



CITY PLANNING COMMISSION

May 12, 2004 / Calendar No. 24

C 040116 ZSM

IN THE MATTER OF an application submitted by West 47th Street Associates, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681(a)(1) of the Zoning Resolution to permit portions of a railroad right-of-way that will be completely covered by a permanent platform to be included in the lot area for a residential development of two seven-story buildings on a through lot located west of Tenth Avenue with frontage on West 47th Street and West 48th Street (Block 1076, Lot 24) in an R8 District, within the Special Clinton District (Area A), Community District 4, Borough of Manhattan.

The application for a special permit was filed by West 47th Street Associates, LLC, on September 19, 2003 pursuant to Section 74-681 of the Zoning Resolution to permit portions of a railroad right-of-way which will be completely covered by a permanent platform to be included in the lot area for a residential development of two seven-story buildings.

BACKGROUND

The property is located on a through lot between West 47th and West 48th streets approximately 100 feet west of Tenth Avenue within an R8 District in the Special Clinton District in Manhattan, Community District 4. The site is currently vacant and has an area of 20,083 square feet of which 11,247 square feet are within air space above an active, below-grade Amtrak right-of-way. The right-of-way is 56 feet wide and runs from West 47th Street to West 48th Street approximately midway through the site.

The area along West 47th Street between Tenth and Eleventh avenues contains a mix of uses and building types including four and five-story residential buildings, two two-story auto repair

facilities, a two-story commercial building, two automobile showrooms, and a railroad right-of-way. The area along West 48th Street between Tenth and Eleventh avenues contains an mix of residential and commercial uses, including several five-story residential buildings, one new, seven-story residential building, one four-story office building, several one to three-story commercial and warehouse buildings, and a railroad right-of-way. To the east of Tenth Avenue there are mainly five- and six-story residential buildings. To the west of Eleventh Avenue, manufacturing, warehouse, and auto-related uses predominate.

West 47th Street is a one-way 60 foot-wide westbound street, while West 48th Street is a 60 foot-wide eastbound street. Portions of both streets, approximately 140 feet west of Tenth Avenue, bridge the Amtrak right-of-way. These bridges are owned by the City and maintained by the Department of Transportation. The proposed buildings will be set back five feet from the property lines on West 47th and West 48th Streets to allow access for maintenance, inspection and repair of the bridge structures.

The special permit would facilitate the development of two market rate residential condominium buildings containing 113 units. The building fronting on West 47th Street will rise to a height of 66 feet (7 stories) and will contain 56 units. The building fronting on West 48th Street will rise to a height of 64 feet (7 stories) and will contain 57 units. The development would meet all the requirements of the Preservation Area of the Special Clinton District. Developments in this area

are subject to special floor area ratio (4.2 maximum), lot coverage (60% maximum), and height (66 feet maximum) requirements. Residential developments in the Preservation Area of the Special Clinton District also require that at least 20% of the dwelling units contain 2 bedrooms or more, and at least 20% of the lot area be useable landscaped open space for residents. Additionally, the District mandates the planting of street trees at 30 foot intervals on both West 47th and West 48th streets adjacent to the zoning lot. Four street trees will be provided as part of this project. No parking spaces are required and none are to be provided as part of the proposed development.

Because the site is located above an active railroad right-of-way, a special permit pursuant to Section 74-681(1)(a) is required.

The parameters for construction of a platform over the right-of-way are set forth in Amtrak's current design standards and the 1932 easement, as modified in 1960, which granted below grade space for construction of the railroad. Amtrak must approve of the applicant's structural design and confirm that adequate ventilation will be provided before construction can commence. Amtrak, in a letter dated September 4, 2003, gave its conceptual approval to the applicant's plans to build over the railroad's tracks subject to the applicant demonstrating compliance with Amtrak's requirements for ventilation, lighting, fire, life/safety, design, construction, and maintenance. Final approval cannot be issued until final plans and specifications are completed.

ENVIRONMENTAL REVIEW

This application (C 040116 ZSM) 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 City Environmental Quality Review (CEQR) Rules and Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 03DCP071M. The lead agency is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on January 5, 2004.

UNIFORM LAND USE REVIEW

This application (C 040116 ZSM) was certified as complete by the Department of City Planning on January 5, 2004, and was duly referred to Community Board 4 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 4 held a public hearing on this application on February 4, 2004, and on that day, by a vote of 35 in favor, 1 opposed, and with 2 abstentions, adopted a resolution in favor of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on March 1, 2004, approving the application.

City Planning Commission Public Hearing

On March 10, 2004, (Calendar No. 22) the City Planning Commission scheduled March 24, 2004, for a public hearing on this application (C 040116 ZSM). The hearing was duly held on March 24, 2004, (Calendar No. 7). There was one speaker in favor of the application and no speakers in opposition.

