CITY PLANNING COMMISSION

October 19, 2016/Calendar No. 6 N 160337 ZRM

IN THE MATTER OF an application submitted by the NYC Department of Housing Preservation and Development and Lexington Gardens Owners, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Manhattan, Community District 11.

This application for an amendment to the Zoning Resolution was filed by the applicants on May 13, 2016, to create a Mandatory Inclusionary Housing program that would require, through zoning actions, a share of new housing to be permanently affordable.

RELATED ACTIONS

In addition to the proposed amendment to the Zoning Resolution (N 160337 ZRM), which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

C 160336 ZMM — Amendment to the Zoning Map, Section 6b, changing from R7-2/C1-5 and C8-4 districts to an R9/C2-4 district.

C 160338 ZSM — Special Permit pursuant to ZR Section 74-743(a)(2) to allow, within a Large Scale General Development, the location of a building without regard for applicable yard, court, and height regulations.

C 160339 ZSM — Special Permit pursuant to ZR Section 74-532 to waive, within a Large Scale General Development, 103 required off-street parking spaces for a new building and 25 previously required off-street parking spaces for an existing development on the zoning lot.

C 160340 HAM Designation of property as an Urban Development Action Area and Urban Development Action Area Project (UDAAP); and, pursuant to Section 197-c of the New York City Charter, disposition of such property to a developer selected by HPD.

BACKGROUND

A full background discussion and description of this application appears in the report for the related UDAAP action (C 160340 HAM).

ENVIRONMENTAL REVIEW

This application (N 160337 ZRM), in conjunction with the related actions (C 160336 ZMM, C 160338 ZSM, C 160339 ZSM, C 160340 HAM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 16HPD082M. The Lead Agency is the Department of Housing Preservation and Development.

After a study of the potential impacts of the proposed actions in the Environmental Assessment Statement (EAS), a Negative Declaration was issued on June 1, 2016. A Revised Negative Declaration was issued on June 2, 2016. The Revised Negative Declaration supersedes the Negative Declaration issued on June 1, 2016.

A summary of the environmental review appears in the report on the related application for the UDAAP action (C 160340 HAM).

PUBLIC REVIEW

This application (N 160337 ZRM) was referred for information and review in accordance with the procedures for non-ULURP matters on June 6, 2016, in conjunction with the related actions (C 160336 ZMM, C 160338 ZSM, C 160339 ZSM, and C 160340 HAM), which were certified

as complete by the Department of City Planning, and duly referred to Community Board 11 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 11 held a public hearing on this application (N 160337 ZRM) on July 19, 2016 and on that date, by a vote of 20 in favor, 13 in opposition, and 5 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application (N 160337 ZRM) was considered by the Manhattan Borough President, who issued a recommendation approving the application with conditions on September 16, 2016.

A summary of the Borough President's recommendations appears in the report for the related UDAAP action (C 160340 HAM).

City Planning Commission Public Hearing

On September 7, 2016 (Calendar No. 4), the City Planning Commission scheduled September 21, 2016, for a public hearing on this application (N 160337 ZRM) and related actions. The hearing was duly held on September 21, 2016 (Calendar No. 26), in conjunction with the applications for the related actions. There were a number of appearances, as described in the report for the related action (C 160340 HAM), and the hearing was closed.

CONSIDERATION

The Commission believes that the proposed amendment to the Zoning Rsolution, in conjunction with the related actions, is appropriate. A full consideration and analysis of the issues and the reasons for approving this application appear in the related report (C 160340 HAM).

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to 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 modified, is further amended as follows:

Matter in <u>underline</u> is new, to be added;
Matter in ~~strikeout~~ is to be deleted;
Matter within # # is defined in Section 12-10;
* * * indicates where unchanged text appears in the Zoning Resolution

* * *

APPENDIX F

Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas

* * *

MANHATTAN

* * *

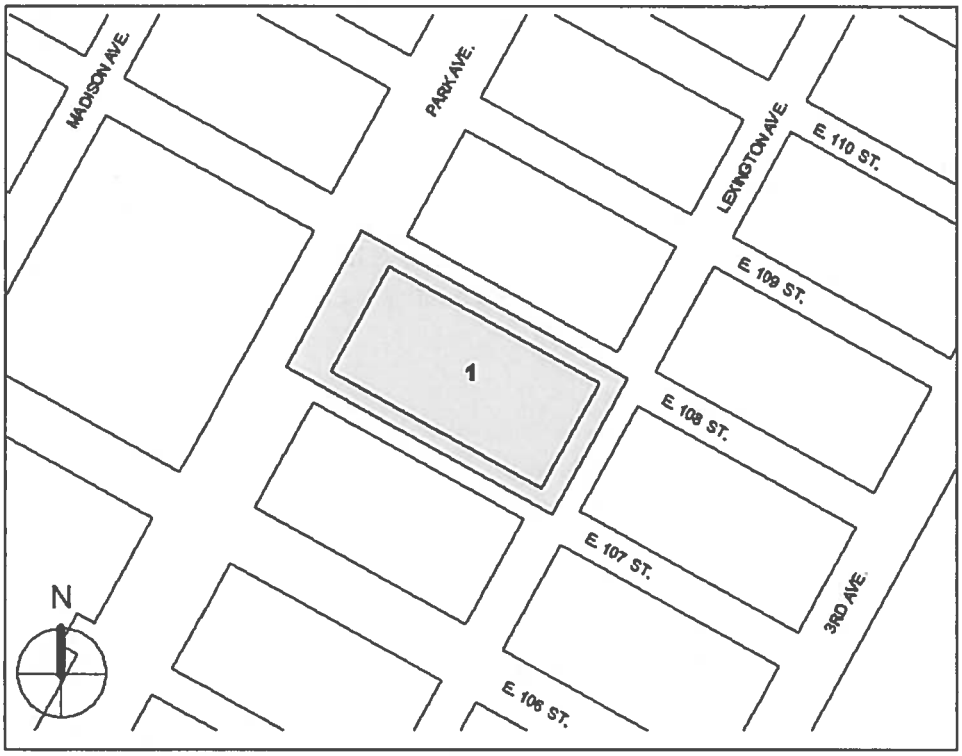
Manhattan Community Districts 9, 10 and 11

