



IN THE MATTER OF an application submitted by the NYC Educational Construction Fund and AvalonBay Communities, Inc. pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-75 of the Zoning Resolution to modify the height and setback requirements of Sections 23-64 (Basic Height and Setback Requirements), 23-65 (Tower Regulations), 23-651 (Tower-on-a-base) and 24-50 (Height and Setback Regulations), and to modify the requirements of Section 24-11 (Maximum Floor Area and Percentage of Lot Coverage), in connection with a proposed mixed use¹ development, on property bounded by East 97th Street, First Avenue, East 96th Street and Second Avenue (Block 1668, Lot 1), in R10 and C2-8 Districts, Borough of Manhattan, Community District 11.

This application for the grant of a special permit pursuant to Section ZR 74-75 of the Zoning Resolution was filed by the applicants on January 6, 2017, to facilitate a new mixed use² development on an entire city block with residential, commercial and community facility uses. The project is located in East Harlem, Manhattan Community District 11.

RELATED ACTIONS

In addition to the special permit (C 170228 ZSM) that 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 170226 ZMM Zoning map amendment to change existing R7-2 and R10A Districts to a C2-8 and an R10 District.

C 170229 ZSM Special permit to waive accessory off-street parking requirements for a mixed use³ development in the transit zone.

N 170227 ZRM Zoning text amendment to modify lot coverage requirements and to designate a Mandatory Inclusionary Housing (MIH) area.

¹ The hyphen was removed from “mixed use”.

² The hyphen was removed from “mixed use”.

³ The description of the development changed from “large scale general” to “mixed use”.

BACKGROUND

The NYC Educational Construction Fund (“ECF”) and AvalonBay Communities request the grant of a special permit pursuant Section 74-75 of the Zoning Resolution to modify requirements related to height and setback, tower location and coverage and location of floor area. The special permit, along with the related actions, would facilitate the development of a new mixed-use building with residential, commercial, and community facility uses and open space on the block bounded by East 96th Street, East 97th Street, Second Avenue and First Avenue (Block 1668, Lot 1) in the East Harlem neighborhood of Community District 11, Manhattan.

Currently, the northern portion of the block is within an R7-2 zoning district, and the southern portion is within an R10A district that was established pursuant to a 1990 rezoning (C 900404 ZMM). Cooperative Tech (Co-op Tech), a Department of Education (DOE) high school, is on the eastern end of the block, and the Marx Brothers Playground, jointly-operated by the DOE and the Department of Parks and Recreation (DPR), is on the western end. Co-op Tech, built in 1941, is a vocational school that provides workshops and training for a variety of trades such as auto, welding, electrical, carpentry and plumbing. The Marx Brothers Playground opened as a jointly-operated playground (JOP) in 1941. During school hours, the playground is used by the school or for other educational purposes, and during non-school hours, the playground is accessible to the surrounding community.

The Co-op Tech building, now over 75 years old, is structurally inadequate to accommodate the number of students seeking certificates. Co-op Tech is a Career and Technical Education (CTE) school where students, citywide, from other DOE schools, are accepted to specific trade programs that prepare them for both college and the workforce. Despite the growing demand for these vocational skills, there is only one classroom allocated to each of the trade workshops offered. As a result, there is a long waiting list to enter the program. The existing Co-op Tech building is a reinforced concrete structure with block interior walls. The structure does not allow for the expansion of trade construction through an enlargement of existing shops or the construction of new shop spaces.

In 2012, ECF issued an RFP for a mixed-use residential and school building to replace Co-op Tech. At the end of the RFP process, in 2013, ECF selected AvalonBay to develop the project. Following the selection of AvalonBay, significant changes were made to the requested project, including the need for affordable units required pursuant to the MIH program, which were adopted subsequent to the RFP process. The project was also expanded to include the co-location of two additional schools, Park East High School and Heritage High School, which are both operating over capacity. Park East High School, at East 105th Street, between Second and Third avenues, occupies a DOE building that has the capacity for 320 students and is currently serving 413 students in 21 classrooms. Heritage High School, at Lexington Avenue between East 105th and 106th Streets, is located within the Julia de Burgos Cultural Center and unable to expand. The school only has 10 classrooms for the 350 students that attend the school. Both schools are located in spaces that cannot accommodate their current programmatic needs, with students in classrooms that have been repurposed from other uses such as locker rooms, cafeterias and nurses' offices. In consultation with DPR, the developers were also asked to move the Marx Brothers Playground away from Second Avenue to the midblock.

