



CITY PLANNING COMMISSION

June 23, 2004/Calendar No. 20

N 040332 ZRM

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York relating to an increase in street wall height within the Ladies' Mile Rezoning Area, the grandfathering of an existing special permit, and a clarification of the zoning text, Borough of Manhattan, Community District 5.

The application for amendment of the Zoning Resolution was filed by the Department of City Planning and Richard Chapman and Associates on March 15, 2004, in order to clarify the zoning text, grandfather a previously approved special permit, and allow street wall heights in a 5 ½-block area of the Flatiron District to be raised up to 150 feet to match an adjacent building. This application was revised on June 18, 2004 to require a BSA special permit within the same 5 ½-block area for eating and drinking establishments with a capacity of over 200 people, and eating or drinking establishments with dancing of any size.

RELATED ACTIONS

In addition to the amendment of the Zoning Resolution 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 040331 ZMM Zoning map amendment to rezone a 5 ½-block area in the Flatiron District from M1-6M to C6-4A.

2. C 040333 ZSM Special permit for a 363-space underground attended public parking garage at 7-13 West 21st Street.

3. C 040334 ZSM Special permit for a 105-space underground attended public parking garage at 4 West 21st Street.

BACKGROUND

A full background discussion and description of this project appears in the report on the related application for an amendment of the Zoning Map (C 040331 ZMM).

ENVIRONMENTAL REVIEW

This application (N 040332 ZRM), in conjunction with the applications for the related actions (C 040331 ZSM), (C 040333 ZSM) and (C 040334 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 04DCP038M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on March 22, 2004. A summary of the environmental review appears in the report of the related application for a zoning map amendment (C 040331 ZMM).

PUBLIC REVIEW

On March 22, 2004, this text change application was duly referred to Community Board 5 and the Borough President for information and review in accordance with the procedure for referring non-ULURP matters.

Community Board Public Hearing

Community Board 5 held a public hearing on this application in conjunction with related applications (C 040331 ZMM, C 040333 ZSM and C 040334 ZSM) on April 8, 2004, and on that day, by a vote of 26 to three with one abstention, adopted a resolution recommending disapproval of the application with conditions.

A summary of the recommendation of the Community Board appears in the report of the related application for a zoning map amendment (C 040331 ZMM).

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation disapproving the application with conditions.

A summary of the recommendation of the Borough President appears in the report of the related application for a zoning map amendment (C 040331 ZMM).

City Planning Commission Public Hearing

On May 12, 2004 (Calendar No. 3), the City Planning Commission scheduled May 26, 2004, for a public hearing on this application (N 040332 ZRM). The hearing was duly held on May 26, 2004 (Calendar No. 21), in conjunction with the public hearings on the applications for the related actions (C 040331 ZMM, C 040333 ZSM and C 040334 ZSM).

There were a number of speakers, as described in the report on the related application for a zoning map amendment (C 040331 ZMM), and the hearing was closed.

CONSIDERATION

The Commission believes that the proposed amendment to the Zoning Resolution, as revised, in conjunction with the related proposed map amendment and two special permits for public parking garages, is appropriate.

A full consideration and analysis of the issues, and the reasons for approving this application appears in the report on the related application for a zoning map amendment (C 040331 ZMM).

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

Matter in ~~strikeout~~ is to be deleted; and

* * * represents text for which no change is proposed

Article I, Chapter 1

Section 11-44

Special Permits Granted Prior to (effective date of amendment)

Within the area bounded by West 22 Street, a line 100 feet west of Fifth Avenue, a line midway between West 16 Street and West 17 Street, and a line 100 feet east of Sixth Avenue, any special permit granted by the City

Planning Commission may be started or continued, in accordance with the terms thereof, or as such terms may be subsequently modified, pursuant to the #bulk# regulations in effect at the time such special permit was granted, subject to the provisions of Sections 11-42 (Lapse of Authorization or Special Permit Granted by the City Planning Commission Pursuant to the 1961 Zoning Resolution) and 11-43 (Renewal of Authorization or Special Permit).

Article 2

Residence District Regulations

* * *

Chapter 3

Bulk Regulations for Residential Buildings in Residence Districts

* * *

23-633

Street wall location and height and setback regulations in certain districts

R6A R7A R8A R9A R10A R6B R7B R8B R7X R8X R9X R10X

In the districts indicated, #street wall# location and height and setback regulations are set forth in this Section. The height of all #buildings or other structures# shall be measured from the #base plane#. The provisions of Sections 23-64 (Alternate Front Setbacks) and 23-65 (Tower Regulations) shall not apply, except as otherwise set forth for #buildings# in R10X Districts.

* * *

R6A R6B R7A R7B R7X R8A R8B R8X R9A R9X R10A R10X

(b) Setback regulations

In the districts indicated, and for #buildings developed# or #enlarged# pursuant to the Quality Housing Program in other R6, R7, R8, R9 and R10 Districts, setbacks are required for all portions of

#buildings# that exceed the maximum base height specified in ~~Table A of~~ the table in this Section. Such setbacks shall be provided in accordance with the following regulations:

R6A R6B R7A R7B R7X R8A R8B R8X R9A R9X R10A R10X

(d) Additional regulations

In the districts indicated, and for #buildings developed# or #enlarged# pursuant to the Quality Housing Program in other R6, R7, R8, R9 and R10 Districts, the following additional regulations shall apply:

* * *

(4) For any #zoning lot# located in a Historic District designated by the Landmarks Preservation Commission, the minimum base height and #street wall# location regulations of this Section, or as modified in any applicable Special District, shall be modified as follows:

(i) The minimum base height of a #street wall# may vary between the height of the #street wall# of an adjacent #building# before setback, if such height is lower than the minimum base height required, up to the minimum base height requirements of this Section, or as modified in any applicable Special District.

(ii) The maximum base height of a #street wall# may vary between the height of the #street wall# of an adjacent #building# before setback, if such height is higher than the maximum base height allowed, and the maximum base height requirements of this Section, provided that such height not exceed 150 feet, and provided such #zoning lot# is located within the area bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue.

~~(i)(iii)~~ The location of the #street wall# of any #building# may vary between the #street wall# location requirements of this Section, or as modified in any applicable Special District, and the location of the #street wall# of an adjacent #building# fronting on the same #street line#.

TABLE A

**MINIMUM BASE HEIGHT, MAXIMUM BASE HEIGHT
AND MAXIMUM BUILDING HEIGHT**

23-663

Require rear setbacks for tall buildings in other districts

R6A R6B R7A R7B R7X R8A R8B R8X R9A R9X R10A R10X

(b) In the districts indicated, and for #buildings developed# or #enlarged# pursuant to the Quality Housing Program in other R6 through R10 Districts, no portion of a #building# that exceeds the applicable maximum base height specified in ~~Table A~~ of Section 23-633 shall be nearer to a #rear yard line# than 30 feet.

* * *

Article 3

Commercial District Regulations

* * *

Chapter 5

Bulk Regulations for Mixed Buildings in Commercial Districts

35-24

* * *

35-24

Special Street Wall Location and Height and Setback Regulations in Certain Districts

C1-6A C1-7A C1-8A C1-8X C1-9A C2-6A C2-7A C2-7X C2-8A C4-2A C4-3A C4-4A C4-4D C4-5A C4-5X
C4-6A C4-7A C5-1A C5-2A C6-2A C6-3A C6-3X C6-4A C6-4X

In the districts indicated, and in other C1 or C2 Districts when mapped within R6A, R6B, R7A, R7B, R7X, R8A, R8B, R8X, R9A, R9X, R10A or R10X Districts, and in other #Commercial Districts# where the #residential# portion of a #mixed building# is #developed# or #enlarged# pursuant to the Quality Housing

Program, #street wall# location and height and setback regulations are set forth in this Section. The height of all #buildings or other structures# shall be measured from the #base plane#.

* * *

C1-6A C1-7A C1-8A C1-8X C1-9A C2-6A C2-7A C2-7X C2-8A C4-2A C4-3A C4-4A C4-4D C4-5A C4-5X
C4-6A C4-7A C5-1A C6-2A C6-3A C6-3X C6-4A C6-4X

(e) Additional regulations

In the districts indicated, and in C1 or C2 Districts when mapped within R6A, R6B, R7A, R7B, R7X, R8A, R8B, R8X, R9A, R9X, R10A or R10X Districts, and in other #Commercial Districts# where the #residential# portion of a #mixed building# is #developed# or #enlarged# pursuant to the Quality Housing Program, the following additional provisions shall apply to all #developments# or #enlargements#:

* * *

(4) For any #zoning lot# located in a Historic District designated by the Landmarks Preservation Commission, the minimum base height and #street wall# location regulations of this Section, or as modified in any applicable Special District, shall be modified as follows:

(i) The minimum base height of a #street wall# may vary between the height of the #street wall# of an adjacent #building# before setback, if such height is lower than the minimum base height required, up to the minimum base height requirements of this Section, or as modified in any applicable Special District.

(ii) The maximum base height of a #street wall# may vary between the height of the #street wall# of an adjacent #building# before setback, if such height is higher than the maximum base height

allowed, and the maximum base height requirements of this Section provided that such height not exceed 150 feet, and provided such #zoning lot# is located within the area bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue.

(ii)(iii) The location of the #street wall# of any #building# may vary between the #street wall# location requirements of this Section, or as modified in any applicable Special District, and the location of the #street wall# of an adjacent #building# fronting on the same #street line#.

* * *

32-21

Use Group 12

C4 C6 C7 C8

Use Group 12 consists primarily of fairly large entertainment facilities that:

- (1) have a wide service area and generate considerable pedestrian, automotive or truck traffic; and
- (2) are, therefore, appropriate only in secondary, major or central commercial areas.

Certain public service establishments are also included.

A. Amusements

* * *

** Eating or drinking establishments with entertainment and a capacity of more than 200 persons, or establishments of any capacity with dancing [PRC-D]

In C4 Districts, a minimum of four square feet of waiting area within the #zoning lot# shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. In C4 Districts, such establishment shall be a minimum of 100 feet from a #Residence District# boundary, except that within 100 feet from a #Residence District# boundary, such establishment is permitted only by special permit pursuant to Section 73-244.

In C6-1, C6-2, C6-3 and C6-4 Districts, a minimum of four square feet of waiting area within the #zoning lot# shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. In these districts, the entrance to such #use# shall be a minimum of 100 feet from the nearest #Residential

District# boundary.

Historical exhibits, provided such #use# is contained within a #completely enclosed building# [PRC-D]

* * *

E. #Accessory Uses#

* In a C4 District, a #use# in Use Group 12, marked with an asterisk, shall not be located on the ground floor of a #building# unless such #use# is at least 50 feet from the #street wall# of the #building# in which it is located, as provided in Section 32-423 (Limitation on ground floor location).

** In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22th Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue, eating or drinking establishments with entertainment and a capacity of more than 200 persons, or establishments of any capacity with dancing, are permitted only by special permit of the Board of Standards and Appeals in accordance with Section 73-244.

* * *

32-31

By the Board of Standards and Appeals

In the districts indicated, the following #uses# are permitted by special permit of the Board of Standards and Appeals, in accordance with standards set forth in Article VII, Chapter 3.

* * *

C3

Eating or drinking establishments with musical entertainment but not dancing, with a capacity of 200 persons or less [PRC-B]

C2 C3 C4* C6-4**

Eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing [PRC-D]

* * *

* In C4 Districts, such #use# is permitted within 100 feet from a #Residence District# boundary only as provided in Section 73-244.

** In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue, such #use# is permitted only as provided in Section 73-244.

* * *

73-244

In C2, C3, C4*, C6-4, M1-5A, M1-5B, M1-5M and M1-6M Districts and the Special Tribeca Mixed Use District**

In C2, C3, C4*, C6-4**, M1-5A, M1-5B, M1-5M and M1-6M Districts and the #Special Tribeca Mixed Use District#, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the following findings are made:

- (a) that a minimum of four square feet of waiting area within the #zoning lot# shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the #street#;
- (b) that the entrance to such #use# shall be a minimum of 100 feet from the nearest #Residence District# boundary;
- (c) that such #use# will not cause undue vehicular or pedestrian congestion in local #streets#;
- (d) that such #use# will not impair the character or the future use or development of the surrounding #residential# or mixed use neighborhoods;
- (e) that such #use# will not cause the sound level in any affected conforming #residential use#, #joint living-work quarters for artists# or #loft dwelling# to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and
- (f) that the application is made jointly by the owner of the #building# and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

Any violation of the terms of a special permit may be grounds for its revocation.

* In C4 Districts where such #use# is within 100 feet from a #Residence District# boundary.

** In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue.

* * *

The above resolution (N 040332 ZRM), duly adopted by the City Planning Commission on June 23, 2004 (Calendar No. 20), 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., RICHARD W. EADDY,
ALEXANDER GARVIN, JANE D. GOL, CHRISTOPHER KUI, JOHN MEROLO,
KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners