

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 the grant of a special permit pursuant to Sections 81-066(b) and 81-254 of the Zoning Resolution to modify:

1. the height and setback regulations of Section 81-27 (Alternative Height and Setback Regulations - Daylight Evaluation); and
2. the Mandatory District Plan Elements of Sections 81-42 (Retail Continuity along Designated Streets), 81-43 (Street Wall Continuity Along Designated Streets), 81-45 (Pedestrian Circulation Space), 81-47 (Major Building Entrances), and the design standards for pedestrian circulation spaces of Section 37-53(f) (Sidewalk Widening);

in connection with a proposed commercial development on property located at 15 Penn Plaza (Block 808, Lots 40, 1001 and 1002) in a C6-6 District, within the Special Midtown District (partially within the Penn Center Subdistrict) Borough of Manhattan, Community District 5.

This application for a special permit pursuant to Section 81-066(b) (“Special permit modifications of Section 81-254, Section 81-40, and certain Sections of Article VII, Chapter 7”) and 81-254 (“Special permit for height and setback modifications”) 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 approximately 2 million zoning square feet on the western half of the block bounded by West 33rd Street, West 32nd Street, Seventh Avenue, and Sixth Avenue. The application was revised on July 8, 2010, with respect to the amenities and configuration of the Gimbel's/33rd Street Passageway and to increase the effective sidewalk widths of West 32nd and West 33rd streets for the proposed Multi-Tenant building.

RELATED ACTIONS

In addition to the proposed special permit (C 100049 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 100047 ZMM	Zoning Map Amendment from a C6-4.5 district to a C6-6 district
N 100048 ZRM	Zoning Text Amendment to Sections 81-066 and 81-254 to allow an application for a Special Permit to modify height and setback for sites wholly or partially in the Penn Center Subdistrict of the Special Midtown District and an amendment to Section 81-541 to modify the procedure for obtaining a transit bonus in the Special Midtown District and permit the reservation of bonus floor area obtained via the transit bonus
C 100050 ZSM	Special Permit pursuant to Sections 74-634 and 81-541 regarding a floor area bonus for transit related improvements; and
C 100237 PQM	City Acquisition of easements related to the transit improvements

BACKGROUND

The applicant, 401 Hotel REIT, LLC and 401 Commercial L.P., proposes a new major commercial office building at 139 West 32nd Street, to be known as “15 Penn Plaza,” located on the western half of the block bounded by Seventh and Sixth avenues and West 33rd and West 32nd streets (Block 808, Lots 1001 and 1002). The proposed building would contain nearly 2.1 million square feet of floor area of Class-A office use, with retail in the lower floors. The proposal also includes a series of at-grade and below-grade improvements to the transit network adjacent to and beneath the proposed development. A separate and concurrent application has

been made by the NYC Department of Citywide Administrative Services (DCAS) to acquire easements related to the transit improvements.

AREA DESCRIPTION

The proposed development site is located on the western portion of midtown Manhattan in an area with significant transportation uses, extensive transit infrastructure, destination retail and entertainment uses, and major office buildings. Pennsylvania Station, across Seventh Avenue from the site, is the nation's busiest commuter hub in, serving half a million commuters daily. The Penn Station transit hub connects a network consisting of NYC Transit/MTA subway lines, the Long Island Railroad (LIRR), New Jersey Transit (NJ Transit), the Port Authority's PATH trains, and Amtrak. Macy's flagship store is located two blocks north of the development site. In addition to Macy's, a large number of shops of various sizes are located on each side of West 34th Street as well as on Seventh and Sixth avenues and Broadway. The Manhattan Mall, an 11-story mixed retail and office building, sits immediately to the east of the development site on the same block. The area is also a hub for large office buildings including, to the south of the site, 11 Penn Plaza (1.1 million square feet), to the west across Seventh Avenue from the site, Two Penn Plaza (1.5 million square feet), and to the northwest of the site at West 34th Street and Seventh Avenue, One Penn Plaza (2.6 million square feet). The Madison Square Garden sports arena, which hosts more than 300 events a year, is located on the block to the west of the site. Further west, between Eighth and Ninth avenues, is the Farley Post Office and the Hudson Yards Area, which was rezoned in 2005 to allow for a new mixed use neighborhood, including high density commercial development. The Garment District is located in the area to the north of the

development site and is characterized with manufacturing, wholesale and showroom space devoted to the fashion industry.

THE DEVELOPMENT SITE

The development site is located on the western half of the block bounded by West 32nd Street, West 33rd Street, Seventh Avenue and Sixth Avenue. The Hotel Pennsylvania currently occupies the site and would be demolished to facilitate the proposed 15 Penn Plaza development. On the eastern side of the block (Lot 40) is the Manhattan Mall which would remain. The zoning lot for the development comprises the entire block including the Manhattan Mall. The western and eastern portions of the block, 200 feet in from Seventh Avenue and 150 feet in from Sixth Avenue, are located within a C6-6 zoning district. Together, the two C6-6 portions of the block comprise approximately 69,125 square feet of lot area. The remaining 88,875 square feet of lot area is located in the interior of the block within a C6-4.5 zoning district.

The C6-6 district permits an as-of-right FAR of 15.0 which is bonusable to 18.0 with a 20% floor area bonus for transit improvements. The C6-4.5 zone has an as-of-right FAR of 12.0, bonusable to 14.4 with a 20% floor area bonus. Given these FARs, the block can generate a total zoning floor area of 2,103,375 square feet as-of-right. Since the Manhattan Mall has 791,333 square feet of existing floor area, there is approximately 1,312,042 square feet available for as-of-right development. The entire block is located in the Special Midtown District. The Seventh Avenue frontage of the site, to a depth of 100 feet into the block, is located in the Penn Center Subdistrict of the Special Midtown District.

The site is located in an area served by a transit network including the NYC Transit subway trains (1, 2, 3, B, D, F, M, N, R, and Q) as well as Penn Station on Seventh Avenue and the Port Authority's PATH trains. The block sits between the Penn Station and Herald Square commuter hubs. A pedestrian passageway, known as "Gimbel's/33rd Street Passageway", runs east-west underneath the West 33rd Street sidewalk, alongside the cellar level of the zoning lot. The passageway connects the Seventh and Sixth avenues transit services. The Gimbel's/33rd Street Passageway is in disrepair and has been closed since 1986.

DESCRIPTION OF PROPOSAL

The applicant proposes to build a 2.052 million square feet office building and a series of improvements to the existing transit network adjacent to and underneath the block. The transit improvements are proposed to be undertaken in order to obtain a 20% floor area bonus pursuant to Sections 81-541 and 74-634 of the Zoning Resolution. The proposal includes two alternative options for the building, each with the same floor area and each requiring bulk waivers: a "Single-Tenant" version and a "Multi-Tenant" version. Only one option would be developed at this site in accordance with drawings approved by the City Planning Commission. Both options would also require a rezoning of the midblock portion of the site.

Proposed Single-Tenant Configuration

The “Single-Tenant” configuration of 15 Penn Plaza would be an office building developed for one tenant. The building would have 67 stories and reach 1,190 feet in height. The building would contain 2.04 million square feet of office space, 11,126 square feet of retail use, and up to 100 accessory parking spaces below grade.

The Single-Tenant tower rises sheer from a widened sidewalk along Seventh Avenue and, at the 568 foot mark, tapers to a finished top. The top half of the tower has four corner notches that expand as the tower rises. Each façade of the tower has a central vertical recess. The tower sits atop a ten-story, 218-foot tall, podium that provides floor plates greater than 60,000 square feet. The podium, above the first floor, is intended to be used for trading floors. The roof top of the podium would be provided as open space for use by employees. The Single-Tenant configuration is designed to accommodate the special needs of a large financial institution: the ground floor will include a large amount of floor area for security and visitor screening. Shuttle elevators taking workers and visitors to floors in the podium and a sky lobby for floors in the tower above, are located alongside the West 32nd Street side of the building instead of in a central core location in order to allow for unobstructed trading floors. The ground floor would also have approximately 10,000 square feet of retail, provided in several areas: Two areas, 60 feet each in length, would be located on Seventh Avenue on either side of a, 57-foot wide lobby entrance. The retail at the West 33rd Street corner wraps around the building and continues towards the middle of the site. The retail at the West 32nd Street corner cannot wrap around the building due to the shuttle elevators located along West 32nd Street. Two smaller pockets of retail are

accessible to the east of the 25-foot entrance on each street. To ensure that the West 32nd Street elevation of the building fronting on the sidewalk is activated, the applicant proposes to install art where the elevator use would otherwise result in a blank wall. The Single-Tenant building contains below-grade parking for 100 vehicles which is accessed from a ramp on West 32nd Street; loading facilities are on the eastern edge of the site, bordering the Manhattan Mall, accessible with 27-foot curb cuts. Trucks accessing the loading area would “head in” at West 32nd Street and “head out” at West 33rd Street. Entrances to the Seventh Avenue subway lines would be located on the side street frontages, approximately 50 feet east from the Seventh Avenue property line.

On Seventh Avenue, the building would setback 15 feet from the streetline, resulting in a sidewalk width of 28 feet. On the side streets, the building would be set back 10 feet, resulting in a sidewalk width of 23 feet.

Proposed Multi-Tenant Configuration

The Multi-Tenant configuration would be an office building developed for multiple tenants. The building would have 68 stories and reach 1,216 feet in height. There would be less floor area devoted to security and screening than in the Single-Tenant configuration. The Multi-Tenant building would contain approximately 1.756 million square feet of office space and 296,390 square feet of retail space.

Unlike the tower in the Single-Tenant configuration, which rises sheer from the widened sidewalk on Seventh Avenue, the tower in the Multi-Tenant configuration sets back approximately 80 feet from the streetwall of the 134-foot tall base. The tower has a similar shape as in the Single-Tenant configuration, with notches, recesses and a tapering that begins at a springpoint of 640 feet. The six-story base would be used for retail, trading floors, or a combination of the two uses. Unlike the Single-Tenant configuration, the Multi-Tenant configuration would have elevators located in a central location at the ground floor level to bring employees directly up the building core.

The ground floor would also have approximately 34,000 square feet of retail, provided in several areas: two portions, 60 feet each in length, would be located on Seventh Avenue on either side of the 57-foot lobby entrance. Each side of the building on the sidestreets would have a 32-foot entrance and to the east of those entrances would be retail space on both the north side and the south side of the elevator core. To the east of the elevator core would be an approximately 24,000 square foot contiguous portion of retail. The multi-tenant version is not proposed to contain parking. Trucks accessing the loading area, which occupies about half the length of street frontage as in the Single-Tenant configuration, would “head in” and “head out” at West 32nd Street. Entrances to the subway would be located on the side street frontages, approximately 50 feet east from the Seventh Avenue property line.

As in the Single-Tenant configuration, the building would set back 15 feet from the Seventh Avenue street line and 10 feet from the West 32nd and West 33rd Street streetlines, resulting in sidewalk widths of 28 feet and 23 feet, respectively.

Proposed Transit Improvements

Pursuant to Zoning Resolution Section 74-634 (“Subway station improvements in Downtown Brooklyn and commercial zones of 10 FAR and above in Manhattan”) and Section 81-541 (“Rail mass transit facility improvement”) the site is eligible for a transit bonus of 20% of zoning floor area for the provision of transit improvements that are adjacent (as per Section 74-634) to the zoning lot. The applicant proposes an extensive series of improvements to the transit network in order to generate the floor area bonus for the proposed development. The transit bonus applies to the zoning lot, which comprises the entire block.

The subway improvements would improve the circulation between the various subway lines and PATH, and improve access from the surface to the below-grade transit as well as from Penn Station. The improvement that widens the platform of the northbound Seventh Avenue local subway would relieve congestion and improve safety for the many commuters waiting on the platform as they come from Penn Station looking to travel north.

The centerpiece of these improvements is a proposal to reconstruct and reopen the former Gimbel’s/33rd Street Passageway which has been closed since 1986. This passageway, located under West 33rd Street between Seventh and Sixth avenues, connects the Penn Station/Seventh Avenue subway lines to the Herald Square/Sixth Avenue subway lines and PATH (creating the “33rd St. Passageway”). The proposed rehabilitation of the Passageway would result in a wider and taller pedestrian connection in which climate control, security, retail, art, and transit information would be provided. Under the proposal, as specified in the revised application submitted July 8, 2010, the width of the Passageway would be expanded from the current width

of 9' - 11'6" to 16 feet for most of its length. A minimum width of 14'8" would be provided on some portions of the Passageway on the Manhattan Mall site. The height would be increased from the current 9'6" - 11 feet to 11 - 12 feet on the Manhattan Mall site, and 13'6" - 14'6" on the 15 Penn Plaza site. Retail use would be provided for at least 265 feet of the 330 foot length of the south side of the 15 Penn Plaza portion of the Passageway, with at least 45% of that retail frontage to be transparent. On the Manhattan Mall portion of the Passageway's south side, retail cannot currently be provided given the existing configuration. The applicant has indicated that access to retail within the Mall from the Passageway is possible contingent upon the current tenant's preference. The proposal includes train departure/arrival informational boards and art on the south wall in the amount of 149 linear feet (out of 307 total). In the event that the Manhattan Mall is demolished and replaced, the applicant has agreed to provide retail and transparency on the south side of the Manhattan Mall portion of the Passageway in the same percentage of the Passageway length as is proposed to be provided on the 15 Penn Plaza side (approximately 80% retail and 45% transparency). The north side of the wall along the entire length of the Passageway would display an art installation employing LED lights. The minimum lighting requirement of the Passageway would be 15 foot candles.

Other improvements include:

Seventh Avenue:

- Construct new at-grade entrances to the transit network within the 15 Penn Plaza building on West 32nd and West 33rd streets accessing the proposed 33rd St. Passageway
- Construct a new elevator at the new entrance at West 33rd Street and Seventh Avenue
- Widen the stairs that connect the southbound local Seventh Avenue subway line to the 32nd Street Underpass that connects Penn Station to the 15 Penn Plaza site
- Construct a new stair connecting the express platform of the Seventh Avenue subway line to the 32nd Street Underpass
- Widen the northbound platform on the Seventh Avenue subway line (along and under the 15 Penn Plaza Seventh Avenue frontage) between West 32nd Street and West 33rd Street and increase the stair width to the 32nd Street Underpass

Sixth Avenue:

- Widen the stairs to 10 feet at the entrance to the PATH trains on Sixth Avenue at West 32nd Street
- Construct one escalator and 10-foot stairs at the entrance to the PATH trains on Sixth Avenue at West 33rd Street
- Construct 9-foot stairs from the PATH level to the Sixth Avenue/Broadway subway lines platform near West 32nd Street
- Construct 15-foot stairs from the PATH level to the Sixth Avenue/Broadway subway lines platform near West 33rd Street
- Reconfigure the fare turnstiles for increased access to the Sixth Avenue/Broadway subway lines and to accommodate new stairs

ACTIONS REQUESTED

To facilitate the development the applicant is requesting several actions including a zoning text amendment, a map amendment, and two special permits. A separate application for the acquisition of easements relating to the transit improvements has been submitted by DCAS.

Zoning Text Amendment (N 100048 ZRM)

The applicant proposes amendments to Section 81-066 (“Special permit modifications of ZR 81-40 and certain Sections of Article VII, Chapter 7”) and Section 81-254 (“Special permit for height and setback modifications”) to permit a special permit application to waive height and setback and Mandatory District Plan Elements regulations of the Special Midtown District required for either configuration. The amendment would allow for waivers of the height and setback regulations of Section 81-26 and Section 81-27 (see discussion of these provisions below) as well as waivers of the Mandatory District Plan Elements, via special permit, for a development on an at least 60,000 square foot zoning lot, partially or wholly within the Penn

Center Subdistrict of the Special Midtown District, which has been granted a transit bonus, provided that certain findings are met. These findings would require that the waivers result in better site planning and are consistent with the purposes of the Mandatory District Plan Elements. They would also ensure that the height and setback waivers are necessary, and that the development would provide a good building design consistent with the context of the neighborhood and the underlying goals of the Special Midtown District, as well as improve the site for pedestrian uses and movement. The amendments also would require the Commission to consider the daylight evaluation analysis pursuant to Section 81-27.

