

Manhattan Community Board Five

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

March 13, 2017

Hon. Marisa Lago
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Application # N170186 ZRM and N170187 ZMM - Department of City Planning application for zoning changes in the Greater East Midtown area. The changes would enable higher density commercial development and permit district-wide transfers of unused air rights from landmarks in exchange for key transit and public realm improvements and the preservation of historic landmarks.

Dear Chair Lago:

At the regularly scheduled monthly Community Board Five meeting on Thursday, March 09, 2017, the following resolution passed with a vote of 32 in favor; 0 opposed; 1 abstaining:

WHEREAS, Mayor de Blasio established the East Midtown Steering Committee in May 2014 to develop a new planning framework that would inform rezoning, capital commitments, funding mechanisms and other policy decisions affecting East Midtown's commercial core; and

WHEREAS, The East Midtown Steering Committee's first meeting was held on September 30, 2014 and during the following nine months, the East Midtown Steering Committee met 19 times to inform itself of the issues, hear from outside stakeholders and subject matter experts, consider planning proposals; and

WHEREAS, Meetings lasted two to three hours and always had representation from Community Board Five; and

WHEREAS, The East Midtown Steering Committee Report's policies do not represent the position of every member group on every issue but instead reflect a consensus view that, on balance, the framework of policies would properly reflect the overlapping goals that the Committee was asked to advance; and

WHEREAS, Community Board Five agreed to participate in the East Midtown Steering Committee because it was informed that the product of the collaborative effort, absent

unforeseen legal or technical issues, would become the planning framework for East Midtown; and

WHEREAS, Community Board Five is disappointed that Mayor de Blasio's Greater East Midtown proposal deviates substantially from the East Midtown Steering Committee Report; and

WHEREAS, Community Board Five's core objective throughout the process was to ensure that the Greater East Midtown planning effort resulted in an improvement to the public realm; and

WHEREAS, East Midtown has minimal public space and any increase in built density in East Midtown facilitated by a change to the Zoning Resolution must be coupled with an increase in the absolute amount of public space; and

WHEREAS, Although Community Board Five strongly prefers the creation of new outdoor public space in East Midtown because such space better mitigates some of the adverse impacts tied to new construction, it believes the creation of indoor public space is preferable to the creation of no new public space on a redeveloped site; and

WHEREAS, Page 2 of the East Midtown Steering Committee Report, in the Executive Summary of Recommendations section, reads:

“The East Midtown Steering Committee supports invigorating the East Midtown office district by encouraging as-of-right, higher density and modernized office development in appropriate locations if accompanied by both: (1) significant, timely and assured upgrades to transportation networks and public realm spaces (the “public realm”) in accordance with an adopted concept plan and an ongoing, consultative implementation process; and (2) preservation of important local historic resources. The Steering Committee believes that any rezoning should provide more certainty as to both the development of permitted as-of-right and the public realm improvements that would accompany any increase in density.”; and

WHEREAS, Page 50 of the East Midtown Steering Committee Report reads:

“The East Midtown Steering Committee emphatically concludes that the public realm of East Midtown - inclusive of transit, plazas, sidewalks and other public spaces - needs to be meaningfully improved, not just to accommodate more development in the district, but also to address the present intensity of land use and keep the district competitive. Planning, funding and project management for such improvements should go in advance of or, at the latest, hand-in-hand with added development.”; and

WHEREAS, Page 64 of the East Midtown Steering Committee report reads, “Open space is a needed amenity throughout the district”; and

WHEREAS, Although page 65 of the East Midtown Steering Committee Report includes policy “C23,” which calls on the city to change policy in East Midtown to ensure that there is an increase in the number of privately owned public spaces, the Department of City Planning has

taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Although page 65 of the East Midtown Steering Committee Report includes policy “C24,” which calls on the Department of City Planning to “improve the current plaza guidelines with regard to indoor plazas,” the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Although page 65 of the East Midtown Steering Committee Report includes policy “C25,” which calls on the Department of City Planning to create a mechanism for off-site location of privately owned public spaces, the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Although page 66 of the East Midtown Steering Committee Report includes policy “C26,” which calls on the Department of City Planning to create a “streamlined process and incentives for private owners to renew their POPS and plazas,” the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy clearly outlined in the East Midtown Steering Committee Report; and

WHEREAS, Community Board Five believes that the Greater East Midtown proposal of 2016-2017, if approved as currently proposed, would likely result in a worse public realm in the Grand Central area than what would have been achieved under Mayor Bloomberg’s 2012-2013 East Midtown Rezoning proposal because developers proposing projects on redevelopment sites surrounding Grand Central Terminal would have likely offered to build high quality, privately owned public space in order to earn a special permit granting 6 additional FAR under the Bloomberg plan, but will likely will forgo the special permit if the current proposal is adopted because the present proposal would only permit an additional 3 FAR through a special permit; and

WHEREAS, There is a long history of building owners who manage POPS flouting their agreements with the City, over which the Department of City Planning has no enforcement power, which causes DCP to be reluctant to create new POPS, and

WHEREAS, The best answer to this problem is for a new unit to be created within DCP which will have singular authority over POPS, allowing for oversight and enforcement at the same agency where these initial agreements are made; and

WHEREAS, We commend DOT for its efforts to envision public realm improvements on existing streets, but do not believe the city has a mechanism in place to ensure that any of these improvements will happen; and

WHEREAS, We ask for at least some up-front investment in the DOT improvements; and

WHEREAS, It is critical for there to be a minimum contribution rate for the transfer of development rights within East Midtown so that the Governing Group is able to receive sufficient funds to invest in the development and operation of improvements for the public realm; and

WHEREAS, It is important that the minimum contribution rate is based on reasonable assumptions that do not, for instance, use development rights transactions for 100% residential developments without making proper adjustments, and

WHEREAS, The Governing Group should be required, by the Zoning Resolution, to record every meeting by video and have a word-for-word transcription of each meeting that shall be made accessible by the Office of the Manhattan Borough President and either the Mayor's Office or the Department of City Planning; and

WHEREAS, The Governing Group should be empowered to act, according to the Zoning Resolution, only if at least one non-Mayoral appointee votes for an action so as to ensure that the Governing Group is not a rubber stamp for the Mayor; and

WHEREAS, Although page 27 of the East Midtown Steering Committee Report includes policy "C6," which states that "The Governing Group's membership should balance Mayoral authority with significant input from other elected officials, as well as balance government and highly qualified outside voice," the Department of City Planning's proposal would permit Mayoral appointees to simply dictate all action of the Governing Group even if the Council Member, Borough President, and community boards all jointly objected to a proposal before the Governing Group; and

WHEREAS, We are troubled that the proposed zoning text amendment allows the possibility for developers to build a public elevator from street-level to a station mezzanine without building an additional elevator from the mezzanine to the platform-level; and

WHEREAS, According to Center for an Urban Future "Scale Up New York Report" from November 2016, NYC has lost more than 1.6 million square feet of Class B and C office space since 2000; and

WHEREAS, Dozens of properties have an incentive to convert from Class B office space unless the city prohibits the as-of-right conversion of more than 12 FAR of a building from non-residential use to residential use in East Midtown; and

WHEREAS, The local public schools serving the students of Community District Five do not have capacity to absorb the conversion of dozens of East Midtown buildings from Class B office to residential use; and

WHEREAS, Although page 27 of the East Midtown Steering Committee Report includes policy "B6," which calls on the Department of City Planning to put forth a zoning text amendment that would place a 12 FAR cap on the conversion of non-residential floor area to residential floor area in East Midtown so as to protect the commercial character of East Midtown, protect the

businesses and workers in Class B office buildings, and ensure that our overcrowded schools do not face further crowding absent additional investment in school capacity, the Department of City Planning has taken no steps to implement this policy nor explained in writing why it has chosen to disregard this policy of the East Midtown Steering Committee Report; and

WHEREAS, The Regional Plan Association, in regards to the policy B6 on conversions, testified on February 6, 2017:

“Residential conversions & Affordable Housing Require special permit for residential conversions, and require affordable housing in any residential development enabled: East Midtown is first and foremost a business district and to that end, RPA recommends residential uses be discouraged. In order to utilize the zoning framework proposed in this rezoning, the City’s proposal requires that development have clear frontage along a wide street, exceed environmental performance standards, and that residential floor area be no more than 20 percent of the development. RPA applauds this last provision, and furthermore recommends that if this rezoning will encourage additional residential capacity, either by design or as a side-effect, two conditions apply: residential conversions must be approved through special permit and any additional residential should be mixed-income.”; and

WHEREAS, The Municipal Art Society, in regards to the policy B6 on conversions, testified on February 6, 2017:

“Residential Conversion Since 1981, the Zoning Resolution has allowed commercial buildings to be converted to residential without regard to generally applicable bulk regulations if they meet certain criteria. Over a hundred buildings, representing millions of square feet within the proposed rezoning area, would be eligible for residential conversion (built in 1961 or earlier, exceed 12 FAR, and have zero residential floor area). As such action would be contrary to the stated goals of the proposal, MAS urges the city to explore mechanisms that would restrict conversions within the project area.”; and

WHEREAS, The Service Employees International Union, Local 32B, in regards to the policy B6 on conversions, testified on February 6, 2017:

“Further, to protect the integrity of the sub-district as a hub of high quality jobs and commercial activity, we urge the city to limit the conversions of office buildings into residential buildings, which is currently permitted as-of-right, provided by Article I Chapter 5 of the Zoning Resolution. This city can do this by amending the rezoning proposal to require a special permit for commercial-to-residential conversions. By subjecting conversions to public review, we can limit residential development to the instances where it serves the goals of the district and ensure it does not undermine efforts to uphold East Midtown as a competitive commercial hub....we ask the City to require special permits for commercial-to-residential conversions.”; and

WHEREAS, While the policy behind the Greater East Midtown proposal is an “earned as-of-right” framework where there is no increase in permitted floor area under base zoning regulations, the Department of City Planning has made one glaring exception, amounting to a “spot zoning” to grant 5 FAR—tied to no landmark benefit, public realm improvement, or transit benefit—to the Pfizer site; and

WHEREAS, The proposed rezoning will cause additional shadows to be cast onto Central Park, a vital light sensitive resource of CB5 and of the city as a whole; and

WHEREAS, Although the EIS identifies Central Park as a light sensitive resource, the proposed rezoning does not include any mitigating mechanism to prevent or at the very least limit the amount of incremental shadows cast onto Central Park; and

WHEREAS, The EIS does not study or assess the specific shadow impact that the redevelopments will have on Central Park, failing to address and protect one of the most important natural resources in a densely-built environment—the EIS should carefully assess this and consider mitigations; and

WHEREAS, Since 2013, Community Board Five has expressed grave concerns over shadows on Central Park and has advocated for mitigating factors to protect access to air and light to Central Park from incremental shadows but, to this day, the Department of City Planning and the Mayor’s Office have refused to allow for the serious study of building envelope reconfiguration to protect our vital public resources, let alone acknowledge that incremental shadows are even an issue; and

WHEREAS, The proposed rezoning will relax the Midtown Subdistrict requirement for sky plane exposure and daylight scores, darkening the streets and avenues at ground level, while providing no mitigation; and

WHEREAS, Community Board Five believes that the proposed zoning changes will diminish the environmental quality of Midtown streets and the pedestrian’s experience; and

WHEREAS, Midtown zoning’s performance-based Height and Setback regulations, with their daylight standards, have served the City well for almost 35 years resulting in as-of- right development which has added to the environmental quality of Midtown; and

WHEREAS, The City should maintain daylight standards and when they cannot be met for a particular site, the public should be provided with concrete reasons as to why a development cannot feasibly apply the daylight standards—balancing the environmental quality of Midtown with other perceived “goods”; and

WHEREAS, CB5 strongly believes the goal of the rezoning should be to create and preserve a diversity of high quality commercial jobs and therefore strongly encourages developers, contractors and tenants to take steps to protect the hundreds of building service workers who are earning family-sustaining prevailing wages and benefits and may be displaced by the redevelopment of qualifying sites as result of the East Midtown rezoning, and to commit to

creating high service jobs that pay all building service workers the industry standard prevailing wage in the new development sites; therefore be it

RESOLVED, Community Board Five **recommends denial** of the Greater East Midtown zoning application **unless**:

1. There is a creation of new public space on every redeveloped site that takes advantage of the Greater East Midtown's transfer of development rights framework; and
2. The Governing Group should be empowered to act, according to the Zoning Resolution, only if at least one non-Mayoral appointee votes for an action so as to ensure that the Governing Group is not a rubber stamp for the Mayor; and
3. 30 percent of the value of the transferred development rights will be deposited into the improvement fund and the Greater East Midtown proposal **MUST** maintain the minimum contribution price so as to ensure that all parties pay their fair share; and
4. The City invests in at least some of the Department of Transportation-identified improvements prior to the adoption of the proposed zoning text; and
5. There is some mechanism for community board review (even if not ULURP) for developments that would exceed 24 FAR; and
6. There is a prohibition on the as-of-right conversion of more than 12 FAR from non-residential use to residential use and a special permit mechanism created to permit such conversions on a discretionary basis; and be it further

RESOLVED, Community Board Five asks for the following:

1. There shall be no increase in base permitted floor area approved as part of the Greater East Midtown rezoning; and
2. The Concept Plan of identified improvements should be written into the Zoning Resolution so as to ensure that the Governing Group is obligated, based on the Zoning Resolution, to first carefully consider implementing these improvements even if it ultimately decides not to; and
3. The Governing Group should be empowered to fund operation of a closed or shared street so that the local business improvement district shall not have *de facto* veto power over the creation of new pedestrian space on a Department of Transportation-controlled street; and
4. The Governing Group should be required, by the Zoning Resolution, to record every meeting by video and have a word-for-word transcription of each meeting that shall be made accessible by the Office of the Manhattan Borough President and either the Mayor's Office of the Department of City Planning; and
5. Any improvement related to the installation of an elevator tied to an as-of-right FAR bonus must only occur if the improvement results in full elevator access from the platform to the street level; and
6. A new unit will be created within DCP that would be charged with the sole oversight and enforcement of all POPS; and
7. There should be additional connections from 4/5/6 to the 7 Train at Grand Central Terminal; and

8. Daylighting standards shall only be lessened pursuant to careful public review on a project-by-project basis that ensures that such modifications are truly necessary to facilitate Class A office development; and
9. DCP devises building massing regulations that eliminate or drastically limit the amount of shadow cast onto Central Park and other light sensitive resources of our district; and be it further

RESOLVED, The words "denied" and "unless" in the first resolved clause shall be interpreted as "approval" and "conditional upon," respectively, if, on or before March 13th, 2017, the New York City Mayor's Office or the New York City Department of City Planning communicates the following to Community Boards Five and Six in writing: The EIS will consider an alternative that requires redeveloped sites to include either outdoor plaza space or a covered pedestrian space.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Eric Stern
Chair, Land Use, Housing and Zoning Committee