



## CITY PLANNING COMMISSION

---

July 14, 2010 / Calendar No. 30

N 100048 ZRM

---

**IN THE MATTER OF** an application submitted by 401 Hotel REIT, LLC and 401 Commercial, L.P. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York, concerning Article VIII, Chapter 1 (Special Midtown District) relating to the applications for modification of height and setback and mandatory plan elements for the 15 Penn Plaza proposal, Borough of Manhattan, Community District 5.

---

This application for a zoning text amendment was filed by 401 Hotel REIT, LLC, and 401 Commercial, L.P. on August 5, 2009 to facilitate the development of a commercial office building of over 2 million zoning square feet on the western half of the block bounded by West 33<sup>rd</sup> & West 32<sup>nd</sup> streets, and Seventh and Sixth avenues.

### RELATED ACTIONS

In addition to the zoning text amendment 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 100047 ZMM	Zoning Map Amendment from a C6-4.5 district to a C6-6 district
C 100049 ZSM	Special Permit pursuant to Sections 81-066 and 81-254 to modify: the height and setback regulations of Section 81-27; the Mandatory District Plan Elements of Sections 81-42, 81-43, 81-45, and 81-47, and the design standards of Section 37-53(f)
C 100050 ZSM	Special Permit pursuant to Sections 74-634 and 81-541 for a floor area transit improvement bonus
C 100237 PQM	City Acquisition of easements related to the transit improvements

## **BACKGROUND**

A full background discussion and description of this application appears in the related report for a special permit (C 100049 ZSM).

## **ENVIRONMENTAL REVIEW**

This application (N 100048 ZRM) in conjunction with the applications for the related actions (C 100047 ZMM, C 100049 ZSM, C 100050 ZSM, and C 100237 PQM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09DCP019M. The lead is the City Planning Commission.

A summary of the environmental review appears in the related report for a special permit (C 100049 ZSM).

## **PUBLIC REVIEW**

On February 8, 2010, the application (N 100048 ZRM), was referred to Community Board 5 and to the Manhattan Borough President for information and review in conjunction with the applications for the related actions (C 100047 ZMM, C 100049 ZSM, C 100050 ZSM, and C

100237 PQM) which were certified as complete by the Department of City Planning, and were duly referred to Manhattan Community Board 5 and the Manhattan Borough President in accordance with Title 62 of the rules of the City of New York, Section 2-02(b).

### **Community Board Review**

Community Board 5 held a public hearing on this application (N 100048 ZRM) and related applications (C 100047 ZMM, C 100049 ZSM, C 100050 ZSM, and C 100237 PQM) on April 15, 2010, and on that date, by a vote of 36 in favor, 1 opposed, 1 abstaining, adopted a resolution recommending disapproval of this application.

A summary of the recommendations of Community Board 5 appears in the related report for a special permit (C 100049 ZSM).

### **Borough President Recommendation**

The application (N 100048 ZRM) and the related applications (C 100047 ZMM, C 100049 ZSM, C 100050 ZSM, and C 100237 PQM) were considered by the Manhattan Borough President who recommended conditional approval of the applications on May 19, 2010.

A summary of the recommendations of the Borough President appears in the related report for a special permit (C 100049 ZSM).

## **City Planning Commission Public Hearing**

On May 12, 2010 (Calendar No. 3) the City Planning Commission scheduled May 26, 2010, for a public hearing on this application (N 100048 ZRM) in conjunction with the hearing on the related actions (C 100047 ZMM, C 100049 ZSM, C 100050 ZSM and C 100237 PQM). The hearing was duly held on May 26, 2010 (Calendar No. 14).

There were a number of appearances, as described in the report on the related application for special permit (C 100049 ZSM) and the hearing was closed.

## **CONSIDERATION**

The Commission believes that this application for amendment of the Zoning Resolution is appropriate.

A full consideration and analysis of the issues, and reason for approving this application appears in the related report for a special permit (C 100049 ZSM).

