



CITY PLANNING COMMISSION

June 23, 2004/Calendar No. 19

C 040331 ZMM

IN THE MATTER OF an application submitted by the Department of City Planning and Richard Chapman and Associates pursuant to Sections 197-c and 201 of the New York City Charter **for an amendment of the Zoning Map, Section Nos. 8d and 12c, changing from an M1-6M District to a C6-4A District property bounded by West 22nd Street, a line 100 feet westerly of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet easterly of Avenue of the Americas**, as shown on a diagram (for illustrative purposes only) dated March 22, 2004, and subject to the conditions of CEQR Declaration E-131, Borough of Manhattan, Community District 5.

The application for an amendment of the Zoning Map (C 040331 ZMM) was filed by the Department of City Planning and Richard Chapman and Associates on March 15, 2004, to rezone a 5 1/2-block area in the Flatiron District from M1-6M to C6-4A. The rezoning would update the zoning regulations to more accurately reflect the mixed-use character of the area, allow for residential development on underutilized lots in the area, and ensure that new development is in character with the built context of the surrounding area.

RELATED ACTIONS

In addition to the an amendment of the Zoning Map (C 040331 ZMM) which is the subject of this report, implementation of the proposed action also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

1. N 040332 ZRM Zoning text amendments to Sections 11-44, 23-633, 23-663 and 35-24 of the Zoning Resolution that would clarify the zoning text, grandfather a previously approved special permit, and allow street wall heights to be raised up to 150 feet to match adjacent street walls.

2. C 040333 ZSM Special permit for a 363-space underground attended public parking garage at 7-13

West 21st Street.

3. C 040334 ZSM Special permit for a 105-space underground attended public parking garage at 4 West 21st Street.

BACKGROUND

Land Use and Neighborhood Character

The Rezoning Area, which is almost entirely located within the Ladies' Mile Historic District, is dominated by loft buildings with high street walls constructed during the late nineteenth and early twentieth centuries – prior to the adoption of the 1916 zoning ordinance. These buildings are generally in the range of 100 to 150 feet in height, and are constructed to their full heights at the lot line without setbacks. Interspersed among these loft buildings are one- to six- story commercial buildings, and a number of former row houses. The area also contains several parking lots on sites once occupied by buildings that have either been demolished or destroyed. Significantly, there has been little new construction in the Rezoning Area since the adoption of the 1916 zoning ordinance and no new construction of manufacturing space in the area in over forty years.

In the early 1980s, the Rezoning Area was rezoned from M1-6 to M1-6M in recognition of the rapid decline of manufacturing activities and the increasing prevalence of residential conversions in the area. The M-suffix was added to guide the transition of the area from a manufacturing center to a mixed use commercial and residential area. Today, the area contains a mix of commercial, institutional and residential uses with a small number of remaining manufacturers. Three percent of the jobs in the area are in the manufacturing sector, representing a 46 percent decline since 1990.

The decline in manufacturing uses has been balanced over the past three decades by increases in commercial, retail and residential uses. Today, almost 70 percent of the occupied building area is used for office, retail and other commercial activity, and about 6 percent is devoted to wholesale uses. Most of the commercial uses are services, with approximately half being media related, such as advertising, film, graphic design, photo, computer services and digital printing.

Approximately 11 percent of the space is used by community facilities. The balance contains the area's approximately 340 occupied dwelling units. These include units occupied prior to 1961, Interim Multiple Dwelling Units designated by the Loft Board, units converted through a BSA variance, and units permitted through certification by the City Planning Commission. Much of the residential space is located on individual floors of buildings that have substantial non-residential occupancies, reflecting the rules governing conversions pursuant to M1-6M zoning controls.

The current mix of uses in the neighborhood indicates that the area has undergone a transition from one dominated by manufacturing to one with extensive office and retail use and a significant residential presence. M1-6M controls have not, however, encouraged the most appropriate use of currently undeveloped land because the regulations allow new construction for only manufacturing and commercial purposes, neither of which is economically feasible on the available development sites in the Rezoning Area. Because of this, the undeveloped sites in the area have remained as parking lots for decades despite the area's increased popularity, central location, and excellent access to public transportation.

Project Background

The application seeks to rezone a 5-½ block area located on the midblocks between Fifth and Sixth avenues, from the centerline between West 16th and 17th streets to the south, to West 22nd Street on the north (the

“Rezoning Area”). Except for two properties in its southwest corner, the entire rezoning area is located within the Ladies’ Mile Historic District.

The area is currently zoned M1-6M — a 10 FAR zone that allows for a mix of manufacturing and commercial uses. Residential conversions are allowed provided that a portion of the building being converted or a comparable building in the area is preserved for manufacturing or commercial use. Full buildings can convert pursuant to several authorizations and special permits. New residential construction is not allowed as-of-right in the M1-6M zone.

The application proposes to rezone the area to C6-4A — a 10 FAR contextual zone which would allow for a similar mix of uses and would allow for as-of-right residential construction and conversion. The rezoning would update the zoning regulations to more accurately reflect the mixed-use character of the area, and would ensure that new development is in character with the built context of the surrounding area.

Concurrent with the zoning map amendment, this application seeks to implement changes to the following sections of the Zoning Resolution:

- **Section 11-44** (Special permits granted prior to [effective date of amendment])
- **Section 23-633** (Street wall location and height and setback regulations in certain districts)
- **Section 23-663** (Required rear setbacks for tall buildings in other districts)
- **Section 35-24** (Special street wall location and height and setback regulations in certain districts)

Amendments to Sections 23-633 and 35-24 would permit, only within the rezoning area, an increase in the maximum permitted street wall height from 125 feet to either 150 feet or the height of an adjacent building, whichever is less. The amendment to Section 11-44 would allow projects with previously approved special

permits to continue, including one recently approved project at 38-42 West 18th Street. The amendment to Section 23-663 is an administrative correction that would clarify the zoning text.

This application (C 040331 ZMM) along with the related text change application (C 040332 ZRM) is being submitted jointly by the Department of City Planning and a private applicant that controls two parking lots in the Rezoning Area that it intends to develop with residential buildings. The private applicant is the sole applicant for two special permit applications (C 040333 ZSM and C 040334 ZSM) for public parking garages on its two development sites. These garages would replace the parking provided on the parking lots that are likely to be developed under the proposed zoning.

Purpose and Need

The proposed zoning map and text changes are intended to:

- ***Update the zoning to reflect the current mixed-use character of the area***

The area has transitioned from a largely commercial and manufacturing center to one with a lively mix of commercial, retail, institutional and residential uses. Today, the area contains almost 350 residential units and only three percent of the jobs in the area are in the manufacturing sector.

- ***Allow for residential development on underutilized lots***

The area contains several undeveloped sites that have remained as parking lots for decades because there has not been a demand for new commercial or manufacturing space in the area. Though there are significant residential pressures in the area, the current zoning does

not allow for new residential construction. The proposed zoning would allow the parking lots to be developed with residential buildings helping to address the City's housing shortage.

- ***Strengthen and preserve the existing built character of the area***

The existing zoning permits building types that do not reflect the prevailing character of the surrounding area. The lack of zoning controls governing height and setback encourages tower development without height limitations that contrasts sharply with the existing built character of the neighborhood. The proposed zoning would ensure that any new development will be in character with the built context of the surrounding historic district.

Proposed Zoning Map and Text Amendments (C6-4A)

The proposed C6-4A zone allows for a mix of commercial and residential uses with an FAR of 10 (bonusable to 12 with inclusionary housing). The C6-4A zone caps overall building heights at 185 feet and requires a street wall of between 60 and 125 feet. The related zoning text change (N 040332 ZRM), applicable only to this area, would allow a street wall height up to 150 feet — a typical street wall height in the area. These bulk regulations would replace the tower rules of the existing M1-6M zoning, which limit street walls to just 85 feet, allow a building to set back from the street line, and allow a building to rise without a height limit.

The proposed zoning text amendments to allow a higher street wall would facilitate new as-of-right development having appropriate building forms. The higher street wall would allow new buildings to more closely match the area's linear median street wall height of 145 feet.

The proposed C6-4A zoning would reflect the evolution of the Rezoning Area from one dominated by manufacturing uses to one with a wide mix of uses with a significant residential presence. Though new

manufacturing uses would not be allowed, existing manufacturers would remain a conforming use and would be permitted to expand pursuant to Section 15-021 of the Zoning Resolution. The zoning would permit the construction of much-needed housing, including the potential for affordable housing built pursuant to the inclusionary housing bonus.