The applicant also proposes to modify Section 81-541, which defines the applicability of transit floor area bonuses in the Special Midtown District. The applicant proposes to add to Section 81-541 text that would define the administrative process for obtaining approvals of the several transit agencies for the improvements, provide that floor area obtained via the transit improvement bonus would be vested and could be used at a later time elsewhere on the zoning lot, subject to Commission review, and clarify that the floor area awarded via the transit improvement bonus for improvements located in the Penn Center Subdistrict could be located anywhere on the zoning lot.

Special Permit under modified Section 81-066 (C 100049 ZSM)

For a building to be constructed as-of-right in the Special Midtown District it must either comply with the “daylight compensation” rules of Section 81-26 (“Height and Setback Regulations – Daylight Compensation”) or the “daylight evaluation” rules of Section 81-27 (“Alternative

Height and Setback Regulations – Daylight Evaluation”). The applicant is requesting a waiver from the requirement of attaining the minimum 75% score required under Section 81-27 pursuant to the proposed amended Section 81-066. The daylight evaluation analysis for the proposed project demonstrates that the Single-Tenant configuration attains an overall daylight evaluation score of 17.50% and that the Multi-Tenant configuration attains an overall score of 37.40%.

The applicant is also applying, under the same amended Section 81-066, for a special permit pursuant to the proposed text amendment for a waiver of certain Mandatory District Plan Elements of the Special Midtown District. The District Plan Elements of special district are mostly requirements addressing street-level design that promote the “accommodation and well-being of pedestrians.” The proposal’s design does not meet the requirements of four of the Mandatory District Plan Elements:

1. Pedestrian Circulation Space Regulations (Sections 81-45 and ZR 37-50)

Section 81-45 sets minimum dimensions for pedestrian circulation spaces in accordance with Section 37-50 et seq. (“Requirements for Pedestrian Circulation Space”). Both proposed configurations do not meet two regulations of Section 37-53 and one regulation of Section 81-45 in that:

- The permitted sidewalk widening along a wide street must be between 5 and 10 feet along Seventh Avenue. The sidewalk widening for the proposed development is 15 feet.

- The sidewalk widening must extend along the entire front lot line of the zoning lot. The eastern portion of the zoning lot where Manhattan Mall sits would not have a sidewalk widening, and
- A development must provide at least 50% of the total required pedestrian circulation space on a wide street. On Seventh Avenue, 3,421 square feet of Pedestrian Circulation Space is required (50% of 6,842 square feet required for the full site). The proposal, however, includes only 2,962 square feet of Pedestrian Circulation Space on Seventh Avenue (or 43% of 6,842 square feet).

2. Waiver of Street Wall Continuity Regulations (Section 81-43)

Section 81-43 sets a maximum distance of 10 feet between the street line and the street walls on Seventh Avenue. The distance from the street line to the streetwall in both proposed configurations is 15 feet.

3. Waiver of Retail Continuity Regulations (Section 81-42)

Section 81-42 limits the length of street frontage occupied by the lobby space, entrance space and/or a building entrance recess to 40 feet or 25 percent of the building's total street frontage. The lobbies of both proposed configurations for 15 Penn Plaza are 57 feet wide, exceeding this requirement.

Section 81-42 also requires that the storefronts must not be more than 10 feet from the street line. The retail frontage of the proposed development is 15 feet from the Seventh Avenue street line.

4. Waiver of Major Building Entrances Regulations (Section 81-47)

Section 81-47 requires that for large zoning lots with one or more narrow street frontages that occupy a full block front a major entrance shall be located on a narrow street. The proposed development does not have a major entrance on West 33rd or West 32nd streets.

Special Permit to obtain the transit improvement bonus (C 100050 ZSM)

Section 74-634 permits the Commission, with the consent of involved transit agencies (here, the MTA/NYC Transit, The Port Authority of NY & NJ and Amtrak¹), to grant a maximum of 20% floor area bonus for improvements to the transit network adjacent to the zoning lot. The Commission must determine if the requirements and findings have been met.

As noted earlier, the proposed transit improvements span the full block between Seventh and Sixth avenues and include improvements that are not immediately adjacent to the site. The central feature of the package of proposed improvements is the reconstruction and reopening of the Gimbel's/33rd Street Passageway providing for a high-quality finished underground pedestrian connection between Penn Station and Herald Square. The reconstruction will widen the Passageway from 9' – 11'6" to approximately 16' wide and increase the floor to ceiling height from 9' 6" to 11' – 14'6". The proposed reconstruction of the Passageway would be climate controlled, secure, include 265 linear feet of retail on the southern side as well as provide visuals with an art installation extending the full length of the Passageway on the northern side. The Passageway is also proposed to display informational boards on the south side with arrival and departure information regarding the transit systems accessible from the passageway.

¹ Amtrak consents are necessary due to the fact that the proposed widening of the local platform stair that connects the southbound Seventh Avenue subway with the 32nd Street Passageway will take place above Amtrak's tracks and that construction of the new stair from the express platform requires modifications to Amtrak's train shed roof girders.

Other improvements include:

Seventh Avenue:

- Two new at-grade entrances to the transit network within the 15 Penn Plaza building near Seventh Avenue
- A new elevator accessing the Passageway at West 33rd Street and Seventh Avenue
- Widen the stairs connecting the southbound local Seventh Avenue subway line to the 32nd Street Underpass that connects Penn Station to the 15 Penn Plaza site
- Construct a new stair connecting the express platform of the Seventh Avenue subway line to the 32nd Street Underpass
- Widen the northbound platform on the Seventh Avenue subway line (along and under the 15 Penn Plaza Seventh Avenue frontage) between West 32nd Street and West 33rd Street and increase stair width to the 32nd Street Underpass

Sixth Avenue:

- Widen the stairs to 10 feet at the entrance to the PATH trains on Sixth Avenue at West 32nd Street
- Construct one escalator and 10-foot stairs at the entrance to the PATH trains on Sixth Avenue at West 33rd Street
- Construct 9-foot stairs from the PATH level to the Sixth Avenue/Broadway subway lines platform near West 32nd Street
- Construct 15-foot stairs from the PATH level to the Sixth Avenue/Broadway subway lines platform near West 33rd Street
- Reconfigure the fare turnstiles for increased access to the Sixth Avenue/Broadway subway lines and to accommodate new stairs

Each involved transit agency whose transit network would be upgraded (or, in the case of Amtrak, affected) by these improvements has provided a conceptual approval and feasibility letter with regards to the transit improvement proposal.

Zoning Map Amendment (C 100047 ZMM)

The applicant requests a rezoning of the midblock portion of the block from a C6-4.5 zoning district to a C6-6 zoning district. The area of rezoning contains 88,875 square feet. The rezoning would amend Zoning Map Section 8d.

The C6-4.5 district and the C6-6 district are high density commercial districts located in central business districts mapped throughout midtown Manhattan. The uses permitted in each district are identical. The difference is in permitted FAR: the C6-6 in the Special Midtown District permits a maximum as-of-right FAR of 15.0 which is bonusable (via the transit bonus, inter alia) to 18.0 FAR. The C6-4.5 district permits a maximum as-of-right FAR of 12.0, bonusable (via the transit bonus, inter alia) to 14.4 FAR.

Acquisition of an easement to expand the Gimbel's/33rd Street Passageway in the future (C 100237 PQM)

Below-grade portions of Block 808 and the adjacent sidewalk where the transit improvements would be located are proposed to be acquired by the City (DCAS) on behalf of the MTA/NYC Transit for the construction of transit entrances, the Gimbel's/33rd Street Passageway, and other transit improvements. While most of the width of the Passageway is located under the West 33rd Street sidewalk, there is existing infrastructure preventing a further northern expansion.

Therefore, in order to attain the proposed width, the Passageway needs to be expanded south onto Block 808. The easements would ensure that this expansion could be accomplished on the applicant's property.

The easements will be transferred to the MTA/NYC Transit pursuant to the Public Authorities Law as part of the City's "Master Lease" with MTA/NYC Transit for various transit properties. "Easement A," which would contain stairway and elevator connections within the Manhattan Mall property (Lot 40) to the PATH station at West 34th Street, would be transferred to the Port Authority of New York and New Jersey.

The Gimbel's/33rd Street Passageway is proposed to be expanded from the current width of approximately 12 feet to approximately 16 feet on the 15 Penn Plaza site. On the Manhattan Mall site, however, since the Mall will remain, the Passageway can attain a width of 14'6". "Easement D", on the northern edge of Block 808, is proposed to be 6 feet north to south in width and extend to the Manhattan Mall portion of the block. A second 2-foot wide portion of Easement D, within the Manhattan Mall site, would only come into City possession upon a demolition of the Manhattan Mall and a widening of the Passageway. The 2-foot wide portion would permit the Passageway to expand to 16 feet if and when the Mall is demolished.

ENVIRONMENTAL REVIEW

This application (C 100049 ZSM), in conjunction with the applications for the related actions (C 100047 ZMM, N 100048 ZRM, 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 03DCP031M. 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 December 19, 2009, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental

Impact Statement (DEIS) was issued on December 19, 2008. A public scoping meeting was held on the Draft Scope of Work on January 27, 2009. A Final Scope of Work, reflecting the comments made during scoping was issued on February 5, 2010. The applicant prepared a DEIS and a Notice of Completion for the DEIS was issued on February 5, 2010. On May 26, 2010, a public hearing was held on the DEIS pursuant to SEQRA and other relevant statutes. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on July 2, 2010. The FEIS identified significant adverse impacts and proposed mitigation measures that are summarized in the Executive Summary of the FEIS attached as Exhibit B.

UNIFORM LAND USE REVIEW

On February 8, 2010, the application (C 100049 ZSM), in conjunction with the applications for the related actions (C 100047 ZMM, C 100050 ZSM, and C 100237 PQM), was certified as complete by the Department of City Planning, and 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). The related non-ULURP action (N 100048 ZRM) was also referred for information and review.

Community Board Review

Community Board 5 held a public hearing on this (C 100049 ZSM) and the related applications (C 100047 ZMM, N 100048 ZRM, 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 denial of the application with the following comments:

- The 33rd St. Passageway “would likely only be used to avoid bad weather rather than a attractive new way to move from Herald Square to Pennsylvania Station”;
- “New subway entrances on 7th Avenue would be required by an as-of-right development and new subway entrances would also be required for any future development on the 6th Avenue site”;
- “In the already densely developed area surrounding Penn Station there are several locations where the Zoning Map pointedly designates lower FAR, one of which is at this development project site; Community Board Five is concerned that the upzoning requested in this application would not only violate the intention of the Zoning Map and burden the area with excessive density but also set a troubling precedent and tipping point for future development in the area”;
- Given that the impact of the development of nearby Moynihan Station and the sale of the Farley Building’s commercial development rights are not yet known “any upzoning at this development site is not only premature given the area's redevelopment future but also a threat to the area's environmental quality while producing no redeeming benefits to the community”;
- “The only rationale offered for upzoning the mid-portion of this lot is that the developer would like the option of developing more office space and the Board does not believe this is a sound basis for making decisions on what the permitted density for an area should be”;
- “Some of the proposed transit improvements for which the applicants would receive a 20 percent development bonus resemble repairs and maintenance associated with the applicants' own project and to their own benefit rather than added-value improvements meriting the bonus”;
- “The development of such a large building on this site presents an opportunity for an additional major entrance to Pennsylvania Station which could lead directly to a single-level passageway to Herald Square and thus greatly improve accessibility to the station from the east and ease some of the existing overcrowding and additional traffic that will be generated by this and other planned developments in the area”;
- The Board requested “additional improvements be made to mitigate the environmental impacts of this development such as better systems for truck deliveries, trash pick-up, tree plantings, public space, and other streetscape amenities, including, as a starting point, a block-through loading dock for any proposal”;

- “neither proposal includes adequate measures to mitigate the small truck and black car traffic that will be generated at this site”
- The Board was “disappointed that the proposed building/s designs are bulky, uninspired, massive, and fail to seize this opportunity to add beauty and distinction to the New York City skyline and streetscape”; and
- The building at this location would “place significant burdens on the neighborhood's traffic, noise, infrastructure, air quality and other quality of life conditions and therefore the transit bonus and upzoning are only justifiable if there are also equally significant improvements to the transit infrastructure in the area, as well as to the community’s ability to seek relief from any exceptional increase in density including but not limited to green space, arts facilities, and other public amenities”;

Borough President Review

The application (C 100049 ZSM) and the related applications (C 100047 ZMM, N 100048 ZRM, C 100050 ZSM, and C 100237 PQM) were considered by the Manhattan Borough President who issued a conditional approval on May 19, 2010 provided that the applicant follows through on the commitments relating to:

- **Open space by:**
 - Working with the Department of City Planning and Department of Parks and Recreation (DPR) to determine the appropriate form of mitigation for open space impacts; and
 - Providing accessible open space on the proposed building’s podium to reduce impacts on nearby public open spaces;
- **Traffic by:**
 - Implementing the new off-street truck loading plan for the Multi-Tenant Building that will allow trucks to enter and exit head first;
 - Creating a black car management plan for the Single-Tenant Building;
 - Hiring a dock master to coordinate loading and unloading activities; and
 - Updating traffic studies to reflect new traffic initiatives in Midtown;
- **Pedestrian impacts by:**

- Working with the Department of Transportation to widen crosswalks and other pedestrian elements; and
 - Working with the 34th Street Partnership to relocate any planters which may serve as an obstruction to pedestrian movement;
- **Construction by:**
 - Implementing path controls to address construction noise issues;
 - Studying additional measures that may be undertaken to reduce noise impacts;
 - Establishing a construction taskforce to address and respond to construction impacts and issues, which meets regularly as required by the phasing and nature of construction and includes representatives from the community board, local council member and other local stakeholders; and
 - Having a single point of contact during construction to resolve any community concerns;
- **Improve sidewalk conditions by:**
 - Working with CB5 and DPR to determine appropriate locations for the 56 street trees that cannot be planted at the perimeter of the development site; and
 - Incorporating street wall design elements to the West 32nd Street façade of the Single-Tenant Building to enliven the pedestrian experience;

City Planning Commission Public Hearing

On May 12, 2010 (Calendar No. 4), the City Planning Commission scheduled May 26, 2010, for a public hearing on this application (C 100049 ZSM), in conjunction with the applications for the related actions (C 100047 ZMM, N 100048 ZRM, C 100050 ZSM, and C 100237 PQM). The hearing was duly held on May 26, 2010 (Calendar No. 15). There were 15 speakers in favor of the applications and no speakers in opposition.

Those speaking in favor of the applications included five representatives of the applicant's team, including the applicants, the project architect, the applicant's planning and transit consultants.

Other speakers in favor included representatives from the Metropolitan Transit Authority (MTA), the Regional Plan Association (RPA), The NYC Transit Riders Council, The Tri-State

Transportation Campaign, the 34th Street Partnership, SEIU (Service Employees International Union (Local 32BJ)), BTEA: New York's Alliance of Union Contractors, Jones Lang LaSalle and the Director of the Real Estate Development Program in the Graduate School of Architecture, Planning and Preservation at Columbia University. The Director of Land Use for the Manhattan Borough President also spoke in favor.

