

SPECIAL PERMIT pursuant to section 197-c of the New York City Charter and Section 81-53 of the Zoning Resolution of the City of New York to grant a floor area bonus for the construction of a major subway improvement (IND 53rd Street/Lexington Avenue subway station) in conjunction with the construction of an office building at 885 Third Avenue within the Special Midtown District and Special Transit Land Use District, Community District No. 6, Manhattan.

53-54 Third Associates applied for this special permit on November 13, 1983, requesting permission to construct a 34-story commercial office and retail building that would include a floor area bonus generated by a subway improvement. The site is located on the easterly blockfront of Third Avenue between East 53rd Street and East 54th Street partially within the Special Midtown District and the Special Transit Land Use District, Community District No. 6, Manhattan.

The special permit was requested pursuant to Section 81-53 of the Zoning Resolution of the City of New York (the "Zoning Resolution") in order to obtain a floor area bonus up to a 20% maximum.

A simultaneous but separate application (N 840380 ZCM) was made for certification of a transit access easement volume pursuant to Section 95-041 of the Zoning Resolution. That certification was issued on April 27, 1984.

The applicant entity 53-54 Third Associates was replaced by 53rd at Third Venture (the "Applicant").

BACKGROUND

The zoning lot on which the proposed project will be developed contains an area of 26,108 square feet (the "Zoning Lot"). This special permit would allow the construction of an enlargement to a 391,624.95 square foot commercial building now under construction as-of-right. The enlarged building, containing 463,169 square feet of zoning floor area, will have 34 stories plus a penthouse.

On May 13, 1982, the New York City Board of Estimate adopted an amendment to the Zoning Resolution that created the Special Midtown District. Section 81-47 of those regulations (Off-Street Relocation of a Subway Stair) requires existing subway entrances adjacent to development sites to be relocated within the property line of the development. Because of this requirement, the

Applicant must relocate one subway entrance to the IND 53rd Street/Lexington Avenue station (the "IND Station") onto the Zoning Lot.

Upon approval of a special permit by the City Planning Commission and Board of Estimate, Section 81-53 of the Zoning Resolution (Subway Station Improvements) allows the granting of a floor area bonus, up to 20%, for substantial improvements to designated subway stations. The IND Station, which is adjacent to the Zoning Lot, is one of the stations designated in Section 81-531 (Midtown Subway Stations), thus allowing such a bonus. The bonus must be generated, however, by improvements in excess of the mandatory, non-bonused subway entrance relocation requirements of Section 81-47.

The Applicant has proposed a major subway improvement comprised of the construction of a new, up-only, single run escalator between the IND Station platform and the station mezzanine to improve egress from the station, thereby decreasing platform congestion, improving platform safety and raising station capacity. Additionally, the Applicant has proposed an additional access stairway on the Zoning Lot within a lightwell. (The construction of the new escalator and the additional access stairway within a lightwell, the widening of the stairway between the lightwell and the mezzanine and associated improvements will be collectively referred to hereinafter as the "Subway Improvement.") The portion of the Subway Improvement within the Zoning Lot will be protected by the grant by the applicant of a permanent irrevocable easement to the Transit Authority for the public benefit. Pursuant to Section 81-532 of the Zoning Resolution, the Metropolitan Transportation Authority and the Transit Authority have approved the design of the Subway Improvement.

The Subway Improvement consists of two major components. First, the Applicant will design, construct and maintain a westward extension of the Third Avenue mezzanine of the IND Station and a new 32" (hip width) escalator running westerly from the station platform to this new mezzanine extension. The mezzanine extension will have its own control point (intended to be operated as an exit only). A knock-out panel at the western end of the new mezzanine extension will be constructed so that an additional mezzanine

extension may be constructed in the future (a possibility envisioned by the complementary excavation being performed by the developers of 599 Lexington Avenue at the Lexington Avenue end of the IND Station).

Second, the Applicant will design, construct and maintain, on the Zoning Lot, a lightwell containing stairway entrances to the subway. This lightwell will encompass the mandatory, non-bonused relocation of the existing sidewalk staircase onto the Zoning Lot pursuant to Section 81-47 of the Zoning Resolution as well as a second, entirely new staircase. The Applicant will also widen the existing intermediate level staircase between the new lightwell and the mezzanine.

