



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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December 6, 2007

Hon. Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, New York 10007

Re: 540 W. 49th Street – Real Estate Industrials, Inc. - ULURP Application Nos. 0702892ZMM and 070539ZRM

Dear Chair Burden:

At the recommendation of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board No. 4, having held a duly noticed public hearing on ULURP application numbers 0702892ZMM and 070539ZRM, unanimously adopted the following resolution by roll call vote at its meeting on December 5, 2007. Though we support the proposed development, the resolution recommends conditional denial of the applications.

BACKGROUND: THE APPLICANT AND THE ZONING LOT

The applicant, Real Estate Industrials, Inc., is a family-owned business that has owned part of this zoning lot since 1938 (the rest was acquired in 1947). For many years the family operated a laundry on the property on the site, servicing hotels in the area. (Well before the current enthusiasm for sustainability measures such as co-generation, the facility generated its own electricity from the laundry's steam.) Seeking to make the property newly productive in a manner worthy of the family's roots in the area, the laundry building at 514 W. 49th Street, a classic Clinton industrial building with art deco qualities, was sold to The American National Red Cross in 2005 and renovated as the new headquarters of The American Red Cross in Greater New York. The Red Cross has quickly established itself as an active and constructive member of our community.

The applicant continues to own the remainder of the zoning lot, consisting of a garage at 540 W. 49th Street (next to the Red Cross building, a parking lot at 545-551 W. 48th Street (next to the Salvation Army dormitory), and two small industrial buildings at 521-525 W. 48th St. (with 3 classic Clinton 5-story residential buildings on either side). The first two parcels and the site of the Red Cross building are zoned M1-5 and are in the Other Area of the Special Clinton District. The third parcel is zoned R8 and is in the Preservation Area of the Special Clinton District.

THE PROPOSED DEVELOPMENT

The applicant proposes to develop three new residential buildings using the NYS Housing Finance Authority's 80/20 program. In keeping with the requirements applicable in the Preservation Area of the Special Clinton District, the new buildings will each be 66 feet and 7 stories in height, the overall floor area ratio on the zoning lot will be 4.2, and the number of two-bedroom units will be 20% or more of the total new units. Building 1, at 540 W. 49th St., will have 69 residential units; Building 2, at 551 W. 48th Street, will have 55 residential units; and Building 3, at 521-525 W. 48th St. will have 41 residential units, for a total of 165 new residential units. We welcome this development.

The proposed development also includes a public parking garage for 88 cars, to be located in the cellar of Buildings 1 and 2. As discussed below, we do not welcome this aspect of the project.

THE ULURP APPLICATIONS

The application requests:

- (i) a zoning map amendment to change the zoning from M1-5 to R8 by moving the present boundary between the M1-5 and R8 districts on the block west to a line 175 feet east of Eleventh Avenue, and adding a C2-5 overlay to the rezoned area;
- (ii) A zoning text amendment to make certain of the requirements now applicable in the Preservation Area of the Special Clinton District applicable as well to land in the Other Area that is zoned R8; and
- (iii) A special permit for an 88 car public parking garage, including 31 accessory spaces.

The Zoning Map Amendment – Yes to R8 and Red Cross's Legal Status, No to C2-5 Overlay

The zoning map amendment would apply to the site of proposed Buildings 1 and 2, and to the Red Cross building, all of which are in the same zoning lot, as well as to the Salvation Army dormitory at 535 W. 48th Street, a portion of the Amtrak cut east of the Red Cross building, and a 5-story residential building at 544 W. 49th Street. (The site of proposed Building 3 is already zoned R8; the proposed development there is as-of-right.)

The zoning change from M1-5 to R8 is consistent with the zoning on the eastern portion of the block and in the Preservation Area of the Special Clinton District. It is also consistent with the rezoning that this Board has long been seeking for the blocks between 45th and 50th Streets, Tenth to Eleventh Avenues. We approve.

However, the zoning change to R8 would make the Red Cross a legal non-conforming use, because office use is not allowed in R8 districts. According to the applicant, even though the Red Cross's use of its building would still be legal, this would violate an agreement between the applicant and the Red Cross. In addition, public parking garages are not allowed in R8 zoning

districts. The applicant seeks to address these issues with a C2-5 overlay for the entire rezoned area. This would allow the Red Cross to be a non-complying building, rather than a non-conforming use, which is apparently better under their private agreement and to which we have no objection. It would also allow public parking garages, which is a result that we oppose.

The proposed C2-5 overlay would stick out like a sore thumb on the zoning map. The only other through-block site in the Special Clinton District with a similar commercial overlay is the publicly-owned site of Park West High School two blocks to the north. The overlay could also allow uses inconsistent with the lower-density residential character of the area; we are particularly concerned that it could allow future conversion of the Red Cross building or the Salvation Army dormitory to a hotel.

The private arrangements between the applicant and the Red Cross are not the concern of this Board or the Commission. We agree that office use by the Red Cross of the building at 514 W. 49th Street is a desirable use that should be allowed to continue, and that should the building be damaged or destroyed it should be allowed to be rebuilt to its present density for continued use by the Red Cross or a similar organization. We request that adjustment needed in the building's zoning status to allow such a rebuilding should be accomplished through a zoning text amendment rather than a commercial overlay.

The commercial overlay is also sought to permit the public parking garage. Since we oppose the public parking garage, as discussed below, we also oppose the commercial overlay for this purpose.

The Zoning Text Amendment – Move the Preservation Area Boundary Instead

The zoning text amendment would have the effect of imposing some, but not all, of the requirements now applicable in the Preservation Area of the Special Clinton District in the rezoned area.¹ In particular, Sections 96-101 (limiting floor area ratios to 4.2) and 96-104 (limiting building heights) would apply. These are central provisions of the zoning regulations in the Preservation Area, and we are truly pleased that from the beginning of its discussions with this Board the applicant has been willing to build within these limitations.

