



CITY PLANNING COMMISSION

November 17, 2004/Calendar No. 22

C 040495 ZSM

IN THE MATTER OF an application submitted by 400 Park Avenue South LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-721(a) of the Zoning Resolution to modify the height and setback regulations of Section 23-60, the distance between buildings regulations of Section 23-70, and the court and minimum distance between required windows and walls or lot line regulations of Section 23-80 to facilitate the development of a 475.53 foot-high, 40-story mixed use building on property located at 400 Park Avenue (Block 857, Lots 24, 40 and 46), in a C5-3 District, Borough of Manhattan, Community District 5.

The application for the special permit was filed by 400 Park Avenue South, LLC on June 7, 2004, to allow several bulk waivers to facilitate the development of a 40-story mixed-use building on the southwest corner of East 28th Street and Park Avenue South.

RELATED ACTIONS

In addition to the special permit 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 040496 ZMM Zoning Map Amendment from C6-4A and C5-2 to C5-3 for one block in Midtown South, and

2. N 040497 ZRY Zoning Text Amendment to allow additional waivers by special permit pursuant to Section 74-721(a) and to clarify the zoning text.

BACKGROUND

The zoning lot consists of three tax lots (Lots 40, 46 and 24). Lot 26 is an L-shaped lot on the corner of East 28th Street and Park Avenue South and is currently occupied with an at-grade public parking lot. Lot 40 fronts on Park Avenue South and currently contains a vacant 8-story office building that would be demolished. Together, these two lots comprise the proposed building's L-shaped 19,279 square-foot development site.

Lot 24, which is part of the zoning lot but not part of the development site, is a 54,312 square-foot lot on the western half of the subject block and contains a 15-story office building. The inclusion of that lot in the zoning lot would allow a portion of the lot's unused floor area to be used in the proposed building. The subject block contains one other parcel, which is proposed to be rezoned, but is not part of the proposed project's zoning lot and is not owned by the applicant. That parcel is located on the northeast corner of Park Avenue South and East 27th Street and contains an overbuilt 20 FAR office building.

The proposed building is located on the southwest corner of East 28th Street and Park Avenue South in Midtown South. The blocks to the south contain very large office buildings that were developed primarily in the early 20th century, including the New York Life Building (located one block south of the subject block) and the Metropolitan Life Building (located four blocks south of the subject block). To the west is the Madison Square Park North Historic District which contains primarily commercial and loft buildings. To the north are a mix of office and residential buildings of varying heights, and to the east is the predominantly residential medium-density neighborhood of Kips Bay.

The Proposed Building

The proposed building features a unique faceted design that the applicant believes will make it one of the most distinctive new residential buildings in New York City. The building would be 40 stories tall with 417,544 square feet of floor area rising to a height of 475 feet. The upper floors would be residences and the ground floor would contain retail space, a residential lobby, and a relocated subway entrance to the downtown Lexington Avenue local train.

The mass of the building has been divided into several major elements. The main body of the building is composed of an orthogonal volume that rises perpendicular to the street grid. A portion of that volume along Park Avenue South sets back at 200 feet, responding to the heights of adjacent street walls along the avenue. The orthogonal volume is flanked by two irregularly-shaped glass pavilions that are angled both vertically and horizontally. At the intersection of Park Avenue South and East 28th Street is a third pavilion that rises on the upper levels.

Requested Actions

In order to facilitate the proposed building, the applicant is requesting: 1) a map amendment, 2) a text amendment, and 3) a special permit.

Zoning Map Amendment (C 040496 ZMM)

The applicant proposes to extend the C5-3 (15 FAR) District located in the blocks to the south to include the subject block. The subject block is currently divided by zoning districts. The portion fronting on Park

Avenue South for a depth of 100 feet is zoned C6-4A, a contextual 10 FAR district. The remainder of the block is zoned C5-2, a 10 FAR district that does not require a contextual envelope. Both existing zones are bonusable to 12 FAR through the inclusionary housing bonus.

The proposed rezoning would allow the potential floor area for the proposed building to be increased from a maximum of 302,813 square feet under the existing zoning to 523,574 square feet under the proposed zoning. The proposed building would contain 417,544 square feet of floor area.

Zoning Text Amendment (N 040497 ZRY)

The applicant proposes to amend Section 74-721(a) to add to the type of modifications that can be granted. The section currently allows for the modification of height and setback and tower coverage regulations by City Planning Commission special permit for zoning lots in high density zoning districts that have a minimum lot area of 40,000 square feet. As proposed, the amended text would also allow for the modification of: 1) court regulations, 2) yard regulations, 3) distance between buildings on a single zoning lot, and 4) distance between legally required windows and walls or lot lines.

