



## **CITY PLANNING COMMISSION**

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March 19, 2014/Calendar No. 6

N 140191 ZRM

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IN THE MATTER OF an application submitted by BOP West 31st Street LLC pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 3 (Special Hudson Yards District), Borough of Manhattan, Community District 4.

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This application (N 140191 ZRM) for an amendment of the Zoning Resolution relating to Article IX, Chapter 3 (Special Hudson Yards District) was filed by BOP West 31<sup>st</sup> Street LLC on November 25, 2013.

### **BACKGROUND**

BOP West 31st Street LLC is proposing an amendment to the zoning text to modify Section 93-00 of the Special Hudson Yards District (HY) to require enhanced public access areas in the area generally bounded by West 33rd Street to the north, Ninth Avenue to the east, West 31st Street to the south, and Tenth Avenue to the west. The proposed text amendment would increase the amount of required public access areas in the project area. The project area consists of two development sites: The Ninth Avenue Rail Yard, located between Ninth and Dyer avenues; and 450 West 33rd Street, located between Dyer and Tenth avenues.

### **PROJECT SITE DESCRIPTION**

The project area consists of approximately 8 acres of privately-owned land located in a C6-4 district within the Hudson Yards Farley Corridor Subdistrict. It is located in Manhattan Community District 4 in the immediate vicinity of Midtown and the Chelsea neighborhoods. BOP West 31st Street LLC owns both development sites within the project area.

The Ninth Avenue Rail Yard site is approximately 213,600 SF in size. It primarily contains the rail tracks entering Pennsylvania Station from the west below grade. The applicant is constructing a platform over the rail tracks to allow for development on the site. In addition to

the rail tracks, portions of the site are located at grade along West 31st and 33rd streets and contain four public parking lots with a total of 434 parking spaces.

The 450 West 33rd Street site consists of a 14-story commercial office building which was built in 1960's pursuant to a special permit to develop over the Penn Station tracks. The development site also includes an approach roadway, Dyer Avenue, to the Lincoln Tunnel. Dyer Avenue, located between the Ninth Avenue Rail Yard and 450 West 33rd Street development sites, is approximately 53 feet wide. It starts at grade at West 30th Street and runs under West 33rd Street toward the north.

In 2005, the project area and its immediate surroundings were rezoned and designated as the Special Hudson Yards District by the City Planning Commission (040500(A) ZRM). The purpose of the special district was to facilitate and guide the development of a transit-oriented, mixed-use urban center that would permit medium- to high-density construction, provide an open space network, improve pedestrian circulation, preserve the pedestrian orientation of ground floor use, and control the impact of buildings on the access of light and air to the streets.

The project area was rezoned from M1-6 district to C6-4 (HY) and was included in Farley Corridor Subdistrict B. The 450 West 33rd Street development site is in Subdistrict B1, and the Ninth Avenue Rail Yard site is in Subdistrict B2. The District regulations permit a total basic maximum FAR for non-residential development of 10.0 in Subdistrict B1 and 12.0 in Subdistrict B2. Both sites can develop up to 2.0 FAR for community facility uses. In addition, both sites can utilize the district's as-of-right District Improvement Bonus to achieve higher maximum floor area ratios. The maximum FAR through the DIB in Subdistrict B1 is 21.6 FAR, and the maximum in Subdistrict B2 is 19.0 FAR. At these higher densities, residential use is also permitted – up to 6.0 FAR of residential use can be developed in Subdistrict B1 and 4.0 in B2. This residential development is permitted in the Subdistrict through as-of-right Chairperson certifications for which the applicant is also applying (N 140192 ZCM, N 140194 ZCM). Furthermore, it is permitted only after minimum commercial floor area has been developed, up to 12.0 FAR in Subdistrict B1 and 15.0 FAR in Subdistrict B2. However, residential development

can occur earlier, through an additional chairperson certification that a phasing plan exists to develop the required commercial area in the future.

In addition, the Hudson Yards regulations include special site controls and mandatory improvements to provide public space on each of the development sites, the mainstay of which is the provision of an east-west pedestrian corridor along the prolongation of West 32nd street, which is not mapped west of Seventh Avenue. The corridor is intended to provide a direct pedestrian connection between Pennsylvania Station to Twelfth Avenue and relieve pedestrian congestion on other east-west streets and crosswalks.

As part of development of the Ninth Avenue Rail Yard site, a covered pedestrian space with a minimum width of 60 feet is required along the east-west prolongation of former West 32nd Street from Ninth Avenue to Dyer Avenue. Up to 40 percent of the area may be open to the sky provided it fronts Ninth Avenue. In addition, a minimum 11,280 square foot public plaza that directly connects to the covered pedestrian space is required at the intersection of Ninth Avenue and West 33rd Street. A 20-foot wide through-block connection along the eastern side of Dyer Avenue between West 31st and 33rd streets, directly connecting to the covered pedestrian space, is also required.

To activate the public access area the regulations require direct access to the buildings adjacent to the covered pedestrian space, and that 50 percent of the aggregate frontages must have retail uses. Apart from the public plaza at the corner of Ninth Avenue and West 33rd Street where amenities are required pursuant to the requirements of a public plaza (ZR Section 37-70), the existing regulations do not include provisions for amenities in the other public access areas on the Ninth Avenue Rail Yard.

The 450 West 33rd Street site is required to provide a 60-foot wide through-block connection along the prolongation of West 32nd Street when more than 75 percent of the existing floor area is demolished. In addition, a Lincoln Tunnel Approach bridge over Dyer Avenue along the prolongation of West 32nd Street is required to link the through block connection through the

450 West 33rd Street site and the covered pedestrian space as required on the Ninth Avenue Rail Yard site. In the event that the existing building is not demolished but a large ‘overbuild’ is constructed on top of the existing structure, the provisions allow for a narrower through block connection to be provided.

The required public access areas may be phased in as development occurs on the two sites through a certification from the Chairperson that a plan for the phased development of open space has been established.

The special parking regulations applicable in Hudson Yards limit permitted parking spaces as specified in Section 93-80. The regulations cap the amount of permitted parking in the area to an amount necessary to meet the projected demand of future development. The parking cap includes the amount of parking in existing lots and garages in the area. New developments can only construct parking if parking remains within the parking cap, or if the site already has existing parking which would be maintained in the new development. For such zoning lots, of which the Ninth Avenue Rail Yard is one, a new development may contain parking spaces up to the amount permitted in Section 93-80. All permitted parking is required to obtain a certification from the Chairperson and to complete substantial construction of the requisite development within two years of such certification.

#### Description of Project

The applicant is proposing to develop a mix of commercial and residential uses on the Ninth Avenue Rail Yard site and to retrofit and re-clad the existing building at 450 West 33rd Street for continued use as a commercial building. The applicant has developed a conceptual plan for the project area that takes advantage of design opportunities afforded by consideration of the two sites as a single development and recognizes the construction challenges of the sites. The conceptual plan for the Ninth Avenue Rail Yard site envisions two large commercial office buildings along Ninth Avenue that are set back from the street, a residential building at the southwest corner of Dyer Avenue and West 31st Street, and smaller commercial buildings with retail frontages along the prolongation of West 32nd Street. The applicant has stated that it would

voluntarily commit to providing 20 percent of the units in the residential building as permanently affordable to low-income tenants.

A platform is currently being constructed over the existing rail yard. Due to the below-grade rail yard, whose operation cannot be disrupted or impeded, the future building structures on the site need to be located more than 60 feet away from each other along the prolongation of West 32nd Street. Also the applicant is proposing to deck over Dyer Avenue to create a more inclusive development of the overall superblock. This is intended to result in a site plan that provides opportunities for additional public access areas, enhanced pedestrian connection, improved connectivity, and improved amenities on the block. The proposed conceptual plan envisions an increase in public access areas and amenities required under the existing Hudson Yards provisions. The total amount of open space in the project area would increase from 49,400 to approximately 89,307-91,725 square feet depending upon the configuration.

#### Proposed Action

The applicant is proposing a text amendment to modify the Hudson Yards provisions for both the Ninth Avenue Rail Yard and 450 West 33<sup>rd</sup> Street sites. Specifically the amendment would affect the public access area and construction phasing requirements on both the sites, as well as the parking regulations for the Ninth Avenue Rail Yard. Each portion of the text amendment is described separately below.

#### Public Access Areas

The public access area requirements and design standards for 450 West 33rd Street and the Ninth Avenue Rail Yard sites would be modified to reflect the conceptual plan the applicant has proposed related to the areas, amenities, design standards and maintenance obligations. The proposed amendment would require specific public access areas and amenities in the two development sites as described below. In addition, the amendment would require that all public access areas on the site be open to the public between the hours of 6 am to 1am.

#### *Ninth Avenue Rail Yard*

The various required public access areas currently required for the Ninth Avenue Rail Yard site would be replaced with a series of specific spaces and requirements as described below:

Entry Plaza - The size of the Entry Plaza located at Ninth Avenue and West 33rd Street would reduce from 11,280 SF to 10,080 square feet. It would maintain a minimum width of 60 feet. To allow for circulation to the building entrances and direct connection to the proposed Central Plaza, a minimum of 12 feet wide clear path would be required. The Public Plaza regulations for amenities would be replaced with minimum required amenities for the space including 8 trees, 336 linear feet of seating including 48 movable chairs, 12 movable tables, and 800 square feet of planting bed. Also a minimum 70 percent of the building frontage would be glazed.

Art Plaza - The Art Plaza would be located along Ninth Avenue and West 31st Street and would be directly connected to the Central Plaza. It would be approximately 40 feet wide, a total of 7,480 square feet, and landscaped with minimum amenities including 45 linear feet of seating, 4 trees, 410 square feet of planting bed, and art work. Also minimum 70 percent of the building frontage would be glazed. Under the current text a public access area is not required at this location.

Central Plaza - Instead of a minimum 60-foot-wide covered pedestrian space the applicant is proposing a 100-foot wide Central Plaza that would be open to the sky. The space would be located along the prolongation of West 32nd Street. Amenities and landscaping are proposed for more than 60 percent of the area. The portion of the plaza from Ninth Avenue up to a depth of 295 feet west of Ninth Avenue would be landscaped with 725 linear feet of seating with 120 movable chairs, 30 movable tables; 44 trees and 7,500 square feet of planting area. A minimum of two clear circulation paths, with a minimum width of 12 feet each, would be provided along the full length of the Central Plaza. A minimum of 50 percent of aggregate retail frontage would be provided and an additional one-story, 3,600 square foot retail pavilion in the Central Plaza would be required. A minimum 70 percent of the ground floor of the buildings fronting the plaza would be glazed. An alternative design option is included in the proposal which would allow some portions of the Central Plaza to be 80 feet in width, but the required amenities would

remain the same in this alternative.

In addition to activating the space with retail and required amenities, a maximum 4,500 square feet of open event space would be provided on the western end of the Central Plaza, in the area located beyond more than 295 feet west of Ninth Avenue. The event space would be closed to the public for a maximum of 12 events per year pursuant to approval from the Chairperson. When events are not held the space would contain a minimum of 96 movable chairs, 24 movable tables, and two movable food carts. These chairs and tables would be in addition to that required for the landscaped area

Dyer Avenue Platform - Instead of building a 30-foot wide Lincoln Tunnel Approach bridge over Dyer Avenue as is required in the current text, the applicant is proposing to platform over Dyer Avenue between West 31st and 33rd Streets. It would be connected to the proposed Central Plaza and accessible from both West 31st and 33rd streets. The proposed platform would be 53 feet wide and 455 feet long. The Dyer Avenue platform would provide public access that is open to the sky and landscaped with amenities including 16 trees, 1,500 square feet of planting bed, and 350 linear feet of seating. The platform would provide either eight-foot wide circulation paths or one 12-foot wide path along the entire length of the platform. Also a minimum 70 percent of the building frontage would be glazed.

West 31st Street Connector - The proposed Dyer Avenue platform would be at a similar elevation as the Central Plaza and West 33rd Street. Due to a significant grade change at West 31st Street, a requirement for vertical access is proposed on the southeast side of Dyer Avenue and West 31st Street. The space would be approximately 450 square feet in size and would include a stairway and an elevator.

#### 450 West 33rd Street

The through block connection requirement would continue to apply on the 450 West 33<sup>rd</sup> Street site such that any future development or large scale enlargement on the site would be required to provide it. The proposed amendment adds an additional series of spaces on the site as described

below:

West 31st Street Passageway - While the proposed retrofitting and re-cladding of 450 West 33rd Street would not require a through block pedestrian connection along the prolongation of West 32nd Street, the applicant is proposing to provide an additional east-west access that would connect the Central Plaza and the Dyer Avenue Platform to Tenth Avenue via a passageway along West 31st Street. The proposed passageway, approximately 215 feet long, at the same grade as the Dyer Avenue Platform, would be located on the second floor of the 450 West 33rd Street building. It would be provided by carving out mechanical and office spaces on this floor. The total width of the proposed arcade would be 22 feet, and there would be a minimum 10 foot clear path for pedestrian circulation.

Tenth Avenue Podium - Access from Tenth Avenue to the proposed West 31st Street Passageway and Central Plaza would be provided via a stairway and elevator located within Tenth Avenue Podium. The space would be 1,800 square feet in size and open to the sky. It would be at the same elevation of the passageway and located at the corner of West 31st Street and Tenth Avenue.

#### Construction Phasing

Given the complexity of developing large sites, the phased development of required public access areas is permitted in Hudson Yards through a Chairperson certification that a phasing plan has been established that integrates public access areas with the construction of buildings on the site. For the Ninth Avenue Rail Yard site, a more-specific phasing plan was included in the Hudson Yards regulations that required certain areas be available to the public when minimum densities were achieved. The applicant has presented materials showing that phasing requirements for the site are not workable for the scale of high density construction permitted on the site.

As a replacement, the proposed amendment identifies specific public access areas that would need to be provided with a potential phased development of the site. At a minimum, the Entry

Plaza would need to be provided with the construction of a commercial building at the corner of Ninth Avenue and West 33rd Street. Similarly at a minimum, the Art Plaza would be required with the construction of a commercial building at the corner of Ninth Avenue and West 31st Street. Finally, a portion of the Dyer Avenue Platform would be required with the construction of a residential building at the southwest corner of Dyer Avenue and West 31st Street. For any development built over 15 FAR on the site, all the public access areas would be required to be built, including the West 31street Passageway and 10th Avenue podium on 450 West 33<sup>rd</sup> Street site.

