



## **CITY PLANNING COMMISSION**

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July 1, 2009/Calendar No.15

C 090003 ZSM

IN THE MATTER OF an application submitted by the RJM /EM 4 East 94th Street, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the requirements of Sections 23-691 (Limited Height Districts), 23-633 (b) and 23-633(d) (Street wall location and height and setback regulations), and 23-663 (Required rear setbacks for tall buildings in other districts) to allow the renovation of two buildings located at 4 and 6-8 East 94th Street (Block 1505, Lot 66) in an R8B/LH1A and R10 Districts, within the Special Park Improvement District (PI), Borough of Manhattan, Community District 8.

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The application for the special permit was filed by RJM/EM E. 94<sup>th</sup> Street LLC on July 3, , 2008, to modify certain bulk regulations to facilitate the reconfiguration of two existing buildings (five- and seven-story buildings) into a single six-story building with a uniform street wall and building height located at 4-8 East 94th Street (Block 1505, Lot 66).

### **BACKGROUND**

The site (Block 1505, Lot 66) is located on the south side of East 94<sup>th</sup> Street between Fifth Avenue and Madison Avenue within the Carnegie Hill Historic District. It is located in the Special Park Improvement District and is mapped within a Special Limited Height District (LH-1A).

4-8 East 94<sup>th</sup> Street (Block 1505, Lot 66) is currently improved with two buildings on a single zoning lot containing 5,992 square feet. 4 East 94<sup>th</sup> Street is an existing seven-story building approximately 75 feet in height and 6-8 East 94<sup>th</sup> Street is an existing five-story building approximately 58 feet in height. Combined, both buildings contain 24,463 square feet of floor area.

The subject site was originally developed as three (3) five-story row houses (4, 6 and 8 East 94<sup>th</sup> Street) in 1890. The row houses at 6 and 8 East 94<sup>th</sup> Street were combined into a single five-story townhouse and redesigned in the neo-Georgian style to form a single townhouse in 1936. The row house at 4 East 94<sup>th</sup> Street was demolished in the mid-1960's and a seven-story community facility building was developed in its place and designed using similar materials as those on the 6-8 East 94<sup>th</sup> Street building. 4 East 94<sup>th</sup> Street, previously operated by the Spence-Chapin Adoption Agency, contains an existing one-story structure in the rear yard. Currently, both buildings on the zoning lot are vacant. The project site became part of the Carnegie Hill Historic District in 1993.

The surrounding area is typical of the Upper East Side residential neighborhoods where low density, four- to six-story residential buildings occupy midblocks and higher density multi-family apartment buildings occupy the avenues. The building immediately west is 14 stories; the building immediately east is four stories and the buildings across the street are four and five stories.

The easterly 53 feet of the subject zoning lot is located within the R8B zoning district/Limited Height District (LH-1A). The R8B zoning district generally allows a maximum residential FAR of 4.0. The R8B zoning envelope allows a maximum base height of 60 feet, after which a setback of 15 feet is required with a maximum permitted building height of 75 feet, but the maximum building height in the LH-1A zoning district is 60 feet. Buildings in the R8B district must have a required 30-foot rear yard, and a 10-foot rear yard setback above a height of 60 feet.

The westerly 6-foot portion of the site is located within the R10/Special Park Improvement District. The R10 zoning district allows a residential FAR of 10.

The applicant requests a special permit pursuant to Section 74-711 of the Zoning Resolution to modify height, front wall setback and rear setback to allow for the reconfiguration of two existing buildings (five- and seven-story buildings) into a single six-story building with a uniform street wall and building height.

The fifth floor of 6-8 East 94<sup>th</sup> Street is proposed to be reconfigured and a sixth floor would be added; floors five through seven of 4 East 94<sup>th</sup> Street would be removed and replaced with a fifth and sixth floor that would match the existing height (approximately 67 feet), setback and design of 6-8 East 94<sup>th</sup> Street. The sixth floor would be slightly setback and designed with a mansard roof. Additionally, the applicant proposes to remove the existing one-story structure currently located in the rear yard of 4 East 94<sup>th</sup> Street, allowing for a 30-foot rear yard on the entire zoning lot.

## **REQUESTED ACTIONS**

To facilitate the proposed development, waivers are requested to modify the maximum allowable height, street wall setback and rear setback requirements. Section 23-691 of the Zoning Resolution states that the maximum allowable height within the LH-1A zoning district is 60 feet.

The proposed development would rise to a height of approximately 67 feet. Sections 23-633 (b) and (d) require buildings to setback 15 feet above a height of 60 feet. The street wall of the proposed development would rise to a height of 50 feet and setback approximately four and-a-half feet before reaching the maximum building height of almost 67 feet. Section 23-633 states that the maximum rear wall height of the building is 60 feet, after which a setback of 10 feet is required. The proposed development would reach a total height of approximately 67 feet with no setback.

Section 74-711 also requires a report from the Landmarks Preservation Commission stating that a program has been established for continuing maintenance that will result in the preservation of the subject building or buildings and that such use or bulk modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose.

On March 10, 2008, the Landmarks Preservation Commission issued a report stating that a program for continuing maintenance has been established for 4-8 East 94<sup>th</sup> Street (Block 1505, Lot 66) building and a restrictive declaration has been filed against the property. On December 17, 2007, the Landmarks Preservation Commission issued a Certificate of Appropriateness.

## **ENVIRONMENTAL REVIEW**

This application (C 090003 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 08DCP064M. 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 16, 2009.

## **UNIFORM LAND USE REVIEW**

This application (C 090003 ZSM) was certified as complete by the Department of City Planning on March 16, 2009, and was duly referred to Community Board 8 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 8 held a public hearing on this application on April 15, 2009, and on that date, by a vote of 35, 0 opposed, 2 abstentions and 1 no vote, adopted a resolution recommending approval of the application.

## **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on May 20, 2009 to approve the application with the following condition:

- that the applicant comply with the procedures put forth in the Department of Building's Technical Policy and Procedure Notice #10/88 to prevent unnecessary negative impact on the surrounding historic district and works with the Community Board and local stakeholders to address construction management issues and potential construction impacts on the surrounding area.

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

On May 20, 2009 (Calendar No. 2), the City Planning Commission scheduled June 3, 2009, for a public hearing on this application (C 090003 ZSM). The hearing was duly held on June 3, 2009 (Calendar No. 13). There were three speakers in favor of the application and four opposed.

The applicant's attorney, the applicant's architect and a representative of the Borough President's office appeared in favor. The applicant's attorney and architect presented the proposal and reiterated the applicant's commitment to working with local stakeholders regarding the construction process, as mentioned by the Borough President. The representative of the Borough President's office reiterated the need to address construction management issues.

There were four speakers opposing the project. The opposing speakers were residents of buildings south and west of the proposed development. These residents were concerned about the loss of light and air related to the proposed five-foot extension of the rear of the 4 East 94<sup>th</sup> Street building. Additionally, the opposing speakers expressed concerns about the construction impacts of the proposed development on neighboring properties.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that the grant of the special permit (C 090003 ZSM) is appropriate.

The Commission believes that the proposed development would have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air. The Commission believes that the waiver to exceed the maximum height of 60 feet is appropriate. The proposed development would reduce the height of the existing development at 4 East 94<sup>th</sup> Street from approximately 75 feet to approximately 67 feet. The Commission notes that the Limited Height District, created in 1982, was intended to preserve the built character of historic residential midblocks, however, the Commission notes that the building's proposed height is generally consistent with the height of buildings along E. 94<sup>th</sup> Street and in the surrounding midblock areas. Additionally, the Commission notes that the R8B zoning district and the historic district designations together have been successful in preserving the Upper East Side midblocks.

The Commission believes that the waiver of the required street wall setback regulation would unify the design of the fifth and sixth floors of 4 and 6-8 East 94<sup>th</sup> Street by providing two setbacks and a mansard roof above a street wall height of 50 feet. The Commission notes that the street wall height of 4 East 94<sup>th</sup> Street would be reduced from approximately 75 feet to 50 feet. The Commission further notes that the combination setbacks and the mansard roof would reduce the visibility of the upper portion of the proposed development from the street.

The Commission believes that the waiver of the required rear setback is appropriate. The Commission notes that the area of encroachment is contained within an approximately 10-foot by six-foot volume at the uppermost part of the rear of the building, that the adjacent buildings

are relatively distant from this area of encroachment, and that the proposed building would reduce the amount of encroachment into the rear yard setback from what is existing. As a result, the Commission believes that the waiver of the required rear setback would have minimal adverse effect on light and air to the structures and open space in the vicinity. The Commission further notes that as part of the project, the existing one-story structure in the rear yard would be demolished, thereby providing a 30-foot unobstructed rear yard along the length of the zoning lot.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 of the Zoning Resolution:

- (1) such bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air; and
- (2) Not applicable.

## **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 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 by RJM/EM E. 94<sup>th</sup> Street LLC for the grant



of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the requirements of Section 23-691 (Limited Height Districts), 23-633 (b) and 23-633 (d) (Street wall location and height and setback regulations), and 23-663 (Required rear setbacks for tall buildings in other districts) to allow the renovation of two buildings located at 4 and 6-8 East 94th Street (Block 1505, Lot 66) in an R8B/LH1A and R10 Districts, within the Special Park Improvement District (PI), Borough of Manhattan, Community District 8, is approved subject to the following terms and conditions:

1) The property that is the subject of this application (C 090003 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 Henry C. Kendall, filed with this application and incorporated in this resolution:

<b><u>Drawing No.</u></b>	<b><u>Title</u></b>	<b><u>Last Revised Date</u></b>
A – 002	Zoning Analysis & Zoning Map	December 24, 2008
A – 200	Proposed Site Plan	October 24, 2008
A – 201	Proposed Site Plan w/ Waivers	December 24, 2008
A – 401	Proposed Section	December 24, 2008

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) Development pursuant to this resolution shall be allowed only after the restrictive declaration dated June 30, 2009, executed by RJM/EM E. 94<sup>th</sup> Street LLC, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

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 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 090003 ZSM), duly adopted by the City Planning Commission on July 1, 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, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,**  
**RICHARD W. EADDY, NATHAN LEVENTHAL,**  
**SHIRLEY A. MCRAE, Commissioners**