To fulfill the RFP requirements, the applicant is proposing a mixed-use development with residential, commercial and community facility uses on the site. The proposed development would include a 68-story building with residential, commercial and community facility uses. The residential portion of the development would be along the Second Avenue frontage, with ground retail uses and the new Co-op Tech High School located on north east corner of Second Avenue and East 97th Street. The First Avenue frontage would be developed with the Park East and Heritage High Schools. Between the two developments, the Marx Brothers Playground would be redeveloped and relocated to the midblock with the same amount of square footage as it currently occupies. In total, the block would be developed with approximately 1,270,600 square feet of floor area and have a floor area ratio (FAR) of 9.68.

The mixed-use building along Second Avenue would have approximately 1,140,000 square feet of floor area and rise to a height of approximately 760 feet. It would have nine-stories and rise to approximately 185 feet, along the entire 200-foot frontage of Second Avenue, and extend along both East 96th and East 97th Streets for 220 feet. The building would include approximately

990,000 square feet of residential floor area (between 1,100 and 1,200 dwelling units), and approximately 20,000 square feet of commercial floor area. Co-op Tech would occupy about 130,000 square feet. In accordance with the requirements of Option 1 of the MIH program, 25 percent of the residential floor area (approximately 24,500 square feet) would be affordable (between 330 and 360 units).

Park East and Heritage High Schools would be constructed on the eastern portion of the site along First Avenue in one nine-story building with approximately 130,000 square feet of floor area. To accommodate the programmatic needs of the new high schools, the proposed building would rise without setback to a total height of 185 feet. The four lower floors of the proposed building would be occupied by large spaces, including a cafeteria, a gymnasium, and an auditorium that would be shared by both schools. The top four floors would be dedicated to the two schools, with each school occupying classrooms on two floors. Student arriving at each school would enter the building from different streets; with Park East students entering from East 96th Street and Heritage students entering from East 97th Street.

As part of the proposed project, the Marx Brothers Playground would be relocated to the middle of the block and renovated. Among the proposed upgrades to the playground are a new artificial turf field, separate play areas for children aged two through five and for children aged five through twelve, shaded picnic areas, better lighting and a renovated comfort station. Additionally, the entire playground would be elevated out of the 100-year floodplain.

The blocks immediately west of the project area are predominantly developed with ground floor retail along Second Avenue and walk-up apartment buildings on the midblock. A 41-story residential tower with approximately 456 dwelling units is located on the midblock between Second and Third Avenues. The Islamic Cultural Center of New York is located at the corner of East 96th Street and Third Avenue. The blocks to the immediate south are primarily developed with residential towers and ground floor retail. The blocks south of the project area are developed with residential buildings of various heights, ranging from six-story walk-ups to residential towers.

Directly north of the project area, Metropolitan Hospital Center occupies the superblock bounded by Second Avenue, First Avenue, East 97th Street and East 99th Street. The hospital also occupies the block directly east, between First Avenue and the FDR Drive. The Washington Houses, a NYCHA development with six 12-story “tower in the park” residential buildings, are located west of the hospital. Stanley Isaacs Playground is located across First Avenue, and Randall’s Island is accessible by the Wards Island Bridge at East 103rd Street and Central Park at Fifth Avenue.

The development site is close to several major transportation connections, including the FDR Drive entrance and exits at East 96th Street. The Second Avenue Subway has an entrance at East 96th Street and Second Avenue, and the M96, M101, M102, M103 and M15 bus lines serve the area.

To facilitate the development, a special permit is required to modify zoning regulations regarding height and setback, tower location and coverage, and the location of floor area.

Height and Setback

The proposed mixed-use building on Second Avenue would be developed as a “tower-on-base” (TOB). Pursuant to Section 23-651(a), a tower is required to set back at a height of 85 feet at least 15 feet along a narrow street and at least 10 feet along a wide street. Along Second Avenue, the proposed mixed-use building would rise to height of 100 feet before setting back. Along 96th Street, the building would rise to height of 96 feet before setting back, and along 97th Street, the building would rise to a total height of 185 without setting back. These proposed base heights exceed the maximum base height of 85 feet on each frontage, so a modification of street wall requirements is required.

The proposed school building at First Avenue would be located directly across from Stanley Isaacs Park, which has an area exceeding one acre; therefore the TOB regulations pursuant to Section 23-65(c) of the Zoning Resolution do not apply. Accordingly, the height and setback and sky exposure plane regulations set forth in Section 24-50 apply to this school building, an entirely community facility building. Within an R10 district, Section 24-522(a) permits a maximum street wall of 85 feet or nine stories, whichever is less. Above such maximum base height, a building must set back

20 feet from a narrow street and 15 from a wide street. Beyond such setbacks, a building may rise provided it does not penetrate the applicable sky exposure plane, which is calculated at 2.7 vertical feet to each horizontal foot along narrow streets, and 5.6 vertical feet to each horizontal foot along wide streets.