### Parking Regulations

Prior to the commencement of construction of the platform over the Ninth Avenue Rail Yard, the zoning lot contained four parking lots with a total capacity of 434 spaces. Upon completion of the development on the site it is proposed to contain approximately 300 parking spaces as part of the development. The existing zoning regulations in Hudson Yards require substantial construction of the development which includes the permitted parking facility within two years. The engineering complexity of developing the Ninth Avenue Rail Yard site would require a longer construction period. Given this, the applicant is proposing to modify the regulations for to the Ninth Avenue Rail Yard site so that substantial construction must be completed within six years.

## **ENVIRONMENTAL REVIEW**

The application (N 140191 ZRM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 14DCP077M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed action, a Negative Declaration was issued on December 2, 2013.

## **PUBLIC REVIEW**

On December 2, 2013, this application (N 140191 ZRM) was duly referred to Community Board 4 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Review**

Community Board 4 held a public hearing on the application on January 8, 2013, and on February 13, 2014 adopted a resolution recommending approval of the application subject to a series of conditions. Those that were related to the text amendment application focused on the hours of operation and overall accessibility of the various public access areas in the proposed project. Particularly, the Community Board recommended that the public access areas be required to remain open 24 hours per day, and that the 31<sup>st</sup> and 33<sup>rd</sup> Street frontages of the development be active.

In addition, the Community Board recommended that the applicant embody its commitment to provide 20 percent of the residential units in the proposed development as permanently affordable in a letter to the City Council. The Board further recommended that the affordable units not be segregated in the building and have the same finishes and fixtures as the market-rate units.

The Board's other recommendations focused on continued community engagement between the applicant on construction and programming issues for the site.

### **Borough President Review**

This application was considered by the Borough President, who issued a recommendation in support of the application on April February 18, 2014 saying that the proposed site plan and text amendment was a significant improvement over the previously-mandated requirements. The recommendation also reiterated the Community Board's comments regarding public accessibility

and affordable housing. In addition, the Borough President recommended limiting the size of retail establishments so as to limit the possibility of large chain stores and restaurants.

### **City Planning Commission Public Hearing**

On February 5, 2014 (Calendar No. 4), the City Planning Commission scheduled February 19, 2014 for a public hearing on this application (N 140191 ZRM). The hearing was duly held on February 19, 2014 (Calendar No. 19).

The applicant's Senior Vice President for design and construction and the landscape designer for the project both described that their intent for the proposed text amendment is to expand and improve the public access area requirements for the site. They also noted that they had no intention of gating or fencing off the public areas at night. In addition, the applicant's representative described the state of plans for the as-of-right residential development on the site.

A representative of Community Board 4 described the board's conditional approval and expressed concern about the overall quality of the proposed public areas and urged the applicant to create a great public space on their site. They also reiterated their recommendations regarding affordable housing on the site. In addition, a representative of the local Assembly member, City Council member, and two state senators expressed approval of the text amendment, but reiterated the board's concerns regarding hours of access and affordable housing. A representative of the Borough President did the same.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that the zoning text amendment (N 130178 ZRM), as modified, is appropriate.

The Commission believes the combined superblock made up of the Ninth Avenue Rail Yard and 450 West 33<sup>rd</sup> Street site offers an outstanding opportunity to provide a strong connection

between the Pennsylvania Station area and Hudson Yards and that the public access areas on the site are critical to accomplishing this. The Commission is pleased that the applicant has created a holistic site plan for the entire block that has identified new opportunities for public space which will further this goal. The Commission is further pleased that the applicant has committed to providing 20 percent of the units in the proposed residential building as permanently affordable to low-income tenants.

The Commission notes that the text amendment is needed to reflect this updated site plan in the public access area requirements for the superblock, and that the overall use and density regulations for the sites remain unchanged. Given this, the Commission's focus in this consideration is on these site plan changes.

The Commission believes that the various proposed public access requirements for both sites included in the amendment are appropriate and will provide more public space of a higher quality than the existing regulations would have done. The amendment would update the public access area requirements for the site and bring them up to the standards of the other large blocks in Hudson Yards (particularly, the Eastern and Western rail yards) and provide specific minimum levels of amenities that reflect the proposed updated site plan design. The Commission believes these various requirements will facilitate a great public space for the site and the overall Hudson Yards area. In addition, the Commission believes the various glazing and retail requirements in the proposed amendment are appropriate for a high density predominantly commercial area and will ensure that adjacent buildings will help activate the public access areas.

The Commission notes that the main point of discussion at the public hearing relating to the proposed amendment was on the hours of public access on the site. The proposed amendment includes minimum hours of public hours of 6am to 1am, while the Community Board and others recommended the public areas be required to remain open 24 hours per day. The original Hudson Yards text does not include hours of operation for the various required public areas throughout the District and that the implication was that there were no minimum requirements for public

access for these areas. Over time, as the large sites have required amendments to their regulations (including the Eastern and Western rail yards), the Commission has added hours of access appropriate to the specific character of the spaces. For large public spaces, the hours of public parks – 6 am and 1 am - have been required. For public plaza-like spaces, 24 hour access has been required, while for interior public access ways, more limited hours of operation have been instituted.

The Commission believes that most of the spaces on the block affected by the text amendment are large public open spaces similar to other spaces for which the hours of operation have been set as 6am to 1am. Given this, the Commission believes these hours are appropriate for most of the public areas on the site. However, the Commission notes that the public areas adjacent to Ninth Avenue – the public plaza and the arts plaza – are more like public plazas for which 24 hour access is normally required. The Commission also notes these spaces are intended to provide access to the two main buildings on the Ninth Avenue Rail Yard Site. Given this, the Commission modifies the requirements for these two spaces so that their hours of operation are increased and made similar to public plazas throughout the City. The Commission believes this will ensure public access along the Ninth Avenue frontage of the site. In addition, to ensure that the public spaces throughout the two sites cannot be closed off to the public, the Commission modifies the proposal so that no gates or fences can be constructed on the site. With these modifications, the Commission believes appropriate public access on the block will be provided.

The other portions of the proposed amendment relate to construction phasing for the public access areas and for parking and the Commission believes these changes are appropriate as they reflect the scale of high-density construction proposed on the site.

Finally, the Commission has modified the text to include a series of revisions and clarifications intended to make the intent of the text clearer to the reader.

The Commission notes the currently ongoing construction over the rail yard on the block and awaits the development of the site given its critical location and overall importance to the

Hudson Yards neighborhood. The Commission is pleased with the applicant's commitment to public dialogue with the community board and other area stakeholders to date, and looks forward to this continuing as plans for the site progress in the future.

## **RESOLUTION**

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

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution

### **Article IX: Special Purpose Districts**

#### **Chapter 3: Special Hudson Yards District**

#### **93-03**

##### **District Plan and Maps**

The regulations of this Chapter are designed to implement the #Special Hudson Yards District# Plan.

The District Plan includes the following six ~~ten~~ maps in Appendix A of this Chapter:

Map 1 - Special Hudson Yards District, Subdistricts and Subareas

Map 2 - Mandatory Ground Floor Retail

Map 3 - Mandatory Street Wall Requirements

Map 4 - Mandatory Sidewalk Widening

Map 5 - Transit Facilities

Map 6 - Sites Where Special Parking Regulations Apply

Subdistrict Plans include the following five maps in Appendix B of this Chapter:

Map 1 – Subdistrict B: 450 West 33<sup>rd</sup> Street and Ninth Avenue Rail Yard Public Access Area Plan

Map 2 ~~Map 7~~ - Subdistrict F: Site Plan

Map 3 ~~Map 8~~ - Subdistrict F: Public Access Area Plan

Map 4 ~~Map 9~~ - Subdistrict F: Mandatory Ground Floor Requirements

Map 5 ~~Map 10~~ - Subdistrict F: Mandatory Street Wall Requirements

The Maps ~~are located within Appendix A of this Chapter and~~ are hereby incorporated and made part of this Resolution. They are incorporated for the purpose of specifying locations where special regulations and requirements set forth in the text of this Chapter apply.

\* \* \*

**93-04**

**Subdistricts and Subareas**

In order to carry out the provisions of this Chapter, six subdistricts are established, as follows:

\* \* \*

The subdistricts and subareas are outlined on Map 1 (Special Hudson Yards District, Subdistricts and Subareas) in Appendix A of this Chapter. Additional requirements for specific subdistricts, or portions thereof, are outlined in Appendix B of this Chapter.

\* \* \*

**93-14**

**Ground Floor Level Requirements**

\* \* \*

(b) Retail continuity along designated streets in Subdistrict F

Map 4 ~~Map 9~~ (Subdistrict F: Mandatory Ground Floor Requirements) in Appendix B ~~Appendix A~~ specifies locations where the special ground floor #use# and transparency

requirements of this Section apply. Such regulations shall apply along either 100 percent or 70 percent of the #building's street# frontage, as indicated for each location on Map 4 in Appendix B ~~Map 9~~.

(1) Along Eleventh Avenue

The ground floor retail provisions established in paragraph (a) of this Section shall apply to the ground floor #street# frontage of #buildings# along Eleventh Avenue. In addition, if a #street# frontage is occupied by a bank, as listed in Use Group 6, such a #street# frontage shall not exceed a #street wall# width, in total, of 25 feet.

(2) Along designated streets other than Eleventh Avenue

In addition to the #uses# listed in paragraph (a) of this Section, the following #community facility uses# from Use Groups 3 and 4 as well as the following #commercial use# from Use Group 6B shall be permitted within a #story# that has a floor level within five feet of #curb level# for frontages along designated #streets#, as shown on Map 4 in Appendix B ~~Map 9~~, other than Eleventh Avenue.

\* \* \*

**93-17**

**Modification of Sign Regulations**

\* \* \*

(b) Subdistrict F

For the purposes of calculating the permitted #surface area# of a #sign#, each site set forth on Map 2 ~~Map 7~~ (Subdistrict F; Site Plan) in Appendix B ~~Appendix A~~ shall be considered a separate #zoning lot#.

\* \* \*

**93-221**

**Maximum floor area ratio in the Farley Corridor Subdistrict B**

(a) Western Blocks Subarea B1

In the Western Blocks Subarea B1 of the Farley Corridor Subdistrict B, #residential use# shall only be permitted on a #zoning lot# with a #commercial floor area ratio# of 12.0 or more, or as provided for phased developments in Section 93-122 Certification for residential use in Subdistricts A, B and E).

(b) Central Blocks Subarea B2

In the Central Blocks Subarea B2 of Farley Corridor Subdistrict, #residential use# shall only be permitted on a #zoning lot# with a #commercial floor area ratio# of 15.0 or more, or as provided for phased developments in Section 93-122.

(c) Farley Post Office Subarea B3

In the Farley Post Office Subarea B3 of Farley Corridor Subdistrict B, no #floor area# increases shall be permitted.

(d) Pennsylvania Station Subarea B4

In the Pennsylvania Station Subarea B4 of Farley Corridor Subdistrict B, any increase in the #floor area ratio# specified in Row A in the table in Section 93-22 shall be permitted only pursuant to Section 93-35 (Special Permit for Transit Bonus in Pennsylvania Station Subarea) and Section 74-79 (Transfer of Development Rights from Landmark Sites), as modified by paragraph (b) of Section 93-054 (Applicability of Chapter 4 of Article VII).

(e) Transfer of #floor area#

Notwithstanding any other provision of this Resolution, #floor area# may not be transferred between a #zoning lot# located north of West 31<sup>st</sup> Street in the Western Blocks Subarea B1 and a #zoning lot# located north of West 31<sup>st</sup> Street in the Central Blocks Subarea B2.

\* \* \*

**93-522**

**Ninth Avenue ~~rail yard~~ Rail Yard**

The provisions of this Section shall apply within the area bounded by Ninth Avenue, West 31st Street, the Lincoln Tunnel Approach and West 33rd Street.

No #building or other structure# shall exceed a height of 150 feet within 15 feet of a #wide street line# and 20 feet of a #narrow street line#. However, on a #narrow street#, a #building# may rise without setback provided no part of such #building# is within 15 feet of the #narrow street line#.

No #rear yard# or #rear yard equivalent# regulations shall apply to any #building developed# or #enlarged# pursuant to this Section. Furthermore, the provisions of this Section may be waived or modified in conjunction with the granting of a special permit pursuant to Section 74-41 (Arenas, Auditoriums, Stadiums or Trade Expositions) for the #development# of an arena in the area bounded by Ninth Avenue, West 31st Street, Dyer Avenue and West 33rd Street.

\* \* \*

## **93-56**

### **Special Height and Setback Regulations in Subdistrict F**

The height and setback regulations set forth in this Section, inclusive, shall apply to specific development sites identified as Sites 1 through 6 on ~~Map 2~~ Map 7 (Subdistrict F; Site Plan) in ~~Appendix B~~ Appendix A. All #buildings or other structures developed# or #enlarged# within Subdistrict F, with the exception of those approved as part of a public access area pursuant to Section 93-78 (Site and Landscape Plans for Public Access Areas in Subdistrict F), shall occur within these designated site locations. However, portions of a #building# located entirely below grade, and exempt from the definition of #floor area#, shall be permitted to extend beyond such designated site locations. Furthermore, the boundary of Site 6 may be extended in a westerly direction, by up to 40 feet, to accommodate a public #school# in accordance with the provisions of paragraph (b) of Section 93-568 (Site 6).

Map 4 (Mandatory Sidewalk Widening) in Appendix A identifies the location of a sidewalk widening required along Eleventh Avenue that is referenced in this Section, inclusive. Regulations governing the design of this sidewalk widening are set forth in Section 93-61.

Public access areas in Subdistrict F shall be comprised of publicly accessible open spaces, private streets and pedestrian ways. ~~Map 3~~ Map 8 (Subdistrict F; Public Access Area Plan) in ~~Appendix B~~ Appendix A, identifies the location of publicly accessible open spaces, private streets, and pedestrian ways that are referenced in this Section.

Publicly accessible open spaces are comprised of the Western Open Space, the Central Open Space, the Southwest Open Space, the Northeast Plaza, the Midblock Connection and the #High Line#. General rules governing such publicly accessible open spaces are set forth in Section 93-75 (Publicly Accessible Open Spaces in Subdistrict F).

Publicly accessible private streets are comprised of the West 32nd Street Extension (including the Allee, as defined in paragraph (c)(2) of Section 93-761 and shown on Map 3 in Appendix B ~~Map 8~~) and the West 31st Street Extension. Publicly accessible pedestrian ways are comprised of the West 30th Street Corridor, and the Connector. General rules governing such private streets and pedestrian ways are set forth in Section 93-76 (Publicly Accessible Private Streets and Pedestrian Ways in Subdistrict F).

For the purposes of applying height and setback regulations, the term “#buildings#” shall include #buildings or other structures#.