The private applicant intends to construct residential developments on the two properties he controls which would include two public parking garages which are the subject of the two special permits described below.

Public Parking Garage Special Permits

One of the proposed public parking garages (7-13 West 21st Street) (C 040333 ZSM) would be located on a through-block site between West 21st and West 22nd Street just west of Fifth Avenue. The site is currently operated as a public parking lot with a capacity of 180 spaces. The applicant intends to construct an approximately 288,000 sq. ft. residential building on the site. The requested special permit would allow for the construction of a 363-space public parking garage with 18 reservoir spaces in the building's basement.

The other proposed public parking garage (4 West 21st Street) (C 040334 ZSM) would be located on the south side of West 21st Street between Fifth and Sixth avenues. The site is also currently operated as a public parking lot with a capacity of 100 spaces. The applicant intends to construct an approximately 94,000 sq. ft. residential building on the site. The requested special permit would allow for the construction of a 105-space public parking garage with 10 reservoir spaces in the building's basement.

ENVIRONMENTAL REVIEW

This application (C 040331 ZMM), in conjunction with the applications for the related actions (N 040332 ZRM), (C 040333 ZSM) and (C 040334 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 04DCP038M.

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 22, 2004.

The negative declaration included an (E) designation. The placement of the (E) designation (E-131) on the zoning map would eliminate the potential for significant adverse impacts.

To avoid any potential impacts associated with emissions, as part of the proposed action, the following (E) designation for air quality will be placed on the following properties:

Block 819, Lots 14, 15 and 66
Block 822, Lot 45
Block 823, Lot 31

The text of the (E) designation is as follows:

Any new development on the above referenced property must use natural gas as the type of fuel for the HVAC systems.

To avoid any potential impacts associated with noise, as part of the proposed action, the following (E) designation for noise will be placed on the following properties:

Block 818, Lot 56
Block 819, Lots 6, 14, 15, 26, 32, 59 and 66
Block 821, Lots 24 and 58
Block 822, Lots 45 and 51 and the eastern p/o Lot 19
Block 823, Lots 16, 17, 31 and 64

The text of the (E) designation is as follows:

In order to ensure an acceptable interior noise environment, future residential uses must provide a closed window condition with a minimum of 35 dB(A) window/wall attenuation in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.

To avoid the potential for hazardous materials impacts, the proposed zoning map amendment includes (E) designations for hazardous materials (E-114), which would be established on the following parcels:

Block 818, Lot 56
Block 819, Lots 6, 14, 15, 26, 32, 59, 66
Block 821, Lots 24, 58
Block 822, Lots 45, 51 and the eastern p/o Lot 19
Block 823, Lots 16, 17, 64

The (E) designation for hazardous materials would ensure that sampling and remediation take place where hazardous material contamination may exist and would avoid any significant impacts related to hazardous materials at these locations. The (E) designation would require that the fee owner of such site conduct a testing and sampling protocol, and remediation where appropriate, to the satisfaction of the New York City Department of Environmental Protection (NYCDEP) before the issuance of a building permit by the New York City Department of Buildings (NYCDOB) pursuant to the provisions of Section 11-15 of the Zoning Resolution (Environmental Requirements). The (E) designation also includes a mandatory construction-related health and safety plan which must be approved by NYCDEP.

The proposed action also includes a Restrictive Declaration in connection with the special permit for the proposed public parking garage at 7-13 West 21st Street (Block 823, Lot 31). The Restrictive Declaration would ensure that significant adverse impacts related to hazardous materials would not occur in connection with the redevelopment of the site.

UNIFORM LAND USE REVIEW

This application (C 040331 ZMM), in conjunction with the applications for the related actions (C 040333 ZSM) and (C 040334 ZSM), was certified as complete by the Department of City Planning on March 22, 2004, and was duly referred to Community Board 5 and the Borough President, along with the related non-ULURP text change application (N 040332 ZRM), which was sent to the board and the Borough President for information and review, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 5 held a public hearing on this application on April 8, 2004, and on that day, by a vote of 26 to three with one abstention, adopted a resolution recommending disapproval with conditions of the application with the following comment:

that Community Board Five does not approve this application to rezone an approximately 5.5 block area in the Ladies-Mile Historic District (17th B 22nd Streets, between 5th and 6th Avenues) from M1-6M to C6-4A, to allow for new residential development, unless the new zoning excludes new bars and nightclubs, requires sufficient off-street parking and includes specific provisions to encourage the inclusion of affordable housing.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation disapproving the application with conditions on May 14, 2004.

