



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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December 19, 2008

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

Re: ULURP Applications No. C 080008 ZMM, N 080009 ZRM, C 0800010 ZSM and C 080011 ZSM - The Clinton Park, 770 Eleventh Avenue between 53rd and 54th Streets

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 applications number C 080008 ZMM, N 080009 ZRM, C 0800010 ZSM and C 080011 ZSM, unanimously adopted the following resolutions by roll call vote at its meeting on December 3, 2008. The resolutions recommend denial of the applications unless conditions are met.

These are applications by an affiliate of Two Trees Management Co. to facilitate development of a very large (94,463 square feet) site on Eleventh Avenue between 53rd and 54th Streets, opposite DeWitt Clinton Park. The site was previously owned by Verizon and used for vehicle maintenance and storage.

The proposed building would be an "S" or "Z" shaped tower rising in steps from 7 stories (95 feet) at Eleventh Avenue and 54th Street to 32 stories (337 feet), including enclosed mechanicals¹, at the eastern edge of the site. As proposed in the applications, this mixed-use building of approximately 1.3 million square feet would contain approximately 900 residential units (of which 180 would be permanently affordable pursuant to the Inclusionary Housing Program); a Mercedes dealership with showroom, vehicle preparation and vehicle repair facilities on the ground floor and three floors below grade; a stable and other facilities for the NYPD Mounted Unit; a retail food market; a health club; and accessory parking for up to 225 cars.

¹ The occupied portion of the tower is 30 stories. The roof of the last residential floor is 327 feet above grade.

THE APPLICATIONS

The applications are for the following land use actions:

- A rezoning of the site from M1-5 to C6-3X;
- Zoning text amendments to accommodate an inclusionary housing bonus;
- A zoning text amendment to allow the dealership and the stable uses, and to accommodate the accessory parking garage above the stable and the dealership; and
- Special permits for modification of height, setback and signage regulations, and to allow the health club to be located on the same floor as residential use.

THE COMMUNITY'S CONCERNS

Since its purchase of the site in 2006, Two Trees has met many times with various members of the Clinton community to present their plans and listen to the community's responses. The inclusionary housing, the NYPD stable, the food market and the limited accessory parking were included in the project in response to our suggestions. Though we have significant concerns about the scale of the project, Two Trees has dealt with us forthrightly and respectfully and shown a willingness to engage in substantive discussions about all aspects of the project.

Overall Density, Height and Zoning Issues

The overall scale of the project and the height of the proposed tower have generated significant concern in the community.

Two Trees seeks to dazzle with a marvelously creative design from a world-renowned architect, and the design has been guided by some principles we strongly support – keeping building heights lower on 11th Avenue opposite DeWitt Clinton Park, concentrating height on the eastern portion of the site, creating transparent and active streetwalls, using green building design elements, including permanent affordable housing and limiting parking to accessory spaces.

But this project is huge – because the site is large, and because Two Trees is seeking a zoning designation greater than anything around it.

Density and Height. The project site is zoned M1-5. It is within the Clinton Urban Renewal Area, but was never acquired by the City. As such, this property is not subject to the development restrictions of the Clinton Urban Renewal Plan, and it is also excluded from the height and bulk restrictions of the Special Clinton District. The area surrounding the project site has historically contained a mix of low- and mid-rise residential, commercial and industrial buildings, and this is the architectural context that we wish to maintain in the area. CB4's long-held public position has been that the site should be rezoned for predominantly residential use at a density limited to what is allowed in an R8A zoning district – namely 6.02 FAR. This is consistent with the areas

to the south, which are zoned or planned to be rezoned R8 or R8A, and with the large NYCHA Harborview property to the north, which is zoned R8.

The application points to the area's anomalies as evidence of a higher-density context: the 38 story Hudsonview residential development on 51st Street to the south (Mitchell-Lama development on R8 zoning lot), the 39 story Clinton Towers across 54th Street to the north (Mitchell-Lama development on R9 zoning lot) and the 457 foot AT&T switching tower to the east (an architectural eyesore on an M1-5 zoning lot). Other recent exceptions are the Foundry, Westport and Archstone Clinton Projects on R9 or R9-equivalent zoning lots with residential FARs of 7.52. Two of those were projects were sponsored by HPD with substantial public benefits provided in exchange for the additional bulk.²

Yet, Two Trees is seeking an even larger zoning designation of C6-3X, with an FAR of 9.0 with an inclusionary housing bonus. This is significantly out of scale with the existing area context and would set an unfortunate precedent for zoning on the four remaining private development sites in the CURA³ and in the 11th Avenue corridor to the south.