All of the Applicant's obligations have been incorporated into agreements with the Transit Authority dated March 27, 1984 and to be amended prior to the granting of the Special Permit (the "Agreements"), which operate in addition to and in conjunction with this special permit. The Agreements will be recorded against the entire Zoning Lot, and will legally bind the Applicant to perform the obligations contained therein in a timely and complete manner.

This special permit requires the Applicant to meet stringent deadlines for performance of its obligation to construct the bonused Subway Improvement. First, the Subway Improvement must be substantially complete before any temporary certificate of occupancy is issued for the bonus floor area of the proposed building and before any portion of the bonused floor area is used or occupied for any purpose. Second, the Subway Improvement must be 100% complete before a permanent certificate of occupancy is issued for any space within the proposed building.

These deadlines ensure that the public will benefit from the amenity at the same time as, or before, the Applicant benefits from the occupancy of the bonused portion of the proposed building.

ENVIRONMENTAL REVIEW

This application was reviewed by the Department of Environmental Protection and the Department of City Planning pursuant to the New York City Environmental Quality Review (CEQR) regulations as set forth in Mayoral Executive Order No. 91 of 1977, and the New York State Environmental Quality Review Act (SEQRA), whose regulations are set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq (6 NYCRR 617.00).

A Draft Environmental Impact Statement (the "DEIS") was prepared (CEQR #Q81-307M), for which a Notice of Completion was issued on June 22, 1984. The Final Environmental Impact Statement (the "FEIS") was completed, with a final Notice of Completion issued on September 7, 1984.

The City Planning Commission considered the potential impacts disclosed in the FEIS, including the following major issues:

1. The proposed project, will generate 8,230 two-way person trips. The induced vehicular trips will impact existing traffic flows as follows: The Volume/Capacity (V/C) Ratio will change from .90 (Level of Service D) to .94 (Level of Service E) during the evening peak at 53rd Street and Second Avenue. At 53rd Street and Third Avenue the evening peak V/C Ratio will change from .92 (Level of Service E) to 1.03 (Level of Service F). Mitigation measures in the form of revised traffic regulations are proposed on 53rd Street between Third and Second Avenues to improve traffic flows.

More stringent signage will be placed on both sides of 53rd Street for a distance of 100 feet east from the corner of Third Avenue. These signs will read: "Tow Away Zone - No Standing Any Time". This should allow for an additional moving lane to be available for at least 25% of any hour on 53rd Street at Third Avenue. Implementation of this mitigation measure will lower the V/C Ratio at 53rd Street and Third Avenue from 1.03 to .95. Additionally, with this mitigation measure some improvement will result on upstream traffic at 53rd Street and Second Avenue, lowering the V/C Ratio from .94 to .93.

2. The provision of six trees along the Third Avenue sidewalk of the proposed project will result in a decrease in the level of service (LOS) of pedestrian flow quality. The morning peak pedestrian flow quality changes from LOS/C to LOS/D; the mid-day peak changes from LOS/AB to LOS/C; and the evening peak changes from LOS/C to LOS/D after the placement of trees within the sidewalk, due to the reduction in the effective width of the sidewalk.

3. The increased vehicular traffic due to the proposed project would result in a significant air quality impact and would, if not mitigated, be inconsistent with the goals of the State Implementation Plan.

The proposed project would cause a significant exacerbation of the predicted violation of the 8-hour Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) of 9 parts per million (ppm), at 53rd Street between Second and Third Avenues. At this location, the proposed project results in an increase in CO of 2.4 ppm over the No-Build condition and the concentration of 12.9 ppm.

Implementation of the proposed mitigation measures described in paragraph (1) above will make the incremental impact at the 53rd Street intersection site insignificant. Although, with implementation of this mitigation measure, the CO concentration would be reduced to 10.8 ppm, the site will continue to have a projected violation of the NAAQS.

3. The proposed building is being designed to include double glazed windows and an alternate means of ventilation that will ensure an indoor noise environment of 45db(A) or less. These noise attenuation measures will mitigate the adverse noise impact on the proposed building caused by the external ambient noise levels, which place the site in the "Marginally Unacceptable" category according to CEPO/CEQR guidelines established for the evaluation of the sound environment.

UNIFORM LAND USE REVIEW

The application was certified as complete by the City Planning Commission on June 25, 1984 in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) and referred to Community Board No. 6, Borough of Manhattan.

Community Board Public Hearing

Community Board No. 6 held a complying public hearing on July 11, 1984 and on July 18, 1984 adopted a favorable recommendation. The vote was 19 in favor, 4 opposed and 1 abstaining.

City Planning Commission Public Hearing

On July 13, 1984 Public Notice was given for a Public Hearing on the DEIS, which was jointly held by the Department of Environmental Protection and the Department of City Planning on July 25, 1984. On July 9, 1984 (Calendar No. 5), the City Planning Commission scheduled a public hearing on the application for this special permit. The hearing was held on July 25, 1984 (Calendar No. 31) simultaneously with the hearing on the DEIS. There was one appearance at the hearing, by the representative of Community Board No. 6, advocating approval of this special permit, after which the hearing was closed. At the end of the hearing, the record remained open for an additional ten days to receive further comment on the DEIS.

CONSIDERATION

Floor Area Bonus

The proposed building is a 34-story and penthouse commercial office and retail building that rises to a height of 470 feet above the mean curb level

of the Zoning Lot. At grade, the proposed building is set back approximately 7½ feet from the property line on 53rd Street.

In plan, the proposed building consists of several tangential ellipses, stepping back from Third Avenue, together with a rectangular 9-story wing on 54th Street. The elliptical shape provides open areas at the corner of 54th Street and Third Avenue (curb level qualifying pedestrian circulation space) and at the corner of 53rd Street and Third Avenue (lightwell containing two subway staircases which together qualify as pedestrian circulation space). The lobby of the proposed building is entered from the end of the ellipse at 53rd Street. The bulk of the proposed building is designed to comply with Section 81-26 of the Zoning Resolution (Height and Setback Regulation-Daylight Compensation).

The Zoning Lot contains a total lot area of 26,108 square feet. If developed "as-of-right", the Zoning Lot could generate 391,625 square feet of floor area. The Applicant is requesting an increase in floor area ratio of 2.74 or 18.27% more than allowed "as-of-right". This bonus would permit the Zoning Lot to generate a maximum of 463,169 square feet of floor area. The 71,544.05 square feet of bonus floor area shall be defined as contained in the seven uppermost floors of the elliptical portion of the building.

The Zoning Lot is divided by several zoning district boundaries: i.e. 25,105 square feet of the Zoning Lot are within a C6-6 zoning district (maximum "as-of-right" floor area ratio without bonuses equals 15.00) and 1,003 square feet are within a C6-4 zoning district outside the Special Midtown District (maximum "as-of-right" floor area ratio without bonuses equals 10.00). Therefore the Zoning Lot is subject to special provisions of the Zoning Resolution for lots divided by district boundaries; however, pursuant to Section 77-211 of the Zoning Resolution, the entire Zoning Lot is deemed to be within a C6-6 district, within the Special Midtown District. Therefore, the entire Zoning Lot is deemed to have a maximum "as-of-right" floor area ratio of 15.00 and is eligible for bonuses pursuant to Section 81-53 of the Zoning Resolution. Additionally, the frontage along 53rd Street, for a depth of 100 feet is also within the Special Transit Land Use District.

Subway Station Improvements

The floor area bonus is achieved by construction of a major Subway Improvement to the IND Station. The work required of the Applicant includes the following:

1. Construction of a mezzanine extension westward within the bed of 53rd Street to provide a landing for a new escalator. This extension will be equipped with new high-wheel turnstile exits leading users to the underutilized staircases between the IND Station mezzanine and the street on the westerly side of Third Avenue.
2. Construction of an escalator from the mezzanine extension to the platform in accordance with plans and specifications approved by the Transit Authority;
3. Construction of an entirely new stairway entrance within the Zoning Lot near 53rd Street;
4. Construction of an unenclosed lightwell to provide greater natural light to the mezzanine;
5. Construction of a new wider opening and stairway into the northerly side of the IND Station mezzanine from the lightwell;
6. Granting of a permanent, irrevocable easement to the Transit Authority, for the public benefit, through the Zoning Lot to encompass the portion of the Subway Improvement within the Zoning Lot; and
7. Maintenance and repair of the Subway Improvement in accordance with the Agreements.

The existing subway stairway on the easterly sidewalk of Third Avenue will be relocated onto the Zoning Lot . This five foot wide stairway will be replaced by a single stairway, eight feet five inches wide, located in the unenclosed lightwell at the corner of 53rd Street and Third Avenue. This stairway is required pursuant to Section 81-47 of the Zoning Resolution and does not generate any floor area bonus whatsoever.

Additionally, the Applicant will build a second eight foot five inch wide stairway in the same lightwell. This second stairway does generate a small portion of the floor area bonus. The open space area around this lightwell provides substantial pedestrian circulation space, including off-sidewalk queuing space in excess of Transit Authority minimum standards.

All work to be executed by the Applicant must comply with Section 81-533 of the Zoning Resolution and the Transit Authority Station Planning

Guidelines. The City Planning Commission has received a letter from the Transit Authority, dated September 14, 1984, granting final approval of the design of the Subway Improvement, and listing items that remain to be finalized.

The proposed project has created several important opportunities for the New York City transit system. First, the required relocation of the 53rd Street stairway entrance will provide expanded capacity for the heavily utilized IND Station, as will the new escalator. Second, the completion of the escalator will increase the convenience of using the subway for many riders. Third, the additional stairway capacity, the pedestrian circulation space, mezzanine extension and escalator will significantly improve street level pedestrian circulation.

Curb Cut

The site plan provides a curb cut, which is 29 feet 10 inches wide including splays, on 54th Street to serve the two loading berths. This will be a back in, head out loading facility.

Completion Deadlines

This special permit contains three specific deadlines for completion of the Subway Improvement and related work.

- Prior to the granting of the special permit a modified agreement covering all aspects of the proposed Subway Improvement must be executed by the Applicant and the New York City Transit Authority. The original and modified agreements shall be recorded against the Zoning Lot in the office of the Register of the City of New York (County of New York). The modified agreement must include, among other matters, the conditions to be observed by the Applicant during construction, the final plans, specifications and working drawings for the Subway Improvement, the conveyance of a permanent easement in favor of the Transit Authority and the terms upon which the Applicant must maintain the Subway Improvement.
- Prior to any application for or issuance of a temporary certificate of occupancy for any portion of the bonus floor area constructed pursuant to this special permit, and before any portion of the bonus floor area is used or occupied for any purpose, the Subway Improvement must be determined by the Transit Authority to be substantially complete and usable by the public.

- Prior to any application for or issuance of a permanent certificate of occupancy for any portion of the proposed building, the Subway Improvement must be determined by the Transit Authority to be complete in all respects.

The issuance of a temporary certificate of occupancy for the bonus floor area of the proposed building is explicitly conditioned upon the Transit Authority's certification that the Subway Improvement is substantially complete. This requirement ensures that the Applicant will gain none of the economic benefit from the bonused portion of the proposed building unless the public is also receiving the benefit from the bonused amenity.

The issuance of a permanent certificate of occupancy requires that the Subway Improvement be 100% complete to the satisfaction of the Transit Authority.

FURTHER ENFORCEMENT

The Commission has long expressed concern for what it has viewed as a growing disregard for the conditions it has imposed on applicants for the construction, maintenance and operation of public amenities in connection with special permit developments and has sought more efficacious means of enforcement. The ability to assure production of the Subway Improvement by a variety of distinct enforcement devices has in fact been a major aspect of the Commission's consideration of the project. The Commission has begun, in the recent past to require rent assignments as a means of enforcement. This method was considered because it eliminates the profit from violations, as well as the incentive to delay or withhold completion of amenities. It is believed that this will figure as an important tool in enforcement in future projects.

Therefore, for this project, as an additional means of assuring timely completion of the Subway Improvement and of preventing unauthorized use or occupancy of the bonused floor area, the Applicant has entered into an agreement with the City of New York assigning to the City the rents, issues, profits and revenues arising out of use or occupancy of the bonused floor area in violation of the occupancy conditions of the special permit.

FINDINGS

Pursuant to Section 81-535 of the Zoning Resolution, the City Planning Commission hereby finds that:

- a) The general accessibility, circulation, appearance, rider orientation and safety of the IND Station will be substantially improved by the provision of new facilities;
- b) The environment of the IND Station will be enhanced by provision for additional natural light, better orientation of riders, lighting and various other architectural treatments;
- c) The provision of the escalator between the mezzanine level and the platform will substantially assist in the efficient and convenient movement of passengers; and
- d) The street level entrances within the Zoning Lot are highly visible in the streetscape, spacious and convenient, and relate well to the pedestrian circulation at both the street and underground level, as well as to the proposed project's ground floor uses.

The City Planning Commission has evaluated the benefits to the City of New York from the proposed Subway Improvement and has determined that the appropriate amount of bonus is 18.27% or a floor area ratio of approximately 2.74. The total floor area bonus allowable on the Zoning Lot shall not exceed 71,544.05 square feet of floor area.

TRANSIT AGREEMENT

The Applicant has signed an Agreement with the Transit Authority, which shall be modified prior to approval of this special permit and which shall be recorded against and run with the Zoning Lot. The Agreements grant to the Transit Authority an irrevocable easement in perpetuity through the Zoning Lot in order to protect the portion of the Subway Improvement within the Zoning Lot, guarantee construction of the Subway Improvement according to specified approved plans, and provide for continuing maintenance by the Applicant of the Subway Improvement for the life of the proposed building.

ENVIRONMENTAL FINDINGS

Having considered the FEIS, the City Planning Commission finds that consistent with social, economic and other essential considerations:

- (1) from among the reasonable alternatives thereto, the actions to be approved are ones that minimize or avoid adverse environmental effects to the maximum extent practicable;
and

(2) to the maximum extent practicable, the adverse environmental impacts revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

This report, together with the FEIS, shall constitute the written statement of facts supporting the decision and indicating the social, economic, and other factors and standards that form the basis of the decision, pursuant to 6 NYCRR 617.9(C)(3).

RESOLUTION

The City Planning Commission has determined that this application warrants approval subject to the conditions stated in the following resolution:

RESOLVED, by the City Planning Commission, pursuant to Section 197-c of the New York City Charter, that the application by the Applicant for the grant of a special permit (C 840379 ZSM) allowing an increase in floor area by the completion of a major subway improvement, as an essential part of a 34 story and penthouse commercial office and retail building at 885 Third Avenue, on a zoning lot bounded by 53rd Street, Third Avenue and 54th Street within the Special Midtown District, Community District #6, Borough of Manhattan, be and hereby is approved pursuant to Section 81-53 of the Zoning Resolution, subject to the following conditions that shall be made conditions of the certificates of occupancy, temporary or permanent, issued for any portion of the proposed building:

1. The Zoning Lot shall be developed in size and arrangement substantially in accordance with the drawings and zoning computation dated as follows and made a part hereof:

Number	Title		Received on Date
Z1	Plot Plan and General Notes	revised	September 17, 1984
Z1.1	1st Ellipse Max. Ht. Streetwall	revised	June 25, 1984
Z2	1st Ellipse Parapet	revised	" 1984
Z3	2nd Ellipse Parapet	revised	" 1984
Z4	3rd Ellipse Parapet	revised	" 1984
Z5	Roof Top Parapet	revised	" 1984
Z6	Area Map	revised	" 1984
Z7	Tax Map	revised	" 1984
Z8	Site Survey	revised	" 1984
Z9	Lower Level 2	revised	" 1984
Z10	Lower Level 1	revised	" 1984
Z11	Ground Floor Plan	revised	" 1984
Z12	1st Ellipse Plan	revised	" 1984
Z13	2nd Ellipse Plan	revised	" 1984
Z14	3rd Ellipse Plan	revised	" 1984
S1	Scope of Work	revised	" 1984
S2	Street Level Plan	revised	" 1984
S3	Mezzanine Level Plan	revised	" 1984
S4	Elevations and Sections at subway entrance	revised	" 1984
S5	Details at subway entrance	revised revised	" 1984 " 1984
S6	Proposed new escalator	revised	" 1984
S7	Utility Plan	revised	" 1984
F3	Lower Level 1	revised	" 1984
F4	Ground Floor Plan	revised	" 1984
F18	Penthouse Plan Lower Level	revised	" 1984
F19	Penthouse Plan Upper Level	revised	" 1984
F21	Building Section	revised	" 1984
F22	Building Section	revised	" 1984
F23	West and South Elevations	revised	" 1984
F24	East and North Elevations	revised	" 1984

2. The proposed project shall conform to all applicable provisions of the Zoning Resolution, except for the modifications herein granted, as shown on the plans filed with the application. All zoning computations are subject to verification and approval by the New York City Department of Buildings;
3. The proposed project shall conform with all applicable laws and regulations relating to construction, operation and maintenance;
4. This Resolution shall be effective only if the Agreements between the Applicant and the Transit Authority, dated March 27, 1984 and to be amended prior to the granting of the special permit relating to the Subway Improvement that is the subject of this special permit, containing reduced-size (8½"x14") copies of drawings of the Subway Improvement as approved by the Transit Authority shall have been recorded and filed with the City Register in the County of New York and indexed against the Zoning Lot;
5. In the event that the Zoning Lot is developed as, sold, or converted to a cooperative or condominium ownership, a copy of this Resolution, the Agreements, and any subsequent modification of the terms of either document shall be incorporated in full in all of the offering documents for such cooperative or condominium;
6. All ground level open space areas within the Zoning Lot, which are shown on drawing number Z-11 (Ground Floor Plan) and which are not within the proposed building, shall remain accessible, usable, unobstructed and open to the public 24 hours per day, every day of the year. All such open space areas that are not covered by upper floors of the proposed building, shown on the approved drawings attached hereto, shall remain unobstructed to the sky, and all other portions shall remain unobstructed to the level where the proposed building begins. Obstruction of these open space areas by unpermitted fencing, planting (except as shown on drawing Z-11) or other restriction, including limitation as to hours of accessibility by the public shall be a violation of the special permit.
7. The Applicant shall, in good faith, provide a plaque, not less than two square feet in size, displayed in a prominent location, within the lightwell. This plaque shall contain the City Planning Commission specified public space symbol, and shall state that "The City Planning Commission requires that this open space area be provided for the benefit of the public";

8. The Applicant shall provide six trees in the public sidewalk along Third Avenue adjacent to the Zoning Lot. These trees are to be planted greater than 25 feet north of the intersection of 53rd Street and Third Avenue and greater than 25 feet south of the intersection of 54th Street and Third Avenue.
The trees are to be at least 4 inch caliper and shall be planted, and replaced as necessary, with gratings flush to grade in at least 100 cubic feet of soil of per tree; with a depth of soil of at least 3 feet;
9. The off-street loading berths shall be used for all truck and service vehicle loading and unloading for the proposed building, including all deliveries to the owners, tenants and users thereof. Any persistent or continuous pattern of on-street loading or unloading related to the proposed building on any of the streets bounding the proposed project shall be grounds for revocation of this special permit. It shall be the responsibility of the owners and tenants of the proposed building to enforce compliance with this condition;
10. The proposed project shall comply with the following condition to mitigate adverse environmental impacts disclosed in the FEIS:
Signage will be placed on both sides of 53rd Street for 100 feet east of Third Avenue that will state "Tow-Away Zone No Standing Any Time." Such required signage shall be constructed in accordance with the standards of the New York City Department of Transportation and paid for by the Applicant.
11. No building permit, or amendment to the building permit for the "as-of-right" development, that would enable the developer to utilize the special permit, to build all or any portion of the 71,544.05 square feet of bonus floor area to be contained in the uppermost seven floors of the building or the structural framing for those floors shall be applied for or issued until: a) the Applicant shall have executed an agreement with the New York City Transit Authority covering all aspects of the proposed Subway Improvement and the agreement shall have been recorded against the Zoning Lot in the Office of the Register of the City of New York (New York County); b) the Applicant shall have posted a performance bond or an irrevocable clean letter of

