



CITY PLANNING COMMISSION

July 2, 2008 / Calendar No. 23

N080358ZRM

IN THE MATTER OF an application submitted by the Department of Small Business Services pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York concerning Section 62-416 (Special regulations for zoning lots that include parks) relating to the East River Waterfront Esplanade and Piers Project in Community Districts 1 and 3, in the Borough of Manhattan.

The application for a text amendment to amend the regulations of Section 62-416 was filed by the Department of Small Business Services on March 27th 2008.

BACKGROUND

Pursuant to Section 62-711 (e) of the Zoning Resolution, relating to the development of a waterfront park, the Chair of the City Planning Commission must certify a site plan to be compliant with the provisions of section 62-416 (Special Regulations for Zoning Lots that Include Parks.) The proposed waterfront park that is part of the East River Waterfront Esplanade and Piers Project (ERW) is subject to this certification. The park is located along the East River waterfront extending from the Battery Maritime Building to Pier 42.

The applicant, The Department of Small Business Services (SBS) is seeking a text amendment to Section 62-416 because the ERW Project cannot comply with certain waterfront zoning regulations due to specific site constraints associated with the FDR Drive and existing shoreline and bulkhead conditions, specific examples are described below:

- **Shore Public Walkway (Section 62-40):** A shore public walkway is required to be landward of the bulkhead line. The ERW Project proposes a compliant Shore Public Walkway in all areas of the project except in the southernmost area near the Battery Maritime Building. In this location, it is impossible to construct the required SPW in the narrow space available between the existing bulkhead and South Street/ the FDR Drive/ Battery Park Underpass. Instead, the walkway is proposed to be seaward of the bulkhead line which would not comply with waterfront zoning regulations.

- Planted Buffer (Section 62-40): An 8-foot wide planted buffer is required to be provided in areas where the shore public walkway adjoins the bikeway. ERW cannot meet this requirement because the location between the walkway and the bikeway is underneath the viaduct of the FDR Drive precluding inclusion of the planted buffer.
- Additional Planting Requirements (Section 62-60): 25 % of the remaining area of the shore public walkway is required. Furthermore, one shade tree per 750 square feet of the shore public walkway is required. The project cannot meet this requirement because the FDR Drive viaduct structure limits the areas in which planting conditions are feasible to such an extent that meeting this requirement is not possible for this project.

The proposed text amendment which would only be applicable to the East River Waterfront Esplanade and Piers Project would allow the Chair to certify the plans for the ERW pursuant to Section 62-711 (e) provided that: (1) A site plan is referred by the applicant to the affected Community Boards and Councilmember(s) showing the project design; (2) The Community Boards and Councilmember (s) have had at least 45 days to review such a plan; (3) Any Community Board and Councilmember comments and recommendations have been considered by the applicant and addressed in a report by the applicant; (4) such report includes a response to such comments or recommendations; and (5) the Chair certifies that the applicant has completed this process and complied with the terms of these provisions.

ENVIRONMENTAL REVIEW

The East River Esplanade and Piers Project was reviewed pursuant to the National Environmental Policy Act and its implementing regulations (NEPA) Section 106 of the National Historic Preservation Act and its implementing regulations (Section 106), 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. The lead agency is the Lower Manhattan Development Corporation (LMDC). LMDC served as lead agency pursuant to both NEPA and SEQRA for the environmental review of the Esplanade Project. The Department of City Planning served as an involved/cooperating agency in this environmental review. As noted above, LMDC issued the FEIS on May 30, 2007. On July 25

of that same year, the CPC approved ULURP applications for the Site Selection and Disposition actions (C 070350 PPM, C 070349 PSM) needed to implement the ERW Project.

During the environmental review conducted by the LMDC, the text amendment as described herein was not identified as an action needed to facilitate the development of the ERW Project. Following project approval and upon design plans being prepared for project implementation, the City determined that such a text amendment would be needed. As the result, the Department of City Planning in consultation with LMDC conducted a review of the text amendment. A Technical Memorandum, dated April 17, 2008, determined that adoption of the text amendment and its use in implementing the East River Esplanade and Piers Project would not result in any significant adverse impacts not previously identified in the FEIS.

PUBLIC REVIEW

This application (N 080358 ZRM) was referred on April 21st, 2008 to Manhattan Community Boards 1 and 3, the Manhattan Borough President and the Manhattan Borough Board in accordance with the procedure for referring non-ULURP matters.

Community Board 1 Public Hearing

Community Board 1 held a public hearing on this application on May 27th, 2008, and on that date, by a vote of 39 to 1 with no abstentions, adopted a resolution recommending approval of the application subject to the following conditions:

- that planting areas are maximized where possible
- that the zoning text amendment be revised so that review of plans for a specific phase(s) by the affected Manhattan Community Boards 1 and 3 include joint review with the affected Councilmember.

