is city-owned and is located within the Clinton Urban Renewal Area (Sites 8A & 9C). HPD intends to dispose of the property, along with development rights from the adjacent Oasis Community Garden (Block 1081, part of Lot 29).

## **ENVIRONMENTAL REVIEW**

This application (C 050053 ZSM), in conjunction with related applications (C 050050 ZMM, N 050051 ZRM, C 050052 ZSM, C 050054 ZSM, C 050055 HAM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 04HPD011M. The lead is the Department of Housing Preservation and Development.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on August 4, 2004

## **UNIFORM LAND USE REVIEW**

This application (C 050053 ZSM), in conjunction with related applications (C 050050 ZMM, N 050051 ZRM, C 050052 ZSM, C 050054 ZSM, C 050055 HAM), was certified as complete by the Department of City Planning on August 23, 2004, and was duly referred to Community Board 4 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules, along with the application for the zoning text amendment (N 050051 ZRM) which was referred for review and comment.

## **Community Board Public Hearing**

Community Board 4 held a public hearing on this application on October 6, 2004, and on that date, by a vote of 29 to 0 with 1 abstention, adopted a resolution recommending approval of the application subject to the following conditions:

1. That binding agreements are reached to ensure that the theaters are built-out in a way that is financially sustainable to all concerned, and that the theaters will be permanently available for use as not-for-profit theaters.
2. That the landscaping plan for the central open space is redesigned to be more open, inviting and usable to the community.
3. That the issues concerning the Oasis Community Garden are resolved.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation approving the application on October 26, 2004, subject to the following conditions:

1. That binding agreements are reached to ensure that the theaters are built-out in a way that is financially sustainable to all concerned, and that the theaters will be permanently available for use as not-for-profit theaters.
2. That the landscaping plan for the central open space is redesigned to be more open, inviting and usable to the community.
3. That the issues concerning the Oasis Community Garden are resolved.

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

On November 3, 2004 (Calendar No. 7), the City Planning Commission scheduled November 17, 2004, for a public hearing on this application (C 050053 ZSM), in conjunction with related applications (C 050050 ZMM, N 050051 ZRM, C 050052 ZSM, C 050054 ZSM, C 050055 HAM). The hearing was duly held on November 17, 2004 (Calendar No. 13). There were four speakers in favor of the application and no speakers in opposition.

A representative of the HPD briefly described the nature of the project and the requested action. The developer's counsel provided additional details of the project and addressed the Community Board and Borough President's conditions. The attorney also indicated that the applicants are in discussion with the Community Board and representatives of the Oasis Community Garden in an effort to resolve all open issues.

The project's architect described the urban design rationale for the project and detailed the buildings' bulk, configuration, and massing. The project architect indicated that the project would be LEEDS-certified at the sub-silver level. The architect also provided details on the project open spaces, including plans for a gravel seating area with movable chairs and tables that would be maintained by the property owner and plans related to security of the open spaces. The architect also indicated that maintenance access to the Amtrak rail line would be provided through a sidewalk hatch on West 52<sup>nd</sup> Street.

A representative of Community Board 4 briefly described the Board's concerns related to the project. Referencing the condition related to the nature of the project open space, the representative stated that the Board's Land Use Committee had reviewed and approved the latest, updated open space plan for the project. The representative indicated that the Board's additional conditions related to the Oasis Community Garden and the theater spaces were being addressed.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that the applications for a zoning map amendment (C 050050 ZMM), a zoning text amendment (N 050051 ZRM), special permits (C 050052 ZSM, C 050053 ZSM, C 050054 ZSM), and UDAAP designation and disposition (C 050055 HAM) are appropriate.

The proposed actions would facilitate the construction of a mixed use development on two sites with approximately 526,000 zoning square feet of residential space containing up to 650 residential units, 23,000 zoning square feet of commercial space, and 60,000 zoning square feet of not-for-profit space. In addition, the Commission believes that the proposed actions would permit development that would significantly enhance the character of this portion of the Clinton neighborhood and Clinton Urban Renewal Area through the provision of new housing opportunities, significant new publicly-accessible open spaces, space for four theaters and two not-for-profit theater groups, and a

development program that respects the existing context of the area while removing underutilized, vacant, and blighted conditions on the project site.