Credit in an amount acceptable to the Transit Authority, naming the Transit Authority as the beneficiary, as specified in the Agreement; c) the Applicant shall have executed an assignment of rents for the bonused floor area in favor of the City of New York as set forth in paragraph 14 hereinbelow; and d) the City Planning Commission shall have informed the New York City Department of Buildings in writing that the Applicant has fully complied with this and all other applicable terms and conditions of this special permit.

12. No temporary certificate of occupancy for any portion of the 71,544.05 square feet of bonused floor area of the proposed building, which shall all be defined as contained in the seven uppermost floors of the elliptical portion of the proposed building, shall be applied for or issued, nor shall any portion of the bonused floor area of the proposed building be used or occupied, until:
 - a. The Applicant shall have met all of the terms and conditions of the Agreement;
 - b. The Transit Authority shall have certified in writing to the City Planning Commission that the Subway Improvement that is the subject of this special permit and the Agreement is "substantially complete", as this term is defined in the Agreement, and that the Subway Improvement can be used by the public;
 - c. The City Planning Commission shall have informed the New York City Department of Buildings in writing that the Applicant has fully complied with these, and all other applicable terms and conditions of this special permit;
13. No permanent certificate of occupancy for any portion of the proposed building shall be applied for or issued until:
 - a. The Applicant shall have complied with all conditions of the Agreement;
 - b. The Transit Authority shall have certified in writing to the City Planning Commission that the Subway Improvement that is the subject of this special permit and the Agreement is "finally complete," as this term is defined in the Agreement;

- c. The City Planning Commission shall have informed the New York City Department of Buildings in writing that the Applicant has fully complied with these, and all other applicable terms and conditions of this special permit.
14. Any temporary or permanent certificant of occupancy shall set forth, floor by floor that the seven uppermost floors of the building contain floor area permitted as a bonus for the provision of the Subway Improvement.
 15. The Applicant shall observe the terms of an agreement with the City of New York to assign, transfer and set over to the City of New York all of the rents, issues, profits and revenues arising out of occupancy of the bonused floor area in violation of the occupancy conditions of this special permit, as security for compliance by the Applicant with such occupancy conditions.
 16. All leases or other agreements for use or occupancy of space within the proposed building, entered into prior to substantial completion of the Subway Improvement in accordance with paragraph 12 set forth hereinabove, shall give actual notice of all of the conditions of this special permit to the potential user or occupant.
 17. Upon the failure of any party having any right, title or interest in the Zoning Lot or the failure of any heir, successor, or assign of such party to observe any of the covenants, restrictions, agreements, terms, or conditions of this Resolution, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of this special permit, and such power of revocation shall be in addition to and not in limitation of any other powers of the City Planning Commission, of any other agency of government, or of any private person or body.
 18. Any alteration in the premises or in the manner of operation that departs from any of the hereinbefore specified conditions, unless authorized by the City Planning Commission, shall cause an immediate termination of the special permit herein granted.
 19. This special permit shall lapse two years after the date of its approval by the Board of Estimate unless substantial construction of the Subway Improvement has been undertaken, except that, if substan-

tial construction has been delayed by reasons beyond the Applicant's control, then the period for substantial construction shall be extended by the period of such delay.

20. Neither the City Planning Commission nor any of its staff shall have any liability to the Applicant for money damages by reason of its actions or its failure to act in accordance with the provisions of this special permit.

The above resolution duly adopted by the City Planning Commission on September 17, 1984 (Calendar No. 1) is herewith filed with the Secretary of the Board of Estimate, pursuant to Section 197-c of the New York City Charter.

RG:bb

HERBERT STURZ, Chairman
MARTIN GALLEN, Vice Chairman
MAX BOND, JOHN P. GULINO,
R. SUSAN MOTLEY, DENISE M. SCHEINBERG, Commissioners