On November 18, 2008 we received a letter from Two Trees offering to amend the ULURP applications in several respects. The main feature of this "Consensus Proposal" is to remove one complete residential floor from the building. This reconfiguration would reduce the project's total FAR to 8.55, and its height to 317 feet (330 feet including enclosed mechanicals). Thus, the project would include less density than the Archstone Clinton project (8.71 FAR), and its overall height would be comparable to the Archstone Clinton project (325 feet including enclosed mechanicals).

We reluctantly accept this Consensus Proposal. We wish we didn't have to. But the pre-ULURP negotiations over this project are over, the ULURP process has started, and the Consensus Proposal is better than the original proposal.

Zoning Designation. Two Trees seeks a C6-3X zoning designation, with a text amendment to allow the automobile dealership and the NYPD stable. By DCP's own description,

"C6 districts permit a wide range of high-bulk commercial uses requiring a central location. Most C6 districts are in Manhattan and Downtown Brooklyn and permit corporate headquarters, large hotels, entertainment facilities, retail stores and high-rise residences in mixed buildings." (Zoning Handbook p. 62.)

² The Foundry project, completed in 2000, included the preservation and rehabilitation of the Site 5 HDPC. The Archstone Clinton project, completed earlier this year, includes 60,000 square feet of not-for-profit theater space, 21,700 square feet of public open space, preservation of the Oasis Community Garden, and the City's commitment to make the remaining City-owned sites on blocks 1080 and 1081 available for affordable housing and not-for-profit uses.

³ These sites are the Triangle building at 525 West 52nd Street; 706-716 Eleventh Avenue (between 50th and 51st Streets); 802 Eleventh Avenue (between 55th and 56th Streets); and the Clinton Manor parking lot at 535 West 51st Street.

That zoning is not right for this neighborhood or for this project.

This project is fundamentally a residential project in an area where new development has been, and is planned to be, predominantly residential. Thus, the zoning designation here should favor residential development. Densities should, as much as possible, be consistent with surrounding land use patterns and with the Eleventh Avenue rezoning now being discussed by CB4 and the Department of City Planning. DCP's draft proposed zoning for the east side of Eleventh Avenue to a depth of 100 feet between 45th and 52nd Streets (excluding 46th-47th) is R8A. The Two Trees site should be rezoned R8A within 100 feet of Eleventh Avenue and R9A on the balance of the site. We understand that Two Trees has discussed such a zoning designation with DCP staff. We urge those discussions to resume.

We understand DCP staff prefers a commercial zoning designation at this site because of the extent of the commercial use planned for the Mercedes dealership, as well as the provision for the health club located on the first residential floor above the parking garage. But the vast majority of the dealership's floor area will be below grade and will not count as zoning floor area. And Two Trees is seeking a special permit to modify height and setback requirements and a zoning text amendment for the dealership and the stable anyway; the same special permit and text amendment, expanded to allow the health club use, could be used for an alternate zoning designation. To us, therefore, the insistence on a commercial zoning designation for a project that is fundamentally residential is hard to understand. However, if the zoning designation must be commercial, a C2-7A designation would seem far more appropriate, because it is "predominantly residential in character," (Zoning Handbook p. 54), and would seem to fit the reduced density "Consensus Proposal." C2-7A is also already present in the area, mapped on the west side of Tenth Avenue between 54th and 59th Streets.

Whatever the zoning, transient hotels (Use Group 5) and large entertainment facilities (Use Group 12) should not be allowed, because they are incompatible with residential use.

Zoning text amendments. We support the proposed zoning text amendments to accommodate an inclusionary housing bonus, subject to further modification consistent with our recommendations above on the zoning designation. We also support the proposed zoning text amendment of ZR Section 96-80 to allow the dealership and stable uses and to extend the floor area exclusion, which is normally applicable below 23 feet, to include the proposed accessory parking garage, with a height of 28.5 feet, on the floor above the stable. However, we recommend two further changes in the proposed text for ZR Section 96-80:

- It should be further limited to sites larger than 90,000 square feet, because automobile showrooms would not be appropriate on Tenth Avenue; and
- For clarity, insert "and," between "dwelling units," and "should" in the fifth line, and a comma after "23 feet" in the sixth line.

Project Design

The project's strikingly modern design proposal, involving the unusual stepped Z shape, and facades of gray and glass is unlike anything in the neighborhood. It will stand out from its surroundings rather than fit in.

Some in our community and beyond are excited by the project's design. Others are appalled. The renderings in the application tend to make the building's density and height appear less intimidating than many of us fear it will be. Those renderings omit an image that emphasizes the effect of the diagonal glass slab even without showing the context of the surrounding buildings and the park. In context the effect will be even greater.



In our discussions with Two Trees, we have asked them to investigate alternatives of façade treatment that would break up the monumentality of the solid Eleventh Avenue façade opposite DeWitt Clinton Park. They obliged with several images, about which Two Trees was non-committal and we were unable to reach consensus. In addition we were surprised to note that while the renderings show the façade in varying shades of

gray, the intention is to clad the entire façade in a single shade with perforations for HVAC vents. We urge continued discussions to do something to differentiate the building's façade to provide relief from the solid slab.

Permanent Affordable Housing.

Two Trees has planned from the outset to use the State Housing Finance Agency's "80/20" program to finance a portion of the development. As a result, 20% of the residential units are planned to be affordable to low-income households. Under the original proposal, 180 of a total 900 units would be permanently affordable. Under the Consensus Proposal, 169 of a total 845 units would be permanently affordable.

Very early in our discussions Two Trees agreed to develop under the City's Inclusionary Housing Program, with the result that all of the low-income units will remain affordable in perpetuity, rather than just for the terms of the HFA bonds and the 421-a tax exemption. This is a significant benefit of the project to our community.

The Inclusionary Housing Program is proposed to be amended to accommodate this project, with a base FAR of 7.0, bonusable to 9.0 at a rate of 1.25 square feet for each square foot of lower income housing. By our calculations, the 9 FAR project described in the applications would require an additional 3,697 square feet of affordable housing (approximately 5 units) to achieve the maximum bonus. By the same calculations, the 8.55 FAR Consensus Proposal would produce 21,540 more square feet of affordable housing than is required for the maximum bonus for this site. The inclusionary housing program rules would allow that excess to contribute to a bonus on another site. However, reducing the density of this project to address this community's concerns must not result in increased density elsewhere. Any excess bonus development rights must go unused.

Two Trees has assured us that it is their practice, which will be continued with this project, to distribute the affordable units evenly on all residential floors and to provide the same fixtures and finishes in the market rate units and the affordable units. We commend Two Trees for this practice, which few other developers adopt voluntarily.

The proposed residential units will be predominantly studios and one-bedroom units, reflecting Two Trees' assessment of the demand for market rate units. This emphasis on smaller units encourages a transient population. The demand for affordable units, and the community's desire for family-friendly development, favors larger family-sized units. Unfortunately, HFA and 421-a requirements mandate an identical mix of unit sizes for the market-rate units and the affordable units. We would prefer that there be more affordable 2-bedroom units, and fewer affordable studios and 1-bedroom units. At least 20% of the affordable units should be 2-bedroom units or larger. With HPD's support, we are seeking to discuss this matter with HFA. Should those discussions prove successful and HFA guidelines be modified to allow it, Two Trees has agreed to change the mix of affordable units, within the 20% of the residential floor area devoted to affordable housing, to include more 2-bedroom units. We recognize that this may result in fewer (though larger) affordable units overall.

The Market.

The market was originally included in the project at our request, because the community is keen to attract an affordable grocery store. As originally proposed, the market would have been 16,000 gross square feet. As the Mercedes dealership and the NYPD stable have expanded, the space available for the market has shrunk to 5,493 zoning square feet. This is not large enough for the kind of grocery store the community needs.

As a result, Two Trees has proposed, and we agree, that the space on the 54th Street side of the project that is now designated for the market should be used for a not-for-profit or community facility use by a user to be selected through a community-based process. Two Trees will make this space available for long-term lease to any designee of CB4 for a nominal annual rent, and has expressed its commitment to work with us to accommodate and support the selected user. We are grateful for this commitment, and look forward to working with Two Trees to implement it.

NYPD Stable

The NYPD Mounted Unit stable is being included in this project at our suggestion, and we are pleased that Two Trees has been willing to take up the challenge of including this important public facility in this project. The stable has been at a variety of locations in CD4 for many years, providing a reassuring police presence, sidewalk entertainment for residents and visitors alike, and fertilizer for neighborhood gardens. The Unit is now temporarily located on Pier 76 at 36th Street, in facilities it must vacate pursuant to a Memorandum of Understanding between the City and the Hudson River Park Trust. However, negotiations between Two Trees and the City are ongoing, and the City has not yet made a commitment to this project. When a deal is reached, an additional ULURP application will be required for public facility site selection.

In the unlikely (and disappointing) event that the NYPD negotiations fall through, we have requested and Two Trees has agreed that the space on the 53rd Street side of the project that is now designated for the NYPD stable should also be used for a community facility use by a user to be selected by Two Trees in consultation with CB4. We recognize that the financial terms for any such alternate user must generally be revenue-neutral to Two Trees.

Parking Garage

The application states that the project includes accessory parking for up to 225 cars, but Two Trees' presentations indicate that the project will include only 175 accessory spaces for cars (140 for residents and 35 for the NYPD stable). The residential garage will be located above the dealership and the stable, and accessed via ramp from 53rd Street. It will be an unattended self-park facility with spaces rented to building residents on a monthly basis. No hourly transient parking will be allowed. Prioritized spaces will be provided for car-share services like Zip Cars, and for alternate fuel vehicles. In addition,

the garage will include space for 600-700 bicycles. By eliminating public parking and providing space for alternate means of transportation, Two Trees has developed a parking plan that we strongly endorse. We hope it becomes a model for other developers.

The main features of the parking plan must be made permanent through a restrictive declaration or comparable enforcement mechanism.

The Auto Dealership

Auto dealerships have historically been located along Eleventh Avenue in this area. Because of its role in the City's economy, it is a use we accept. However, the proposed Mercedes dealership is enormous – 330,000 square feet, most of it located on three levels below grade.

The dealership will be accessed by a central ramp with curb cuts on both side streets. This makes the dealership accessible from both east and west, which will reduce traffic impacts. The DEIS estimates that the dealership's service facility could generate as many as 50 vehicle trips during peak hours in the morning and afternoon. This raises concerns about vehicle queuing, which must not be allowed on the sidewalks or streets around the project site. However, the service facility will be located on the first floor below grade. Drivers will not encounter service personnel until they reach the lower level, where there appears to be ample space for cars to be stored awaiting check-in. The facility appears to be well designed to avoid sidewalk queuing.

The requested land use actions include a modification of the signage regulations to accommodate the dealership. The applicable regulations limit signage across the street from a large public park or a residential zoning district to 150 square feet for non-illuminated signs and 50 square feet for illuminated signs, with a maximum height of 25 feet. This affects all 3 streetwalls of the proposed project. The application seeks to increase the size of the allowed signage to 500 square feet per establishment, and a maximum height of 30 feet above the curb.

The application provides no details about the dimensions and location of the proposed signage, but argues that larger signs are necessary "to provide the driving public with necessary dealership location and directional signage." That's nonsense. With two-story glass windows at the base of this striking building, the dealership will be a beacon visible from the West Side Highway, with or without signage.

We asked Two Trees to show us the signage Mercedes proposes. We were shown a rendering and plans with a single dealer sign of 372 square feet (69'x5.5') on the Eleventh Avenue façade, with a maximum height less than 20', and square "star modules" (the Mercedes logo) of 46 square feet, one on each of the street frontages. All four signs would be illuminated.

The dimensions of the proposed signs are not inappropriate, particularly considering that the dealership extends across the entire Eleventh Avenue block front, 200 feet along 54th

Street and 100 feet along 53rd Street. We are concerned, however, about the effect of light from the signs shining into neighboring residential buildings on 53rd and 54th Streets. Signage must comply with Section 42-53 of the Zoning Resolution, ensuring that lighting is not directly projected into residences and prohibiting flashing illumination. We are also concerned that light from the showroom windows may disturb neighboring residents at night. On the other hand, the lit windows will make the sidewalks safer at night.

We request a commitment from Mercedes to work with us to address these and any other quality of life issues that may arise as the dealership becomes operational.

Managing curb cuts

The project design includes 4 curb cuts on 53rd Street east of one of the building's residential entrances, for the accessory parking garage, the NYPD Mounted Unit facility, the Mercedes service facility and dealership loading. One curb cut is proposed on 54th Street west of the other residential entrance, for the Mercedes service facility. The curb cuts are appropriately located, but must be carefully managed with signage and warning systems to avoid accidents with pedestrians.

Environmental impacts

Schools. The DEIS projects a need for an additional 108 elementary school seats as a result of this project. This emphasizes the need to plan the expansion of PS51 to provide additional elementary school seats, rather than introducing intermediate school seats. We request the City's renewed commitment to the PS51 expansion project.

Open space. The DEIS also reports that this enormous project will further decrease the area's already paltry open space ratio, placing additional demand on DeWitt Clinton Park. The park is now undergoing renovation of the ball fields and other capital improvements, but more is needed. To mitigate the impacts on the park, and to improve and sustain the park as an amenity for all area residents, Two Trees has expressed a willingness to contribute \$50,000 per year to support the park for the life of the project. The funds could be used to supplement DPR's annual operating budget for DeWitt Clinton Park, or for capital improvements in the park. This offer should be enthusiastically accepted, developed in greater detail while the ULURP process continues, and embodied in a restrictive declaration or comparable enforcement mechanism.

NOW, THEREFORE, BE IT RESOLVED that Manhattan Community Board No. 4 recommends denial of ULURP Applications No. C 080008 ZMM, N 080009 ZRM, C 0800010 ZSM and C 080011 ZSM unless the following conditions are met:

1. The applications are amended to reflect the Consensus Proposal, with a total project FAR limited to 8.55 and a roof height limited to 327 feet (337 feet including enclosed

mechanicals). Should development plans for the site change, this maximum height and density must continue to apply.

2. Zoning must be R8A within 100 feet of Eleventh Avenue and R9A on the balance of the site, with a commercial overlay and text amendments to accommodate the proposed uses reflected in the applications.
3. The text amendment proposed for ZR Section 96-80 must be further limited to apply only to sites larger than 90,000 square feet.
4. All bonus development rights generated under the Inclusionary Housing Program must be used on-site, or not used at all.
5. Affordable units must be evenly distributed on all residential floors, and provide the same fixtures and finishes as the market rate units.
6. State regulations permitting, at least 20% of the affordable units must be 2-bedroom units or larger.
7. The space now designated for the market must be used instead for a not-for-profit or community facility use by a user to be selected through a community-based process at a nominal annual rent.
8. Should the NYPD Mounted Unit not take the space designated for it, that space must be used for a community facility use by a user to be selected by Two Trees in consultation with CB4.
9. All of the above commitments and the main features of the parking plan must be made permanent through a restrictive declaration or comparable enforcement mechanism.
10. Two Trees must develop and implement a plan to fill as many of the development's permanent jobs as possible with residents of Community District 4.
11. Illuminated signage must comply with all applicable regulations, including ZR Section 42-53.
12. Mercedes must commit to work with us to address quality of life issues that may arise as the dealership becomes operational.
13. Curb cuts must be managed with signage and warning systems to avoid accidents with pedestrians.
14. Two Trees' offer to contribute annually to support DeWitt Clinton Park must be embodied in a restrictive declaration or comparable enforcement mechanism.
15. Street trees must be planted, in accordance with the Zoning Resolution.

AND FURTHER RESOLVED that CB4's acceptance of the Consensus Proposal arises out of the unique circumstances of this project and this site, and must not be interpreted as precedent-setting for, or a change in any of our stated positions concerning, the rezoning of other areas in the Special Clinton District including, in particular, the PS51 Affordable Housing Site and the Eleventh Avenue rezoning. If anything, these actions renew our determination to complete the rezoning of the PS51 Affordable Housing Site and the Eleventh Avenue corridor and implement our previously-articulated planning priorities.

Sincerely,



Jean-Daniel Noland
Chair



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

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