* * *

In th R9 District within the areas shown on the following Map 3:

Map 3. (date of adoption)

[PROPOSED MAP]



Mandatory Inclusionary Housing area see Section 23-154(d)(3)
Area **1** (date of adoption) — MIH Program Option 2

Portion of Community District 11, Manhattan

* * *

The above resolution (N 160337 ZRM), duly adopted by the City Planning Commission on October 19, 2016 (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
RAYANN BESSER, ALFRED C. CERULLO, III,
MICHELLE DE LA UZ, JOSEPH DOUEK,
RICHARD W. EADDY, HOPE KNIGHT,
ANNA HAYES LEVIN, ORLANDO MARÍN, LARISA ORTIZ, Commissioners

CHERYL COHEN EFFRON, Commissioner Recused

Borough President Recommendation

City Planning Commission

22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Applications: C 160336 ZMM, N 160337 ZRM, C 160338 ZSM, C 160339 ZSM, C 160340 HAM

Docket Description:

C 160336 ZMM

IN THE MATTER OF the application submitted by Lexington Gardens Owners LLC for an amendment of the Zoning Map, Section No. 3b:

1. eliminating from within an existing R7-2 District a C1-5 District bounded by a line 100 feet westerly of Lexington Avenue, East 108th Street, Lexington Avenue, and East 107th Street;
2. changing from an R7-2 District to an R9 District property bounded by a line 100 feet easterly of Park Avenue, East 108th Street, Lexington Avenue, and East 107th Street;
3. changing from a C8-4 District to an R9 District property bounded by the easterly boundary line of the New York City Central Railroad Right-of-Way, East 108th Street, a line 100 feet easterly of Park Avenue, and East 107th Street; and
4. establishing within the proposed R9 District a C2-4 District bounded by the easterly boundary line of the New York City Central Railroad Right-of-Way, East 108th Street, Lexington Avenue, and East 107th Street.

(See Continued)

COMMUNITY BOARD NO: 11 BOROUGH: Manhattan

RECOMMENDATION

- [ ] APPROVE
- [x] APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- [ ] DISAPPROVE
- [ ] DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

Paul A Brewer
BOROUGH PRESIDENT

September 16, 2016
DATE

C 160337 ZRM

IN THE MATTER OF the application submitted by Lexington Gardens Owners LLC, is seeking a zoning text amendment to Appendix F to apply the Mandatory Inclusionary Housing ("MIH") program to the Project Area. The Applicant is planning the Proposed Development with affordable housing that meets the Option 2 requirements. The Applicant requests that the City Planning Commission and City Council allow the Applicant to meet the MIH affordable housing requirement by complying with the Section 23-154(d)(3)(ii) requirements and providing no less that 30% of residential floor area to housing earning up to 80% of AMI.

C 160338 ZSM

IN THE MATTER OF an application submitted by Lexington Gardens Owners LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the height and setback requirements of Section 23-66 (Height and Setback Requirements for Quality Housing Buildings) and Section 35-65 (Height and Setback Requirements of Quality Housing Buildings), and the Street wall location requirements of Section 35-651 (Street Wall Location), in connection with a proposed mixed-use development on property bounded by Park Avenue, East 108th Street, Lexington Avenue, and East 107th Street (Block 16 35, Lots 1, 7, 16 & 17), in an R9/C2-4* District, within a Large-scale General Development, Borough of Manhattan, Community District 11

*Note: The site is proposed to be rezoned by changing existing R7-2, R7-2/C1-5 & C8-4 Districts to an R9/C2-4 District under a concurrent application (160336 ZMM).

C 160339 ZSM

IN THE MATTER OF an application submitted by Lexington Gardens Owners LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-532 of the Zoning Resolution to waive 103 required off-street parking spaces including 25 required off-street parking spaces for an existing development on the zoning lot, in connection with a proposed mixed-use development on property bounded by Park Avenue, East 108th Street, Lexington Avenue, and East 107th Street (Block 1635, Lots 1, 7, 16, & 17), in an R9/C2-4* District, within the Transit Zone, in a Large-Scale General Development, Borough of Manhattan, Community District 11.

C 160340 HAM

IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD)

1. pursuant to Article 160 of the General Municipal Law of New York State for;
    a. the designation of property located at 1461 Park Avenue (Block 1635, Lot 1) an Urban Development Action Area: and
    b. Urban Development Action Area Project for such area: and

2. pursuant to Section 197-c of the New York City Charter for the disposition of such a property to a developer to be selected by HPD:
    a. to facilitate an affordable housing development containing approximately 390 dwelling units, approximately 3,201 square feet of commercial space and approximately 38,053 square feet of community facility space in the Borough of Manhattan, Community District 11.

