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October 18, 2021 / Calendar No. 5

N 210416 ZRM

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**IN THE MATTER OF** an application submitted by Commodore Owner 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 the provisions of the East Midtown Subdistrict in Article VIII, Chapter 1 (Special Midtown District).

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This application for a zoning text amendment was filed by Commodore Owner LLC on May 11, 2021 to allow for modifications to the East Midtown Subdistrict regulations. The proposed action, in conjunction with the related applications, would facilitate the development of a 2.25 million-square-foot hotel and office tower, located at 175 Park Avenue (Block 1280, Lot 30), in the East Midtown neighborhood of Manhattan Community District 5.

#### **RELATED ACTIONS**

In addition to the zoning text amendment that is the subject of this report (N 210416 ZRM), implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

- |                     |   |
|---------------------|---|
| <b>C 210412 ZSM</b> | Special Permit pursuant to Zoning Resolution (ZR) Section 81-685 to allow for modifications to the East Midtown Subdistrict regulations                     |
| <b>C 210413 ZSM</b> | Special permit pursuant to ZR Section 81-621 permit hotel use   |
| <b>C 210414 ZSM</b> | Special Permit pursuant to ZR Section 81-644 to permit an increase in floor area to allow for transit improvements.   |
| <b>C 210415 ZSM</b> | Special Permit pursuant to ZR Section 81-645 to permit an increase in floor area to allow for public concourse improvements and modify loading regulations. |
| <b>C 210417 PPM</b> | Disposition of non-residential City-owned property.   |

## **BACKGROUND**

A full background discussion and description of this application appears in the report for the related special permit (C 210412 ZSM).

## **ENVIRONMENTAL REVIEW**

The application (N 210416 ZRM), in conjunction with the applications for the related actions (C 210412 ZSM, C 210413 ZSM, C 210414 ZSM, C 210415 ZSM, and C 210417 PPM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 21DCP057M. The lead is the City Planning Commission.

A summary of the environmental review appears in the report for the related special permit application (C 210412 ZSM).

## **PUBLIC REVIEW**

This application (N 210416 ZRM) was duly referred on May 17, 2021, to Community Board 5 and the Manhattan Borough President, in accordance with the procedures for non-ULURP matters, along with the related actions (C 210412 ZSM, C 210413 ZSM, C 210414 ZSM, C 210415 ZSM, C 210417 PPM), which were certified as complete by the Department of City Planning and duly referred in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

## **Community Board Recommendation**

Community Board 5 held a public hearing on this application (N 210416 ZRM) on July 8, 2020, and, on that date, by a vote of 35 in favor, none opposed, and one abstaining, adopted a resolution recommending approval of the application with conditions. A summary of the

Community Board's recommendations appears in the report for the related special permit (C 210412 ZSM).

### **Borough President Recommendation**

This application (N 210416 ZRM) was considered by the Manhattan Borough President, who, on August 19, 2021, issued a recommendation to approve the application with conditions. A summary of the Borough President's recommendations appears in the report for the related special permit (C 210412 ZSM).

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

On August 18, 2021 (Calendar No. 19), the City Planning Commission scheduled September 1, 2021 for a public hearing on this application (N 210416 ZRM) and the related applications (C 210412 ZSM, C 210413 ZSM, C 210414 ZSM, C 210415 ZSM, and C 210417 PPM). The hearing was duly held on September 1, 2021 (Calendar No. 40), in conjunction with the public hearing on the application for the related actions.

There were a number of speakers, as described in the report on the related special permit application (C 210412 ZSM), and the hearing was closed.

### **CONSIDERATION**

The Commission believes that the zoning text amendment (N 210416 ZRM), along with the related actions (C 210412 ZSM, C 210413 ZSM, C 210414 ZSM, C 210415 ZSM, and C 210417 PPM), is appropriate. A full consideration and analysis of the issues and the reasons for approving this application appear in the report on the related application (C 210412 ZSM).

