



CITY PLANNING COMMISSION

March 26th, 2008 / Calendar No. 11

C 080042 ZSM

IN THE MATTER of an application submitted by 40th Street Partners LLC and HSBC Bank USA 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 requirements of Section 77-02 (Zoning Lots Not Existing Prior to Effective Date or Amendment of Resolution), the pedestrian circulation space requirements of Section 37-50 (Requirements for Pedestrian Circulation Space) and Section 81-45 (Pedestrian Circulation Space), the street wall continuity requirements of Section 81-43 (Street Wall Continuity Along Designated Streets) and the height and setback requirements of Section 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation) to facilitate the development of a 32-story mixed use building, on property located at 14-20 West 40th Street (Block 841, Lots 30, 31, 45, 49, 57, 58, 59 & 60), in C5-3 and M1-6 Districts, , partially within the Special Midtown District, Community District 5, Borough of Manhattan.

The application for the special permit was filed on August 6, 2007, by 40th Street Partners LLC and HSBC Bank USA pursuant to Section 74-711 (Landmarks preservation in all districts) for modifications to height and setback, split lot provisions, pedestrian circulation space, and street wall continuity requirements to facilitate the development of a new mixed hotel and residential building on West 40th Street between Fifth and Sixth Avenues.

BACKGROUND

The applicant is seeking a special permit pursuant to Section 74-711 to facilitate the construction of a mixed-use building in a zoning district split between C5-3 and M1-6.

The development site is located in the midtown central business district at the convergence of several different commercial areas. West 39th Street has a mix of

commercial and manufacturing uses, with its midblock portion located within a manufacturing district. The south side of West 40th Street, where the proposed building would be located, is characterized by buildings between 10 to 29 stories with a maximum height of approximately 415 feet. West 40th Street between Fifth and Sixth Avenues includes three designated landmarks: the American Radiator Building (23 stories) and the Bryant Park Studios (16 stories) to the west of the site, and the Knox Building (10 stories) to the east of the site. The block also contains the 400-foot-tall HSBC tower, which is directly adjacent to the Knox Building and approximately 80-feet east of the proposed building.

42nd Street from Madison Avenue to Times Square contains mostly high-rise commercial buildings including the 47-story Grace building between Fifth and Sixth Avenues, the 15-story HBO building at the northeast corner of Sixth Avenue and 42nd Street, the 41-story Verizon building on the southwest corner of Sixth Avenue and 42nd Street. Currently under construction on 42nd street between Sixth Avenue and Broadway is the Bank of America Building.

The block directly to the north of the project site contains the New York Public Library's Central Research Library which is a designated New York City and national historic landmark, and Bryant Park, which is a designated city scenic landmark. The park was renovated and reopened in 1992 and constitutes the major open space in midtown Manhattan.

Fifth Avenue, to the east of the site, contains a mix of uses including the Mid-Manhattan Library on its east side between West 39th and West 40th Streets, the recently landmarked Lord and Taylor department store on the west side between West 38th and West 39th Streets, and a 33-story, 175 unit condominium building on the east side at West 39th Street.

Project Site

The proposed building's zoning lot is comprised of Lots 30, 31, 45, 49, 57, 58, 59, and 60 of Block 841 — the block bounded by West 39th Street, Fifth Avenue, West 40th Street and Sixth Avenue. The zoning lot has 322'6" of frontage along West 39th Street, the block's full 197'6" of frontage along the west side of Fifth Avenue between 39th and 40th Streets, and two frontages totaling 275' along West 40th Street. The easternmost 200 feet of the zoning lot, along Fifth Avenue, is located in a C5-3 zoning district within the Fifth Avenue Subdistrict of the Midtown Special District, the 40th Street frontage beyond 200 feet from Fifth Avenue is located in a C5-3 zoning district in the Special Midtown District, and the 39th Street frontage beyond 200 feet from Fifth Avenue is located in an M1-6 zoning district. The lot area of the zoning lot is 59,002 square feet.

The development site consists of Lots 30, 58, 59 and 60, which currently contains a public parking lot operated pursuant to a City Planning Commission special permit approved on August 19, 1998 (C980495 ZSM) for a term of five years. A renewal of that special permit was granted by the Commission and the City Council in 2003 (C030108ZSM) with no term. The remainder of the zoning lot is improved with the

headquarters buildings of HSBC and includes the Knox Building, a designated New York City landmark.

The existing HSBC buildings include: a 12-story office building at One West 39th Street which extends from Fifth Avenue to approximately 300 feet west of Fifth along 39th Street; the 29-Story HSBC Tower which was constructed pursuant to the 1981 & 1984 special permit and wraps around the Knox Building; and the 10-story Knox Building at 452 Fifth Avenue on the corner of Fifth Avenue and 40th Street.

Prior Approvals

The existing HSBC headquarters tower was developed pursuant to a special permit approved in 1981 (C810605ZSM) and subsequently modified in 1984 (C830890ZSM).

The 1981 special permit was granted by the City Planning Commission and the Board of Estimate pursuant to Section 74-711. The permit allowed the development of a 27-story tower that wrapped around the landmark Knox Building and connected four other structures to form the HSBC complex. The special permit granted a variety of waivers and also included a program of continuing maintenance for the preservation of the Knox Building.

In 1993, HSBC proposed construction of an addition on the same site as the currently proposed building. A special permit for that addition was approved in 1994 Special Permit, but the building was never constructed and the special permit has lapsed.

PROPOSED PROJECT

The proposed development would be a 357 foot tall, 32 story building with approximately 186,940 square feet of new floor area. The first floor would contain entrances for the hotel and retail space, as well as the residential lobby, floors 2 through 16 would be hotel use, and floors 17 through 32 would be residential floors. The development would consist of approximately 4,500 square feet of floor area for the retail/restaurant space on the ground floor, 95,000 square feet of floor area for the hotel, and 87,000 square feet of floor area for the residential portion of the building, with approximately 32 as-of right accessory parking spaces below-grade.

The building would be physically separated from the Knox Building by 12 West 40th Street (an existing 4-story building on the same zoning lot as the new building), 8 West 40th Street (a 21-story building under separate ownership on a different zoning lot), and the portion of the HSBC tower that extends to 40th Street.

The proposed building would have 102.5 feet of frontage on West 40th Street, where all pedestrian entrances will be located. In addition, a vehicular entrance from West 39th Street would provide access to off-street loading areas and the accessory parking area below grade at cellar level.

As required by Section 74-711 (a) on April 17, 2007, the Landmarks Preservation Commission voted to approve the restoration work and continuing maintenance program outlined in the second modified declaration and also issued a report to the Chair of the

City Planning Commission stating that the requested bulk modifications relate harmoniously to the landmark Knox building.

REQUESTED ACTIONS

Under Section 74-711 of the Zoning Resolution, the City Planning Commission may, by special permit, allow developments on zoning lots containing designated landmark buildings or within a designated Landmark Historic District to modify certain use and bulk regulations. The requested modifications are:

- a) Section 81-27 ("Alternative Height and Setback Regulations - Daylight Evaluation") in the C5-3 district to allow daylight scores on West 39th Street, Fifth Avenue and West 40th Street that are less than the required 66 percent minimum for an individual street and the 75 percent minimum overall score.

- b) Section 77-02 (split lot bulk provisions) to allow transfer of approximately 17,264 square feet of floor area from the M1-6 portion of the Subject Premises to the C5-3 portion, not normally permitted.

- c) Modification of the pedestrian circulation space requirements of Sections 81-45 and 37-50 along West 40th Street to waive pedestrian circulation space requirements. The amount of pedestrian circulation space required for the new building is 623 square feet. The proposed building provides no such space.

d) Modification of the street wall continuity regulations of Section 81-43.

These waivers would facilitate a building constructed flush to the street line as is the case with the landmark Knox building and more consistent with the existing streetscape on West 40th Street which is characterized by towers, such as the landmarked American Radiator building to west, flanked by buildings three to six stories in height.

ENVIRONMENTAL REVIEW

This application (C 080042 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 613.00 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 03DCP056M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on December 17, 2007.

UNIFORM LAND USE REVIEW

This application (C 080042 ZSM) was certified as complete by the Department of City Planning on December 17, 2007 and was duly referred to Community Board 5 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 5 held a public hearing on the application on January 17th, 2008, and by a vote of 28 in favor, 2 opposed, and 2 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was also considered by the Manhattan Borough President, who issued a recommendation in favor of the application on February 8, 2008.

City Planning Commission Public Hearing

On February 13, 2008 (Calendar No. 16), the City Planning Commission scheduled February 26, 2008 (Calendar No. 35) for a public hearing on this application (C 080042 ZSM). The hearing was duly held on February 26, 2008 (Calendar No. 35). There were four speakers in favor of the application and three in opposition.

The Deputy Director for Land Use for the Borough President reiterated the Borough President's support for the application, noted that the high quality design of the project, and urged the developer to work with Community Board #5 to mitigate any construction related impacts. The applicant's attorney described the subject proposal and stated that it met the requisite findings. The project architect described the proposed building and explained how the design of the building was intended to reflect the scale and context of

West 40th Street. A representative of the Bryant Park Corporation also spoke in favor and noted the design benefit to the park and the neighborhood of the proposed building.

Two neighborhood residents spoke in opposition to the project, expressing their concern over construction impacts, shadows on Bryant Park, and the traffic impacts of the proposed project. A representative of the Bryant Park Neighborhood Coalition also spoke in opposition to the project expressing concerns over the impact to daylight on the street, the public benefit of the landmark's preservation, and the need for an Environmental Impact Statement.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit pursuant to Sections 74-711 (Landmarks preservation in all districts) is appropriate.

The Commission notes that that the simple rectilinear massing of the proposed tower and its lack of setbacks will relate well to the composition of the Knox Building. The Commission further notes that the massing of the proposed project, a 32 story tower connected with an adjacent five story building will reinforce the rhythm of taller towers flanked by shorter buildings that characterizes the streetscape on West 40th Street between Fifth and Sixth Avenues.

The Commission notes that the requested modifications to Section 81-27 (Alternate

Height and Setback Daylight Evaluation Regulations) would permit the building to be built to the 40th Street street line and rise without a front setback to its full height of 32-stories. Moreover, the Commission believes that the proposed building without setbacks is consistent with the prevailing architectural pattern of buildings that rise sheer from the street.

The Commission believes that the proposed building is similar in both scale and massing to most adjacent developments along 40th Street. Since the modifications would permit a more slender building of no greater height than an as-of right building, the effect of the modifications on Bryant Park and the plaza of the New York Public Library would be minimal.

The Commission also believes that the other waivers being sought - for pedestrian circulation space, street wall continuity, and split lot provisions - all help to facilitate a building that reinforces the pattern of towers with adjacent three to six story structures built flush with the street line. The Commission further notes that the waiver of pedestrian circulation requirements permits the development of a building base with entrances directly on the street line in harmony with the other buildings on West 40th Street and that the waiver of street wall and split lot requirements allow for the building to be massed as a tower with an adjacent shorter five story portion, echoing the pattern of buildings on the block.

The Commission notes that the Environmental Assessment Statement completed for the project found that shadows cast by the proposed building would not have a significant impact on Bryant Park and further notes that the Bryant Park Corporation has expressed its support for this application.

The Commission also recognizes the Landmarks Preservation Commission has determined that the Restoration Work and the Continuing Maintenance Program outlined in the Second Modified Declaration will contribute to the restoration of the Knox building and will restore many of the buildings original historic elements.

The Commission believes that the proposed mixed-use building will fill a gap in the urban fabric on West 40th Street and will be consistent with and supportive of the character of the surrounding mixed-use area.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 and 81-277.

- 1) 74-711 (b)(1) such 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;

- 2) 74-711 (b) (2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

3) 81-277 (1) the requested departure from the alternate height and setback regulations is the minimum amount necessary to achieve a feasible building design.

4) 81-277 (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.

5) 81-277 (3) That where the landmark is located on the zoning lot proposed for development or enlargement or on a lot contiguous thereto or directly across a street 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 actions 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 40th Street Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant 74-711 of the Zoning Resolution to modify: the requirements of Section 77-02 (Zoning Lots Not Existing Prior to Effective Date or Amendment of Resolution), the pedestrian circulation space requirements of Section 37-50 (Requirements for Pedestrian Circulation Space) and Section 81-45 (Pedestrian Circulation Space), the street wall continuity requirements of Section 81-43 (Street Wall Continuity Along Designated Streets) and the height and setback requirements of Section 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation) to facilitate the development of a 32-story mixed use building, on property located at 14-20 West 40th Street (Block 841, Lots 30, 31, 45, 49, 57, 58, 59 & 60), in C5-3 and M1-6 Districts,

partially within the Special Midtown District, Community District 5, Borough of Manhattan is approved, subject to the following terms and conditions :

1. The property that is the subject of this application (C 080042 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 MA Architects filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-2	Site Plan / Ground Floor Plan	12/10/2007
Z-3	Zoning Lot Computations	12/10/2007
Z-4	Sections	12/10/2007
Z-5	Zoning Computations	2/13/2008
Z-6	Zoning Roof Plan and Notes	12/10/2007
Z-7	Daylight Evalutaion Diagram	12/10/2007
Z-8	1994 Set – Daylight Evaluation Roof Plan	12/10/2007
Z-9	1994 Set – Daylight Evaluation Calculations	12/10/2007
Z-10	1994 Set – Daylight Evaluation Calculations	12/10/2007
Z-11	1994 Set – Daylight Evaluation Diagrams	12/10/2007
Z-12	1994 Set – Daylight Evaluation Diagrams	12/10/2007
Z-12a	1994 Set – Daylight Evaluation Diagrams	12/10/2007
Z-13	1994 Set – Daylight Evaluation Diagrams	12/10/2007
Z-13a	1994 Set – Daylight Evaluation Diagrams	12/10/2007
Z-14	1994 Set – Daylight Evaluation Diagrams	12/10/2007
Z-14a	1994 Set – Daylight Evaluation Diagrams	12/10/2007

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 related 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 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 or of the related restrictive declaration.

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.

7. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

8. Development pursuant to this resolution shall be allowed only after the restrictive declaration dated March 12, 2008, executed by Property Owner (USA) LLC and 40th St. Partners, LLC, the terms of which are hereby incorporated in this

resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

The above resolution (C 080042 ZSM), duly adopted by the City Planning Commission on March 26, 2008 (Calendar No. 11), 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

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