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

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
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Gale A. Brewer, Borough President

September 16, 2016

Recommendation on ULURP Application Nos. C 160336 ZMM, N 160337 ZRM, C 160338 ZSM, C 160339 ZSM, and C 160340 HAM - Lexington Gardens II
By New York City Department of Housing Preservation and Development

PROPOSED ACTIONS

The New York City Department of Housing Preservation and Development ("HPD" or "the Applicant") and its proposed development partner Lexington Gardens Owners LLC ("the Owner"), seek approval of multiple land use actions to facilitate the development of a mixed-use affordable housing project on the block bounded by Lexington Avenue, East 108th Street, Park Avenue, and East 107th Street (Block 1635, Lots 1, 7, 16, and 17) in the East Harlem neighborhood, Community Board 11 (CB 11) in the Borough of Manhattan.

The actions include a zoning map change to a high density residential district with a commercial overlay, a text amendment to apply the city's Mandatory Inclusionary Housing (MIH) program, a large-scale general development special permit for bulk modifications, a special permit to waive parking requirements, and the designation of city-owned property as an Urban Development Action Area (UDAA) and the approval of the project as an Urban Development Action Area Project (UDAAP).

Any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough. In evaluating the text amendment, this office must consider whether the amendment is appropriate and beneficial to the community and consistent with the goals of the MIH program.

Special Permit for a Large-Scale General Development

For a large scale general development, the City Planning Commission ("Commission" or "CPC") may, pursuant to ZR § 74-743 (a)(2) modify or waive the location of buildings without regard for the applicable yard, court, distance between buildings or height and setback regulations. In order to grant a special permit pursuant to this Section for any large-scale general development, the Commission shall find, pursuant to ZR § 74-743 (b), that:

(1) the distribution of floor area, open space, dwelling units, rooming units, and the location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the large-scale general development, the neighborhood and the City as a whole;

(2) the distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets; …
(4) considering the size of the proposed large-scale general development, the streets providing access to such large-scale general development will be adequate to handle traffic resulting therefrom; … and
(10) a declaration with regard to ownership requirements in paragraph (b) of the large-scale development definition in Section 12-10 has been filed with the Commission.[1]

Special Permit for the Waiver of Parking Requirements for accessory group parking facilities
The special permit pursuant to ZR § 74-532 requires the City Planning Commission, in conjunction with an application for a large-scale residential development or a large-scale general development in the transit zone seeking a bulk modification, to reduce or waive the number of required accessory residential off-street parking spaces, including any spaces previously required for an existing building on the zoning lot, provided that the Commission finds that:

(1) where the applicant is seeking reduction of parking spaces required by ZR §25-23 (Requirements Where Group Parking Facilities are Provided), such reduction will facilitate the creation or preservation of income-restricted housing units, in such large-scale residential development or large-scale general development. Such finding shall be made upon consultation with the Department of Housing Preservation and Development;
(2) the anticipated rates of automobile ownership of residents of such large-scale residential development or large-scale general development are minimal and that such reduction or waiver is warranted;
(3) such reduction of parking spaces will not have undue adverse impacts on the residents, businesses or community facilities in the surrounding area, including the availability of parking spaces for such uses; and
(4) such reduction of parking spaces will result in a better site plan.

In determining the amount of parking spaces to reduce or waive, the Commission may take into account current automobile ownership patterns for an existing building containing residents on the zoning lot, as applicable.

The Commission may prescribe additional conditions and safeguards to minimize adverse effects on the surrounding area.

Urban Development Action Area and Urban Development Action Area Project
City-owned properties that are no longer in use or are in deteriorated or deteriorating condition are eligible to be designated as UDAA and UDAAP, pursuant to the Urban Development Area Act (Article 16 of the State General Municipal Law). UDAA and UDAAP provide incentives for private entities to correct substandard, unsanitary and/or blighted conditions. According to New York State General Municipal Law § 694(4), to receive a UDAA and/or UDAAP designation the City Planning Commission and the City Council must find that:

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[1] Pursuant to ZR §74-743, special provisions for bulk modification, findings (a)(1), (b)(3), (b)(5), b(6), b(7), b(8) and b(9) are not applicable to this application.

(a) the present status of the area tends to impair or arrest the sound growth and development of the municipality;
(b) the financial aid in the form of tax incentives, if any, to be provided by the municipality pursuant to [the tax incentives provisions of the Urban Development Action Area Act]… is necessary to enable the project to be undertaken; and
(c) the area designation is consistent with the policy and purposes [of the Urban Development Action Area Act].

Section 197-c of the New York City Charter mandates that the disposition of all City-owned real property (other than the lease of office space) be subject to the Uniform Land Use Review Procedure ("ULURP"). While no specific findings must be met to make a property eligible for disposition under Section 197-c, Section 1802(6)(j) of the Charter limits HPD to the disposition of residential real property.

PROJECT DESCRIPTION

HPD and Lexington Gardens Owners seek to develop a building ranging in height from 8 to 15 stories and totaling 411,725 square feet in a Large-Scale General Development. The Development Site (Lots 1, 7, and 16) will contain approximately 370,470 square feet of residential floor area, 38,053 square feet of community facility floor area, 3,201 square feet of commercial floor area, and active and passive landscaped tenant recreation space. The proposed building will occupy three corners of the Development Site with 163 feet of frontage along 107th Street, 2-1 feet of frontage along Park Avenue between E 107th Street and E 108th Street, and 405 feet of frontage along Lexington Avenue. The development will be located on both private and public land, necessitating a disposition of city-owned land in order to make a cohesive development parcel. The project will produce approximately 390 affordable residential units, with the potential for more as the building is fully designed for construction.

