



CITY PLANNING COMMISSION

December 19, 2007/Calendar No. 23

C 060225 ZMM

IN THE MATTER OF an application submitted by Tuck-it-Away Associates, L.P. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 6a, changing from an M1-2 District to a C6-2 District property bounded by West 135th Street, a line 90 feet easterly of Broadway, West 133rd Street and Broadway, Borough of Manhattan, Community District 9, as shown on a diagram (for illustrative purposes only) dated July 23, 2007, and subject to the conditions of CEQR Declaration E-193.

The application for an amendment to the Zoning Map was filed by Tuck-it-Away Associates, L.P. on November 14, 2005, to rezone two properties, 3330 and 3320 Broadway, which are located on the east side of Broadway between West 133rd and West 135th Streets, from an M1-2 to C6-2 District. The requested action would facilitate the development of two new residential/commercial buildings within the proposed rezoning area.

BACKGROUND

The applicant, Tuck-it-Away Associates, L.P., seek approval of a zoning map amendment from M1-2 to C6-2 to facilitate the development of two mixed-use buildings. The proposed rezoning area is located on the east side of Broadway between West 133rd and West 135th streets in Manhattan Community District 9.

The requested action would rezone the east side of Broadway between West 133rd and West 135th Streets. The applicant owns all of the property within the rezoning area. The property between West 133rd and West 134th streets (3300 Broadway, Block 1987, Lot 1) is developed with a two-story warehouse/storage facility. The property has an area of approximately 17,987 square feet and the building has approximately 32,000 square feet of floor area (approximately 1.78 FAR). This property is abutted by a seven-story commercial building and a parking garage, with the remaining portion of the block developed with five and six-story residential buildings.

The portion of the rezoning area between West 134th and West 135th streets (3320 Broadway Block 1988, Lot 1) is developed with a three-story warehouse/storage facility. A portion of this property includes the former Claremont Theater, which was designated as a City landmark on June 6, 2006. This property has an area of approximately 17,987 square feet and the building has approximately 47,000 square feet of floor area (approximately 2.61 FAR). The rezoning area is abutted by a parking garage, with the remaining portion of the block developed with five and six-story residential buildings.

The rezoning area is currently zoned M1-2. M1-2 districts which allow retail, commercial and light manufacturing uses up to 2.0 FAR. Certain community facility uses are allowed up to 4.8 FAR. Residential uses are not permitted.

The area immediately adjacent to the proposed rezoning area is primarily zoned R7-2, which allows medium-density residential development up to 3.4 FAR and community facility uses up to 6.5 FAR. On wide streets outside the Manhattan Core (i.e., Manhattan Community Districts 1-8), residential development under Quality Housing option is allowed up to 4.0 FAR.

Neighboring uses include automotive-related uses, commercial and local retail uses. The area also has five- and six-story residential buildings, with some along Broadway having ground floor retail use. The IRT subway viaduct, serving the Broadway No 1 train, is located adjacent to the proposed rezoning area.

Proposed Zoning Map Amendment

The requested action would rezone the applicant's properties from M1-2 to C6-2. C6-2 zones are medium-density commercial districts that allow commercial uses up to 6.0 FAR and community facility uses up to 6.5 FAR. Residential development, currently not allowed under the existing zoning, would be permitted up to 6.02 FAR. On wide streets outside the Manhattan Core, residential development under Quality Housing option is allowed up to 7.2 FAR. The existing mini-storage facilities (Use Group 16) would be allowed to continue as

non-conforming uses. C6-2 zones are non-contextual districts, with building envelopes subject to height factor regulations without height limits.

The applicant has stated that, if the rezoning is approved, it intends to develop two mixed-use buildings that could produce a total of 168 residential units (3300 Broadway - 64 units; 3320 Broadway - 104 units). The proposed buildings would range from 166 feet to 255 feet in height. The applicant could, in the future seek a special permit, pursuant to Section 74-79 of the Zoning Resolution, to transfer unused development rights from 3320 Broadway to 3300 Broadway.

Concurrent with this application, the applicant has also filed three additional applications to rezone other sites in its ownership within the Manhattanville area of West Harlem to a C6-2 designation. They are:

C 060223 ZMM

651 West 125th Street (Block 1996, Lot 56): 651 West 125th Street is a three-story warehouse located on the north side of West 125th Street between Broadway and Twelfth Avenue.

C 060224 ZMM

614 West 131st Street (Block 1997, Lot 44): 614 West 131st Street is a five-story warehouse located on the south side of West 131st Street between Broadway and Twelfth Avenue.

C 060226 ZMM

3261 Broadway (Block 1998, Lot 29): 3261 Broadway is a four-story warehouse located on the west side of Broadway between West 131st and West 132nd streets.

Special Manhattanville Mixed-Use District

On November 26, 2007, the City Planning Commission approved Columbia University's applications to establish a Special Manhattanville Mixed-Use District (MMU) (C 070495 ZMM, N 070496 ZRM). The MMU would facilitate a comprehensive plan for Columbia University to expand and modernize its facilities within an Academic Mixed-Use Area and the revitalization, improvement, and redevelopment of portions of Manhattanville by

allowing greater density and a wider variety of land uses. The MMU and the Columbia University expansion plan are described in detail in the City Planning Commission report, N 070496 ZRM. The applications are currently pending before the City Council.

Under the MMU, the area bounded by Broadway, Old Broadway, 12th Avenue, West 125th, West 133rd and West 134th streets, would be rezoned to a C6-1 district. C6-1 districts are medium-density commercial districts that allow residential, commercial and community facility uses. Residential development is allowed up to 3.44 FAR, commercial uses are allowed up to 3.4 FAR and community facility uses are allowed up to 6.5 FAR. Under the MMU, Subdistrict A would have special provisions to limit community facility uses to 6.0 FAR, which is below the 6.5 FAR maximum for community facility use in C6-1 districts. The applicant's property located at 3300 Broadway would be located within Subdistrict A and rezoned to a C6-1 district. Special District regulations would establish a maximum building height limit of 120 feet and a street wall height of 60 to 85 feet. Under Columbia's proposal, the applicant's property at 3300 Broadway would be incorporated into the Academic Mixed-Use Development for a University Housing use.

The area bounded by Broadway, West 134th and West 135th streets, and a point 90 feet east of Broadway would comprise the 'Other Area-Broadway' subdistrict of the MMU. This area would be rezoned from M1-2 to R8/C1-4, to facilitate future residential development. The applicant's property located at 3320 Broadway would be located within the 'Other Area-Broadway' subdistrict.

ENVIRONMENTAL REVIEW

This application (C 060225 ZMM) 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 06DCP060M. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the subject application (C 060225 ZMM), a Conditional Negative Declaration was issued on July 23, 2007.

The Conditional Negative Declaration included an (E) designation. The placement of the (E) designation (E-193) on the zoning map would eliminate the potential for significant adverse impact on those sites and would ensure that appropriate testing, remediation and corrective action, if needed, would be undertaken

The City Planning Commission is now considering modifying the Tuck-It-Away Associates, L.P., application to eliminate the 3320 Broadway parcel (Block 1988, Lot 1) from the proposed rezoning area. Under this modification, the (E) designation for noise would be placed only on the 3300 Broadway parcel (Block 1987, Lot 1). The text of the (E) designation, which would remain the same, is as follows:

In order to ensure an acceptable interior noise environment, future residential and commercial uses must provide a closed window condition with a minimum of 40 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.

Additionally, the modification would warrant (E) designation requirements for operational air quality and construction impact air quality on Block 1987, Lot 1 in order to avoid potential significant adverse impacts, as described below.

Operational Air Quality

An E-designation would be required on Block 1987, Lot 1 to ensure this development would not result in any significant air quality impacts from HVAC emissions. The E-designation is as follows:

Any new development on the above referenced property must ensure that the heating, ventilating and air conditioning (HVAC) systems utilize natural gas to avoid any potential significant air quality impacts.

Construction Air Quality

An emission reduction program would be instituted for Block 1987, Lot 1 during construction to be implemented through an E-designation. The specific technical requirements relating to this E-designation is as follows:

Prior to issuing a building or demolition permit, the Department of Buildings shall be furnished with a report from the Department of Environmental Protection of the City of New York (DEP) stating that the applicant has documented to DEP's satisfaction that either: (1) the applicant will implement the following controls in connection with its construction of such development, including reporting and completion certification which must be approved by DEP prior to issuance of any Certificate of Occupancy, and that its contracts for such construction will have specifications requiring the following restrictions; or (2) that applicant has demonstrated to DEP's satisfaction, including reporting and completion certification to be approved by DEP prior to issuance of any Certificate of Occupancy, if necessary, that the construction of the development would not result in significant air quality impacts from fine particulate matter emissions PM_{2.5}:

1. Generator Use Limited: On-site power generation will be limited to a single generator with a power rating of 10 horsepower (hp) or less, to be used during construction working hours only and not to be operated after hours. Any other on-site electrical power needs may be met by securing a grid-power connection.
2. Non-road Diesel Sulfur Content Limited: Any diesel fuel used on site by non-road engines will be ultra low sulfur diesel (ULSD) with a sulfur content of 15 parts per million or less (50hp or greater).
3. Large Engine Emissions Control: All non-road diesel engines with a power rating of 50 hp or greater to be used on site will be either:
 - a. certified as EPA Tier 4 engines; or
 - b. certified as EPA Tier 2 engines and retrofit with a diesel particle filter (DPF) verified by EPA or California Air Resources Board, or with other emission reduction technology which is documented to reduce at least 90 percent of diesel particulate matter emissions for the engine exhaust.

The above (E) designations for noise and air quality would ensure that the proposed action would not result in significant adverse impacts due to noise and air quality.

The Negative Declaration issued on July 23, 2007 identified the need for a restrictive declaration for hazardous materials due to the potential presence of hazardous materials on the subject properties (Block 1987, Lot 1 and Block 1988, Lot 1). With the proposed modification under consideration by the City Planning Commission to eliminate the blockfront containing 3320 Broadway (Block 1988, Lot 1), the restrictive declaration would apply only to Block 1987, Lot 1. The restrictive declaration requires that the applicant prepare a hazardous materials sampling protocol including a health and safety plan, which would be submitted to the Department of

Environmental Protection (DEP) for approval. The applicant has agreed to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

The restrictive declaration would serve as a mechanism to assure that the potential for hazardous materials contamination would be characterized prior to any site disturbance (i.e. site grading, excavation, demolition, or building construction) and is binding upon the property's successors and assigns. The restrictive declaration would ensure that the proposed action would not result in significant adverse impacts related to hazardous materials.

UNIFORM LAND USE REVIEW

This application (C 060225 ZMM), was certified as complete by the Department of City Planning on July 23, 2007, and was duly referred to Community Board 9 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 9 held a public hearing on this application on September 20, 2007, and on that date, by a vote of 16 to 12 with 2 abstentions, adopted a resolution recommending disapproval of the application "unless Tuck-it-Away agrees to:"

1. Further define "affordable housing" as targeted to 40% AMI, 60% AMI, 80% AMI, 100% AMI and 120% AMI of CB9M.
2. Allocate at least 50% of residential units as affordable housing in perpetuity by placing a deed restriction on the property. And of the 50%, 10% be specifically designated for seniors.
3. Provide a fair percentage of affordable units for units.
4. Provide affordable commercial units for local business people, with priority given to women and minority entrepreneurs from the community.
5. Engage in sustainable design and construction practices with the equivalent of a LEED standard of platinum prior to the commencement of construction.
6. Commit to conforming to the height restrictions for CB9M set forth in Manhattan Borough President Stringer's proposed Special District Area Plan.

7. Commit to continue discussions with CB9M before the implementation of any planned uses of the property.
8. Conduct a financial feasibility study for the development project.
9. Commit to developing the landmark Claremont Theatre building or any other property or or part of a property included in the application into a facility with the purpose of cultivating local arts and culture.
10. Otherwise, meet the goals and objectives outlined in the 197-a Plan including, but not limited to, mitigating all direct and indirect adverse impacts with respect to job creation for local residents, economic development, socio-economic conditions, environmental protection and sustainable development, public transit, neighborhood character, public open space and other impact areas, as delineated by CB9M in the 197-a Plan

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation disapproving the application on October 31, 2007. The Borough President provided comments with the recommendation. The excerpts below highlight the chief comments which are fully described in the attached recommendation.

The applications show every characteristic of impermissible spot zoning. Each proposed action applies to discreet, individual properties, some as small as 75,000 sf, all of which are owned by Tuck-it-Away Associates. No other properties are included in any of these applications. The proposed rezonings, if adopted, would leave extremely small islands of mixed-use zoning completely surrounded by a larger manufacturing zone - an irrational and unwise intermingling of uses.

No comprehensive plan for the City or for West Harlem has been adopted that contemplates such a piece-meal, spotty approach to planning for future growth and development.

Whatever its other merits, these applications cannot be approved because it is a nearly textbook case of impermissible spot zoning, which cannot be legally defended and is offensive to the principles of comprehensive planning.

City Planning Commission Public Hearing

On October 31, 2007 (Calendar No. 3), the City Planning Commission scheduled November 14, 2007 for a public hearing on this application (C 060225 ZMM). The hearing was duly held on

November 14, 2007 (Calendar No. 30). Thirteen speakers spoke in favor of the application and one speaker in spoke opposition.

Those speaking in favor included the applicant and the applicant's architect, environmental consultant and attorney. Others speaking in favor included an attorney representing property owners affected by Columbia's Manhattanville proposal, area residents, business owners and community advocates.

The applicant stated that the requested rezonings of this and other sites under its ownership, from M1-2 to C6-2, was appropriate because it would facilitate much needed residential development. The applicant also stated that his proposed development for this and other sites under his ownership would complement Columbia's campus expansion in Manhattanville. The applicant further stated that while he did not have extensive experience developing property at the proposed scale, he had made extensive efforts to identify resources to enable development of affordable housing on his sites.

The applicant's architect described her view that non-contextual height-factor buildings on the subject sites would be more compatible to the surrounding built context, given the scale and height of 3333 Broadway, a neighboring former Mitchell-Lama development comprising towers that range from 21-35 stories. She also explained how the developer intends to preserve the Claremont Theater, a designated city landmark that anchors the northern portion of 3320 Broadway.

Other speakers expressed support for the applicant's proposal and opposition to Columbia's expansion, particularly with regard to the potential use of eminent domain to assemble the applicant's sites for the Academic Mixed Use Development.

The Deputy Director of Land Use for the Manhattan Borough President spoke in opposition to the applications and reiterated the Borough President's recommendation, stating that the applications to rezone parcels under the applicant's ownership within the Manhattanville area lacked a land use rationale and constituted a form of 'spot zoning'.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the amendment of the Zoning Map, as modified herein, is appropriate.

The rezoning of the east side of Broadway between West 133rd and West 134th streets (3300 Broadway) is appropriate within the context of the Special Manhattanville Mixed Use District. At the same time, the Commission believes that the amendment of the Zoning Map for the east side of Broadway between West 134th and West 135th streets (3320 Broadway) is not appropriate. Accordingly, the Commission adopts this application with a modification disapproving that portion of the application which seeks to rezone 3320 Broadway.

The proposed rezoning area comprises two properties, 3300 and 3320 Broadway, which are located on the east side of Broadway between West 133rd and West 135th Streets and are developed with two- and three-story warehouses that are owned by the applicant.

The requested action would rezone the applicant's properties from M1-2 to C6-2. C6-2 zones are medium-density commercial districts that allow commercial uses up to 6.0 FAR and community facility uses up to 6.5 FAR. Residential development, currently not allowed under the existing zoning, would be permitted up to 6.02 FAR. On wide streets outside the Manhattan Core, residential development is allowed up to 7.2 FAR under the Quality Housing option.

The Commission has reviewed the requested action with the context of the existing M1-2 zoning and within the context of the recently approved Manhattanville Mixed Use District, which if approved by the City Council, will significantly modify the land use context of the area.

3320 Broadway

For 3320 Broadway, the Commission believes that applicant's request to rezone the property from an M1-2 District to C6-2 District is inappropriate and that the recently approved R8A/C1-

4 zoning is appropriate. C6-2 districts allow residential development up to 6.02 FAR under a height factor building envelope without height limits. R8A districts allow residential development up to 6.02 FAR, and community facility uses up to 6.5 FAR. Within the commercial overlay, commercial development would be allowed up to 2.0 FAR. Under the contextual envelope of an R8A district, a street wall of between 60 and 85 feet is required, with a maximum building height of 120 feet.

The R8A district supports residential development, consistent with the objectives for the property expressed by the applicant. Given the surrounding neighborhood's five- to six-story street wall context and scale, and predominantly residential character, the Commission believes that the R8A envelope under the MMU would better ensure that future development is compatible with the surrounding neighborhood context than would be the case under the applicant's non-contextual C6-2 zoning proposal.

3300 Broadway

For 3300 Broadway, the Commission believes that applicant's request to rezone the property from an M1-2 District to C6-2 District is appropriate, with future development on the site subject to an R8A contextual envelope pursuant to the MMU regulations.

The applicant's proposed C6-2 zoning, subject to R8A bulk controls under the Special Manhattanville Mixed Use District regulations, would create a consistent zoning pattern with the R8A district mapped immediately to the north. Should this site become part of the Columbia campus, it would be developed at 6 FAR for university housing with an R8A envelope. In the event that it is instead developed by the applicant, then residential development would take place on the same basis as at the 3320 Broadway site to the north under the 'Other Area-Broadway' subdistrict of the MMU (i.e., an R8A envelope at 6.02 FAR).

As indicated above, the Commission's determination that a C6-2 designation is appropriate for 3300 Broadway is predicated on the combination of C6-2 densities and the R8A envelope controls prescribed under the regulations of the MMU. Without the additional bulk controls

provided under the MMU, height factor building envelopes under a C6-2 district at 3300 Broadway would be inconsistent with the existing neighborhood context and scale.

The Commission's decision to approve the requested rezoning of 3300 Broadway is, therefore, informed by the context that would be established at 3320 Broadway under the regulations prescribed for the R8A/C1-4 designation of the 'Other Area'-Broadway' subdistrict in the MMU, as well as by the R8A envelope regulations of the MMU for the 3300 Broadway site. In the event the Special Manhattanville Mixed Use District is not approved, however, the Commission does not believe that C6-2 district designations would be warranted at either the 3300 or 3200 Broadway locations.

For the reasons set forth above, the Commission believes that the requested zoning map amendment as modified, is appropriate. The Commission recognizes that in order to fully effectuate the C6-2 district designation for 3300 Broadway approved herein, a follow-up text amendment is needed to remove references to the densities of a C6-1 district in MMU regulations which govern the site. The Commission has requested that the Department prepare an application for such amendment.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment, subject to the condition that the applicant, Tuck-it-Away Associates, L.P., agrees via a restrictive declaration to prepare a hazardous materials testing protocol, including a health and safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan, including a health and safety plan, to DEP for approval. If necessary, remediation measures would be taken pursuant to the remediation plan, 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 described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961 and as subsequently amended, is hereby amended by changing the Zoning Map, Section No 6a changing from an M1-2 District to a C6-2 District property bounded by West 134th Street, a line 90 feet easterly of Broadway, West 133rd Street and Broadway, Borough of Manhattan, Community District 9, as shown in a diagram (for illustrative purposes only) dated July 23, 2007 and modified on December 19, 2007, and which includes CEQR Designation E-193.

The above resolution (C 060225 ZMM), duly adopted by the City Planning Commission on December 19, 2007 (Calendar No. 23), 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, ALFRED C. CERULLO, III,
RICHARD W. EADDY, NATHAN LEVENTHAL, JOHN MEROLO,
KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners

ANGELA R. CAVALUZZI, R.A., Commissioner, VOTING NO

MARIA M. DEL TORO, Commissioner, ABSTAINING