



## CITY PLANNING COMMISSION

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August 25, 2004/Calendar No. 13

C 010646 ZSK

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**IN THE MATTER OF** an application submitted by Two Trees Management Company pursuant to Sections 197-c and 201 of the New York City Charter **for the grant of a special permit** pursuant to Section 74-743(a)(2) of the Zoning Resolution **to allow the location of a proposed 16-story mixed use building without regard for the applicable yard, court and height and setback regulations, on a zoning lot located at 38-64 Water Street a.k.a. 9-43 Dock Street** (Block 36, Lots 1, 3, and 14), within a General Large Scale Development (Block 36, Lots 1, 3, 14, 16, and 116, Block 26, Lots 33 and 38), within M1-2/R8, M1-2/R8A and M3-1 Districts, partially within a Special Mixed Use District (MX-2), partially within the Fulton Ferry Historic District.

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The application by Two Trees Management Company was submitted on May 11, 2001, for a Special Permit to facilitate the development of an approximately 200-unit apartment building with ground floor retail, community facility use and a 327-space public parking garage on the western portion of the block bounded by Water Street, Dock Street, Main Street and Front Street in the DUMBO (Down Under the Manhattan Bridge Overpass) neighborhood of Community District 2, Brooklyn.

### **RELATED ACTIONS**

In addition to the special permit which is the subject of this report, 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:

1. C 010645 ZMK      Amendment to the Zoning Map, changing an M1-2 District to an M1-2/R8 District and establishing a Special Mixed-Use District (MX-2);
2. C 010647 ZSK      Special Permit pursuant to Section 74-512 for a public parking garage in excess of 150 spaces and exemption of floor area from the definition of floor area; and
3. C 030492 ZSK      Special Permit pursuant to Section 74-711 for a use modification within a historic district.

## **BACKGROUND**

Two Trees Management Company is seeking a special permit pursuant to Section 74-743 to allow bulk modifications in conjunction with development of an approximately 200-unit apartment building with ground floor retail, community facility space and a 327-space public parking garage on the western portion of the block bounded by Water, Front, Dock and Main Streets in the DUMBO area of Community District 2, Brooklyn.

In conjunction with the special permit, the applicants are also proposing a zoning map change from M1-2 District to an M1-2/R8 District and establishing a Special Mixed-Use District (MX-2), a Special Permit pursuant to Section 74-512 for a public parking garage in excess of 150 spaces and to allow a portion of the garage floor area up to a height of 23' to be exempted from the definition of floor area, and a special permit pursuant to Section 74-711 to allow use modifications for a building located within a Historic District. This special permit would permit the conversion of an existing, four-story, vacant brick building located at 85 Water Street to residential use with ground-floor retail. Eighty-five Water Street is located within the proposed General Large-Scale Development, but is not within the proposed rezoning area boundary.

### **Area Description**

The proposed rezoning area is located in DUMBO, a vibrant, mixed-use neighborhood that contains a wide variety of uses including residential, commercial offices and neighborhood retail, parking garages and manufacturing. The rezoning area consists of the western, 49,000-square foot portion of Block 36. The applicant owns four of the five properties that comprise the rezoning area, including a 70-space public parking garage, two vacant three- and four-story brick

buildings and a one-story warehouse (Block 36, Lots 1,3, and part of 14). The lot that the applicants do not control is a three-story, brick building that contains an automotive clutch manufacturing business (Nova Clutch) and an accessory parking lot.

The surrounding area contains a mixture of building forms ranging from one-story warehouses to multi-story loft buildings that rise without setback and open space. These blocks are generally developed to a high density, with the taller buildings ranging from eight- to 16-stories and include the adjacent, ten-story Sweeney Building (154 feet) and 16-story One Main Street Building (176 feet with a tower of 262 feet). One Main Street and the Sweeney Building were converted to residential use by rezoning applications approved in 1993 and 1998, respectively. Across Water Street from the rezoning area, and extending north to the East River, is the Empire Fulton Ferry State Park which contains the Empire Stores and Tobacco Warehouse. Brooklyn Bridge Park, the first phase of the proposed 67-acre park stretching along the East River from DUMBO to Atlantic Avenue, is located immediately north of 1 Main Street on the East River. Across Dock Street to the west, immediately beneath the Brooklyn Bridge, is a city-owned garage used for police vehicle storage and maintenance.

A portion of the proposed rezoning area lies within the DUMBO Industrial District, which is a landmark district on the State and National Registers of Historic Places. The proposed rezoning area is also adjacent to the New York City Fulton Landing Historic District. There are two buildings on Water Street that are within both the rezoning area and the State Historic District; one would be retained and renovated for residential and ground floor retail uses. The other

would be demolished in order to facilitate a more efficient layout in the proposed new building.

A portion of the rezoning area is located beneath the Brooklyn Bridge and is subject to a DOT restriction which limits any structure within 70 feet of the bridge to a height of 50 feet below the bridge (approximately 23 feet tall at this point).