Background

The Applicant for the project proposal is a partnership between Tahl-Propp Equities and L&M Developers Lexington Gardens Owners LLC. Both organizations are well known in East Harlem; L&M Developers have built a number of buildings in East Harlem and Tahl-Propp Equities owns a number of buildings in East Harlem and Greater Harlem.

In 1983, to facilitate the construction of Lexington Gardens, a Section 8 subsidized housing project, Lots 7, 16, and 17 were conveyed from HPD to Lexington Gardens Associates (LGA). Lexington Gardens was constructed on Lot 17 and consists of 108 residential units and a ground floor community facility in an 116,146 square foot building. Lot 16 was developed with 25 required off-street accessory parking spaces. Under the Land Disposition Agreement between the City and LGA, on-site affordable housing was required with a lifespan of 40 years from the issuance of the first Certificate of Occupancy, or until 2025. After the completion of Lots 16 and 17, LGA was acquired by Tahl-Propp Equities, LLC.

In June 2015, with a commitment made to CB 11, the developers refinanced Lexington Gardens to extend the affordability to 2050 by utilizing a 35-year FHA insured mortgage. In addition, the developers acquired a 20-year Housing Assistance Payment contract with HUD and received a

35-year Article XI tax exemption. To facilitate the refinancing of Lexington Gardens, the Project Area was combined into a single zoning lot. Beneficial ownership of this development is an entity affiliated with Tahl-Propp Equities.

East Harlem
The City of New York rezoned East Harlem from Lexington Avenue to the East River in 2003. The rezoning replaced height factor zoning districts with contextual zoning districts with greater heights on the avenues and lower heights midblock. The project site was not included in this rezoning.

As of 2010, East Harlem is comprised of approximately 120,500 residents with a median income of $31,079 (with a 5.5% margin of error). CB 11 is predominately comprised of multi-family residential and mixed residential/commercial properties (low to midrise multi-family walk-up and elevator). The Community District is generally bordered by 96th Street to the south, East 132nd Street to the north, Fifth Avenue to the east and the FDR Drive and Randall's Island Park/Wards Island Park to the west. Additionally, CB 11 encompasses Thomas Jefferson Park, Marcus Garvey Park and Harlem River Park.

East Harlem Neighborhood Plan
The East Harlem Neighborhood Plan ("EHNP" or "Plan") is a community-driven comprehensive roadmap for fostering smart growth in East Harlem. The process was led by City Council Speaker Mark-Vivierito, Manhattan Community Board 11, Community Voices Heard (CVH) and our office in partnership with a 21-member steering committee of local stakeholders. Developing the plan was a yearlong process with no less than eight large public meetings, approximately 40 policy discussions, numerous calls and meetings with city agencies and on the ground canvassing for person-to-person survey collection. The culmination of this work resulted in a final report with over 230 key objectives and recommendations to ensure a stable and inclusive future for the neighborhood with ideas of how we can achieve it[2].

The proposed project is located within the study boundaries of the EHNP but no specific zoning recommendations were made for this full block site. Instead the Plan acknowledged that this site is an active project within HPD's Manhattan pipeline. According to those recommendations, all future rezonings should be done in conjunction with each other to ensure that 50 percent of the new housing on private rezoned and public sites is affordable to a variety of low- and moderate-income levels. More specifically, the Plan recommends that 100 percent of units on public sites be permanently affordable, and that 20 percent of affordable units be set aside for those earning no higher than 30 percent of AMI.

Other goals of the Plan relevant to this project are that affordable housing projects include a community preference for East Harlem residents (Objective 2.10), and that minimum parking requirements be eliminated in rezonings (Objective 2.11). The Plan calls for permanent affordability when public sites are developed but in the project before us only 30 percent of the units -- those mandated under MIH – will be permanently affordable. Additionally, those units are set at no higher than 50% of AMI but the EHNP pushes for developments that include public sites to set aside at least 20% of units at no higher than 30% of AMI.

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[2] East Harlem Neighborhood Plan Report. February 2016. http://www.eastharlemplan.nyc/

Area Context
The neighborhood surrounding the project area is comprised of strong residential and commercial elements, as well as a variety of building typologies. To the south of the Project on Lexington Avenue are 6-story, mixed-use, multi-family buildings as well as buildings that were built as large, single family townhomes. To the north, on Lexington Avenue, are similar multi-family buildings. Directly to the north are public housing buildings that make up the Clinton NYCHA development. Two more buildings of the Clinton development are found along Park Avenue on either side of East 105th Street and to the east, and southeast of the project site, are Lehman Houses and Carver Houses, respectively.

A number of academic institutions border the Project Site. To the east, the Bilingual Bicultural School is located between 3rd and 2nd Avenues on 109th Street, and the Tag Young Scholars School is located between 3rd and 2ndAvenues on 109th Street. To the west, Central Park East High School and Junior High School 13 Jackie Robinson is located between 106th and 108th Streets on Madison Avenue; the Young Women Leadership School of East Harlem is located between Park Avenue and Lexington Avenue on 106th Street; Cristo Rey New York High School is located between Park and Lexington Avenues on 106th Street; and, the Heritage School is located between 105th and 106th Streets on Lexington Avenue.