### **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, RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

Matter ~~struck out~~ is to be deleted;

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

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

\* \* \*

**ARTICLE VIII  
SPECIAL PURPOSE DISTRICTS**

**Chapter 1  
Special Midtown District**

\* \* \*

**81-60  
SPECIAL REGULATIONS FOR THE EAST MIDTOWN SUBDISTRICT**

\* \* \*

**81-61  
General Provisions**

\* \* \*

**81-613  
Definitions**

\* \* \*

**Public Realm Improvement Fund**

For the purposes of Section 81-60, inclusive, the “Public Realm Improvement Fund” (the “Fund”) shall be a separate interest-bearing account established for the deposit of contributions

made when #developments# or, where permitted, #enlargements# on #qualifying sites# in the East Midtown Subdistrict will exceed the basic maximum #floor area ratio# set forth in Section 81-64 (Special Floor Area Provisions for Qualifying Sites) through their utilization of the provisions of Sections 81-642 (Transfer of development rights from landmarks to qualifying sites), ~~or~~ 81-643 (Special provisions for retaining non-complying floor area in commercial buildings) or 81-685 (Special permit to modify qualifying site provisions). The Fund shall be utilized, at the discretion of the #Public Realm Improvement Fund Governing Group#, to provide funding to implement improvements to the East Midtown Subdistrict, and its immediate vicinity, in the Borough of Manhattan. Upon receipt of any contribution, the #Public Realm Improvement Fund Governing Group# or the Department of City Planning shall notify the Comptroller of the City of New York and the Speaker of the New York City Council and promptly deposit it into the Fund.

\* \* \*

### **81-644 Special permit for transit improvements**

For #qualifying sites# located in the Grand Central Transit Improvement Zone Subarea, or the Other Transit Improvement Zone Subarea, as shown on Map 2 (East Midtown Subdistrict and Subareas) in Appendix A of this Chapter, the City Planning Commission may permit an increase in the amount of #floor area ratio# permitted on such #zoning lots#, up to the amount specified in Row F of the table in Section 81-64 (Special Floor Area Provisions for Qualifying Sites), as applicable, where subway station and/or rail mass transit facility improvements are made in accordance with the provisions of Sections 81-292 (Subway station improvements) and 74-634 (Subway station improvements in Downtown Brooklyn and in Commercial Districts of 10 FAR and above in Manhattan).

As a pre-condition to applying for such special permit, an applicant shall demonstrate that the maximum as-of-right #floor area ratio# for #qualifying sites# set forth in Row E of the table in Section 81-64 has been achieved prior to, or in conjunction with, the special permit application.

### **81-645 Special permit for a public concourse**

For #qualifying sites#, the City Planning Commission may permit an increase in the amount of #floor area ratio# permitted on such #zoning lots#, up to the amount specified in Row G of the table in Section 81-64 (Special Floor Area Provisions for Qualifying Sites), as applicable, where an above-grade public concourse, in the form of an open or enclosed, publicly accessible space for public use and enjoyment, is provided on the #qualifying site#. Such publicly accessible spaces shall include amenities that are characteristic of #public plazas# or public atriums, as applicable, for the comfort and convenience of the public. In addition, to facilitate such public concourse, the Commission may permit the modification of provisions, other than #floor area ratio# regulations, of this Resolution.

As a pre-condition to applying for such special permit, an applicant shall demonstrate that the maximum as-of-right #floor area ratio# for #qualifying sites# set forth in Row E of the table in Section 81-64 has been achieved prior to, or in conjunction with, the special permit application.

In order for the City Planning Commission to approve a special permit application for additional #floor area#, the Commission shall determine that such #development# or, where permitted, #enlargement#, complies with the conditions and application requirements of paragraph (a), the findings of paragraph (b) and the additional requirements of paragraph (c) of this Section.

- (a) Applications shall include information and justification sufficient to provide the Commission with the basis for:
  - (1) evaluating the benefits to the general public;
  - (2) determining the appropriate amount of increased #floor area# to grant; and
  - (3) determining whether the applicable findings set forth in paragraph (b) of this Section have been met. Such application materials shall also include initial plans for the maintenance of the proposed improvements.
  