Community Board 3 Public Hearing

Community Board 3 held a public hearing on this application on May 27th 2008, and on June 2nd, 2008, by a vote of 40 to 0 with no abstentions, adopted a resolution recommending approval of the application subject to the following conditions:

- that greenery be maximized to the largest extent possible
- that the review of specific plans for a specific phase of the waterfront development include joint review with the affected Council Member as well as with the affected Community Boards

Borough President Recommendation

This application was considered by the Borough President who issued a recommendation on June 4th, 2008, approving the application with the following recommendations:

- That SBS and EDC continue to maximize public input during the implementation of the ERW Project by including all relevant community stakeholders
- That SBS and EDC maximize the number of plantings along the East River Waterfront Esplanade and Piers whenever and wherever possible as suggested by Community Boards 1 and 3.

Borough Board Recommendation

The Borough Board did not submit a recommendation on this application.

City Planning Commission Public Hearing

On June 4th, 2008 (Calendar No.3) the City Planning Commission scheduled this application (N 08035 ZRM) for a hearing on June 18th, 2008. The hearing was held on June 18, 2008 (Calendar No.17). There were five speakers in favor of the application and no speakers in opposition.

A representative from the Economic Development Corporation (EDC) endorsed the text amendment for its ability to address the unique waterfront conditions in this location and provide for the project's phased implementation. A representative from the Lower Manhattan Development Corporation (LMDC) commended the Commission for its persistence on the ERW Project and supported the text amendment because it provides the possibility for the project's timely implementation and also provides thorough Community Board review. A member of the Parks Committee of Community Board 3 supported the text amendment but suggested changing the current 45 day CB review to 60 days as well as maximizing the

amount of planting underneath the FDR Drive. Anthony Borelli, the Direction of Land Use for the Manhattan Borough President, spoke in favor of the application. Community Board 1's Director of Land Use and Planning spoke in favor of the text amendment and recommended that the local City Council member be added to the review of the application.

There were no other speakers and the hearing was closed.

Waterfront Revitalization Program Consistency Review

This application (N 080358 ZRM) was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, 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 07-017.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that the application (N 080358 ZRM) for this text amendment, as modified herein is appropriate. The Commission recognizes that due to several site-specific constraints such as the Battery Park Underpass, the FDR Drive and South Street preclude the ERW project from meeting the requirement of Section 62-416. Further, the Commission acknowledges that the ERW Project is the result of an intensive and continuous community outreach process in which well over 100 public meetings have now been held since the project was initiated. The Commission believes that the text amendment will ensure continued public review by requiring that the applicant, for a certification pursuant to Section 62-711, refer the application and accompanying plans to the affected Community Board for at least 45 days and then prepare a report demonstrating that the community input has been

considered. Further, the Commission believes that the text amendment will ensure timely implementation of the ERW Project by allowing for the project's phased implementation. In response to the recommendation from Community Board 1 and 3 to include the local Council Member in review of an application for certification, the Commission is modifying the text to add the Councilmember to such review.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS) for the East River Waterfront Esplanade and Piers Project that was issued by the Lower Manhattan Development Corporation (LMDC) on May 30, 2007, with respect to this application, together with Technical Memorandum, dated April 17, 2008, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that the adoption of the text amendment and its use in implementing the East River Esplanade and Piers Project as described herein will have no significant impact on the environment.

The report of the City Planning Commission, together with the FEIS and the Technical Memorandum, 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, 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 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 in underline is new, to be added;

Matter in strikeout is to be deleted;

Matter with # # is defined in Section 12-10;

* * * indicates where unchanged text appears in the Zoning Resolution

ARTICLE VI

SPECIAL REGULATIONS APPLICABLE TO CERTAIN AREAS

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Chapter 2

Special Regulations Applying in the Waterfront Area

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62-40

REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AND VISUAL CORRIDORS

* * *

62-416

Special regulations for zoning lots that include parks

(a) In M2 and M3 Districts as permitted in Section 62-27 (Special Use Regulations for Public Parks, Playgrounds or Private Parks), where a #zoning lot# or adjoining #zoning lots# are #predominantly developed# as a park, the requirements of Section 62-41, inclusive, and Section 62-60 shall be deemed satisfied for that portion of the #zoning lots# occupied by such park #use#, provided that:

(a)(1) such park is comprised of a minimum of nine acres of land above water and the #water coverage# of #piers# or #platforms#, located on the #zoning lot# or the #zoning lot# and adjoining #zoning lots#, having at least 600 feet of #shoreline#;

(b)(2) such park provides a continuous paved walkway along the entire portion of the #zoning lots# occupied by such #use# with a minimum clear width of no less than 12 feet, within 40 feet of the #shoreline# for at least 75 percent of those portions of the park that abut the #shoreline#;

(c)(3) such walkway connects with all other #shore public walkways# on the #zoning lot# and adjoining #zoning lots# and any adjoining public sidewalks or other pedestrian areas within #pier# public access areas, a public #street#, #public park#, other public place or park;

(d)(4) such walkway shall be open and accessible from #pier# public access areas, a public #street#, park or other public place at intervals over the length of the park, not exceeding 1,000 feet with an average of 600 feet, by a continuous paved walkway with a minimum clear width of not less than 10 feet;

(e)(5) such park is open and accessible to the public from dawn to dusk, except when hazardous conditions are present that would affect public safety;

(f)(6) a maintenance and operation agreement providing for the maintenance and operation of the park in good condition is entered into with the Department of Parks and Recreation (DPR), except that no such maintenance and operation agreement shall be required for a park developed and maintained by the State or the City of New York, any subdivision or agency of the State or the City, or any public authority or other entity created pursuant to State or local statute for the purpose of operating such a park; and

(g)(7) #visual corridors# shall be provided in accordance with Section 62-42 (Requirements for Visual Corridors).

Any maintenance and operation agreement required pursuant to paragraph (a)(6) of this Section shall include a requirement that prior to obtaining any building permit or opening any portion of the park to the public, the property owner or operator of the park shall post with DPR security in the form of a maintenance bond, letter of credit or other security acceptable to DPR, in an amount certified by a registered architect or landscape architect to be sufficient to cover 125 percent of the cost of maintaining the park for a 12 month period following its final completion, and that such security shall be replaced every five years with new security in an amount sufficient to cover 125 percent of the then current annual cost of maintaining the park, as certified by a registered architect or landscape architect, for the life of the park. Any maintenance and operation agreement shall be attached to or included within a duly recorded, signed declaration of restrictions, indexed against the #zoning lot#, binding the owners and any lessees, tenants, successors and assigns to maintain and operate the park in conformance with this Section and with the maintenance and operation agreement for the life of the park. The filing of such declaration, where required, shall be a precondition to certification pursuant to paragraph (e) of Section 62-711.

Any portion of a #zoning lot# that is not #developed# for a park #use# shall be subject to all of the requirements of Sections 62-40 and 62-60. For purposes of determining obligations pursuant to this Section, such portions of a #zoning lot# not used for park purposes shall be treated as a separate #zoning lot# or separate #zoning lots#, except that the entire #zoning lot#, including the portion used for park purposes, shall be considered in determining #lot area# for purposes of Section 62-411 (Requirements for shore public walkways).

(b) In order to implement the East River Waterfront Esplanade and Piers Project described in the Final Environmental Impact Statement (FEIS) dated May 18 2007, of the Lower Manhattan Development Corporation and the record of decision (ROD) adopted by such corporation on November 7, 2007 (the ERW Project), in C2-8, C4-6, C6-4 and M1-4 Districts located in Manhattan Community Districts 1 and 3, for #zoning lots predominantly developed# as publicly accessible open space under the ERW Project, the Chairperson shall allow for the phased implementation of such publicly accessible open space, and the

requirements of Section 62-40 (REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AND VISUAL CORRIDORS), inclusive, and 62-60 (DESIGN STANDARDS FOR THE WATERFRONT AREA), inclusive, shall be deemed satisfied, provided that:

(1) the application for certification pursuant to Section 62-711 for any such phase(s) includes a report demonstrating that:

(i) a site plan of the design of the publicly accessible open space in such phase(s) has been shown by the applicant to the affected Community Boards and Council Member(s) and such Community Boards and Council Member(s) have had at least 45 days to review such plan;

(ii) any comments and recommendations of the affected Community Boards and Council Member(s) have been considered by the applicant, and such report includes a response to such comments or recommendations. Where design modifications have been made in response to such recommendations, the report shall address how the design has been modified;

(iii) the publicly accessible open space in such phase(s) will be open and accessible to the public at a minimum from dawn to dusk, except when hazardous conditions are present that would affect public safety; and

(iv) a maintenance and operation agreement providing for the maintenance and operation of the publicly accessible open space in such phase(s) in good condition is entered into with the DPR, except that no such maintenance and operation agreement shall be required for a publicly accessible open space developed and maintained by the State or the City of New York, any subdivision or agency of the State or the City, or any public authority or other entity created pursuant to State or local statute for the purpose of operating such publicly accessible open space; and

(2) the site plan of the design for the publicly accessible open space phase(s) in such application is determined by the Chair to be in substantial compliance with the ERW Project as described in the FEIS and ROD.

No excavation or building permit shall be issued for #development# under any phase for publicly accessible open space under the ERW Project certified pursuant to Section 62-711 in accordance with this paragraph until all applicable federal, state and local permits and approvals have been received with respect to such phase, including, without limitation, permits and approvals of the New York State Department of Environmental Conservation.

The above resolution (N 080358 ZRM) was duly adopted by the City Planning Commission on July 2, 2008 (Calendar No. 23), 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
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