The applicant's attorney briefly described the project and the requested action. The attorney noted that the applicant is working with the Department of Transportation to resolve issues related to a required building setback to allow for bridge access. The applicant's attorney also indicated that, while negotiations were ongoing, it appeared that a five foot setback, as originally proposed, would be required.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

The Commission believes that it is appropriate to include the area above the right-of-way, which will be completely covered by a permanent platform of 11,247 square feet, in the lot area for the proposed development. The Commission believes the development of two residential buildings over the transit right-of-way would contribute to the City's overall housing supply and help reinforce the mixed-use character of the Clinton neighborhood. The Commission also notes that the proposed number of units has been revised from 113 to 95 units, with 47 units being located in the West 47th Street building and 48 units being located within the West 48th Street building. The Commission recognizes that the reduction in units does not affect compliance with the provisions of the Special Clinton District.

The Commission believes that the streets surrounding the proposed development are adequate to handle the projected increase in traffic. The Environmental Assessment Statement (EAS), prepared as part of the application, found that the total number of units in the building was below the City Environmental Quality Review Technical Manual's threshold for requiring additional pedestrian and vehicular traffic analysis. The vehicle trips generated will be divided between West 47th and West 48th streets and it is reasonable to assume that the streets will adequately handle this increase in pedestrian and vehicular trips.

The Commission believes that the configuration and density of the proposed development, including the number of residential units and their distribution on the project site, would not affect the character of the surrounding neighborhood. The proposed buildings would comply with underlying zoning and the provisions of the Preservation Area of the Special Clinton District. The height and scale of the development are appropriate for the surrounding area. The proposed buildings would be constructed at a similar scale as surrounding buildings and of materials that fit into the existing built context of the area. The Commission also notes that the applicant will provide landscaped open space in the rear yard separating the buildings.

The Commission believes that the proposed development, both above and below the platform, will not interfere with railroad operation and use and also believes that the presence of the rail line will not interfere with the proposed development. The Commission notes that the applicant's compliance with the provisions of the easement and Amtrak's current design guidelines ensures that the platform and building will meet the railroad's clearance requirements and will not affect rail operations. The provision of stairway access through the proposed development to the railroad tracks below will enhance the ability to inspect and maintain the rail line. Creating a platform over the entire right-of-way ensures that the trains will be isolated from and not adversely affect the apartment buildings.

The Commission believes that the design of the platform and residential buildings, as detailed in

the applicant's designs, does not inhibit current and future use of the right-of-way for transportation use. The Commission notes that Amtrak has indicated their conceptual approval of the proposed development and that the applicant has maintained an ongoing dialogue with the railroad to ensure continued use of the rail line during and after construction.

The Commission notes the concerns expressed by Manhattan Community Board Number 4 related to the depth of the setback required by the New York City Department of Transportation on this development site. The Commission recognizes that the applicant and the Department of Transportation are, together with other parties, including the Department of City Planning and Manhattan Community Board 4, involved in ongoing discussions related to bridge maintenance and inspection needs. The Commission notes the Board's concern with the possibility of a setback with a depth greater than five feet on this development site and acknowledges that the Board voted to approve this application as it was certified by the City Planning Commission. The Commission notes that the applicant has received a conceptual approval from the Department of Transportation for the provision of bridge access via removable sidewalk panels in the public right-of-way. Under this agreement, the applicant would be responsible for relocating public and private utilities from the public right-of-way into the five-foot setback on the applicant's property. The Commission believes that the five-foot setback, as proposed in the application, strikes an appropriate balance between the needs of the Department of Transportation and the integrity of the street wall and neighborhood character.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-681 (development within or over a railroad or transit right-of-way or yard) of the Zoning Resolution:

- a) that the streets providing access to all uses pursuant to Section 74-681 paragraph (a) are adequate to handle traffic resulting therefrom;
- b) that the distribution of floor area and the number dwelling units do not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development, including any portion of the development located beyond the boundaries of such railroad right-of-way or yard;
- c) that all uses or developments located on the zoning lot or below a platform do not adversely affect one another;
- d) that the site plan and structural design of the development do not preclude future use of, or improvements to, the right-of-way for such transportation use.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by West 47th Street Associates, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant

to Section 74-681(a)(1) of the Zoning Resolution to permit portions of a railroad right-of-way that will be completely covered by a permanent platform to be included in the lot area for a residential development of two seven-story buildings on a through lot located west of Tenth Avenue with frontage on West 47th Street and West 48th Street (Block 1076, Lot 24) in an R8 District, within the Special Clinton District (Area A), Community District 4, Borough of Manhattan.

1. The property that is the subject of this application (C 040116 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by H. Thomas O'Hara Architect, PLLC, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-01	Zoning Analysis	May 5, 2004
A-03	Track Plan, Sections And Details	May 5, 2004

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 plan listed above which has 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. 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, sublessee, or occupant.

5. Upon the failure of any party having any right, title or interest in the property that is 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, and terms or conditions of this resolution, 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 powers of the City Planning Commission, or of any 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.

6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the City's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 040116 ZSM), duly adopted by the City Planning Commission on May 12, 2004, (Calendar No. 24) 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, AICP, Chair,
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, ANGELA R. CAVALUZZI, R.A., RICHARD
W. EADDY, ALEXANDER GARVIN, CHRISTOPHER KUI, JOHN MEROLO, DOLLY
WILLIAMS, Commissioners**

JANE D. GOL, Commissioner, Recused