The representatives of the applicant noted that the site is unique in that it provides a very large floor plate with superior access to transit. They also noted that the extensive transit improvements would help commuters and that they were not part of the MTA capital improvement plan. The representatives stated that they intended the Gimbel's/33rd Street Passageway to be lively and activated by retail and art. They also noted that the amount of mechanical space, particularly in the Single-Tenant configuration, was appropriate for this type of commercial office building. The project architect noted that the site was perfect for transit-oriented office development, explained how the two versions differ from an architectural perspective and described the design of the towers. He also explained why the amount of mechanical space in both versions was justifiable and spoke of the history of the Hotel Pennsylvania and the difficulties that would be presented in preserving the hotel as part of the new development. The applicant's planner noted the history of development and zoning in the area and how the proposed amount of floor area and floor area ratio of the proposal was not unusual for this area and for transit oriented development. He further explained scenarios under which the applicant would complete the transit improvements and earn the bonus, but the towers would be built with less than the full amount of bonus FAR. The project transit consultant

clarified the size and location of the Gimbel's/33rd Street Passageway and stated that during peak hours approximately ten to twelve thousand commuters would move through the Passageway.

The representative of the MTA explained that the transit improvements were important due to the many transit connections that could be made on this site, that this development would reinforce this office district, would help congestion both on the sidewalks and in the transit network and was critical due to limited MTA capital funding.

A representative of SEIU noted that the proposal would encourage appropriate high-density transit oriented development and provide relief from congestion for commuters as well as badly needed jobs. A representative of the RPA pointed out that density belongs around transit hubs such as this one and helps promote sustainable development. She also stated that the project would be an integral part of the 32nd - 34th Street Corridor and that the transit improvements were sound.

A representative of the Tri-State Transportation Campaign also spoke and explained that commuters would welcome a safer and less congested route between the Penn Station and Herald Square and that the site is an excellent location for a tower given the proximity to Amtrak, NJ Transit, PATH and LIRR. A representative of the NYC Transit Rider's Council expressed appreciation for the long-awaited reopening of the Gimbel's/33rd Street Passageway and also for the other proposed transit improvements, which she noted would be implemented at no cost to the MTA or the City.

A real estate broker from Jones Lang Lasalle testified as to what major financial firms look for in a building (central location, attractive place for employees, the correct scale with efficiency, equipped for required technology, trading floor, LEED certified) and stated that 15 Penn would have those important qualities. A representative of the 34th Street Partnership pointed out that the ground plane of a building is very important and that 15 Penn would provide an enhanced pedestrian environment.

The Director of Land Use for the Manhattan Borough President reiterated the Borough President's recommendation and the commitments made by the applicant, particularly noting that development is appropriate due to the connections to transit and its location and that it would be appropriate as a form of transit-oriented development. He also stated that only the applicant was in the position to implement these improvements due to cost and the location on the applicant's property.

A representative of the BTEA: New York's Alliance of Building Contractors applauded the building's design and transportation improvements and stated that the construction would help alleviate unemployment in the NYC building trades.

The Director of the Real Estate Development Program in the Graduate School of Architecture, Planning and Preservation at Columbia University explained that NYC faces strong competition from other global cities but that the existing NYC office stock is growing obsolete. He also stated that the location with a large floorplate between two transit nodes where transit transfers take place was a unique asset. He added that that the construction of the building would provide

thousands of direct and indirect permanent jobs, that the design was beautiful, and that the development would help induce growth on the west side from Seventh Avenue to the Hudson River.

Written testimony in support of the proposed project was also received from Macy's, The Real Estate Board of New York, Stonehenge Management LLC, LDV Hospitality, New Jersey Transit, The Building Construction Trades Council of Greater New York, Madison Square Garden, and The Steven L. Newman Real Estate Institute of Baruch College. Written testimony in opposition of the proposed project was also received from The Empire State Building Company, LLC and several local residents.

CONSIDERATION

The Commission believes that this application for a special permit (C 100049 ZSM), in conjunction with related applications for a special permit (C 100050 ZSM), zoning map change (C 100047 ZMM), text amendments to the Zoning Resolution (N 100048 ZRM), and City acquisition of easements (C 100237 PQM), is appropriate.

The applicant, 401 Hotel REIT, LLC and 401 Commercial L.P., proposes a new 1,200 foot tall commercial office building to be known as "15 Penn Plaza." The building would contain nearly 2.1 million square feet of floor area of Class-A office space with retail use in the lower floors. A major component of this proposal is an extensive series of at-grade and below-grade improvements to the transit network beneath and adjacent to the proposed development. There are two configurations for 15 Penn Plaza, one for a single tenant and the other for multiple

tenants. The configurations are similar in massing except for the treatment of the base along Seventh Avenue and the position of the respective towers. The Single-Tenant and Multi-Tenant buildings feature the same transit improvement package. The two options allow the development to address future market conditions.

This large, half-block site in Midtown Manhattan located across the street from Penn Station and sitting atop the nation's busiest transit hub, presents a remarkable opportunity for a major new high-density development. The Commission believes that the 15 Penn Plaza proposal is an excellent response to the opportunity presented by the site's unique size and location. The Commission believes 15 Penn Plaza will make a fine addition not only to the Penn Station area, but to the New York City skyline as well.

The Commission commends the design of the building for its responsiveness to its surroundings and the elegance of its tapered form. This signature new Class-A office tower would mark the Penn Station area as a major gateway to and from the city. The Commission is equally satisfied with the group of improvements to the transit network, which will greatly aid pedestrians and users of the transit network.

In order to construct 15 Penn Plaza, the applicant has requested a number of approvals. The Commission notes that the application was revised on July 8, 2010, to include changes to Gimbel's/33rd Street Passageway, to the building setback along West 32nd and West 33rd streets in the Multi-Tenant configuration, and to other elements of the proposal in response to questions raised during the public review process. A detailed discussion of the Commission's consideration of the requested actions is provided below.

Zoning Text Amendment (N 100048 ZRM)

The Commission believes that the text amendment to Sections 81-066 and 81-254 to allow modifications to height and setback regulations and Mandatory District Plan Elements of the Special Midtown District, and to Section 81-541 pertaining to transit related improvement bonus, is appropriate.

Sections 81-066 and 81-254

This text amendment would allow, by special permit, the modification of height and setback regulations and Mandatory District Plan Elements for developments or enlargements on a zoning lot with lot area of at least 60,000 square feet that are located wholly or partly within the Penn Center Subdistrict and that are receiving a transit improvement bonus.

Currently, Section 81-066 (“Special permit modifications of Section 81-254, Section 81-40, and certain Sections of Article VII, Chapter 7”) provides that the Commission may grant, by special permit, a limited group of bulk and Mandatory District Plan Element modifications for sites larger than 60,000 square feet in the Special Midtown District. Section 81-066 currently does not allow modifications to height and setback regulations. In order to grant this existing special permit, a number of findings must be made. The existing findings include determinations that the waivers result in a better site plan or better arrangement of required facilities, that the proposal is compatible with the surrounding area, that potential harmful effects on retail continuity have been addressed with pedestrian oriented uses, and that the modifications will not unduly obstruct light and air.

The proposed text amendment adds the ability to waive height and setback regulations and further findings. The Commission would be required to determine that the improvements to the transit network significantly increase public accessibility, that the height and setback modifications are necessary due to site constraints, and that the requested modifications have been reviewed in light of the goals of the Special Midtown District. The Commission would also be required to consider the project's daylight evaluation analysis.

The Commission believes that this set of required findings establishes an appropriately high threshold for the grant of waivers for bulk, mandatory district plan elements, and height and setback regulations. The purpose of the existing special permit under Section 81-066 is to allow for flexibility in site planning and massing on uniquely large sites that may not be able to meet standards established for smaller sites without undesirable compromises to the design of the development, or that may present opportunities for better site planning and massing alternatives that cannot be carried out on smaller sites. The Commission believes that this text amendment is consistent with the purpose of the existing special permit to allow for more flexibility for large sites and that the series of findings assure that a proposed development will be appropriate for its surroundings.

The Commission also notes that the text amendment is limited in its applicability to zoning lots that are at least partially within the Penn Center Subdistrict and that are at least 60,000 square feet in size and generating a transit-related bonus.

Sections 81-541

The applicant also requests a text amendment to 81-541 (“Rail mass transit facility improvement”) to define the administrative process for obtaining approvals from the multiple transit operating entities involved in rail mass transit facility improvements in and around the Penn Center Subdistrict, and to allow for the vesting of bonus floor area generated by the completion of the improvements to be used elsewhere on the zoning lot should the bonus floor area not be fully utilized at the time of development.

The Commission believes that the proposed text to clarify the administrative procedure for obtaining a transit-related bonus is appropriate and provides a high level of safeguard that the improvements are well defined and that their implementation is feasible. The text specifically requires that each rail mass transit entity confirm that the drawings of the 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 are physically and operationally feasible.

The Commission also supports the proposed provision that clarifies that the floor area bonus obtained via the transit improvement may be located on a portion of the zoning lot that is outside the Penn Center Subdistrict. This provision is desirable to allow for more flexibility in the location of certain improvements for a large zoning lot that may only be partially located within the Subdistrict. In the case of the 15 Penn Plaza proposal, this text would facilitate improvements on the Sixth Avenue portion of the site.

The Commission further supports the inclusion of the provision whereby floor area earned via the transit improvement bonus, if not fully used in the proposed development, may be retained for later use elsewhere on the zoning lot, subject to applicable review procedures. Under this provision, a future zoning map amendment reducing the floor area available on the zoning lot would not affect the amount of available, unused bonus floor area generated by the completed transit improvements. The Commission notes that this vesting provision provides an added incentive for completion of the transit improvements.

Special Permit pursuant to Sections 81-066 and 81-254 (C 100049 ZSM)

The Commission believes that the application for the special permit (C 100049 ZSM) pursuant to Section 81-066 and 81-254, to waive height and setback regulations and certain Mandatory District Plan Elements, is appropriate.

In order to grant the special permit, the Commission is required to make a number of findings related to: 1) the arrangement of programmatic needs and the site plan, 2) the compatibility of the building with the surrounding area, 3) the availability of light and air to the surrounding area, 4) effects on the pedestrian-oriented streetscape, 5) consistency with the policy objectives of the Special Midtown District, 6) increased accessibility to the below-grade transit system, and 7) whether the modifications to height and setback regulations are necessary due to the constraints of the site and that consideration has been given to the complete daylight evaluation for the proposed design. As detailed below, the Commission has given each of the findings careful

consideration and believes that both configurations of the 15 Penn Plaza proposal meet all of the above findings.

The first finding the Commission must make is that the proposed waivers of the Mandatory District Plan Elements will result in a better arrangement of facilities or a better site plan on a uniquely large lot.

The applicant is requesting waivers from the standards for pedestrian circulation space, street wall continuity, retail continuity, and major building entrances. The Commission notes that the request for the waivers stem from the applicant's intent to provide a generous amount of sidewalk circulation space and to provide an improved configuration of ground floor uses for its program.

The applicant is requesting that the sidewalk widening along Seventh Avenue be allowed to be 15 feet in width, rather than the standard maximum of 10 feet as set forth in Section 37-50. The Commission believes that the additional five feet of sidewalk widening allows for more circulation space and relief from congestion in one of the city's most heavily pedestrian trafficked areas.

The Commission believes that ample effective widths of the sidewalks (the aggregate of city sidewalk plus the sidewalk widening area on the private property) on Seventh Avenue and the side streets are necessary to achieve an acceptable level of service for pedestrians traveling in the Penn Station and Herald Square areas. The Commission notes that the existing city sidewalks

surrounding the project site measure only 13 feet in width and that the proposed sidewalk widenings along the street frontages of the development are highly desirable. During the review process the Commission requested that the sidewalk widening along West 32nd and West 33rd streets in the multi-tenant proposal be increased from seven feet which was proposed at the time of certification to 10 feet. (the Single-Tenant version was already proposed to have 10-foot wide sidewalk widenings on the side streets). The Commission is pleased that, in response, the applicant has committed to provide the 10-foot widenings in the Multi-Tenant version and notes that the change is reflected in the applicant's submission of revised plans on July 8, 2010.

The Commission notes that the 15-foot wide sidewalk widening along Seventh Avenue will result in an effective sidewalk width of 28 feet and that the 10-foot wide sidewalk widening along West 32nd and West 33rd streets will result in an effective sidewalk width of 23 feet. If, in the future, bollards are required for security purposes, these effective sidewalk widths would still allow for unobstructed, clear path widths of 25 feet on Seventh Avenue and 20 feet on West 32nd Street and West 33rd Street.

Related to the waiver requested above, the applicant is also requesting relief from the retail continuity and streetwall requirements of Sections 81-42 and 81-43 which state that ground floor storefronts and streetwalls are not permitted to be located more than 10 feet from the street line. The Commission notes that these requirements cannot be met along Seventh Avenue since the sidewalk widening is proposed to be 15 feet, resulting in a streetwall that is 15 feet from the street line. This waiver is appropriate because it allows for wider effective sidewalk widths and more circulation space, as noted above.

While the applicant plans to provide widened sidewalks on the 15 Penn Plaza portion of the zoning lot, the applicant cannot provide the sidewalk widening on the portion of the block occupied by the Manhattan Mall. Section 37-50 states that a sidewalk widening must extend along the entire front lot line of the zoning lot. The Commission believes that a waiver from this standard is appropriate due to structural infeasibility given the existing Manhattan Mall structure. Should the existing Manhattan Mall be demolished and the site redeveloped, the applicant has committed to provide sidewalk widenings on the Manhattan Mall portion of the site. The Commission notes that any future sidewalk widenings on the Manhattan Mall portion of the site would be provided in a manner that does not conflict with transit improvements that are completed as part of 15 Penn Plaza's package of transit improvements.

Also related to the sidewalk widening on Seventh Avenue, pursuant to Section 81-45, the Seventh Avenue frontage must provide a minimum of 50% of required pedestrian circulation space on that frontage. The purpose of this requirement is to locate a majority of the required pedestrian circulation space near the entrance of the building. Both proposed building configurations are required to provide a total of 6,842 square feet of pedestrian space, of which 3,421 square feet is required to be provided along Seventh Avenue. Both proposed buildings provide 2,962 square feet of pedestrian circulation space along Seventh Avenue, less than the required 50 percent. The Commission notes that the proposed sidewalk widening of 15 feet already exceeds the maximum of 10 feet, and that any further increase in the depth of the sidewalk widening or the any other provision of additional pedestrian circulation space would likely diminish the strong proposed streetwall of 15 Penn Plaza.

The applicant has also requested a waiver from the maximum frontage length of the lobby entrance which is required in Section 81-42 to be either 40 feet or 25% of the total street frontage, whichever is less. The Commission believes that the applicant's request for a lobby entrance that spans 57 feet of the building's Seventh Avenue frontage in both building configurations is appropriate because it will better accommodate the intense circulation requirements of the new building. 15 Penn Plaza is expected to have up to 10,000 employees and several hundreds of visitors daily. A wider than normally allowed lobby entrance is appropriate for a 2 million square foot building in one of the city's most heavily trafficked areas. The Commission notes that the lobby would be flanked with retail on the corners to provide amenity to passers by.

The applicant is also seeking a waiver of Section 81-47 which requires, on a site with at least 20,000 square feet of lot area on a full block front with at least one narrow street frontage, that a major entrance to the building be provided on at least one narrow street unless a sidewalk widening of 10 feet has been provided on the wide street. The Commission notes that a sidewalk widening is provided on Seventh Avenue, except that instead of 10 feet, it is proposed to be 15 feet.

In its review of the site plan, the Commission took into consideration comments made by the Community Board in its recommendation to disapprove the project. The Community Board recommended improvements to loading, black car traffic, public space, and tree plantings. The Commission notes that the applicant has committed to revise the loading plan for the Multi-Tenant configuration to ensure that trucks "head-in" and "head-out" on West 32nd Street, to plant

trees where possible on the site or nearby if not possible, to provide a black car management plan, and to establish an open space fund prior to the time at which the number of building occupants would increase to the point at which an open space impact would exist. The Commission is also pleased with the commitment of the applicant to provide an approximately 9,900 square foot open space on the roof of the base of the Single-Tenant building to provide open space access for 15 Penn workers.

For all the reasons described above, the Commission believes that requested modifications of the Mandatory District Plan Elements are appropriate and result in an improved arrangement of facilities and better site plan.

