



CITY PLANNING COMMISSION

December 22, 2004 | Calendar No. 18

C 050054 ZSM

IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development and the Dermot Company pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(b) of the Zoning Resolution to permit residential and non-residential uses to be arranged within a building without regard for the regulations set forth in Section 32-42 (Location within Buildings) to facilitate the development of two mixed buildings (Block 1080, part of Lot 25, Block 1081, Lot 39 and part of Lot 29), within a general large-scale development, generally bounded by West 53rd Street, Tenth Avenue, West 51st Street and a line 275 feet westerly of Tenth Avenue, in a C6-3 District, within the Special Clinton District, in the Clinton Urban Renewal Area, Community District 4, Borough of Manhattan.

The application was filed by the Department of Housing Preservation and Development (HPD) and The Dermot Company on August 9, 2004, for a special permit pursuant to Section 74-744(b) of the Zoning Resolution to allow residential and non-residential uses to be located within a building without regard for the regulations specified in Section 32-42 to facilitate the development of two mixed-use buildings on property generally bounded by West 53rd Street, Tenth Avenue, West 51st Street, and a line located approximately 275 feet west of Tenth Avenue in the Special Clinton District Excluded Area, within the Clinton Urban Renewal Area.

RELATED ACTIONS

In addition to the special permit which is the subject of this report (C 050054 ZSM), 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:

C 050050 ZMM: a zoning map amendment to rezone M1-5 and R8 portions of the project

site to C6-3 to facilitate the construction of a mixed-use development;

N 050051 ZRM: zoning text amendment to allow for modification of open space requirements within general large-scale developments in the Special Clinton District;

C 050052 ZSM: a special permit, pursuant to Section 74-681, for development within or over a railroad right-of-way or yard;

C 050053 ZSM: a special permit, pursuant to Sections 74-743, 74-743(a)(1), 74-743(a)(2), and 96-40, to allow for the distribution of floor area across zoning lot lines and modification of height, setback, minimum distance between buildings, open space, and yard regulations in a proposed general large-scale development;

C 050055 HAM: UDAAP designation and project approval and disposition of City-owned property.

BACKGROUND

The 69,990 square foot project site occupies portions of two blocks (1080 and 1081) bounded by West 51st Street, Tenth Avenue, West 53rd Street, and Eleventh Avenue within the Special Clinton District Excluded Area and also within the Clinton Urban Renewal Area (CURA; Sites 8 & 9). The south parcel is a City-owned, approximately 22,900 square foot midblock parcel located approximately 125-250 feet west of Tenth Avenue between West 51st and West 52nd Streets. The north parcel is approximately 47,061 square feet in area, is also City-owned and is located on the midblock between West 52nd and West 53rd Streets and includes the West 53rd Street frontage extending east to Tenth Avenue. An approximately 4,400 square foot City-owned community garden adjacent to the north parcel is proposed to be included in the proposed general large-scale development.

A more detailed description of the proposed project and the area is contained in the report on the related special permit application (C 050053 ZSM).

ENVIRONMENTAL REVIEW

This application (C 050054 ZSM), in conjunction with related applications (C 050050 ZMM, N 050051 ZRM, C 050052 ZSM, C 050053 ZSM, C 050055 HAM), 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 04HPD011M. The lead is the Department of Housing Preservation and Development.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on August 4, 2004

UNIFORM LAND USE REVIEW

This application (C 050054 ZSM), in conjunction with related applications (C 050050 ZMM, C 050052 ZSM, C 050053 ZSM, C 050055 HAM), was certified as complete by the Department of City Planning on August 23, 2004, and was duly referred to Community Board 4 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules, along with the application for the zoning text amendment (N 050051 ZRM) which was referred for

review and comment.

Community Board Public Hearing

Community Board 4 held a public hearing on this application on October 6, 2004, and on that date, by a vote of 29 to 0 with 1 abstention, adopted a resolution recommending approval of the application with conditions.

A summary of that recommendation appears in the report on the related special permit application (C 050053ZSM).

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on October 26, 2004, with conditions.

A summary of that recommendation appears in the report on the related special permit application (C 050053ZSM).

City Planning Commission Public Hearing

On November 3, 2004 (Calendar No. 8), the City Planning Commission scheduled November 17, 2004, for a public hearing on this application (C 050054 ZSM). The hearing was duly held on November 17, 2004 (Calendar No. 14). There were four speakers in favor of the application and no

speakers in opposition, as described in the report on the related special permit application (C 050053 ZSM).

CONSIDERATION

The Commission believes that the application for a special permit (C 050054 ZSM) is appropriate.

A detailed description of the application is contained in the report for the related special permit (C 050053 ZSM).

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Sections 74-744(b) of the Zoning Resolution:

1. the commercial uses are located in a portion of the mixed building that has separate access to the outside with no opening of any kind to the residential portion of the building at any story; and
2. the commercial uses are not located directly over any story containing dwelling units; and
3. the modifications shall not have any adverse effect of the uses located within the building.

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 201 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by the Department of Housing Preservation and Development and the Dermot Company pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(b) of the Zoning Resolution to permit residential and non-residential uses to be arranged within a building without regard for the regulations set forth in Section 32-42 (Location within Buildings) to facilitate the development of two mixed buildings (Block 1080, part of Lot 25, Block 1081, Lot 39 and part of Lot 29), within a general large-scale development, generally bounded by West 53rd Street, Tenth Avenue, West 51st Street and a line 275 feet westerly of Tenth Avenue, in a C6-3 District, within the Special Clinton District, in the Clinton Urban Renewal Area, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 050054 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 Fox & Fowle Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-104	Railroad right-of-way, Plan & Sections	12/15/04
Z-202	Illustrative Ground Floor Site Plan	12/15/04

Z-203	Zoning Analysis	12/15/04
Z-301	Average Curb Level/Base Plan	7/26/04
Z-402	Encroachment Diagrams	8/18/04
Z-403	Building Envelope Controls-Plans	7/26/04
Z-408	Height and Setback Encroachment Diagrams	7/26/04
Z-409	Height and Setback Encroachment Diagrams	7/26/04
Z-410	Yard Requirements	8/18/04
Z-411	Open Space Diagram	7/26/04

- 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 050054 ZSM), duly adopted by the City Planning Commission on December 22, 2004 (Calendar No. 18), 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 Chair

ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,

RICHARD W. EADDY, JOHN MEROLO, DOLLY WILLIAMS, Commissioners

ALFRED C. CERULLO, III, Commissioner, Recused