

CITY PLANNING COMMISSION

October 17, 2012 / Calendar No. 7

N 120305 ZRM

IN THE MATTER OF an application submitted by Clinton Park Holdings pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York, relating to Article IX, Chapter 6 (Special Clinton District), Community District 4, Borough of Manhattan.

This application for a zoning text amendment was filed by Clinton Park Holdings on April 30, 2012. The zoning text amendment would resolve the otherwise non-compliant condition that would be created if a New York Police Department horse stable does not occupy space constructed for its use on the ground floor of Mercedes House.

BACKGROUND

The Mercedes House is a mixed-use development currently under construction. The project site is located on the east side of Eleventh Avenue, between West 53rd Street and West 54th Street, is approximately 200 feet by 470 feet, and has a lot area of 94,463 square feet. The north easternmost corner of the site (approximately 3,750 sq. ft.) is comprised of a deck over a below-grade easement for the Amtrak right-of-way.

Immediately to the west and southwest of the project site is the 5.83 acre DeWitt Clinton Park; to the northwest is an eight-story commercial building; to the north are thirty-nine and fourteen-story residential towers bracketing a four-story institutional use and a parking lot; to the northeast are four- and five-story commercial buildings and a twelve-story residential building with ground floor retail; immediately to the east of the project site is the windowless, 457-foot high AT&T tower; to the southeast is Archstone Clinton, a twenty-five story residential tower; immediately to the south are several low rise (1 to 4 story) commercial buildings interspersed with open parking lots and two seven-story residential buildings at the corner.

The project site was previously the subject of a zoning map amendment to change from a M1-5 zoning district to C6-3X (C 080008 ZMM); a zoning text amendment relating to Article II, Chapter 3 (Bulk Regulations for Residential Buildings in Residence Districts) and relating to Article IX, Chapter 6 (Special Clinton District) (N 080009 ZRM); a Special Permit pursuant to

Section 74-743 to waive height and setback regulations (C 080010 ZSM); and a Special Permit pursuant to Section 74-744 to permit a commercial use and residential use to occupy the same floor and to waive signage regulations (C 080011 ZSM). These actions were approved by the City Planning Commission (CPC) on March 18, 2009, and were approved by the City Council on May 20, 2009. The approved development includes approximately 729,000 square feet of residential floor area (900 dwelling units of which 180 will be developed pursuant to the Inclusionary Housing Program); a food market with approximately 8,000 square feet and a second retail space of approximately 800 square feet; an automobile dealership, including showroom, preparation and repair facilities, with a gross area of 330,000 square feet; a fitness center of 20,000 square feet; and accessory parking for up to 225 cars on the second level of the building to be located above a horse stable intended to be occupied by the New York City Police Department's Mounted Troop "B". The Mercedes House is currently under construction, and almost completed. A number of residential units are occupied, and the automobile dealership space is occupied by Mercedes-Benz.

A site selection and acquisition application for the stable to accommodate the New York City Police Department's Mounted Troop "B" was approved by the CPC on July 1, 2009 (C 080012 PCM).

The previously-approved text amendment action (N 080009 ZRM), associated with the 2009 approvals, recognized the impact that the City's horse stable would have on floor area calculations for the project. Given the physical requirements of the stable, including the need for significant structural members to accommodate a column-free riding and training ring, high floor to ceiling heights in areas with horse traffic, and mezzanine office space, new text was adopted to allow any accessory parking located above space occupied by the New York Police Department (NYPD) stable to be exempted from floor area calculations. Normally, accessory parking located up to 23feet in height is allowed to be exempted from floor area calculations; accessory parking in Mercedes House was proposed to be located above the height of 28.5 feet.

The shell of the stable has been built; however, at the time of referral for the text amendment which is the subject of this report, the Police Department had not acquired the space and there

was no indication that the Police Department would relocate from its current location at Pier 76 in the immediate future. As a result, approximately 70,000 sf of accessory parking floor area located above the stable cannot be exempted, meaning that the project as a whole is significantly overbuilt and residential units at the top of the building cannot receive certificates of occupancy.

The proposed text amendment would resolve this by continuing to allow the accessory parking to be exempted from floor area provided it is located above space that was designed for stable use by the New York City Police Department in a building approved by the Department of Buildings.

ENVIRONMENTAL REVIEW

The application (N 120305 ZRM) 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 07DCP071M. The lead is the City Planning Commission.

As stated above, the project site was the subject of ULURP applications, including that for a special permit, approved by the CPC in 2009 and analyzed in a Final Environmental Impact Statement (FEIS) completed on March 6, 2009. Subsequent to the FEIS, a Technical Memorandum, dated March 17, 2009, analyzed modifications made by the City Planning Commission, identified partial mitigation for the significant adverse elementary school impact and slightly modified language regarding day care mitigation.

On June 15, 2012, a Technical Memorandum was issued which analyzed the environmental effects of this application for the proposed text amendment (N 120305 ZRM). It determined that the proposed application would not result in any new or different significant adverse impacts not already disclosed in the March 2009 FEIS for the proposed project.

PUBLIC REVIEW

This application (N 120305 ZRM) was referred to Manhattan Community Board 4 and the Manhattan Borough President on July 9, 2012, in accordance with the procedures for non-ULURP matters, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 4 held a public hearing on this application (N 120305 ZRM) on July 24, 2012. At its Full Board Meeting on September 5, 2012, Community Board 4 adopted a resolution recommending disapproval of the application, subject to the following conditions:

1. The text is amended to allow the Applicant to obtain a Temporary Certificate of Occupancy upon certification by the applicant to the Chair of the City Planning Commission (CPC) that the NYPD stable was constructed as planned.
2. The applicant then agrees to work with CB4 in good faith to identify a mutually acceptable user to utilize the former NYPD Mounted Unit space as a community facility.
3. If such user cannot be identified by May 30, 2013, a Permanent Certificate of Occupancy may be issued, after that date, upon certification by the Applicant to the Chair of the CPC, with a reasonable opportunity for CB4 to respond that certifies:
 - a. That a user has been found that meets certain criteria established by the applicant that is willing to lease the premises; and
 - b. That the applicant has worked in good faith with CB4 to find a user that meets certain criteria established by the applicant for the space as a community facility or failing that, that an acceptable user for the space for a use that is not an adult establishment, bank, banquet hall, catering establishment, or eating/drinking establishment, except restaurants with a capacity of 200 persons or less, has been found by the applicant but that no final agreement has been reached.

Borough President Recommendation

The President of the Borough of Manhattan did not submit a recommendation on this application (N 120305 ZRM).

City Planning Commission Public Hearing

On September 5, 2012 (Calendar No. 4), the City Planning Commission scheduled September 19, 2012 for a public hearing on this application (N 120305 ZRM). The hearing was duly held on September 19, 2012 (Calendar No. 10).

There were two speakers in favor of the application, and one speaker in opposition.

A land use attorney representing the applicant spoke in favor of the application and described the need for the text amendment. The representative also discussed potential other uses that could occupy the space originally proposed for the NYPD horse stable and described the applicant's willingness to consider community facility uses, such as those requested by CB4. The representative also mentioned that, pending further negotiations, there is still a possibility that the NYPD horse stable occupies the space originally constructed for its use. A representative of the applicant spoke in more detail about relatively recent discussions with the City regarding the possibility of locating the NYPD horse stable within its building.

The one speaker appearing in opposition, an assistant District Manager for Manhattan Community Board 4, reiterated CB4's recommendation.

There were no other speakers on the application and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a zoning text amendment (N 120305 ZRM), is appropriate.

The Commission recognizes that the 2009 approvals for the project site anticipated the construction of a mixed-use building that included a NYPD horse stable on the ground floor. The Commission notes that the site selection and acquisition of property and a text amendment exempting floor area for accessory parking above the horse stable were specifically approved to facilitate the horse stable use and that subsequent to such approvals, the building was constructed in good faith to accommodate such use. The Commission notes that through no fault of its own,

the horse stable might not occupy space built for its use, and the applicant, as a result, will have constructed a building with significantly more floor area than allowed pursuant to zoning. This would mean residential units constructed at the top of the building could not be occupied. The Commission believes the applicant should not be penalized as a result of the City's decision to not relocate to the applicant's building after the applicant has built space for its use, and believes the proposed text amendment will resolve this unintended consequence of the City's actions.

The Commission is pleased to hear that since referral of the application, the applicant has re-engaged with City officials regarding the possibility of relocating the horse stable to their building, as originally planned. The Commission notes that the applicant has stated in a letter to the Commission dated September 28, 2012, that while they are hopeful to reach an agreement with the City, the proposed text amendment is still necessary to allow the occupancy of the residential units, including some affordable units, when they are expected to be completed in October 2012. The Commission also notes that that the applicant has stated that if the City decides not to move forward with the horse stable in the applicant's building, they will continue to work in good faith with Manhattan Community Board 4 to try to find a community facility or commercial use that is mutually agreeable. While the Commission agrees with this approach, it notes that, if necessary, the proposed text amendment would appropriately allow the applicant to provide a variety of uses for the horse stable space pursuant to the underlying district regulations.

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and 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 in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;
Matter within # # is defined in Section 12-10;
* * * indicate where unchanged text appears in the Zoning Resolution

* * *

Article IX, Chapter 6 - Special Clinton District.

* * *

96-80 EXCLUDED AREAS

Except as provided in this Section, the regulations set forth in this Chapter shall not apply to the following areas:

- (a) parcels within the blocks bounded by West 50th Street, Tenth Avenue, West 56th Street and Eleventh Avenue, provided that in this area the provisions of Sections 96-40 (MODIFICATION OF GENERAL LARGE-SCALE DEVELOPMENT PROVISIONS), 96-51 (Mandatory Tree Planting Provisions) and 96-82 (C6-3X Districts) shall apply.

In addition, for parcels in C6-3X Districts, bounded by West 53rd Street, Tenth Avenue, West 54th Street and Eleventh Avenue, the following shall be permitted ~~uses~~ below the level of any floor occupied by ~~dwelling units~~:

- (1) automobile showrooms with automobile sales and preparation of automobiles for delivery;
- (2) automobile repairs; and
- (3) New York City Police Department stables for horses, with ~~accessory~~ automobile parking.

~~Should the floor to ceiling height of such Police Department stable, as measured from the ~~base plane~~, exceed 23 feet, then any floor space occupied by ~~accessory~~ parking located on the floor immediately above the floor occupied by such Police Department stable and immediately below the level of any floor occupied by ~~dwelling units~~ shall be exempted from the definition of ~~floor area~~.~~

For a ~~building~~, that at the time of approval by the Department of Buildings, included space designed for stable use for New York City Police Department horses, and the ceiling height of such stable space, as measured from the ~~base plane~~, exceeds 23 feet, then any floor space occupied by ~~accessory~~ parking located on the floor immediately

above such stable space and immediately below the level of any floor occupied by #dwelling units# shall be exempted from the definition of #floor area#.

* * *

The above resolution (N 120305 ZRM), duly adopted by the City Planning Commission on October 17, 2012 (Calendar No. 7), 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.

KENNETH J. KNUCKLES, Esq., Vice Chair
ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MICHELLE DE LA UZ,
MARIA M. DEL TORO, RICHARD W. EADDY,
ANNA HAYES LEVIN, ORLANDO MARÍN, Commissioners

JOSEPH I. DOUEK, Commissioner Abstaining



CITY OF NEW YORK

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COREY JOHNSON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

September 7, 2012

Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

**Re: Mercedes House Text Amendment No. N 120305 ZRM
770 Eleventh Avenue between W. 53rd and W. 54th Streets**

Dear Chair Burden:

At the July 24, 2012 meeting of Manhattan Community Board 4's (CB4) Clinton/Hell's Kitchen Land Use (C/HKLU) committee, C/HKLU discussed ULURP No. 120305 ZRM, an application to amend Section 96-80(b) of the New York City Zoning Resolution. The Applicant, Clinton Park Holdings, is the developer of the approximate 900 unit building known as Mercedes House, located at 770 Eleventh Avenue between 53rd and 54th Streets, located within the Special Clinton District and the subject of ULURP application nos. N 080008ZMM, C 08001 ZSM and C080011ZSM, which were approved by the NYC Council in May 2009.

At its full Board meeting on September 5, 2012, CB4 voted to deny approval of the text amendment unless the conditions listed below are incorporated.

Background

Mercedes House is located on a very large site, 94,463 square feet, on Eleventh Avenue between W. 53rd and W. 54th Streets, opposite DeWitt Clinton Park. The building itself is an "S" or "Z" shaped tower rising in steps from 7 stories (95 feet) at Eleventh Avenue and W. 54th Street to 32 stories (337 feet), including enclosed mechanicals, at the eastern edge of the site. It is a mixed-use building of approximately 1.3 million square feet which contains approximately 900 residential units (of which 180 are permanently affordable pursuant to the Inclusionary Housing Program); a Mercedes dealership with showroom, vehicle preparation and vehicle repair facilities on the ground floor and three floors below grade; a stable and other facilities originally planned for the NYPD Mounted Unit; a retail food market; a health club; and accessory parking for up to 225 cars.

In 2009, a series of Uniform Land Use Review Procedure (ULURP) actions relating to development of the Mercedes House, including map and text amendments, went through the

public review process. Those ULURP actions were approved by the City Council. Amongst those actions was a text amendment allowing for the NYPD Mounted Unit to be accommodated at this site.

NYPD Mounted Unit

The NYPD Mounted Unit stable has been at a variety of locations in CD4 for many years, providing a reassuring police presence, sidewalk entertainment for residents and visitors alike, and fertilizer for neighborhood gardens. The stable is currently temporarily located on Pier 76 at West 36th Street, in facilities it must vacate pursuant to a Memorandum of Understanding between the City of New York and the Hudson River Park Trust. As such, permanent relocation of the NYPD Mounted Unit stable to the Mercedes House development was facilitated at the suggestion of CB4. CB4 was very pleased that Two Trees was willing to take on the challenge of incorporating such an important public facility in this project.

Given the heights necessary to functionally accommodate the stables and related offices, it was necessary to amend the zoning text to build out the space. As the current application states:

The text amendment adopted in 2009 (N 080009 ZRM) recognized the unique physical requirements of the planned stable, including the need for significant structural transfers to accommodate a column-free riding and training ring, high floor to ceiling heights in areas with horse traffic, mezzanine office space, and provided for an exemption of floor area occupied by accessory parking located above the stable, which would normally have been exempted (up to 23') except for the height required by the stable (28.5'). The text adopted in 2009 required that the stable be occupied by the Police Department for the floor area exemption to be available."

Unfortunately, for economic and other reasons not disclosed to CB4, the City opted to not relocate the NYPD Mounted Unit stable to Mercedes House, even though the developer had already built out the stables and related facilities to the NYPD's specifications. While the Applicant reports that NYPD may reconsider its decision not to relocate, the current stalemate also places CB4 in a difficult position, as the relocation of the mounted unit resolved a longstanding community problem and was considered a significant community benefit when CB4 originally commented on the proposed development. Now as a result of the NYPD decision, the applicant is unable to obtain a Certificate of Occupancy and the community has lost a significant benefit.

The Application

With the City no longer willing to occupy the stable, the Applicant cannot get the necessary floor area exemption and thus they will not be able to obtain a Certificate of Occupancy. The present Text Amendment seeks to correct this problem by allowing the exemption upon construction of the stable, not upon occupancy by the NYPD Mounted Unit.

Concerned about this unfortunate outcome, CB4 wrote in its original December 2008 resolution relating to this project:

"In the unlikely (and disappointing) event that the NYPD negotiations fall through, we have requested and Two Trees has agreed that the space on the 53rd Street side of the project that is now designated for the NYPD stable should also be used for a community facility use by a user to be selected by Two Trees in consultation with CB4. We recognize that the financial terms for any such alternate user must generally be revenue-neutral to Two Trees."

CB4 continues to stand behind this condition and is concerned that while the proposed language solves the applicant's immediate dilemma, it fails to address the loss of the community benefit that was originally negotiated. At its C/HKLU meeting, committee members sought a solution that both addressed the community's request for replacement community facility space and resolved the Applicant's predicament.

NOW, therefore, be it resolved that Manhattan Community Board No. 4 recommends Text Amendment No. N 120305 ZRM provided that the text is amended to allow the Applicant to obtain a Temporary Certificate of Occupancy upon certification by the Applicant to the Chair of the City Planning Commission (CPC) that the NYPD stable was constructed as planned. The Applicant then agrees to work with CB4 in good faith to identify a mutually acceptable user to utilize the former NYPD Mounted Unit space as a community facility. In the event that a community facility user cannot be identified by May 30, 2013, a Permanent Certificate of Occupancy may be issued, after that date, upon certification by the Applicant to the Chair of CPC, with a reasonable opportunity for CB4 to respond that certifies:

- 1) that a user has been found that meets certain criteria established by the applicant that is willing to lease the premises; and
- 2) that the applicant has worked in good faith with CB4 to find a user that meets certain criteria established by the applicant for the space as a community facility or failing that, that an acceptable user for the space for a use that is not an adult establishment, bank, banquet hall, catering establishment, or eating/drinking establishment, except restaurants with a capacity of 200 persons or less, has been found by the applicant but that no final agreement has been reached.

Sincerely,



Corey Johnson, Chair
Manhattan Community Board 4



Jean-Daniel Noland, Chair
Clinton/Hell's Kitchen Land Use Committee

cc: DCP - Calendar Office, Edith Hsu-Chen
Two Trees - David Walentas, Jed Walentas, Bonnie Campbell, David Lombino
Capalino and Co. - James Capalino, George Fontas
Wachtel & Masyr - Raymond Levin, Esq.
Speaker Quinn's Office - Melanie Larocca, Michaela Miller
MBPO - Brian Cook, Karolina Grebowiec-Hall