## **93-561**

### **General rules for Subdistrict F**

The following regulations shall apply to all #buildings# within Sites 1 through 6:

(a) #Street wall# location

For the purposes of applying the height and setback regulations of this Section, inclusive, wherever a #building# fronts upon any publicly accessible open space, private street or pedestrian way, as shown on Map 3 Map-8 (Subdistrict F: Public Access Area Plan) in Appendix B, the boundary of such publicly accessible open spaces, private streets or pedestrian ways shall be considered to be a #street line#. Furthermore, for the purposes of applying such height and setback regulations, the sidewalk widening line required along Eleventh Avenue shall be considered the Eleventh Avenue #street line#.

Wherever a #building# on Sites 1, 5 or 6 faces the #High Line#, the #street wall# shall not be located closer than five feet to the edge of the #High Line#, as shown on Map 3 in Appendix B Map-8. Such five foot separation shall remain unobstructed, from the level of finished grade adjacent a #building#, to the sky, except as permitted:

\* \* \*

**93-562**

**Street wall regulations for certain streets**

The locations of all #street walls# identified in this Section are shown on Map 5 Map-10 (Subdistrict F Mandatory Street Wall Requirements) in Appendix B Appendix A.

\* \* \*

**93-565**

**Site 3**

\* \* \*

(c) Maximum length and height

The maximum horizontal dimension of a tower, measured in any direction, shall not exceed 145 feet. However, if the angle of the tower’s maximum horizontal dimension is aligned within 15 degrees of a 45 degree line constructed from either the southwest or northeast corner of the Site 3 rectangle in plan, as shown on Map 2 Map-7 (Subdistrict F: Site Plan) in Appendix B Appendix A, then such maximum horizontal dimension measured in this direction may be increased to 160 feet, provided that the maximum dimension measured perpendicular to such increased dimension does not exceed a length of 120 feet.

The maximum height of a tower within Site 3 shall be a minimum of 100 feet taller than the tower height of Site 5.

All towers that exceed a height of 350 feet shall provide articulation in accordance with Section 93-569 (Tower top articulation).

\* \* \*

**93-566  
Site 4**

\* \* \*

(c) Towers

All #stories# of a #building# located partially or wholly above the maximum base height of 120 feet shall be considered a tower and shall comply with the provisions of this paragraph, (c). Not more than one tower shall be permitted on Site 4.

(1) Maximum floor plate

The gross area of any such #story# shall not exceed 12,000 square feet.

(2) Maximum length and height

For any portion of a tower above 120 feet, the maximum horizontal dimension, measured in any direction, shall not exceed 145 feet. However, if the angle of the tower's maximum horizontal dimension is aligned within 15 degrees of a 45 degree line constructed from either the southwest or northeast corner of the Site 4 rectangle, in plan, as shown on Map 2 Map 7 (Subdistrict F; Site Plan) in Appendix B Appendix A, then such maximum horizontal dimension measured in this direction may be increased to 160 feet, provided that the maximum dimension measured perpendicular to such increased dimension does not exceed a length of 120 feet.

The maximum height of a tower on Site 4 shall be a minimum of 100 feet taller than any tower located on Site 3.

All towers that exceed a height of 350 feet shall provide articulation in accordance with Section 93-569 (Tower top articulation).

**93-567  
Site 5**

All #stories# of a #building# located wholly or partially above finished grade on Site 5 shall be considered a tower and shall comply with the provisions of this Section.

On Site 5, a #building# may be located adjacent to and above the #High Line#, provided no portion of such #building# or an associated structural column is located within five feet of the edge of the #High Line# from the level of finished grade to a level of 50 feet above the level of the #High Line bed#, as shown on Map 3 ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in Appendix B ~~Appendix A~~.

\* \* \*

(b) Maximum length and height

At or below a height of 50 feet above the #High Line bed#, if a #building# is located so that it has portions on both sides of the #High Line#, the minimum horizontal dimension, measured in any direction between such portions shall be 60 feet.

For that portion of a tower located above a height of 50 feet above the #High Line bed#, the maximum horizontal dimension, measured in any direction, shall not exceed 145 feet. However, if the angle of the tower's maximum horizontal dimension is aligned within 15 degrees of a 45 degree line constructed from either the southwest or northeast corner of the Site 5 rectangle, in plan, as shown on Map 2 ~~Map 7~~ (Subdistrict F: Site Plan) in Appendix B ~~Appendix A~~, then such maximum horizontal dimension measured in this direction may be increased to 160 feet, provided that the maximum dimension measured perpendicular to such increased dimension does not exceed a length of 120 feet. Furthermore, the maximum horizontal dimension for that portion of a tower that spans the #High Line#, measured in any direction, shall not exceed 120 feet.

The maximum height of a tower on Site 5 shall be 350 feet.

**93-568**

**Site 6**

\* \* \*

(b) Certification to expand Site 6

The area of Site 6, as shown on Map 2 ~~Map 7~~ (Subdistrict F: Site Plan) in Appendix B, may be extended westward by up to 40 feet in order to accommodate a public #school# upon certification of the Chairperson of the City Planning Commission, that:

- (1) the Chairperson of the City Planning Commission is in receipt of a letter from the School Construction Authority that describes the need for the additional area;
- (2) the site and landscape plans for the Southwest Open Space have been approved by the Chairperson of the City Planning Commission, pursuant to Section 93-78 (Site and Landscape Plans for Public Access Areas in Subdistrict F);

- (3) no portion of a tower located on Site 6 extends beyond 395 feet west of the Eleventh Avenue #street line#; and
- (4) any portion of a #building# located beyond 395 feet from the Eleventh Avenue #street line# shall affect southwesterly view corridors from the Central Open Space towards the Hudson River to the minimum extent necessary to accommodate a public #school#.

\* \* \*

**93-70  
PUBLIC ACCESS REQUIREMENTS FOR SPECIAL SITES**

Public access shall be provided for special sites as specified in this Section, inclusive. In the event of a conflict between the provisions of this Section, inclusive, and any underlying regulation, the provisions of this Section shall govern.

No building permit shall be issued for any #development# or #enlargement# on such sites other than for an #ERY Culture, Festival and Exhibit Facility# until the Chairperson of the City Planning Commission certifies to the Department of Buildings that the provisions of this Section have been met.

An application for such certification shall be filed with the Chairperson showing the plan of the #zoning lot#; a site plan indicating the area and dimensions of all required public access areas and the location of all proposed #buildings#, and a detailed plan or plans demonstrating compliance with the provisions of this Section. For certifications relating to the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, the requirements as set forth in paragraph (h) of Section 93-71, shall apply. For certifications relating to 450 West 33<sup>rd</sup> Street, the requirements set forth in Section 93-722 shall apply. For certifications relating to the Ninth Avenue Rail Yard, the requirements set forth in Section 93-732 shall apply.

Plans for public access areas shall be set forth in an instrument in a form acceptable to the City, and setting forth such provisions as necessary to ensure compliance with the provisions of this Section. Such instrument shall be filed and duly recorded in the Borough Office of the City Register of the City of New York and indexed against the property. Such filing and recording of the instrument shall be a precondition for the Chairperson’s certification under this Section. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

The Chairperson shall allow for the phased development of public access areas upon certification to the Commissioner of Buildings that a plan has been submitted that provides for the completion of any public access area that is integral to the #development# of a #building# or #buildings# within each phase. ~~Such plan may provide for the outdoor plaza described in Section 93-71,~~

~~paragraph (b), to be constructed in phases.~~ The completion of the Cultural Facility Plaza shall be deemed integral only to an #ERY Culture, Festival and Exhibit Facility# and to no other #use# or #development# in the Eastern Rail Yard Subarea A1. Where the public use and enjoyment of a public access area is contingent upon #development# on an adjacent #zoning lot# that has not yet occurred, the Chairperson may allow for the future development of such public access area at the time that the adjacent #zoning lot# is #developed#. For the Eastern Rail Yard Subarea A1, such phased development plan may provide for the outdoor plaza described in paragraph (b) of Section 93-71 to be constructed in phases. For 450 West 33<sup>rd</sup> Street and the Ninth Avenue Rail Yard, such phased development plan shall comply with additional provisions set forth in Sections 93-722 and 93-732, respectively.

For any portion of any #development# or #enlargement# other than an #ERY Culture, Festival and Exhibit Facility#, no temporary certificate of occupancy from the Department of Buildings may be issued for any portion of any #development# or #enlargement# with a #floor area ratio# of 10.0 or more until the Chairperson certifies to the Department of Buildings that the public access area is substantially complete, and the public access area is open to and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# or #enlargement# with a #floor area ratio# of 10.0 or more until the Chairperson certifies to the Department of Buildings that the public access area is complete and that all public access requirements of this Section have been met in accordance with the plans for such public access areas. Notwithstanding the foregoing, for #zoning lots# with multiple #buildings# for which the Chairperson has certified that a plan has been submitted that provides for the phased development of public access areas through completion of any public access area that is integral to the #development# of a #building# or #buildings# within each phase, such certifications shall be made with respect to substantial completion or completion of the public access areas integral to each such phase, except as provided in paragraph (h) of Section 93-71, and Section 93-732. Issuance of a temporary or permanent certificate of occupancy for any #building# or portion of a #building# not occupied by an #ERY Culture, Festival and Exhibit facility# shall not be conditioned upon the completion, substantial completion or improvement of the Culture Facility Plaza.

\* \* \*

### **93-72 Public Access Areas at 450 West 33rd Street**

For the purposes of this Section 93-72, inclusive, 450 West 33<sup>rd</sup> Street shall be considered ~~The provisions of this Section shall apply to any #development# or #enlargement# in the area bounded by the eastern #street line# of Tenth Avenue, the northern #street line# of West 31st Street, the Lincoln Tunnel Approach a line 302 feet east of the eastern #street line# of Tenth Avenue and the southern #street line# of West 33rd Street. Such area shall include the tax lots located at Block 729, Lots 1 and 15, existing on (date of adoption). Any #development# or #enlargement# in such area shall provide public access areas in accordance with the provisions~~

of this Section, 93-72, inclusive. However, if a special permit has been granted for the #development# of an arena pursuant to Section 74-41 in the area bounded by the western #street line# of Ninth Avenue, the northern #street line# of West 31st Street, a line 498 feet west of the western #street line# of Ninth Avenue ~~the Lincoln Tunnel Approach~~ and the southern #street line# of West 33rd Street, the provisions of this Section may be waived or modified in conjunction with such special permit. All public access areas listed in this Section shall be accessible to the public between the hours of 6:00 am and 1:00 am.

(a) Through block connection

A publicly-accessible through block connection shall be provided within 10 feet of the prolonged center line of West 32nd Street, at an elevation that connects the Tenth Avenue pedestrian bridge required pursuant to paragraph (g) in Section 93-71 with the ~~Lincoln Tunnel Approach bridge~~ Dyer Avenue platform required pursuant to paragraph (b) of this Section and paragraph (e) of Section 93-73 (Public Access Areas on Ninth Avenue Rail Yard). Public access shall also be provided between such through block connection and the Tenth Avenue sidewalk.

For #developments# or #enlargements# where 75 percent or less of the total #floor area# existing on the #zoning lot# on January 19, 2005, has been demolished, such through block connection shall be open or enclosed and have a minimum clear width of 30 feet. If enclosed, at least 75 percent of such through block connection shall have a minimum clear height of 30 feet, and the remainder shall have a minimum clear height of 20 feet.

For #developments# or #enlargements# where more than 75 percent of the total #floor area# existing on the #zoning lot# on January 19, 2005, is demolished, such through block connection shall have a minimum width of 60 feet and a minimum clear path of 20 feet, and have retail uses fronting upon at least 50 percent of its northern and southern boundaries. At least 60 percent of such through block connection shall be enclosed, with an average clear height of 60 feet and a roof of transparent material that allows for natural daylight to enter. Direct access shall be provided to any #building# adjacent to such through block connection. The maximum height of a #building# wall along the southern boundary of the through block connection shall not exceed the average height of the enclosed portion, or the height at which an arched or angled ceiling of the enclosed through block connection begins, whichever is less. Any portion of a #building# that exceeds such height shall be set back at least 20 feet in depth from the southern boundary of the through block connection. Any portion of such through block connection that is open to the sky shall comply with the provisions for #public plazas# set forth in Sections 37-718, 37-726, 37-728, 37-741, 37-742, 37-743, 37-744, 37-75, 37-76 and 36-77.

Notwithstanding the foregoing, an #enlargement# that does not increase the total #floor area# on the #zoning lot# to more than 1,373,700 square feet, shall not be considered an #enlargement# for purposes of this paragraph (a).

(b) Lincoln Tunnel Approach bridge-Dyer Avenue platform

~~A publicly accessible pedestrian bridge shall be provided over the Lincoln Tunnel Approach linking the through block connection required pursuant to paragraph (a) of this Section with the through block passageway required pursuant to Section 93-73 (Public Access Areas on Ninth Avenue Rail Yard) or the covered pedestrian space required pursuant to Section 93-731 (Special requirements for zoning lots with floor area ratios greater than 10). Such bridge may be open or enclosed, and shall have a minimum width of 30 feet. If enclosed, such bridge shall have a~~

~~minimum clear height of 15 feet.~~

A permanent easement shall be provided along the eastern edge of 450 West 33<sup>rd</sup> Street, as shown on Map 1 (Subdistrict B: 450 West 33<sup>rd</sup> Street and Ninth Avenue Rail Yard Public Access Area Plan) in Appendix B of this Chapter, for the purposes of constructing the Dyer Avenue platform required pursuant to paragraph (d) of Section 93-73 (Public Access Areas on Ninth Avenue Rail Yard). Such easement shall have a minimum width of 33 feet. Any amenities required by paragraph (d) of Section 93-73 may be located within such easement.

(c) West 31<sup>st</sup> Street Passageway

A publicly accessible passageway space, (hereinafter referred to as the "West 31<sup>st</sup> Street passageway") shall be provided connecting the Tenth Avenue podium required pursuant to paragraph (d) of this Section to the Dyer Avenue platform required paragraph (d) of Section 93-73, as shown on Map 1 in Appendix B. The West 31<sup>st</sup> Street passageway shall be located at the same elevation as the Dyer Avenue platform. Such space shall be located within 35 feet of West 31<sup>st</sup> Street, have a minimum clear path of ten feet and be visually open to West 31<sup>st</sup> Street except for structural elements of the #building# at 450 West 33<sup>rd</sup> Street.

(d) Tenth Avenue podium

(1) Location and minimum dimensions

A publicly accessible area (hereinafter referred to as the "Tenth Avenue podium") shall be provided at the corner of Tenth Avenue and West 31<sup>st</sup> Street, as shown on Map 1 in Appendix B. The Tenth Avenue podium shall have a minimum area of 1,800 square feet, be located at the same elevation as the Dyer Avenue platform required pursuant to paragraph (d) of Section 93-73, and shall connect to the West 31st Street passageway required pursuant to paragraph (c) of this Section.

