



## **CITY PLANNING COMMISSION**

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July 27, 2005 / Calendar No. 17

N 050417 ZRM

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**IN THE MATTER OF** an application submitted by the Battery Park City Authority 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 Article VIII, Chapter 4 (Special Battery Park City District) concerning Sections 84-03 (Use Regulations for Zone A and Zone C), 84-031 (Special Permit Uses), 84-12 (Use Regulations), and 84-135 (Limited Height of Buildings) to allow for a new class of permitted rooftop obstructions and to clarify restrictions on the location of uses, Borough of Manhattan, Community District 1.

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The application for an amendment of the Zoning Resolution was filed by the Battery Park City Authority, on April 12, 2005. The proposed text amendment will allow for a new class of permitted rooftop obstructions in the Special Battery Park City District and would clarify restrictions on the location of uses in the District.

### **BACKGROUND**

The Special Battery Park City District was established in 1973 in response to the original Master Development Plan for the 92 acre site along the Hudson River in Lower Manhattan. These regulations were substantially modified in 1981 when new regulations for the Special Battery Park City District were adopted. These regulations sought to stimulate and expedite development within Battery Park City. The special district also strove to integrate Battery Park City with the rest of Lower Manhattan, to create an active and varied waterfront, and to institute land use controls that were sufficiently flexible to adjust to future market requirements.

## **Proposed Text Amendment**

The proposed text amendment seeks to address two issues. First, the text amendment seeks to allow residential and non-residential uses to exist on the same floor in a building provided that there is adequate separation between these uses. In 2001, the Battery Park City Authority (BPCA) committed to developing community facilities in the northern neighborhood of Battery Park City. Subsequent to this, the BPCA determined that development on Site 16/17 would be the most appropriate location to house a branch of the New York Public Library and additional cultural space. To accommodate the programming needs of these uses, the BPCA seeks to locate a portion of these community uses on the second floor of the development. While the proposed community uses would exist in a separate wing of the development, this configuration would not be allowed under the current zoning because residential uses are not permitted on the same floor as non-residential uses. The text amendment would allow this configuration provided that there is an adequate separation of these uses.

Second, the text amendment would permit wind turbines and heliostats (mirrors which redirect sunlight to interior spaces cast in shadow) on the rooftops of residential buildings in Battery Park City. In 2000, the BPCA adopted environmental guidelines that required developers to meet certain sustainability requirements in the construction and operation of new residential buildings. To further meet these objectives, the BPCA is seeking to allow wind turbines and heliostats as two new classes of permitted rooftop obstructions.

The proposed text amendment would specifically alter the following sections of the Special

Battery Park City District text: To allow for the changes pertaining to the location of uses, Section 84-12 (Use Regulations) will be amended to permit non-residential uses on the same floor as residential uses provided that there is adequate separation of these uses. A portion of this Section as well as Sections 84-03 (Use Regulations for Zone A and Zone C) and 84-031 (Special Permit Uses) would also need to be amended to maintain internal consistency within the Special Battery Park City District regulations. To allow for the new environmental technology, Section 84-135 (Limited Height of Buildings) will be amended to allow for heliostats and wind turbines as a new class of permitted obstructions.

## **ENVIRONMENTAL REVIEW**

This application (N 050417 ZRM) 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 Battery Park City Authority.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on January 11, 2005.

## **PUBLIC REVIEW**

On April 26, 2005, this text amendment was duly referred to Community Board 1 and the Borough President for information and review in accordance with the procedure for referring

non-ULURP matters.

### **Community Board Review**

On May 17, 2005, Community Board 1 adopted a resolution in favor of the proposed text amendment, by a vote of 33 to 1 with no abstentions.

### **Borough President's Review**

No comment was received from the Manhattan Borough President with regard to the proposed text amendment.

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

On June 8, 2005 (Calendar No. 3), the City Planning Commission scheduled June 22, 2005, for a public hearing on this application (N 050417 ZRM). The hearing was duly held on June 22, 2003 (Calendar No. 21). There was one speaker in favor of the application and no speakers in opposition.

An attorney representing the Battery Park City Authority, described the content of the proposed text amendment as well as the development objectives of the Battery Park City Authority. The speaker noted that the text amendment would further enable the Battery Park City Authority to incorporate environmentally responsive technologies in the remaining developments within the Battery Park City as well as maximize the potential of a new park under construction in the north neighborhood. The speaker also noted that the text amendment would enable the Authority to

develop additional community facility space in Battery Park City.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that the proposed text amendment, to 84-03 (Use Regulations for Zone A and Zone C), 84-031 (Special Permit Uses), 84-12 (Use Regulations), and 84-135 (Limited Height of Buildings) of the Special Battery Park City District, is appropriate.