To accommodate the two relocated high schools in a configuration that meets their programmatic needs and minimum size floor plates, the school on First Avenue is proposed to rise without setback to its full height of nine stories with mechanical and bulkhead equipment. Because this building rises without providing the required setbacks along the street frontages and penetrates the sky exposure plane, the applicants are requesting a modification of Section 23-65(a)2 of the Zoning Resolution.

Tower Location

Pursuant to Section 23-65(a)(2) of the Zoning Resolution, a TOB building is permitted to be located on a zoning lot that fronts on a wide street and is within 125 feet of a wide street frontage along the short dimension of the block, or within 100 feet from a wide street frontage along the long dimension of the block. The mixed-use building (which is being developed as TOB) is proposed to be located within the portion of the zoning lot that is 220 feet from Second Avenue, along East 96th Street and East 97th Street. Because the portion of the building along East 97th Street (a narrow street) lies beyond 125 feet from a wide street frontage along the short dimension of the block (Second Avenue), and beyond 100 feet from a wide street along the long dimension of the block (East 96th Street), a modification of tower location regulations is required.

This section also prohibits the location of a tower on a narrow street at a distance more than 100 feet from an intersection with a wide street. Because the tower portion of the mixed-use building is proposed to be more than 100 feet from Second Avenue (a wide street) along East 97th Street (a narrow street), the applicant request a modification of this section to permit the location of the proposed tower on East 97th Street more than 100 feet from Second Avenue.

Tower Coverage

Pursuant to Section 23-651(a) of the Zoning Resolution, at any level above the maximum base height of 85 feet, a tower may not occupy more than 40 percent of zoning lot area or less than 30 percent of such area. This section also requires that, for purpose of determining tower coverage, the portion of a zoning lot located within 125 feet from the wide street frontage along the short dimension of a block be treated as a separate zoning lot. The tower proposed for this project does not comply with these requirements. The applicants therefore request that tower coverage requirements be modified.

Location of floor area

Pursuant to Section 23-651(a) of the Zoning Resolution, a minimum of between 55 and 60 percent of the total floor area permitted on the zoning lot must be located below a height of 150 feet. The total permitted floor area on the zoning lot, as requested by these actions, would be approximately 1,574,274 square feet, 55 percent of which is equal to approximately 865,850 square feet. Because the proposed development would include less than this amount below 150 feet, the applicants request a waiver to allow approximately 319,600 square feet, or 20.3 percent of the total floor area, below a height of 150 feet on the zoning lot.

In addition to the special permit that is the subject of this report, several related actions are required to facilitate the proposed development.

Zoning Map Amendment (C 170226 ZMM)

The development site is currently split between an R7-2 district on the northern portion of the block and an R10A district on the southern portion. The R7-2 districts are height factor zoning districts that encourage low buildings on smaller lots and taller buildings with low lot coverage on larger lots. The maximum residential FAR is 3.44 (4.0 under the Quality Housing program) and the maximum community facility FAR is 6.5. Districts with commercial overlays have a maximum commercial FAR of 2.0. R10A is a contextual district that typically produces substantial apartment buildings suitable for wide streets. R10A districts have a maximum residential FAR of 10. Residential and mixed-use buildings can receive a residential floor area bonus for the creation or

preservation of affordable housing, on- or off-site, pursuant to the Inclusionary Housing program. The maximum base height, before setback, is 150 feet on a wide street and 125 feet on a narrow street. The maximum building height is 185 feet for a building fronting on a narrow street and 210 feet for a building fronting on a wide street. Towers are not permitted in R10A districts.

In 1973, the portion of the site within 100 feet of Second Avenue was mapped within the Special Transit Land Use District (CP224422). The Special Transit Land Use District was created in anticipation of the Second Avenue Subway and included provisions intended to allow for critical subway access and infrastructure needs.

The proposed zoning changes would replace the R7-2 district on the northern portion of the site and the R10A district on the southern portion of the site with a C2-8 district along Second Avenue, mapped to a depth of 100 feet. The remainder of the site would be rezoned to an R10 district. The zoning changes would increase the available FAR on the entire site to 10. The proposed zoning would also remove the maximum building height of 210 feet on the southern portion of the site and allow the site to be developed pursuant to height factor regulations. The portion of the site within 100 feet of Second Avenue would remain within the Special Transit Land Use District.

A C2-8 district is a commercial district that is predominantly residential in character and is usually mapped along major commercial thoroughfares in medium- to high-density areas. There is an existing C2-8 district mapped along Second Avenue immediately south of the project site, between East 95th and East 96th streets. The maximum residential and community facility FAR in this district is 10 and the maximum commercial FAR is 2. C2-8 districts allow local retail uses such as grocery stores, dry cleaners, drug stores and restaurants.

Special Permit pursuant to ZR Section 74-533, to allow, within a Mixed Use⁴ Development in the transit zone seeking a bulk modification, a waiver of required accessory residential off-street parking (C 170229 ZSM)

⁴ The description of the development changed from "Large Scale General" to "Mixed Use".

In R10 residential districts, pursuant to Section 25-23 of the Zoning Resolution, the required number of off-street accessory spaces is 40 percent of the total non-income restricted residential units. But zoning regulations relax this requirement for residential developments within the transit zone. The proposed development would require 336 spaces for the non-income restricted units. The applicant is seeking to waive all required accessory spaces to avoid the expense of building the multi-level parking garage that would be required within the footprint of the mixed-use building.

The proposed project is located just outside of the Manhattan Core and the area is well-served by transit, including the Second Avenue Subway directly west of the site.

Zoning Text Amendment (N 170227 ZRM)

The applicant proposes a zoning text amendment to modify Article VII, Chapter 4 (Special Permits by the City Planning Commission) and to designate the project area as an MIH area. The proposed changes to Article VII, Chapter 4 would modify Section 74-75 of the Zoning Resolution to allow the distribution of lot coverage on the zoning lot containing Co-op Tech High School without regard for zoning lot lines. The text amendment would also map the project area with MIH Option 1, requiring at least 25 percent of the residential floor area to be provided as housing affordable to households at an average of 60 percent of the area median income (AMI).

ENVIRONMENTAL REVIEW

This application (C 170228 ZSM), in conjunction with the related actions (C 170226 ZMM, N 170227 ZRM, C 170229 ZSM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 16ECF001M. The Lead Agency is the New York City Educational Construction Fund.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued June 10, 2016, and distributed, published and filed. Together with

the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on June 10, 2016. A public scoping meeting was held on the DEIS on June 29, 2016. A Final Scope of Work, reflecting the comments made during the scoping, was then issued.

The applicant prepared a DEIS and the Notice of Completion for the DEIS was issued on January 17, 2017. On May 10, 2017, a public hearing was held on the DEIS pursuant to the SEQRA and other relevant statutes. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on June 9, 2017. The FEIS identified significant adverse impacts with respect to transportation (traffic, transit, and pedestrians) and construction (traffic, noise and open space). These impacts and measures to minimize or eliminate these impacts, where feasible and practicable, are described below:

Transportation- Traffic

The proposed project would result in potential significant adverse traffic impacts at seven intersections during the weekday AM peak hour, five intersections during the weekday midday peak hour, and six intersections during the weekday PM peak hour. The majority of the locations where significant adverse traffic impacts are predicted to occur could be fully mitigated with the implementation of standard traffic mitigation measures (e.g., signal timing changes).

Transportation- Transit

The proposed project would result in a potential significant adverse subway stairway impact at the S4 stairway at the 96th Street-Lexington Avenue station during the weekday AM peak hour. If monitoring confirms that the projected stairway impact would occur and the discussions with New York City Transit (NYCT) do not identify any feasible mitigation measures, the identified significant adverse stairway impact would be unmitigated.

The proposed project would result in potential significant adverse bus line-haul impacts for the westbound M96, and northbound and southbound M15 Select Bus Service (SBS) routes during the weekday PM peak hour. Increases in service frequency of one, one, and four buses an hour for the westbound M96, northbound M15 SBS, and southbound SBS routes, respectively, would fully mitigate the projected line-haul impacts.

Transportation- Pedestrians

The proposed project would result in a significant adverse pedestrian impact at one crosswalk during the weekday AM and PM peak hours. The pedestrian mitigation measures consist of signal timing changes that are routinely implemented and are generally considered feasible.

Construction- Traffic

The proposed project would result in potential significant adverse construction (traffic) impacts. The construction traffic increments during the construction peak hours (6:00 to 7:00 AM and 3:00 to 4:00 PM) would be lower than the potential traffic impacts as described above. Mitigation measures would encompass primarily signal timing changes, which could be implemented at the discretion of the Department of Transportation (DOT) to address actual conditions at that time.

The FEIS has also identified significant adverse impacts with respect to transportation (traffic) and construction (noise and open space) that would remain unmitigated or be only partially mitigated. These impacts are described below:

Transportation- Traffic

The proposed project would result in potential significant adverse traffic impacts at the intersections of East 96th Street and York Avenue/FDR Northbound Ramp, East 96th Street and FDR Southbound Ramp, East 96th Street and First Avenue, and East 96th Street and Second Avenue that could not be fully mitigated during the peak hours.

Construction – Traffic

The proposed project would result in potential significant adverse construction (traffic) impacts during the peak construction period at the intersections of East 96th Street and York Avenue/FDR Northbound Ramp, East 96th Street and FDR Southbound Ramp, East 96th Street and First Avenue, and East 96th Street and Second Avenue that could not be fully mitigated during the construction peak hours.

