Herkimer-Williams
Discussion of Findings
ZR 74-743 – Special Permit to Modify Bulk Regulations
September 2025

74-743
Special Provisions for Bulk Modifications

(a) For a #large-scale general development#, the City Planning Commission may permit:

(1) Distribution of total allowable #floor area#, #rooming units#, #dwelling units#, #lot coverage# and total required #open space# under the applicable district regulations within a #large-scale general development# without regard for #zoning lot lines# or district boundaries, subject to the following limitations:

The Applicant proposes to distribute floor area throughout the LSGD without regard for internal zoning district boundaries and zoning lot lines. The LSGD would involve shifting available floor area from Parcel 1 to Parcels 2, 3 and 4. All of these parcels would be within a C6-4 zoning district in an MIH-designated area, which permits a maximum FAR of 12.0. Of the approximately 1.23 million square feet proposed to be developed in the LSGD, the Applicant is proposing to shift approximately 58,000 square feet from Parcel 1. Depending on the uses developed on each parcel, the maximum permitted floor area on Parcel 2 would be increased by up to approximately 7,000 square feet; on Parcel 3 by up to approximately 45,000 square feet; and on Parcel 4 by up to approximately 15,000 square feet.[1] No floor area would be distributed to Parcel 5.[2] The relocation of floor area will enhance the overall site plan by increasing density in areas adjacent to elevated rail structures, as well as near the Fulton Street/Herkimer Street/East New York Avenue junction that can handle the additional floor area—as well-established urban planning and zoning principles provide that wide streets (e.g. avenues in Manhattan and major thoroughfares and boulevards in Brooklyn and Queens) are more apt to accommodate larger buildings with greater density and population, as opposed to that which can be appropriately sited on smaller, narrower side streets. The movement of this floor area, in turn, would facilitate the development of Parcel 1 by the City, which will serve as the largest publicly accessible open space (PAA) in the LSGD (i.e. approximately 4,904 sf). Once constructed, this PAA would operate harmoniously with the City's proposed Van Sinderen Plaza to be located immediately to the north, thereby providing much needed outdoor gathering space for and connectivity from the Development Site to the Broadway Junction subway station. The Applicant believes the proposed floor area distribution, which

[1] The total floor area distributed from Parcel 1 to Parcels 2, 3 and 4 would, overall, not exceed approximately 58,000 square feet. However, depending on the proposed programming for the potential development on each of the parcels, the amount transferred to each individual parcel may vary. Notwithstanding, such floor area amounts transferred to individual parcels would not exceed the amounts specified herein, nor would the maximum aggregate proposed floor area distribution exceed approximately 58,000 square feet from Parcel 1

[2] Parcels 1, 2, 3 and 4 would all be entirely within the proposed C6-4 zoning district, while Parcel 5 would be split, but primarily located in the proposed M1-6 zoning district.

facilitates greater open space and, in turn, affordable housing creation, is an essential component in establishing the Proposed Development as a true regional mixed-use hub.

(i) no distribution of #bulk# across the boundary of two districts shall be permitted for a #use# utilizing such #bulk# unless such #use# is permitted in both districts;

Not applicable.

(ii) When a #large-scale general development# is located partially in a #Residence District# or in a Cl, C2, C3 or C4-1 District and partially in other #Commercial# or #Manufacturing Districts#, no transfer of #commercial floor area to a #Residence District# or to a Cl, C2, C3 or C4-1 District from other districts shall be permitted, except that for a #large-scale general development# located partially or wholly within the former Seward Park Extension Urban Renewal Area, a transfer of #commercial floor area# form a C6 District to a C2 District may be permitted;

Not applicable.

(2) location of buildings without regard for the applicable #yard#, #court#, distance between #buildings#, or height and setback regulations;

The Applicant proposes to modify underlying regulations to locate certain buildings on certain zoning lots within the Development Site without regard to (i) rear yards and (ii) height and setback regulations. As more specifically identified below, waivers are sought from rear yard requirements on Buildings B, C and E; and from height and setback regulations for Buildings B, C, D and E.

Overall, the waivers to these regulations will facilitate better urban design and site planning of the Development Site because they help to respond to existing site conditions such as varying street angles and widths, and allow for the movement of added density resulting in more substantial buildings along major street junctions and elevated rail structures where such increased bulk is better handled. Additionally, these waivers support the location of public accessible open spaces in various locations across the Development Site that are appropriately integrated with the proposed buildings and that facilitate new pedestrian corridors and outdoor environments—particularly on Parcel 1 and the new pedestrian corridor along Herkimer Street east of Williams Place. As discussed in more detail below, the proposed rear yard and height and setback waivers provide the best site plan arrangement of buildings and street walls in relation to the proposed enhancements to the pedestrian environment and new public open spaces, which achieve a visually interesting project that also meets the needs of the existing community and new community members to occupy the LSGD.