The Commission notes that development in Battery Park City strives to meet high environmental standards and as a result necessitate the incorporation of new environmental technology, some of which must be located on the rooftops of buildings. The Commission notes that this proposed green technology will not only advance the environmental objectives but will be also limited in physical scale and size so as to blend in with other permitted rooftop obstructions. The Commission believes that by allowing this new class of permitted obstructions, environmentally responsive development in Battery Park City will be promoted.

The Commission also believes that the text amendment to allow Battery Park City residential and non-residential uses to exist on the same floor in a building will further the aims of the Battery Park City Authority to provide needed community facilities in the northern neighborhood of Battery Park City. Specifically, the Commission believes that modification of the zoning text will enable the development of a branch of the New York City Public

Library and additional programmed cultural space. The Commission further notes that any conflict of uses will be prevented by the requirement that there be adequate separation of these uses.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action describes 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 in underline is new, to be added;

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

Matter within # # is defined in the Zoning Resolution;

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

## **SPECIAL BATTERY PARK CITY DISTRICT REGULATIONS**

\* \* \*

11/13/81

### **Article VIII - Special Purpose Districts**

## Chapter 4

### Special Battery Park City District

\* \* \*

1/8/97

#### 84-03

#### Use Regulations (For Zone A and Zone C)

The #uses# permitted shall be constructed and located so that no exhaust vents or chimneys open onto any #street# or park or onto the #Esplanade#.

~~In the case of a #building#, or portion of a #building# occupied by #residential uses#, non-#residential uses# may be located only on a #story# below the lowest #story# containing #dwelling units#, except in subzone A-4 pursuant to Section 84-12 (Use Regulations), and except that in any #development# containing hotel #uses# as provided in Sections 84-12 or 84-32 (Use Regulations), an eating and drinking establishment as permitted in Use Group 6 and a #physical culture and health establishment#, either permitted as #accessory# to the hotel or as a non-#accessory# #use# pursuant to this Chapter, may be located above a #story# containing #residential uses#.~~

~~In the case of a mixed #building# containing #residential# and commercial #uses#, non-#residential uses# must be located in a portion of the #mixed building# that has separate access~~

~~from the street.~~

\* \* \* \* \*

1/8/97

**84-031**

**Special permit uses**

The following #uses# are permitted only by special permit of the City Planning Commission:

Electrical or gas utility substations, open or enclosed, pursuant to Section 74-61

In Zone A, #public parking garages# as provided for in C5 Districts, pursuant to Section 74-52

As a condition precedent to the granting of such special permit, the Commission shall make a finding that such #use# is located so as to minimize adverse effects on existing or future #development# in nearby areas or on the use or enjoyment of the #Esplanade# or other public facilities.

The following #uses# are permitted only by special permit of the Board of Standards and Appeals:



Electrical or gas utility substations, open or enclosed, pursuant to Section 73-14

Public utility stations for oil or gas metering or regulating, pursuant to Section 73-15

Telephone exchanges or other communications equipment structures pursuant to Section 73-14

In Zone A, #Physical culture or health establishments# in subzone A-4 only, pursuant to Section 73-36. However, #physical culture or health establishments# located below the level of the first #story# ceiling shall not be permitted to front on the #Esplanade#.

\* \* \* \* \*

2/27/01

## **84-12**

### **Use Regulations**

In the areas indicated as permitted commercial locations in Appendices 2.3 and 3.3, the #use# regulations applying in a C2 District shall apply, except as provided in Sections 84-031(Special permit uses), 84-032 (Uses not permitted), 84-121(Uses along Esplanade) and this Section.

In the case of a mixed #building# containing #residential# and non-#residential uses#, #residential uses# are permitted on the same #story# as a non-#residential use# provided no

access exists between such #uses# at any level containing #residences# and provided any non-#residential uses# are not located over any #residences#. However, such non-#residential uses# may be located over #residences# by authorization of the City Planning Commission upon finding that sufficient separation of #residences# from non-#residential uses# exists within the #building#.

Notwithstanding any other provisions of this Resolution, the permitted #uses# listed in Use Groups 6, 7, 8, 9 or 14 and the additional #uses# permitted hereunder shall be limited, per establishment, to 10,000 square feet of #floor area# of any #story# and shall not be located above the first #story# ceiling, except that:

- (a) in any #development# containing an #arcade# required in Section 84-134 (Mandatory arcades), any permitted #use# may be located above the first #story# ceiling and below the second #story# ceiling; and
- (b) supermarkets are permitted with no limitation on #floor area#.

Notwithstanding any other provisions of this Resolution, the #zoning lot# south of First Place and east of Battery Place may be #developed# either with #residential uses#, #transient hotel uses#, or as a #building# containing both #residential# and hotel #uses#. In the case of a #development# containing hotel #uses# on this #zoning lot#, (a) a #physical culture or health establishment# may be permitted and (b) an eating and drinking establishment as permitted in

Use Group 6 and a #physical culture and health establishment# or a non-residential accessory use may be located above a #story# containing #residential uses#.

~~For #developments# and #enlargements# located in subzone A-4, the City Planning Commission may, upon application, authorize modification of the supplementary #use# regulations of Section 32-422 (Location of floors occupied by non-residential uses), provided the following findings are made:~~

- ~~(1) — that the non #residential uses# are located in a portion of the #mixed building# which has separate access to the outside with no opening of any kind to the #residential# portion of the #building# at any #story#;~~
- ~~(2) — that the non #residential uses# are not located directly over any #story# containing #dwelling units#; and~~
- ~~(3) — that the modifications shall not adversely affect the #residential# character of the area.~~

\* \* \* \* \*

2/27/01

**84-135**

**Limited height of buildings**

No portion of any #building or other structure# may be built to a height greater than 85 feet above #curb level#, except that:

(a) any portion of a #building# required to have an exterior wall coincident with a 110-135 foot #mandatory front building wall line#, as provided in Section 84-132 (Mandatory front building walls), may be built to a height of up to 135 feet above #curb level#;

(b) any portion of a #building# required to have an exterior wall coincident with a 110-230 foot #mandatory front building wall line#, as provided in Section 84-132 and subject to the requirements contained in paragraph (f) therein, may be built to a height of up to 230 feet above #curb level#;

(c) portions of a #building# required to have an exterior wall coincident with a 150-250 foot #mandatory front building wall line#, as provided in Section 84-132, may be built to a height of up to 250 feet above #curb level#;

(d) on the portion of any #zoning lot# designated as a #special height location# in Appendices 2.2 or 3.2, a #building# may be built to the height above #curb level# indicated in Appendices 2.2 or 3.2, subject to the following:

(1) on any #development# south of First Place and east of Battery Place, with a mandatory front building wall, the area of which, below the level of the second story

ceiling, occupies 100 percent of the frontage along its #mandatory front building wall line#, a height of not more than 450 feet, provided, however, that a setback of not more than 10 feet may be provided at a height of 85 feet or more above #curb level#;

(2) on #zoning lots# located north of First Place, south of Third Place, and east of Battery Place, #special height locations# not to exceed heights of 135 feet or 360 feet above #curb level# are permitted as indicated in Appendix 2.2, provided that a setback of 10 feet is provided at a height of 85 feet above #curb level# along any #narrow street# frontage;

(3) on the #zoning lot# at the southeast corner of Chambers Street and North End Avenue, the #special height location# indicated in Appendix 3.2 shall apply only if such #zoning lot# is occupied by #school# and #residential uses# and the portion of the #building# above a height of 135 feet above #curb level# does not exceed a #lot coverage# of 40 percent; and

(4) on the #zoning lot# at the northeast corner of Murray Street and North End Avenue, a #special height location# of 320 feet above #curb level# is permitted as indicated in Appendix 3.2, subject to the requirements contained in Section 84-132, paragraph (f);

(e) Sections 23-62 (Permitted Obstructions) and 33-42 (Permitted Obstructions) are hereby

made inapplicable. Any portion of a #building or other structure# that exceeds an established height limit shall be subject to the following provisions:

- (1) The following shall not be considered obstructions and may thus penetrate a maximum height limit:

Chimneys or flues, with a total width not exceeding 10 percent of the #aggregate width of street walls# of a #building# at any level

Elevator or stair bulkheads, roof water tanks, cooling towers or other #accessory# mechanical equipment (including enclosure walls), provided that either the product, in square feet, of the #aggregate width of street walls# of such obstructions facing each #street# frontage times their average height, in feet, shall not exceed a figure equal to eight times the width, in feet, of the #street wall# of the #building# facing such frontage at #curb level#, or the #lot coverage# of all such obstructions does not exceed 20 percent of the #lot coverage# of the #building# and the height of all such obstructions does not exceed 40 feet

Flagpoles and aerials

Parapet walls, not more than four feet high

Wire, chain link or other transparent fences

Heliostats and wind turbines

- (2) The maximum permitted size of enclosure walls surrounding elevator or stair bulkheads, roof water tanks, cooling towers or other mechanical equipment may be increased by authorization of the City Planning Commission, provided the Commission finds that:
- (i) the width of such additional enclosure wall at each building face does not exceed 80 percent of the width of the enclosure wall as allowed in paragraph (e)(1) of this Section;
  - (ii) the additional area of the enclosure wall at each building face is not more than 50 percent of the area permitted as-of-right;and
  - (iii) the enclosure wall is compatible with the #building# and the urban design goals of the Special District and complements the design by providing a decorative top; and
- (f) in #special height locations# in Appendices 2.2 and 3.2, no portion of a #building#, including permitted obstructions, shall exceed a height of 450 feet above #curb level#.

\* \* \*

The above resolution (N 050417 ZRM), duly adopted by the City Planning Commission on July 27, 2005 (Calendar No. 1), 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., ANGELA R. CAVALUZZI, R.A.,**

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**CHRISTOPHER KUI, JOHN MEROLO, KAREN A. PHILLIPS, DOLLY WILLIAMS Commissioners**