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Gale A. Brewer, Borough President

July 18, 2018

Recommendation on

**ULURP Application Nos. C 180263 ZSM and C 180264 ZSM – 110 E 16th St
by East 16th Street Owner LLC and Trinity Christian Center of Santa Ana, Inc.**

PROPOSED ACTIONS

East 16th Street Owner LLC and Trinity Christian Center of Santa Ana, Inc. (together, the “applicants”) seek the approval of a **special permit** pursuant to Section 74-711 of the New York City Zoning Resolution (“ZR”) to effectuate the development of a mixed use building (“Proposed Development”) at 110 East 16th Street (Block 871, Lot 74, the “Development Site”) in a C6-2A zoning district in Manhattan Community District Five. The applicants will restore and establish a continuing maintenance program for the (Former) Century Association Building, an individual landmark located at 109-111 East 15th Street (Block 871, Lot 10). This special permit requests waivers in base and setback, rear yard equivalent, minimum distance between buildings, and height.

In order to obtain a permit, ZR § 74-711 sets forth the following conditions which must be met:

- (1) any application pursuant to this Section shall include a report from the Landmarks Preservation Commission stating that a program has been established for continuing maintenance that will result in the preservation of the subject *building* or *buildings*, and that such *use* or *bulk* modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;
- (2) any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the Landmarks Preservation Commission stating that such *bulk* modifications relate harmoniously to the subject landmark *building* or *buildings* in the Historic District, as applicable; and
- (3) the maximum number of *dwelling units* shall be as set forth in Section 15-111 (Number of permitted dwelling units).

In order to grant a special permit, the City Planning Commission (CPC) shall find that:

- (1) such *bulk* modifications shall have minimal adverse effects on the structures or *open space* in the vicinity in terms of scale, location and access to light and air; and
- (2) such *use* modifications shall have minimal adverse effects on the conforming *uses* within the *building* and in the surrounding area.

The applicants are also seeking a **special permit** pursuant to ZR Section 13-451 to allow 23 accessory parking spaces in a new parking garage at the Development Site to accommodate residential growth.

The special permit requires that all of the applicable conditions of ZR 13-20 (SPECIAL RULES FOR MANHATTAN CORE PARKING FACILITIES) be met and that the findings of 13-45 and 13-451 have been met. These findings are as follows:

- (1) the location of the vehicular entrances and exits to such parking facility will not unduly interrupt the flow of pedestrian traffic associated with uses or public facilities, including access points to mass transit facilities in close proximity thereto, or result in any undue conflict between pedestrian and vehicular movements, due to the entering and leaving movement of vehicles;
- (2) the location of the vehicular entrances and exits to such parking facility will not interfere with the efficient functioning of streets, including any lanes designated for specific types of users or vehicles, due to the entering and leaving movement of vehicles;
- (3) such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow;
- (4) for public parking garages, 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;
- (5) such parking facility will not be inconsistent with the character of the existing streetscape; and
- (6) the number of off-street parking spaces in such proposed parking facility is reasonable and not excessive in relation to recent trends in close proximity to the proposed facility with regard to:
 - (a) the increase in the number of dwelling units; and
 - (b) the number of both public and accessory off-street parking spaces, taking into account both the construction, if any, of new off-street parking facilities and the reduction, if any, in the number of such spaces in existing parking facilities.

PROJECT DESCRIPTION

The Development Site at 110 East 16th Street and the landmark building at 109-111 East 15th Street are currently one zoning lot. The applicants intend to enlarge this zoning lot pursuant to an as-of-right zoning lot merger to include 113-115 East 15th Street (Block 871, Lot 12) in order to facilitate the Proposed Development. Together, the Development Site, the landmark building site, and Lot 12 comprise the Project Area.

The Project Area is bounded by East 16th Street to the north, Irving Place to the east, East 15th Street to the south, and Union Square East to the west. The Project Area has a total lot area of 16,986 square feet – the Development Site is 6,660 square feet, the landmark site is 5,163 square feet, and Lot 12 is 5,163 square feet. The Project Area is a through lot with 100 feet of frontage on East 15th Street and 64 feet 6 inches of frontage on East 16th Street. The Development Site is currently occupied by a nine-story, 86-foot tall public parking garage with 196 public parking

spaces, which will be demolished. The landmark site is currently occupied by a three-story, 57-foot tall landmarked commercial building containing a theater, dressing rooms, offices, and office space. Lot 12 is currently occupied by a four-story, 52-foot commercial building containing a theatrical school and offices, which will remain unaffected by the Proposed Development.

The Proposed Development with the requested bulk waivers would be a 21-story mixed-use building with 76,822 square feet of residential space, 2,310 square feet of commercial space, and 690 square feet of community facility space, for a total floor area of 79,822 square feet. The no-action condition without the special permit would allow 51,040 square feet of zoning floor. Thus, the special permit would facilitate the development of 25,782 more zoning square feet of residential floor area

Background

In 1961, the Project Area and surroundings were zoned C6-1. In 1996, the CPC rezoned the Project Area from C6-1 to C6-2A (C 940304 ZMM). The block frontages along Irving Place between East 15th Street and East 18th Street were rezoned from R8 to R8A, and the block frontages along Third Avenue north of East 15th Street were rezoned from C1-9 to C1-9A.

In 1960, prior to the enactment of the current Zoning Resolution, CPC granted a special permit to allow a 154 space public parking garage at the Development Site for a term of 25 years. In 1961, CPC amended the Special Permit to increase the capacity of the garage to approximately 200 spaces, and granted a new 25-year term expiring in 1986. The CPC authorized the extension of the public parking use for a term of 10 years in 1986, and again in 1997 and 2007. This authorization expired in March of 2016. Union 16 Parking LLC, the garage operator, applied to the CPC to renew the authorization and in April of 2017 the CPC approved the renewal for five years.

The Landmarks Preservation Commission (“LPC”) designated the (Former) Century Association Building as an individual landmark in 1993. On January 22, 2018, LPC issued a report stating that a continuing maintenance plan has been established that would result in the preservation of the landmark, and that the proposed restorative work contributes to a preservation purpose. The continuing maintenance program also contains a restrictive declaration entered into in accordance with the guidelines and specifications of LPC. LPC also issued a Certificate of Appropriateness (COFA-19-13478) stating that the proposed plans relate harmoniously to the landmark building, and would not eliminate any significant historic fabric and would be consistent with the historic character of the building.

On March 22, 2016, the New York City Council approved the Mandatory Inclusionary Housing (MIH) text amendment with modifications. The text amendment makes the production of affordable housing a mandatory condition of residential development when developers build in an area zoned for MIH, whether as a part of a City plan or a private rezoning application. In addition, with regard to special permit use and bulk modifications, ZR § 74-32 states:

Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

On August 15, 2016, CPC approved a special permit for the Adorama project at 38-42 West 18th Street without the inclusion of affordable housing under MIH. That application, just like this one, sought bulk waivers which made an additional 22,367 zoning square feet of residential space possible. This office and Manhattan Community Board 5 (CB5) recommended disapproval of the project unless MIH was applied, as the special permit to modify bulk requirements would allow the developer to build a significantly bigger building, even though it did not increase the maximum allowed zoning square footage of the building. On September 23, 2016, the City Council's Subcommittee on Zoning and Franchises also voted to approve the Adorama application. The applicant for Adorama, Acuity Capital Partners, agreed to contribute funds for affordable housing elsewhere in lieu of providing affordable housing pursuant to MIH.

Proposed Development

The Proposed Development is a 21-story mixed-use building with 40-55 residential units, commercial space, community facility space, and up to 23 accessory parking spaces. The Proposed Development would have 76,822 square feet of residential space, 2,310 square feet of commercial space, and 690 square feet of community facility space, for a total floor area of 79,822 square feet. The Proposed Development would have a base height of 230 feet, and then there would be a series of setbacks to reach a maximum building height of 268 feet (283 feet with bulkhead).

In conjunction with the Proposed Development, the applicants would restore the landmark building and ensure ongoing maintenance in accordance with the continuing maintenance plan. The restoration would consist of façade improvements, entrance improvements, and reinforcement of the envelope of the building.

In order to facilitate the Proposed Development, the applicants are seeking a number of bulk waivers via a special permit pursuant to ZR Section 74-711. The Development Site is zoned C6-2A, which allows for a maximum building height of 120 feet (160 feet with bulkhead) and requires a 15 foot setback at no lower than 60 feet and no higher than 85 feet pursuant to ZR Section 23-662. The Proposed Development, through a bulk waiver, would rise to a base height of 230 feet, and have an initial setback of 2 feet 5 inches, and a total height of 283 feet with bulkhead. In addition, ZR Section 23-711 requires a minimum distance of at least 50 feet between a wall and any window that is legally required for light and air. The residential windows on the 4th floor of the Proposed Development would only be 30 feet from the existing building on Lot 12. ZR Section 23-462(c) also requires that any open space provided along a side lot line

must have a minimum width of 8 feet; the width of the side yard for the Proposed Development would range from 1 foot 4 inches to 7 feet 5 inches.

According to the Environmental Assessment Study (EAS) for this special permit application, the no-action condition would allow for 46 residential units with 51,040 square feet of zoning floor area. With the special permit and attendant bulk waivers, the applicants are proposing up to 55 residential units with 76,822 residential zoning square feet. Thus, the special permit would facilitate the development of 9 more market-rate residential units and 25,782 more zoning square feet of residential floor area. It is worth noting that the EAS uses certain assumptions for unit size and the 9 unit increment does not necessarily correspond to the zoning square feet increment. The applicants are proposing 55 units and 76,822 zoning square feet, or an average of approximately 1,396 zoning square feet per unit.

The applicants are also seeking a special permit pursuant to ZR 13-451 in order to allow for additional parking spaces for residential growth. The Proposed Development plans for 23 accessory parking spaces; however, the proposed 40-55 residential units would only allow for a corresponding 8-11 accessory parking spaces as-of-right.

Area Context

The Project Area is located in the Union Square neighborhood of Manhattan Community District 5. The surrounding area contains a mix of residential, commercial, community facility, and park uses. There is a range of building heights in the area, with some low-rises and some newer buildings that are more than 20 stories. The Project Area is in a C6-2A district bounded to the north by the center line of East 16th Street and East 17th Street, to the east by a line 100 feet west of Irving Place, to the south by East 15th Street, and to the west by a line 100 feet west of Union Square East. An R8A district, which is the residential district equivalent of the C6-2A designation, extends along Irving Place from East 15th Street to East 18th Street.

Union Square Park is approximately 300 feet west of the Project Area. The Union Square Special District is approximately 100 feet west of the Development Site across East 15th Street. The Special District was created in 1985 in order to enhance the compatibility of new development with existing buildings and Union Square Park by requiring ground floor retail uses, off-street relocation of subway stairs, and street wall continuity.

The Project Area is very well-served by mass transit, primarily because of its proximity to the 14th Street-Union Square subway station, which is one of the busiest hubs in the city. The station provides access to the 4, 5, 6, L, N, Q, R, and W subway lines, and is approximately one block west of the Project Area. There are also many bus routes that serve the surrounding area, including the M1, M2, and M3, which run southbound along Union Square East, the M101, M102, and M103, which run along Third Avenue, and the M14, which runs along East 14th Street. The PATH train is also accessible at 14th Street and Sixth Avenue, approximately three blocks west of the Project Area.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on June 14, 2018, CB5 approved a resolution recommending **denial** of both special permits requested by the applicants. The resolution passed with a vote of 36 in favor; 1 opposed; and 2 abstaining.

CB5 stated that they believe the requested bulk waivers would allow for additional residential floor area to be realized in a way that should trigger MIH provisions for the creation of affordable housing, and that the applicants should commit to the creation of affordable housing elsewhere in the district that is equivalent to the number of units that would have been created under MIH. While the applicants were reportedly working with Council Member Carlina Rivera to find a partnering developer and an affordable housing project within the district, CB5 noted that there have been no commitments made and no progress reports to this end.

In addition, CB5 raised concerns with permitted weekend construction for other projects in the area, the shadow impacts of the Proposed Development, and the overcrowding of schools serving the area.

BOROUGH PRESIDENT'S COMMENTS

The applicants propose a thoughtful building that provides restorative work to a landmark building and ensures its continued maintenance. This project clearly serves a preservation purpose for the applicability of ZR 74-711, and it will reinforce the historic and architectural character of the neighborhood. Furthermore, the mixed-use residential building would replace an unattractive, nine-story parking garage with 196 parking spaces. It has long been my belief that areas near major transportation hubs such as Union Square should aim to minimize parking, especially for transient commercial uses. In addition to improving the streetscape experience, I believe the Proposed Development would also ameliorate vehicular congestion and traffic conditions by replacing the existing parking garage.

However, as with the similar Adorama project that went through the ULURP process in 2016, this project is troubling with regard to the application of the Mandatory Inclusionary Housing program. The New York City Department of City Planning's Zoning Division and Counsel's office concluded in that case that this type of special permit application does not result in MIH being applied because the requested bulk waivers simply facilitate the use of residential floor area that is already permitted instead of creating newly permitted residential floor area. I continue to disagree with their determination and believe that this application should be subject to the requirements of MIH.

I was the only Borough President to recommend conditional approval of MIH back in 2015. As with many other community groups and elected officials, I had very serious concerns about the text amendment and its ramifications for our city. But what ultimately swayed my decision was the belief that it would require permanent affordable housing to be built for projects exactly like this one. In my testimony on the MIH text amendment before the City Planning Commission on December 16, 2015, the first reason I gave as to why I was able to support the proposed text amendment was that “[i]n addition to neighborhood rezonings, it would apply to all special-permit applications – the best part of it – by private developers to add more than 10 residential units of housing to any area where this housing couldn't otherwise be built.”

The language of the text amendment indicates as much. Section 23-933 on Mandatory Inclusionary Housing Areas states that the “Inclusionary Housing Program shall also apply as a condition of City Planning Commission approval of special permits as set forth in Section 74-32 (Additional Considerations for Special Permit Use and Bulk Modifications). . . .” Then in section 74-32 entitled “Additional Considerations for Special Permit Use and Bulk Modifications” the text reads that “[w]here a special permit application would allow a significant increase in #residential floor area# . . . , the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

The text does not make reference to an increase in residential FAR being required for the applicability of MIH, nor does it state an increase in permitted residential floor area is required. I believe that it is important to apply MIH to any special permit that will enable more than ten units of housing or 12,500 square feet of residential floor area to be built where it could not have been built absent the approval of the special permit. In this case, the bulk waivers would allow for an increment of 25,782 zoning square feet of residential floor area compared to the No-Action scenario. It remains my firm belief that the MIH requirements should, at a minimum, apply to the additional floor area facilitated by this special permit approval, in the manner of an enlargement.

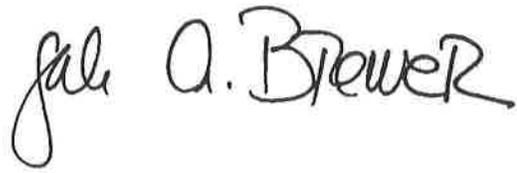
The applicants have committed to working with Council Member Carlina Rivera and my office to pursue options to partner with development partners on affordable housing projects in the area. They have communicated to us that they are meeting with several trusted community development partners to explore how they might be able to make a contribution to affordable housing outside of the application of MIH. I am appreciative of these efforts, and the fact that the applicant appears to be committed to making this a part of this undertaking. However, as of right now, it is impossible to determine with confidence how such a contribution might move forward for a project that I believe must include affordable housing as a significant component.

The applicants are also requesting a special permit to allow for additional accessory parking spaces. While I support the Proposed Development’s proximity to mass transit and its replacement of a 196 space public parking garage, these are also reasons why I do not support permitting more parking spaces than what is allowed as-of-right. The applicants might very well meet the individual findings for a special permit pursuant to ZR 13-45 and 13-451. However, I believe that these findings are too narrowly focused and do not take into account the very important factor of access to mass transit. Excessive car congestion certainly has adverse effects on the character of Manhattan neighborhoods, and I recommend denial of this special permit in such a transit-rich area.

BOROUGH PRESIDENT’S RECOMMENDATION

Therefore, the Manhattan Borough President recommends denial of ULURP Application No. C 180263 ZSM unless the Mandatory Inclusionary Housing Program is applied in accordance with ZR 23-92.

The Manhattan Borough President recommends **denial** of ULURP Application No. C 180264 ZSM.

A handwritten signature in black ink that reads "gale A. Brewer". The signature is written in a cursive style with a large, looping initial "g" and a capital "A".

Gale A. Brewer
Manhattan Borough President