



## **CITY PLANNING COMMISSION**

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January 6, 2010 / Calendar No. 10

C 100012 ZSM

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IN THE MATTER OF an application submitted by 161 West 78<sup>th</sup> Street LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the bulk regulations of Section 23-692 (Height limitations for narrow buildings or enlargements) to facilitate the construction of a one-story rooftop addition to an existing five-story building on property located at 161 West 78<sup>th</sup> Street (Block 1150, Lot 7) in an R8B District, within the Upper West Side / Central Park West Historic District, Borough of Manhattan, Community District 7.

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This application for a special permit pursuant to Section 74-711 of the Zoning Resolution was filed by 161 West 78<sup>th</sup> Street LLC on July 7, 2009 to modify the bulk regulations of Section 23-692 (Height limitations for narrow buildings or enlargements) to facilitate the construction of a one-story rooftop addition to an existing five-story building on the Upper West Side of Manhattan in Community District 7.

### **BACKGROUND**

The subject site zoning lot is located on the north side of West 78<sup>th</sup> Street between Amsterdam and Columbus Avenues, about 153 feet east of Amsterdam Avenue. It consists of a single tax lot that is 19 feet wide and 102 feet deep, with 1,941 square feet of lot area. The site is improved with a five-story brownstone row house building that was constructed in 1890 as part of a row of eight Renaissance Revival brownstones designed by the firm of Thom & Wilson. The building has 6,131 square feet of floor area. It was formerly a multi-unit residential building and is currently being converted into a single-family residence by and for the applicant.

The area of the Upper West Side in which the subject site is located is predominantly residential with a significant component of commercial and community facility uses. This block of West 78<sup>th</sup> Street is mostly composed of four- and five-story brownstones in the midblock, while Amsterdam and Columbus Avenues and Broadway consist mainly of mid- and high-rise apartment buildings with ground-floor retail. To the north of the site on West 79<sup>th</sup> Street, large apartment buildings range from 12 to 19 stories in height, including a 15-story apartment building adjoining the site. A public elementary school, PS 87 William T. Sherman, is located

across West 78<sup>th</sup> Street to the south. Immediately to the west of the site are three brownstones that are part of the Rodeph Sholom School.

The subject site is located in an R8B zoning district, which allows a maximum floor area ratio (FAR) of 4.0 for residential and community facility uses and a maximum height of 75 feet. The subject site is also located within the Upper West Side / Central Park West Historic District.

The proposed rooftop addition would add approximately 12 feet to the subject building's existing roof height of 58 feet, raising it to 70 feet, and would create one additional floor. There is an existing stair bulkhead on the roof of the building that rises to a height of approximately 66 feet; under the bulk regulations for residential buildings, this structure is considered a permitted obstruction. The bulkhead would be replaced by the rooftop addition. The proposed addition would be approximately 37 feet long and 19 feet wide (the full width of the building) and would rise to a total height of approximately 67 feet, with a skylight adding the remaining three feet of height. It would be set back approximately 16 feet from the front building wall, which is slightly more than the 15-foot setback required by the underlying R8B regulations and far enough that the addition would not be visible from West 78<sup>th</sup> Street. The addition would also be set back approximately 14 feet from the rear building wall. It would add 694 feet of floor area to the building for a new total of 6,825 square feet, within the maximum floor area allowed on the zoning lot.

Under Section 23-692 of the Zoning Resolution (known as the "Sliver Law"), in certain medium- and high-density zoning districts, an enlarged building 45 feet or less in width is limited to a total height not greater than the width of the street on which it fronts, or 100 feet, whichever is less. Since West 78<sup>th</sup> Street has a total mapped width of 60 feet, and the subject site is 19 feet wide, any enlargement on the site is therefore limited to a total height of 60 feet as-of-right. The applicant is requesting that the City Planning Commission waive this provision with respect to the proposed rooftop addition, which would have a total height of 70 feet.

Section 74-711 of the Zoning Resolution allows the Commission to modify, by special permit, use and bulk regulations (except floor area) in order to further the preservation of designated

landmark buildings or buildings located within historic districts. In order to grant the special permit, the Commission must find that the proposed bulk modifications will have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location, and access to light and air.

As a condition for granting the special permit, Section 74-711 provides that the Landmarks Preservation Commission (LPC) must issue a report stating that a program has been established for continuing maintenance that will result in the preservation of the subject building or buildings and that such use or bulk modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose. On April 29, 2009, the LPC issued a report finding that the restoration work agreed to by the applicant “will bring the building up to a sound, first-class condition and aid in its long-term preservation.” The LPC report also stated that a five-year cyclical maintenance plan has been established for the subject building and will be required in perpetuity by means of a restrictive declaration to be filed against the property. The LPC issued a Certificate of No Effect for the restoration work on April 29, 2009. On September 7, 2007, the Landmarks Preservation Commission issued a Certificate of No Effect approving the proposed one-story rooftop addition.

### **ENVIRONMENTAL REVIEW**

This application (C 100012 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 10DCP005M. 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 August 17, 2009.

### **UNIFORM LAND USE REVIEW**

This application (C 100012 ZSM) was certified as complete by the Department of City Planning on August 17, 2009 and was duly referred to Community Board 7 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**

Manhattan Community Board 7 held a public hearing on this application on October 6, 2009 and on that date, by a vote of 29 in favor, six opposed, and one abstaining, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

This application was considered by the Manhattan Borough President, who issued a recommendation approving the application on November 20, 2009.

### **City Planning Commission Public Hearing**

On November 18, 2009 (Calendar No. 2), the City Planning Commission scheduled December 2, 2009 for a public hearing on this application (C 100012 ZSM). The hearing was duly held on December 2, 2009 (Calendar No. 13). There were five speakers in favor of the application and none in opposition.

The applicants stated that the proposed addition is consistent with the neighboring brownstones, many of which have rooftop additions, and would have very minimal adverse effects on the structures and open space in the vicinity. The other member of the applicant team described the restoration work and the continuing maintenance plan developed with the Landmarks Preservation Commission.

The applicant's architect described features of the surrounding built context, including the existence of comparable rooftop additions on neighboring brownstones, and characterized the proposed new height as minimal in comparison with the taller apartment buildings on West 79<sup>th</sup> Street, to the rear of the applicant's building. The applicant's environmental consultant noted that the increase in shadow cast on the apartment building and rear yard behind the applicant's property as a result of the addition would be quite minimal.

A representative of the Manhattan Borough President also appeared in support of the application.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that the grant of this special permit (C 100012 ZSM) is appropriate.

The Commission understands that the proposed rooftop addition would raise the overall roof height of the building at 161 West 78<sup>th</sup> Street from approximately 58 feet to 67 feet, with a skylight on the addition rising to 70 feet. The Commission recognizes that the proposed addition is set back from the building's street wall and, as determined by the LPC in its approval process, would not be visible from West 78<sup>th</sup> Street or any other street. The Commission notes that the building's proposed height is generally consistent with the heights of other buildings along this block of West 78<sup>th</sup> Street and further notes that, of the eight buildings in this row of historic brownstones, five currently have rooftop additions of similar heights as the applicant's proposed addition, and another rooftop addition has been approved by the LPC for the brownstone adjoining the applicant's building to the west.

Accordingly, the Commission believes that the requested bulk modification will have minimal adverse effects on the structures and open space in the vicinity in terms of scale, location, and access to light and air.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 of the Zoning Resolution:

- 1) That the proposed bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location, and access to light and air; and
- 2) Not applicable.

## **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 Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of West 78<sup>th</sup> Street LLC, pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to Section 24-209 of the Zoning Resolution to modify the bulk regulations of Section 24-209 (Height limitations for narrow buildings or enlargements) to facilitate the construction of a one-story rooftop addition of an existing five-story building on property located at 161 West 78<sup>th</sup> Street (Block 1150, Lot 7) in an R8B District within the Upper West Side / Central Park West Historic District, Borough of Manhattan, Community District 7, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 100012 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 Torborg Architects LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPC-1	Site Plan Zoning & Analysis	6/29/09
CPC-5	Proposed North/South Building Section	6/29/09

- 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) Development pursuant to this resolution shall be allowed only after the attached restrictive declaration, dated as of December 31, 2009, executed by 161 West 78<sup>th</sup> Street LLC, the terms of which shall be deemed incorporated herein as a condition of this resolution, shall have been recorded and filed in the Office of the City Register of the City of New York, County of New York.
- 5) 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.
- 6) 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 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 alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation, or amendment of the special permit hereby granted.
- 7) 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 100012 ZSM), duly adopted by the City Planning Commission on January 6, 2010 (Calendar No. 10), 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, FAICP, Chair**  
**RAYANN BESSER, ALFRED C. CERULLO, III, BETTY Y. CHEN,**  
**MARIA M. DEL TORO, RICHARD W. EADDY, SHIRLEY A. McRAE,**  
**KAREN A. PHILLIPS, Commissioners**