**Zoning map amendment (C 050050 ZMM)**

The Commission believes that the proposal to rezone the R8 district on the southern parcel and the M1-5 district on the northern parcel to a C6-3 district is appropriate. The rezoning would permit mixed residential and commercial development in a C6-3 district across the entirety of the project site and would provide sufficient density to enable the development as proposed. The Commission notes that the rezoning would consist of an extension of an existing C6-3 district located along the west side of Tenth Avenue. The rezoning also allows for the highest-density portion of the proposed development to be moved towards the midblock, away from the lower density buildings along Tenth Avenue.

The Commission believes that the proposed C6-3 zoning is appropriate for the project site. The C6-3 district would permit residential FAR of 7.52, commercial FAR of 6.0 and community facility or mixed FAR of 10.0. Additionally, the existing M1-5 zoning on the project site would preclude development of residential uses on much of the north parcel and the existing R8 zoning would not allow the planned commercial and retail uses on the south parcel.

**Zoning text amendment (N 050051 ZRM)**

The Commission believes that the proposal to amend the Zoning Resolution to create a new Section



96-40 permitting modification of open space regulations of Section 23-14 is appropriate. The text amendment would permit such modifications as part of the special permit for general large scale developments occupying more than one block within the Clinton Urban Renewal Area.

The Commission recognizes that open space modifications, as proposed, would be considered as part of a special permit. Section 74-74 of the Zoning Resolution specifically states that, “[f]or general large-scale developments involving several zoning lots but planned as a unit, the district regulations may impose unnecessary rigidities and thereby prevent achievement of the best possible site plan within the overall density and bulk controls.” The Commission believes that the intent of the proposed text amendment, namely the modification of open space requirements in an effort to provide additional flexibility in the creation of an optimal site plan and program, is generally consistent and compatible with the goals and objectives of Section 74-74. Modifications to open space regulations, as proposed in the subject text amendment, would provide flexibility in the configuration of open space and the programming of significant, multi-block developments within the Clinton Urban Renewal Area. Additionally, the Commission recognizes that the findings proposed would ensure that any resultant open spaces would be adequate in size to meet the needs of residents of the development and would require that any modifications enhance overall site planning.

**Special permit for bulk modifications (C 050053 ZSM)**

The Commission believes that the special permit to allow for the distribution of floor area without regard for zoning lot lines and for modification of height, setback, minimum distance between

buildings, yard, and open space regulations is appropriate. The Commission believes that the special permit would allow for new development that is consistent in bulk and character with existing buildings on adjacent blocks and would result in a better site plan than would otherwise be possible.

The Commission believes that the distribution of floor area, open space, dwelling units and the locations of buildings will result in a better site plan. The Commission notes that the requested special permit would permit waivers of height and setback regulations that would ordinarily limit the base height to 85 feet or nine stories, whichever is less, and would require the portion of the building above the required setback to not penetrate a sky exposure plane. The Commission believes that these underlying C6-3 regulations would unduly limit design flexibility and would inhibit the optimal massing of development on the project site. The envelope design would maintain the lower-scale streetwall and building heights of Tenth Avenue while pulling the larger, tower portions of the development towards the midblock. The Commission recognizes that the immediate context of large towers supports the development of residential towers on the project site. At the same time, the Commission believes it is critical that a consistent lower scale character is maintained along the avenue frontage. Providing the flexibility to move bulk to the midblock portion of the site ensures that the Tenth Avenue streetwall and building heights can be developed in a contextual manner. The Commission believes that the proposed 325-foot maximum height of the development envelopes is generally consistent with the 38-story residential building and 25-story utility facility located immediately to the north and south of the project site. Additionally, the waivers of height and setback regulations allow the towers to be oriented in a north-south manner,

which the Commission believes reduces their presence on the narrow street frontages, provides for an arrangement of contiguous open space and creates a better relationship between buildings, open space, and adjacent streets.