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on July 2, 2010, with respect to this application

(CEQR No. 09DCP019M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act & regulations, has been met and that,

1. Consistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration attached as Exhibit A to the report on the related application for a special permit (C 100049 ZSM), those mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FEIS, 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**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and subsequently amended, is further amended as follows:

Matter in underline is new, to be added;  
Matter in ~~strikeout~~ is old, to be deleted;  
Matter in # # is defined in Section 12-10;

\* \* \* indicate where unchanged text appears in the Zoning Resolution

\* \* \*

**ARTICLE VIII, Chapter 1  
Special Midtown District**

\* \* \*

**81-066**

**Special permit modifications of Section 81-254, Section 81-40, and certain Sections of Article VII, Chapter 7**

(a) The City Planning Commission, by special permit, for #zoning lots# where the #lot area# is at least 60,000 square feet or that occupy an entire #block#, may permit modification of the mandatory district plan elements of Section 81-40 or the provisions of Article VII, Chapter 7, that determine the distribution of permitted #floor area# on such #zoning lots# and, in conjunction with such modifications, may also modify the applicable #yard# and #court# requirements. However, no exception to the #street wall# or retail continuity requirements shall be permitted on Fifth Avenue or within 50 feet of Fifth Avenue within the #Special Midtown District#.

The modifications shall be subject to the following findings:

- (~~a~~)(1) that the modifications of mandatory plan elements, #floor area# allocation, or #rear yard# and #court# regulations result in a better arrangement of required facilities or in better site planning on a uniquely large #zoning lot#.
- (~~b~~)(2) that a substantial majority of the #zoning lot# is either vacant at the time of certification for review, pursuant to Section 197-c of the New York City Charter, or contains #buildings# that will be an integral part of the #development#, both physically and programmatically;
- (~~e~~)(3) that the design, scale and location of the new #buildings# or #enlarged buildings# are compatible with the character of the surrounding area and existing #buildings# to remain on the #zoning lot#;
- (~~d~~)(4) that such modifications will not unduly obstruct the access of light and air to surrounding properties;
- (~~e~~)(5) that any adverse impact on retail continuity is minimized by a site plan that requires pedestrian-oriented #uses# along the boundaries of any open or enclosed public areas within the #development#;

(f)(6) that such modifications of mandatory plan elements or #floor area# allocation are consistent with the basic strategy of the #Special Midtown District# and the purposes of the Mandatory District Plan Elements.

(b) For #developments# or #enlargements# on a #zoning lot# with a #lot area# of at least 60,000 square feet located wholly or partially in the Penn Center Subdistrict which have been granted a #floor area# bonus for subway station and/or rail mass transit facility improvements pursuant to Section 81-541 in accordance with Section 74-634 , the Commission may permit modifications of the mandatory district plan elements of Section 81-40, the height and setback regulations of 81-26 and 81-27, or the provisions of Article VII, Chapter 7 that determine the distribution of permitted #floor area# on such #zoning lots# and, in conjunction with such modifications, may also modify the applicable #yard# and #court# requirements subject to the following findings:

- (1) that the modifications of mandatory plan elements, #floor area# allocation or #rear yard# and #court# regulations result in a better arrangement of required facilities or in better site planning on a uniquely large #zoning lot#;
- (2) that the design, scale and location of the new #buildings# or #enlarged buildings# are compatible with the character of the surrounding area and existing #buildings# to remain on the #zoning lot#;
- (3) that such modifications will not unduly obstruct the access of light and air to surrounding properties;
- (4) that any adverse impact on retail continuity is minimized by a site plan that requires pedestrian-oriented #uses# along the boundaries of any open or enclosed public areas within the #development#;
- (5) that such modifications of mandatory plan elements or #floor area# allocation are consistent with the basic strategy of the #Special Midtown District# and the purposes of the Mandatory District Plan Elements;
- (6) that the improvements to the below-grade pedestrian circulation network provided by the #development# or #enlargement# significantly increase public accessibility to and from subway stations and/or rail mass transit facilities in and around Pennsylvania Station; and
- (7) that the modifications of height and setback regulations:
  - (i) are necessary due to the constraints or conditions of the #development# or #enlargement# and conditions imposed by the configuration of the site; and
  - (ii) will provide an appropriate distribution of #bulk# on the #zoning lot# with due consideration of the basic strategy of the #Special Midtown District#

and the purpose of the District’s height and setback regulations. In considering whether such distribution of #bulk# is appropriate, the Commission shall consider a complete daylight evaluation for the proposed design.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