The second finding the Commission must make is whether the design, scale, and location of both versions of the building are compatible with the character of the surrounding area.

The area of Midtown Manhattan surrounding the project site is characterized by high-density commercial buildings and a strong retail presence. There are a number of towers in the near vicinity including One Penn Plaza (750 feet tall) and Two Penn Plaza (412 feet tall), and, at a further distance, the Empire State Building (1,450 feet tall). Similar to the proposed 15 Penn Plaza, these buildings, each with over 1 million zoning square feet, feature a large base housing large floor plates and a tower that rises after setback from the base. There are also high-rise residential buildings in the near vicinity including the 59-story Epic on West 31st Street and the 56-story Nelson Tower at West 34th Street. Both configurations of 15 Penn Plaza are compatible with the Manhattan Mall, which will remain on the site. The bases of both configurations (218

feet tall for the Single-Tenant and 134 feet tall for the Multi-Tenant) are close to the height of the Manhattan Mall (208 and 228 feet). Both configurations of the 15 Penn Plaza also provide a significant amount of retail. Given the preponderance of high-rise, high-density developments surrounding the project site, the Commission believes the design, scale, and location of 15 Penn Plaza, as well as its proposed commercial and retail use, are fully compatible with the surrounding area.

With respect to the special permit finding regarding effects on light and air, the Commission believes that the design of the both building configurations takes effective means to lessen the blockage of light and air to surrounding properties, chiefly via the tapered form of the tower and the ground floor setbacks. The existing buildings on the block, Hotel Pennsylvania and the Manhattan Mall, are imposing masonry structures that were built to the streetline and rise without setback to 22 stories and 11 stories, respectively. Unlike the two existing buildings currently on the block, the Commission notes that the streetwall of 15 Penn Plaza sets back 10 feet from the streetlines of West 32nd Street and West 33rd Street and 15 feet from the streetline of Seventh Avenue. These setbacks on each side of the building bring light and air directly to the street. The most prominent design feature of 15 Penn Plaza, the tower's taper, causes the tower to narrow as it ascends, thereby also reducing the blockage of light and air. The Commission notes that the tower of the multi-tenant version is significantly set back by approximately 80 feet from the Seventh Avenue streetwall.

The Commission notes that a measurement of the impact of the both proposed building configurations on certain surrounding properties and public spaces is also provided by the

shadow analysis in the FEIS. The FEIS identified a total of 13 sunlight sensitive open spaces, natural features, and/or architectural resources in the study area that would be affected by the incremental shadows from either proposed building configuration FEIS concluded that in no case would the extent and duration of such shadow be substantial enough to result in a significant adverse impact.

The design of the building also employs certain architectural treatments that serve to decrease the visual perception of the tower's girth. These architectural features include the "notched corners" of the tower, which increase in size from the mid-point of the tower as the building gets taller, and the vertical recesses that run down the center of each façade of the tower. The Commission notes that the taper, corner notches, and the vertical recesses are required elements of the special permit approval and restrictive declaration.

During the review process, Manhattan Community Board 5, in its recommendation for disapproval of 15 Penn Plaza, stated that it believed the proposed designs were "bulky, uninspired, massive, and fail to seize this opportunity to add beauty and distinction to the New York City skyline and streetscape." The Commission disagrees. As discussed above, the proposed designs are appropriate for the size and location of the site, and the taper, notches and recessed elements in the building's façade all contribute to making 15 Penn Plaza an attractive addition to the New York City skyline.

With regard to the finding whether any potentially deleterious effects on retail continuity have been minimized by the provision of pedestrian oriented uses, the Commission notes that the site

plan provides transit entrances and a significant amount of retail. Where retail and transit-related uses cannot be located due to other essential ground floor uses such as building lobby and loading areas, a meaningful alternative has been put in place. In particular, the Commission is pleased that along West 32nd Street, in the Single-Tenant configuration where shuttle elevators abut 120 linear feet of frontage, the applicant has committed under the restrictive declaration to provide art or another method of street wall activation along this frontage to ensure a lively streetscape. The base proposal is to provide multi-colored LED lighting on each of the shuttle elevators which would form words or patterns as the elevators rise and fall and be visible from the street.

The Commission must also find that the requested modifications are consistent with the basic strategy of the Special Midtown District and its Mandatory District Plan Elements.

The Special Midtown District was created to promote multiple goals such as strengthening the Manhattan business core by improving working and living environments; stabilizing Midtown and providing incentives for growth where appropriate; controlling the impact of buildings on the access of light and air to the streets; linking future Midtown growth to improved pedestrian circulation and public transit options; expanding retail, entertainment, and the commercial character of the area around Penn Station and enhancing its role as a major transportation hub in the city; and providing architectural design flexibility within an established framework.

The Commission first notes that the requested modifications to certain standards for the Mandatory District Plan Elements result from site planning objectives for the building's uniquely

large site location between two regional transit hubs. Although modifications are requested, the overall result is consistent with the purposes of the special district.

The Commission believes that the 15 Penn Plaza proposal strongly reinforces the goals of the Special Midtown District. With its location in immediate proximity to the transportation hubs at Penn Station and Herald Square, the proposed buildings would enhance the area's role as a major transit center in the City as well as reinforce the retail and commercial character of the area. The proposed mass transit improvements and sidewalk widenings along each street frontage significantly improve pedestrian circulation at grade and enhance access to mass transit facilities. The development provides significant below-grade transit improvements and enhanced street access to those improvements, as well as retail both along Seventh Avenue and the side streets. It also would enhance Penn Station by making it possible to more easily access the station and more easily walk to and from the station at-grade via the widened sidewalks on West 33rd and West 32nd streets.

With regard to the finding whether the transit related improvements significantly increase public accessibility to and from Penn Station, the Commission is extremely pleased with the extent and the variety of improvements that include, among others, subway entrances that are moved closer to the street corners, increased subway platform width for the uptown No. 1 train, new stairs and escalators, a new street elevator, and most notably, the reconstruction and re-opening of the Gimbel's/33rd Street Passageway. The Passageway has been closed and in disrepair since 1986. When re-opened as part of this proposal, the new Passageway will provide an attractive, secure, and climate-controlled link between the Herald Square and Penn Station transit hubs. The

benefits of the improvements are discussed in further detail below in the discussion of the special permit for a transit improvement bonus. The Commission finds that the numerous transit-related improvements would significantly increase public accessibility to and from the facilities in and around Pennsylvania Station.

Finally, the Commission must find that that the requested modifications to height and setback regulations are necessary due to the constraints or conditions of the proposed development and conditions imposed by the configuration of the site, and must consider the waivers in light of the purpose of the Special Midtown District and a review of the complete daylight evaluation for the proposed design.

The Commission notes that the modification of the height and setback regulations is necessary in order to provide building envelopes that can accommodate the specialized requirements of a building suitable for occupancy by a financial services firm with an extensive trading operation. The site is constrained by the unavailability of basement space due to the Amtrak/LIRR train shed that runs under the building, and also the provision of on-site transit improvements. This limited basement space requires more mechanical space than usual to be placed in the tower. The site, albeit large, is further constrained by the existing Manhattan Mall on the eastern half of the zoning. Retention of the Manhattan Mall results in approximately three-quarters of the total floor area on the zoning lot to be located on the 15 Penn Plaza half of the site.

Both proposed building options were analyzed under the Daylight Evaluation regulations of Section 81-27. The overall Daylight Evaluation analysis resulted in scores of 17.50% for the

Single-Tenant Building and 37.40% for the Multi-Tenant Building. A normal passing score is 75%.

Both the Single-Tenant and Multi-Tenant buildings provide a large open floor plate in the podium to accommodate large floor plate required for trading floors. The Single-Tenant building achieves the largest possible open floor by locating the elevator core away from the center and close to Seventh Avenue. The result is a low Daylight Evaluation score for the Single-Tenant configuration. The elevators in the Multi-Tenant building are located in the core, which leads to a better Daylight Evaluation score than the Single-Tenant version. The Commission notes that the low Daylight Evaluation scores on West 32nd and 33rd streets are partly attributable to the existing Manhattan Mall building which rises without setback on the side streets to a height of approximately 200 feet at the streetline.

As detailed above in the Commission's consideration of the finding relating to light and air, the Commission believes that the design of the both configurations ensures that sufficient light would reach the surrounding streets. The Commission believes that the design of the buildings successfully mediates between the specialized programmatic needs of a Class-A building for the financial service sector (chiefly, the need for large floor plates) and a building massing that does not unduly block light and air to the surrounding streets and properties. As noted above, both Single-Tenant and Multi-Tenant configurations set back 15 feet from the Seventh Avenue street line and 10 feet from the West 32nd and West 33rd street streetlines. The towers are tapered and notched on all four sides to ensure less blocking of daylight. The proposed glass skin of the building would also serve to reflect daylight. The Commission also notes that the Penn Station

superblock across Seventh Avenue from the site has a 90 foot deep plaza (the distance from the curb to 2 Penn Plaza) which would permit light from the west to fall on the site and surrounding blocks.

The Commission believes that the requested height and setback modifications are necessary to facilitate the development of a building sufficiently large to accommodate the total amount of bonus floor area generated by the unique and desirable proposed program of mass transit improvements and to meet the specialized requirements of prospective financial services tenants. The redevelopment of this prominent site located between the regional transportation hubs of Penn Station and Herald Square would reinforce the retail and commercial character of the Penn Center Subdistrict and provide a major program of transit improvements that is an essential component in the City's overall strategy for guiding growth in Midtown.

The Commission is also pleased that the applicant has agreed, via provisions in the restrictive declaration, that in the event the proposed building utilizes less floor area than what is generated by the transit improvement bonus and will be reduced in height and other dimensions, it must remain consistent with the architectural form reflected in the approved set of drawings by adhering to a set of prescribed design principles. Under the restrictive declaration, conformity with the approved building form and design principles must be approved via a Chair Certification prior to the applicant accepting a building permit. In the event the unutilized floor area were later proposed for use in connection with an enlargement or redevelopment of the Manhattan Mall site, if the redevelopment were to exceed the envelope of the current Manhattan Mall building, further discretionary approvals would be required. These would include

Commission approval, as well as full ULURP review in the event that the proposed envelope of the development or enlargement required new waivers.

The Commission received written testimony expressing opposition to the building's proposed height and comparing 15 Penn Plaza to 53 West 53rd Street, also known as the MoMA/Hines tower, which was approved by the Commission in 2009 (C 090432 ZSM), but with a two hundred feet reduction in height. The Commission notes that the 53 West 53rd Street proposal was reduced in height out of concern that it did not have a complete and coherent design at the tower top, and that the proposal would have resulted in a display of mechanical equipment in the upper stratum of the New York skyline. 15 Penn Plaza's design configuration is consistently well thought out from the base to the tower top, and does not present the issues that concerned the Commission in the case of the West 53rd Street project.

In a letter dated June 6, 2010, the owners of the Empire State Building wrote to object to the proposed height and size of the 15 Penn Plaza, stating among other concerns that potential effects on the Empire State Building, a New York City landmark and icon, had not been adequately analyzed. The owners were principally concerned with the potential effects on the Empire State Building with regards to its importance to the Manhattan skyline and its antenna transmission facility. In response, the Commission notes that, as discussed in the FEIS analysis, the prominence of the Empire State Building would not be significantly affected because the new building in either the Single-Tenant or Multi-Tenant configuration would be shorter than the Empire State Building (approximately 230 feet shorter), and the two buildings are approximately 1,000-feet apart, which would further diminish the perceived height of the new building in more distant views. The Commission also points out that there would be no significant impact on

skyline views because 15 Penn Plaza would be seen in distant views that already contain large-scale tower buildings, and new developments in Hudson Yards will continue to add large towers to the Midtown skyline. Additionally, and also as discussed in more detail in the FEIS, there would be no impact on views from the pedestrian level, because there are no major view shed corridors that would be blocked by 15 Penn Plaza. The Commission further notes that interference of antenna-based transmissions is not unique and occurs as a consequence of New York City's evolving built landscape; transmission interference can generally be managed through the use of technologies for filling transmission gaps without need to relocate a transmission site. Alternative transmission tower locations are also available in Manhattan. Further, regarding a possible antenna on the top of the tower in either configuration, the rules of the Special Midtown District (Section 81-252) prohibit items, such as antennas, that would normally be allowed as "permitted obstructions." Therefore an addition of an antenna would not be as-of-right and a modification of this application would need to be made to this Commission.

Special Permit to obtain the transit improvement bonus (C 100050 ZSM)

The Commission believes that the proposed set of transit improvements will provide significant amenities and merits the full 20% floor area bonus as proposed. The improvements extending throughout the block, at and below grade, will greatly improve access to, from, and through the area. The Commission notes that the improvements were identified in consultation with transit agencies through a multi-year process, and that each agency has submitted letters of conceptual approval and feasibility for the proposed improvements. It is worth emphasizing that while these

improvements are highly desired by the agencies, there is no funding currently available for any of the improvements in any transit agency's capital plan.

The Commission believes that the improvement package is both extensive and multi-faceted.

The centerpiece feature of the package, the reconstruction and reopening of the Gimbel's/33rd St. Passageway, is an especially welcome improvement to the Penn Station underground network. It would permit an underground connection between the Seventh Avenue and Sixth

Avenue/Broadway transit nodes, in a free zone, which has been missing for a quarter of a century. This re-opened connection will not only facilitate transit for commuters whose ultimate destination is this area but also commuters who want an easier connection between the many subway and commuter lines that are in close proximity to each other but lack easy connections.

The Commission believes that this and the other improvements constitute an extensive set of transit improvements that will not only improve accessibility and commuter flow on and around the 15 Penn Plaza site but also extend the benefits of the improvements off site, to the express and southbound Seventh Avenue subway infrastructure, as well as the transit infrastructure on the Manhattan Mall site which will remain. The Commission is pleased that improvements would facilitate the movement of commuters to and from five transit networks (Amtrak, NJ Transit, PATH, LIRR and MTA/NYC Transit). Two improvements located off site will increase the width of connections from the express and southbound platforms of the Seventh Avenue subway lines into Penn Station and onto this site.

The Commission is also pleased with the proposed security arrangements for the Passageway.

The Passageway will be well lit at a minimum of lighting level of 15 foot candles, it will have

multiple points of access including a stair to the street at the mid-block, and it will be lined with a significant amount of retail and transparency. The Passageway will be open from 6:00 am to 10:00 pm and will be monitored by MTA staff from a control center via a camera system provided by the applicant.

The Community Board, in its recommendation for disapproval, stated that the Passageway would only be used in “bad weather” and that some of the improvements resemble repairs and maintenance rather than added-value improvements meriting the bonus. The Commission disagrees and notes that the Passageway is particularly useful for moving commuters to and from destinations that are underground to other underground destinations, for example, from Penn Station to the east towards the Sixth Avenue subway lines or between the Seventh Avenue subway and the PATH trains. The Commission believes that the improvements represent real improvements that go well beyond mere repairs, particularly the reopening of the Passageway, and that the improvements will create new connections and pathways that will upgrade the transit network in ways that repairs cannot. The Commission notes that, among other improvements, the Gimbel’s/33rd Street Passageway will be expanded in height and width, lined with retail and artwork, and constructed with high quality finishes such as granite floor pavers.

The Community Board also noted that subway entrances on Seventh Avenue would be required by an as-of-right development and that new subway entrances would also be required for any future development on the Sixth Avenue portion of the site. However, the types of stairs provided on Seventh Avenue exceed the basic standards and while stairs would be required on Sixth Avenue in the event of new construction on the Manhattan Mall site, the transit

improvements on Sixth Avenue are proposed to be constructed by the applicant even while the existing Manhattan Mall building remains in place.