- (b) The Commission shall find that:
  - (1) to the extent practicable, the open or enclosed public concourse will:
    - (i) consist of a prominent space of generous proportions and quality design that is inviting to the public;
    - (ii) improve pedestrian circulation and provide suitable amenities for the occupants;
    - (iii) front upon a #street# or a pedestrian circulation space in close proximity to and within view of, and accessible from, an adjoining sidewalk;
    - (iv) provide or be surrounded by active #uses#;
    - (v) be surrounded by transparent materials;
    - (vi) provide connections to pedestrian circulation spaces in the immediate vicinity; and
    - (vii) be designed in a manner that combines the separate elements within such space into a cohesive and harmonious site plan, resulting in a high-quality public space; ~~and~~

- (2) the public benefit derived from the proposed public concourse merits the amount of additional #floor area# being granted to the proposed #development# or, where permitted, #enlargement#, pursuant to this special permit; and
- (3) with regard to a modification to regulations of this Resolution, other than #floor area ratio# regulations, such modification:
  - (i) is the minimum extent necessary and will facilitate an improved public concourse, inclusive of enhancements described in the findings of paragraph (b)(1) of this Section; and
  - (ii) will not have adverse effects on the #qualifying site#, surrounding #zoning lots#, or adjacent #streets#.
- (c) Prior to obtaining a foundation permit or building permit for a #development# or, where permitted, an #enlargement# on a #qualifying site#, from the Department of Buildings, a written declaration of restrictions, in a form acceptable to the Chairperson of the City Planning Commission, setting forth the obligations of the owner to construct, maintain and provide public access to public improvements provided pursuant to this Section, shall be recorded against such property in the Office of the Register of the City of New York (County of New York). Proof of recordation of the declaration of restrictions shall be submitted in a form acceptable to the Department of City Planning.

No temporary certificate of occupancy shall be granted by the Department of Buildings for the portion of the #building# utilizing increased #floor area# granted pursuant to the provisions of this Section until the required improvements have been substantially completed, as determined by the Chairperson, and such improvements are usable by the public. Such portion of the #building# utilizing increased #floor area# shall be designated by the Commission in drawings included in the declaration of restrictions filed pursuant to this paragraph.

No permanent certificate of occupancy shall be granted by the Department of Buildings for the portion of the #building# utilizing increased #floor area# until all improvements have been finally completed in accordance with the approved plans, as determined by the Chairperson.

\* \* \*

**81-685  
Special permit to modify qualifying site provisions**

In conjunction with any application that would allow additional #floor area# permitted beyond the basic maximum #floor area# for a #qualifying site# set forth in Section 81-64 (Special Floor Area Provisions for Qualifying Sites), the City Planning Commission may permit modifications to certain #qualifying site# criteria, as well as height and setback regulations and mandatory plan

elements, as set forth in paragraph (a) of this Section, provided that the Commission determines that the application requirements set forth in paragraph (b) and the findings set forth in paragraph (c) of this Section are met.

(a) The Commission may modify the following, whether singly or in any combination:

(1) the following #qualifying site# criteria:

- (i) the requirement for minimum #wide street# frontage, including the requirement that no existing #buildings# will remain on such #wide street# frontage, set forth in paragraphs (b) and (c) of the definition of a #qualifying site# in Section 81-613 (Definitions);
- (ii) the #building# performance and publicly accessible space requirements in paragraph (f) of the definition of a #qualifying site# and Section 81-681 (Mandatory requirements for qualifying sites);-~~or~~
- (iii) the requirement that the additional #floor area# permitted through the provisions of Section 81-64 be achieved exclusively through a #development#;
- (iv) the requirement that a #qualifying site# be comprised of a single #zoning lot#, provided that the two or more #zoning lots# constituting such #qualifying site# are contiguous and include the #zoning lot# occupied by Grand Central Terminal. All #bulk# regulations of this Chapter shall apply to such modified #qualifying site# without regard to #zoning lot lines#; or
- (v) the requirement that a #development# or #enlargement# exceed the basic maximum #floor area ratio# set forth in Row A of the table in Section 81-64 as a pre-condition to an increase in #floor area# pursuant to such table, where a #qualifying site# includes the #zoning lot# occupied by Grand Central Terminal;