The Borough President's recommendation included the following comments:

1. There can be no additional clubs of 200+ people to be built as of right
2. All new developments, where possible, provide public parking

City Planning Commission Public Hearing

On May 12, 2004 (Calendar No. 2), the City Planning Commission scheduled May 26, 2004, for a public hearing on this application (C 040331 ZMM). The hearing was duly held on May 26, 2004 (Calendar No. 20), in conjunction with the public hearings on the applications for the related actions (N 040332 ZRM), (C 040333 ZSM) and (C 040334 ZSM). There were two speakers in favor of the application and 14 speakers in opposition.

A representative of the private co-applicant spoke in favor of the application and responded to concerns raised by Community Board 5 and the Borough President's Office. He noted that the co-applicant has agreed to not place any new nightclubs in new buildings that he would build as a result of the rezoning. He further noted that the rezoning would likely result in the development of a number of affordable units through the use of either the inclusionary housing program or through the 80/20 program, and noted that requiring parking in central Manhattan would be out of scope and would require the revision of decades-old regulations that were adopted as a result of the Clean Air Act.

A representative for the Real Estate Board of New York also spoke in favor of the application. He supported the Department of City Planning's citywide efforts to update the zoning in areas zoned for manufacturing that contain very few remaining manufacturing jobs. Areas like the Ladies' Mile area, he stated, are logical places to update the zoning in order to allow for new and needed housing opportunities.

Fourteen speakers spoke in opposition to the rezoning. Speakers included residents of the area and representatives from local civic groups and elected officials. They raised concerns regarding nightclubs, building construction, traffic, affordable housing, job displacement and parking.

The majority of speakers in opposition noted that the area is home to a number of bars and nightclubs that have created quality-of-life issues for area residents in terms of noise, crime and litter. They noted that nightclub patrons often make noise going to, coming from, and loitering outside of nightclubs. The patrons generate large amounts of litter and create an unsafe environment. The speakers noted that it is an ongoing problem that has not been adequately addressed by enforcement. Several of the speakers asked that the Department prohibit all new nightclubs and bars in the area because they feel the area is oversaturated with such places.

The speakers noted that a level of protection against nightclubs would be removed as a result of the rezoning. They stated that the current M1-6M zone requires a special permit from the Board of Standards and Appeals for any new eating or drinking establishment with a capacity of over 200 people, or any eating or drinking establishment with dancing regardless of size, and the proposed C6-4A zoning would not require such a permit. The speakers asked that the requirement for a special permit be retained.

A representative of The Drive to Protect the Ladies' Mile District, a local historic preservation group, echoed the sentiments regarding quality-of-life, but noted that, by filling in the gaps created by the parking lots, the rezoning would reinforce the historic character of the area. He stated that his group was supportive of the zoning text change to allow a higher street wall height in order to match adjacent buildings.

Several speakers stated that the rezoning would not require sufficient parking for the area and that additional parking should be required on the other projected development sites not subject to the two garage special permits. One speaker noted that the addition of more parking spaces, by drawing more cars to the area, would exacerbate traffic congestion in the area.

Representatives of two state senators from the 26th and 29th districts read statements on behalf of the state senators. They stated that concerns regarding affordable housing, parking and nightclubs have not been adequately addressed by the proposed rezoning. Though they were aware that addressing some of these issues were beyond the scope of the rezoning, they asked that the City undertake better enforcement of existing nightclub complaints and commit more resources to providing affordable housing.

A number of other issues were raised by the speakers in opposition. Several speakers questioned the validity of the public-private partnership between the parking lot owners and the City, arguing that it is a conflict of interest for the private applicant to fund the Environmental Assessment Statement. Several speakers noted that the noise and traffic generated by the construction of new buildings in the area would further degrade quality-of-life in an area that already suffers from noise and traffic problems. Finally, one speaker stated that the parking lots ameliorate sound in the area and that new buildings would exacerbate noise issues.