During the public review period a number of questions were raised by the Commission regarding specific details of the proposed Passageway, in particular related to the amount of retail and transparency, the transit informational boards provided on the south wall adjacent to the Manhattan Mall, the art installation on the north wall, and the lighting plan. The Commission is pleased that the applicant, in a letter dated June 25, 2010, has committed to devote at least 265 linear feet (out of 330 linear feet) of the south wall on the 15 Penn Plaza half of the Passageway to retail and that 45% of the area occupied by retail frontage would be transparent. The Commission notes that the applicant has provided details regarding the materials to be used in the art installation as well as its method of operation, and has elaborated on the lighting plan for the Passageway (with a commitment to a minimum of 15 foot candles) and its finishes. The Commission is also pleased that, if and when the Manhattan Mall is redeveloped, the applicant is committed to providing retail and transparency along the Manhattan Mall portion of the Passageway to the same degree as would be provided on the 15 Penn portion: 80% of its linear frontage would be occupied by retail with 45% of that retail frontage to be transparent. During the public hearing, the Commission also raised the issue of the height of the Passageway, which was 9'6" to 11 feet tall as originally proposed. The Commission is pleased with the applicant's commitment, in a letter dated June 18, 2010, to lower the floor to ensure that the height of the new Passageway is approximately 14 feet for much of its length and at no point less than 11 feet in height.

The Commission agrees with the Manhattan Borough President that the site has unparalleled connectivity to regional, long-distance and subway mass transportation and represents a unique opportunity for high-density transit oriented development and that the proposal will contribute much to the transportation infrastructure in this area. The Commission further agrees with the Borough President's statement that the proposed transit improvements would have a significant positive effect on the mass transit system.

The Commission recognizes that details of the transit improvements will continue to be developed following the ULURP process, but notes that the restrictive declaration includes a set of "Mandatory Network Elements", which enumerates particular aspects of the transit improvements that must be reflected in the final design. The Commission also notes that under the restrictive declaration, the final design of the Passageway must include specified "Designated Passageway Elements", including elements relating to the amount of retail provided, transparency, art, and key dimensions. A determination as to whether the Designated Passageway Elements are satisfied would be made via Chair's certification. The Commission is also pleased that the applicant has committed to use "best efforts" to keep the Passageway retail leased and has agreed to put artwork or other non-third party advertising visuals in the retail windows in the event of a vacancy.

Given the improvements and amenities described above, the Commission believes that the proposed set of improvement meets the findings of Section 74-763 in that (i) the general accessibility and security of the subway station/rail mass transit improvements will be improved by the provision of new connections, additions to or reconfigurations of circulation space, including provision of escalators or elevators; and that (ii) significant improvements to the

subway station/rail mass transit environment by provision for direct daylight access, or improvements to noise control, air quality, lighting or rider orientation and satisfactory integration of the street level entryway into the development or enlargement will occur.

Based on the consideration above, the Commission believes that the proposed set of transit improvements will provide significant amenities and merits the full 20% floor area bonus as proposed.

Zoning Map Amendment (C 100047 ZMM)

The Commission believes the application to rezone the midblock portion of Block 808 from a C6-4.5 district to a C6-6 is appropriate. The two districts are virtually identical with respect to permitted uses. With regard to permitted density, a C6-4.5 district permits 12.0 FAR as-of-right bonusable with the transit improvement bonus to 14.4 FAR. A C6-6 district permits 15.0 FAR as-of-right bonusable with the transit improvement bonus to 18.0 FAR.

The Commission notes that the City has for many years advanced a policy to encourage office development in this area of midtown Manhattan with high permitted densities. Specifically, the Commission report for the creation of the Special Midtown District, dated March 16, 1982 (N 820253 ZRM and N 820253 ZRM(A)) noted that the Midtown Development Project (which formed the basis for what later became the policies of the Special Midtown District) maintained that the strategy for the development of midtown Manhattan would be to encourage development to the west and south and specifically that this area (“34th Street between Fifth and Eighth; and the Penn-Station Herald Square area”) was designated for growth. Higher density districts have

been mapped in areas of midtown near transit nodes such as Penn Station, the Port Authority Bus Terminal and Columbus Circle. It is noteworthy that, with regard to midblocks, the Special Midtown District rules downzoned the midblocks on the east side of midtown, but did not downzone the midblocks in the dense commercial area just north of Grand Central Terminal between East 42nd and East 48th Streets.

The City has also encouraged “transit oriented development”. This policy encourages higher densities at locations that are well served by public transportation in order to promote the use of public transportation, decrease auto usage, and promote a sustainable living environment. The Commission believes that high-density development and high quality access to public transportation go hand-in-hand, as most recently demonstrated in the 2005 approval of the Special Hudson Yards District. The expansion of the Manhattan’s central business area envisioned by that rezoning is underpinned by the planned extension of the No. 7 subway line. A bonus is available for a contribution into the Hudson Yards District Improvement fund, which is used in part for funding of the No. 7 extension. Further illustrating this “transit oriented development” policy in West Midtown, the Special Hudson Yards District allows up to 19.5 FAR on the block across Seventh Avenue from the 15 Penn site, with a transit bonus.

The Commission notes that the overall FAR for the 15 Penn Plaza site, including the full transit improvement bonus, would be 18.0 FAR, which is below that established for the 19.0 - 33.0 FAR commercial corridor in Hudson Yards, and below that of the Grand Central Subdistrict which allows for the densities to reach 21.6 FAR, provided that improvements are made to the pedestrian circulation network around Grand Central Terminal.

The Commission further notes that large FAR allowances are not unusual in this area of Midtown given the prevalence of high density commercial districts to the east, west and northeast of the site (including C6-6 districts) and the proximity of the Special Hudson Yards District described above.

Here the rezoning permits the site to take full advantage of its transit-rich location in a manner consistent with the transit-oriented development policies discussed above. The Commission further notes that the rezoning of this midblock is appropriate in that it strengthens this area Midtown Manhattan as the city's and nation's preeminent central business district.

In conclusion, the Commission believes that the 15 Penn Plaza proposal -- a state-of-the-art, Class-A office building accompanied by an extensive series of improvements to the City's most vital transit hub-- represents an excellent response to the opportunity presented by the site's unique size and location. The soaring, tapering tower will make a fine addition to the New York City skyline while the transit improvement at grade and below will serve to greatly aid travelers in the Penn Station area. The construction of the 15 Penn Proposal will make a major contribution to the continued global competitiveness of New York City. The Commission enthusiastically supports the 15 Penn Plaza proposal.

City Acquisition of Easements (C 100237 PQM)

The Commission believes that the City's application for acquisition of easements to facilitate the transit improvements is appropriate. These easements will be transferred to MTA/NYC Transit under the City's Master Lease with the MTA, thereby permitting the integration of the completed improvements into the subway system under MTA/NYCTA management.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to proposed Section 81-066(b) of the Zoning Resolution;

- (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.

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 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 FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to a Restrictive Declaration, dated July 13, 2010, those mitigative 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 Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the 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 the grant of a special permit pursuant to the following Sections 81-066(b) and 81-254 of the Zoning Resolution:

1. to modify the height and setback regulations of Section 81-27 (Alternative Height and Setback Regulations-Daylight Evaluation); and
2. to modify the Mandatory District Plan Elements of Sections 81-42 (Retail Continuity along Designated Streets), 81-43 (Street Wall Continuity Along Designated Streets), 81-45 (Pedestrian Circulation Space), 81-47 (Major Building Entrances), and the design standards for pedestrian circulation spaces of Section 37-53(f) (Sidewalk Widening).

in connection with a proposed commercial development on property located at 15 Penn Plaza (Block 808, Lots 40, 1001 and 1002) in a C6-6 District, within the Special Midtown District (partially within the Penn Center Subdistrict), Borough of Manhattan, Community District 5, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 100049(ZSM)) shall, except as provided in Section 3.2 of the Restrictive Declaration be developed in size and arrangement

substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Pelli, Clarke, Pelli Architects and Stantec, filed with this application and incorporated in this resolution:

Single-Tenant Version

<u>Drawing</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-3.1	Single Tenant Zoning Calculations Attachment 4	February 8, 2010
Z-4.1	Single Tenant Zoning Calculations Attachment 4	February 8, 2010
Z-5.1	Single Tenant Site Plan @ Ground Level Attachment 2	July 8, 2010
Z-6.1	Single Tenant Low Rise Plan Floor 31 Attachment 6	July 8, 2010
Z-7.1	Single Tenant Low Rise Plan Floor 41 Attachment 6	July 8, 2010
Z-8.1	Single Tenant Mid Rise Plan Floor 51 Attachment 6	July 8, 2010
Z-9.1	Single Tenant High Rise Plan Floor 61 Attachment 6	July 8, 2010
Z-10.1	Single Tenant Roof Level Plan Attachment 6	July 8, 2010
Z-11.1	Single Tenant Site Plan @ Top of Screen Roof Level/ Attachment 6	July 8, 2010
Z-12.1	Single Tenant Lower Level-1 Lower Level-2 Attachment 6	July 8, 2010
Z-13.1	Single Tenant Street Wall & Retail Continuity Attachment 6 + 4	July 8, 2010
Z-14.1	Single Tenant Pedestrian Circulation Attachment 6 + 4	July 8, 2010
Z-15.1	Single Tenant Building Sections Attachment 6	February 8, 2010
Z-18.1	Single Tenant Roof Plan, Viewpoints Compliance Notes/ Attachment 5 + 4	February 8, 2010
Z-19.1	Single Tenant Roof Plan Enlargement Attachment 5 + 4	February 8, 2010
Z-20.1	Single Tenant Roof Plan Enlargement Attachment 5 + 4	February 8, 2010
Z-21.1	Single Tenant Axonometric Drawings and Elevations/ Attachment 5 + 4	February 8, 2010

Z-22.1	Single Tenant Grids and Calculations Compliance Notes/ Attachment 5 + 4	February 8, 2010
Z-23.1	Single Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-24.1	Single Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-25.1	Single Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-26.1	Single Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-27.1	Single Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010

Multi Tenant Version

<u>Drawing</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-3.2	Multi Tenant Zoning Calculations Attachment 4	February 8, 2010
Z-4.2	Multi Tenant Zoning Calculations Attachment 4	July 8, 2010
Z-5.2	Multi Tenant Site Plan @ Ground Level Attachment 2	July 8, 2010
Z-6.2	Multi Tenant Low Rise Plan Floor 37 Attachment 6	July 8, 2010
Z-7.2	Multi Tenant Low Rise/Mid Rise Plan Floor 46 Attachment 6	July 8, 2010
Z-8.2	Multi Tenant Low Rise/Mid Rise Plan Floor 53 Attachment 6	July 8, 2010
Z-9.2	Multi Tenant High Rise Plan Floor 62 Attachment 6	July 8, 2010
Z-10.2	Multi Tenant Roof Level Plan Attachment 6	July 8, 2010
Z-11.2	Multi Tenant Site Plan @ Top of Screen Roof Level / Attachment 2	July 8, 2010
Z-12.2	Multi Tenant Lower Level-1 Lower Level-2 Attachment 6	July 8, 2010
Z-13.2	Multi Tenant Street Wall & Retail Continuity Attachment 6 + 4	July 8, 2010
Z-14.2	Multi Tenant Pedestrian Circulation Attachment 6 + 4	July 8, 2010
Z-15.2	Multi Tenant Building Elevations and Building Sections/ Attachment 6	July 8, 2010
Z-18.2	Multi Tenant Roof Plan, Viewpoints Compliance Notes/ Attachment 5 + 4	February 8, 2010
Z-19.2	Multi Tenant Roof Plan Enlargement	February 8, 2010

Z-20.2	Attachment 5 + 4 Existing Building Roof Plan, Viewpoints Attachment 5 + 4	February 8, 2010
Z-21.2	Multi Tenant Axonometric Drawings and Elevations/ Attachment 5 + 4	February 8, 2010
Z-22.2	Multi Tenant Grids and Calculations Compliance Notes/ Attachment 5 + 4	February 8, 2010
Z-23.2	Multi Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-24.2	Multi Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-25.2	Multi Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-26.2	Multi Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010
Z-27.2	Multi Tenant Daylight Evaluation Diagram Attachment 5 + 4	February 8, 2010

Single/Multi Tenant Transit Drawings

<u>Drawing</u>	<u>Title</u>	<u>Last Date Revised</u>
G-001	Cover Sheet	February 8, 2010
G-007	Key Plan Street Level	February 8, 2010
G-008	Key Plan Lower Level 1 (LL1)	February 8, 2010
G-009	Key Plan Lower Level 2 (LL2)	February 8, 2010
A-102	Area 1 IRT Platform Level (LL1) Floor Plan	February 8, 2010
A-103	IRT Underpass Level (LL2) Floor Plan	February 8, 2010
A-201	Street Level Floor Plan	February 8, 2010
A-202	IRT Platform Level (LL1) Floor Plan	February 8, 2010
A-203	IRT Underpass Level (LL2) Floor Plan	February 8, 2010
A-301	Area 3 Street Level Floor Plan	February 8, 2010
A-302	IRT Platform Level (LL1) Floor Plan	July 8, 2010
A-400	Area 3 to 7 Passageway Spatial & Design	July 8, 2010

Requirements

A-401	Area 4 Street Level Floor Plan	July 8, 2010
A-402	Area 4 Passageway Level (LL1) Floor Plan	July 8, 2010
A-502	Area 5 Passageway Level (LL1) Floor Plan	July 8, 2010
A-602	Area 6 Passageway Level (LL1) Floor Plan	July 8, 2010
A-701	Area 7 Street Level Floor Plan	February 8, 2010
A-702	Area 7 Path Mezzanine Level (LL1) Floor Plan	February 8, 2010
A-703	Area 7 IND Mezzanine Level (LL2) Floor Plan	February 8, 2010
A-801	Area 8 Street Level Floor Plan	February 8, 2010
A-802	Area 8 PATH Mezzanine Level (LL1) Floor Plan	February 8, 2010
A-803	Area 8 IND Mezzanine Level (LL2) Floor Plan	February 8, 2010
A-S01	Area 3 to 7 Passageway Longitudinal Section	July 8, 2010
A-S02	Area 1 to 3 Miscellaneous Sections 1 of 2	February 8, 2010
A-S03	Area 3 to 8 Miscellaneous Sections 1 of 2	July 8, 2010

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. Development pursuant to this resolution shall be allowed only after the Restrictive Declaration, dated July 13, 2010 and executed by VNO 100 West 33rd Street, LLC, 401 Hotel REIT, LLC, and 401 Commercial, L.P., as Declarant, shall have been recorded in the Office of the Register of the City of New York, County of New York. Such Restrictive Declaration shall be deemed incorporated herein as a condition of this resolution.

5. 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.

6. 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.

7. 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.

8. 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 100049 ZSM), duly adopted by the City Planning Commission on July 14, 2010 (Calendar No. 31), 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



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Vikki Barbero, *Chair*

Wally Rubin, *District Manager*

April 16, 2010

Hon. Amanda Burden
Chair
Department of City Planning
22 Reade Street, Room 2E
New York, NY 10007

Re: 15 PENN PLAZA

Dear Chair Burden:

At the regularly scheduled monthly meeting of Community Board Five on Thursday, April 15, 2010, the Board passed the following resolution by a vote of 36 in favor, 1 opposed, 1 abstaining:

WHEREAS, 401 Commercial LP and 401 Hotel REIT LLC propose to redevelop the current site of the Hotel Pennsylvania with a new 67-story, approximately 1,190 to 1,216-foot tall commercial office building to be known as 15 Penn Plaza; and

WHEREAS, The development site is currently occupied by the 1,700 room Hotel Pennsylvania which was designed by McKim, Mead & White which Community Board Five has previously recommended for landmark designation but the New York Landmark Preservation Commission recently determined that the Hotel did not meet their criteria for designation; and

WHEREAS, The applicants are proposing two optional development scenarios for the site in order to have flexibility to respond to future market conditions:

- 1) An office building for a single financial industry tenant with five floors of approximately 340,000 sq. ft. of trading floor use, plus approximately 18,000 sq. ft. of retail use, 509,000 sq. ft. of amenity, lobby, service and loading area space, 418,000 sq. ft. of mechanical space, and 1.53 million sq. ft. of office space for a total of 2.83 million gross sq. ft.; or
- 2) A slightly smaller office building for multiple tenants that would include approximately 1.89 million sq. ft. of commercial office use, 361,711 sq. ft. of retail space, 307,180 sq. ft. of mechanical space, and 97,131 sq. ft. of amenity, lobby, and service and loading area space for a total of 2.66 million gross sq. ft.; and

WHEREAS, The applicants do not yet have a tenant for the single-tenant scenario; and

WHEREAS, Both scenarios would potentially include 100 below-grade accessory parking spaces, widened sidewalks, various options for truck deliveries and pickups in response to the area's intensely busy traffic, and trees planted on 32nd Street; and

WHEREAS, The single tenant proposal includes a block through loading area and the multi-tenant proposal only includes a single-entry loading dock and neither proposal includes adequate measures to mitigate the small truck and black car traffic that will be generated at this site, and

WHEREAS, The design proposals for both development scenarios are by Pelli Clarke Pelli Architects and currently propose to incorporate green construction materials and systems with the goal to achieve or exceed LEED Silver certification; and

WHEREAS, The development site is located partly within a C6-6 zoning district and partly within a C6-4.5 zoning district that has a lower FAR requirement; it is also partially located within the Penn Center Subdistrict of the Special Midtown District; and

WHEREAS, current zoning would permit approximately 1.15 million square feet of floor space on the building lot and in order to build either scenario -- a single tenant at 2.83 million square feet or multiple tenants at 2.66 million square feet -- the applicants would move 245,542 square feet from the adjacent site through a zoning lot merger with the parcel they also own on 6th Avenue that is currently the location of Manhattan Mall. For additional floor area, the applicants are seeking to:

- By obtaining Zoning Map and Zoning Text Amendments, add 266,625 square feet from an upzoning from a C6-4.5, which permits 12 FAR, to a C6-6, which permits 15 FAR; and
- Obtain a Special Permit (ZR 81-541 and 74-634) that would give the project an additional 20 percent of additional floor area, adding 474,000 square feet in exchange for making various improvements to mass transit facilities at, or adjacent to, the development site; and

WHEREAS, The applicants must also obtain:

- Special permit (ZR 81-066 and 81-254) to modify the height and setback regulations of the Special Midtown District;
- Special permit (ZR 81-066) to modify the Mandatory District Plan elements pertaining to pedestrian circulation space, street wall continuity, retail continuity and major building entrances; and
- A Zoning text amendment to define the administrative process for obtaining approvals from the multiple transit operating entities in and around Penn station, and to provide that any bonus floor area for completed rail mass transit improvement that is not utilized in a development is vested and available for use elsewhere on the zoning lot;

WHEREAS, The development site shares its block with the 11-story Manhattan Mall and under both development scenarios, the development site and the Mall site will be merged into a single zoning lot and thus any approvals granted to this development proposal would apply to the merged zoning lot; and

WHEREAS, All the entities -- 401 Commercial LP, 401 Hotel REIT LLC and the Manhattan Mall site -- are controlled by Vornado Realty Trust which also controls 11 buildings and 8 million square feet in the area; and

WHEREAS, If the C6-4.5 to C6-6 upzoning is granted to this development proposal and if for any reason the applicants do not proceed with either of the proposed tenant scenarios, by dint of having merged the development site with the adjacent Manhattan Mall site, the upzoning FAR increase can be used for any future development that may take place on the merged lot; and

WHEREAS, As currently proposed, the project would take approximately 4 1/2 years to construct but no timetable has been set for construction to begin, absent confirmation as to which development scenario will be chosen; however any upzoning granted under this ULURP application would remain permanently in effect; and

WHEREAS, The applicant is requesting a 20 percent transit bonus in exchange for relocating and upgrading the existing subway entrances on West 32nd and West 33d Streets, adding a new street elevator at Seventh Avenue and 32nd Street, relocate two subway entrances at the Manhattan Mall site, add a new stairway from the mezzanine level to the IRT express train platform and making other transit improvements either to mitigate the impact of this development, accommodate the new workers coming to the new office tower, or to provide improvements and alternatives to help meet the significant demands on the existing transit infrastructure from the millions of MTA-NYCT, Port Authority Trans Hudson (PATH), Port Authority of New York and New Jersey, and Amtrak passengers and other residents, commuters and visitors who travel through this area daily; and

WHEREAS, With the granting of an easement to permit its widening, the applicants would renovate, including new public access to Manhattan Mall retail tenants, and reopen the pedestrian passageway, often referred to as the

Gimbel's Passageway, under the south side of 33rd Street along the length of the merged zoning lot/development site, originally built by the former Gimbel's Department Store; and

WHEREAS, The passageway would be accessed by a stairway from the mezzanine level of the IRT station under 7th Avenue or stairways from the street level and be only 16 feet wide and would likely only be used to avoid bad weather rather than a attractive new way to move from Herald Square to Pennsylvania Station; and

WHEREAS, New subway entrances on 7th Avenue would be required by an as-of-right development and new subway entrances would also be required for any future development on the 6th Avenue site, and

WHEREAS, In the already densely developed area surrounding Penn Station there are several locations where the Zoning Map pointedly designates lower FAR, one of which is at this development project site; Community Board Five is concerned that the upzoning requested in this application would not only violate the intention of the Zoning Map and burden the area with excessive density but also set a troubling precedent and tipping point for future development in the area; and

WHEREAS, The impact of the development of nearby Moynihan Station on the density of the surrounding area, including the sale of Farley Building commercial development rights, is not yet known but could be significant as well as concurrent with the building of 15 Penn Plaza; thus any upzoning at this development site is not only premature given the area's redevelopment future but also a threat to the area's environmental quality while producing no redeeming benefits to the community; and

WHEREAS, The only rationale offered for upzoning the mid-portion of this lot is that the developer would like the option of developing more office space and the Board does not believe this is a sound basis for making decisions on what the permitted density for an area should be; and

WHEREAS, Some of the proposed transit improvements for which the applicants would receive a 20 percent development bonus resemble repairs and maintenance associated with the applicants' own project and to their own benefit rather than added-value improvements meriting the bonus; and

WHEREAS, The biggest infrastructure problem in this area is the severe overcrowding of the sidewalks and, in particular, the entrance to Pennsylvania Station on 7th Avenue directly across the street from the development site, and

WHEREAS, The development of this site will be directly tied to Pennsylvania Station through a small entryway to the mezzanine under the 7th Avenue IRT and the applicant is proposing a much needed additional stairway from the mezzanine to the express train platform; and

WHEREAS, The development of such a large building on this site presents an opportunity for an additional major entrance to Pennsylvania Station which could lead directly to a single-level passageway to Herald Square and thus greatly improve accessibility to the station from the east and ease some of the existing overcrowding and additional traffic that will be generated by this and other planned developments in the area; and

WHEREAS, Community Board Five requests that additional improvements be made to mitigate the environmental impacts of this development such as better systems for truck deliveries, trash pick-up, tree plantings, public space, and other streetscape amenities, including, as a starting point, a block-through loading dock for any proposal; and

WHEREAS, By proposing what would be the third tallest building in New York City and a major addition to the city's skyline, Community Board Five is disappointed that the proposed building/s designs are bulky, uninspired, massive, and fail to seize this opportunity to add beauty and distinction to the New York City skyline and streetscape; and

WHEREAS, By building such an enormous building in this location the applicants will place significant burdens on the neighborhood's traffic, noise, infrastructure, air quality and other quality of life conditions and therefore the transit bonus and upzoning are only justifiable if there are also equally significant improvements to the transit infrastructure in the area, as well as to the community's ability to seek relief from any exceptional increase in density including but not limited to green space, arts facilities, and other public amenities; therefore be it

RESOLVED, That Community Board Five recommends **denial** of the application for a Zoning Map Amendment and various Zoning Text Amendments, Special Permit for a Floor Area Bonus, Special Permit to Modify Height

and Setback, and Acquisition of Easements to permit the development and construction of a new 2,052,667 office building on the current site of the Hotel Pennsylvania on Seventh Avenue between 32nd and 33rd Streets.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair

Kevin Finnegan
Chair, Land Use and Zoning Committee



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

May 19, 2010

Recommendation on
15 Penn Plaza
Application Nos. C 100047 ZMM, N 100048 ZRM, C 100049 ZSM and C 100050 ZSM
by 401 Hotel REIT, LLC/401 Commercial, L.P.; and C 100237 PQM by Department of
Citywide Administrative Services

PROPOSED ACTIONS

401 Hotel REIT, LLC and 401 Commercial, L.P. (“Vornado”)¹ seeks a zoning map amendment, zoning text amendments, and two special permits, to facilitate the development of a commercial office building on property located at 139 West 32nd Street in Manhattan Community District 5. The development site is located on a portion of a city block bounded by West 32nd Street, West 33rd Street, Sixth Avenue and Seventh Avenue, and is in the Special Midtown District (“MiD”) and partially within the Penn Center Subdistrict (“PCS”) of the MiD.

Vornado seeks approval of a **Zoning Map Amendment (C 100047 ZMM)** to change a portion of an existing C6-4.5 zoning district, mapped from a line 150 feet westerly of Sixth Avenue to a line 200 feet easterly of Seventh Avenue, to C6-6 zoning.

Vornado also seeks approval of **Zoning Text Amendments (N 100048 ZRM) to Sections 81-066 (Applicability of Article VII Provisions), 81-254 (Special Permit for Height and Setback Modifications), and 81-541 (Rail Mass Transit Facility Improvement) of the Zoning Resolution (“ZR”)**. The proposed amendments to ZR §§ 81-066 and 81-254 would allow, through special permit, developments or enlargements on zoning lots with lot area of at least 60,000 square feet located wholly or partly in the PCS to modify height and setback regulations and certain Mandatory District Plan Elements of the MiD. The proposed amendment to ZR § 81-541 would: define the administrative process for obtaining approvals from the involved transit entities; allow the entire zoning lot to be eligible for the mass transit improvement bonus if the lot is partially within the PSC; permit the bonus floor area to be located anywhere on the zoning lot; and allow the transit bonus floor area to be retained for later use on the zoning lot, pending completion of transit improvements.

¹ 401 Hotel REIT, LLC and 401 Commercial, L.P. are subsidiaries of Vornado Realty Trust.

Vornado also seeks a **Special Permit (C 100049 ZSM) pursuant to ZR § 81-066(b) and ZR § 81-254 (amended)** to modify the height and setback regulations and certain Mandatory District Plan Elements of the MiD including: pedestrian circulation space, street wall continuity, retail continuity, and location of a major building entrance.

In order for the City Planning Commission (“CPC”) to grant a special permit pursuant to the modified ZR §§ 81-066(b) and 81-254 (relating to the requested height, setback, and Mandatory District Plan Elements modifications), the application must meet the following findings: (1) the proposed modifications of Mandatory District Plan Elements result in a better site plan; (2) the design, scale, and location of the new buildings are compatible with the character of the surrounding area and existing buildings to remain on the zoning lot; (3) such modifications will not unduly obstruct the access of light and air to surrounding properties; (4) adverse impacts on retail continuity are minimized by a site plan that requires pedestrian-oriented uses; (5) the modifications are consistent with the basic strategy of the Special Midtown District and the purposes of the Mandatory District Plan Elements; (6) the improvements to the below-grade pedestrian circulation network provided by the development or enlargement significantly increase public accessibility to and from the subway and/or mass transit facilities in and around Pennsylvania Station; and (7) the modifications of height and setback regulations are necessary due to site constraints and will provide an appropriate distribution of bulk on the zoning lot with due consideration of the basic strategy of the MiD and the purpose of the District’s height and setback regulations. In considering whether such distribution of bulk is appropriate, the CPC shall consider a complete daylight evaluation for the proposed design.

Further, it seeks a **Special Permit (C 100050 ZSM) pursuant to ZR §§ 81-541 and 74-634 (amended)** to allow a floor area bonus, no greater than 20 percent of the permitted zoning lot for subway and rail mass transit facility improvements.

In order for CPC to grant a special permit pursuant to the modified ZR §§ 81-541 and 74-643 (relating to the requested transit improvement bonus), the application must meet the following finding: In determining the amount of floor area bonus, the CPC shall consider the degree to which: (i) the general accessibility and security of subway station will be improved by the provision of new connections, additions, or reconfigurations of circulation space, including provision of escalators or elevators; and (ii) significant improvements to the station’s environment by provision for direct daylight access, or improvements to noise control, air quality, lighting or rider orientation and satisfactory integration of the street level entryway into the development or enlargement will occur.²

In a related application, the Department of Citywide Administrative Services (“DCAS”) seeks approval of the **acquisition of easements (C 100237 PQM)**, to facilitate the construction of transit entrances, a below-ground passageway, and other mass transit improvements. Section 197-c of the New York City Charter mandates that acquisition by the City of real property be subject to the Uniform Land Use Review Procedure. There are no findings that need to be met to make a property eligible for acquisition under Section 197-c.

² There are two other findings that are not applicable for the proposed development.

PROJECT DESCRIPTION

The Project Site

The proposed actions would facilitate the redevelopment of the current Hotel Pennsylvania site (Block 808, Lots 1001 and 1002), on Seventh Avenue between West 32nd Street and West 33rd Street, as a commercial office building. In order to have the flexibility to respond to changing market conditions, Vornado proposes two development scenarios – a “Single-Tenant Building” and a “Multi-Tenant Building.”

The project site consists of the entire city block bounded by West 32nd Street, West 33rd Street, Sixth Avenue, and Seventh Avenue. The proposed office building would be constructed at the western end of the project site where the Hotel Pennsylvania currently stands (“development site”). The remainder of the project site is occupied by the Manhattan Mall (Block 808, Lot 40), a 14-story office and retail building of 1.1 million gross square feet (“GSF”). The applicant plans to merge the development site and the Manhattan Mall site into a single zoning lot.

The project site is located partially within two zoning districts, a C6-6 zoning district and a C6-4.5 zoning district. It is also located entirely in the Special Midtown District (“MiD”) and partially within the PCS³, both of which impose special use and bulk regulations on development within the underlying zoning districts. The C6-6 district is mapped along the avenues and has a maximum FAR of 15, which can be increased to 18 with a qualifying floor area bonus. The midblock portion of the project site is mapped C6-4.5 and has a maximum FAR of 12, which can be increased to 14.4 through a bonus. In addition, special FAR bonus provisions for transit improvements are available within the PCS.

The project site is located at the center of the 34th Street commercial corridor in the southern part of the Midtown Central Business District (“CBD”). The project site is almost entirely surrounded by high density commercial buildings, including One and Two Penn Plaza across the street to the west, and the Empire State Building one block to the east and north. Directly across the street is the Madison Square Garden Arena. Further west is the Special Hudson Yards District, which was created in 2005 to encourage high density transit-oriented development on sites adjacent to the No. 7- subway line extension. The Church of St. Francis of Assisi is located directly across from the development site on West 32nd Street. There are also a few residential buildings in the area, the closest of which is the 458-unit Epic, which also fronts on West 32nd Street.

The project site is between two regional transportation hubs – Penn Station and Herald Square. Penn Station serves the Long Island Rail Road, New Jersey Transit, and Amtrak, as well as the 1, 2, 3 and A, C, E subway lines. The completion of Moynihan Station, to be located in the Farley Post Office Building on Eighth Avenue between West 31st and 33rd streets, would increase the capacity of rail lines currently housed in Penn Station. The Herald Square transit complex serves the Port Authority Trans-Hudson (“PATH”) rail service, as well as the B, D, F, N, Q, R, V, and

³ The Penn Center Subdistrict is mapped generally to a depth of 100 feet along Seventh Avenue between West 31st Street and 100 feet north of West 34th Street.

W subway lines. The Access to the Region's Core rail station, another major regional commuter facility, will be located beneath West 34th Street between Sixth and Eighth avenues.