### **Proposed Development**

The applicants propose to develop an approximately 200-unit apartment building with ground-floor retail, community facility uses and a three-story, partially below-grade 327-space public parking garage. The proposed building would be L-shaped, with a residential tower of 178 feet fronting on Water Street, above a three-story base containing the retail and community facility uses. The two-and-a-half-story public parking garage would be located at the southwestern portion of the zoning lot along Dock Street. The applicants are proposing to provide a landscaped terrace on the roof of the garage for use by the occupants of the building. This design reflects the high-density loft buildings which characterize the DUMBO neighborhood. The proposed residential building would be at least 70 feet from the bridge while the garage, which would be within 70 feet of the bridge, would maintain a distance of at least 50 feet below or adjacent to the bridge, pursuant to DOT restrictions.

The proposed public parking garage would contain approximately 327 spaces within the cellar, first and second stories and would be fully attended and operate 24-hours a day, seven days a week. The parking garage entrance and exit would be located along Front Street, a two-way street and would accommodate 327 public parking spaces including 80 accessory residential

parking spaces, 26 accessory commercial spaces and 221 public parking spaces. The facades of the garage would be glazed and the applicant would provide street trees.

### **Proposed Actions**

The applicant is requesting a zoning map change and three special permits in order to facilitate the development of the proposed building.

### **ZONING MAP CHANGE (C 010645 ZMK)**

The proposed action would rezone the western portion of Block 36 from an M1-2 District to an M1-2/R8 District and establish a Special Mixed-Use District (MX-2) by extending an existing mixed use district (MX-2) west to Dock Street. The existing M1-2 zoning district permits 2.0 FAR for manufacturing, commercial, and limited community facility uses (Use Groups 4-14, 16 and 17). The proposed M1-2/R8, mixed-use zoning district would permit Use Groups 1-3, residential and community facility uses, in addition to all of the uses currently permitted. M1-2/R8 districts allow 6.02 FAR for residential uses, 6.5 FAR for community facility uses and 2.0 for commercial and manufacturing uses.

Under the proposed M1-2/R8 zoning district, the maximum permitted residential, commercial, manufacturing and community facility floor areas on the applicant's zoning lot would be 201,002 square feet (6.02 FAR), 66,778 square feet (2.0 FAR) and 217,030 square feet (6.5 FAR), respectively, for a total permitted floor area of 217,030 (6.5 FAR) square feet. The proposed building would contain 201,002 square feet residential floor area (6.02 FAR), 7,968

square feet ground floor-retail (0.24 FAR), 46,272 square feet public parking garage floor area (1.39 FAR), 8,060 square feet community facility floor area (0.24) for a total of 263,302 square feet of floor area (7.88 FAR), 46,272 square feet over the 217,030 square feet permitted on the zoning lot. However, the applicant is requesting exemption of 46,272 square feet of floor area occupied the public parking garage from definition of floor area, pursuant to Section 74-512, as part of the concurrent application for a special permit for a public parking garage (C 010147 ZSK).

The proposed M1-2R8 (MX-2) district mandates a building envelope with a 15-foot setback above a base of 85 feet and a maximum height of 210 feet. The proposed building would rise to a height of 178 feet without setback to complement the surrounding loft buildings which generally rise to their maximum building height without setback. The applicants are requesting a special permit pursuant to Section 74-74 to waive the setback requirements to allow the proposed building.

#### **SPECIAL PERMIT FOR BULK MODIFICATION (C 010646 ZSK)**

The applicants are requesting a Special Permit pursuant to Section 74-743 (a)(2) for bulk modifications that would allow a building form more consistent with the existing built character of the neighborhood and additional design flexibility.

Three waivers of the bulk regulations are being sought:

First, the applicants request modification of the height and setback regulations pursuant to

Section 123-672 to allow the proposed building to rise above its maximum base height of 85 feet without setback to a height of 178 feet. The majority of the higher density loft buildings in the surrounding DUMBO area rise without setback to their maximum building heights.

Second, the applicants are requesting the modification of the required rear yards pursuant to Section 23-47. The regulations impose a 20-foot rear yard for the commercial and community facility portions of the proposed development and a 30-foot rear yard for the residential portion of the development. The applicants have stated that, where a 30-foot rear yard is required, the lot measures only 80 feet deep. The applicants are requesting a nine-foot waiver of the required rear yard regulations in order to create a floorplate of sufficient depth for a double-loaded corridor in the residential tower portion of the proposed building. The applicants are also requesting a waiver of the 20-foot rear yard required by the commercial and community district regulations at the second story of the proposed public parking garage. The applicants would utilize the area of the required rear yard above the garage as an approximately 16,950 square-foot open terrace accessible to the users of the building.

Third, the applicants are requesting a modification of the 30-foot required minimum distance between legally required windows and a rear yard line as required by Section 23-861. This waiver is requested at the same location as the above mentioned rear yard waiver due to the shallow 80-foot lot depth. The applicants are requesting a waiver of nine feet that would result in a distance of 21 feet between the legally required windows and the lot line.

**SPECIAL PERMIT FOR A PUBLIC PARKING GARAGE (C 010647 ZSK)**

The applicants are seeking a Special Permit pursuant to Section 74-512 to allow a public parking garage in excess of 150 spaces and to allow approximately 46,272 square feet of floor area located on the first and second floors of the proposed building (1.39 FAR) to be exempted from the calculation of floor area.

The proposed public parking garage would contain approximately 327 spaces within the cellar, first and second stories and would be fully attended and operate 24-hours a day, seven days a week. The parking garage entrance and exit would be located along Front Street, a two-way street, and would contain 17 reservoir spaces, providing the required 5 percent of the total parking spaces in the garage. The facades of the garage would be glazed and the applicant would provide street trees.

