



CITY PLANNING COMMISSION

September 9, 2009/Calendar No. 15

C 090431 ZSM

IN THE MATTER OF an application submitted by W2005/Hines West Fifty-Third Realty, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 81-212 and 74-79 of the Zoning Resolution to allow the transfer of 136,000 square feet of floor area from property located at 1 West 54th Street (Block 1270, Lot 34) that is occupied by a landmark building (University Club) to property located at 53 West 53rd Street (Block 1269, Lots 5, 6, 7, 8, 9, 11, 12, 13, 14, 20, 30, 58, 66, 69, and 165) to facilitate the development of an 85-story mixed use building, in C6-6, C5-P, C5-2.5 and C5-3 Districts, within the Special Midtown District (partially within the Preservation and Fifth Avenue Subdistricts) Borough of Manhattan, Community District 5.

This application for a Special Permit pursuant to Section 74-79 (Special provisions for transfer of development rights from landmark sites) of the Zoning Resolution was filed by W2005/Hines West Fifty-Third Realty, LLC, on May 12, 2009, to facilitate the construction of a 85 story, approximately 1,250-foot tall, mixed-use building at West 53rd Street between Sixth and Fifth Avenues in Manhattan Community District 5.

RELATED ACTION

In addition to the application for amendments to the Zoning Resolution which is the subject of this report (C 090431 ZSM), implementation of the proposed development also requires action by the City Planning Commission (CPC) on the following application which is being considered concurrently with this application:

C 090432 ZSM Special permit pursuant to Section 81-277 and Section 74-711 of the Zoning Resolution to modify bulk requirements.

BACKGROUND

A full background discussion and project description appears in the report on the related special permit application (C 090432 ZSM).

ENVIRONMENTAL REVIEW

This application (C 090431 ZSM), in conjunction with the application for the related actions (C 090432 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09DCP004M. The lead is the City Planning Commission.

A Positive Declaration was issued on October 16, 2008, and distributed, published and filed. A summary of the environmental review appears in the report on the related application for a special permit (C 090432 ZSM).

UNIFORM LAND USE REVIEW PROCEDURE

This application (C 090431 ZSM), in conjunction with the related application (C 090432 ZSM), was certified as complete by the Department of City Planning on May 18th, 2009, and was duly referred to Manhattan Community Board 5 and the Manhattan 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 this and the related application (C 090432 ZSM) and on June 11, 2009, by a vote of 30 in favor, 9 opposed, 1 abstaining, with 1 present, adopted a recommendation disapproving the application.

A full discussion of the Community Board's recommendation appears in the report on the related application for the grant of a special permit (C 090432 ZSM).

Borough President Recommendation

This application (C 090431 ZSM) and the related application (C 090432 ZSM) were considered by the Borough President, who issued a recommendation conditionally approving the

applications on July 17th, 2009. A full discussion of the Borough President's recommendation appears in the report on the related application for the grant of a special permit (C 090432 ZSM).

City Planning Commission Public Hearing

On July 1, 2009, (Supplemental Calendar No. 1) the City Planning Commission scheduled July 22nd, 2009, for a public hearing on this application (C 090431 ZSM). The hearing was duly held on July 22nd, 2009 (Calendar No. 25), in conjunction with the hearing on the related application (C 090432 ZSM). There were several speakers as described in the report on the related special permit application (C 090432 ZSM) and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a special permit pursuant, as modified (C 090431 ZSM) is appropriate. A full consideration and analysis of the issues and the reasons for approving this application as modified appears in the report on the related special permit application (C 090432 ZSM).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-792 (e) (Conditions and Limitations) of the Zoning Resolution;

1. That the permitted transfer of floor area or variations in the front height and setback regulations will not unduly increase the bulk of any new development, density of population or intensity of use in any block to the detriment of the occupants of buildings on the block or nearby blocks, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole;
2. That the program for continuing maintenance will result in the preservation of the landmark;
and
3. Not applicable

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion ratified herein was issued on August 28th, 2009, with respect to this application (CEQR No. 09DCP004M), together with the Technical Memorandum, dated September 4th, 2009, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that

1. Consistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The FEIS considered possible mitigation measures but determined that none of these measures were practical or feasible. The report of the City Planning Commission, together with the FEIS, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New an application submitted by W2005/Hines West Fifty-Third Realty, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 81-212 and 74-79 of the Zoning Resolution to allow the transfer of 136,000 square feet of floor area from property located at 1 West 54th Street (Block 1270, Lot 34) that is occupied by a landmark building (University Club) to property located at 53 West 53rd Street (Block 1269, Lots 5, 6, 7, 8, 9, 11, 12, 13, 14, 20, 30, 58, 66, 69, and 165) to facilitate the development of a mixed use building, in C6-6, C5-P, C5-2.5 and C5-3 Districts, within the Special Midtown District (partially within the Preservation and Fifth Avenue Subdistricts) Borough of Manhattan, Community District 5 is approved subject to the following conditions:

1. The property that is the subject of this application (C 090431 ZSM) shall be developed in accordance with:

(a) Plans prepared by SLCE Architects filed with this application (“Certification Plans”), modified as necessary to reflect a reduction of building height to a height of no more than 1050 feet, and to be consistent in all respects with the Modification Notes annexed hereto as Exhibit A, which plans are incorporated in this resolution, as follows:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-3	Zoning Calculations	May 11, 2009
Z-4	Site Plan/Roof Plan	May 26, 2009
Z-5	Floor Area Analysis	May 11, 2009
Z-6	Zoning Floor Area Schedule	May 11, 2009
Z-7	Pedestrian Circulation & Tree Requirement	May 11, 2009
Z-8	Rear Yard & Rear Yard Equivalents	May 11, 2009
Z-9	Rear Yard & Rear Yard Equivalents	May 26, 2009
Z-10	Roof Plan – Height and Setback	May 26, 2009
Z-11	Zoning Roof Plan and Viewpoints	May 26, 2009
Z-12	Sec 81-27 Analysis Plan and Section Angles	May 26, 2009
Z-13	Sec 81-27 Analysis Plan and Section Angles	May 26, 2009
Z-14	Sec 81-27 Analysis Plan and Section Angles	May 26, 2009

Z-15	Sec 81-27 Analysis Plan and Section	May 26, 2009
Z-16	Sec 81-27 Analysis Plan and Section	May 26, 2009
Z-17	Sec 81-27 Analysis Plan and Section	May 26, 2009
Z-18	Height and Setback – Sections	May 11, 2009
Z-19	Area of Encroachment C5-P	May 11, 2009
Z-20	Area of Encroachment C5-P – Axonometric	May 11, 2009

and ;

- (b) Supplemental plans (hereinafter “Supplemental Plans”), on file with the Technical Review Division of the Department of City Planning, annexed hereto as Exhibit B and incorporated into this resolution

Z-21	Building Views	September 9, 2009
Z-25	North and East Building Elevations	September 9, 2009
Z-26	South and West Building Elevations	September 9, 2009
Z-27	Top of Building Partial Elevations	September 9, 2009
Z-28	Height at Intersection- Point and Slope Angles	September 9, 2009

- The Department of Buildings shall not issue any Permit for the Subject Development unless and until the Chair has certified that the Department has received a single set of consolidated and revised plans which conform in all respects to the provisions of Section 1 of this resolution.
- Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution, as shown on the plans listed above and in the single set of consolidated and revised plans certified pursuant to Section 2 of this resolution. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

4. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution 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.
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.
8. 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 such documents 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.

9. Development pursuant to this resolution shall be allowed only after the restrictive declaration and Transfer Instrument and Notice of Restrictions pursuant to Section 74-793, attached hereto as Exhibit C, with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed and recorded by W2005/Hines West Fifty-Third Realty in the Office of the City Register of the City of New York, County of New York. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

10. Development pursuant to this resolution shall be allowed only after the restrictive declarations, attached hereto as Exhibit D, with such administrative changes as are acceptable to Counsel to the City Planning Commission, have been executed and recorded by St. Thomas Church and the University Club in the Office of the City Register of the City of New York, County of New York. Such restrictive declarations shall be deemed incorporated herein as a condition of this resolution.

The above resolution (C 090431 ZSM), duly adopted by the City Planning Commission on September 9th, 2009 (Calendar No. 15), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER,
BETTY Y.CHEN, MARIA M. DEL TORO, RICHARD W. EADDY,
NATHAN LEVENTHAL, KAREN A. PHILLIPS, Commissioners

IRWIN G. CANTOR, P.E., Commissioner, Recused
ANNA HAYES LEVIN, Commissioner Abstaining