In 1961, the area was predominantly zoned as R7-2 which has a maximum residential FAR of 4.0 and a maximum community facility FAR of 6.5. The commercial zoning compliments the medium density zoning with a C1-5 overlay district (maximum commercial FAR of 2.0), along Lexington Avenue until East 111th Street. The only commercial activity that was permitted on Park Avenue was four blocks of C8-4 zoning (maximum commercial FAR of 5.0, maximum community facility FAR of 6.5) from East 106th Street to East 110th Street for automotive use. As a result, Park Avenue is a very infrequently trafficked pedestrian corridor when compared to Madison Avenue to the west and Lexington Avenue to the east. The Fifth Avenue corridor is zoned R9 (maximum residential FAR of 8.0, maximum community facility FAR of 10.0) along Central Park from East 110th Street down to East 96th Street.

The central public transportation point is the Lexington Avenue No. 6 subway line. The project site is located two blocks south of the 110th Street stop and four blocks north of the 103rd Street stop. The project site is also accessible by the southbound M101, M102 and M103 bus lines on Lexington Avenue and 109th Street, the northbound M101, M102 and M103 on Third Avenue and 109th Street, and the crosstown M106 on 106th Street. The neighborhood is also now within the Citibike catchment area after the service expanded in the summer of 2016 up to 110th street.

The project site is serviced by the NYPD 23rd Precinct, located on 102nd Street between Lexington and 3rd Avenues. The project site is also located five blocks north of FDNY Engine 53 and three blocks south of FDNY Engine 91.

Project Area and Project Site
The proposed project area is comprised of a surface parking area and an existing residential building, Lexington Gardens. The surface parking area is equipped to hold approximately 88 vehicles and the Park Avenue side of the parking area , is designated for NYPD and HPD authorized vehicles only. In addition to normal fleet parking, the NYPD uses this space for

authorized trucks, two sea storage containers, and two light towers. Along 108th Street between Park and Lexington Avenues, vehicles are parked on both the street and sidewalk surface. The existing Lexington Gardens is a 116,146 square foot building is comprised of 108 residential units, a ground floor community facility Just north of this building are 25 off-street parking spaces.

The Project Area is currently zoned C8-4 along Park Avenue, R7-2 covers the entire remainder of the lot including C1-5 overlay along Lexington Avenue. The C8-4 zoning district permits Use Groups 4 through 14 and 16 and has a maximum FAR of 6.5 for a community facility and a maximum FAR of 5.0 for commercial; residential use is not permitted. This zoning district requires a 20 foot rear yard, maximum street wall height of 85 feet and a setback of 15 feet on wide streets. The R7-2 residential district with a C1-5 overlay permits Use Groups 1 through 6 and a maximum FAR of 3.6 for residential, maximum FAR of 2.0 for community facility and a maximum FAR of 6.5 for commercial use. The required rear yard is 30 feet, the maximum front wall height ranges 65 to 75 feet, and the building height is 75 to 80 feet.

Proposed Project

The principal goal of this project is to create a significant source of new, affordable housing units for the East Harlem neighborhood. Assuming that community preference will still be in effect when this building receives its Certificate of Occupancy, at least 195 units will be set aside for the residents of Community District 11. All of the units will be subject to the affordable housing lottery with the maximum income capped at 165% of AMI. The final number of units that will fall into each affordability level and under permanent affordability through MIH will likely change. The proposed breakdown is 20% of the units at up to 165% AMI, 30% of the units at up to 100% AMI and 50% of the units at up to 50% AMI. The MIH requirements would preserve 30% of the units that are currently under the "up to 50% AMI" band into perpetuity. The other 70% of the affordable units will only remain affordable under the terms and timeline of the regulatory agreement that would be required after the approval of this ULURP application.

A secondary goal of this project is achieved by the building itself. By replacing vast amounts of surface parking with active ground floor uses, and a well-designed, well lit building, this project will seek to rehabilitate the blighted portions of Block 1635. The project intends to waive zoning-related requirements for accessory surface parking spaces for the original Lexington Gardens development and replace the remaining 25 parking spaces that are required by its Federal Housing and Urban Development ("HUD") Regulatory Agreement. Those spaces will be housed within a parking garage with an entrance off of Park Avenue. A second garage will replace a municipal surface parking lot on Park Avenue that served NYPD vehicles and HPD code enforcement vehicles. This garage will allow the NYPD to maintain its fleet in nearly the same location. The garage will be accessed by an entrance on East 107th Street, across the street from existing NYPD offices. The Park Avenue side would be the most greatly improved frontage for this project. The NYPD currently uses the sidewalk for parking official vehicles and equipment, creating an unsafe environment both in terms of perception of danger and by forcing pedestrians to enter the roadway to traverse the east side of Park Avenue. The NYPD garage will eliminate sidewalk parking on this block front as an acceptable use of public space. The development will also provide a large amount of community facility space that is accessed from

and fronts Park Avenue, creating essential human activity in an area that at present actively deters it.