*****

(b) In order to grant a special permit pursuant to this Section for any large-scale general development, the Commission shall find that:

(1) the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances and show windows will result in a

better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the large-scale general development, the neighborhood and the City as a whole;

In general, the ability to distribute floor area and to locate certain buildings without regard to rear yards and height and setback regulations, will result in a better overall site plan and development as it relates to the surrounding area. Specifically, this is because these zoning modifications will allow the LSGD to better respond to existing site conditions such as varying street widths, angles and bisecting elevated railed structures, while also allowing for the movement of floor area within the Development Site to areas better equipped to handle more substantial buildings and to provide for the construction of new public open space on Parcel 1. These proposed zoning modifications will permit flexibility of design to create a more visually interesting development unburdened by certain underlying zoning controls, of which the byproduct is the creation and connectivity of public open spaces—such as the large open space on Parcel 1 and the creation of several new spaces along both sides Herkimer Street. The proposed arrangement of PAAs juxtaposed to the proposed location of buildings enhances public usability of such PAAs and would improve pedestrian experience (among other areas) leading towards the Fulton Street/Herkimer Street/East New York Avenue intersection. As discussed in greater below, each of the waivers serves a particular purpose that promotes a better overall site plan and the objectives of the development as a whole and brings benefit to the neighborhood and surrounding area within the City.

- Floor Area Distribution

The distribution of floor area from Parcel 1 to Parcels 2, 3 and 4 would allow for the creation of an approximately 4,900-sf PAA-1 on Parcel 1, while simultaneously allocating density in buildings near major intersections, wide streets and elevated rail structures, which are more equipped to handle the additional floor area, bulk, density and overall population and their movements.

Parcel 2 will receive up to approximately 7,000 square feet of floor area, which would be incorporated into Building B, which would have a total of approximately 186,000 square feet of floor area. Building B is proposed to be a mixed-use, primarily affordable housing building located along the east side of Van Sinderen Avenue, with its rear lot line adjacent to the elevated rail lines. Elevated rail structures, where trains pass by quickly, are not impeded by their proximity to tall, dense buildings. By accepting this modest amount of additional floor area, Building B would become slightly denser, but such added density is appropriate due to its proximity to the adjacent rail structures. Additionally, the floor area shifted here would likely facilitate the creation of approximately 10 more sorely-needed affordable housing units.

Parcel 3 will receive approximately 45,000 square feet, which would be incorporated into Building C, which would have a total of approximately 250,000 square feet of floor area. This building will be a primarily affordable residential building with approximately 19,500 square feet of local retail uses on the ground floor, and be situated prominently along the north side of Herkimer Street towards the eastern point of the Development Site. By receiving this floor area, Building C would gain density and an increased building envelope; however, because Building C would help frame the Herkimer Street for new residential and commercial activity,

and would be flanked by elevated rail structure to the west and a triangular open area to the east, it is on a lot properly situated to do so. The Proposed Development has been designed such that buildings on Herkimer Street east of the elevated rail structures will be the focal point as they lead eastward toward a major street convergence of Herkimer Street, Fulton Street and East New York Avenue. With the added density (and commensurate height) in Building C, the envelope of the building better relates to Buildings D (discussed below) and E across the street, and helps frame and activate this portion of Herkimer Street, which will be further enhanced by the new PAA spaces on both sides of the street. Further, the floor area shifted here would also contribute to approximately 60 more affordable housing units.

Parcel 4 would receive 15,000 square feet for incorporation into Building D, which would have a total of approximately 278,000 square feet of floor area. Building D is located in the most prominent portion of the Development Site—at the tip of the Fulton Street/Herkimer Street/East New York Avenue intersection. Compared to Buildings B and C, Building D would have the greatest potential for a mix of uses, but nonetheless will be primarily affordable residential. At up to a maximum height of 350 feet and located on the south side of Herkimer Street and along its unique curvature at this location, it's proposed envelope (and the Parcel 4 zoning lot shape) would similarly contribute to the forming of the new, distinct PAA spaces lining the street, and be positioned such that it serves as the main focal point of the Proposed Development. Here, the minimal floor area added to Building B not only facilitates a better relationship between the Proposed Development's buildings, open spaces and bisecting streets, but further can be developed for approximately 21 additional affordable housing units.

