



CITY PLANNING COMMISSION

October 11, 2006 | Calendar No. 10

C 060334 ZSM

IN THE MATTER OF an application submitted by SCW West LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681 of the Zoning Resolution to allow a portion of a railroad right-of-way which will be completely covered over by a permanent platform to be included in the lot area of property located at 505-513 West 43rd Street a.k.a. 506-512 West 44th Street (Block 1072, Lot 24) to facilitate the development of two hotels, in M1-5, R8/C2-5 and R8 Districts, within the Special Clinton District, Community District 4, Borough of Manhattan.

The application was filed by SCW West LLC on February 14, 2006, for a special permit pursuant to Section 74-681 of the Zoning Resolution to allow portions of a railroad right-of-way which will be completely covered by a permanent platform to be included in lot area for the development of two hotels on a through block property located west of Tenth Avenue between West 43 and West 44th streets in the Special Clinton District Other Area and Preservation Area.

BACKGROUND

The project site is an approximately 20,000 square foot, through block zoning lot extending between West 43rd and West 44th streets west of Tenth Avenue in the Clinton neighborhood. The site is vacant and characterized by exposed rock and steep slopes leading down to two active Amtrak rail tracks within an open, below-grade railroad cut. West 43rd and West 44th streets pass over bridges located above the rail cut adjacent to the north and south sides of the project site.

The project site is split between two zoning districts. The eastern portion of the site, comprising approximately 4,090 square feet, is located within an R8 zoning district that is also within the

Preservation Area of the Special Clinton District. The western portion of the site, approximately 15,825 square feet in area, is located within an M1-5 district that is also within the Other Area of the Special Clinton District. Because the eastern portion of the site contains less than 50% of the total lot area and because the distance from the district boundary to the zoning lot line is less than 25 feet, the applicant intends to apply the M1-5 district regulations to the entirety of the zoning lot pursuant to Section 77-11. The M1-5 district regulations allow for a floor area ratio of 5.0 for light manufacturing and commercial uses.

Land uses immediately surrounding the project site are varied. Directly east of the project site, fronting on Tenth Avenue and West 43rd Street, are five walk-up residential buildings with ground floor retail uses and a one-story retail establishment. To the west of the project site are several small automotive repair shops fronting on West 44th Street and a three-story rental car facility fronting on West 43rd Street. The Research Library Annex of the New York Public Library is located in a six-story building fronting on both West 43rd and West 44th streets. Other uses on the block include an approximately 20,000 square foot public parking lot, a three-story parking garage and automotive repair facility, a seven-story self storage warehouse, and, fronting on Eleventh Avenue, an automotive repair establishment, vacant lot, and one-story diner.

The larger area around the project site is a mix of residential and commercial uses. South of the project site, across West 43rd Street, the character is primarily residential. Five residential buildings, four of which are greater than 22 stories in height, front on West 43rd Street. One of these towers

serves as residences for the Chinese Consulate, which is located one block west on Twelfth Avenue.

In addition, a 160-room hotel, four-story firehouse, and a five-story former commercial building front on West 43rd Street. North of the project site, across West 44th Street, uses are primarily auto-oriented. A gas station fronts on Tenth Avenue with an open rail cut to the west, directly north of the project site. Further west are a playground for a public elementary school that fronts on West 45th Street, a vacant one-story factory, and a large surface parking lot on the midblock and fronting on Eleventh Avenue. The surrounding blocks to the south and to the east in the Preservation Area of the Special Clinton District are primarily residential. The blocks to the north contain a mix of residential and commercial uses while those to the west are primarily commercial and automotive in nature.

The applicant intends to construct a platform covering the railroad cut across the entire zoning lot, including the entirety of the railroad easement as well as the adjacent rock slopes. The applicant intends to construct two hotels on this platform (approximately 100,000 zsf total) with a total of 354 hotel rooms in both buildings. One hotel would front on each street frontage and an as-of-right, accessory parking lot would be located between the two buildings.

Each hotel would conform to the M1-5 district regulations and would have 98 feet 10 inches of street frontage and would be set back 15 feet from the street line. The setback was in part necessitated by the Department of Transportation requirements to facilitate inspection, maintenance and repair of the West 43rd and West 44th street bridge structures over the rail cut. The South Hotel would be 12

stories and approximately 118 feet in height and would contain 203 hotel rooms. The North Hotel would be 9 stories and approximately 90 feet in height and would contain 151 hotel rooms. There would be no additional setback beyond the initial 15-foot setback from the street line. Each hotel would have a ground floor lobby and cafeteria but would otherwise contain no further amenities. The as-of-right accessory parking lot would be accessed via one 16-foot wide driveway from West 43rd Street.

Because the site is located above an active railroad right-of-way, a special permit pursuant to Section 74-681 is required.

The parameters for construction of a platform over the right-of-way are set forth in Amtrak's current design standards and the 1932 easement, as modified in 1960, which granted below grade space for construction of the railroad. Amtrak must approve of the applicant's structural design and confirm that adequate ventilation will be provided before construction can commence. Amtrak, in a letter dated June 30, 2005, gave its conceptual approval to the applicant's plans to build over the railroad's tracks subject to the applicant demonstrating compliance with Amtrak's requirements for ventilation, lighting, fire, life/safety, design, construction, and maintenance. Final approval cannot be issued until final plans and specifications are completed.

ENVIRONMENTAL REVIEW

This application (C 060334 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 06DCP036M. The lead is the Department of City Planning.

After a study of the potential environmental impact of the proposed action, the applicant signed a conditional negative declaration on July 6, 2006, stating the following:

The applicant agrees via a restrictive declaration to prepare a hazardous materials sampling protocol including a health safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

The applicant signed the conditional negative declaration on July 6, 2006. The conditional negative declaration was published in the City Record on July 19, 2006, and in the New York State Environmental Notice Bulletin on July 19, 2006. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq., a 30-day comment period followed. No comments were received and the conditional negative declaration was issued on October 10, 2006.

UNIFORM LAND USE REVIEW

This application (C 060334 ZSM) was certified as complete by the Department of City Planning on July 10, 2006, 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.

Community Board Public Hearing

Community Board 4 held a public hearing on this application on July 26, 2006, and on that date, by a vote of 32 to 0 with 1 abstention, adopted a resolution recommending disapproval of the application.

The Community Board cited the following reasons for its disapproval:

We believe...adverse effect[s] on the character of the surrounding area will be reduced if relatively more floor area is located on 43rd Street... and less floor area is located on 44th Street.

The design of the hotel must be much more residential in look, and more horizontal in order to minimize the impact of the buildings height. Cornices should be added to the tops of both buildings.

...[T]he east facades of each building should be treated...windows should be added and the facades should be finished with brick of similar materials...

The open space created by the street line setback in front of each building must be designed and landscaped to integrate with the neighborhood...

Signage and lighting must be sensitive to the residential surroundings. Signs must be illuminated/front lit, not backlit. There should be no signs or lighting on the eastern façade of either building. Lighting in front of each building should be limited to the ground floor only and should be downward facing... [A]ny lighting must be white light, not fluorescent or sodium vapor.

Having any guest parking will allow the hotels to advertise the availability of parking,

encouraging guests to arrive in their own cars... We continue to oppose any parking for hotel guests.

Street trees must be planted in front of both buildings...

The Board strongly supports the use of design and construction practices that significantly reduce or eliminate the negative impact of buildings on the environment, including in particular those practices that will reduce impacts on area residents and local infrastructure.

Every effort must be made to reduce the negative effects of the construction and operation of both hotels on the operations of PS51 and Rescue One.

To better manage the impact of a transient hotel population on its residential surroundings ... neither hotel [should] accept tour bookings.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on August 31, 2006, with the following condition: "...the commitments agreed to in the applicant's letter to the Borough President [dated August 29, 2006,] are fulfilled."

City Planning Commission Public Hearing

On August 23, 2006 (Calendar No. 2), the City Planning Commission scheduled September 13, 2006, for a public hearing on this application (C 060334 ZSM). The hearing was duly held on September 13, 2006 (Calendar No. 16). There were three speakers in favor of the application and no speakers in opposition.

The applicant's architect briefly described the proposal and provided a summary of the proposed modifications that came from the negotiations with Community Board 4 and the Manhattan

Borough President. The architect also provided details regarding the hotel operation, landscaping within the front setbacks, and the type of heating and ventilation systems that would be provided. The applicant's attorney also appeared in favor.

The Director of Land Use for the Manhattan Borough President reiterated the Borough President's support of the proposal and described the community involvement in the public review process. The representative expressed concern regarding the applicant's proposal to locate 12 accessory parking spaces on the project site, but indicated that the Borough President felt that community concerns were substantially addressed.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the application for a special permit (C 060334 ZSM) is appropriate.

The Commission believes that the streets providing access to the proposed development will be adequate to handle the traffic generated. The Commission recognizes that the project would provide parking for 12 vehicles and that the maximum trips generated would be below the threshold that would require detailed traffic analysis. The Commission further notes that the proposed hotel uses would not contain banquet or meeting facilities that would have the potential to generate additional traffic. As such, the proposed development should not unduly burden the surrounding streets.

The Commission also believes that the development will not result in floor area being unduly concentrated on any one portion of the project site. The proposal includes the platforming over the Amtrak railroad cut, which would permit for a more even distribution of floor area across the project site than would otherwise be possible. The proposed development also involves construction of two buildings, one fronting on each street bordering the project site, further distributing the floor area across the property.

The Commission recognizes that the design of the development is being undertaken in consultation with Amtrak to ensure that the various proposed uses on the project site do not conflict with one another and that rail traffic will continue unaffected. The Commission is in receipt of a conceptual letter of approval of the project from Amtrak and acknowledges that Amtrak will continue to fully review all plans for the development to ensure consistency with its rail service operations. The Commission believes that close consultation with Amtrak will ensure that the various uses on the project site will not adversely affect one another and that the development will not impede use of the rail line.

The Commission notes the concerns put forward by Community Board 4 and the Borough President and acknowledges that the applicant has provided a letter to the Borough President detailing the modifications to design and operation of the hotels that were agreed upon during the public review process. The Commission notes the Borough President's commendation of the applicant for their willingness to work with the community and modify the proposal accordingly. The Commission

also acknowledges that the applicant filed a revised application on October 4, 2006, addressing many of the issues raised by Community Board 4 and the Borough President during the public review process.

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Section 74-681 of the Zoning Resolution:

1. the streets providing access to all uses pursuant to paragraph (a) of Section 74-681 are adequate to handle traffic resulting therefrom; and
2. the distribution of floor area and the number of dwelling units or rooming units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development or enlargement, including any portion of the development of enlargement located beyond the boundaries of such railroad or transit right-of-way or yard; and
3. all uses, developments, or enlargements located on the zoning lot or below a platform do not adversely affect one another; and
4. if such railroad or transit right-of-way or yard is deemed appropriate for future transportation use, the site plan and structural design of the development does not preclude future use of, or

improvements to, the right-of-way for such transportation use.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment subject to the following conditions;

For the property located at 505-513 West 43rd Street a.k.a. 506-512 West 44th Street (Block 1072, Lot 24), the applicant agrees via a restrictive declaration to prepare a hazardous materials sampling protocol including a health safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by SCW West LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681 of the Zoning Resolution to allow a portion of a railroad right-of-way which will be completely covered over by a permanent platform to be included in the lot area of property located at 505-513 West 43rd Street a.k.a. 506-512 West 44th Street (Block 1072, Lot 24) to facilitate the development of two hotels, in M1-5, R8/C2-5 and R8 Districts, within the Special Clinton District, Community District 4, Borough of Manhattan, is approved, subject to the following conditions:

1. The property that is the subject of this application (C 060334 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 Gene Kaufman Architect PC, filed with this application and incorporated in this resolution:

<i>Drawing No.</i>	<i>Title</i>	<i>Last Date Revised</i>
A-101	Plot Plan	October 2, 2006
A-102	Zoning Calculations, Plot Plan	October 2, 2006
A-301	Section A-A @ West Rail Profile	October 2, 2006
A-302	Section B-B @ East Rail	October 2, 2006
A-401	South Building Front Elevation	October 2, 2006
A-402	North Building Front Elevation	October 2, 2006

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 plan listed above which has 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 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, and terms or conditions of this resolution, 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 powers of the City Planning Commission, or of any 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.

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 060334 ZSM), duly adopted by the City Planning Commission on October 11, 2006 (Calendar No. 10), 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

IRWIN G. CANTOR, ANGELA R. CAVALUZZI, R.A., ALFRED C. CERULLO, III,

RICHARD W. EADDY, JANE D. GOL, CHRISTOPHER KUI, JOHN MEROLO,

DOLLY WILLIAMS, Commissioners