These additional waivers would be allowed only in 15 FAR districts, which the applicant believes require additional flexibility than 10 FAR districts in order to accommodate the increased bulk. Because the Section 74-721 special permit is not applicable within either the Special Lower Manhattan District and the Special Midtown District, the modified portion of the text would only be applicable in 15 FAR districts outside of these areas. There are only three such areas in the City:

- 1) The four-block area directly south of the subject block bounded by East 23rd Street, Madison Avenue, East 27th Street and Park Avenue South in Manhattan;
- 2) The area along Park Avenue from East 32nd Street to the midblock between East 34th and 35th streets in Manhattan; and
- 3) A three-block area in the Court Square Subdistrict of the Special Long Island City District in Queens.

As part of the text amendment, the applicant also proposes to make several clarifications to other portions of Section 74-721. These additional changes have no material effect on the section.

Special Permit (C 040495 ZSM)

Pursuant to the revised Section 74-721(a), the applicant seeks to modify height and setback regulations, distance between buildings, distance between legal required windows and lot lines, and court regulations.

Height and Setback

C5-3 zones require buildings to setback at a certain height and fall behind a sky exposure plane. For wide streets, a 15-foot setback is required with a maximum height of 85 feet, and the sky exposure plane is 5.6:1. For narrow streets, a 20-foot setback is required with a maximum height of 85 feet and the sky exposure plane is 2.7:1. The proposed building does not setback below 85 feet and large portions of the building are located in front of the sky exposure plane.

Distance Between Buildings

Section 23-711 of the Zoning Resolution requires that buildings or portions of buildings on a single zoning lot be separated by a minimum distance of 40 feet. The subject zoning lot contains a merged lot with an existing 15-story building which would be less than 40 feet from the proposed building. Because of the building's faceted façade, the distance between the buildings varies both horizontally and vertically. At its closest point, the distance provided between the buildings is eight feet.

Distance between legal required windows and lot lines

Section 23-861 of the Zoning Resolution requires a minimum distance of 30 feet between a legally required window and a lot line or wall. All rooms in the proposed building would have legal windows with the exception of one room on the 25th through 29th floors in the southwestern corner of the building. The floors below have legal windows through a notch in the building's façade which faces east towards Park Avenue South. On the upper floors, the façade changes resulting in windows that face south towards the outparcel of the block. The windows for those five rooms are eight feet from the side lot line. These floors are above the height of the adjacent outparcel lot, which is substantially overbuilt.

Court Regulations

The southern edge of the proposed building is separated from the adjacent outparcel building by an outer court that is connected to the building's rear yard. This outer court does not meet the 30-foot minimum requirement of Section 23-84. The extent of the waiver requested varies both vertically and horizontally because of the sloping planes of the pavilion. At its narrowest, the outer court has a width of eight feet.

ENVIRONMENTAL REVIEW

This application (C 040495 ZSM), in conjunction with the applications for the related actions (C 040496 ZMM) and (N 040497 ZRY), 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 04DCP058M. 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 August 9, 2004.

UNIFORM LAND USE REVIEW

This application (C 040495 ZSM), in conjunction with the application for the related action (C 040496 ZMM), was certified as complete by the Department of City Planning on August 9, 2004, and was duly referred to Community Board 5 and the Borough President in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules, along with the related non-ULURP text change application (N 040497 ZRY), which was sent to Manhattan Community Board 5, Queens Community Board 2, the Manhattan Borough President and the Queens Borough President for information and review.

Community Board Public Hearing

Community Board 5 held a public hearing on this application on September 9, 2004, and on that date, by a vote of 23 to one with one abstention, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on September 27, 2004.

City Planning Commission Public Hearing

On October 6, 2004 (Calendar No. 5), the City Planning Commission scheduled October 20, 2004, for a public hearing on this application (C 040495 ZSM). The hearing was duly held on October 20, 2004 (Calendar No. 12), in conjunction with the public hearings on the applications for the related actions (C 040496 ZMM and N 040497 ZRY). There were four speakers in favor of the application and one speaker in opposition.

The Councilmember from the Second District spoke in favor of the application. She praised the building's design, stating that the building would be an important addition to Manhattan's built environment. She highlighted her fondness for the relocated entrance to the subway station.

The developer's representative briefly summarized the requested actions, including the zoning map change, the zoning text change and the special permit.

The project's architect of record discussed the proposed building in the context of the Madison Square Park area. He noted the area's architectural heritage with its many significant buildings developed in the early 20th century. He stated that the proposed building would build on and add to that heritage.

The design architect described the building's crystalline structure. The pavillions and oblique angles of the building's facade, he stated, enhance the building's verticality. He noted that the street wall on the Park Avenue South frontage related to the other buildings along that avenue, while the building's angular top related to the other significant skyscrapers in the Madison Square Park area. He stated that the building's modern design added vitality to the area's historic character while respecting the area's character. He explained the design of the relocated subway entrance noting that the entrance was designed to be dramatic and to allow natural light to penetrate below grade.

One speaker, a tenant of 394 Park Avenue South (the eight-story loft building to be demolished as part of the proposed development), spoke in opposition to the applications. He stated that his family's business had been in the area for many years and that he had not been adequately notified that he was going to be evicted in order to facilitate the development of the proposed building.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this the special permit, in conjunction with the related

applications for a zoning map amendment (C 040496 ZMM) and a zoning text amendment (N 040497 ZRY), is appropriate.

The Commission recognizes that the proposed building has a unique design that does not conform to several of the requirements of the Zoning Resolution. The Commission is aware that the applicant would be able to comply with these requirements but has chosen not to in order to produce a building of exceptional design.

The Commission believes that the requested height and setback waivers provide a better distribution of bulk on the zoning lot. These modifications permit the mass of the building to be distributed in a manner that minimizes the building's overall height (an as-of-right building could be almost 200 feet taller). The proposed higher street wall allows the building to better fit into the context of the area, especially along Park Avenue South which contains buildings with street walls well above the 85-foot height limit of C5-3 districts. The Commission believes that these height and setback waivers allow for a unique design that complements and adds to the architectural heritage of the surrounding area.

The Commission believes that the separation of the proposed building from the adjacent buildings allows more light and air to penetrate into the building. While this separation requires the modification of the minimum distance between two buildings on a zoning lot and minimum court dimensions, the Commission believes that the proposed building's faceted design facilitates the provision of light and air to the building's units and the requested modifications will not have an adverse impact on the provision of light and air to

buildings and streets in the surrounding area.

The Commission notes that the waiver of the minimum distance between legal windows and a lot line only affects windows in one room on the 25th through 29th floors. The Commission also notes that the windows for these five rooms are above the height of the adjacent building. Because that building is substantially overbuilt, the Commission does not believe that that building will be enlarged or rebuilt in a manner that would affect the provision of light and air to the five rooms in the proposed building.

The Commission commends the unique design of the building and applauds the developers for selecting an innovative team that has created a design that elevates the architectural bar for residential buildings.

Zoning Map Amendment (C 040496 ZMM)

In approving the related zoning map change, the Commission recognizes that the subject block is more similar in scale to the blocks to the south (which are zoned 15 FAR) than it is to the blocks to the north (which are zoned 10 FAR). The subject block (exclusive of the development site) has an FAR of 12.08, which is similar to the FARs of three of the four blocks to the south (those four blocks have FARs of 12.84, 14.74, 22.45 and 12.23). The blocks to the north have an average FAR of 9.81, significantly lower than the FAR of the subject block. In allowing the increased density, the Commission recognizes that the immediate area is extremely well-served by public transportation, with a several subway stations nearby, including one on the subject block.

Zoning Text Amendment (N 040497 ZRY)

In approving the related text change, the Commission is aware that the text change would allow for additional bulk waivers for zoning lots in 15 FAR districts that have a minimum lot area of 40,000 square feet. The Commission believes these additional waivers are appropriate in order to accommodate bulk and allow design flexibility in very high density districts.

The Commission notes that the applicability of this text change would be limited. Because the Section 74-721 special permit is not applicable in either the Special Lower Manhattan District or the Special Midtown District, the modified portion of the text would only apply to the three areas in the City (two in Midtown South and one in Long Island City).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-721(a) (Height and setback and yard regulations) of the Zoning Resolution:

- the modifications provide a better distribution of bulk on the zoning lot;
- the modifications result in a better relationship of the building to open areas, adjacent streets and surrounding development; and
- the modifications provide adequate light and air for buildings on the zoning lot and neither impair access to light and air to legal required windows in adjacent buildings nor adversely affect adjacent zoning lots by unduly restricting access to light and air to surrounding streets and properties.

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 400 Park Avenue South, LLC for the grant of a special permit pursuant to Section 74-721(a) of the Zoning Resolution to modify the height and setback regulations of Section 23-60, the distance between buildings regulations of Section 23-70, and the court and minimum distance between required windows and walls or lot line regulations of Section 23-80 to facilitate the development of a 475.53 foot-high, 40-story mixed use building on property located at 400 Park Avenue (Block 857, Lots 24, 40 and 46), in a C5-3 District, Borough of Manhattan, Community District 5, is approved, pursuant to Section findings of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 040495 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 Gary Edward Handel and Associates, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-2	Att. 2&4, Zoning Calculations	June 2, 2004
Z-4	Att. 4 - Height & Setback	June 3, 2004
Z-5	Buildings Sections & Elevations	June 3, 2004
Z-7	Att. 4 - Modifications Requested	June 3, 2004

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 and the attached restrictive declaration 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 or of the attached restrictive declaration.

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 040495 ZSM), duly adopted by the City Planning Commission on November 17, 2004 (Calendar No. 22), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, 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., Alfred C. Cerullo, III, Jane D. Gol, Christopher Kui, John Merolo, Karen A. Phillips, Dolly Williams Commissioners.