In sum, the movement of floor area from Parcel 1 to Parcels 2, 3, and 4 would allow for better site planning and results in a benefit to the community because it facilitates the creation of a much-needed, high quality public open space on Parcel 1 that would support and enhance EDC's construction of an adjacent plaza and public realm improvements around the Broadway Junction subway station, while simultaneously resulting in an appropriate building envelopes that frame Herkimer Street and support the creation and activation of new pedestrian amenities of both sides of the street. Further, the floor area will be distributed to buildings that will be primarily developed as new affordable housing.[3]

- Rear Yards

On Parcels 2, 4 and 5, the Applicant proposes to locate portions of Buildings B, D and E, respectively, within required rear yards. In C6-4 districts, on interior lots, a minimum 20 foot residential rear yard is required up to a height of 75 feet, above which a 30-foot residential rear yard is required; and 20-foot commercial/community facility rear yards are required. However, one-story building portions not exceeding heights of 23 feet and used for commercial or community facility use may be located in the commercial or community facility required rear

[3] The total floor area distributed from Parcel 1 to Parcels 2, 3 and 4 would, overall, not exceed approximately 58,000 square feet. However, depending on the proposed programming for the potential development on each of the parcels, the amount transferred to each individual parcel may vary. Notwithstanding, such floor area amounts transferred to individual parcels would not exceed the amounts specified herein, nor would the maximum aggregate proposed floor area distribution exceed approximately 58,000 square feet from Parcel 1.

yard. Rear yards are not required for portions of zoning lots within 100 feet of a corner, or for zoning lots that occupy entire street blocks. In C6-4 districts, no rear yard is required on through lots; and in M1-6 districts, on through lot portions which extend more than 110 feet, a rear yard equivalent is required and may be provided along the full length of the side lot line for a minimum depth of 20 feet (among other options).[4]

For Building B, the required 20/30 foot rear yard for all uses would be waived in its entirety up to a height of 95 feet, at which point the minimum rear yard depth would be increased to 30 feet. The waiver would allow uses to encroach into the rear yard and would facilitate the potential to include up to approximately 48,000 square feet of commercial use and light industrial uses on several floors in the lower portion of Building B. The rear yard modifications would result in a better site plan because they allow flexibility to provide larger floor plates, which are better suitable for use and occupancy by potential community facility and light industrial tenants on those lower floors. Larger floor plates would be more marketable to these types of tenants, whose presence would contribute to the true mixed-use nature of the Proposed Development and support the creation of new economic development and job opportunities. Additionally, the waivers would result in a better and more appropriate relationship to surrounding development because the reduced yards would face the approximately 30-foot high elevated rail line, which does not require the same yard-setback protection as would an occupied site used for less intensive commercial or residential purposes.

For Building D, the required 20 foot rear yard would be waived in its entirety where the building steps down from 230 feet along East New York Avenue to 55 feet near the rear lot line with Parcel 5 and adjacent to the large meeting and gathering open spaces on the south side of Herkimer Street. In this portion of the building, residential and/or community facility use would be located on the first through eight floors of this portion of the building, with residential apartments located on the ninth through 17th floors—as the building steps up toward East New York Avenue. The rear yard waiver would promote a better site plan and better relationship to surrounding development because it allows design flexibility to permit the building to step up gradually from the Herkimer Street open space to the East New York frontage—shifting the bulk away from the new PAA-4 and towards a wider thoroughfare more aptly suited to handle it. Underlying rear yard regulations would not permit this gradual, articulated building step-up, but permit only a single-story building portion in this area and, in turn, result in a taller tower portion. The rear yard waiver would result in a better distribution of bulk across Parcel 4 and more appropriate located building density away from PAA-4 and PAA-5A, while simultaneously allowing for a stronger, vertical street wall on the wider East New York Avenue.

For Building E, which is required to comply with M1-6 district regulations in which a 20-foot-wide rear yard equivalent would be required along the entire side lot line of the zoning lot (excepting for a one-story building portion with a height up to 23 feet may be a permitted obstruction in such rear yard equivalent), the building would be constructed to the lot line with Parcel 4 and rise to a height of 55 to 59 feet to accommodate the two-story base proposed for large retail use. Accordingly, because a two-story base is provided a rear yard waiver from grade up to 59 feet for the entire rear yard equivalent would be necessary. This waiver would

[4] Waivers are requested with respect to compliance with ZR Sections 23-34, 33-26, 33-28, 43-26 and 43-28.

facilitate a better site plan and better relationship between adjacent development, streets, and open space because it permits the development of large floor plates in the two-story building base, and because it would allow flexible design and layouts for the proposed large, destination retail use to be located at this site. Given the long dimensions and irregular geometry of this large lot, which drives the design of the building base to have larger floorplates if it is to be located at the street line, this arrangement presents an opportunity to accommodate the needs of larger retail uses at this site (as proposed by the Retail Special Permit). Large retail use in Building E would contribute to the variety of retail offerings available in the Proposed Development—particularly those that are best suited when located in close proximity to mass transit.

- Height and Setback

Modifications to building base height, maximum overall height and minimum set back depth regulations are proposed throughout the LSGD.[5] The composition of different building envelopes and bulk distribution permitted by the subject height and setback waivers would result in a better site plan and better relationship between such buildings and the surrounding environment because they facilitate varying building forms, articulated street walls, and the creation of new, at grade public open spaces as part of an enhanced pedestrian experience through and adjacent to the LSGD.

