



CITY PLANNING COMMISSION

September 19, 2007/Calendar No. 16

C 070470 ZSM

IN THE MATTER OF an application submitted by 400 Fifth Realty LLC and 401 Fifth LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 81-277 of the Zoning Resolution to modify the height and setback requirements of Section 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation) to facilitate the development of a 57-story mixed use building on property located at 400-404 Fifth Avenue (Block 838, Lots 42, 45, 46, 47 and 48), in a C5-3 District, within the Special Midtown District (Fifth Avenue Subdistrict) Borough of Manhattan, Community District 5.

This application for a special permit in order to waive height and setback requirements was filed by 400 Fifth Realty LLC and 401 Fifth LLC on May 10, 2007 to facilitate the construction of a 57 story mixed use building with approximately 389 residential units, 200 hotel rooms and about 28,707 square feet of retail space on the south west corner of Fifth Avenue and West 36th Street.

RELATED ACTIONS

In addition to the application for the special permit which is the subject of this report (C 070470 ZSM), implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

N 070468 ZRM Text Amendment to Sections 74-79, 81-212, and 81-85 (new section) to allow modification of Sections 81-40 (Mandatory District Plan Elements of the Special Midtown District), 37-07 (Requirements for Pedestrian

Circulation Space), and Section 81-84 (Mandatory Regulations and Prohibitions of the Fifth Avenue Subdistrict) as a part of Section 74-79 Special Permit.

C 070469 ZSM A special permit pursuant to Section 74-79, the amended Section 81-212 and the new Section 81-85 of the Zoning Resolution to transfer 173,692 square feet of floor area from the landmark zoning lot to the subject zoning lot and modification of Sections 81-27 (Alternative Height and Setback Regulations - Daylight Evaluation), 81-84(a) (Mandatory Regulations and Prohibitions/Pedestrian access to uses), 81-45 (Pedestrian Circulation Space), and 37-07 (Requirements for Pedestrian Circulation Space) of the Zoning Resolution.

BACKGROUND

A full background discussion and project description appears in the report on the related special permit application (C 070469 ZSM).

ENVIRONMENTAL REVIEW

This application (C 070470 ZSM), in conjunction with the application for the related actions (N 070468 ZRM & C 070469 ZSM), 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 06DCP093M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on May 21, 2007.

UNIFORM LAND USE REVIEW PROCEDURE

This application (C 070470 ZSM) along with the related action (C 070469 ZSM) was certified as complete on May 21, 2007 and referred to Community Board 5 and the Borough President by the Department of City Planning in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the non-ULURP application (N 070468 ZRM) which was referred for information and review.

Community Board Review

Community Board 5 held a public hearing on the application on June 14, 2007, and on that day, by a vote of 22 in favor to 13 opposed with two abstentions, adopted a resolution recommending approval of the application.

Borough President's Recommendation

This application was considered by the Borough President, who issued a recommendation on July 20, 2007 in favor of approving the application.

City Planning Commission Public Hearing

On July 25, 2007 (Calendar No. 12), the City Planning Commission scheduled August 8, 2007 for a public hearing on this application (C 070470 ZSM). The hearing was duly held on August

8, 2007 (Calendar No. 39) in conjunction with the public hearing on the related actions (C 070468 ZRM & C 070469 ZSM) and was continued to August 22, 2007 (Calendar No. 19).

A full description of the City Planning Commission public hearing appears in the report on the related special permit application (C 070469 ZSM).

CONSIDERATION

The Commission believes that this application a special permit to (C 070470 ZSM) is appropriate. A full consideration and analysis of the issues and the reasons for approving this application appears in the report on the related special permit application (C 070469 ZSM).

FINDINGS

Based upon the consideration in the report on the related special permit application (C 070469 ZSM) the City Planning Commission hereby makes the following findings required by Section 81-277 (b):

- 1) That the requested departure from the alternate height and setback regulations is the minimum amount necessary to achieve a feasible building design.
- 2) That the disadvantages to the surrounding area resulting from reduced light and air access will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole.
- 3) That where the landmark is located on the zoning lot proposed for development or enlargement on a lot contiguous thereto or directly across the therefrom, the

modification of the alternate height and setback regulations will adequately protect the setting for the landmark.

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by 400 Fifth Realty LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 81-277 of the Zoning Resolution to allow for the modification of alternative height and setback regulations – daylight evaluation to facilitate the development of a 57-story mixed use building on property located at 400- 404 Fifth Avenue (Block 838, Lots 42, 45, 46, 47 and 48), in a C5-3 District, within the Special Midtown District (Fifth Avenue Subdistrict), Borough of Manhattan, Community District 5 is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 070470 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Gwathemey Siegel Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001	Zoning Site and Calculations	8/29/07
Z-002	Zoning Applicability and Yard Diagram	5/09/07

Z-004	Building Sections	8/29/07
Z-006	Pedestrian Circulation Space	8/29/07
Z-007	Streetwall Continuity. Major Entrances & Retail Continuity	5/09/07
Z-008	Daylight Evaluation Site Plan	5/09/07
Z-009	Daylight Evaluation 36th Street	5/09/07
Z-010	Daylight Evaluation 5th Avenue	5/09/07
Z-011	Daylight Evaluation 37th Street	5/09/07

- 2) Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
- 3) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 4) All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
- 5) Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the attached restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any

- 6) Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 070470 ZSM), duly adopted by the City Planning Commission on September 19, 2007 (Calendar No. 16), 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.

AMANDA M. BURDEN, AICP, Chair

KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,

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