\* \* \*

**81-254  
Special permit for height and setback modifications**

In the #Special Midtown District#, the City Planning Commission may modify the special height and setback regulations set forth in this Chapter only in accordance with the following provisions:

Section 74-711 (Landmark preservation in all districts) as modified by the provisions of Sections 81-266 or 81-277 (Special permit for height and setback modifications);

Section 74-79 (Transfer of Development Rights from Landmark Sites) where development rights are transferred from a landmark site to an adjacent lot in a C5-3, C6-6 or C6-7 District, as modified by Section 81-212, and the total #floor area# on the adjacent lot resulting from such transfer exceeds the basic maximum #floor area ratio# by more than 20 percent. In such cases, the granting of a special permit by the Commission for height and setback modifications shall be in accordance with the provisions of Sections 81-266 or 81-277;

Section 81-066 (Special permit modifications of Section 81-40, Section 81-254 and certain Sections of Article VII, Chapter 7).

Section 81-635 (Transfer of development rights by special permit).

\* \* \*

**81-50  
SPECIAL REGULATIONS FOR THE PENN CENTER SUBDISTRICT**

\* \* \*



**81-51  
General Provisions**

In order to establish the Penn Center Subdistrict as a destination and enhance its retail, entertainment and commercial character and expand accessibility to its transportation network, special regulations are set forth governing the location and type of #signs#, urban design and streetscape relationships, and the improvement of pedestrian circulation to and from public transit facilities.

The regulations of Section 81-50 are applicable only in the Penn Center Subdistrict, the boundaries of which are shown on Map 1 (Special Midtown District and Subdistricts) in Appendix A of this Chapter, except as set forth for rail mass transit improvements pursuant to Section 81-541. These regulations supplement or modify the provisions of this Chapter applying generally to the #Special Midtown District#, of which this Subdistrict is a part.

\* \* \*

**81-541  
Rail mass transit facility improvement**

In addition to the provisions of Section 81-29 (Incentives by Special Permit for Provisions of Public Amenities), the City Planning Commission may grant #floor area# bonuses for subway station and/or rail mass transit facility improvements for non-#residential# or #mixed buildings#, in accordance with Section 74-634 (Subway station improvements in commercial zones of 10 FAR and above in Manhattan), and may modify or waive the provisions of Section 81-43 (Street Wall Continuity Along Designated Streets) in accordance with the provisions of Section 74-634, provided that such improvement is approved by the entities which own and/or operate the rail mass transit facility. Prior to granting a special permit, the City Planning Commission shall be provided with:

- (a) a letter from each entity that operates the rail mass transit facility confirming that the drawings of the subway and/or rail mass transit improvement are of sufficient scope and detail to describe the layout and character of the improvements and that the proposed implementation of the improvements is physically and operationally feasible, and
- (b) a legally enforceable instrument containing:
  - (1) drawings of the improvements, as approved by the transit operator;
  - (2) provisions that all easements required for the on-site improvements will be conveyed and recorded against the property;
  - (3) the obligations of the applicant to construct, maintain and provide capital maintenance for the improvements and

- (4) a schedule for completion of the improvements and a requirement that a performance bond or other appropriate security be provided to insure the completion of the improvements.

For the purposes of this Section, improvements to any rail mass transit facility on a #zoning lot# located wholly or partially within the Subdistrict qualifies for bonus #floor area# in accordance with the provisions of Section 74-634, as modified herein. For #zoning lots# located partially within the Subdistrict, such bonus #floor area# may be located anywhere on such #zoning lot#. In addition, if a subway and/or rail mass transit improvement has been constructed in accordance with an approved special permit and has received a Notice of Substantial Completion in accordance with the provisions of Section 74-634, the bonus #floor area# may be retained at the full amount granted by the special permit and may be utilized elsewhere on the #zoning lot# subject to any applicable review and approval process for such #development# or #enlargement#.

\* \* \*

The above resolution (N 100048 ZRM), duly adopted by the City Planning Commission on July 14, 2010 (Calendar No. 30), 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, FAICP, Chair**

**KENNETH J. KNUCKLES, ESQ., Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, BETTY Y. CHEN,**  
**MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,**  
**ANNA HAYES LEVIN, KAREN A. PHILLIPS, Commissioners**

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