The interior of the project is notable because of the nature of the existing Lexington Gardens development, which has an "L" shape along the Lexington Avenue and East 107th Street frontage. The proposed Lexington Gardens II project will create an inverse "L" shape from the existing building and will create an interior courtyard for both buildings. Both developments will see a modern open space format. The residents of Lexington Gardens will receive a "backyard" area that they do not currently enjoy with the north side of the building fronting a surface parking lot. This will allow for improved passive and active recreation opportunities within both developments. The C2-4 overlay will permit the previously disallowed "Physical Culture Establishments" to occur as-of-right. The planned commercial space on Lexington Avenue will be large enough to house a gym-style facility, which is not currently available in the area.

Proposed Actions
The proposed affordable housing development will create 390 units adjacent to an older affordable housing project that preceded the current proposal by over three decades. The project team proposes to redevelop the property as a Large-scale General Development to facilitate the waiving of bulk, height and setback, street wall, and parking requirements. The Lexington Gardens II project requires the approval of five actions to allow construction to commence as currently envisioned.

*Zoning Map Change (*C 160336 ZMM)
The applicants propose a zoning map change to Zoning Sectional Map No. 3b from an existing R7-2 district with a partial C1-5 commercial overlay along Lexington Avenue and a C8-4 district along Park Avenue to an R9 district with a C2-4 overlay (maximum commercial FAR of 2) over the entirety of the block. The applicant argues that the increased residential density that is permitted by the change from R7-2 and C8-4 to R9, an increase from 4.0 residential FAR to 8.0, will allow for a project that maximizes both the available land resources as well as the financial resources that can be leveraged by the project team to generate nearly 400 affordable units. Upzoning the block will also allow the City Planning Commission to apply the Mandatory Inclusionary Housing (MIH) requirements to the project, which are elaborated in the following action, N 160337 ZRM. The change will also permit a higher community facility FAR across the site, increasing from 6.5 to 10 FAR.

The expansion of the commercial overlay from the typical avenue mapping along Lexington Avenue to the entirety of Block 1883 will allow for more flexibility for ground floor use in both the proposed Lexington Gardens II project as well as the existing Lexington Gardens development. Currently, there is no commercial overlay to the west of the existing overlay on the eastern portion of Lexington Avenue. Park Avenue is a wide street that is bisected by an elevated train viaduct that runs from East 97th Street to the Metro North station on East 125th Street and then veers over into the Bronx, crossing the Harlem River at East 132nd Street. The zoning map change from the commercial districts of C1-5 and C8-4 to a C2-4 overlay will also facilitate the inclusion of two parking garages on-site to accommodate the displacement of HPD operated off-street parking spaces.

Zoning Text Amendment (N 160337 ZRM)
Complementary to the zoning map amendment allowing for an increase to the permitted residential floor area ratio, a zoning text amendment to modify Appendix F of the Zoning Resolution to apply Mandatory Inclusionary Housing requirements to the site is required. The applicant is also requesting that the City Planning Commission and City Council apply Option 2 requirements to the site. This would require that the development dedicate no less than 30% of the residential floor area to households earning up to 80% Area Median Income ("AMI".)

Large-scale General Development (C 160338 ZSM)
In order to facilitate the construction of the mixed-used development, a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the height and setback requirements of Section 23-66 (Height and Setback Requirements for Quality Housing Buildings) and Section 35-65 (Height and Setback Requirements of Quality Housing Buildings), and the street wall location requirements of Section 35-651 (Street Wall Location) is necessary. By permitting the building height to exceed the limitations of the R9 District 60 foot sky exposure plane, the development team can arrange the bulk of the building to accommodate more floor area to be used as affordable housing. The street wall modifications will allow the applicant to set back sections of the street wall from the requirements in the Quality Housing rules to allow the flexibility to break up the street wall along East 107th and East 108th streets. By relaxing these rules, the building will not have a solid 400 feet of street wall massing and will instead feature an "undulating" street wall to give the impression of multiple buildings and allow for more visual interest.

Special Permit for the Waiver of Parking Requirements (C 160339 ZSM)
The applicant is seeking a special permit pursuant to Section 74-532 of the Zoning Resolution to modify required off-street parking spaces. The current portion of residential units in the proposed project that are above the 80% AMI threshold to qualify as "Income Restricted" will generate approximately 78 accessory parking spaces. When combined with the 25 units of the original Lexington Gardens project's accessory parking spaces that are required by an existing regulatory agreement, the project proposes a reduction of the 103 required residential parking spaces. Instead, the Project Development would accommodate some of the off-street parking spaces used by HPD that would be displaced by developing two parking garages with a total of 57 parking spaces.

Urban Development Action Area and Urban Development Action Area Project (C 160340 HAM)
HPD seeks designation of City-owned property as an Urban Development Action Area ("UDAA") and approval for the project as an Urban Development Action Area Project ("UDAAP"). In addition, HPD seeks approval for the disposition of said property to Lexington Gardens Owners LLC, which will also choose the managing agent of the facility. At the time of writing, the Owner of Lexington Gardens II intends to use Manhattan North Management.

COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting On July 19th, 2016, CB 11 passed resolutions approving the proposed amendment to the zoning map, a special permit to modify height and setback, a special permit to

waive required off-street parking, and the designation of the Project Site as an Urban Development Action Area. In addition, the Department of Housing Preservation and Development team submitted an application to facilitate the Project Site as an affordable housing development containing 390 dwelling units, approximately 3,201 sq. ft. of commercial space and approximately 38,053 sq. ft. of community facility space. The Board voted 20 in favor, 13 in opposition and 5 abstentions.