(2) Required amenities

The Tenth Avenue podium shall contain a minimum of four trees and be directly accessible from West 31<sup>st</sup> Street by a staircase and elevator. The stair and the adjoining area shall be open to West 31<sup>st</sup> Street except for columns and structural elements of the 450 West 33<sup>rd</sup> Street #building#.

### **93-721**

#### **Design and maintenance requirements for Public Access Areas at 450 West 33<sup>rd</sup> Street**

Public access areas at 450 West 33<sup>rd</sup> Street provided pursuant to the requirements of Section 93-72 shall comply with the applicable design reference standards set forth in paragraph (a), and the maintenance provisions of paragraph (b) of this Section.

##### (a) Design reference standards

The public access areas required by paragraphs (c) and (d) of Section 93-72 shall comply with the applicable design standards set forth in this paragraph (a).

- (1) At least two litter receptacles in such public access areas shall be provided;
- (2) All open spaces within the public access areas shall provide open space signage pursuant to the standards set forth in Section 37-751 (Public space signage systems). In addition, a minimum of two wayfinding #signs# shall be provided;
- (3) The minimum level of illumination shall be 1.5 horizontal foot candles (lumens per foot);
- (4) No gates, fences or other barriers shall be permitted within such public access areas; and
- (5) For the purposes of applying the #sign# regulations to #building# walls facing public access areas, such public access areas shall be considered #streets#.

##### (b) Maintenance

The owner(s) shall be responsible for the maintenance of all public access areas, including, but not limited to, litter control, management of pigeons and rodents, maintenance of required lighting levels, and the care and replacement of furnishings and vegetation.

### **93-722**

#### **Certification for public access areas at 450 West 33<sup>rd</sup> Street**

For #enlargements# that do not increase the total #floor area# on the #zoning lot# to more than 1,373,700 square feet, in accordance with the provisions of Section 93-732 (Certification for

public access areas on the Ninth Avenue Rail Yard), no temporary or permanent certificate of occupancy shall be issued by the Department of Buildings for more than 3,204,000 square feet of #floor area developed# or #enlarged# on the Ninth Avenue Rail Yard until the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that a phasing plan has been submitted requiring the West 31st Street Passageway and the Tenth Avenue Podium, required pursuant to paragraphs (c) and (d) of Section 93-72 (Public Access Areas at 450 West 33<sup>rd</sup> Street), respectively, to be substantially complete and open to and useable by the public.

### **93-73**

#### **Public Access Areas on the Ninth Avenue Rail Yard**

The provisions of this Section shall apply to any #development# or #enlargement# on a #zoning lot# in the area bounded by Ninth Avenue, West 31st Street, the western boundary of the Lincoln Tunnel Approach and West 33rd Street. For such #zoning lots# with a #floor area ratio# greater than 2.0, the following easements shall be required:

- (a) — a permanent easement shall be provided within 10 feet of and over the Lincoln Tunnel Approach for the purposes of facilitating the construction of the Lincoln Tunnel Approach bridge required pursuant to paragraph (b) of Section 93-72; and
- (b) — a permanent easement with a minimum width of 60 feet shall be provided within 10 feet of the prolonged center line of West 32nd Street connecting the Lincoln Tunnel Approach bridge required pursuant to paragraph (b) of Section 93-72 with Ninth Avenue.

Where the #floor area ratio# on the #zoning lot# exceeds 4.0 but is not greater than 10.0, a publicly accessible through block passageway with a minimum width of 60 feet shall be provided within 10 feet of the prolonged center line of West 32nd Street. Such passageway shall be structurally designed to accommodate and connect the Lincoln Tunnel Approach bridge, required pursuant to paragraph (b) of Section 93-72, with Ninth Avenue.

No #rear yard# regulations shall apply to any #building developed# or #enlarged# pursuant to this Section. Furthermore, the provisions of this Section may be waived or modified in conjunction with the granting of a special permit pursuant to Section 74-41 (Arenas, Auditoriums, Stadiums or Trade Expositions) for the #development# of an arena in the area bounded by Ninth Avenue, West 31st Street, the Lincoln Tunnel Approach and West 33rd Street.

For the purposes of this Section 93-73, inclusive, the Ninth Avenue Rail Yard shall be considered the area bounded by the western #street line# of Ninth Avenue, the northern #street line# of West 31st Street, a line located 498 feet west of the western #street line# of Ninth Avenue and the southern #street line# of West 33<sup>rd</sup> Street. Such area shall include the tax lots located at Block 729, Lots 50 and 60, existing on (date of adoption). Any #development# in such area shall provide public access areas in accordance with the provisions of this Section, 93-73, inclusive.

Public access areas on the Ninth Avenue Rail Yard shall be comprised of the types of public access areas listed in this Section, 93-73. Public access areas shall also include the area of the sidewalk widenings along Ninth Avenue and West 33<sup>rd</sup> Street required pursuant to Section 93-61 (Pedestrian Circulation Space). The entry plaza and the art plaza, as set forth in paragraphs (a) and (c) of this Section, respectively, shall be subject to the hours of access provisions set forth in Section 37-727. All other public access areas listed in this Section shall be accessible to the public between the hours of 6:00 am and 1:00 am.

(a) Entry Plaza

(1) Location and minimum dimensions

A publicly accessible space, open to the sky (hereinafter referred to as the “entry plaza”), shall be located within the area bounded by the western #street line# of Ninth Avenue, the southern #street line# of West 33<sup>rd</sup> Street, a line 168 feet south of and parallel to the southern #street line# of West 33<sup>rd</sup> Street and a line 60 feet west of and parallel to the western #street line# of Ninth Avenue, as shown on Map 1 (Subdistrict B: 450 West 33<sup>rd</sup> Street and Ninth Avenue Rail Yard Public Access Area Plan) in Appendix B of this Chapter. The entry plaza shall have a minimum area of 10,080 square feet, shall have a minimum frontage along Ninth Avenue of 168 feet and shall provide a direct connection to the central plaza required pursuant to paragraph (b) of this Section. No more than 50 percent of the entry plaza area shall be covered by the permitted obstructions described in paragraph (a) of Section 37-726.

(2) Required amenities

The entry plaza shall have the following amenities:

- (i) a minimum of eight trees (or other amounts equivalent to a minimum of 32 caliper inches);
- (ii) at least 336 linear feet of seating including a minimum of 48 moveable chairs and 12 moveable tables. At least 50 percent of the seating, including movable seats, shall have backs and no more than 50 percent of the seating with backs shall be movable seating;
- (iii) two or more planting beds which, in the aggregate, occupy an area of at least 800 square feet. No more than 35 percent of the linear feet of the planting beds shall have bounding walls exceeding 18 inches in height above an adjacent walking surface;
- (iv) ground floor transparency, in accordance with the provisions of paragraph (c) of Section 93-14 (Ground Floor Level Requirements), shall apply to at

least 70 percent of the length of all #building# walls facing the entry plaza; and

- (v) one clear pedestrian circulation path with a minimum width of 12 feet shall be provided adjacent to the #building# facing the entry plaza and shall extend for the full length of the #building# frontage.

(b) Central Plaza

(1) Location and minimum dimensions

A publicly accessible space (hereinafter referred to as the “central plaza”), shall be located within an area bounded by the western #street line# of Ninth Avenue, a line 168 feet south of and parallel to the southern #street line# of West 33<sup>rd</sup> Street, a line 187 feet north of and parallel to the northern #street line# of West 31<sup>st</sup> Street and a line 478 west of and parallel to the western #street line# of Ninth Avenue, as shown on Map 1 in Appendix B. Except as provided in paragraph (b)(3) of this Section, the central plaza shall have a minimum area of 47,800 square feet, and shall have a minimum north-south dimension as measured from the #building# walls of the #buildings# facing onto the central plaza of 100 feet. The central plaza shall be open to the sky, except for the area occupied by the pavilion permitted by paragraph (b)(2)(vii) of this Section.

(2) Required amenities

The central plaza shall contain the following features and amenities:

(i) Landscaped Area

A landscaped area shall be provided and shall contain a minimum of 44 trees (or other amounts equivalent to a minimum of 176 caliper inches), and planting beds which, in the aggregate, occupy an area of at least 7500 square feet.

Within the area bounded by the western #street line# of Ninth Avenue and a line drawn 45 feet west of the western #street line# of Ninth Avenue, a minimum of 1,000 square feet of such total requirement shall be occupied by planting beds.

(ii) Seating

A minimum of 725 linear feet of seating shall be provided, with 120 moveable chairs and 30 moveable tables. At least 50 percent of the required seating shall have backs.

Within the area bounded by the western #street line# of Ninth Avenue and a line drawn 45 feet west of the western #street line# of Ninth Avenue, a minimum of 50 linear feet of seating of such total requirement shall be provided of which 50 percent shall have backs.

(iii) Event space

The portion of the central plaza located beyond a line drawn 295 feet west and parallel to the western #street line# of Ninth Avenue may be used for events (hereinafter referred to as the "event space"). Such event space shall have a maximum area of 4,500 square feet and may contain a temporary stage or platform and temporary seating associated with events. When such event space is not being used for an event, it shall contain a minimum of 192 linear feet of seating, with 96 moveable chairs and 24 moveable tables, and during the period April 1 to November 15, two moveable food carts within the event space or on the periphery thereof. Such tables and chairs shall be in addition to the amount required for the landscaped area in paragraph (b)(2)(ii) of this Section.

(iv) Circulation paths

Circulation paths in the central plaza shall meet the following minimum requirements:

- (aa) pedestrian circulation paths extending the full length of the central plaza with an aggregate width of not less than 30 feet shall be provided;
- (bb) at least two of the required circulation paths with a minimum clear width of twelve feet shall be located within 20 feet of the facade of each #building# facing the central plaza ;
- (cc) in addition to the circulation paths required by paragraph (b)(2)(iv)(aa) of this Section, at least two circulation paths shall be provided through the landscaped area required by paragraph (b)(2)(i) of this Section, which connect with the circulation paths required by paragraph (b)(2)(iv)(bb) of this Section;
- (dd) all circulation paths shall be unobstructed during events held in the event space permitted by paragraph (b)(2)(iii) of this Section; and
- (ee) a clear path with a minimum aggregate width of at least 20 feet shall be maintained where the entry plaza required pursuant to paragraph (a) of this Section and the central plaza required by paragraph (b) of this Section intersect and where the art plaza

required pursuant to paragraph (c) of this Section and the central plaza required by paragraph (a) of this Section intersect, provided that up to eight feet of such required clear path may be located within the entry plaza and within the art plaza respectively.

(v) Transparency

The transparency requirements of paragraph (c) of Section 93-14 (Ground Floor Level Requirements) shall apply to the ground floor level of at least 70 percent of the length of all #building# walls facing each side of the central plaza.

(vi) Retail continuity

At least 40 percent of the frontage of any #building# fronting on the central plaza shall comply with the retail continuity requirements of paragraph (a) of Section 93-14 (Ground Floor Level Requirements) and at least 50 percent of the aggregate frontage of all #buildings# fronting on the central plaza shall comply with the retail continuity requirements of paragraph (a) of Section 93-14 (Ground Floor Level Requirements). Such retail space shall have a minimum depth of 30 feet measured perpendicular to the wall adjoining the central plaza.

(vii) Pavilion

A #building# (hereinafter referred to as a "pavilion") containing #uses# listed in Use Groups 6A and 6C may be located within the central plaza, provided that such pavilion (and any seating associated with a use in the pavilion) shall be located at least ten feet west of the prolongation of the east face of the #building# fronting on the north side of the central plaza. The pavilion shall have a minimum #lot coverage# of 1,000 square feet and a maximum #lot coverage# of 3,000 square feet, with a maximum width of 40 feet parallel to Ninth Avenue. Such pavilion shall be no more than one #story# in height, except such one #story# limitation may be exceeded by portions of the pavilion allocated to mechanical equipment as well as restrooms and a food preparation kitchen occupying, in the aggregate, no more than 200 square feet area. Such pavilion shall not exceed a height limit of 25 feet, except that the permitted obstructions set forth in Section 33-42, as well as restrooms and a food preparation kitchen located above the level of the first #story# may be permitted to exceed such height limit provided that the height of such restroom and food preparation kitchen do not exceed ten feet. Seating may be provided for the #uses# in the pavilion provided that the total area occupied by the pavilion and such associated seating does not exceed a maximum #lot

coverage# of 3,600 square feet and that such associated seating shall not count towards meeting the seating requirements set forth in paragraphs (b)(2)(ii) and (iii) of this Section. Floor space within the pavilion shall not be considered #floor area#. At least 60 percent of the exterior walls of the pavilion shall be transparent except for structural supports, provided that 100 percent of the east facing wall of the pavilion shall be transparent except for structural supports.

(3) Alternative design option

Notwithstanding the provisions of paragraph (b)(1) of this Section, the minimum north-south width of the central plaza may be reduced to no less than 80 feet for at least 50 percent of the aggregate frontage of the #buildings# fronting on the central plaza, provided that such narrowed portion begins no further than 150 feet from the western #street line# of Ninth Avenue, and further provided that the minimum size of the central plaza is not less than 41,382 square feet. The minimum height of a #building# wall fronting upon such narrowed portion shall be 45 feet, and the maximum height of such #building# wall shall not exceed 85 feet. Above a height of 85 feet, the minimum setback distance shall be 10 feet and the minimum distance between #buildings# fronting on the central plaza shall be 100 feet.

(4) Closing of Event space

The City Planning Commission may allow the closing of the event space for up to 12 events per year pursuant to a restrictive declaration acceptable to the City and recorded in the office of the City Register for New York County and indexed against the property.

(c) Art Plaza

(1) Location and minimum dimensions

A publicly accessible space open to the sky (hereinafter referred to as the “art plaza”) shall be located in the area bounded by the western #street line# of Ninth Avenue, the northern #street line# of West 31<sup>st</sup> Street, a line 40 feet west of and parallel to the western #street line# of Ninth Avenue and a line 187 feet north of and parallel to the northern #street line# of West 31<sup>st</sup> Street, as shown on Map 1 in Appendix B. The art plaza shall have a minimum area of 7,480 square feet, a minimum east-west dimension of 40 feet and shall provide a direct connection to the central plaza required pursuant to paragraph (b) of this Section.

(2) Required amenities

The art plaza shall contain the following features and amenities:

- (i) a minimum of four trees (or other amounts equivalent to a minimum of 16 caliper inches);
- (ii) planting beds which, in the aggregate, occupy an area of at least 410 square feet;
- (iii) a minimum of 45 linear feet of seating;
- (iv) one or more pieces of artwork. Such artwork may not incorporate addresses, text or logos related to the adjacent #building# or tenants of such #building#; and
- (v) the transparency requirements of paragraph (c) of Section 93-14 shall apply to the ground floor level of at least 70 percent of the length of all #building# walls facing the art plaza.