(2) the provisions for #zoning lots# divided by district boundaries set forth in Sections 77-02 (Zoning Lots Not Existing Prior to Effective Date or Amendment of Resolution), 77-21 (General Provisions) or 77-22 (Floor Area Ratio), and the provisions of Section 81-612 (Applicability along district boundaries) requiring that #zoning lots# divided by Subarea boundaries utilize the provisions of Article VII, Chapter 7;

(3) for #qualifying sites# modified pursuant to paragraph (a)(1)(iv) and paragraph (a)(1)(v) of this Section:

- (i) the pre-condition of achieving the maximum as-of-right #floor area ratio# for #qualifying sites# set forth in Row E of the table in Section 81-64 prior



to, or in conjunction with, the special permits set forth in Sections 81-644 (Special permit for transit improvements) and 81-645 (Special permit for a public concourse), provided that, prior to obtaining a new building permit for a #development# utilizing bonus #floor area# granted pursuant to Sections 81-644 or 81-645, a contribution is made to the #Public Realm Improvement Fund# in an amount that is commensurate with what the provisions of Section 81-642 (Transfer of development rights from landmarks to qualifying sites) would require if the #zoning lot# occupied by Grand Central Terminal were a #granting lot# and the #development# site were a #receiving lot#; and

(ii) the permitted #floor area ratio# attributable to the combination of the special permits set forth in Row F and Row G of the table in Section 81-64, from 3.0 to 6.0;

~~(3)~~(4) the #street wall# regulations of Sections 81-43 (Street Wall Continuity Along Designated Streets) or 81-671 (Special street wall requirements), inclusive;

~~(4)~~(5) the height and setback regulations of Sections 81-26 (Height and Setback Regulations – Daylight Compensation), inclusive, 81-27 (Alternate Height and Setback Regulations –Daylight Evaluation), inclusive, or 81-66 (Special Height and Setback Requirements);~~or~~

~~(5)~~(6) the mandatory district plan elements of Sections 81-42 (Retail Continuity Along Designated Streets), 81-44 (Curb Cut Restrictions), 81-45 (Pedestrian Circulation Space), 81-46 (Off-street Relocation or Renovation of a Subway Stair), 81-47 (Major Building Entrances), 81-48 (Off-street Improvement of Access to Rail Mass Transit Facility), 81-674 (Ground floor use provisions), 81-675 (Curb cut restrictions and loading berth requirements), 81-676 (Pedestrian circulation space requirements) or 37-50 (REQUIREMENTS FOR PEDESTRIAN CIRCULATION SPACE), inclusive, except that no modifications to the required amount of pedestrian circulation space set forth in Section 37-51 shall be permitted;~~;~~ or

(7) for #qualifying sites# modified pursuant to paragraph (a)(1)(iv) or paragraph (a)(1)(v) of this Section, the time period for substantial construction to be completed prior to the lapse of any special permit granted for such #qualifying site#, as set forth in Section 11-42 (Lapse of Authorization or Special Permit Granted by the City Planning Commission Pursuant to the 1961 Zoning Resolution), provided that such time period does not exceed 10 years.