The proposed 327-space, attended public parking garage would replace an existing 70-space public parking garage currently on the project site to accommodate the accessory parking requirement of the proposed building and provide public parking spaces for DUMBO residents and visitors. The applicant is requesting exemption of floor area up to a height of 23 feet from the definition of floor area in order to facilitate the development of the proposed garage. It is anticipated that with the development of the Brooklyn Bridge Park along the East River waterfront the demand for public parking would continue to increase in the area. In addition, the applicant states that the proposed exemption is necessary due to a high water table at the project site, thus, excavation further below grade would be prohibitively expensive.

### **SPECIAL PERMIT FOR USE MODIFICATION WITHIN A HISTORIC DISTRICT (C 030492 ZSK)**

The applicants are requesting a Special Permit pursuant to Section 74-711 to modify the use on a zoning lot located within a Historic District as designated by the Landmarks Preservation Commission (LPC). The applicants are proposing to convert a vacant four-story building at 85 Water Street, located within the City's Fulton Ferry Landing Historic District, to residential use with ground-floor retail. The rehabilitation of this building has commenced as a television studio and is featured on Bob Vila's home improvement program, "Home Again". The conversion to residential use would not be completed until the approval of this Special Permit is final.

### **ENVIRONMENTAL REVIEW**

This application (C 010646 ZSK ), in conjunction with the applications for the related actions (C 010645 ZMK), (C 010647 ZSK) and (C 030492 ZSK), 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 01DCP004K. The lead is the City Planning Commission.

It was determined that the proposed action may have a significant effect on the environment and that an environmental impact statement would be required. A Positive Declaration was issued on March 19, 2004, and distributed, published and filed, and the applicant was asked to prepare or have prepared a Draft Environmental Impact Statement (DEIS). A public meeting on the

Draft Scope of Work for the DEIS was held on September 19, 2003, and the Final Scope of Work for the DEIS was issued on March 11, 2004.

The applicant prepared a DEIS and a Notice of Completion for the DEIS was issued on March 24, 2004. Pursuant to the SEQRA regulations and the CEQR procedures, a joint public hearing was held on the DEIS on July 14, 2004, in conjunction with the on the Uniform Land Use Review Procedure (ULURP)s (C 010646 ZMK), (C 010645 ZMK), (C 010647 ZSK) and (C 030492 ZSK).

The Final Environmental Impact Statement (FEIS) was completed, and a Notice of Completion of the FEIS was issued on August 13, 2004. The Notice of Completion for the FEIS identified the following significant adverse impacts and proposed the following mitigation measures:

## **IMPACTS**

### **Historic Resources**

#### *Archaeological Resources*

Based on historic-period research, much of the rezoning area has been determined to be potentially sensitive for in-ground historic-period archaeological resources. As the proposed project and projected development sites would involve excavation in these potentially sensitive areas, such activities could result in significant adverse impacts to archaeological resources.

In addition, the historic foundry building proposed for demolition at 54-62 Water Street may also have the potential to yield historic-period industrial archaeological resources. Demolition of that building, therefore, could result in significant adverse impacts to these potential industrial archaeological resources.

#### *Architectural Resources*

The proposed project involves the preservation and reuse of two historic buildings, 64 and 85 Water Street. However, the proposed project also calls for the demolition of buildings on the project site, one of which, 54-62 Water Street, is historically significant and located within the D.U.M.B.O. Historic District. The D.U.M.B.O. Historic District is S/NR and is not a City

designated historic district; however, LPC has found the district is eligible for listing as a New York City Landmark District.

Since 54-62 Water Street is a contributing building in an S/NR-listed historic district, according to the City's *CEQR Technical Manual* and the SEQRA Act and implementing regulations, its demolition is a significant adverse impact on historic resources.

### **Hazardous Materials**

Based on site investigations and research of the historic industrial uses of the buildings and properties affected by the proposed actions, there is the potential for impacts from hazardous materials at both the site of the proposed project as well as the projected development site. Because of this potential impact, mitigation is required. This mitigation would involve soil and groundwater sampling at both the site of the proposed project and the projected development site and remediation of contaminated materials, as necessary. At the site of the proposed project, this sampling would be performed in accordance with a protocol approved by the New York City Department of Environmental Protection (DEP). Implementation of the sampling would be required pursuant to a Restrictive Declaration that has been recorded with DEP (March 10, 2004), for the applicant properties (Block 36, Lots 1,3, and 14).

At the projected development site, which is a non-applicant-owned property, implementation of a hazardous materials sampling program would be required through an (E) designation that would be placed on the zoning map. The properties affected by the (E) designation are Block 36, Lots 49, 52, and 53. Additional detail on this mitigation is provided below, under "Mitigation."

## **MITIGATION**

### **Historic Resources**

#### *Archaeological Resources*

To avoid any adverse effects to archaeological resources on the site of the proposed project, a Stage 1B field investigation would be undertaken on the applicant-owned properties prior to construction to test for the presence or absence of archaeological resources. A protocol for this effort would be designed in consultation with LPC prior to initiating any work. This protocol, however, would only apply to the site of the proposed project where the requirement for archaeology mitigation could be implemented. Because this mitigation cannot be performed on the non-applicant owned sites (e.g., the projected development site), this would be an unavoidable adverse impact of the proposed project for which no mitigation is available.

#### *Architectural Resources*

##### *Partial Mitigation for Demolition of S/NR Historic Building (54-62 Water Street)*

The proposed project includes the demolition of 54-62 Water Street, one of the two contributing buildings on the project site located within the D.U.M.B.O. Historic District. This is a significant adverse impact on historic architectural resources.

The CEQR Technical Manual identifies a number of potential mitigation measures for

significant adverse effects on historic architectural resources. First among them is redesign of the proposed project to avoid the impact. This is the preferred mitigation measure. Among the redesign alternatives are: relocating the proposed action (moving the proposed action or development away from the resource), adaptive reuse, which would incorporate the historic structure into the project rather than demolishing it; data recovery, which is a recordation or recovery of artifacts or plans that would document the historic value of the structure; and relocating the impacted historic architectural resource. Of these alternative mitigation approaches, according to the CEQR Technical Manual, the last two are not the preferred mitigation. Regarding “relocating” the proposed action, the rezoning of the west portion of this block cannot specifically exclude this building. However, preservation of the building through adaptive reuse of the building as a stand-alone structure was examined (see Chapter 22, “Alternatives” of the FEIS). As discussed in that chapter of the FEIS, preserving the building at 54-62 Water Street would result in a narrower footprint than the proposed new building. Assuming the same amount of floor area and housing units as in the proposed new building, this would result in a taller tower which could have a significant contextual impact on the D.U.M.B.O. Historical District. Alternatively, if the building height is maintained at 178 feet, between Dock Street on the west and the buildings at 54-62 Water Street on the east, it could not provide the wider setback from the Brooklyn Bridge (proposed is a 134-foot setback) without a significant loss of floor area and units. In addition, this alternative would also require the cost of repair, upgrade, and maintenance of the existing building at 54-62 Water Street. In the opinion of the applicant, who has renovated and converted numerous buildings in the D.U.M.B.O. Historic District, with two more renovations proposed under this project, the conversion and maintenance of the building at 54-62 Water Street is not economically viable. Thus, demolition of the building and partial mitigation is proposed. Proposed is photographic recording of the building in accordance with Historic American Building Survey (HABS) and Historic American Engineering Record (HAER) requirements and the salvage of representative and significant exterior architectural features (to the extent they exist). All work related to this recordation would be performed in accordance with an approved LPC protocol, and all reports would be submitted to LPC for review and approval. A final report would go to the LPC as well as the Municipal Archives, and other appropriate repositories, such as the Brooklyn Historical Society.

#### *Construction Protection Plan for S/NR Building at 64 Water Street*

The proposed project would implement construction protection measures to protect the existing historic building at 64 Water Street from impacts during construction from the proposed and projected development. This historic building would be restored under the proposed project; however, the adjacent building at 54-62 Water Street would be demolished and a new building constructed in its place as well as a new building at 35-43 Front Street. To address the concern for construction impacts on the historic building to remain, the project sponsor, in coordination with the LPC, would establish a construction protection plan to avoid damage to the building to be preserved at 64 Water Street during construction. As per the CEQR Technical Manual, the construction protection plan would be developed by independent structural and foundation engineers. It would describe in detail the demolition and construction procedures of the proposed project and would also provide for the inspecting and reporting of existing conditions at the adjacent architectural resources; establish protection procedures; implement a monitoring

program to measure vertical and lateral movement and vibration; establish and monitor construction methods to limit vibrations; and establish methods and materials to be used for any repairs. The independent engineers would be empowered to issue “stop work” orders to prevent any damage to adjacent architectural resources, and any re-commencement of work would require approval by LPC. With these procedures in place, which would also be mandated through the restrictive declaration, no significant adverse impacts to historic resources are expected to occur during construction.

### **Hazardous Materials**

Due to the age and historical uses of the structures in the proposed rezoning area, it is expected that some building materials contain asbestos and some painted surfaces contain lead. Polychlorinated biphenyls (PCBs) may also be present in older fluorescent light ballasts observed in some structures. These materials would be tested and disposed of in accordance with Federal and State regulations.

Prior to demolition or excavation activities, a soil, soil gas, and groundwater testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented, would be submitted to DEP for review and approval. Once testing is performed, if the results indicate that remediation is necessary, a proposed remediation plan would be submitted to DEP for review and approval. After completing the remediation, the DEP would be provided with proof that the work has been satisfactorily completed. For applicant-owned properties (Block 36, Lots 1, 3, and 14) this work would be performed in accordance with a restrictive declaration and a sampling plan provided in Appendix C of the FEIS. That sampling plan has been developed in conjunction with DEP. For non-applicant-owned properties (Block 36, Lots 49, 52, and 53), preparation of a protocol and implementation of an approved testing program would be required in conformance with an (E) designation that would be mapped as part of the proposed zoning.

### **UNIFORM LAND USE REVIEW**

This application (C 010646 ZSK), in conjunction with the applications for the related actions (C 010645 ZMK), (C 010647 ZSK) and (C 030492 ZSK), was certified as complete by the Department of City Planning on March 24, 2004, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

## **Community Board Public Hearing**

Community Board 2 held a public hearing on this application on April 21, 2004, and on May 12, 2004, by a vote of 39 to 0 with one abstention, adopted a resolution recommending disapproval of the application with the following comments:

- 1- That any construction on the block bounded by Water, Front, Dock and Main Streets not demolish 56 Water Street (a building on the National Register of Historic Places). The building should be preserved by adaptive reuse.
  
- 2- That development on the block should include enlivening the Front Street streetscape as well as that on Water Street.

## **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation disapproving the application on July 1, 2004.

The Borough President's recommendation included the following comments:

Be it resolved that the Borough President of the Borough of Brooklyn, pursuant to section 197-c of the New York City Charter, and based on the rezoning described in this attachment, recommends disapproval of the applications unless the City Planning Commission and/or City Council approve a zoning map amendment of M1-2/R7A instead of the M1-2/R8 proposed by the applicant.

Be it further resolved that, should a district permitting residential use be approved by the City Council, Two Trees Management is urged to construct a signature building respectful of the built

character of DUMBO, consistent of the quality of design and construction that has been the standard of Two Tres in its conversion of industrial lofts and new construction as demonstrated at Court Street and Atlantic Avenue.

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

On June 23, 2004 (Calendar No. 2), the City Planning Commission scheduled July 14, 2004, for a public hearing on this application (C 010646 ZSK). The hearing was duly held on July 14, 2004 (Calendar No. 20), in conjunction with the public hearings on the applications for the related actions (C 010645 ZMK), (C 010647 ZSK) and (C 030492 ZSK). There were 15 speakers in favor of the application and 16 speakers in opposition.

Speakers in favor included the developer, the attorney for the developer and the architect. Also speaking in favor were representatives of the Brooklyn Chamber of Commerce, the Real Estate Board of New York, the Executive Director and Chair of the Downtown Brooklyn Council, local business owners and residents. In addition, written testimony in favor was submitted by the American Institute of Architects New York Chapter and Pratt Institute.

The speakers described the positive contribution that the new mixed-use development could add to the vitality of the DUMBO neighborhood. They testified that the proposed development would complete the neighborhood context and enhance the street life along each of the frontages

of the project. Local property and business owners testified that the retail component would serve as a connection to other businesses along Water Street and strengthen the growing retail community developing in the neighborhood. In addition, they recognized the importance of additional public parking in the DUMBO neighborhood today and with the future development of the Brooklyn Bridge Park.

Speakers explained how the proposed zoning and accompanying actions would allow the development of new commercial and residential uses and that the new development would expand on the high quality, mixed-use character of DUMBO and would create a new contextual building that compliments the surrounding loft buildings of the neighborhood.

Speakers in opposition included area residents, community advocates and representatives of local community organizations, the Historic Districts Council, Community Board 2 and a representative of the Council Member from the 33<sup>rd</sup> district. Many of the speakers in opposition were complimentary of the developer and the quality of their loft conversions in the neighborhood, but expressed concern regarding the precedent the rezoning would establish by allowing the development of the proposed 178 feet high building and its proximity to the Brooklyn Bridge.

Several speakers testified that the project, as proposed, would be too close to the span of the Brooklyn Bridge and would impede important view corridors, particularly from the walkway.

Representatives of one local community organization requested that the rezoning application be modified to an M1-2/R6A zoning district and further advocated that the application include specific requirements for concealing roof air conditioner units and sound attenuation of those units. Others supported a contextual district with a lower height limit and the preservation of the contributing building proposed to be demolished.

Many of the speakers stated that they believed that the proposed building would be out of scale with the low-rise character of the Fulton Ferry Landing area and the adjacent Empire Stores and Tobacco Warehouse. Residents of Fulton Ferry Landing testified that the proposed building should draw its context from the two- to four-story buildings along Old Fulton Street and along Water Street. The representative of the City Council Member was supportive of the development in its creation of new housing units and local retail, but argued that the height was out of context and suggested a building envelope of an R7A District.

There were no other speakers and the hearing was closed.

### **Waterfront Revitalization Program Consistency Review**

This application, in conjunction with the applications for the related actions, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant

to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 03-013.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

### **CONSIDERATION**

The Commission believes that this Special Permit (C 010646 ZSK), as revised, in conjunction with the related applications for amendment of the Zoning Map (C 010645 ZMK), and Special Permits (C 010647 ZSK) for a public parking garage in excess of 150 spaces and to allow a portion of the garage floor area to be exempted from the definition of floor area, and to allow use modifications for a building located within a Historic District (C 030492 ZSK), is appropriate.

In response to testimony heard at the Commission's Public Hearing, the recommendations of Community Board 2 and of the Brooklyn Borough President, the applicant revised the applications with a new proposed building design. The revised proposal would reduce the height of a approximately 79-foot portion of the western side of the building closest to the Brooklyn Bridge, from the originally proposed 178 feet to 88 feet, approximately the same elevation as the Brooklyn Bridge roadway. A terrace would be located above the 88-foot tall building rooftop. The remaining, approximately 149-foot long residential tower would rise to the maximum building height of 178 feet, as originally proposed. Due to the decrease in total floor area in the

revised proposal, the amount of floor area requested for exemption up to 23' feet would decrease from approximately 46,272 to approximately 36,000 square feet.

The Commission believes that the proposed actions, as revised, would allow for a new mixed-use development in context with the bulk and character of the DUMBO neighborhood, permit the construction of a new public parking facility, would reinforce the historic and mixed-use character of DUMBO and would allow for the conversion of two vacant buildings to residential use with ground-floor retail. The Commission further believes that the revised design would reflect the high-density loft buildings which characterize the DUMBO neighborhood to the east and would provide a transition to the lower-scale buildings of the Fulton Ferry Landing Historic District to the west.

#### **ZONING MAP CHANGE (C 010645 ZMK)**

The Commission believes that the amendment to the zoning map is appropriate because it would allow new mixed-use development in DUMBO. The Special Mixed Use District was designed to encourage investments in mixed residential and industrial neighborhoods, promote the opportunity for workers to live proximate to their jobs, create new opportunities for mixed-use communities and recognize and enhance the vitality and character of existing and potential mixed-use neighborhoods. The proposed district would allow for a mixture of uses that would reflect and complement the uses on adjacent blocks and in the surrounding area. The proposed development would represent the largest new construction project in this area that has thus far

been characterized by the conversion of former industrial buildings to residential and commercial office use.

The Commission believes the proposed M1-2/R8 (MX-2) density is appropriate for the project site. The rezoning would provide a transition from the high-density, mixed-use district to the east (ranging in FAR from 7.5 to 9.5) to the medium-, to low-density, residential district to the west (ranging in FAR from 1.5 to 4.5). The rezoning to M1-2/R8 would facilitate the development of the proposed mixed-use building with residential, community facility, ground-floor retail uses that would be compatible with the mixed-use character of the surrounding area.

The Commission believes the proposed building would contribute to the vitality of the emerging DUMBO neighborhood and help to enliven the waterfront and improve the pedestrian experience in this area at all hours of the day. The Commission further believes that extending the existing mixed-use district would be consistent with the land use trends in the area and complete the boundary of the MX-2 district between the Manhattan and Brooklyn Bridges.

The proposed M1-2/ R8 would allow for the conversion of an existing vacant building to residential use and enable the construction of the proposed mixed-use building with residential, ground-floor retail and community facility uses. The Commission believes the proposed building would be compatible with the existing uses in the General Large-Scale Development plan and in the surrounding area.

In response to the recommendation by the Borough President and testimony given by a representative of the City Council member, the Commission notes that a R7A zoning district with a maximum base height of 65 feet and a maximum building height of 80 feet would unduly restrict design flexibility on this irregularly shaped property and make it economically unfeasible for the developer. Furthermore, the Commission notes that the proposed mixed-use district's height and setback regulations reflect the predominant building form of high-streetwall buildings predominant in DUMBO.

In response to the recommendation by Community Board 2 and comments by a local neighborhood organization, the Commission believes that preservation of 65 Water Street would result in a smaller building footprint that would not be economically feasible and would result in a building that would be three stories taller (approximately 208 feet). The Commission believes that such a building would not be as consistent with the heights of the adjacent, high-density loft buildings.

Regarding the recommendations of Community Board 2, the Commission notes that the applicants have stated that retail on the Front Street would not be consistent with adjacent land uses along that street. The Commission notes that the current proposal would include retail along Water Street and along a portion of Dock Street. This retail would complement the existing retail activity along Water Street and enliven Dock Street, a currently desolate side street.

## **SPECIAL PERMIT FOR BULK MODIFICATIONS (C 010646 ZSK)**

The Commission believes that the Special Permit for bulk modifications, as revised, is appropriate.

The Commission believes that the height and setback regulations of the M1-2/R8 zoning district on this site would unduly inhibit design flexibility and create a building that would be out of context with the surrounding buildings in the DUMBO area. The Special Permit would permit waivers that would allow the building's envelope to rise to a maximum building height of 88 feet and 178 feet without setback from the street line. The Commission notes that the Special Permit limits the height of the building while mandating a building form that would be more consistent with the surrounding built context.

Regarding the testimony at the public hearing and written testimony, the Commission notes that the Special Permit would restrict the proposed building to an envelope that would mandate a maximum building height of 178 feet, a minimum required community facility space of approximately 8,060 square feet and provide the developer with the design flexibility to create a mixed-use development that would be in keeping with the character of the surrounding loft area. The Commission notes that the developer has worked closely with Department staff and the Commission to develop a building design that seeks a compromise between achieving an economically feasible option and a form that respects the integrity of the existing built character of DUMBO.

The Special Permit would also allow waivers for a portion of the required rear yards and distance between legally required windows. The Commission believes that due to an unusual site condition, the applicant's request for waivers would allow for the design of a building footprint of sufficient size for a double-loaded corridor in the residential tower portion of the building. The Commission believes that the request for this waiver is minimal and the provision of the full 20 and 30 foot rear yards would result in a less beneficial building design. The Commission further believes that granting this Special Permit would result in a better site plan with respect to floor area, open space, dwelling units and building footprints.

The Commission believes that the rear yard waivers would not adversely affect the adjacent zoning lot, not owned by the applicant. The adjoining lot at the rear lot line of the proposed project has a depth of approximately 120 feet and therefore granting of the requested waivers would not block or unduly obstruct access of light and air to the users on the adjacent lot.

**SPECIAL PERMIT FOR A PUBLIC PARKING GARAGE IN EXCESS OF 150 SPACES AND FOR THE EXEMPTION OF A PORTION OF THE GARAGE FLOOR AREA FROM THE DEFINITION OF FLOOR AREA (C 010647 ZSK)**

The Commission believes that the granting of a special permit for a public parking garage and the exemption of the floor area in the parking garage from the definition of floor area is appropriate.

The proposed 327-space public parking garage would provide 17 reservoir spaces, five percent of the total parking spaces provided in the parking garage, which would be adequate to accommodate expected demand at peak times.

The proposed garage would be accessed by a 30-foot curb cut on Front Street, a two-way street across from the off-ramp of the Brooklyn-Queens Expressway (BQE). The proposed garage has convenient access to major arterial routes including Front Street, Old Fulton Street and the BQE and would therefore not contribute to traffic congestion or inhibit traffic and pedestrian flow in the surrounding area. The exit of the proposed garage would be designed to minimize potential conflicts between departing vehicles and pedestrians with a flashing light and ringing bell that would both visually and audibly alert pedestrians to the presence of an exiting vehicle.

The traffic analysis conducted as a part of the Final Environmental Impact Statement for this project concluded there would be no traffic impacts and that the streets providing access to the parking facility would be adequate to handle the traffic generated by the project. The proposed garage would draw a minimum of traffic through local residential streets because cars approaching the garage would generally be traveling from the BQE on to Front Street and Old Fulton Street, minimizing use of neighborhood streets. The proposed garage would provide the required 17 reservoir spaces, five percent of the total spaces in the garage, which would be adequate to accommodate expected demand at peak times and prevent queuing on the street.

The Commission notes the proposed garage would be glazed and that the developer would provide street trees to improve the streetscape and pedestrian experience along Water, Dock and Front Streets. The proposed garage would replace the existing 70-space public garage and serve the current users, users of the proposed building, neighboring buildings and visitors to the area.

The Commission notes that the request for exemption of 36,000 square feet of floor area from the definition of floor area is appropriate. The developer is requesting this exemption in part due to the proximity of the proposed development to the water table beneath the site that makes further excavation extremely expensive. The proposed public parking garage is desirable in DUMBO because it would provide additional off-street parking in the neighborhood. The parking demand in DUMBO is increasing and is expected to continue to rise with the development of the Brooklyn Bridge Park along the East River waterfront. The Commission, therefore, believes that allowing the exemption of 36,000 square feet from the calculation of floor area for the garage is appropriate.

**SPECIAL PERMIT PURSUANT TO SECTION 74-711 (C 030492 ZSK)**

The Commission believes that the granting of the proposed Special Permit to allow the use modification of an existing vacant, four-story building to residential use with ground-floor retail is appropriate.

The proposed conversion of 85 Water Street to residential use with ground-floor retail would be

compatible with the surrounding area which includes other small-scale residential buildings with ground-floor retail, and higher density loft buildings containing residential and office uses. The conversion of this vacant building would restore 85 Water Street, create three new dwelling units in the building and continue the revitalization of Water Street which has become a well-established commercial street in DUMBO. The Commission notes that the applicant has worked closely with the Landmarks Preservation Commission to establish a continuing maintenance program that would result in the restoration and continued preservation of 85 Water Street. Its restoration would retain and protect its historic character while at the same time contribute to the overall architectural harmony of the surrounding area within the GLSD and the rezoning area.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on August 13, 2004, with respect to this application (CEQR No. 01DCP004), the City Planning Commission finds that the requirements of Part 617, State Environmental Quality Review, have been met and that, consistent with social, economic and other essential considerations:

1. From among the reasonable alternatives thereto, the actions to be approved are ones which minimize or avoid adverse environmental impacts to the maximum extent practicable; and

2. The adverse environmental impacts revealed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval those mitigative measures that were identified as practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.1(d) of the SEQRA regulations; and be it further

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; 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 for the grant of a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to allow the location of a proposed 178-foot high, mixed use building without regard for the applicable yard, court and height and setback regulations, on a zoning lot located at 38-64 Water Street a.k.a. 9-43 Dock Street (Block 36, Lots 1, 3, and 14), within a General Large Scale Development (Block 36, Lots 1, 3, 14, 16, and 116, Block 26, Lots 33 and 38), within M1-2/R8, M1-2/R8A and M3-1 Districts, partially within a

Special Mixed Use District (MX-2), partially within the Fulton Ferry Historic District., Borough of Brooklyn, Community District 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 010646 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Beyer, Blinder, Belle, LLP, Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
2a	Site Plan/Zoning Analysis	August 13, 2004
2b	Zoning Calculations	August 13, 2004
3	Encroachment Diagrams - Site 1	August 13, 2004
4a	Parking Plans - Site 1	August 4, 2004
4b	Parking Plans - Site 1	August 4, 2004
6	Floor Plans - Site 2	August 13, 2004

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. In the event that 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 any subsequent modifications 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.

5. The development shall include those mitigative measures listed in the Final Environmental Impact Statement (CEQR No. 01DCP004) issued on August 13, 2004, (and identified as practicable), as follows:

## **MITIGATION**

### **Historic Resources**

#### *Archaeological Resources*

To avoid any adverse effects to archaeological resources on the site of the proposed project, a Stage 1B field investigation would be undertaken on the applicant-owned properties prior to construction to test for the presence or absence of archaeological resources. A protocol for this effort would be designed in consultation with LPC prior to initiating any work. This protocol, however, would only apply to the site of the proposed project where the requirement for archaeology mitigation could be implemented. Because this mitigation cannot be performed on the non-applicant owned sites (e.g., the projected development site), this would be an unavoidable adverse impact of the proposed project for which no mitigation is available.

#### *Architectural Resources*

##### *Partial Mitigation for Demolition of S/NR Historic Building (54-62 Water Street)*

The proposed project includes the demolition of 54-62 Water Street, one of the two contributing buildings on the project site located within the D.U.M.B.O.

Historic District. This is a significant adverse impact on historic architectural resources.

The CEQR Technical Manual identifies a number of potential mitigation measures for significant adverse effects on historic architectural resources. First among them is redesign of the proposed project to avoid the impact. This is the preferred mitigation measure. Among the redesign alternatives are: relocating the proposed action (moving the proposed action or development away from the resource), adaptive reuse, which would incorporate the historic structure into the project rather than demolishing it; data recovery, which is a recordation or recovery of artifacts or plans that would document the historic value of the structure; and relocating the impacted historic architectural resource. Of these alternative mitigation approaches, according to the CEQR Technical Manual, the last two are not the preferred mitigation. Regarding “relocating” the proposed action, the rezoning of the west portion of this block cannot specifically exclude this building. However, preservation of the building through adaptive reuse of the building as a stand-alone structure was examined (see Chapter 22, “Alternatives” of the FEIS). As discussed in that chapter of the FEIS, preserving the building at 54-62 Water Street would result in a narrower footprint than the proposed new building. Assuming the same amount of floor area and housing units as in the proposed new building, this would result in a taller tower which could have a significant contextual impact on the D.U.M.B.O. Historical District.

Alternatively, if the building height is maintained at 178 feet, between Dock Street on the west and the buildings at 54-62 Water Street on the east, it could not provide the wider setback from the Brooklyn Bridge (proposed is a 134-foot setback) without a significant loss of floor area and units. In addition, this alternative would also require the cost of repair, upgrade, and maintenance of the existing building at 54-62 Water Street. In the opinion of the applicant, who has renovated and converted numerous buildings in the D.U.M.B.O. Historic District, with two more renovations proposed under this project, the conversion and maintenance of the building at 54-62 Water Street is not economically viable. Thus, demolition of the building and partial mitigation is proposed. Proposed is photographic recording of the building in accordance with Historic American Building Survey (HABS) and Historic American Engineering Record (HAER) requirements and the salvage of representative and significant exterior architectural features (to the extent they exist). All work related to this recordation would be performed in accordance with an approved LPC protocol, and all reports would be submitted to LPC for review and approval. A final report would go to the LPC as well as the Municipal Archives, and other appropriate repositories, such as the Brooklyn Historical Society.

### *Construction Protection Plan for S/NR Building at 64 Water Street*

The proposed project would implement construction protection measures to protect the existing historic building at 64 Water Street from impacts during construction from the proposed and projected development. This historic building would be restored under the proposed project; however, the adjacent building at 54-62 Water Street would be demolished and a new building constructed in its place as well as a new building at 35-43 Front Street. To address the concern for construction impacts on the historic building to remain, the project sponsor, in coordination with the LPC, would establish a construction protection plan to avoid damage to the building to be preserved at 64 Water Street during construction. As per the CEQR Technical Manual, the construction protection plan would be developed by independent structural and foundation engineers. It would describe in detail the demolition and construction procedures of the proposed project and would also provide for the inspecting and reporting of existing conditions at the adjacent architectural resources; establish protection procedures; implement a monitoring program to measure vertical and lateral movement and vibration; establish and monitor construction methods to limit vibrations; and establish methods and materials to be used for any repairs. The independent engineers would be empowered to issue “stop work” orders to prevent any damage to adjacent architectural resources, and any re-commencement of work would require approval by LPC. With these procedures in place, which would also be mandated through the restrictive declaration, no significant adverse impacts to historic resources are expected to occur during construction.

### **Hazardous Materials**

Due to the age and historical uses of the structures in the proposed rezoning area, it is expected that some building materials contain asbestos and some painted surfaces contain lead. Polychlorinated biphenyls (PCBs) may also be present in older fluorescent light ballasts observed in some structures. These materials would be tested and disposed of in accordance with Federal and State regulations.

Prior to demolition or excavation activities, a soil, soil gas, and groundwater testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented, would be submitted to DEP for review and approval. Once testing is performed, if the results indicate that remediation is necessary, a proposed remediation plan would be submitted to DEP for review and approval. After completing the remediation, the DEP would be provided with proof that the work has been satisfactorily completed. For applicant-owned properties (Block 36, Lots 1, 3, and 14) this work would be performed in accordance with a restrictive declaration and a sampling plan

provided in Appendix C of the FEIS. That sampling plan has been developed in conjunction with DEP. For non-applicant-owned properties (Block 36, Lots 49, 52, and 53), preparation of a protocol and implementation of an approved testing program would be required in conformance with an (E) designation that would be mapped as part of the proposed zoning.

6. 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.
  
7. 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.
  
8. 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 010646 ZSK), duly adopted by the City Planning Commission on August 25, 2004 (Calendar No. 13), 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 CAVALUZZI**, R.A., **RICHARD W. EADDY**,  
**CHRISTOPHER KUI**, **KAREN A. PHILLIPS**, **DOLLY WILLIAMS**,  
Commissioners