For Building B, where a 15-foot initial setback is required, a waiver of 7 feet is requested to provide an 8-foot setback; and where a maximum building height of 235 feet is permitted, a waiver of 60 feet is requested to allow the maximum building envelope to be 295-feet-tall. The minimal 7-foot setback exceedance and increased overall building height would result in a better site plan and relationship to nearby development and structures because it allows for a stronger, vertical street wall closer to the street line along Van Sinderen Avenue (which can be complemented by future development of similar height and massing at the adjacent Calvary Church Site). Additionally, as noted above, elevated rail structures would not be impeded by their proximity to tall buildings with increased bulk because trains are constantly in motion and their operation is not affected by such adjacent bulk. The receipt of floor area from Parcel 1, as well as Building B's proximity to the elevated rail structure along its rear lot line, would also necessitate the additional height to provide more affordable housing at appropriate heights and distances separating such use from the railway.

For Building C, where a minimum 15-foot initial setback is required along all frontages. setback relief is requested along all frontages to various degrees. More specifically, along Fulton Street, above the maximum base height of 155 feet, setback relief ranging from 12 feet, 8 inches to 9 feet, 1 inch up to a height of 260 feet in order to provide setbacks ranging 2 feet, 4 inches to 5 feet, 11 inches between such heights is requested; and above such height, setback relief ranging from 7 feet, 8 inches to 2 feet, 10 inches up to the maximum proposed envelope height in order to provide setbacks ranging 7 feet, 4 inches to 12 feet, 2 inches between those heights is request. Along Williams Place, above the maximum base height of 155 feet, setback relief ranging 3 feet, 7 inches to 9 feet, 9 inches up to the proposed envelope height in order to

[5] Waivers are requested with respect to compliance with ZR Sections 23-432, 23-433 and 43-43.

provide setbacks ranging 11 feet, 5 inches to 5 feet, 3 inches in various locations is requested. Further, along Herkimer Street, where the depth of the 20-foot-high base shrinks below a depth of 15 feet and the tower begins to rise sheer from the street, setback relief ranging from 0 feet to 15 feet above the maximum base height of 155 feet up to the proposed envelope height would be requested. Moreover, along both Willams Place and Herkimer Street as they near the intersection, where a 60-foot minimum base height is required, up to a 40-foot minimum base height waiver would be needed to allow the base in that part of the site to only rise to 20 feet. The waivers requested here would promote a better site plan and relationship to nearby development, streets and open spaces because they would allow for greater streetwall articulation and design interest and flexibility (particularly along Williams Place and Fulton Street). Additionally, the waivers would allow for the bulk of the building to be more centrally located within Parcel 3, making room at grade for PAA-3 to accommodate sidewalk widenings along Williams Place and Fulton Street and two new open spaces along Herkimer Street at the eastern point of the site. Both new spaces would be vitally important in enhancing the pedestrian experience along Herkimer Street.

For Building D, where a 15-foot minimum setback is required along Herkimer Street and 10-foot minimum setback is required along East New York Avenue, minor setback relief is requested on those frontages. To accommodate the variety of open spaces provided on Parcel 4 (and as discussed above), the building is set back at grade from Herkimer Street at various depths (e.g. 23 feet, 3 inches along Herkimer Street before its curvature, and 14 feet, 6 inches as it nears the East New York Avenue intersection) before rising vertically to up to 350 feet (near the curvature of Herkimer Street) or to a 230-foot base (near the intersection). In two locations, as the street curves, a waiver of the required 15-foot minimum setback down to 2 feet, 8 inches and 3 feet, 2 inches would be required above the maximum base height as the façade oscillates in and out compared to the street line. Near the corner, along Herkimer Street, a six inch setback waiver is requested, to provide a 12.5-foot setback above the maximum base height up to 230 feet. Along East New York Avenue, a waiver of 4 feet of the required 10-foot setback would be requested above the maximum base height, up to a height of 230 feet. This would allow Building D to setback 6 feet at grade, then rise to a height of 230 feet. The height and setback waivers for Building D would contribute to better site planning because they allow greater density to be incorporated in a building designed with strong, vertical street walls, located at the most prominent, geographical point of the Proposed Development, and also allows for the development of at-grade public open space. The junction of Fulton Street, Herkimer Street and East New York Avenue serves as the focal point of the project, leading into the various new publicly accessible open spaces on either side of Herkimer Street, and the tallest building in the project would be appropriately located at this site. The additional height ensures Building D's stature at this location, while the setback waivers help pull the building massing to the center of the site, thereby making additional at grade space available for new sidewalk widenings and larger open spaces as the south side of Herkimer Street curves. The location and height of Building D, facilitated by these waivers, therefore would promote a better relationship between buildings and surrounding development, streets and open spaces.