(b) Application requirements

Applications for a special permit for modifications pursuant to this Section shall contain materials, of sufficient scope and detail, to enable the Commission to determine the

extent of the proposed modifications. In addition, where modifications to *#street wall#* or height and setback regulations are proposed, any application shall contain the following materials, at a minimum:

- (1) drawings, including but not limited to, plan views and axonometric views, that illustrate how the proposed *#building#* will not comply with the *#street wall#* regulations of Section 81-43, or as such provisions are modified pursuant to Section 81-671, as applicable, and that illustrate how the proposed *#building#* will not comply with the height and setback regulations of Sections 81-26 or 81-27, or as such provisions are modified pursuant to Section 81-66, as applicable;
- (2) where applicable, formulas showing the degree to which such proposed *#building#* will not comply with the length and height rules of Section 81-26, or as such provisions are modified pursuant to Section 81-66; ~~and~~
- (3) where applicable, *#daylight evaluation charts#* and the resulting daylight evaluation score showing the degree to which such proposed *#building#* will not comply with the provisions of Section 81-27 or as such provisions are modified pursuant to Section 81-66; and
- (4) for any *#development#* or *#enlargement#* on a *#qualifying site#* that includes Grand Central Terminal, a report from the Landmarks Preservation Commission concerning the harmonious relationship of the *#development#* or, where permitted, *#enlargement#* to Grand Central Terminal.

(c) Findings

The Commission shall find that such proposed modifications:

- (1) to the definition of *#qualifying site#* are the minimum extent necessary, and are harmonious with the Subdistrict objective to protect and strengthen the economic vitality and competitiveness of East Midtown by facilitating the development of exceptional modern and sustainable office towers;
- (2) to the requirement for *#wide street#* frontage in the definition of *#qualifying sites#* will not unduly concentrate *#bulk#* towards the middle of the *#block#* to the detriment of the surrounding area;
- (3) to the *#building#* performance requirements in the definition of *#qualifying sites#* and paragraph (a) of Section 81-681:
  - (i) are necessary due to the presence of existing *#buildings#* on the site; and
  - (ii) will not detract from the incorporation of innovative sustainable design measures;

- (4) to the publicly accessible space requirements in the definition of #qualifying sites# and paragraph (b) of Section 81-681:
- (i) are the minimum necessary to accommodate the proposed #building#; and
  - (ii) that any reduction or waiver will result in a better site plan and will not detract from a lively streetscape and pedestrian experience;
- (5) to regulations pertaining to #zoning lots# divided by district boundaries will result in better site planning;
- (6) to #floor area ratio# requirements will facilitate significant improvements to transit infrastructure and the public realm in and around Grand Central Terminal;
- ~~(6)~~(7) to the mandatory district plan elements:
- (i) will result in a better site plan for the proposed #development# or #enlargement# that is harmonious with the mandatory district plan element strategy of the #Special Midtown District#, as set forth in Section 81-41 (General Provisions);
  - (ii) any adverse impact on retail continuity is minimized by a site plan that requires pedestrian-oriented #uses# along the boundaries of any open or enclosed public areas within the #zoning lot#; ~~and~~
- ~~(7)~~(8) to the #street wall# or height and setback regulations:
- (i) are necessary due to constraints or conditions of the #development# or #enlargement# and conditions imposed by the configuration of the site;
  - (ii) will not unduly obstruct the access of light and air to surrounding properties;
  - (iii) will result in an improved distribution of #bulk# on the #zoning lot# that is harmonious with the height and setback goals of the #Special Midtown District# set forth in Section 81-251 (Purpose of height and setback regulations); and
  - (iv) the overall design of the #building# demonstrates an integrated and well-considered facade, taking into account factors such as #street wall# articulation, and fenestration, that creates a prominent and distinctive #building# which complements the character of the surrounding area and constitutes a distinctive addition to the Midtown Manhattan skyline; and

- (9) to the time period for substantial construction to be completed prior to the lapse of any special permit granted for such #qualifying site# are necessary due to the complexity of demolition and construction on the site.

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

\* \* \*

The above resolution (N 210416 ZRM), duly adopted by the City Planning Commission on October 18, 2021 (Calendar No. 5), 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.

**ANITA LAREMONT, *Chair***

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

**ALLEN P. CAPPELLI, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,  
ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners***

**DAVID J. BURNEY, *Commissioner, VOTING NO***

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