The project site includes the Gimbels Passageway, an underground pedestrian connection between Penn Station and Herald Square that has been closed to the public since the 1970s. Two entrances to the 1, 2, and 3 subway lines are currently located in the Hotel Pennsylvania lobby. Within the Manhattan Mall, two existing stair entrances and one ADA elevator serve PATH and all Sixth Avenue subway lines.

Building Descriptions

Both development scenarios – a Single-Tenant Building and a Multi-Tenant Building – would maintain the Manhattan Mall and result in the demolition of Hotel Pennsylvania. Either of the proposed office buildings will have, at minimum, a LEED Silver rating. The applicant proposes the same transit improvements for each development scenario.

The Single-Tenant Building, a 67-story building, contains a total of 2,052,667⁴ zoning square feet ("ZSF") of floor area, with 11,126 ZSF of retail space, 310,180 ZSF of trading floors, and 1,731,361 ZSF of office space. The building consists of a 10-story podium, which would rise to a height of 218 feet, and a tower portion that would rise to height of 1,190 feet. The podium would contain retail uses, trading floors and a sky lobby. The building's podium would be set back 10 feet from the property line along West 32nd and West 33rd streets and 15 feet along Seventh Avenue. The ground floor would include the building's entrances (with the major entrance on Seventh Avenue), lobby space, elevators to the building's trading floors and sky lobby, retail uses, an entrance to a below-grade 100-space accessory parking garage, and a through lot truck loading dock. The tower of the building would be oriented on Seventh Avenue and would extent approximately 207 feet into the midblock.

The Multi-Tenant Building, a 68-story building, also contains a total of 2,052,667⁵ ZSF, including 296,392 ZSF of retail and 1,756,275 ZSF of office space. The building consists of a six-story podium, which would rise to a height of 130 feet, and a tower portion that would rise to a height of 1,216 feet. The podium would be set back 7 feet from the property line along West 32nd and West 33rd streets and 15 feet along Seventh Avenue. The ground floor of the building would include the building's entrances (with the major entrance on Seventh Avenue), lobby and pedestrian circulation space, retail space, an entrance to a below-grade 100-space accessory parking garage, a loading dock for refuse and retail tenant loading on West 32nd Street, and an entrance to a below-grade truck loading facility on West 33rd Street for commercial loading.⁶ Retail uses would be located one story below grade and on the first, second and third floors. The upper three floors within the podium could be used for retail or commercial office space. The

⁴ The Single-Tenant Building will contain 2,821,000 GSF.

⁵ The Multi-Tenant Building will contain 2,666,000 GSF.

⁶ The proposed truck loading facility for commercial loading is accessed via two elevators on West 33rd Street. Trucks would enter head first and would be required to back out of the facility after loading/unloading. The proposed truck loading facility for retail tenant loading and for refuse requires trucks to back-in to the loading dock on West 32nd Street.

building's tower portion would be centered on the podium, setting back approximately 73 feet from Seventh Avenue.

Zoning Map Amendment (C 100047 ZMM)

The proposed map amendment would change zoning for the midblock portion of the proposed zoning lot, which encompasses the eastern portion of the development site and the western portion of the Manhattan Mall, from C6-4.5 zoning to a C6-6, thereby increasing the maximum FAR from 12 to 15. The Special Midtown District (in accordance with ZR § 74-634) permits a floor area bonus up to 20 percent of the base FAR for subway station improvements by special permit. However, in the PCS (in accordance with ZR § 81-541) rail mass transit facility improvements may also qualify for the bonus. In this case, the permitted maximum floor area bonus would be 3 FAR.

Text Amendment to ZR §§ 81-066 and 81-254 and related Special Permit (C 100049 ZSM)

The proposed text amendment would allow, by special permit, modification of height and setback regulations and certain Mandatory District Plan Elements for developments or enlargements on zoning lots at 60,000 SF located wholly or partly in the PCS which have been granted a floor area bonus for subway station and/or rail mass transit facility improvements pursuant to ZR § 81-541 (in accordance with ZR § 74-634). ZR § 81-066 does not currently permit the modification of height and setback regulations. The Mandatory District Plan Elements are mandatory planning and urban design elements, which are generally purposed towards the accommodation and well-being of pedestrians. The elements generally require retail continuity, streetwall continuity, maximum building setback allowance from the street line, and the relocation of subway entrances.

The requested special permit would allow certain modifications of height and setback regulations that are needed to facilitate the proposed office building and required due to certain site constraints. The proposed development, under either scenario, would not comply with the height and setback regulations of ZR § 81-27 (Daylight Evaluation). Daylight Evaluation is an alternative setback regulation, which generally describes sky visibility above a zoning lot. The applicant is retaining the Manhattan Mall, which is relatively low scale and therefore provides a significant amount of daylight on Sixth Avenue. However, the bulk of the proposed development has been redistributed towards Seventh Avenue and the side streets near Seventh Avenue. Both side streets, therefore, do not meet the daylight score requirements. Further, Seventh Avenue only meets the daylight score requirements for the Multi-Tenant Building, which has a recess on the avenue that is not found in the Single-Tenant design option. In order to meet daylight requirements, the bulk of proposed development would have to be more evenly distributed across the entire zoning lot.

In addition, the requested special permit would permit modification to certain Mandatory District Plan Elements proposed by the applicant:

- *Retail Continuity* – Pursuant to ZR § 81-42, ground floor uses are limited to retail⁷ uses on Seventh Avenue and storefronts cannot be set back more than 10 feet from the street line. Additionally, any lobby space on Seventh Avenue is limited to 40 feet or 25 percent of the building's total street frontage. The proposed building will be set back on Seventh Avenue 15 feet from the property line, and the applicant proposes to have an office lobby of 57 feet, in order to accommodate the projected population of the proposed building.
- *Street Wall Continuity* – Pursuant to ZR § 81-43, the street wall is required to be within 10 feet of the street line; the proposed building would be set back 15 feet from the street line along Seventh Avenue in order to provide greater space for pedestrian circulation.
- *Pedestrian Circulation Space* – Pursuant to ZR § 81-45, developments or enlargement on a zoning lot having a full block frontage on a wide street, with a few exceptions, must provide a minimum of 50 percent of its required pedestrian circulation space on that wide street. The development would be required to provide 6,842 SF of pedestrian circulation space with 3,421 SF of this space on Seventh Avenue. Vornado proposes to provide 15,252.5 SF of pedestrian circulation space, more than twice what is required in total, but only 2,962.5 of this space is on Seventh Avenue.
- *Design Standards for Pedestrian Circulation* – Pursuant to ZR § 37-53, a maximum permitted sidewalk widening is 10 feet and the sidewalk widening must extend along the entire length of the front lot line of the zoning lot. The proposed sidewalk widening along Seventh Avenue exceeds the maximum permitted width of 10 feet, and the sidewalk widenings on the West 33rd and West 32nd streets frontages are not continuous along the entire length of zoning lot lines.
- *Major Building Entrance* – Pursuant to ZR § 81-47, for zoning lots with full block frontage, a major entrance must be located on at least one narrow street, except if the zoning lot contains a permitted sidewalk widening with a width of 10 feet along a wide street. The proposed office building does not have a qualifying sidewalk widening on Seventh Avenue where the major office entrance will be located.

Text Amendment to ZR § 81-541 and related Special Permit (C 100050 ZSM)

The text amendment to ZR § 81-541 would define the administrative process for obtaining approvals from multiple transit entities involved in rail mass transit improvements in and around PCS; permit the bonus floor area to be located anywhere on the zoning lot; and provide that any transit-related bonus floor area may be vested and available for use elsewhere on the zoning lot, subject to application review and approval.

The requested special permit pursuant to ZR § 81-541 and in accordance with ZR § 74-634 would allow a floor area bonus, no greater than 20 percent of the permitted floor area for subway and rail mass transit facility improvements. Both development scenarios include a package of transit improvements that occur on, adjacent to, or in close proximity to the development site. All such improvements shall comply with all applicable design standards of the current station

⁷ Personal services and amusement uses are also permitted. There are exceptions for lobby spaces or certain other uses.

planning guidelines of MTA/NYC Transit and four entrances will be designed to include glass blocks in the sidewalk, which will bring natural light to the stations. These improvements are:

- Reconstruction of and widening the Gimbels Passageway between Penn Station and the Herald Square transit complex;
- Widening the stair from the Seventh Avenue southbound local IRT platform (1 subway line) to the West 32nd Street underpass;
- Building a new stairway to the Seventh Avenue center IRT platform (2,3 subway lines) from the West 32nd Street/Seventh Avenue underpass;
- Widening a section of the Seventh Avenue northbound local IRT platform between West 32nd and West 33rd streets;
- Constructing a new street elevator at the Seventh Avenue and West 33rd Street entrance to the subway platform concourse;
- Widening the Sixth Avenue and West 32nd Street PATH entrance stairs to approximately nine feet and adding one escalator;
- Constructing a new subway entrance at Sixth Avenue and West 33rd Street in the Manhattan Mall that would include a nine-foot set of stairs and an escalator;
- Constructing a new 10-foot staircase from the PATH to the B, D, F and V platform near West 32nd Street and Sixth Avenue;
- Constructing a 15-foot staircase from the PATH to the B, D, F, and V platform near West 33rd Street and Sixth Avenue; and
- Reconfiguring the fare control area on Sixth Avenue near West 33rd Street to accommodate new stairs from the PATH to B, D, F, and V platforms.

Vornado is required to replace entrances and stairways that currently exist within Hotel Pennsylvania. The existing entrance on West 32nd Street is located 103 feet from the Seventh Avenue property line, and the existing entrance on West 33rd Street is located 87 feet from Seventh Avenue property line. In addition, there are two stairways located within the hotel's lobby. Vornado has proposed relocating the two subway entrances onto Seventh Avenue. These two new subway entrances, one at the corner of Seventh Avenue and West 32nd Street and one at the corner of Seventh Avenue and West 33rd Street, would each include a 10-foot wide set of stairs within the proposed building. The proposed entrances and stairways are proposed as expansions of the existing facilities. These improvements are beyond what would be required for replacement of existing facilities. For this reason, these improvements are considered within the purview of the bonus program and to be valued for 50 percent of their typical bonus value were they not replacement facilities.

Modification of both of these special permits is subject to CPC review and approval. The extent of review depends on the degree of the modification requested.

Acquisition of Easements (C 100237 PQM)

The proposed acquisition of transportation easements by DCAS will facilitate the construction of the proposed transit improvements. Specifically, the proposed easements are required for the reconstruction of Gimbels Passage; the widening of the uptown 1-train subway platform; as well as the new and widened subway stairs, escalators and elevators through the proposed building and in the Manhattan Mall.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on April 15, 2010, Manhattan Community Board 5 (“CB5”) voted to **disapprove** the proposed actions by a vote of 36 in favor, 1 opposed, and 1 abstention. No conditions were stipulated. However, the Board cited several concerns, among them, including:

- the proposed buildings are too dense;
- the proposed transit improvements do not justify a 20 percent development bonus;
- the project would contribute to already overcrowded neighborhood conditions and it would place significant burdens on noise, infrastructure, air quality, traffic while providing no direct community benefits;
- the multi-tenant truck parking scheme presents challenges for truck deliveries and trash-pickup;
- no black car queuing measures are in place;
- proposing two building forms provides too little commitment to building design and construction and the zoning lot merger could permit future development on the Manhattan Mall site that is not a part of this application;
- the lack for a district-wide plan that coordinates area redevelopment and density; and
- the preservation of the Hotel Pennsylvania building.

BOROUGH PRESIDENT’S COMMENTS

General Comments

New York City’s gross metropolitan product was \$1.13 trillion in 2005. It is the largest financial center and the second largest CBD in the world. Midtown Manhattan, as the largest CBD in the United States, is inextricably linked to the economic health of not only the City but the nation.

Economic studies in recent years have highlighted the City’s need for new Class A office space – particularly in Midtown – in order to maintain competitiveness both regionally and globally.⁸ In light of such studies, the City has taken steps to encourage the expansion of Midtown’s office base in areas such as the Hudson Yards Special District. As one of the few remaining areas within the CBD that has both significant development potential and rich access to transit, the middle portion of the 34th Street corridor represents a superb location for high density commercial growth.

⁸ Senator Charles E. Schumer’s June 2001 report, "Preparing for the Future: A Commercial Development Strategy for New York City," recommended an expansion of Midtown’s CBD by at least 20 million square feet of new office space.

Vornado's proposed office building, situated between Penn Station and Herald Square, will have unparalleled connectivity to regional, long-distance and subway mass transportation and represents a unique opportunity for high-density transit oriented development. Regionally-accessible office space at the proposed site would minimize congestion in surrounding areas and across the City while adding significant office capacity. Additionally, the proposed development will contribute to the much needed improvement and maintenance of transportation infrastructure in and around Penn Station and Herald Square.

Further, the proposal will have a significant positive economic impact on New York City. During construction, the project will create 6,100 fulltime-equivalent jobs and add an additional \$47.7 million in tax revenue for New York City. In the long term, the project will result in a net increase of 7,010 to 7,050 fulltime jobs on the site and result in an addition of approximately \$42.8-50.2 million in tax revenue to New York City and \$71.1-84.9 million in tax revenues to New York State. Additionally, both the construction and the new office space will have a significant positive impact on other areas of the economy in terms of indirectly creating or inducing new jobs and tax revenues.

Environmental and Community Concerns

While the potential benefit of Vornado's proposal to the City's economy and infrastructure is evident, sound planning requires that the proposed development respond to community concerns and potential adverse impacts on the surrounding area. The Draft Environmental Impact Statement ("DEIS") analyzed both the Single-Tenant Building and Multi-Tenant Building scenarios in comparison to a "No-Action" condition that consists of 1.1 million ZSF (at least 1.6 million GSF) commercial building with office and retail space, as well as a 100-space accessory parking garage. The DEIS identified significant adverse impacts on open space, traffic, transit and pedestrians, and local conditions during construction.

Open Space

The Midtown CBD contains limited open space as compared to other parts of the city. Though the proposed project will not eliminate any existing open space, it will contribute to greater use of already overtaxed local open space, in particular passive open spaces. It is anticipated that the open space ratio within a quarter-mile radius of the site will decrease by 3 percent. Consequently, the proposed development triggers a significant adverse impact on open space.

Potential mitigations were identified in the DEIS, which included funding for improvements, renovation or maintenance at existing open spaces or adding amenities to existing open spaces. The applicant has committed to working with Department of Parks and Recreation ("DPR") to explore the feasibility of these potential measures and to undertake some form of open space mitigation. Vornado has recently reaffirmed this commitment and conversations with DPR and DCP are on-going.

Vornado has also committed to create new outdoor open space on the podium roof in the Single-Tenant Building scenario. Even if only accessible to building tenants and users, this space would reduce the proposed project's impact on surrounding open space by providing alternative open spaces to the crowded open spaces in that area that are available to the general public.

Traffic

The DEIS identified significant adverse impacts on many intersections at various peak time periods. Mitigation measures will be implemented at all intersections with significant impacts. Mitigations include signal phases and timing, parking regulation changes, daylighting, intersection improvements, lane markings and signage, and/or prohibition of turns.

The Department of Transportation (“DOT”) has proposed certain traffic initiatives that may significantly affect the Midtown traffic system that were not considered in the traffic analysis of the DEIS. The Green Light for Midtown Project, a pedestrian mall along Broadway, was implemented last year and has since become permanent; consequently, the DEIS traffic analysis may need to be updated to reflect this permanent change, as was recommitted to by Vornado.

Additionally, DOT has proposed the 34th Street Transitway, a bus rapid transit program that may significantly affect the surrounding area’s traffic patterns and regulations. Therefore, the proposed mitigations in the DEIS may need to be further revised in order to take into consideration any effects of the Transitway on local traffic conditions. As details have not yet been finalized, a quantitative analysis cannot be performed at this time. Vornado is currently in discussions with DOT and DCP to determine if an analysis of the cumulative impact of the proposed development and the new Transitway is necessary.