The City Planning Commission has also received letters supporting the rezoning from the Real Estate Board of New York, the 23rd Street Association, the Landmarks Conservancy and the New York Chapter of the American Institute of Architects. Each praised the Department's efforts to update the zoning to reflect the current character of the area, and to allow for residential growth in an envelope that respects the area's historic built context.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this amendment of the Zoning Map, in conjunction with the related text change (N 040332 ZRM) and two special permits (C 040333 ZSM and C 040334 ZSM), is appropriate.

The Commission recognizes that the area has transitioned from a largely commercial and manufacturing center to a commercial area with a significant residential presence and very little remaining manufacturing activity. The Commission believes that the rezoning recognizes this change by more accurately reflecting the uses in the area today. The Commission notes that the manufacturing uses that remain in the area will continue to be conforming uses pursuant to Section 15-021 and will be permitted to expand within the buildings in which they are located.

The area contains several undeveloped sites that have remained as parking lots for decades because there has not been a demand for new commercial or manufacturing space in the area. The Commission notes that the rezoning would allow these sites to be developed with residential buildings containing approximately 900 new apartments. These buildings would put currently underutilized land into productive use and will make a meaningful contribution to the City's effort to address its housing shortage. The Commission believes that a number of affordable units could be created by these new developments through the use of either the inclusionary housing program or the 80/20 program.

The Commission is aware that the current zoning strictly prohibits high street wall buildings that are characteristic of the area, and that the current zoning allows for inappropriate buildings without height limits or street wall requirements. The contextual envelope mandated by the C6-4A zone would ensure that all new development is in character with the built context of the surrounding area. The Commission believes that the zoning text change that would allow for the street wall of a new building to be raised up to a maximum for 150 feet in order to match an adjacent building would promote good urban design by facilitating construction of a building form more likely to be found "appropriate" by the Landmarks Preservation Commission.

The Commission approves the two public parking garage special permits submitted by the private co-applicant that would replace most of the parking spaces that exist on the parking lots that are anticipated to be developed as a result of the rezoning. The Commission is aware that the two garages would result in a net increase of 188 parking spaces on those two sites, and is also aware that the other sites, if and when they are developed, may request a special permit for a public parking garage. Because the area is extremely well served by public transportation, the Commission does not believe it is necessary or appropriate to require public parking on these other sites.

The Commission is aware that many residents in the community are concerned about nightclubs in the area and the quality-of-life problems that they generate. The Commission recognizes that the rezoning area has been the source of numerous complaints against such places. Though the Commission is aware that the owners of several development sites in the area have agreed to not place any new nightclubs in new buildings on the site, the Commission is sympathetic to the concerns raised during public review that the new zoning would remove a level of protection against new nightclubs—the requirement for a BSA special permit for eating and drinking establishments with a capacity of over 200 people, and eating or drinking establishments with dancing of any size. In response to these concerns, the applicants have revised the application for the zoning text amendment (N 040332 ZRM) to restore the requirement for the BSA special permit in this area. The Commission recognizes that this area is unique among high-density C-zones because of its emerging residential population, its concentration of late-night establishments and its current protections under M1-6M zoning.

In approving this application, the Commission believes that the proposed amendments to the Zoning Map and the Zoning Resolution would contribute to the Department's ongoing efforts to update zoning to more

accurately reflect existing conditions, to preserve and strengthen the built character of neighborhoods, and to increase the City's housing supply.

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 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 by changing the Zoning Map, Section Nos. 8d and 12c, changing from an M1-6M District to a C6-4A District property bounded by West 22nd Street, a line 100 feet westerly of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet easterly of Avenue of the Americas, Borough of Manhattan, Community District 5, as shown on a diagram dated March 16, 2004 (N 04 0331 ZMM) and which includes the designation CEQR E-131.

The above resolution (C 040331 ZMM), duly adopted by the City Planning Commission on June 23, 2004 (Calendar No. 19), 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., RICHARD W. EADDY,
ALEXANDER GARVIN, JANE D. GOL, CHRISTOPHER KUI, JOHN MEROLO,
KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners