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Gale A. Brewer, Borough President

January 7, 2015

**Recommendation on
ULURP Application Nos. N 140407 ZRM, C 140408 ZSM, and C 140409 ZSM
505-513 West 43rd Street by 1818 Nadlan LLC**

PROPOSED ACTIONS

1818 Nadlan LLC¹ seeks a zoning text amendment and two special permits to facilitate the development of a 16-story, 160,664 square foot residential building with a 35-space parking garage at 505-513 West 43rd Street in the Clinton neighborhood of Manhattan Community District 4. The applicant seeks a text amendment to Section 96-32 of the Zoning Resolution (“ZR”) to allow modification of the applicable height and setback, planting, and permitted obstruction within rear yard regulations. The applicant seeks a special permit pursuant to ZR § 96-32 as amended and a special permit pursuant to § 74-681 to allow development over a railroad right-of-way.

Pursuant to ZR § 74-681, where a development is located partially or entirely within a railroad right-of-way, the City Planning Commission (“CPC”) may permit that the portion of the railroad right-of-way which will be completely covered by a permanent platform be included in the lot area of the development. As a condition of granting the special permit, the CPC must find that:

1. the streets providing access to the proposed development are adequate to handle traffic resulting from the development;
2. the distribution of floor area and the number of dwelling units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of the development, including any portion of the development located beyond the boundaries of the railroad right-of-way;
3. all uses on the zoning lot and below the platform do not adversely affect one another; and
4. if the railroad right-of-way is deemed appropriate for future transportation use, the site plan and structural design of the project do not preclude future use of, or improvements to, the right-of-way.

In conjunction with the special permit pursuant to ZR § 74-681, pursuant to § 96-32, as amended, the CPC may grant a waiver of height and setback, planting, and permitted obstruction within rear yard regulations provided that:

¹ 1818 Nadlan LLC is a subsidiary of the El Ad Group, which is managed by Orly Daniell, President and Chairwoman

1. the height and setback waivers will not result in a building taller than 165 feet, will result in a better distribution of bulk, and will permit adequate access to light and air to surrounding streets and properties;
2. the modification of planting requirements will facilitate access to Department of Transportation (“DOT”) bridge structures, and that the sidewalk will be improved with moveable planters; and
3. any permitted rear yard obstruction is properly screened with vegetation and is necessary to accommodate the ventilation needs of a railroad or transit facility.

PROJECT DESCRIPTION

The applicant is seeking a zoning text amendment and two special permits to facilitate the construction of a 16-story residential building above an Amtrak right-of-way. The site is currently an open rail cut between West 43rd and West 44th Streets, on the block between Tenth and Eleventh Avenues. While certified as a rental building with 192 residential units, the ownership of the development changed hands just prior to certification and the new owner plans a condominium building, within the same building envelope, with 127 units.

Previous Actions

In 2006, the CPC issued a special permit for the development site pursuant to ZR § 74-681 (C 060334 ZSM). At the time, the western portion of the lot was located in an M1-5 (CL) district, and by the split lot regulations the entire lot was subject to M1-5 regulations. The approved special permit would have allowed two separate hotels with a total zoning floor area of 100,414 square feet. The hotels were never constructed and the special permit lapsed in 2010.

In 2011, the development site was rezoned as part of the West Clinton Rezoning (C 110177 ZMM), which was intended to address a recent trend of increased residential development between Tenth and Eleventh Avenues and commercial, office and manufacturing-district compatible development between Eleventh and Twelfth Avenues. The rezoning generally affected 18 blocks, from West 43rd Street to West 55th Street. Blocks east of Eleventh Avenue were rezoned for contextual residential development with affordable housing, and blocks west of Eleventh Avenue were rezoned to allow manufacturing-district uses in contextual building envelopes. The development site was rezoned at this time to R9 (CL).

In 2010, the CPC approved a series of actions in connection with the Gotham West project, a multi-building development immediately north of the development site (C 100051 ZMM et al). The actions facilitated a project, proposed by the Department of Housing Preservation and Development, which was comprised of multiple buildings with approximately 1,350 residential units, 10,800 square feet of retail space, parking for 204 cars, and a 630-seat public school. As part of a larger suite of actions, the applicant sought a special permit pursuant to ZR § 74-681 to facilitate development over the

railroad right-of-way and a special permit to modify bulk and height requirements. The buildings to be located over the railroad cut were set back eight feet from the property line, with a nine-story base, after which there was an additional seven-foot setback with five stories above, for a total height of 14 stories.

Area Context

The development site is located in the Clinton Neighborhood of Manhattan Community District 4. The surrounding area is characterized by a mix of uses and building forms, but recent development is primarily residential in nature. The block to the south of the development site includes a number of high-rise residential buildings, up to 46 stories tall. Gotham West, the large-scale mixed-use development, described above, is currently under construction to the north of the project area. Though the blocks to the north and south contain tall residential buildings, the project block itself is largely lower in scale. On the eastern end of the block are four- and five-story residential buildings with ground-floor retail facing on Tenth Avenue. To the west of the development site is a row of automotive repair shops fronting on West 44th Street and a three-story rental car facility on West 43rd Street. One through-block building in the midblock is currently occupied by the New York City School Construction Authority, which is to be converted to a high school. West of this is a 20,000 square foot, through-block, surface parking lot, which is a proposed residential development site. West of that is another three-story automotive facility. The western side of the block contains a seven-story self-storage warehouse, an auto repair shop, a 6,832 square foot vacant lot, and a diner.

Area Zoning

The development site is a split lot located in the Western Subarea C2 and the Preservation Area of the Special Clinton District (CL). Established in 1974, the district was created to preserve and strengthen the residential character of the community, maintain a broad mix of income, and ensure that the community is not adversely affected by new development. The district established a “Preservation Area,” from West 43rd to West 56th Streets between Eighth and Tenth Avenues, with an R7 zoning and a six-story height limit on new buildings. To the east and south of the Preservation Area is a perimeter area designed to provide appropriate transitions between the lower-scale side streets and the Special Hudson Yards District to the south and the Special Midtown District to the east. The Other Area, to the west and north of the Preservation Area, was established to maintain a mix of residential, industrial, and waterfront uses.

Within Western Subarea C2 the underlying zoning regulations apply, except for special floor area, height, and setback regulations in R8, R8A, R9 and M2-4 districts. Inclusionary Housing bonuses are available to residential developments in R8A and R9 districts. The blocks between Eleventh and Twelfth Avenue are mapped M2-4, which allows medium intensity industrial and some commercial uses. Within the CL, M2-4 permits a floor area ratio (“FAR”) of 5.0, a street wall of between 50 and 95 feet, and a maximum height of 135 feet. R8 and R8A districts are widely mapped in the surrounding area, particularly to the north and east of the project area. Within the Western Subarea C2

and the Preservation Area, special regulations apply to R8 districts. The maximum FAR for all uses is 4.2. Within 100 feet of a wide street, buildings must have a street wall height of between 50 and 66 feet, and a maximum building height of 85 feet. On narrow streets, no building may exceed a height of seven stories or 66 feet, whichever is less. R8A districts within the Western Subarea C2 are Inclusionary Housing designated areas with a base FAR of 5.2, bonusable to 7.2 with the provision of affordable housing. They are subject to a required base height of between 60 and 85 feet and a maximum building height of 120 feet.

Proposed Development Site

The development site is a through-block site between Tenth and Eleventh Avenue with 100 feet of frontage on both West 43rd and West 44th Streets. At the eastern edge of the lot, a 4,090 square foot portion of the 20,083 square foot lot is located in the Preservation Area of the CL and is zoned R8 with a C2-5 overlay. Under ZR § 77-11, because the distance from the zoning boundary is less than 25 feet and because this portion comprises less than 50 percent of the lot area, the R9 (CL) regulations of the western portion of the lot may be applied to the entire lot. Under the R9 regulation, the building is limited to a maximum height of 135 feet. R9 districts in Western Subarea C2 allow 6.0 base FAR, which can be bonused to 8.0 FAR through the provision of affordable housing.

Proposed Project

The proposed actions, as described in the ULURP application, would facilitate a 16-story residential building with a 35-space accessory parking garage. The proposed building would be constructed on a platform covering the entire cut of the Amtrak right-of-way. The building will be set back eight feet from the property line on both West 43rd and West 44th Streets because of access requirements by the DOT. In order to accommodate the full 8.0 FAR on the site given this constraint, the building, as certified, will rise to a height of 164 feet with a setback at the tenth floor.

The proposed development would consist of two building segments, one fronting on each street, connected by a one-story ground floor. The ground floor would consist of a lobby, accessory recreation space, bike rooms, mechanical space, and a parking area. A driveway, accessed by a 12-foot curb cut, would be located at the western edge of the lot on West 43rd Street. A passive ventilation system will be provided on the second floor terrace which will be triggered by a fire or smoke condition in the rail tunnel. This vent, 22 feet wide and 17 feet deep, will have a height of 8 feet.

As currently delineated in the application, the building would have a total zoning floor area of 160,664 feet, which would accommodate a maximum of 192 dwelling units. Twenty percent of the building's floor area would be dedicated to affordable housing, but because some of the market rate units would be large, this would constitute 38 percent of the total number of units. Since the project was initially planned, the land has come into new ownership, however, and the current applicant is proposing a condominium, rather than rental, building. Under the condo scenario, with the certified building envelope, the

applicant proposes 127 units, 26 of which would be affordable. According to the applicant, all apartments in the building would be ownership units and the affordable units would be distributed throughout the building. The number and mix of units has been further altered, however, in negotiations with Community Board 4, to be described in greater detail below.

Proposed Actions

In order to facilitate the proposed project, the applicant seeks (1) a text amendment to ZR § 96-32 (Special Regulations in R9 Districts) to allow modification of height and setback, planting, and permitted rear yard obstruction regulations; (2) a special permit pursuant to the amended § 96-32(c); and (3) a special permit pursuant to § 74-681 (Development Within or Over a Right-of-Way or Yards). The actions are necessary to construct a platform over the rail cut, to accommodate the access and ventilation requirements of the railway and the DOT bridge, and to allow the full 8.0 FAR, including the 2.0 FAR Inclusionary Housing bonus within the proposed building envelope.

The proposed zoning text amendment would allow modification of the applicable regulations for height and setback, planting, and permitted obstruction with rear yard for all sites developed pursuant to a § 74-681 special permit within R9 districts in Western Subarea C2. First, because of the required eight foot setback on both streets for DOT access, the height and bulk waivers are needed to fit the full FAR on the site. The DOT access requirements also prevent the installation of street trees that would be required by ZR § 23-892. The special permit would allow waiver of these requirements provided that the area between the street wall and street line will be improved with moveable planters. Finally, the modification of rear yard obstruction requirements is necessary to accommodate the emergency ventilation structure which will sit in the building's rear yard equivalent, on the second floor terrace. The proposed text amendment will require that the obstruction be fully screened by a landscape strip at least four feet wide, densely planted with evergreen shrubs at least four feet high at the time of planting, and of a type that is expected to form a year-round, dense screen at least six feet high within three years. The building will conform to all other applicable height, setback, and floor area regulations.

The special permit pursuant to ZR § 74-681 is required to include the area of the platform over the rail cut in the building's floor area calculations. This special permit is needed as the majority of the lot area of the development site is located in air space above the rail line. In order to approve for the CPC to approve the special permit the applicant must show that the project will not create traffic congestion, that the bulk is appropriately distributed and will not harm the character of the neighborhood, and that the development will not hinder the current or future use of the right-of-way.

COMMUNITY BOARD RECOMMENDATION

At a Full Board meeting on December 3, 2014, Manhattan Community Board 4 ("CB4") voted on a resolution recommending **approval with conditions** of the application by a

vote of 35 for, 3 against, and 0 present but not eligible to vote. The recommendation of approval is based on negotiations between the Community Board and the applicant which resulted in a revised proposal with a reduced building height. The revised proposal will reduce the size of the building by approximately one floor, roughly ten feet, and will relocate some of the affordable units to an off-site location, to be determined, within the Clinton neighborhood.

The full, agreed upon changes to the proposal are as follows:

Building Height

The proposed height of the building will be reduced from 164 feet on both West 43rd and West 44th Streets to 154 feet on West 44th Street and 154 feet and 144 feet on West 43rd Street. The reduced height will decrease the FAR of the building from 8.0 to 7.39.

Affordable Housing

Because of the reduction of the building's size, the total number of affordable apartments will be reduced from 26 to 18. A minimum of six of these units will be located on-site and an additional 12 units will be located off-site. On-site units will be affordable condominiums available to households earning 80 percent of the area medium income ("AMI"). Off-site units will be affordable rentals available to households earning between 50 and 80 percent of AMI.

Further, the applicant has agreed that the on-site affordable units will be distributed equally between both building segments, on upper and lower floors, with no more than one unit per floor. The on-site units will have the same fixtures, finishes, and appliances as the market-rate units, and all building amenities (other than parking) will be accessible to affordable owners at no cost.

Parking

The applicant has agreed to reduce the size of the parking garage from 35 to 23 spaces.

Ongoing Consultation

The applicant has agreed to an ongoing dialogue with CB4 as the ULURP process continues. The applicant will work with CB4 to make the façade of the building more contextual with the neighborhood and adjacent buildings, and will agree upon changes prior to the City Planning Commission hearing. Additionally, the applicant will refer its HPD applications for Inclusionary Housing to CB4 for both the on- and off-site units.

BOROUGH PRESIDENT COMMENTS

The applicant is proposing to fill a longstanding gap in this block of West 43rd and West 44th Streets with a residential building. Unlike the previously-approved project that would have brought two new hotels to the neighborhood, the proposed project fits in with the goals of the West Clinton Rezoning with its residential use and the inclusion of affordable housing. The permanent platform over the Amtrak right-of-way will reduce noise in the neighborhood, will reintroduce a street wall to the block, and will help the

neighborhood's transition from an industrial to a residential character. The need to set back the building for DOT access and the cost of the platform over the railway makes the applicant's request for a text amendment to create bulk, height, and other waivers appropriate. It is important, however, to balance the goals of residential infill and affordable housing with the other important goal of the Special Clinton District: maintaining the low-scale built character of the Clinton neighborhood.

These blocks of West 43rd and West 44th Streets are very much transition zones. From the high-rises of West 42nd Street, buildings here step down to match the lower scale to the north. And from the medium density commercial and manufacturing uses to the west, these blocks act as a buffer for the residential row house heart of Clinton. The development site itself is a transition zone. Part of the site sits in the R9 Western Subarea C2, while part of the site sits in the R8 Preservation Area. For this reason, Community Board 4 sought to minimize any increase in height on this site, which will set the context for the continued redevelopment of this block. The applicant and the Community Board have reached a middle ground that will provide for the redevelopment of this site with market rate and affordable housing, while reducing the total height of the building. The community effort on this matter should be respected and strengthened.

Due to the reduction in total floor area of the building, to include all affordable units on-site would potentially result in a building with less market-rate floor area than the non-bonused, as of right alternative. It is therefore reasonable for a portion of the affordable units to be located off site. The number of on-site units, however, should be maximized as these will provide the greatest benefit to the public in terms of creating a diverse, mixed-income community. Furthermore, with a condominium building such as this, the fewer affordable owners in the building, the less power those owners will have in future decision-making in the building. It is important that we do not create a scenario in which future owners do not feel that they have a voice in decisions about their home.

In discussions with the Borough President's Office, the applicant has clarified how the condominium declaration and the condominium board by-laws will be strengthened to protect the owners of the inclusionary units. First, the by-laws will provide that one member of the Board of Managers must be an owner of an inclusionary unit. Additionally, the condominium declaration and by-laws will provide that there cannot be any distinction between market rate owners and affordable owners regarding access to building amenities. Finally, the condominium declaration and the by-laws will clearly state that they cannot be amended in any way that would affect the inclusionary unit owners without the consent of HPD. All of these commitments, as well as clarification regarding the applicable HPD and ZR regulations that would affect affordable owners in the building are laid out in a memo dated December 23, 2014 to the Borough President's Office attached to this recommendation.

In addition to these protections for affordable unit owners, the applicant should do everything possible to maximize the number of on-site affordable units, while also maintaining the commitment to the CB4 to maximize the number of two-bedroom units. The reduced height alternative will include 148,538 square feet of floor area, of which

28,040 square feet is bonus floor area. If the applicant included six 800 square foot two-bedroom units, this would account for only 17 percent of the bonus floor area, and only three percent of the building's total zoning floor area. By minimally reducing the size of the 99 market rate units anticipated to be included in the building, the applicant could add additional two-bedroom units on-site without dramatically altering these percentages. Ten such units, for example, would account for 28.5 percent of the bonus floor area, or only five percent of the building.

Because of the change in ownership of this development that occurred just prior to certification of the project, the interior of the proposed building is not yet designed. While the applicant has committed to at least six on-site units, as the public process continues it should clarify the affordable housing plan for the building, which should include more than six on-site units. In a letter to the Borough President dated January 6, 2015, the applicant has committed to increase the number of on-site units if possible given the constraints of the building.

The reduced height alternative agreed upon with the Community Board, if altered to maximize the number of on-site units, will meet all of the applicable finding of both requested special permits. The unique conditions of sites that include rail rights-of-way warrant the additional relief that would be provided by the proposed text amendment as the rights-of-way impose their own unique constraints.

BOROUGH PRESIDENT RECOMMENDATION

In consideration of the above, the Manhattan Borough President recommends approval with conditions of ULURP application numbers N 140407 ZRM, C 140408 ZSM, and C 140409 ZSM provided that the applicant:

- 1. Revise the ULURP application to reflect all changes outlined in the November 20, 2014 letter to Community Board 4;**
- 2. Ensure fair treatment of all inclusionary unit owners, as outlined in the December 23, 2014, memo to the Borough President's Office, including that:
 - a. the by-laws will provide that one member of the Board of Managers must be an owner of an inclusionary unit;**
 - b. the condominium declaration and by-laws will provide that there cannot be any distinction between market rate owners and affordable owners regarding access to building amenities; and**
 - c. the condominium declaration and the by-laws will clearly state that they cannot be amended in any way that would affect the inclusionary unit owners without the consent of HPD;****
- 3. Determine interior floor plans prior to City Council approval of the ULURP application so that the approved application indicates the final number of on-site affordable units; and**
- 4. Include more than six on-site affordable condominiums.**



Gale A. Brewer
Manhattan Borough President