Independent of this project, this Board has been in discussions with DCP staff for several years about our request to move the boundary of the Preservation Area west toward Eleventh Avenue, between 45th and 50th Streets. These discussions are now being formalized in the Eleventh Avenue planning and rezoning that is underway pursuant to the agreement between the City and the Speaker of the City Council dated July 10, 2007.

Consistent with that effort, we believe that the proposed zoning text amendment is only a partial solution. It is also poor policy to create this small island of an R8 district with its own special rules. The better approach is simply to make the boundary of the Preservation Area consistent with the boundary of the R8 zoning district, so that the other Preservation Area regulations are

¹ We raise two typographical questions. First, the proposed text amendment is designated Section 96-32. Why isn't it Section 96-31? Second, the cross-reference in subsection (b) should be to "Section 96-102 (Lot coverage regulations)", not Section 96-103.

applicable as well. These include the 20% two-bedroom requirement and the provisions concerning demolition, tenant harassment and cure. Applicant's proposed development would, in fact, comply with these additional provisions, so this change would have little effect on the applicant's plans. The sole impact would be lot coverage; the applicant seeks a 70% lot coverage maximum rather than the 60% maximum in the Preservation Area. We have no objection to the increased lot coverage.

The Special Permit for the Parking Garage - Yes to Accessory Parking spaces; No to additional Public Parking

The applicant seeks a special permit to allow an attended public parking garage in the cellar of Buildings 1 and 2. The entrance and exit would be from West 48th Street, with one 20-foot-wide curb cut leading to a ramp to the garage, and ten reservoir spaces. The garage would contain 88 spaces, including 31 spaces for accessory use for use by the development's residents.

Community District 4 is choked with traffic. It is also well served by mass transit. We therefore generally seek to discourage private car use in the area by any means possible, including reducing the amount of public parking spaces. If we build fewer parking spaces, fewer people will come to Midtown Manhattan by car. This goal consistent with the goals of PlaNYC, and we are pleased that the elimination of public parking is increasing finding its way into a discussion of congestion mitigation. For this reason, we oppose the commercial zoning overlay that the applicant seeks.

If the applicant was seeking a special permit for the 31 accessory parking spaces, representing less than 20% of the development's 165 new residential units, we believe that the findings for accessory parking required by ZR Section 13-561 could be satisfied, and we would recommend approval of such a permit.

However, the applicant is seeking a special permit for a public parking garage, so we address the findings for public parking required by ZR Section 74-52:

a) that such use [i.e., the public parking garage] will not be incompatible with, or adversely affect the growth and development of, uses comprising vital and essential functions in the general area within which such use is to be located

This area is presently so congested at peak commuting hours that vital and essential functions such as emergency services are often adversely affected by traffic. During the times of greatest congestion, public parking that encourages any more people to bring cars to the area is incompatible with emergency services needed in the area.

b) that such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow

There already is serious traffic congestion in the area. Eighty-eight additional cars will make a contribution, if minor, to that serious traffic congestion. There is currently a 125 car public parking lot and parking garage on the development site, and the application argues that the

proposed garage will create fewer trips than the existing uses. That may be true, but it's irrelevant. The existing parking is an opportunistic use of vacant land being held for future development. It is currently contributing to the area's serious traffic congestion and its demise is to be celebrated.

c) that such use is so located as to draw a minimum of vehicular traffic to and through local streets in nearby residential areas

Since the garage entrance would be located on West 48th Street, an eastbound street, we agree with applicant's statement concerning this finding.

d) that such use has adequate reservoir space . . .

We agree that this finding can be met.

f) that, where roof parking is permitted . . .

There is no roof parking; the finding is not applicable.

g) that, where any floor space is exempted from the definition of floor area, such additional floor space is needed in order to prevent excessive on-street parking demand and relieve traffic congestion

Because the existing Red Cross building contains more commercial floor area than would be allowed on the zoning lot with the C2-5 overlay, the application seeks to exempt from the definition of floor area the 892 square feet of floor space located in the entrance and a portion of the ramp to the garage. We do not object.

PERMANENT AFFORDABLE HOUSING

We are pleased that 20% of the new residential units will be reserved for low-income households under the HFA 80/20 program. The difficulty with that program, however, is that the low-income requirement lasts only as long as the HFA bonds are outstanding, typically 20 or 30 years. We request that the applicant agree to maintain these low income units in perpetuity. We recognize that this is not formally within the parameters of the present ULURP applications, but it is a matter of great importance to this community. Because the applicant's land costs are so low (having acquired the property in 1938 and 1947) and the construction costs will have been fully amortized by the time the bonds expire, we do not believe our request threatens the financial viability of the project. We hope that the applicant will agree to make this additional long-term commitment to our community.

Now, therefore, be it RESOLVED that Manhattan Community Board No. 4 recommends denial of ULURP Application number 060334 ZSM unless:

- The C2-5 commercial overlay is eliminated;

- All of the provisions of ZR Section 96-10 relating to the Preservation Area are made applicable to the rezoned area;
- Parking is limited to accessory spaces only; and
- The low income units are permanently reserved for low-income households.

Sincerely,



Jean-Daniel Noland
Chair



Anna Hayes Levin, Chair
Clinton/Hell's Kitchen Land Use Committee

Cc: City Planning Commission, Calendar Information Office, 22 Reade Street, Rm 2E
DCP – Erik Botsford, Erika Sellke
Elected Officials
Applicant, c/o Elise Wagner, Kramer Levin, 1177 Avenue of the Americas, NYNY
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