



## CITY PLANNING COMMISSION

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August 25, 2004/Calendar No.14

C 010647 ZSK

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**IN THE MATTER OF** an application submitted by the Two Trees Management Co. pursuant to Sections 197-c and 201 of the New York City Charter **for the grant of a special permit** pursuant to Section 74-512 of the Zoning Resolution **to allow an attended public parking garage with a maximum capacity of 327 spaces on portions of the cellar floor, ground floor and second floor, and to allow floor space up to a height of 23 feet above curb level to be exempted from the definition of floor area as set forth in Section 12-10 (DEFINITIONS), in a proposed 16-story mixed use building 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.

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The application for the special permit was filed by Two Trees Management Company on May 11, 2001, to facilitate the construction of a public parking garage in excess of 150 spaces and exemption of floor area from the definition of floor area in the DUMBO 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 (MX-2) District.
2. C 010646 ZSK      Special Permit pursuant to Z.R. Section 74-743 (a)(2) for bulk modification.
3. C 030492 ZSK      Special Permit pursuant to Z.R. Section 74-711 for a Use conversion within a Historic District.

## **BACKGROUND**

A full background discussion and description of this project appears in the report on the related application for the grant of a special permit (C 010647 ZSK).

## **ENVIRONMENTAL REVIEW**

This application (C 001647 ZSK ), in conjunction with the applications for the related actions (C 010645 ZMK), (C 010646 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 01DCP004. The lead is the City Planning Commission.

A summary of the environmental review and the Final Environmental Impact Statement appears in the report on the related application for the grant of a special permit (C 010647 ZSK).

## **UNIFORM LAND USE REVIEW**

This application (C 001647 ZSK), in conjunction with the applications for the related actions (C 010645 ZMK), (C 010646 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.

A summary of the recommendation of Community Board 2 appears in the report on the related application for the grant of a special permit (C 010647 ZSK).

### **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. 3), the City Planning Commission scheduled July 14, 2004, for a public hearing on this application (C 001647 ZSK). The hearing was duly held on July 14, 2004 (Calendar No. 21), in conjunction with the public hearings on the applications for the related actions (C 010645 ZMK), (C 010646 ZSK) and (C 030492 ZSK).

There were a number of speakers, as described in the report on the related application for the grant of a special permit (C 010647 ZSK), 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), 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 the grant of this the special permit is appropriate.

A full consideration and analysis of the issues, and the reasons for approving this application appear in the report on the related application for the grant of a special permit (C 010646 ZSK).

### **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-512 (Public Parking Garages or Public Parking Lots Outside High Density Central Areas In Other Districts) of the Zoning Resolution:

(a) that the principal vehicular access for such use is located on an arterial highway, a major street or a secondary street within one-quarter mile of an arterial highway or major street, except that in C5 or C6 Districts such access may be located on a local street;

(b) that such use is so located as to draw a minimum of vehicular traffic to and through local streets in nearby residential areas;

(c) that such use has adequate reservoir space at the vehicular entrances to accommodate either ten automobiles or five percent of the total parking of the total parking spaces provided by the use, whichever amount is greater, but in no event shall such reservoir space be required for more than 50 automobiles.

(d) that the streets providing access to such use will be adequate to handle the traffic generated thereby;

(e) not applicable;

(f) that, where any floor space is exempted from the definition of floor area, such additional floor space is needed in order to prevent excessive on-street parking demand and relieve traffic congestion;

## **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 of Two Trees Management Company for the grant of a special permit pursuant to Section 74-512 of the Zoning Resolution to allow an attended public parking garage with a maximum capacity of 327 spaces on portions of the cellar floor, ground floor and second floor, and to allow floor space up to a height of 23 feet above curb level to be exempted from the definition of floor area as set forth in Section 12-10 (DEFINITIONS), in a proposed 16-

story mixed use building 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 for a term of four years, pursuant to Sections and that, of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 010647 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, 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. 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

flourescent 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.

5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 010647 ZSK), duly adopted by the City Planning Commission on August 25, 2004 (Calendar No. 21), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, AICP, Chair,**  
**KENNETH KNUCKLES, Vice-Chairman**  
**ANGELA M. BATTAGLIA, IRWIN G. CANTOR,P.E.,**  
**ANGELA CAVALUZZI, CHRISTOPHER KUI,**  
**KAREN PHILLIPS, DOLLY WILLIAMS,**  
**Commissioners**