Previous to the Full Board vote, on July 13th, 2016, the CB 11 Land Use Committee heard from L&M Properties LLC and Tahl-Propp Equities, following up on concerns regarding the lack of locally hired sub-contractors and construction workers, and building violations at their properties.. L&M Properties proposed a 10 percent goal for locally hired sub-contractors and construction workers. Currently, only 1 percent of workers are hired from CB 11. Tahl-Propp Equities reported that they are working to reduce the number of violations per building. During deliberation, members at the Land Use Committee also voiced concerns over the accuracy of the Environment Assessment Statement's ("EAS") open school seat analysis.

BOROUGH PRESIDENT COMMENTS

As proposed, Lexington Gardens II will create affordable housing for neighborhood residents for years to come. However, as I have repeatedly said previously for these types of projects, I am unsatisfied by the non-permanence of the majority of the affordable housing units that fall outside of the MIH requirements. While the terms of the financing may be counted in decades as opposed to single years, it is not an unreasonable assumption that a young family that moves into the recently completed building will see the affordability of their home expire just as they begin winding down their working careers and years working to improve their communities.

The proposed project will produce approximately 390 affordable residential units, with the potential for more when the design is finalized. According to the East Harlem Neighborhood Plan's affordable housing analysis, in the year in which this project is to be completed, Community District 11 will lose an estimated 280 units of affordable housing. The project would satisfy a major affordable housing objective of the Plan by producing a number of affordable units that would more than offset this loss. The applicant has committed to community preference for East Harlem residents which is also included as a goal in the Plan.

However, the Applicant's proposal includes the limited longevity of affordability for 70% of their housing stock and the inability to reach the deeper depth of affordability called for in the Plan's recommendations. Real property is an enduring asset with permanent value for the owner. As the City moves to shrink its portfolio of unused or underutilized land, it must do so with the intention of preserving the value of that same land to the residents of the city in perpetuity. Where requirements for permanent affordability of all units in a project built on formerly city-owned land are not possible, the city must explore mechanisms to achieve "practical permanence" as a tool for future development of projects where the City has contributed land. MIH requirements are an effective way to assure permanent affordability in private projects, but developments that use City land must be held to a higher standard. All dispositions of city-owned land have the option of attaching a restrictive covenant to the deed that establishes additional

requirements to the property owner. The city must take the concept of "practical permanence" beyond balloon payments and establish a public process that occurs at or near the expiration of the public financing and regulatory agreement to ensure true and permanent oversight of our city assets, in an effort to maintain the affordability of as close to all of the units as possible to justify the permanent disposition of city land.

In addition, when the city disposes of a permanent asset such as land there must be a means of assuring that the asset and its inhabitants will be provided a safe, well-maintained environment, in addition to its being affordable. I have concerns in the case of the current management team. In conjunction with a 2008 proposed disposition of city land to Tahl-Propp, research by elected officials and tenant advocates pointed to deteriorating conditions in many of the buildings acquired by Tahl-Propp.[3] In 2010, Tenants at 1890 Adam Clayton Powell Jr. Blvd made claims of being harassed through repeated loss of heat and hot water, among other problems. HPD ultimately took Tahl-Propp to court over these allegations[4]. Tenants at 100 West 119th Street received a $3 million settlement in July 2011 after residents claimed the building had exposed pipes, cracked hardwood floors, exposed structural beams and other problems[5]. In addition, numerous housing advocates have identified Tahl-Propp as a problem landlord and a group was formed, Harlem Tenants Against Tahl-Propp, expressly to shed light on violations in their portfolio.

Where there is a cloud over the future recipient of the property, there needs to be a mechanism that runs with the land to provide oversight and protect the residents over the life of this building. Otherwise, the city is sacrificing quality and viability of the affordable units we are all dedicated to seeing last a lifetime.

HPD has represented to me that it is working with Tahl-Propp to clear building violations in its portfolio and has encouraged them to provide progress reports to CB 11. However, this alone is insufficient. HPD must also give the future residents of the approximately 390 affordable units recourse to the city and their elected officials in perpetuity. At a minimum, such a process should involve mandated periodic updates to the community on the clearing of violations and a formalized process for redress of tenant complaints. Tenants need to be protected in a manner that will extend beyond the timeframe of our current administration.

Ultimately, this project will achieve the goals of the UDAAP in taking a blighted parcel of land and converting it into an anchor of the community in terms of housing, safety, service, and economic opportunity. Safety is improved by maintaining the NYPD presence in the general area, but without the vehicles creating a safety condition when spilling over onto the sidewalk and impeding Vision Zero goals by forcing pedestrians into the roadway around the parked vehicles. Health outcomes may improve given the new passive and active recreation spaces for both buildings on the block and by allowing physical culture establishments within a more

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[3] Serrano, Jose. *Serrano Fights Against Predatory Equity In East Harlem*. October 23, 2008. https://www.nysenate.gov/newsroom/in-the-news/jos%C3%A9-m-serrano/serrano-fights-against-predatory-equity-east-harlem

[4] Jones, David. *City takes Tahl to court in Harlem heat dispute*. January 19, 2011. http://therealdeal.com/2011/01/19/city-takes-tahl-propp-to-court-in-harlem-heat-dispute/

[5] Ibid.

appropriate C2-4 commercial overlay. The building will provide better fenestration, street lighting, and far more street activity on all sides of the block, The street environment along Park Avenue will be the biggest benefactor and with hope, this development will be an inspiration to both city planners and developers to consider Park Avenue as a place where people may want to be instead of the equivalent of a underused back alley.

The special permits to waive regulations for bulk, building setbacks, street wall, and parking waivers are all appropriate as they are necessary to maximize the amount of affordable housing without creating subpar design conditions at the ground floor of the building. The building is well served by transit and the likelihood of a high parking demand for residents is low. The desire to create an "undulating" street wall is thoughtful and should be more often pursued by larger developments that stretch over hundreds of feet along a block front. The development team has been very responsive to comments from my office and to the CB 11 Land Use Committee over the last two years. The proposed project design is the result of taking that commentary into consideration.

Through an increase in allowed residential density, the City Planning Commission will invoke MIH requirements. This is the basis of the new reality of how the City will address the affordable housing crisis through the land use considerations. While I often have concerns over height and density increases and do not believe in a zero sum game between affordable housing and neighborhood context, this neighborhood has undergone a robust pre-ULURP planning process, the East Harlem Neighborhood Plan, which espouses a balanced set of principles for these very concerns.

The increase in density from R7-2 to R9 is appropriate at this location since two wide streets bound the site, and the scale of the project will allow for a greater number of permanently affordable units through MIH. Per the East Harlem Neighborhood Plan, this neighborhood and Community Board 11 has prioritized the provision of affordable housing, especially the provision of 100 percent affordable housing, over concerns with height, for significant portions of the district when those sites border wide streets. In addition, in to prioritizing affordable housing over height comes a strong desire to eliminate parking in favor of additional affordable units or more deeply affordable units. The scale of the development site also creates other community benefits as described above. The city is still growing in population and that growth is being reflected in rising demand to live in the Borough of Manhattan. While there are concerns over building management, the greater need to house New Yorkers means that we must work with the city to demand better tools to address the need for not just affordable units but those that will be well-maintained for the lifetime of that affordability; and every effort must be made to ensure that in the case of former city-owned land, that timespan comes as close to perpetuity as possible.

BOROUGH PRESIDENT RECOMMENDATION

Therefore, the Manhattan Borough President recommends <u>approval with conditions</u> of ULURP Application Nos. C 160336 ZMM, N 160337 ZRM, C 160338 ZSM, C 160 339 ZSM, and C 160340 HAM provided that HPD and the City:

1. **Creates an enduring oversight mechanism to review and evaluate the management of the Lexington Gardens and Lexington Gardens II developments with requirements that the acting management company presents to the appropriate committee of Community Board 11, the Manhattan Borough President, and the local City Councilmember; and**
2. **Studies how to enact "practical permanence" by using restrictive covenants on the deed to compel property owners to extend the duration of affordability and regulatory requirements.**

Gale A. Brewer

Gale A. Brewer
Manhattan Borough President

NYCPLANNING
DEPARTMENT OF CITY PLANNING CITY OF NEW YORK

Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application # **C 160336 ZMM**	Project Name: **Lexington Gardens II**
CEQR Number: 16HPD082M	Borough(s): Manhattan Community District Number(s): 11

Please use the above application number on all correspondence concerning this application

SUBMISSION INSTRUCTIONS

1. Complete this form and return to the Department of City Planning by one of the following options:
   - **EMAIL (recommended)**: Send email to CalendarOffice@planning.nyc.gov and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
   - **MAIL:** Calendar Information Office, City Planning Commission, 120 Broadway, 31st Floor, New York, NY 10271
   - **FAX**: to (212) 720-3488 and note "Attention of the Calendar Office"
2. Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER OF an application submitted by Lexington Gardens Owners LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 3b:

1. eliminating from within an existing R7-2 District a C1-5 District bounded by a line 100 feet westerly of Lexington Avenue, East 108th Street, Lexington Avenue, and East 107th Street;

2. changing from an R7-2 District to an R9 District property bounded by a line 100 feet easterly of Park Avenue, East 108th Street, Lexington Avenue, and East 107th Street;

3. changing from a C8-4 District to an R9 District property bounded by the easterly boundary line of the New York Central Railroad Right-of-Way, East 108th Street, a line 100 feet easterly of Park Avenue, and East 107th Street; and

4. establishing within the proposed R9 District a C2-4 District bounded by the easterly boundary line of the New York Central Railroad Right-of-Way, East 108th Street, Lexington Avenue, and East 107th Street,

Borough of Manhattan, Community District 11, as shown on a diagram (for illustrative purposes only) dated June 6, 2016

Applicant(s):	Applicant's Representative:
Lexington Gardens Owners LLC c/o L&M Development Partners Inc. 419 Park Avenue South, 18th Floor New York, NY 10016	Veanda Simmons NYC Department of Housing Preservation & Development 100 Gold Street, NY 10038

Recommendation submitted by:
Manhattan Community Board 11

Date of public hearing: July 19, 2016 Location: Dream Charter School, 1991 Second Avenue, NY NY

Was a quorum present? YES ☒ NO ☐ *A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.*

Date of Vote: July 19, 2016 Location: Dream Charter School, 1991 Second Avenue, NY NY

RECOMMENDATION

☒ Approve ☐ Approve With Modifications/Conditions
☐ Disapprove ☐ Disapprove With Modifications/Conditions

Please attach any further explanation of the recommendation on additional sheets, as necessary.

Voting

In Favor: 20 # Against: 13 # Abstaining: 5 Total members appointed to the board: **48**

Name of CB/BB officer completing this form	*Title*	*Date*
Angel D. Mescain	District Manager	8/17/2016