Construction- Open Space

The proposed project would result in significant adverse construction (open space) impacts. To allow for a more expedited construction period, construction staging would take place on the project site and the existing Marx Brothers Playground would be temporarily displaced. During the construction period, the active open space ratios for the study area would therefore be reduced by more than the CEQR threshold of 5 percent, constituting a temporary significant adverse construction period impact. After construction, the Marx Brothers Playground would be fully reconstructed and restored to public use.

Construction- Noise

The proposed project would result in significant adverse construction (noise) impacts. The detailed analysis of construction noise determined that construction of the proposed project has the potential to result in construction noise levels that would constitute temporary significant adverse impacts at the portion of Health & Hospital Corporation (HHC) Metropolitan Hospital immediately across East 97th Street north of the project site, the western façade and western portions of the north and south façades of the existing Co-op Tech school building, and the north façade of the residential building at 306 East 96th Street immediately south of the project site. Interior noise levels at these locations during the loudest portions of construction are predicted to be up to 9 dBA higher than the acceptable levels according to CEQR noise exposure guidelines. With the façade noise attenuation measures already in place (insulated glass windows and an alternative means of ventilation), there are no feasible and practicable mitigation measures that would be able to reduce or eliminate the potential significant adverse noise impacts. Source or path controls beyond those already identified for the construction of the proposed project would not be effective in reducing the level of construction noise at the receptors.

UNIFORM LAND USE REVIEW

This application (C 170228 ZSM), in conjunction with the applications for the related actions (C 170226 ZMM and C 170229 ZSM), was certified as complete by the Department of City

Planning on January 17, 2017 and was 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), along with the related application for a zoning text amendment (N 170227 ZRM), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 11 held a public hearing on the application (C 170228 ZSM) on March 21, 2017 and on that date, by a vote of 26 in favor, eight in opposition, and with two abstentions, adopted a resolution recommending approval with the following conditions:

1. Include more affordable housing units, with 50% of the units to be permanently affordable;
2. Consult with CB11, the New York City Department of Housing Preservation & Development (HPD), and the office of Council Speaker Melissa Mark-Viverito to request subsidies from HPD to ensure that 50% of units will be permanently affordable;
3. Explore an alternative design scenario that reduces the height of the residential tower;
4. Include senior housing units;
5. Specify the exact number of residential units being built by category and size;
6. Commit to establishing a “First Source” hiring program and allocate funds to target and identify job opportunities for residents of East Harlem throughout the development of the project;
7. Commit to workforce development, allocate funds for Occupational Safety and Health Administration (OSHA) training and construction training, and assist with pipeline capacity;
8. Commit to 35% local hiring in all construction positions for union and non-union East Harlem residents at minimum prevailing wage (\$40 per hour) or more depending on skillset and experience;
9. Commit to 50% local hiring for all new hire post construction positions;
10. Work to ensure that local East Harlem Minority and Women-owned Business Enterprise/Latino-owned Business Enterprise (MWBE/LBE) organizations receive 35% of all construction contracts;
11. Provide internship opportunities, property/project management training as well as skillset enhancement for East Harlem hires;
12. Present a systematic hiring program that provides a quarterly review of the progress of the organization achieving the goals stated by CB11;
13. Work to secure a written commitment by the DOE to provide priority enrollment for students residing in East Harlem applying to Heritage High School, Park East High School and Co-op Tech;
14. Retail space be provided at reduced cost for local East Harlem retail establishment that have been/may be displaced;
15. Repurpose retail space to provide community facility space at reduced cost for locally-based health and human service providers;

16. Assist small businesses in sustaining their operations with below market rents and counseling services if needed;
17. Work with the DPR to establish “open play” hours during which permits will not be issued that would restrict access for community use of the playing field;
18. Incorporate adult fitness opportunities in the Marx Brothers Playground.

Borough President Recommendation

This application (C 170228 ZSM) was considered by the Manhattan Borough President, who issued a recommendation approving the application on May 1, 2017, with the following conditions:

The applicant:

1. Should provide the Manhattan Borough President’s office with updated drawings that reflect the new lower height of 63-stories of the residential building facing Second Avenue;
2. Work with Manhattan Borough President’s office, Community Board 11, the local council member, and the City to reach deeper levels of affordability below 40 percent on the income-restricted units;
3. Work with Manhattan Borough President’s office, Community Board 11, the local council member, and the City to continue to explore an alternative design scenario that reduces the height of the residential tower even further;
4. Work with DPR and Manhattan Borough President’s office to fund meaningful improvements to Stanley Isaacs Playground;
5. Create a tower design that ensures light and air to the surrounding streets and public spaces through the use of setbacks, recesses and other forms of articulation, and the tower top produces a distinctive addition to the Upper Manhattan Skyline which is well-integrated with the remainder of the building;
6. Create a tower design that demonstrates an integrated and well-designed façade, taking into account factors such as street wall articulation and amounts of fenestration, which create a prominent and distinctive building which complements the character of the surrounding area, especially the nearby historic districts; and
7. A commitment by the developer to provide regular updates to the Board, on measures being taken related to:
 - a. Review and approvals by the Department of Environmental Protection that will be needed to address appropriate sanitary flow and storm water source controls;
 - b. development of a Construction Protection Plan in relation to the identified historic and cultural resources nearby;
 - c. progress on the traffic signal timing changes as part of the traffic mitigation measures cited in the environmental review;
 - d. selection of a qualified, experienced local community-based organization to create a housing outreach plan that encourages local residents to apply and provides credit counseling well in advance of the application process.
8. Address errors in the draft environmental review related to school sites; for example, removing JHS 13 from the list of schools in Table 4-4, and adjusting the calculations for that chapter accordingly;

9. Ensure that the discussion of future educational uses for the Park East High School site include not only DOE and CEC, but also broad-based community participation.

City Planning Commission Public Hearing

On April 26, 2016 (Calendar No. 11), the City Planning Commission scheduled May 10, 2017 for a public hearing on this application (C 170228 ZSM) and the applications for the related actions. The hearing was duly held on May 10, 2017 (Calendar No. 44). There were six speakers in favor of the application and seven in opposition.

Several members of the applicant team, including ECF's executive director, the developer, the project architect, and the environmental consultant, spoke in favor of the project. The team provided a history of the site and an overview of the proposed development. ECF discussed the RFP process and how ECF schools are built and financed. The executive director said that the project would enable investments in new school buildings and an improved playground, without any City subsidies or capital funding. The project would also give more East Harlem students the opportunity to enroll in these schools' programs. Absent this project, she said, there are no capital funds to support the expansion or improvement of these schools, noting that no new public high school had been built in East Harlem in over 50 years. She also described the project's phasing and the development's site plan, noting that none of schools would be displaced during construction. The project architect talked about the multiple buildings' design, and the height and setback waivers that would be necessary to facilitate the development. The architect also explained why the current site plan was needed, given the proposed uses, and why the proposed height was necessary. The environmental consultant described the shadow analysis for the proposed mixed-use building, stating that the proposed orientation and location of the building, along Second Avenue, would not cast shadows that adversely affect the adjacent Stanley Isaacs Playground.

A representative from the Manhattan Borough President's Office reiterated the conditions in the Borough President's recommendation and urged the applicants to explore solutions for lowering the height of the proposed mixed-use building, increase the level of affordability, make improvements to the adjacent Stanley Isaacs Playground, and continue to work with the community to address other concerns. A representative from the 32BJ service workers' union also spoke in favor of the project.

Seven individuals spoke in opposition to the project, expressing concerns about the proposed building's height, the potential shadow impacts on the adjacent playground, traffic impacts, the number of uses proposed on the site and whether or not the development site was mapped parkland. Several speakers said that the proposed building would be the tallest building north of 72nd Street and taller than any building in the outer boroughs. All of the speakers stated that the proposed height would cast prolonged shadows on the adjacent Stanley Isaacs Playground. Some of them predicted traffic impacts based on the site's proximity to the FDR Drive and the new residents the project would bring to the area.

Some speakers stated that, although they were pleased to see new schools being built, they felt that three schools, in addition to commercial and residential uses, and a significant increase in the number of people traversing the area, would negatively affect the neighborhood's character. Speakers in opposition also questioned whether portions of the development site were mapped as parkland, since the MTA had decided to pursue alienation legislation in order to use a portion of the Marx Brothers Playground to stage work for the Second Avenue Subway. One speaker questioned how the playground could generate floor area if it were indeed mapped parkland.

There were no other speakers, and the hearing was closed.

CONSIDERATION

The Commission believes that this application (C 170228 ZSM), in conjunction with the related actions (C 170226 ZMM, N 170227 ZRM, and C 170229 ZSM), is appropriate.

There is a tremendous need for new public schools, both citywide and in Community District 11. Finding adequate sites and securing capital funding are two major obstacles to providing new public school seats. The ECF provides the DOE with a unique mechanism to construct new schools within New York City through public/private partnerships, and in a manner that does not require City funding for capital construction.

The proposed development will allow the expansion of the City's high school programs. Co-op Tech will have more classrooms and larger spaces to accommodate the demand for the vocational

workshops they offer. Park East High School and Heritage High School will share the four lower floors in which the auditorium, cafeteria, and gymnasium will be located. Each high school will have two of the upper stories, with 10 classrooms on each floor.

These three new East Harlem high schools will increase the capacity of the existing overcrowded and outdated schools, allowing more students access to their programs. These new facilities will contain improved classrooms, cafeteria, gymnasium, and auditorium spaces. The Marx Brothers JOP would also be replaced and improved, providing open space for public school students during school hours and for the community during non-school hours. The Commission believes that the proposed site plan, which includes residential, commercial and community facility uses, is effectively arranged to take maximum advantage of the site's location and size.

The site, an entire city block, is located just west of the FDR Drive and adjacent to open space and transit. The relocation of the Marx Brothers Playground moves the open space away from heavy traffic and allows for retail continuity along Second Avenue. The proposed project also provides additional housing opportunities in the area, including permanent affordable housing through the MIH program.

The proposed project will provide 1,100-1,200 residential units with approximately 300-330 permanently affordable units. The affordable units will have rents affordable to households at an average of 60 percent of the AMI. The Commission believes that this will help to meet the significant affordable housing needs in Manhattan generally and in Manhattan Community Board 11 specifically.

The requested special permit, as revised, to modify height and setback, tower location and coverage, and location of floor area regulations pursuant to Section 74-75 is appropriate. The Commission recognizes the concerns raised regarding the proposed height and the number of uses. In response to concerns expressed by the Commission and the community about the proposed height, the site plan, shadow impacts, and the status of the playground, the applicants provided a comprehensive response package dated June 1, 2017.

The Commission is pleased that the applicants have revised the application to reflect a lower height in response to concerns raised by the community. The applicants have proposed to lower the height from 68 to 63 stories. These revisions do not result in any changes to the requested waivers.

The Commission recognizes that the development site is located in a unique area of the district that can accommodate the proposed density. Given the dearth of sites in East Harlem that comprise an entire city block, there are no other development opportunities within the district that can accommodate the scale and the number of uses being proposed. The development site is located along the southern border of East Harlem, just above the Upper East Side. This part of the district has more residential tower buildings and a neighborhood character similar to that of the community district to the south. The proposed height allows the development of three schools to be built in a manner that is cost-effective and compliant with SCA standards. The Executive Director of the SCA, in a response letter to the Commission, stated that “for new high school facilities, the SCA’s preferred building heights are approximately five stories” and “facilities that house more than one school and taller than five stories” are programmed in a way that limits circulation to the five-story standards. The Commission believes that the location of the development site, and its proximity to public transportation presents an exceptional opportunity to address some of the residential and educational needs of the community.

The Commission believes that the proposed development’s height, although significantly higher than the existing buildings in the neighborhood, is acceptable at this site due to its unique character. The site and the neighborhood benefit from the location of the Marx Brothers Playground; however, the 64,000-square-foot playground limits the amount of horizontal area available for development, requiring the project to achieve its development potential with height, since it is restricted in width. Furthermore, there is ample light and air around the block, which is bounded by three wide streets (East 96th Street and First and Second Avenues) and is separated from the East River by only Stanley M. Isaacs Park, providing the site and neighboring properties with unobstructed light and air from the east.

In the June 1st response to the Commission, the applicants examined an alternative configuration with a lower height through a “two tower” scenario. In this scenario, there would be two mixed

use buildings: one on Second Avenue and one on First Avenue. Constructing a 40-story residential overbuild on the school proposed to front on First Avenue would allow the residential portion of the building on Second Avenue to come down to approximately 40 stories. However, the Commission acknowledges, based on the analyses provided by applicant team that this scenario would result in schools that are either non-compliant with SCA standards or limited in the resources and amenities that could be provided to students. The residential overbuild would also increase the construction cost by eight to 10 percent because separate elevators and stairways would be required for each use. Furthermore, this approach would require residential infrastructure, such as trash and recycling chutes and structural columns, to penetrate through the schools. The “two tower” scenario would also cast a larger shadow on the adjacent playground and the East River Esplanade.

The Commission recognizes that, in a “two tower” scenario, costs associated with a residential overbuild would make the project financially infeasible and result in a suboptimal school layout.

In response to additional questions raised by the Commission regarding the proposed site plan, the applicant responded with a letter dated June 15, 2017 that identified challenges associated with changing the proposed site plan. The letter stated that moving the playground to First Avenue and placing the two schools in a building adjacent to the building along Second Avenue, making all three schools contiguous, would trigger the same overbuild issues highlighted in the June 1st response. The June 15th letter also states that the placement of the three schools on the western portion of the site could create conflicts with the emergency room for Metropolitan Hospital, which is located on the north side of East 97th Street. Such a change to the site plan would also require an analysis of other potential design conflicts such as courts, distance between buildings and legal windows. The Commission recognizes that the proposed site plan is designed in a manner that minimizes conflicts with surrounding uses.

The related application for a zoning map amendment (C 170226 ZMM) is appropriate. It will facilitate the development of a mixed-use development on an entire city block in close proximity to mass transit, public services and retail. The Commission notes that the C2-8 and R10 zoning regulations are consistent with the surrounding area’s land use and zoning and that there is an

existing C2-8 district mapped along Second Avenue immediately south of the project site, between East 95th and East 96th Streets.

The proposed zoning text amendment (N 170227 ZRM) is appropriate. Designating the project area as an MIH area will ensure permanent affordability for a portion of the units on the site. Option 1 requires that at least 25 percent of the residential floor area be provided as affordable to households at an average of 60 percent of AMI.

The request for parking waivers pursuant to ZR Section 74-533 (C 170229 ZSM) is appropriate. Given the site's proximity to public transit, the Commission believes that the reduction in the number of required accessory spaces will facilitate the creation of affordable housing by reducing the costs associated with providing the amount of parking that would otherwise be required.

The Commission acknowledges the letters received from Community Board 8 and the Defenders of the Historic Upper East Side regarding the scale of the project and the level of affordability. The Commission notes that the applicants have committed, in a letter to the Manhattan Borough President dated April 27, 2017, to lowering the building's height by five stories and exploring high quality design for the residential building that is consistent with character of the surrounding area as it relates to façade treatment, fenestration and other architectural elements.

FINDINGS

Based upon the above consideration, the City Planning Commission hereby makes the following finding required by Section 74-75 (Special Permits for Educational Construction Fund Projects):

1. A substantial portion of the open space which is not accessible exclusively to the occupants of such residence will be accessible and usable by them on satisfactory terms part-time;
2. Playgrounds, if any, provided in conjunction with the school will be so designed and sited in relation to the residence as to minimize any adverse effects of noise; and

3. All open space will be arranged in such a way as to minimize friction among those using open space of the buildings or other structures on the zoning lot.

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Section 197-c and 200 of the New York City Charter, that based on the environment determination and the consideration and findings described in this report, the application submitted by NYC Educational Construction Fund and AvalonBay Communities, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permit pursuant to Section 74-75 of the Zoning Resolution to modify the height and setback requirements of Sections 23-64 (Basic Height and Setback Requirements), 23-65 (Tower Regulations), 23-651 (Tower-on-a-base) and 24-50 (Height and Setback Regulations), and to modify the requirements of Section 24-11 (Maximum Floor Area and Percentage of Lot Coverage), in connection with a proposed mixed-use development, on property bounded by East 97th Street, First Avenue, East 96th Street and Second Avenue (Block 1668, Lot 1), in R10 and C2-8 Districts, within a Large-Scale General Development, Borough of Manhattan, Community District 11 is approved, subject to the following conditions:

1. The application that is the subject of this application (C 170228 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following plans, prepared by Perkins Eastman, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-20	Zoning Calculations	June 19, 2017 ⁵
Z-22	Tower Coverage Diagram	June 19, 2017 ⁶
Z-23	Floor Area Diagram	June 19, 2017 ⁷

⁵ Date changed from June 14, 2017 to June 19, 2017.

⁶ Date changed from June 14, 2017 to June 19, 2017.

⁷ Date changed from January 17, 2017 to June 19, 2017.

Z-30	Site Plan	June 19, 2017 ⁸
Z-60	Waiver Plan	June 19, 2017 ⁹
Z-61	Waiver Section 1	June 19, 2017 ¹⁰
Z-62	Waiver Section 2	June 19, 2017 ¹¹
Z-63	Waiver Section 3	June 19, 2017 ¹²
Z-64	Waiver Section 4	June 19, 2017 ¹³
Z-65	Waiver Section 5	June 19, 2017 ¹⁴

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.

4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.

5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning

⁸ Date changed from June 14, 2017 to June 19, 2017.

⁹ Date changed from June 14, 2017 to June 19, 2017.

¹⁰ Date changed from June 14, 2017 to June 19, 2017.

¹¹ Date changed from January 17, 2017 to June 19, 2017.

¹² Date changed from June 14, 2017 to June 19, 2017.

¹³ Date changed from June 14, 2017 to June 19, 2017.

¹⁴ Date changed from June 14, 2017 to June 19, 2017.

Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

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

The above resolution (C 170228 ZSM), duly adopted by the City Planning Commission on June 21, 2017 (Calendar No. 21), 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.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, ESQ., *Vice Chairman*

RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,

MICHELLE DE LA UZ, JOSEPH DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, HOPE KNIGHT,

ORLANDO MARÍN, *Commissioners*

ANNA HAYES LEVIN, LARISA ORTIZ, *Abstaining*