(d) Dyer Avenue Platform

(1) Location and Minimum Dimensions

A publicly accessible platform shall be constructed over Dyer Avenue connecting West 33<sup>rd</sup> Street and West 31<sup>st</sup> Street (hereinafter referred to as the “Dyer Avenue Platform”), as shown on Map 1 in Appendix B. The Dyer Avenue platform shall include the easement area described in paragraph (b) of Section 93-72 and shall directly connect with the central plaza and the West 31<sup>st</sup> Street connector required by paragraphs (b) and (e) of this Section, respectively. The Dyer Avenue platform shall have a minimum east-west dimension of 53 feet, and a minimum north-south dimension of 455 feet. However, such minimum east-west dimension may be reduced to accommodate an extension of such existing egress stair in order to adjoin the level of the platform, or to accommodate up to 15 inches of additional exterior wall thickness added to the eastern face of the existing #building# at 450 West 33<sup>rd</sup> Street. Except for any portion of the Dyer Avenue platform which on [insert effective date of text amendment], was covered by the #building# located at 450 West 33<sup>rd</sup> Street and the existing egress stairs on the eastern face on such #building#, or the permitted additions thereto, respectively, the Dyer Avenue platform shall be open to the sky.

(2) Required Amenities

The Dyer Avenue platform shall contain the following features and amenities which may be located on the portion of the Dyer Avenue platform located within the easement provided pursuant to paragraph (b) of Section 93-72 (Public Access Areas at 450 West 33<sup>rd</sup> Street):

- (i) a minimum of sixteen trees (or other amounts equivalent to a minimum of 64 caliper inches), of which a minimum of twelve trees (or other amounts equivalent to a minimum of 48 caliper inches) shall be located south of the center line of the prolongation of West 32<sup>nd</sup> Street;
- (ii) planting beds, which in the aggregate, occupy an area of at least 1500 square feet, of which a minimum of 450 square feet of planting beds shall be located south of the center line of the prolongation of West 32<sup>nd</sup> Street and a minimum of 250 square feet of planting beds shall be located within 30 feet of the southern street line of 33<sup>rd</sup> Street. No more than 25 percent of the linear feet of the planting beds shall have bounding walls exceeding 18 inches in height above an adjacent walking surface;
- (iii) a minimum of 350 linear feet of seating shall be provided, of which 50 percent shall consist of seats with backs and with at least 210 linear feet of seating located south of the center line of the prolongation of West 32<sup>nd</sup> Street and a minimum of 50 linear feet of seating located within 30 feet of the southern street line of West 33<sup>rd</sup> Street.
- (iv) the glazing requirements of paragraph (c) of Section 93-14 shall apply to the ground floor level of at least 70 percent of the length of all #building# walls fronting on the eastern edge of the Dyer Avenue platform; and
- (v) at least two pedestrian circulation paths with a minimum clear path of 8 feet or one circulation path with a minimum clear path of 12 feet shall be provided along the full length of the Dyer Avenue platform, from West 31<sup>st</sup> to West 33<sup>rd</sup> Street.

Vertical circulation elements, including stairs and ramps traversing the grade changes of the Dyer Avenue platform shall be considered a part of the Dyer Avenue platform and not an obstruction.

(e) West 31<sup>st</sup> Street Connector

(1) Location and Minimum Dimensions

A publicly accessible connection (hereinafter referred to as the “West 31<sup>st</sup> Street connector”) shall be provided between the Dyer Avenue platform required pursuant to paragraph (e) of this Section and West 31<sup>st</sup> Street, as shown on Map 1 in Appendix B. The West 31<sup>st</sup> Street connector shall be located on West 31<sup>st</sup> Street adjoining the eastern boundary of the Dyer Avenue platform and shall have a minimum area of 450 square feet.

(2) Required Amenities

The West 31<sup>st</sup> connector shall be directly accessible from West 31<sup>st</sup> Street by a staircase with a minimum width of 8 feet and by an elevator.

(f) Connection to below-grade passage

Where a pedestrian passage extending from the Eighth Avenue Subway beneath West 33rd Street to the west side of Ninth Avenue has been constructed, an entrance within the #development# shall be constructed that connects with such passage.

**93-731**

**Design and maintenance requirements for public access areas on the Ninth Avenue Rail Yard**

Public access areas on the Ninth Avenue Rail Yard provided pursuant to the requirements of Section 93-73 (Public Access Areas on the Ninth Avenue Rail Yard), shall comply with the applicable design reference standards set forth in paragraph (a), and the maintenance provisions of paragraph (b) of this Section.

(a) Design reference standards

- (1) Seating shall meet the minimum and maximum dimensional standards set forth in paragraphs (1) through (7) of Section 37-741 (Seating), inclusive;
- (2) Where planting areas are provided, they shall meet the soil depth, continuous area, permeable surface and irrigation requirements of Section 37-742 (Planting and trees). Where trees are provided, they shall meet the planting standards, soil requirements and irrigation standards set forth in Section 37-742;
- (3) Steps shall meet the minimum dimensional standards set forth in Section 37-725 (Steps);
- (4) Kiosks or open air cafes shall meet the operational and service requirements listed in paragraphs (a) and (b) of Section 37-73 (Kiosks and Open Air Cafes) and shall not occupy in the aggregate more than 20 percent of the public access areas required by Section 93-73. Seating provided as part of an open air cafe shall not count towards meeting the seating requirements of a public access area listed in Section 93-73;
- (5) All open spaces within the public access areas shall provide open space signage pursuant to the standards set forth in Section 37-751 (Public space signage system). In addition, a minimum of two wayfinding #signs# shall be provided;

- (6) Where #buildings# front on to public access areas, canopies, awnings, marquees and sun control devices shall be permitted pursuant to the standards set forth in paragraph (c) of Section 37-726 (Permitted obstructions);
- (7) The aggregate number of litter receptacles in such public access areas shall be 21;
- (8) No gates, fences or other barriers shall be permitted within such public access areas; and
- (9) For the purposes of applying the #sign# regulations to #building# walls facing public access areas, such public access areas shall be considered #streets#.

(b) Maintenance

The owner or owners shall be responsible for the maintenance of all public access areas, including, but not limited to, litter control, management of pigeons and rodents, maintenance of required lighting levels, and the care and replacement of furnishings and vegetation.

**93-731**

**Special requirements for zoning lots with floor area ratios greater than 10**

The provisions of this Section shall apply to any #development# or #enlargement# on #zoning lots# in the area bounded by Ninth Avenue, West 31st Street, the western boundary of the Lincoln Tunnel Approach and West 33rd Street. Where the #floor area ratio# for any such #zoning lot# exceeds 10.0, paragraphs (a) through (d) of this Section shall apply:

(a) ~~Covered pedestrian space~~

~~A publicly accessible covered pedestrian space shall be provided within 10 feet of the prolonged center line of West 32nd Street. Such pedestrian space shall be structurally designed to accommodate and connect the Lincoln Tunnel Approach bridge required, pursuant to paragraph (b) of Section 93-72, with Ninth Avenue. Such covered pedestrian space shall:~~

- ~~(1) be enclosed, with an average clear height of 60 feet, a minimum width of 60 feet and a minimum clear path of 20 feet;~~
- ~~(2) have a roof of transparent material that allows for natural daylight to enter;~~
- ~~(3) provide direct access to any #building# adjacent to such covered space; and~~
- ~~(4) have retail uses fronting upon at least 50 percent of its northern and southern walls.~~

~~The maximum height of a #building# wall along the southern boundary of the covered pedestrian space shall not exceed the average height of the covered pedestrian space, or the height at which an arched or angled ceiling of the covered pedestrian space begins, whichever is less. Any portion of a #building# that exceeds such height shall be set back at least 20 feet in depth from the southern boundary of the covered pedestrian space.~~

~~Notwithstanding the provisions of this paragraph, (a), up to 40 percent of the area of a covered pedestrian space required pursuant to this paragraph, (a), may be open, provided such open area fronts upon Ninth Avenue and is directly accessible to the plaza required pursuant to paragraph (c) of this Section. Such open area shall be provided in accordance with the standards for #public plazas# set forth in Section 37-70, inclusive.~~

~~In the event that such covered pedestrian space is not provided pursuant to this paragraph, (a), concurrently with a #development# or #enlargement# north of such covered pedestrian space, both shall be designed to allow for compliance with the provisions of this Section upon completion.~~

~~(b) — Through block connection~~

~~A publicly accessible through block connection, open to the sky, shall be provided along the eastern edge of the Lincoln Tunnel Approach. Such connection shall have a minimum width of 20 feet and provide a direct connection with the covered pedestrian space required pursuant to paragraph (a) of this Section.~~

~~(c) — Plaza~~

~~A publicly accessible plaza, open to the sky, shall be provided at the intersection of Ninth Avenue and West 33rd Street. Such plaza shall have a minimum area of 11,280 square feet with a minimum frontage of 60 feet along West 33rd Street, and provide a direct connection to the covered pedestrian space or open area required pursuant to paragraph (a) of this Section. Such plaza shall be provided in accordance with the standards for #public plazas# set forth in Section 37-70, inclusive.~~

~~(d) — Connection to below grade passage~~

~~Where a pedestrian passage extending from the Eighth Avenue Subway beneath West 33rd Street to the west side of Ninth Avenue has been constructed, an entrance within the #development# or #enlargement# shall be constructed that connects with such passage.~~

~~No #rear yard# regulations shall apply to any #building developed# or #enlarged# pursuant to this Section. Furthermore, the provisions of this Section may be waived or modified in conjunction with the granting of a special permit pursuant to Section 74-41 for the #development# of an arena in the area bounded by Ninth Avenue, West 31st Street, the Lincoln Tunnel Approach and West 33rd Street.~~

## **93-732**

### **Certification for public access areas on the Ninth Avenue Rail Yard**

No certification for the phased development of public access areas on the Ninth Avenue Rail Yard shall be permitted until a plan has been submitted that provides for the completion of public access areas in accordance with the provisions of this Section. Such plan shall provide, at a minimum, that the entry plaza, required pursuant to paragraph (a) of Section 93-73 (Public Access Areas on the Ninth Avenue Rail Yard) will be provided in connection with the construction of a #building# located on the northeast corner of the Ninth Avenue Rail Yard, that the art plaza, required pursuant to paragraph (c) of Section 93-73, will be provided in connection with the construction of a #building# located on the southeast corner of the Ninth Avenue Rail Yard and that in connection with the construction of a #building# on the southwest corner of the Ninth Avenue Rail Yard, the West 31<sup>st</sup> Street connector required by section (e) of Section 93-73 and a 20-foot wide paved area along the eastern edge of Dyer Avenue and extending for the north-south dimension of such #building# will be provided.

An application for certification under this Section shall be filed with the Chairperson of the City Planning Commission and such application shall include: a site plan indicating the area and dimensions of the public access area, or portions thereof, and a detailed plan or plans demonstrating compliance with the requirements of Section 93-73.

Plans for the public access areas shall be set forth in an instrument in a form acceptable to the City, including such provisions as are necessary to ensure compliance with the provisions of this Section. Such instrument shall be filed and duly recorded in the Office of the City Register of the City of New York for New York County and indexed against the property. Such filing and recording of the instrument shall be a precondition for the Chairperson's certification to the Department of Buildings under this Section. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

No temporary certificate of occupancy from the Department of Buildings may be issued for any portion of a #development# within a phase until the Chairperson of the City Planning Commission certifies to the Department of Buildings that the public access area, or portions thereof associated with such phase, is substantially complete and that such public access area, or portions thereof, are open to and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# until the Chairperson certifies to the Department of Buildings that the public access areas, or portions thereof, are fully complete, and that all requirements of this Section have been met in accordance with the plans for public access area, or portions thereof associated with such phase.

No temporary certificate of occupancy from the Department of Buildings may be issued for a #building#, or portion thereof, where the total amount of #floor area# that has been #developed# or #enlarged# on the Ninth Avenue Rail Yard exceeds 3,204,000 square feet until the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that

the public access areas at 450 West 33<sup>rd</sup> Street required by paragraphs (c) and (d) of Section 93-72 (Public Access Areas at 450 West 33<sup>rd</sup> Street) and that all public access areas on the Ninth Avenue Rail Yard required by Section 93-73 have been substantially completed and are open and usable by the public. Notwithstanding the foregoing, the Chairperson may, with respect to the public access area required by paragraph (c) and the elevator required by paragraph (d) of Section 93-72 at 450 West 33<sup>rd</sup> Street, certify to the Commissioner of Buildings that such temporary certificate of occupancy may be issued absent their substantial completion provided that:

- (a) the owner of 450 West 33<sup>rd</sup> Street has submitted proof that all or portions of the area of the West 31<sup>st</sup> Street passageway required by paragraph (c) of Section 93-72 was at any time subject to a lease with an expiration date of December 31, 2019 and was not able to obtain control of the areas subject to such lease on or before December 31, 2017;
- (b) a letter of credit has been posted in accordance with City requirements, and such letter of credit:
  - (1) is in an amount equal to 200 percent of the estimated cost to construct the public access area and the elevator at 450 West 33<sup>rd</sup> Street, required by paragraphs (c) and (d) of Section 93-72, respectively, as set forth in a cost estimate prepared by a professional engineer. Such cost estimate shall be based upon construction documents prepared by a registered architect and submitted with the application for certification pursuant to this Section, and shall be subject to review and acceptance by the City; and
  - (2) authorizes the City to draw upon the letter of credit if such public access area and elevator have not been substantially completed and are not open and usable by the public by December 31, 2022;
- (c) that an easement agreement has been recorded granting the City access to 450 West 33<sup>rd</sup> Street and the Ninth Avenue Rail Yard, as may be necessary for purposes of constructing the public access area and elevator required by paragraphs (c) and (d) of Section 93-72, respectively, if they are not completed by the owner by December 31, 2022; and
- (d) in addition to the foregoing, such letter of credit shall be maintained from the date of certification for temporary certificates of occupancy, pursuant to this Section, until the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that the public access area required by paragraph (c) and the elevator required by paragraph (d) of Section 93-72 have been substantially completed and are open and usable by the public, or until same have been substantially completed by the City. The Chairperson may, no more frequently than annually, require the submission of an updated or new letter of credit in an amount that reflects changes in costs over time, and such updated or new letter of credit shall be subject to the requirements and procedures of paragraph (b) of this Section, until such letter of credit is released based upon substantial completion.

Notwithstanding the foregoing, in the event that a temporary public access area plan is approved pursuant to Section 93-734 (Certification to temporarily modify public access areas for construction staging), no temporary certificate of occupancy from the Department of Buildings may be issued for any portion of a #development# until the Chairperson certifies to the Department of Buildings that the public access area, or portions thereof associated with a phase of #development#, is substantially complete and in accordance with such temporary public access area plan, and the public access area, or portions thereof, are open and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# until the Chairperson certifies to the Department of Buildings that the public access area, or portions thereof associated with such phase, has been fully completed in accordance with the plan therefor, and that such public access area, or portions thereof, are open and useable by the public.

### **93-733**

#### **Certification to modify general requirements of public access areas for ventilation demands**

The Chairperson of the City Planning Commission may modify the general requirements of the public access areas listed in Section 93-73 (Public Access Areas on the Ninth Avenue Rail Yard), provided that the Chairperson certifies to the Commissioner of Buildings that such a change is necessary to accommodate unforeseen ventilation demands within the Ninth Avenue Rail Yard. In addition to the site plan required pursuant to Section 93-732 (Certification for public access areas on the Ninth Avenue Rail Yard), a mechanical plan shall be provided demonstrating the need to modify such general requirements.

### **93-734**

#### **Certification to temporarily modify public access areas for construction staging**

In the event that the applicant demonstrates to the satisfaction of the Chairperson of the City Planning Commission that the area designated for public access will be required for construction staging or similar activities in a future phase of #development#, the application for the site plan approval may be accompanied by a request for approval of a temporary public area which may include fewer amenities and other features required pursuant to Section 93-73 (Public Access Areas on the Ninth Avenue Rail Yard), as necessary to accommodate such future construction staging or similar activities. Such temporary public access area plan shall be subject to review and approval in the same manner as site plan approval pursuant to Section 93-732 (Certification for public access areas on the Ninth Avenue Rail Yard) and, if approved pursuant thereto, shall be implemented and remain in effect only for the period necessary to accommodate the need for use of the public access area for construction staging or similar activities in a future phase of development. Following the expiration of such period, the site plan shall be implemented.

\* \* \*

### **93-75**

## Publicly Accessible Open Spaces in Subdistrict F

Public access areas in Subdistrict F shall be comprised of publicly accessible open spaces, private streets and pedestrian ways.

Publicly accessible open spaces are listed in this Section, inclusive. Such publicly accessible open spaces shall be comprised of the Western Open Space, the Central Open Space, the Southwest Open Space, the Northeast Plaza, the Midblock Connection, and the #High Line# as described within this Section, inclusive. ~~Map 3~~ ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in ~~Appendix B~~ ~~Appendix A~~ identifies the location of publicly accessible open spaces.

\* \* \*

### 93-751

#### General requirements for the Western Open Space

\* \* \*

#### (b) Location and minimum dimensions

The Western Open Space shall be located east of the #High Line#, and encompass the area between Sites 1 and 5 as shown on ~~Map 3~~ ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in ~~Appendix B~~ ~~Appendix A~~. The Western Open Space shall have a minimum easterly boundary of 225 feet, as measured from the easterly #street line# of Twelfth Avenue.

\* \* \*

#### (c) Core elements

The Western Open Space shall provide the following core elements:

\* \* \*

#### (3) Supplemental area

\* \* \*

A minimum of two unimpeded paved pedestrian accesses, each with a minimum width of 12 feet, shall be provided in the supplemental area. One such pedestrian access shall link the West 32nd Street Extension's Allee, as defined in paragraph (c)(2) of Section 93-761 and shown on ~~Map 3~~ in ~~Appendix B~~ ~~Map 8~~, to the #High Line#, and the second such pedestrian access shall link the West 31st Street Extension to the #High Line#.

\* \* \*

**93-752**

**General requirements for the Central Open Space**

\* \* \*

- (b) Location and dimensions

The Central Open Space shall be located within the area bounded by the West 32nd Street Extension, the West 31st Street Extension, the Connector and Eleventh Avenue, and shall also be comprised of any portion of Sites 3 and 4 that are not covered by #buildings# at the ground level as shown on Map 3 ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in Appendix B ~~Appendix A~~.

\* \* \*

**93-753**

**General requirements for the Southwest Open Space**

\* \* \*

- (b) Location and minimum dimensions

The Southwest Open Space shall be located within the area bounded by Twelfth Avenue, the Western Open Space, the West 31<sup>st</sup> Street Extension, Site 6 and West 30th Street, and shall also be comprised of any portion of Site 5 which is not covered by a #building or other structure# at the ground level as shown on Map 3 ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in Appendix B ~~Appendix A~~.

\* \* \*

**93-754**

**General requirements for the Northeast Plaza**

A publicly accessible open space, (henceforth referred to as the “Northeast Plaza”), shall be provided at the intersection of West 33rd Street and Eleventh Avenue, as shown on Map 3 ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in Appendix B ~~Appendix A~~. The area of such space shall be at least 2,600 square feet, and shall have a minimum #street# frontage of 40 feet along each #street#. The Northeast Plaza shall be provided in accordance with the standards for #public plazas#, as set forth in Section 37-70 (PUBLIC PLAZAS), exclusive of the area dimensions set forth in Section 37-712.

\* \* \*

**93-755**

**General requirements for the Midblock Connection**

A pedestrian way, (henceforth referred to as the “Midblock Connection”), shall be provided between West 33rd Street and the West 32nd Street Extension, as shown on Map 3 Map 8 (Subdistrict F: Public Access Area Plan), in Appendix B Appendix A.

\* \* \*

### 93-76

#### Publicly Accessible Private Streets and Pedestrian Ways in Subdistrict F

Public access areas in Subdistrict F shall be comprised of publicly accessible open spaces, private streets and pedestrian ways.

Publicly accessible private streets and pedestrian ways shall be provided in Subdistrict F in addition to the publicly accessible open spaces required in Section 93-75. Such private streets and pedestrian ways shall be comprised of the West 31st and West 32nd Street Extensions, the West 30th Street Corridor and the Connector. Map 3 Map 8 (Subdistrict F: Public Access Area Plan) in Appendix B Appendix A of this Chapter identifies the location of these publicly accessible private streets and pedestrian ways.

\* \* \*

### 93-761

#### General requirements for the West 32nd Street Extension

A private street, (henceforth referred to as the “West 32nd Street Extension”), shall be provided south of and parallel to West 33<sup>rd</sup> Street.

(a) General purpose

\* \* \*

- (3) to provide a unique urban park-like experience for an active public #street# by connecting the Western Open Space and the Eastern Rail Yard plaza with a pedestrian Allee, as defined in paragraph (c)(2) of this Section and shown on Map 3 Map 8 (Subdistrict F: Public Access Area Plan) in Appendix B Appendix A; and

\* \* \*

(b) Location and dimensions

The West 32nd Street Extension shall have its northerly edge located a minimum of 180 feet and a maximum of 200 feet south of the West 33rd Street #street line#, as shown on Map 3 in Appendix B Map 8, except that a terminus to the West 32nd Street Extension, located west of the Connector shall be permitted to expand beyond the maximum dimensions, provided that such terminus extends to provide a #building# entrance drive

along Site 1, and complies with the provisions set forth in paragraph (e) of Section 93-751 (General requirements for the Western Open Space).

\* \* \*

(c) Core elements

(2) Planting and seating requirements for the southern sidewalk and the Allee

\* \* \*

Along the southern sidewalk, trees shall be planted within five feet of the curb and the southern edge of the sidewalk. One row of trees shall be planted within five feet of the curb and a second row of trees shall be planted within five feet of the southern edge of the sidewalk. This double row of tree planting along the southern sidewalk of the West 32nd Street Extension between Eleventh Avenue and the Connector shall henceforth be referred to as the Allee, as shown on Map 3 in Appendix B Map 8. No #building or other structure# shall be permitted within 15 feet of the southern edge of the Allee.

\* \* \*

**93-762**

**General requirements for the West 31st Street Extension**

\* \* \*

(b) Location and dimensions

The West 31st Street Extension shall have its southerly edge located a minimum of 180 feet and a maximum of 200 feet north of the West 30th Street #street line#, as shown on Map 3 Map 8 (Subdistrict F: Public Access Area Plan) in Appendix B Appendix A, except that a terminus to the West 31st Street Extension, located west of the Connector, shall be permitted to expand beyond the maximum dimensions, provided that such terminus extends to provide a #building# entrance drive along Site 5, and complies with the provisions set forth in paragraph (d) of Section 93-753 (General requirements for the Southwest Open Space), and/or paragraph (f) of Section 93-752 (General requirements for the Central Open Space), as applicable.

\* \* \*

**93-763**

**General requirements for the West 30th Street Corridor**

\* \* \*

(b) Location and dimensions

The West 30th Street Corridor shall be located in the area bounded by the #High Line#, Eleventh Avenue, West 30th Street and the eastern edge of the Southwest Open Space, as shown on Map 3 ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in Appendix B ~~Appendix A~~.

\* \* \*

**93-764**

**General requirements for the Connector**

\* \* \*

(b) Location and dimensions

The western #street line# of the Connector shall be located a minimum of 225 feet east of the easterly #street line# of Twelfth Avenue, as shown on Map 3 ~~Map 8~~ (Subdistrict F: Public Access Area Plan) in Appendix B ~~Appendix A~~.

\* \* \*

**93-78**

**Site and Landscape Plans for Public Access Areas in Subdistrict F**

\* \* \*

(e) Where a phase of development results in all development sites in Subdistrict F, as shown on Map 2 ~~Map 7~~ (Subdistrict F: Site Plan) in Appendix B ~~Appendix A~~, having been #developed# in whole or in part pursuant to the provisions of Section 93-56 (Special Height and Setback Regulations in Subdistrict F), the Department of Buildings shall not issue a certificate of occupancy for the last #building# of such phase unless and until the Chairperson certifies to the Commissioner of Buildings that all public access areas within Subdistrict F are substantially complete, and are open to and useable by the public. However, in the event that the site and landscape plans for the #High Line# open space have not been approved, pursuant to paragraph (c) of this Section, at the time such last #building# is eligible for a certificate of occupancy, the Department of Buildings shall issue such certificate of occupancy upon certification of the Chairperson that all public access areas other than the #High Line# open space are substantially complete.

\* \* \*

**93-821**

**Permitted parking when the reservoir surplus is greater than or equal to zero**

When the #reservoir surplus# is greater than or equal to zero, off-street parking spaces may be provided only in accordance with the provisions of this Section.

- (a) For #residences#, #accessory# off-street parking spaces may be provided for not more than 30 percent of the total number of #dwelling units#, except that where such #dwelling units# are comprised of #low income floor area#, #moderate income floor area# or #middle income floor area#, as defined in Section 23-911, #accessory# off-street parking spaces may be provided for not more than eight percent of the total number of such #dwelling units#.
- (b) For Use Group 5 #transient hotels#, the provisions of Section 13-131 shall apply with respect to the number of permitted #accessory# off-street parking spaces, provided that the number of such spaces does not exceed 0.16 for every 1,000 square feet of #floor area#.
- (c) For Use Group 6B offices, not more than 0.16 #accessory# offstreet parking spaces may be provided for every 1,000 square feet of #floor area#.
- (d) In the Eastern Rail Yard Subarea A1, paragraphs (a) through (c) of this Section shall not apply, and any #accessory# off-street parking shall comply with the provisions of this paragraph, (d):
  - (1) for #residences#, #accessory# off-street parking spaces may be provided for not more than 40 percent of the total number of #dwelling units#;
  - (2) for #commercial# and #community facility uses#, not more than 0.325 #accessory# off-street parking spaces may be provided for every 1,000 square feet of #floor area#, provided that in no event shall the number of off-street parking spaces #accessory# to #commercial# or #community facility uses# exceed 350 spaces; and
  - (3) in no event shall the total number of #accessory #offstreet parking spaces for all #uses# exceed 1,000.
- (e) The Department of Buildings shall not issue a building permit for any #accessory# off-street parking pursuant to paragraphs (a) through (c) of this Section, unless the Chairperson has certified that:
  - (1) the sum of the permitted parking spaces set forth in the following paragraphs, (e)(1)(i), (e)(1)(ii) and (e)(1)(iii), is less than or equal to 5,084 spaces:
    - (i) the #reservoir surplus# or zero;
    - (ii) the #Hudson Yards development parking supply#; and

- (iii) the number of spaces proposed to be added by the #development# or #enlargement# for which certification is sought; and
- (2) the sum of the permitted parking spaces set forth in the following paragraphs, (e)(2)(i), (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv), is less than or equal to 5,905 spaces:
  - (i) all off-street parking spaces in the #Hudson Yards parking applicability area# that have been categorized, in accordance with the definition in Section 93-81, as part of the #reservoir parking supply#, less any such off-street parking spaces that have been categorized as decreasing the #reservoir surplus# in accordance with paragraph (a) of the second part of the definition of #reservoir surplus# in Section 93-81;
  - (ii) all off-street parking spaces in the #Hudson Yards parking applicability area# that have been categorized as increasing the #reservoir surplus# in accordance with paragraphs (b) and (c) of the first part of the definition of #reservoir surplus# in Section 93-81;
  - (iii) the #Hudson Yards development parking supply#; and
  - (iv) the number of spaces proposed to be added by the #development# or #enlargement# for which certification is sought.
- (3) Notwithstanding paragraphs (e)(1) and (2) of this Section, if the Chairperson determines that final certificates of occupancy have been issued by the Department of Buildings for all #buildings# shown in the site plan for the Eastern Rail Yard Subarea A1 as required by the provisions of Section 93-70, and that upon the completion of all such #buildings#, fewer than 1,000 #accessory# off-street parking spaces have been provided in such subarea, any difference between the number of #accessory# off-street parking spaces provided in the Eastern Rail Yard Subarea A1, and 1,000, may be added to the limits of 5,084 and 5,905 spaces set forth in paragraphs (e)(1) and (e)(2), respectively.
- (4) Any certification granted by the Chairperson, pursuant to this Section, shall lapse after two years if #substantial construction# of the #development# or of the #enlarged# portion of an existing #building#, which includes the subject #accessory# off-street parking spaces, has not occurred. In making a certification pursuant to this Section, the Chairperson shall not consider any prior certification or any special permit that has lapsed in accordance with the provisions of this Resolution. However, for Site 6, as shown on Map 6 in Appendix A of this Chapter, any such certification shall lapse after six years if #substantial construction# of the new #building# that includes the subject #accessory# off-street parking spaces, has not occurred.

**93-822**

**Permitted parking when a reservoir deficit exists**

When a #reservoir deficit# exists, additional off-street parking spaces may be provided in accordance with the provisions of this Section. However, this Section shall not apply in the Eastern Rail Yard Subarea A1.

- (a) The number of permitted #accessory# off-street parking spaces for Use Group 5 hotels may exceed 0.16 for every 1,000 square feet of #floor area#, up to the number permitted by Section 13-131.
- (b) The number of permitted #accessory# off-street parking spaces for Use Group 6B offices may be increased by up to 33 percent of the number permitted pursuant to Section 93-821, paragraph (b).
- (c) The Department of Buildings shall not issue a building permit for any additional #accessory# off-street parking spaces permitted pursuant to this Section unless the Chairperson has certified that:
  - (1) a #reservoir deficit# exists;
  - (2) the number of #accessory# off-street parking spaces in excess of the number permitted by Section 93-821, proposed to be added by the #development# or #enlargement# for which certification is sought, does not exceed such #reservoir deficit#; and
  - (3) such additional #accessory# off-street parking spaces, when added to the sum of the parking spaces specified in paragraphs (e)(2)(i), (e)(2)(ii) and (e)(2)(iii) of Section 93-821 does not exceed 5,905 spaces, except insofar as the limit of 5,905 spaces set forth in paragraph (e)(2) has been adjusted pursuant to the provisions of paragraph (e)(3) of Section 93-821.
- (d) Any certification granted by the Chairperson pursuant to this Section shall lapse after two years if #substantial construction# of the new #building# or of the #enlarged# portion of an existing #building#, which includes the subject #accessory# off-street parking spaces, has not occurred. In making a certification pursuant to this Section, the Chairperson shall not consider any prior certification or any special permit that has lapsed in accordance with the provisions of this Resolution. However, for Site 6, as shown on Map 6 in Appendix A of this Chapter, any such certification shall lapse after six years if #substantial construction# of the new #building# that includes the subject #accessory# off-street parking spaces, has not occurred.

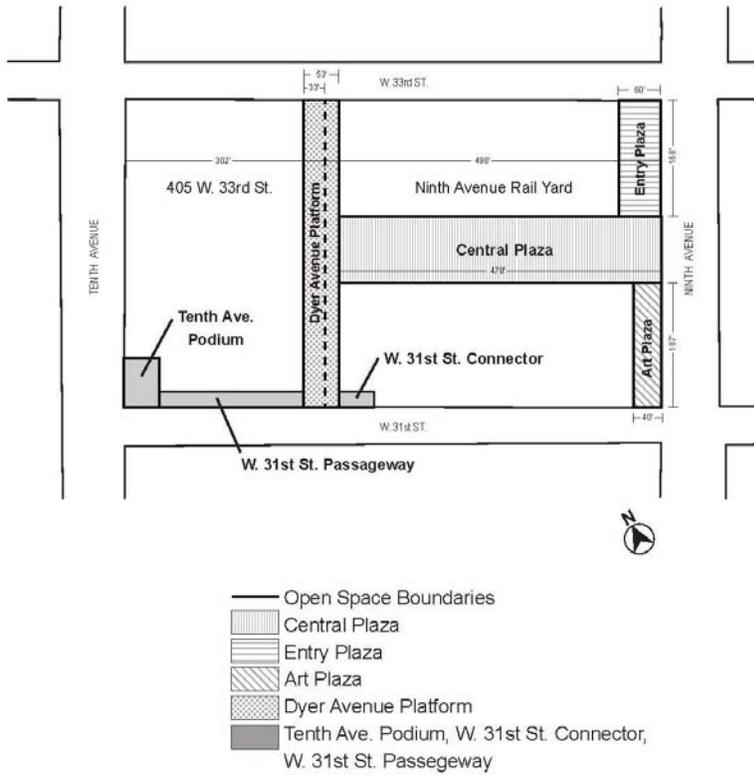
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**Appendix A**  
**Special Hudson Yards District**

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**Appendix B**  
**Special Hudson Yards Subdistrict Maps**

**Map 1 – Subdistrict B: 450 West 33<sup>rd</sup> Street and Ninth Avenue Rail Yard Public Access Area Plan**



**Map 2 ~~Map 7~~ – Subdistrict F: Site Plan**

\* \* \*

**Map 3 ~~Map 8~~ – Subdistrict F: Public Access Area Plan**

\* \* \*

**Map 4 ~~Map 9~~ – Subdistrict F: Mandatory Ground Floor Requirements**

\* \* \*

Map 5 ~~Map 10~~ – Subdistrict F: Mandatory Street Wall Requirements

\* \* \*

The above resolution (N 140191 ZRM), duly adopted by the City Planning Commission on March 19, 2014 (Calendar No. 6), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD, Chairman**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**BETTY Y. CHEN, MICHELLE R. DE LA UZ, JOSEPH DOUEK,**  
**RICHARD W. EADDY, ORLANDO MARÍN, Commissioners**

**ALFRED C. CERULLO, III, Commissioner, Recused**



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
tel: 212-736-4536 fax: 212-947-9512  
www.nyc.gov/mcb4

**CHRISTINE BERTHET**  
Chair

**ROBERT J. BENFATTO, JR., ESQ.**  
District Manager

February 13, 2014

Ken Knuckles, Vice-Chair  
NYC Department of City Planning  
22 Reade Street  
New York, NY 10007

**Re: Manhattan West Text Amendment  
N 140191 ZRM**

Dear Vice-Chair Knuckles:

Manhattan Community Board 4 (MCB4) is pleased to provide its recommendation on an application ("Application") by BOP West 31st Street LLC and Brookfield Properties W. 33rd Co., L.P. ("Applicant") to amend the Special Hudson Yards District of the New York City Zoning Resolution in order to facilitate development of 450 West 33rd Street in Subarea B1 and Ninth Avenue Rail Yard in Subarea B2.

The proposed text amendment would modify the requirements of the public access area and phasing of 450 West 33rd Street (450 Building) in Subarea B1 and Ninth Avenue Rail Yard in Subarea B2; and parking certification of Ninth Avenue Rail Yard in Subarea B2.

Although the Application for a zoning text amendment (N140191 ZRM) is not subject to the Uniform Land Use Review Procedure and did not require public hearing by Manhattan Community Board 4 (MCB4), public presentations on the proposed development and the required zoning actions were given to the Clinton/Hell's Kitchen Land Use And Zoning Committee on January 8, 2013 and, at the Board's request, to Manhattan Community Board 4 at its Full Board Meeting on February 5, 2014.

At the Full Board Meeting Manhattan Community Board 4 recommended approval with conditions.\*

**DEVELOPMENT SITE**

The Development Site consists of lots 50 and 60 in Block 729. The site occupies the entire Ninth Avenue block front (455 feet) and extends 478 feet west on 31st Street. Along 33rd Street, the Development Site also extends west a distance of 478 feet but it does not include the lot

containing 424 West 33rd Street.

The Development Site has an area of approximately 213,600 square feet. It contains no existing buildings but there is an active below-grade rail yard used primarily for Amtrak. The Applicant is currently constructing a platform to cover the rail yard and to enable the development of the proposed commercial and residential buildings. Along both West 33rd and West 31st Streets, public parking lots with a total capacity of approximately 450 spaces were in operation until recently.

The Applicant intends to develop the Development Site into a new commercial center, residential hub and extensive green space (to be known as Manhattan West) that links the midtown business district and Moynihan Station to the Eastern and Western Rail Yards and beyond to Hudson Park and Boulevard, the northern terminus of the High Line, and the new 7 Line extension.

Upon completion, the Development Site will contain approximately four million square of zoning floor area, with approximately 3.2 million square feet of commercial (office, hotel, and retail) uses and 800,000 square feet of residential uses. The first stage of the project is the construction of a platform about the rail yards which commenced in late 2012.

Completion of the entire project is expected in 2020.

### **Five Buildings**

It is currently anticipated that a total of five buildings will be constructed on the Development Site: two office buildings on the northeast and southeast corners, respectively, a residential building on the southwest portion and mixed-use buildings containing office, hotel, or retail uses on the northwest portion and to the north of the residential buildings.

The height and setback regulations in the Special Hudson Yard District allow a building to rise without setback to a height of 150 feet with a mandatory 15 foot setback above that height on a wide street and 20 feet on a narrow street. Alternatively, if a 15-foot setback at grade is provided on a narrow street, no setback is required on a narrow street.

According to the Applicant, the exact heights of the buildings are not known but it is expected that the two office buildings will be skyscrapers.

### **Public Space**

The proposed Development will provide over two acres of publicly accessible open space. According to the Applicant, the space will include "gardens, plazas, terraces," and passageways along with a deck over the existing Dyer Avenue between 31st and 33rd Streets "to create a seamless public open space in place of the open cut roadway." The open space will be "extensively landscaped with both trees and planted areas, (and) have fixed and moveable seating and tables and other amenities".

### **PROPOSED AMENDMENT**

It should be noted that the proposed text amendment is not required to implement the Applicant's

proposed development for the Development Site. They do not change the amount of floor area that can be developed nor do they modify any height and setback or other bulk requirement applicable to the Development site. Rather, they only seek to modify the nature of the public access areas to be provided on the Development Site and the parking requirements. The changes to the parking regulations are required to accommodate the size and complexity of the Development Site.

The central elements of the proposed revised public access plan are:

- A Central Plaza;
- An Entry Plaza at Ninth Avenue and West 33rd Street;
- A new Platform over Dyer Avenue;
- An Art Plaza at Ninth Avenue and West 31st Street; and,
- A Breezeway in the 450 Building running from Dyer Avenue to Tenth Avenue.

The following actions are required to implement the proposed project.

### **Zoning Text Amendments**

1. Amendment to Section 93-221 (Maximum Floor Area Ratio in the Farley Corridor Subdistrict B).

The proposed text amendment would prohibit a transfer of floor area between a zoning lot located north of West 31st Street in the Western Blocks Subarea B1 and a zoning lot located north of West 31st Street in the Central Blocks Subarea B2

2. Amendments to Section 93-70 (Public Access Requirements for Special Sites); Section 93-72 (Public Access Areas at 450 West 33rd Street; Section 93-73 (Public Access Areas on Ninth Avenue Rail Yard); 93-731 (Special Requirements for Zoning Lots with Floor Area Ratios Greater than 10).

The proposed text amendment would substitute a new, redesigned series of public access areas. The revised public access spaces for the Development Site will consist of the following elements:

- An **Entry Plaza** with a minimum size of 10,080 square feet and a minimum Ninth Avenue frontage of 168 feet located at the corner of Ninth Avenue and 33rd Street. The Entry Plaza will have a minimum of eight trees, 336 linear feet of seating including a minimum of 48 moveable chairs and 12 moveable tables and at least two planting bed with an aggregate minimum size of 800 square feet. The Entry Plaza will connect to the northern edge of the central plaza.
- The **Central Plaza** will be a minimum of between 80 to 100 feet wide and extend from Ninth Avenue to Dyer Avenue. The Central Plaza will include a landscaped area with at least 44 trees, large (minimum 7,500 square feet) planting beds as well as at least 725 linear feet of seating including a minimum of 120 moveable chairs and 30 moveable tables.
- An **Event Space** of no more than 4,500 square feet is proposed for the western part of the Central Plaza and will be used for both public events (such as concerts, performances, special

events, art exhibits, etc.) with up to 12 private events permitted upon approval by the Commission of a restrictive declaration. When no events are occurring, the Entry Plaza will contain a minimum 192 linear feet of seating including 96 moveable chairs and 24 moveable tables along with two moveable food kiosks during winter months.

- A **Pavilion**. For the 100 foot wide plaza alternative, the proposed text amendment allows for a one-story retail Pavilion to be constructed in the Central Plaza provided that the lot coverage of the Pavilion is at least 1,000 square feet and no more than 3,000 square feet. The text limits the width of the pavilion to 40 feet and 25 feet in height.

- An **Art Plaza** with a minimum of 7,480 square feet at the corner of Ninth Avenue and West 31st Street. The Art Plaza will contain one or more pieces of artwork approved by the Public Design Commission, 45 feet of linear seating along with at least four trees, and a planting bed of at least 410 square feet.

- A **Platform** ("Dyer Platform") covering the full width of Dyer Avenue from West 31st to West 33rd Street. The platform will be landscaped with trees (a minimum of 16) containing a planting bed of at least 1,500 square feet and have two eight-foot wide circulation paths or one 12-foot wide path extending for the full length of the Dyer Platform. A West 31st Street connector consisting of a stair and elevator will connect the Dyer Platform with the sidewalk at West 31st Street.

For the 450 Site, the proposed text provides that the following new public access areas must be constructed at the time that the Dyer Platform is substantially completed:

- A **Breezeway** (or passageway) in the 450 Building which connects the Dyer Platform to Tenth Avenue.

- A **Podium** with a minimum area of 1800 square feet at the corner of Tenth Avenue and West 31st Street which will connect with the breezeway and provide stairs and elevators to the sidewalk.

The proposed text requires that the seating, planting areas, trees, and stairs generally comply with the public plaza design standards. The public access areas are required to be open to the public from 6 a.m. to 1 a.m. The Applicant wants to close them between 1 a.m. and 6 a.m.

3. Section 93-821 (Permitted Parking when the Reservoir Surplus is Greater than or Equal to Zero) and 93-822 (Permitted Parking when a Reservoir Deficit Exists).

The proposed text amendment aligns the certification for the parking with the timing of the actual construction process for this large site. It only allows the Development Site to utilize the parking permitted by the Zoning Resolution and does not increase the number of parking spaces permitted on the Development Site or allowed in the Special Hudson Yards District.

## **Certifications**

### Certification under Section 93-122

Residential development is only permitted on the Development Site after 15 FAR of commercial uses have been developed. Section 93-122 provides that residential use on the Development Site requires a certification by the Chairperson of the City Planning Commission that the minimum amount of commercial floor area has been provided.

The Applicant is proposing to develop a residential building on the southwest portion of the Development Site that will contain 854,520 square feet of residential floor area (4 FAR).

### Certification under Section 93-122(b)

Section 93-122(b) provides that for phased developments, the Chairperson of the City Planning Commission may, by certification, permit one or more buildings containing residential uses to be developed before residential use is allowed under Section 93-221.

The Applicant intends to develop the Development Site in two phases and has submitted a plan describing the proposed phases.

## **MCB4 COMMENTS AND CONDITIONS**

MCB4 wishes to thank the Applicant for its consistent willingness to present at the Board's request its proposed plans to the community and the Board and to listen to their concerns.

MCB4 applauds the Applicant's desire to install works of art and produce performances for the public and welcomes the increased public space that the approval of these proposed text amendments will provide. The Board feels, however, that public space should not be expanded solely to provide access corridors to retail venues. And the Board fears that the Applicant's employment of stale, corporate-speak lacking in specificity ("open spaces ... to be designed in an integrated fashion, (to) greatly enhance the pedestrian environment") portends open space characteristic more of an upper Sixth Avenue "pedestrian environment" than of a public space worthy of the Applicant's and the community's aspirations.

The Board is not unmindful of the many, sometimes competing demands, public space design has to balance — maintenance and safety considerations, tree and plant requirements, pedestrian circulation, etc. But public space design should not be driven by commerce. It should be driven by a desire to create a respite *from* commerce, an inviting refuge from the hustle and bustle of the city.

The Winter Garden Atrium at Brookfield's World Financial Center is a beautiful and stirring example of what great public space can be. The Board urges the Applicant to create a similar great public space — alas, one without an atrium — in our neighborhood.

## **Conditions For MCB4 Approval**

MCB4 recommends approval of the proposed text amendment with the following conditions:

### **1. Affordable Units**

The Applicant plans to develop a residential building on the southwest portion of the Development Site with 800,000 square feet of residential uses. The Applicant is financing its residential development through the New York State Housing Financing Agency 80-20 Program.

Under this program, tax-exempt financing is available to buildings that provide 20% of the units in their building as affordable to low-income tenants. This affordability is restricted to the life of the bond, typically 30 years, and then those units can be put on the market at a non-restricted rent. Under the Inclusionary Housing program, a floor area bonus is received for making the affordable units permanently affordable.

But the project is located within the Special Hudson Yards District, Farley Corridor Subdistrict B, Central Blocks Subarea B2. In this subarea, an FAR of 4.0 is allowed for residential after a minimum amount of commercial has been built. According to ZR §93-23, Inclusionary Housing is not applicable to this Subarea.

While this building is not able to receive an Inclusionary Housing bonus, the developer has voluntarily agreed to make the 20% of the units in the building that are low-income, permanently affordable. MCB4 is pleased that the developer is taking this step as permanent affordability helps to sustain the economic diversity of the neighborhood.

*The Board requests that the developer embodies this commitment in a written letter to City Council. MCB4 also requests that the developer make a written commitment to Council that it will file a Lower Income Housing Plan with the NYC Department of Housing Preservation and Development by the end of the third quarter of 2014.*

*The Board strongly insists that the affordable units not be segregated, that is, that they be randomly distributed throughout all floors of the building.*

### **2. Finishes and Fixtures**

The Applicant has been unable to answer the Board's simple question: will the affordable units have finishes and fixtures of inferior quality to the market-rate units? We would hope that a company in possession of a respected national and international reputation would wish to treat all the renters in its residential units the same.

*The finishes and fixtures of the affordable units must be the same as the market-rate units.*

### **3. Residential Building Amenities**

*All amenities in the residential building will be open to all market-rate and affordable tenants. For fee-based amenities, there will be a reduced fee for the affordable tenants.*

### **4. An Open City**

The Board fully understands the necessity of closing the public access areas for emergencies or repairs. The Board does not believe, however, that outside those contingencies, open public access areas in our district in the heart of a 24-hour city should ever be closed to the people of New York.

The Applicant contends that Central Park is also closed from 1:00 a.m. until 6 a.m. The Board notes that Central Park is over 800 acres in size, contains over 25,000 trees and wooded areas, and is visited by 20 million people each year. And people have been known to walk or run in it after its closing hours. Despite that, it remains the safest precinct in Manhattan.

As far as we know, there are no wooded areas in the Applicant's proposed 87,000 square feet of public space.

*The public access areas should be open at all times.*

### **5. Event Space and Pavilion**

If a one-story retail Pavilion is constructed in the public space of the Central Plaza, and if it is a restaurant, it must be one with a price range which will not be prohibitive to majority of the public. And since a Pavilion would take otherwise freely accessible public space, the Board requests that the Applicant consider the possibility of having some of the Pavilion space available to the public even if it is not patronizing the restaurant or café.

*The Event Space will be used for private events not more than 12 days out of the year. All other events in the space will be non-commercial events open to the public and free of charge. MCB4 will participate in the event selection process.*

### **6. Construction Task Force**

The Applicant is already cooperating with an MCB4 Construction Task Force to deal with construction effects (noise, hours of construction, sanitation pickup, rat baiting, etc.) to mitigate the impact of construction on the surrounding community, including the Clinton School for Writers and Artists, the Church of St. Michael, the Webster apartments, the Fashion Institute of Technology (FIT), and nearby residential owners and tenants.

*The Applicant will continue to cooperate with the MCB4 Construction Task Force.*

### **7. West 31st and West 33rd Streets**

*The Applicant work with MCB4 and DOT to make West 31st and West 33rd Streets landscaped, inviting, and well lit.*

### **8. Continuing Community Cooperation**

The Board expects that the Applicant will continue to be a good neighbor and valuable member of the Hell's Kitchen community after the development is complete. The Board hopes the Applicant will look into the possibility of offering space in the development for community meetings.

*The applicant will work with MCB4 and the surrounding community to address and resolve*

*issues of light "bounce," noise issues, security, and other concerns which might arise after the development is completed.*

Thank you,



Christine Berthet  
Chair



Jean-Daniel Noland  
Chair, Clinton / Hell's Kitchen Land Use Committee

CC: Henry Caso, Sabrina Kanner, Philip Wharton – Brookfield Properties  
Peter Krokondelas, Kenneth Lowenstein – representatives for Brookfield Properties  
Brad Hoylman - NY State Senator  
Richard Gottfried - NY State Assembly Member  
Jerrold Nadler - Congress Member  
Gale Brewer - Manhattan Borough President  
Corey Johnson - NYC Council Member  
Frank Ruchala - Department of City Planning

\* Joe Restuccia, a member of MCB4 who serves on the Clinton/Hell's Kitchen Land Use Committee is Executive Director of the Clinton Housing Development Company, recused himself from voting.



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

**GALE A. BREWER**  
BOROUGH PRESIDENT

February 18, 2014

Vice Chair Kenneth J. Knuckles, Esq.  
City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: N 140191 ZRM and N 140192 ZCM – Manhattan West Text Amendment**

Dear Vice Chair Knuckles:

I write in support of Brookfield Office Properties' application for a zoning text amendment and Chair certifications to facilitate a modified development plan for the block bounded by West 31<sup>st</sup> and 33<sup>rd</sup> Streets between Ninth and Tenth Avenues. The affected area includes the development site (Block 729, Lots 50 and 60), a 213,600 square foot site containing an active, below-grade rail yard over which the applicant is currently constructing a platform. Additionally, the text amendment will affect the zoning lot to the immediate west, which contains a 14-story commercial building, 450 West 33<sup>rd</sup> Street (450 Site). The proposed text amendments will increase the amount of publicly accessible area on the site, and will provide for a pedestrian-accessible deck over Dyer Avenue.

The project site is located across Eighth Avenue from the future Moynihan Station and sits one block west of Penn Station. To the west, across Tenth Avenue, is the Eastern Rail Yards site of the Special Hudson Yards District, which will feature two large office towers and a shopping mall along Tenth Avenue. The remainder of the surrounding area is a mix of residential, commercial, retail, public facility, and transportation uses. The development site and the 450 Site are separated by Dyer Avenue, a below-grade access road to the Lincoln Tunnel. Dyer Avenue is owned by the applicant as part of the 450 Site but is subject to a 1954 easement by the Port Authority of New York and New Jersey.

Both the development site and the 450 Site are zoned C6-4 and are within the Farley Corridor Subdistrict of the Special Hudson Yards District. The Special Hudson Yards District was established in 2005 to extend the Midtown central business district by offering substantial new opportunities for office and hotel development, and to encourage new housing on the west side of Manhattan. The development site is within the Central Blocks Subarea B2 and the 450 Site is within the Central Blocks Subarea B1. These subareas permit a base floor area ratio ("FAR") of 12 and 10, respectively, which can be increased to a maximum of 19 and 21.6 through the

provision of affordable housing and other amenities. The districts allow buildings to rise without a setback to a height of 150 feet with a mandatory setback above that height of 15 feet on a wide street and 20 feet on a narrow street. The existing zoning requires a number of public access areas on the block, including a public plaza at Ninth Avenue and 33<sup>rd</sup> Street, a 60-foot wide covered pedestrian space along the continuation of 32<sup>nd</sup> Street from Ninth Avenue to Dyer Avenue, and a 20-foot wide through-block connection from 31<sup>st</sup> to 33<sup>rd</sup> Street along Dyer Avenue.

The applicant proposes to develop four buildings on the development site. Along Ninth Avenue will be two skyscraper office buildings, to the southwest will be a residential building, and to the northwest a mixed office and hotel building. Upon completion, the development site will contain approximately four million square feet of floor area, of which 3.2 million will be commercial space including office, hotel and retail uses. Notably all of these buildings, at their proposed size, would be allowed under the current zoning. The applicant proposes to construct a network of open-air public areas on the site. Along Ninth Avenue the applicant proposes two large plazas in front of the proposed office towers, the southern of which will include an art installation. Along the continuation of 32<sup>nd</sup> Street, the applicant proposes a central plaza between 80 and 100 feet wide that will include a landscaped area, large planters, and movable chairs and tables. Under one potential configuration of this space, a one-story retail pavilion would sit in the center of the central plaza. Also within the central plaza would sit an event space that would be closed no more than 12 times a year for private events. The applicant further proposes a landscaped plaza on a platform over Dyer Avenue that would connect the central plaza to the 450 Site and would connect 31<sup>st</sup> and 33<sup>rd</sup> Streets. Finally, the applicant proposes a breezeway through the southern end of the 450 Site that would connect the Dyer Avenue platform to Tenth Avenue.

In order to facilitate this site plan, the applicant seeks text amendments to the Special Hudson Yards District and Chair certifications to allow the residential component of the project to be developed first. First, the text of ZR § 93-221 will be amended to prohibit the transfer of floor area between the 450 Site and the development site. The text amendment will also alter the public access requirements to match the proposed set of public spaces. Previously, any development or enlargement of the 450 Site required the inclusion of a passageway through the building along the prolongation of 32<sup>nd</sup> Street. The text amendment changes this requirement, making it only necessary for enlargements over 10 FAR. The proposed text also modifies the phasing requirements that dictate which of these public spaces must be open based on the timing of construction of the buildings on the site. Finally, the text amendment will allow for existing parking to remain on the site, despite the fact the buildings to which this parking will be accessory will not be completed for more than two years, as is currently required. The zoning text allows 4 FAR of residential space on the site only if 15 FAR of commercial space has been developed. The applicant is applying for certifications to (1) confirm that the minimum amount of commercial square footage has been provided and (2) allow that the residential space be constructed first, as part of a phased development plan.

At a full board meeting on February 5, Manhattan Community Board 4 (CB4) approved a resolution recommending conditional approval of the application. The Board noted that it welcomes the addition of new public space to the district, but that “public space should not be expanded solely to provide access corridors to retail venues.” As such, the Board recommended

a number of changes to the proposed development. First the Board requests that the applicant agree to a restrictive declaration mandating the use of the Inclusionary Housing program. In addition, the Board requests that the Inclusionary Housing include a wide range of income levels, that the affordable units be distributed throughout the building, that the affordable tenants have access to all building amenities, and that the affordable units include all of the same finishes as the market rate units. Additionally, the Board recommends that the public access areas on the site be open 24-hours a day and that, other than the 12 private events a year, all events in the event space be free and open to the public. The Board also asks that the applicant work with the Board and the Department of Transportation to improve 31<sup>st</sup> and 33<sup>rd</sup> Streets. Finally, the Board requests that the applicant continue to work with the CB4 Construction Taskforce to address any issues that come up over the course of construction.

The new site plan proposed by the applicant represents a significant improvement over the previously mandated through-block atrium and Dyer Avenue bridge. The new public spaces will be a boon to the community, which is currently lacking in quality open spaces. The CB4 resolution, however, questions whether these new spaces will be truly public. The applicant is not building a park that will be managed by the public, but rather a series of open-air accessways to its large commercial, residential, and retail facilities. These access areas will serve these particular buildings, but will also serve as critical connections between Penn Station to the east and Hudson Yards to the west. Additionally, it is currently unknown what will occupy the western half of the Farley Post Office, but the space could accommodate a particularly intensive use, including potentially a new home for Madison Square Garden. As such, the CPC should ensure that the spaces that are being built can serve the diverse functions of circulation, passive recreation, and direct access to retail and commercial buildings. The applicant, who has a history of being unable to maintain control over a 24-hour, privately-owned public space, is proposing to close the spaces overnight. Much like city parks, the provision to post open and closed hours is appropriate, but does present some issues. Though the applicant currently plans to keep the plazas open to passing pedestrians during overnight hours, the City should include provisions in the text to prevent future owners of the space from changing these plans. These provisions should mandate that the spaces never be physically gated off. This could be especially important as the neighborhood changes to include more residential uses and late-night establishments like convenience stores and eating and drinking establishments.

The applicant is proposing to create a new retail area fronting on the proposed central plaza. The applicant proposes that this area will be similar in nature to the Winter Garden Atrium at the World Financial Center, which is a quality public space that includes many locally-owned restaurant options. This type of public space is a true amenity to the neighborhood. Though the applicant plans to build a high-quality, amenity-filled area, the proposed zoning text does not sufficiently mandate this type of space. The proposed text for ZR § 93-73(b)(2)(vi), for example, currently mandates that retail spaces have a minimum depth from the plaza of 30 feet. There is no provision for the maximum size of individual retail spaces, however, which leaves open the possibility of large chain stores and restaurants. Though the applicant does not currently plan for these types of retail uses, plans for the entire site are not fully developed at this time, and the public has no assurance that potential future owners of the space maintain the current plans of the applicant. Such assurances should be included in the proposed zoning text amendment. Additionally, the applicant's plans for retail spaces on the site all face inward,

towards the plaza. The applicant should ensure, as plans are further developed, that this does not leave the 31<sup>st</sup> and 33<sup>rd</sup> Street facades as purely commercial and residential lobbies. As these streets will provide the connections between Hudson Yards and the rest of Midtown, the applicant should make sure that they are quality pedestrian environments.

Finally, the Community Board asks that the applicant agree to a restrictive declaration mandating the use of the Inclusionary Housing program. Though the applicant has intentions of using this program, the inclusion of this commitment in a restrictive declaration will provide assurance that, down the road, these intentions will be honored. Further, the applicant will be building a significant amount of very profitable office space on this site and the CPC should explore whether this restrictive declaration, or the proposed text amendment, should include more ambitious affordable housing plans than the typical Inclusionary Housing project. These plans should include a wide range of income levels and affordable units representing more than 20 percent of the building's floor area.

The project being proposed, if altered to ensure true public access, retail diversity, and ambitious affordable housing goals, will be far superior to the project that could be built under the existing public access requirements. The proposed text amendments and certification to allow a phased development are thus appropriate and beneficial to the community. I look forward to continuing to work with the CPC and the applicant to ensure that the final design for the project meets the lofty goals of the applicant and the needs of a quickly-changing neighborhood.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style with a large initial "G" and "A".

Gale A. Brewer  
Manhattan Borough President