The Commission recognizes that portions of the north tower would be located within 31 feet and 40 feet of the theater volume. This requires the modification of the minimum distance between buildings regulations of the C6-3 district, which typically require a minimum 45-foot distance between buildings on a zoning lot. The Commission notes that this condition is created by the provision of a significant theater and cultural facility on the project site which will greatly enhance the quality of cultural offerings in the Clinton neighborhood. It is critical that these theaters have a strong presence on Tenth Avenue and West 53<sup>rd</sup> Streets both to ensure the vitality of the theaters themselves but also to enliven and enrich the neighborhood. The Commission further acknowledges that the applicant, HPD, as part of its RFP process for this project site, has reviewed and approved the layout and window locations of the affected units in the residential tower.

The Commission recognizes that the yard regulations for the project site would ordinarily require the provision of a 30-foot rear yard or 60-foot rear yard equivalent as well as a concomitant requirement for a rear yard setback at 125 feet. Such requirements would unduly restrict the flexibility in arrangement of the building massing and would restrict the ability to provide contiguous, publicly-available open space on the project site. The Commission believes that the waiver of the yard and rear yard setback requirements is therefore appropriate.

The Commission believes it is appropriate to distribute floor area and dwelling units from the north parcel to the south parcel. The Commission believes that this modification would not result in an undue increase in the bulk of buildings on any one block. Instead, the flexibility accorded by this waiver will allow for floor area to be more adequately balanced between the two towers. Without such transfer, the larger northern parcel would contain a disproportionately large amount of floor area. The utilization of this floor area would result in an undesirable amount of bulk on the northern parcel and a paucity of floor area on the southern parcel. The requested distribution of floor area will allow the two residential towers to be of a similar scale and will create a desirable interplay between the building forms that would not otherwise be possible if their scale and bulk were significantly different.

The Commission believes that the streets providing access to the proposed development will be adequate to handle the traffic generated. Because the project site is located on multiple blocks, it is served by four separate streets, including West 51<sup>st</sup>, 52<sup>nd</sup>, and 53<sup>rd</sup> streets as well as Tenth Avenue. The Commission recognizes that the applicant has arranged the proposed uses within the development in an effort to distribute vehicular traffic among the various streets serving the project. Entrances to the residential portions of both buildings will be provided on West 52<sup>nd</sup> Street while the primary theater and retail entrances will be accessed directly from Tenth Avenue, from the pedestrian arcade leading from Tenth Avenue, or from West 53<sup>rd</sup> Street. Additionally, the entrance to the accessory parking garage will be located on West 53<sup>rd</sup> Street while significant pedestrian access will be located at the West 51<sup>st</sup> Street open space and the Tenth Avenue pedestrian arcade. The Commission believes that the variety of entrance points to the development

as well as the diversity of uses across the project site will be sufficient to distribute traffic to each of the surrounding streets and sidewalks, thereby reducing congestion at any one location. Moreover, the Commission recognizes that the Environmental Assessment Statement (EAS) prepared for this project found that the proposed development would be served by streets that generally operate at acceptable to good levels of service and that, while some congestion occurs at peak hours today, the proposed development will not result in undue pedestrian or traffic congestion.

The Commission believes that the modification of the open space requirements is appropriate. The project would require approximately 39,000 square feet of open space but only has approximately 28,000 square feet of open space, 22,000 of which would be at-grade and publicly accessible. The development project will create a significant, new public open space on land currently occupied by a vacant railroad cut. As proposed, nearly one-third of the project site will be devoted to at-grade open space, the majority of which will be configured in a contiguous and linear manner. Additional open spaces on the rooftops of the proposed development will provide dedicated open space for the tenants of the development. Taken together, the publicly accessible, at-grade open space and the rooftop tenant spaces will provide a sufficient amount of open space for the residents of the development while providing a valuable neighborhood amenity. The Commission also notes that the linear and contiguous arrangement of the open spaces, which is enabled by the alignment of the buildings in a north-south orientation, permits a site plan that is more desirable than would otherwise be possible with smaller, disconnected open spaces. The Commission notes that the applicant has engaged in an ongoing process to involve the community in the design of the midblock open space and has made several significant changes in the open space design in an effort

to create a more open and inviting character. The Commission therefore believes that such open space, provided in the manner described in the applicant and this report, will be sufficient to meet the needs of the residents of the proposed development and will result in a superior site plan.

### **Special permit for development over a railroad right-of-way (C 050052 ZSM)**

The Commission believes that the special permit to allow portions of the Amtrak railroad right-of-way to be covered by a platform and to allow the platform to be included in the lot area for the development is appropriate. Portions of the project site are currently occupied by the open, Amtrak railroad cut.

As stated above, the Commission believes that the streets providing access to the proposed development will be adequate to handle the traffic generated. Because the project site is located on multiple blocks and is served by several streets, the traffic generated by the development will be not be unduly concentrated on any one street and will not compromise the ability of surrounding streets to operate at acceptable levels of service.

The Commission also believes, as stated above, that the development will not result in floor area or dwelling units being unduly concentrated on any one portion of the project site. The proposal includes the platforming over the Amtrak railroad cut on the north and south parcel, which would permit for a more even distribution of floor area across the project site than would otherwise be possible. Additionally, other floor area modifications would permit the distribution of floor area across zoning lot and street lines, effectively balancing the amount of floor area provided on the

two parcels.

The Commission recognizes that the design of the development is being undertaken in close consultation with Amtrak to ensure that the various proposed uses on the project site do not conflict with one another and that rail traffic will continue unaffected. The Commission is in receipt of a conceptual letter of approval of the project from Amtrak and acknowledges that Amtrak will continue to fully review all plans for the development to ensure consistency with its rail service operations. Moreover, the Commission notes that the applicant will provide access through the project site to track level for purposes of inspection, maintenance and repair. The Commission believes that the close consultation with Amtrak, together with the provision of maintenance and repair access, will ensure that the various uses on the project site will not adversely affect one another and that the development will not impede use of the rail line.

**Special permit for location of residential and commercial uses (C 050054 ZSM)**

The Commission believes that the special permit to allow location of residential and commercial uses without regard to the provisions of Section 32-42 is appropriate. Section 32-42 prohibits the location of any commercial use on the same level as any portion of a building where residential uses are located. The Commission recognizes that the applicant plans to locate a retail or health club establishment of approximately 15,000 square feet on the mezzanine level of the southern building and that dwelling units would also be provided on the same level. The Commission notes that, while the residential entrance would be provided on West 52<sup>nd</sup> Street, the entrance to the commercial establishment would be located on West 51<sup>st</sup> Street and that no connection would be

provided between the two portions of the building.

**UDAAP designation and project approval and disposition of city property (C 050055 HAM)**

The Commission believes that the disposition of City-owned property and designation of the project site as an Urban Development Action Area and Project are appropriate. The Commission recognizes that HPD has undertaken an RFP process for the selection of a developer for the Clinton Green project. The eventual development of this project requires the disposition of the project site to a developer of HPD's choosing. The Commission notes that the original objectives of the Clinton Urban Renewal Plan include providing "new and/or rehabilitated low, moderate, and/or middle income housing", and that the proposed development would provide up to 650 units of housing for mixed-income residents. Furthermore, the Commission notes that the development would also provide approximately 23,000 square feet of commercial space, and 60,000 square feet of space for the INTAR Theater and Ensemble Studio Theater. The Commission notes that this project will contribute toward the sound and consistent redevelopment of the Clinton Urban Renewal Area. The Commission further recognizes that much of the project site is currently vacant and occupied by an open rail cut. Such a site condition has a blighting influence on the surrounding neighborhood that impedes further development. The Commission believes that the project, as proposed, would remedy this situation while providing significant new housing opportunities, publicly-accessible open space, and cultural facilities.