On Parcel 5, Building E is required to comply with regulations for maximum front wall height of 85 feet or 6 stories (whichever is less), followed by a minimum initial setback of 15 feet along wide streets and 20 feet along narrow streets, and a sky exposure plane with a vertical-

to-horizontal ratio of 2.7:1 along wide streets and 5.6:1 along narrow streets. Setback waivers would be required along both Williams Place and East New York Avenue. At grade, a five-foot and six-foot sidewalk widening would be provided along Williams Place and East New York Avenue, respectfully, and then rise without setback up to 207 feet along Williams Place and 209 feet along East New York Avenue, contrary to minimum 15 and 20-foot setback requirements above the maximum base height. Additionally, on all street frontages, the building would penetrate the sky exposure plane as it rises to the overall height. Here, the height and setback waivers would support better site planning and a better relationship between nearby development, streets and open areas because they would allow for the envelope of the LSGD's only fully commercial and manufacturing building to be shifted toward the elevated rail along Williams Place and East New York Avenue (a wide street)—both of which are more equipped to handle the added density. Simultaneously, this bulk shift would make way for a large, at-grade open space on the south side of Herkimer Street that complements the other new open spaces on Parcels 3 and 4. The added height would also facilitate the bulk of this building to be pulled to the center of the block slightly, thereby resulting in the street widenings on Williams Place and East New York Avenue culminating at the the new open space at the corner of those streets. Overall, the height and setback waivers facilitate the building's massing in such a manner that contributes to the creation of PAA-5, while also appropriately location commercial and industrial uses closer to elevated rail and a wide street.

In sum, the proposed height and setback waivers would improve the LSGD's site plan and relationship between buildings and adjacent streets and the surrounding area by allowing for a more varied built form throughout that draws attention to the prominent aspects of the project (e.g. focal points within the development, and the new open spaces and pedestrian corridor on Herkimer Street east of Williams Place). The range of envelope variety would enhance the LSGD's unique and distinct context amongst its own buildings and the surrounding neighborhood character, supporting better urban design and better site planning for the Development Site.

(2) The distribution of #floor area# and location of #buildings# will not unduly increase the #bulk# of #buildings# in any one #block# or unduly obstruct access of light and air to the detriment of the occupants or users of #buildings# in the #block# or nearby #blocks# or of people using the public #streets#;

The distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air to the detriment of the neighborhood because the waivers that facilitate such distribution and building arrangement aim to move a minimal amount of density and bulk compared to the total amount in the LSGD, and such density is moved towards wide streets, major street intersections and along elevated rail structures which are better equipped to handle more substantial buildings. Additionally, the location of buildings per the proposed waivers would promote the provision of approximately 20,000 sf of publicly accessible open spaces that would enhance the pedestrian usability along Herkimer Street between Van Sinderen Avenue to the west and its convergence with Fulton Street and East New York Avenue to the east. Further, the waivers would help position building forms in such a manner as to minimize obstruction of light and air.

The distribution of floor area within the LSGD will not unduly increase bulk in any one block because the amount of floor area distributed compared to the total amount in the LSGD is minimal. Of the approximately 1.23 million square feet of floor area to be developed within the LSGD, only approximately 58,000 square feet—or 4.7%--would be moved across parcels. Further, the movement of floor area would be from one zoning lot (Parcel 1) and spread across three parcels (Parcels 2, 3 and 4), which further dilutes the distribution. Parcel 3 would receive the most floor area from Parcel 1—up to approximately 45,000 square feet—for incorporation into Building C, while Parcels 2 and 4 would receive lesser amounts of floor area (i.e. up to 7,000 square feet and 15,000 square feet, respectively). With respect to Parcel 2, the additional 7,000 square feet of floor area is only approximately 3.8% of the total floor area proposed in Building B, and such a minor bulk increase would not have a noticeable effect on light and air compared to a building with complying floor area. With respect to Parcel 3, the additional floor area would not unduly obstruct light and air because it would be in a tower-like portion of the building situated near where the Development Site meets the junction point with Herkimer Street, Fulton Street and East New York Avenue. The location of Building C near the convergence of these three streets allows for unobstructed light and air from the northeast, east, southeast and south vantage points. Separately, this building would also have frontage to its west on Williams Place and the elevated rail structures. The proximity to the junction point of the three streets at the eastern tip of the site, as well as the elevated rail lines on the western edge of the site, are both adequately equipped to handle added density in a tower. Additionally, for Parcel 4, the added floor area to Building D would account for only 5.5% of the total building floor area which, when considering it is also located at the convergence of Herkimer Street, Fulton Street and East New York Avenue, is marginally more floor area than an as-of-right development and would therefore not unduly increase bulk or adversely impact light and air to nearby structures or spaces.

Furthermore, the distribution of approximately 58,000 square feet of floor area from Parcel 1 directly results in the development of PAA-1 and the creation of a new, approximately 4,900 sf open space for use by existing community members and new community members. Because of this distribution, light and air is not obstructed but actually increased substantially (and in perpetuity subject to the LSGD approval) on Parcel 1 in the form of PAA-1.

The proposed encroachments of Buildings B, D and E into required rear yards would also not unduly increase bulk in any one location or obstruct access to light and air to the detriment of the neighborhood because these encroachments would occur in locations appropriately situated to handle them—such as adjacent to an elevated rail structure, or in the center of a street block in an area not impeding other residential uses. As discussed above, with respect to Building B, the rear yard encroachment would be located up against the elevated subway rail infrastructure near the lot line with one of the MTA-owned parcels. The rear yard waiver would also allow flexibility to provide larger floor plates for potential institutional or light industrial uses—which are more compatible if located closer to rail structures than residential uses and do not have the same light and air requirements. Additional bulk in the form of a rear yard encroachment would not be unduly burdensome on adjacent rail structures or their use by passing trains, and potential institutional or light industrial uses do not have light and air requirements, and thus their location in a portion of a required rear yard would not be to their detriment.

With respect to Buildings D and E, their rear yard encroachments would be contiguous at their shared rear lot line, which is at the center of the block. This contiguous encroachment area would

not unduly increase bulk nor unduly obstruct light and air because they occur at the lowest points of both buildings and do not result in additional impacts to residential light and air. Building D and E are designed such that their tower-like portions are generally situated at the opposite eastern and western ends of Block 1577, connected by a lower, 55-foot-high podium in the center that, for Building D, steps up gradually toward East New York Avenue. In most cases, the rear yard encroachment on both sites may only reach a height of 55 to 59 feet on both parcels, while on Building D the height of the building portion in the rear yard steps up periodically to a height of 230 feet. The encroachment areas on Parcel 4 and 5 would contain, in effect, the least building bulk of either site and therefore do not unduly increase bulk. In terms of light and air, Building E's encroachment is for commercial retail use and is capped at two stories (or up to 59 feet high). While some portions within the Building D encroachment area would have greater heights due to the building step-up, it is Building D (and not Building E) that may contain residential use, and therefore those residences facing Building E would be located higher (and not obstructed) by any building portion of Building D for a distance of over 35 feet. Therefore, any residential uses in the required rear yard of Building D would receive adequate light and air and not be unduly obstructed.

The proposed height and setback waivers to Buildings B, C, D and E further do not unduly locate bulk in a single location or unduly obstruct light and air. Instead, as discussed above, such waivers would allow density to be moved towards wide streets, major street intersections and along elevated rail structures which are better equipped to handle more substantial buildings; and would also promote the provision of 20,000 sf of new PAA space that supports the creation of a variety of new opens spaces, including the pedestrian corridor along Herkimer Street east of Williams Street. With respect to Building B, additional height is appropriate because of its adjacency to elevated rail structures, and is necessary to accept the floor area distributed from Parcel 1. Elevated rail structures, where trains pass by quickly, do not require access to light and air and their use is not impeded by their proximity to tall, dense buildings. Additionally, the acceptance of approximately 7,000 sf of floor area from Parcel 1 directly facilitates the creation of PAA-1 as a new, 4,900 square-foot open space to be enjoyed by the public. As such, these waivers for Building B do not unduly increase bulk in this location nor unduly obstruct light and air.

The location and arrangement of Buildings C, D and E pursuant to the height and set back waivers would each not facilitate unduly packing bulk in a single location on the Development Site nor negatively impact light and air because, for one, where their proposed envelopes are greatest, they are nearest wide streets, major street junctions, or elevated rail; and, second, nearly all street walls of these buildings would be set back at grade and their bulk pulled to their parcel's center to accommodate the provision of new open space. Buildings C and D are prominently featured on the eastern portion of the Development Site where Fulton Street, Herkimer Street and East New York Avenue converge—a wide, open junction of streets, sidewalks and small, landscaped medians to the east (such as Jewel Square), adjacent to which are several NYC bus stops. Building D's southern façade fronts on East New York Avenue—a 115-foot wide street. Building E is positioned in the southwest corner of Parcel 5—adjacent the elevated rail structure above Williams Place and the wide, East New York Avenue. Further, the tower-like portions of Buildings D and E are set at complete opposite ends of Block 1577. As such, the LSGD does not unduly increase bulk in a single location, but rather strategically separates these buildings from one another and locates them near prominent street junctions, wide streets, and public transit structures that would be minimally impacted by the proximity to additional bulk.

The location of Buildings C, D and E would also promote light and air to nearby uses and within the LSGD because their central location on each of their parcels results in new, varied public open space. As a result of the LSGD's design and arrangement, new sidewalk widenings would be provided on Williams Place (Buildings C and E), Fulton Street (Building C) and East New York Avenue (Buildings D and E). Along Herkimer Street east of Williams Place, several new larger open spaces with passive uses intended to allow for meetings and gatherings by the public would be provided. These new open spaces would frame this portion of Herkimer Street as a walkable pedestrian corridor leading towards the junction with Fulton Street and East New York. Light and air is also promoted by the variety of at grade street wall setbacks of Buildings C, D and E. These at grade setbacks, which facilitate sidewalk widenings, are located on Fulton Street and Williams Place for Building C; Herkimer Street and East New York Avenue for Building D; and East New York Avenue and Williams Place for Building E. The resulting sidewalk widenings allow for more comfortable pedestrian experience and movement in an around the Proposed Development. Additionally, the generally lower base heights on Buildings C and D, with deep setbacks on certain frontages, promotes greater light and air to these new PAAs, which thereby enhances their usability and enjoyability. Furthermore, with respect to Buildings C and D, these waivers directly facilitate the incorporation of the floor area accepted from Parcel 1, which in turn would results in the creation of more project open space in the form of PAA-1. Thus, the arrangement of Buildings C, D and E—facilitated by the height and setback waivers—would not unduly obstruct light and air to the new open spaces or surrounding area, development and uses.

Accordingly, the Proposed Development's distribution of floor area and location of buildings per the relief granted by the subject special permit will not unduly increase bulk in any one location or obstruct light and air within the development or neighboring areas because minimal floor area is effectively being distributed and the proposed buildings have been so situated on each block in an effort to move density towards appropriate locations such as wide streets, major street junctions and elevated rail structures. As a by-product, a variety of new open spaces have been generated, which serve as prime features of the Proposed Development—and which in turn provide additional light and air to adjacent residential uses. Therefore, the distribution of floor area and location of buildings within the LSGD would not unduly increase bulk on any single block, nor obstruct light and air to the detriment of nearby residents, buildings or streets.

(3) Where a #zoning lot# of a #large-scale general development# does not occupy a frontage on a mapped #street#, appropriate access to a mapped #street# is provided;

Not applicable.

(4) Considering the size of the proposed #large-scale general development#, the #streets# providing access to such #large-scale general development# will be adequate to handle traffic resulting therefrom;

The Proposed Development is well served by a series of streets that will provide appropriate and adequate access thereto. The Development Site consists of the blocks bounded by Van Sinderen Avenue (a two-way, approximately 70' wide "narrow" street carrying traffic in both north-south directions), Fulton Street (a two-way street with varying narrow and wide portions, but approximately 80' wide in certain portions carrying traffic in both east-west directions), East New York Avenue (a two-way approximately 115' wide street with a median and carrying traffic in both

east-west directions), and Atlantic Avenue (also a two-way, approximately 280' wide street with express and local lanes adjacent to the Project Area and carrying traffic in both east-west directions). It is bisected north and south by Herkimer Street (a one-way, eastbound, approximately 70' wide "narrow" street) and east and west by Williams Place (a one-way, northbound, approximately 60' wide "narrow" street). The DOT truck route map categorizes Atlantic Avenue as a "Through Truck Route" and Broadway, Jamaica Avenue, and Pennsylvania Avenue as "Local Truck Routes." Those portions of Van Sinderen Avenue between Fulton Avenue and Herkimer Street, and Herkimer Street between Van Sinderen Avenue and East New York Avenue, are also designated as local truck routes. Notwithstanding, the Proposed Development is extremely well-served by mass transit being adjacent to Broadway Junction via a station on the A, C, J, Z and L subway lines, the LIRR East New York station, and a multitude of bus routes with stops within one block of the Project Area.

Considering that the Proposed Development is in a transit-rich area, the LSGD plans submitted herewith would allow for up to 213 accessory permitted parking spaces—with the potential for 26 spaces on Parcel 2 in Building B, 68 spaces on Parcel 4 in Building D and 119 spaces on Parcel 5 in Building E. Access to these parking spaces would be located along the edges of the LSGD, where below-grade garages will have exits/entrances along Van Sinderen Street (Building B) and East New York Avenue (Buildings D and E). With respect to Building B, the Applicant anticipates vehicles would arrive from points south (i.e. off of Atlantic Avenue) or points north and west (i.e. Fulton Street or Herkimer Street), then turn down Van Sinderen to access the garage. Similarly, vehicles exiting the site would likely go north or south on Van Sinderen Avenue towards the larger thoroughfares in the area—Atlantic Avenue, East New York Avenue or Fulton Street. With respect to Buildings D and E, parking access and exits for both lots would be on the north side of East New York Avenue. Curb cuts for Building D and E's garage would be separated by approximately 160 feet, including two larger intervening curb cuts for their respective building's loading areas (discussed further below). At each of the access points, East New York Avenue becomes a one-way westbound lane, so only vehicles heading west on East New York Avenue (away from the Herkimer Street intersection) could enter either garage; and exiting vehicles could only turn right out of either garage onto East New York Avenue towards Atlantic Avenue. This ingress/egress arrangement—also on a street on the edge of the LSGD—promotes vehicles utilizing the major streets in the area, such as Atlantic Avenue, and not traversing the street network internal to the LSGD.

Furthermore, the only loading docks for the LSGD would be in Buildings D and E and along East New York Avenue. Like the accessory parking, trucks utilizing the docks would enter from the east and exit to the west towards Atlantic Avenue—a through-truck route. The loading berth ingress/egress point arrangement also promotes utilization of major thoroughfares and truck routes in the area, which are more than adequate to handle any project-generated traffic. In all cases, based on the arrangement of access points to accessory parking and loading, it is anticipated that vehicles and trucks would primarily use the street network surrounding the LSGD, and not the narrow one-way streets that traverse the center (and are proposed to have greater public open space and pedestrian activity adjacent thereto).

However, because all accessory parking spaces are permitted, and the uses proposed in the LSGD do not require accessory parking, it is the Applicant's intent to build the number of parking spaces sufficient to meet the demonstrated actual demand that are needed to make the project marketable

and that help promote the ample mass-transit options in the area as opposed to vehicle travel. The Applicant anticipates that since most users of the Proposed Development will access the site via public transportation, the surrounding streets, which are adequately sized, will be sufficient to handle traffic resulting from the Proposed Development.

(5) when the Commission has determined that the #large-scale general development# requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable;

Not applicable.

(6) where the Commission permits the maximum floor area ratio in accordance with the provisions of paragraph (a)(4) of this Section, the open space provided is of sufficient size to serve the residents of new or enlarged buildings. Such open space shall be accessible to and usable by all residents of such new or enlarged buildings, have appropriate access, circulation, seating, lighting and paving, and be substantially landscaped. Furthermore, the site plan of such large-scale general development shall include superior landscaping for open space of the new or enlarged buildings;

Not applicable.

(7) where the Commission permits the exclusion of #lot area# or #floor area# in accordance with the provisions of paragraph (a)(5) of this Section or modification of the base and maximum #floor area ratios# or requirements regarding distribution of #affordable housing units# in accordance with paragraph (a)(8) of this Section, such modification will facilitate a desirable mix of #uses# in the #large-scale general development# and a plan consistent with the objectives of the Inclusionary Housing Program and those of Section 74-74 (Large-scale General Development) with respect to better site planning;

Not applicable.

(8) where the Commission permits portions of #buildings# containing #acessory# parking spaces to be excluded from the calculation of #lot coverage# in accordance with the provisions of paragraph (a)(9) of this Section, the exclusion of #lot coverage# will result in a better site plan and a better relationship among #buildings# and open areas that would be possible without such exclusion and therefore will benefit the residents of the #large-scale general development#;

Not applicable.

(9) Where the Commission permits a #floor area# bonus for a #public park# improvement in accordance with the provisions of paragraph (a)(11) of this Section:

(i) the amount of such bonus #floor area# is appropriate in relation to the size and quality of the proposed #public park# improvement; and

(ii) such bonus #floor area# will not unduly increase the #bulk# of #buildings# on the #zoning lot# or unduly obstruct access of light and air to the detriment of the occupants or users of #buildings# on the #block# or nearby #blocks# or of people using the public #streets#.

Grant of a #floor area# bonus for a #public park# improvement in accordance with the provisions of paragraph (a)(11) of this Section shall be conditioned upon adequate assurances for provision of the funding identified by the Commissioner of Parks and Recreation in a letter pursuant to paragraph (1)(11)(ii) of this Section as necessary for completion of the necessary infrastructure, landscape and other work for the #public park# improvement. The Commissioner of Buildings shall not issue a building permit for the #large-scale general development# unless the Commissioner of Parks and Recreation shall have certified that the funding has been made or secured in a manner acceptable to such Commissioner;

Not applicable.

(10) A declaration with regard to ownership requirements in paragraph (b) of the #large-scale general development# definition in Section 12-10 (DEFINITIONS) has been filed with the Commission; and

The Applicant has prepared and submitted a Restrictive Declaration in connection with the LSGD.

(11) Where the Commission permits #floor area# distribution from a #zoning lot# containing existing light industrial #buildings# to be demolished in accordance with the provisions of paragraph (a)(12) of this Section, such #floor area# distribution shall contribute to better site planning of the waterfront public access area and shall facilitate the #development# of affordable housing units within a #large-scale general development#.

Not applicable.

(12) Where #new piers# or #new platforms# are constructed, replaced or reconstructed in accordance with the provisions of paragraph (a)(13) of this Section, such #new piers# and #new platforms# are an integral part of such #large-scale general development#, result in a superior site plan and form an appropriate relationship with adjacent #waterfront public access areas# and #shorelines#, and provide significant public access to or within the #seaward lot# portion of the #waterfront zoning lot#.

Not applicable.

For a phased construction program of a multi-#building# complex, the Commission may, at the time of granting a special permit, require additional information, including but not limited to a proposed time schedule for carrying out the proposed #large-scale general development#, a phasing plan showing the distribution of #bulk# and #open space# and, in the case of a site plan providing for common #open space#, common open areas or common

parking areas, a maintenance plan for a such space or areas and surety for continued availability of such space or areas to the people they are intended to serve.

Not applicable.

The Commission may prescribe additional conditions and safeguards to improve the quality of the #large-scale general development# and to minimize adverse effects on the character of the surrounding area.

*****