



CITY PLANNING COMMISSION

December 17, 2008/Calendar No.18

C 080505 ZSM

IN THE MATTER OF an application submitted by Crosby Street Hotel LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the requirements of Section 42-14 (D)(2)(b) to allow Use Group 5 uses (hotel use) and/or Use Group 6 uses (retail uses) to be located below the floor level of the second story of a proposed 11-story building on property located at 79 Crosby street a.k.a. 246 Lafayette street (Block 496, Lots 1 & 29), in an M1-5B District, Community District 2, Borough of Manhattan

The application for the special permit was filed by the Crosby Street Hotel LLC on June 17, 2008, to permit modification of the use regulations of Sections 42-14D(2) (b) of the Zoning Resolution to permit Use Group 5 and/or Use Group 6 uses below the floor level of the second story of a building located in an M1-5B zoning district in the southern portion of SoHo in Manhattan.

BACKGROUND

The applicant is proposing an 11-story hotel at 79 Crosby street and 246 Lafayette street, midblock between Spring and Prince streets. The project site comprises two zoning lots. 79 Crosby street is located midblock on the east side of Crosby street between Spring and Prince streets. Its lot area is 9,850 square feet. The building will be sited entirely on this lot. 246 Lafayette street is the adjacent lot to the west and fronts on Lafayette street. It has a lot area of 1,079 square feet. 246 Lafayette street is currently occupied by a three story mixed use structure, which will be demolished.

Pursuant to Section 42-14D(2), uses below the floor level of the second story in M1-5B Districts are restricted to Use Groups 7, 9, 11, 16, 17A, 17B, 17C, or 17E (including wholesale, warehouse and light manufacturing uses). Use groups other than those permitted may be allowed by special permit pursuant to Section 74-781 provided that the City Planning Commission finds that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a permitted use at fair market rentals. The good faith marketing of the space shall have been pursued for a minimum of six months for buildings occupying less than 3,600 square feet of lot area.

This application seeks to allow a total of approximately 19,116 square feet of hotel and/or retail area (Use Group 5 and Use Group 6). The proposal includes 6,413 square feet of hotel and/or retail space in the subcellar and 6,456 square feet of hotel and/or retail space in the cellar level of the structure for supporting uses, including restrooms, kitchens, laundry, and conference rooms. There are 6,413 square feet of hotel and/or retail space on the ground floor. The ground floor will be occupied by a hotel lobby, accessible through a main entrance on Crosby street; and a restaurant, with its main entrance on Lafayette street. The restaurant will extend into the northern outdoor courtyard. The southern courtyard is available only to hotel guests and accessible through the hotel lobby. The second through 11th floors of the subject building will be occupied by conforming hotel uses.

The surrounding neighborhood is primarily a mix of three- to seven-story buildings and loft structures occupied by retail uses on the ground floor and residential uses in the form of joint living-work quarters for artists on the upper floors.

ENVIRONMENTAL REVIEW

This application (C 080505 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 lead agency is the City Planning Commission. This application was determined to be a Type II action which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 080505 ZSM) was certified as complete by the Department of City Planning on August 11, 2008, and was duly referred to Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 2 held a public hearing on this application on September 11, 2008, and September 18, 2008, by a vote of 36 to 1 with 0 abstentions, adopted a resolution recommending approval of the application subject to the following conditions:

That the restaurant is intended to service the hotel and is not intended to be a destination restaurant and that the exterior gate on Lafayette street will be locked at 11:00PM to better control night traffic.

That the use of a balcony at the second floor on the roof extension will be limited as only the first four feet will be used by the adjoining rooms and the remaining area will be separated by a large planter and will not be accessible.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on October 24, 2008, approving the application.

City Planning Commission Public Hearing

On October 29, 2008 (Calendar No. 3), the City Planning Commission scheduled November 19, 2008, for a public hearing on this application (C 80505 ZSM). The hearing was duly held on November 19, 2008 (Calendar No. 19). There were three speakers in favor of the application and none in opposition.

The applicant's attorney described the applicant's good faith marketing effort. She stated that the Community Board's concerns about the operating hours of the restaurant will be addressed in the terms of the liquor license, which will also come before the Community Board. The project's architect spoke about the merits of the building's design and described the green roof planned for the roof extension over the restaurant, which will limit access to the roof from the second floor balcony. A representative for the Borough President spoke in favor of the project. She stated that the applicant has worked closely with the community to address their concerns.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

Approval of this application would facilitate construction of an 11-story hotel on SoHo.

The applicant has made the necessary good faith marketing effort for a period of more than six months. Such efforts included signing an exclusive agency agreement with a real estate broker in December 2006 familiar with marketing space in SoHo; and publishing weekly ads in the The New York Times beginning December 2006. In April 2007, weekly advertisements were placed in the Village Voice and biweekly advertisements were placed in the Sing Tao. In May 2007, biweekly advertisements were placed in the World Journal. From December until April 2007, the advertisement listed no asking rent for the space. After April 2007, all advertisements listed the asking monthly rent of \$150 per square foot. The rent was determined based on the rent asked for conforming uses in comparable locations in the area. Additional efforts included notifying local and citywide industry groups of the availability of the spaces, including the Industrial Space Bank at the Economic Development Corporation. Such marketing efforts proved unsuccessful as they did not succeed in obtaining a conforming use.

In response to Community Board 2's recommendation that the roof extension of the restaurant will not be accessible from adjoining balconies of two second floor guest rooms, the Commission notes that the applicant has presented a design which will restrict access to the roof. A planter will separate the green roof from the balconies, deterring the use of the roof extension. Beyond the planter, the roof will be occupied by a non-traversable green roof.

With respect to the Community Board's recommendation concerning the closure of the Lafayette street gate at 11:00 pm, the Commission urges the applicant to continue to work with the Community Board on this issue.

The Commission believes that the building's design reflects historic facades of the Soho District. The Commission acknowledges that the gate on Lafayette street has been decreased to 4 feet in height to promote a more transparent and inviting streetscape experience.

FINDINGS

The City Planning Commission hereby makes the following finding pursuant to Section 74-781 (Modifications by Special Permit of the City Planning Commission) of the Zoning Resolution:

that the owner of the space, or the predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rentals. Such efforts shall include but not be limited to: advertising in local and citywide press, listing the space with brokers, notifying the New York City Office of Economic Development, and informing local and citywide industry groups. Such efforts shall have been actively pursued for a period of no less than six months for buildings under 3,600 square feet and one year for buildings over 3,600 square feet prior to the date of the application for a special permit.

RESOLUTION

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 finding described in this report, the application of Crosby Street Hotel LLC for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 5 (hotel uses) and/or Use Group 6 uses (retail uses) to be located below the floor level of the second story of a proposed building on property located at 79 Crosby street a.k.a. 246 Lafayette street (Block 496, Lot 1 and 29), in an M1-5B District, Borough of Manhattan, Community District 2 is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 080505 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Stonehill and Taylor Architects, PC. filed with this application and incorporated in this resolution:

Drawing No.	Title	Last Date Revised
ZCP-01	Zoning Section, Site Plan, and Zoning Analysis	06/04/08
ZCP-02	Subcellar Floor Plan	06/04/08
ZCP-03	Cellar Floor Plan	06/04/08
ZCP-04	Ground Floor Plan	08/07/08

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans

listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

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

The above resolution (C 080505 ZSM), duly adopted by the City Planning Commission on December 17, 2008 (Calendar No. 18), 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

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