CB5 has raised concerns about increased taxi usage and potential idling and congestion issues related to black car queuing. While adjustments to an existing taxi stand across the street at Penn Plaza should accommodate any additional demands for taxis, the queuing of black cars could have a significant impact on local traffic. Vornado has committed to have a black car management plan for evening hours in place prior to tenancy, which would include queuing cars at an off-site location.

The community board also raised concerns about the impact of the Multi-Tenant Building’s loading docks on traffic and congestion. In order to minimize disruption to pedestrian and vehicular traffic by vehicles entering and exiting the building’s loading areas, Vornado has presented revised designs for the truck loading facility, which includes below-grade loading bays that allow all delivery vehicles to “head-in” and “head-out” of the building. This design change represents a significant improvement to the original proposal which required some vehicles to back out of the facility. However, the Multi-Tenant Building would still include a service dock on West 32nd Street, which will require sanitation trucks to back in, once a day, for garbage collection. Vornado has committed to having an on-site Dock Master to manage these facilities so as to minimize their potential impact on pedestrian flow, traffic and congestion.

Transit and Pedestrians

The DEIS indicated that the Single-Tenant Building would impact ten pedestrian elements (sidewalk and corners) and that the Multi-Tenant Building would impact 16 pedestrian elements. Proposed mitigations include creating corner bulb outs, widening crosswalks, and relocating certain sidewalk obstructions such as planters. With the proposed pedestrian improvements, it is anticipated that pedestrian impacts from the Single-Tenant Building will be fully mitigated and almost all the pedestrian impacts from the Multi-Tenant Building will be mitigated. It should be

noted that the DEIS considered DOT’s “Green Light for Midtown Project,” also known as “Herald Square Plaza,” as a temporary plaza and, therefore, it was not fully considered in the DEIS’s pedestrian analysis. As this plaza will now become permanent, its likely beneficial effect on pedestrian circulation will be considered as part of the Final Environmental Impact Statement.

Both building scenarios provide greater amounts of pedestrian circulation space than is currently required. The additional space is intended to allow for an acceptable level of service for pedestrians particularly during peak hours. Vornado has committed to work with DOT to widen crosswalks as much as is permitted and with the 34th Street Partnership to relocate sidewalk planters that have been identified as obstructions.

Construction Impacts

The DEIS indicated that construction activities would result in elevated noise levels at the Epic residences and the Church of St. Francis of Assisi. While some noise mitigation can often be provided to individual buildings, Epic Residences and the Church of St. Francis of Assisi already have double glazed windows and alternative ventilation. Therefore, the applicant has committed to implement path controls (e.g., placement of equipment, barriers and/or enclosures between equipment and sensitive receptors), to the extent feasible. Additional measures are currently being studied to reduce noise mitigation. This study will likely be concluded in mid-May.

Further, Vornado has committed to establish a construction task force to address and respond to construction impacts and issues, such as noise, pedestrian safety, truck staging, delivery of construction materials and equipment and other aspects of the construction process. The task force will meet regularly as required by the phasing and nature of construction, and will include representatives from the community board, the local council member’s office, and other local stakeholders. Vornado has also committed to maintain a single point of contact for community members during the construction process.

Zoning Map Amendment (C 100047 ZMM)

The existing C6-4.5 and C6-6 districts are high density zoning districts mapped in the Midtown to encourage commercial development. The C6-4.5 zoning district is unique to the MiD and, though relatively high density, is intended to protect the traditionally lower-scale side streets of the Midtown South neighborhood. Lower density zoning in midblock areas is typical in many parts of the city. However, this area of Midtown does not have the typical midblock character found in more residential areas. While several midblock buildings are low scale, several others buildings rise to heights up to 26 stories.

Vornado proposes to extend the existing C6-6 districts, mapped along the avenues, through to the midblock areas. Through an as-of-right zoning lot merger (of the development site and the Manhattan Mall site) and the extension of the C6-6 zoning district⁹, Vornado would be able distribute the floor area throughout the entire zoning lot. The proposed development scenarios and site planning for the entire block, however, result in massing that does in effect provide for a different treatment for the midblock area and for Seventh Avenue. Both the Multi-Tenant

⁹ The existing split lot zoning imposes restrictions on the distribution of floor area on the block.

Building and the Single-Tenant Building have a podium base that maintains the existing dominant midblock character (6 to 10 stories respectively) defined by the existing Manhattan Mall and the varied scale of buildings directly to the north and south of the site.

Further, the density of the proposed development is consistent with other buildings within the 34th Street corridor, which includes One Penn Plaza (2.36 million ZSF) and Two Penn Plaza (1.56 million ZSF) across the street, Macy's department store (2.09 million ZSF) two blocks north of the site, and the Empire State Building (2.81 million ZSF) two blocks to the east of the site. High density commercial development is also planned further west, not only in the Special Hudson Yards District, which allows new development at densities up to 33 FAR, but also contemplated as part of the redevelopment of Farley Post Office as Moynihan Station.

While the proposed development would introduce a significant number of new workers into the area, additional density on this site is appropriate given this block's proximity to two major transportation hubs. In addition, the proposed buildings' designs address the impact of additional pedestrian volumes by setting the buildings back along their entire street frontage to provide more pedestrian circulation space. It is anticipated that the re-opening of the Gimbels Passageway would alleviate some of the pedestrian congestion at street-level. Vornado has also committed to working with DOT to address traffic and pedestrian congestion issues.

There are other examples of successful high density transit-oriented development in Manhattan, most notably, the Grand Central Subdistrict. It should be noted that the Grand Central Subdistrict allows up to a maximum density of 18 FAR, similar to the zoning proposed on this site, for transit improvements. Additional floor area (up to 21.6 FAR) can be achieved by purchasing air-rights from a landmarked building.¹⁰ Neither Grand Central nor the anticipated Hudson Yards developments offer the level of regional transportation access and commuter capacity provided by Penn Station, which currently serves over 425,000 passengers a day, 300,000 more passengers than Grand Central.

Special Permit for Height, Setback, and Mandatory District Plan Element Waivers (C 100049 ZSM) and related text amendment

The proposed text amendment modifies an existing special permit, primarily to introduce height and setback waivers for developments and enlargements located on large sites in the Penn Center Subdistrict. The amendment also introduces additional findings pursuant to ZR §§ 81-254 and 81-066(b), including that the waivers are necessary to achieve a feasible building design, and that disadvantages in terms of light and air are more than offset by the advantage of new commercial development paired with improvement to mass transit and pedestrian infrastructure. The proposed text amendment would allow for better site planning considerations and flexibility as similarly provided for through the large-scale development special permitting process, which is not available for sites in the MiD.

¹⁰ Sites eligible to receive a bonus for landmark air rights in the Grand Central Subdistrict must be at least 50 percent within the Subdistrict and front Lexington Avenue, Madison Avenue, or 42nd Street if the site is east of Lexington Avenue or west of Madison Avenue.

As proposed, the two development scenarios pair large scale commercial development with improvements to mass transportation and pedestrian infrastructure. Both scenarios require height and setback waivers to provide for more efficient building design, and both require similar modifications of Mandatory District Plan Elements.

Height and Setback Waiver

The DEIS demonstrates that shadows from either development scenario would not result in significant adverse impacts on light and air to neighborhood open spaces or historic structures. Further, bulk distribution in both scenarios, with a tower on or near the avenue and a lower-rise midblock form, respects conditions typical in the surrounding area and encouraged by the Special Midtown District. Additionally, the applicant has received letters of support for the project from the two residential buildings nearest the site.

Both development scenarios require waivers to the daylight height and setback regulations due to the proposed development program and site conditions. By retaining the Manhattan Mall, additional density on the zoning lot must be located towards the midblock and Seventh Avenue. While shifting the bulk reduces the amount of available sky and overall daylight scores, it has the positive benefit of preserving the amount of light on public open spaces at Herald Square and Greeley Square, and on the new Herald Square Plaza.

While the tower portion of the proposed Multi-Tenant Building is located towards the midblock and away from Seventh Avenue – creating compliance on Seventh Avenue but not on the side streets. This design takes into account the encroachment of rail tracks under the development site particularly near Seventh Avenue and terra firma in the midblock area. The Single-Tenant Building, however, cannot locate its bulk towards the midblock because the development program requires that the building's core not penetrate the trading floors. Because of these constraints, the Single-Tenant Building creates noncompliance on both the midblock and Seventh Avenue. While both development scenarios would result in disadvantages in terms of reduced light and air, these are offset by the proposed package of transit improvements and the optimal use of the site for high density commercial development. Therefore, the proposed height and setback waivers are necessary to achieve the proposed development program given site conditions, and meet the findings of ZR § 81-066(b).

Mandatory District Plan Elements Waivers

Many of the proposed waivers to the Mandatory District Plan Elements are minimal and are needed to increase space for pedestrian circulation around the proposed development. Such waivers will address heavy pedestrian flows around the building and Penn Station, and along cross-town streets traveling between the two transportation hubs. Further, while the proposed development scenarios reduce the amount of retail space along Seventh Avenue, both scenarios include retail along West 33rd and West 32nd streets, which are not required. This retail will not only enliven these streets but connect the avenue shopping corridors. As the design of the Single-Tenant Building reduces the amount of ground-floor space available for retail along West 32nd Street, the applicant has committed to incorporate street wall design elements such as artistic lighting or displays to enliven the pedestrian experience.

These proposed waivers are minimal and will still produce development that is consistent with the intent of the Mandatory District Plan Elements, which are in place to promote the well-being of pedestrians, adequate pedestrian circulation spaces and a generally positive pedestrian environment. Further, the proposed waivers will result in a better site plan by providing for more efficient programming of space, increasing pedestrian circulation space, and rationalizing building entryways. Therefore, the proposed development meets the findings for this special permit.

Additionally, sidewalk conditions prevent the applicant from fully complying with street tree planting requirements (only 24 out of 80 required street trees will be planted on site). Vornado has committed to working with the DPR and CB5 to identify 56 offsite planting locations for street trees. This will provide the local community with an opportunity to identify neighborhood locations that are most in need of greening and shade.

Special Permit for Subway and Rail Mass Transit Facility Improvements Bonus (C 100050 ZSM) and related text amendment

The Transit Improvement Bonus

The proposed package of transit improvements includes new or enhanced elements located on the development site, as well as in areas that are adjacent to and in close proximity to the development site. The proposed improvements would re-open and enhance Gimbel's Passageway; expand and improve existing stations and station entrances; and create new vertical access points. In exchange for these improvements, the applicant seeks a 20 percent increase in total density. The proposed text amendment would allow improvements to rail mass transit and subway facilities as part of one special permit process. For the CPC to determine the appropriate amount of bonus floor area generated by the package of transit improvements, the special permit requires consideration of the improvements in light of general accessibility, circulation, environmental quality, rider orientation, and satisfactory integration of street level entrances.

The proposed transit improvements will enhance and expand existing access points to Penn Station and to the transit complex under Herald Square, create a new passage between these two transit hubs, and improve circulation within the Seventh Avenue IRT subway station. Newly relocated station entrances will improve rider access and orientation, and will be better integrated with the streetscape. By rehabilitating passageways, widening entryways, widening the IRT platform, and introducing direct daylight to the subway system, the proposed improvements will have a significant positive effect on the mass transit system. In fulfillment of ZR § 74-634 and 81-541, the MTA-NYC Transit has reviewed and determined the proposed improvements are feasible. Further, the proposed waivers' benefits are acknowledged by letters of support from the Regional Plan Association, New Jersey Transit, Tri-State Transportation Campaign, and the New York City Transit Riders Council.

Without the proposed development, the package of transit improvements, and the associated benefits, would not be realized. Under an as-of-right development scenario, only the two subway access points that currently exist within the Hotel Pennsylvania would be replaced. As the majority of the proposed improvements exist directly on the applicant's property, they would not be performed by any other private developer. Furthermore, even if the transit authorities

were willing to undertake the other improvements, many of them could not be achieved without complicated acquisition processes. The positive benefits of the transit improvements would not be achieved without the proposed development. The application meets the findings for this special permit.

The Text Amendment

The related proposed text amendment would allow the applicant to retain unused transit bonus floor area for use elsewhere on the zoning lot under a different future development scenario. The ability to vest this floor area serves an important purpose in that it ensures the completion of the proposed transit improvements even if the proposed development cannot advance as envisioned.

While Vornado anticipates a construction process for the proposed development of approximately 4-½ years, the project may not commence until the next development cycle. Consequently, the two building scenarios may require design modifications, possibly including reduced square footage, to accommodate the needs and demands of future tenant(s). As a result, new construction may not require the total density generated by the special permit. If density remains unused, the Manhattan Mall site, which is part of the same zoning lot, could be the recipient of this bonus floor area.

It is important that the development rights derived through the proposed special permit not be used unchecked. The special permit allowing bulk waivers (previously mentioned) requires that the proposed development be constructed substantially in accordance with application drawings which include the Manhattan Mall site. Any modification of the proposed development must require public review – including any changes to the Manhattan Mall site.

Acquisition of Transportation Easements (C 100237 PQM)

The proposed acquisition of transportation easements by DCAS will enable the proposed package of transit improvements to be realized. As a result, access to and between the transit hubs at Penn Station and Herald Square will be improved, ultimately providing significant public benefits. The proposed acquisition of the easements is necessary to facilitate the construction of these mass transit improvements and is an appropriate City acquisition.

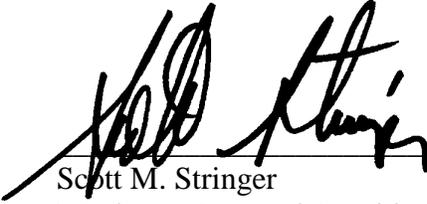
BOROUGH PRESIDENT’S RECOMMENDATION

The proposed development represents a unique opportunity to encourage high-density transit-oriented development, strengthen the nation’s largest central business district, and improve local and regional mass-transit systems. The scale of the proposed project is consistent with buildings in the surrounding area and the City’s development goals and policies, and is appropriate for the development site. The proposed development scenarios meet the findings for the special permits.

Therefore, the Manhattan Borough President recommends conditional approval of the Zoning Map Amendment (C 100047 ZMM); the Special Permit for waivers of Height, Setback and Mandatory District Plan Elements (C 100049 ZSM); the Special Permit for Subway and Rail Mass Transit Facility Improvements (C 100050 ZSM); and the

Acquisition of Easements (C 100237 PQM) provided that the applicant follows through on commitments relating to:

- **Open space by:**
 - Working with DCP and DPR to determine the appropriate form of mitigation for open space impacts; and
 - Providing accessible open space on the proposed building's podium to reduce impacts on nearby public open spaces;
- **Traffic by:**
 - Implementing the new off-street truck loading plan for the Multi-Tenant Building that will allow trucks to enter and exit head first;
 - Creating a black car management plan for the Single-Tenant Building;
 - Hiring a dock master to coordinate loading and unloading activities; and
 - Updating traffic studies to reflect new traffic initiatives in Midtown;
- **Pedestrian impacts by:**
 - Working with DOT to widen crosswalks and other pedestrian elements; and
 - Working with the 34th Street Partnership to relocate any planters which may serve as an obstruction to pedestrian movement;
- **Construction by:**
 - implementing path controls to address construction noise issues;
 - studying additional measures that may be undertaken to reduce noise impacts;
 - establishing a construction taskforce to address and respond to construction impacts and issues, which meets regularly as required by the phasing and nature of construction and includes representatives from the community board, local council member and other local stakeholders; and
 - having a single point of contact during construction to resolve any community concerns;
- **Improve sidewalk conditions by:**
 - working with CB5 and DPR to determine appropriate locations for the 56 street trees that cannot be planted at the perimeter of the development site; and
 - incorporating street wall design elements to the West 32nd Street façade of the Single-Tenant Building to enliven the pedestrian experience;



Scott M. Stringer
Manhattan Borough President