The Commission recognizes the concerns put forward by Community Board 4 and the Borough President related to the creation of an open and inviting open space and notes that Community



Board 4, in a letter to the Chairperson of the City Planning Commission dated December 3, 2004, has indicated that this condition of their approval has been satisfied. The Commission further notes that the Community Board and Borough President have urged resolution of all open issues related to the Oasis Community Garden. The Commission acknowledges that the applicant has worked closely with the community through Community Board 4 to develop an open space plan that provides high-quality, significant open space for the neighborhood and that works with the adjacent Oasis Community Garden and that Community Board 4 has characterized, in the December 3, 2004, letter, these discussions as being close to completion to their satisfaction. Finally, the Commission recognizes that both the Community Board and the Borough President have asked the applicant to enter into binding agreements to ensure that the on-site theaters are developed in a financially viable manner and that such theaters be permanently used in a not-for-profit capacity.

## **FINDINGS**

The City Planning Commission hereby makes the findings pursuant to Sections 74-743 (General Large Scale Development) and 96-40 (MODIFICATION OF GENERAL LARGE-SCALE DEVELOPMENT PROVISIONS) of the Zoning Resolution:

### Section 74-743

1. the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances, show windows and signs will result in a better site plan and a better relationship among buildings and open area to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such

distribution and will thus benefit both the occupants of the general large scale development, the neighborhood, and the City as a whole;

2. the distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air, to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;
3. Not applicable;
4. considering the size of the proposed general large-scale development the streets providing access to such general large-scale development will be adequate to handle traffic resulting therefrom;
5. Not applicable; and
6. 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.

#### Section 96-40

1. the amount of open space provided is sufficient to meet the needs of the residents of the general large scale development; and
2. such modifications will result in improved site planning.

#### **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 and 201 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Department of Housing Preservation and Development and the Dermot Company pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to:

- 1) Section 74-743(a)(1), to allow the distribution of floor area and dwelling units without regard for zoning lot lines;
- 2) Section 74-743(a)(2), to allow the location of buildings without regard for the applicable yard, distance between buildings and height and setback regulations; and
- 3) Section 96-40 and Section 74-743, to allow the modification of open space requirements of Section 23-14 (Minimum Required Open Space, Open Space Ratio, Maximum Lot Coverage and Maximum Floor Area Ratio);

to facilitate the development of two mixed buildings (Block 1080, part of Lot 25, Block 1081, Lot 39 and part of Lot 29), within a general large-scale development, generally bounded by West 53rd Street, Tenth Avenue, West 51st Street and a line 275 feet westerly of Tenth Avenue, in a C6-3 District, within the Special Clinton District, in the Clinton Urban Renewal Area is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 050053 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 Fox & Fowle Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-104	Railroad right-of-way, Plan & Sections	12/15/04
Z-202	Illustrative Ground Floor Site Plan	12/15/04
Z-203	Zoning Analysis	12/15/04
Z-301	Average Curb Level/Base Plan	7/26/04
Z-402	Encroachment Diagrams	8/18/04
Z-403	Building Envelope Controls-Plans	7/26/04
Z-408	Height and Setback Encroachment Diagrams	7/26/04
Z-409	Height and Setback Encroachment Diagrams	7/26/04
Z-410	Yard Requirements	8/18/04
Z-411	Open Space Diagram	7/26/04

- 2) Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

- 3) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 4) All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
- 5) Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the attached restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the attached restrictive declaration.
- 6) Neither the City of New York nor its employees or agents shall have any liability for money

damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 050053 ZSM), duly adopted by the City Planning Commission on December 22, 2004 (Calendar No. 17), 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, AICP, Chair**

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

**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,**

**RICHARD W. EADDY, JOHN MEROLO, DOLLY WILLIAMS, Commissioners**

**ALFRED C. CERULLO, III, Commissioner, Recused**