



CITY PLANNING COMMISSION

January 7, 2004/Calendar No. 22

C 020244 ZSM

IN THE MATTER OF an application submitted by 42 West 18th Street Realty Corp. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the requirements of:

1. Section 42-10 to allow residential use (Use Group 2 uses) on the 4th through 16th floors;
2. Section 43-43 to allow a proposed new building and enlarged portions to penetrate the height and setback requirements; and
3. Section 43-23(b) to allow a proposed 2-story and a 3-story enlarged portions as permitted obstructions within the required rear yard;

to facilitate the construction of a mixed use development on a zoning lot located at 38-42 West 18th Street a.k.a. 41-45 West 17th Street (Block 819, Lots 14, 15 and 66), in an M1-6M District, within the Ladies-Mile Historic District, Borough of Manhattan, Community District 5.

The application for the special permit was filed by 42 West 18th Street Realty Corp. on December 6, 2001, to allow for a residential enlargement in an M1-6M District within the Ladies-Mile Historic District. The applicant has requested the special permit to allow the residential use, and height and setback and rear yard modifications for the proposed enlargement. The application was revised on December 30, 2003 to increase the size of the rear yard.

RELATED ACTIONS

In addition to the special permit which is the subject of this report, implementation of the proposed development also requires action on the following item being considered concurrently with this

application:

N 030144 ZCM Certification by the Chair of the City Planning Commission pursuant to Section 15-21 to allow for the conversion of existing non-residential floor area to residential use within the M1-6M Zoning District.

BACKGROUND

Area Description

The site is located within the Ladies-Mile Historic District in an M1-6M zone B a 10 FAR district that allows for a mix of manufacturing and commercial uses. Pursuant to Section 15-21, residential conversions are allowed by Chair certification provided that a portion of the building or a comparable building is preserved for commercial or manufacturing use. New residential construction is not allowed as-of-right in this zoning district.

The area contains a mix of commercial and residential uses and is characterized by bulky loft buildings with high street walls built in the late 19th and early 20th century. A number of buildings in the area have converted, at least partially, to residential use through Chair certifications in recent years.

Adjacent to the west of the site is a 13-story through block commercial building. To the east is a 7-story building on West 17th Street and a 12-story commercial building on West 18th Street. Across 18th Street to the north of the site is the Siegel-Cooper Building, a six-story office building with ground floor big-box retail stores (Bed, Bath & Beyond and Filene's Basement). Across 17th Street to the south are several smaller residential and mixed-use residential/commercial buildings. A new residential

building was recently completed on the western end of the subject block (in a C6-2A zone) on the corner of Sixth Avenue and West 17th Street.

Project Description

The subject site consists of three individual tax lots. Tax Lot A (Block 819, Lot 14) is currently developed with a 6-story through-block building and would contain a proposed 4-story enlargement. Tax Lot B (Block 819, Lot 66) is currently developed with a 4-story building and would contain a proposed 4-story enlargement. Tax Lot C (Block 819, Lot 15) currently is a public parking lot and would be developed with a building that would rise 16 stories (including a penthouse) on West 17th Street and 13 stories (including a penthouse) on West 18th Street. All three portions of the site would be structurally connected and would contain a total of 133,603 square feet of floor area.

The two existing buildings currently contain Adorama, a retailer of photographic equipment and supplies. As proposed, Adorama would expand to an approximately 36,000 square-foot space on the first, second and third floors.

Within the M1-6M zone, new residential construction is not allowed. The special permit would modify this use regulation to allow for the new residential enlargement. Within M1-6M zones, new construction is required to setback from the street wall at 85 feet above street level or six stories, whichever is less. The proposed building would rise up to a height of 160 feet at the street wall on West 17th Street and up to a height of 128'-6" at the street wall on West 18th Street.

The Zoning Resolution requires an unobstructed rear yard above a height of one-story or 23-feet. The applicant requests to modify this requirement in order to allow the second and third floors to occupy the entire zoning lot. These floors would be occupied by the Adorama retail store. In addition, the applicant is requesting a rear yard waiver for the rooftop addition to the through-block building (Tax Lot A). That building, which is currently six stories, would be reconfigured with a rooftop addition creating a total of 10 stories. The addition does not comply with the rear yard regulations.

As certified, the combined building would contain 90 residential units on floors 4 through 16 (including a penthouse) that would be accessed via a lobby on West 18th Street. Ten of the units would be within the existing building and the remainder would be within the additions.

ENVIRONMENTAL REVIEW

This application (C 020244 ZSM), in conjunction with the application for the related action (N 030144 ZCM), 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 02DCP030M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Conditional Negative

Declaration, signed by the applicant, was issued on September 8, 2003, stating the following:

The applicant agrees via a restrictive declaration, to identify the existence of any potential hazardous materials impact and mitigate any such impact found in connection with the development of the subject property (Block 819, Lots 14, 15 and 66). The applicant agrees to submit a hazardous materials Sampling Protocol, including a Health and Safety Plan, which shall be submitted for the approval of the New York City Department of Environmental Protection's Office of Environmental Planning and Assessment (DEP), to test for and identify any potential hazardous materials impacts, pursuant to the approved Sampling Protocol. If an impact is found, the applicant is required to submit a hazardous materials Mitigation Plan, including a Health and Safety Plan, to DEP for their approval and will provide for the mitigation of such an impact. The applicant has agreed to implement the Sampling Protocol and all hazardous material mitigation required by the Mitigation Plan, to the satisfaction of the DEP.

UNIFORM LAND USE REVIEW

This application (C 020244 ZSM) was certified as complete by the Department of City Planning on September 8, 2003, 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.

Community Board Public Hearing

Community Board 5 held a public hearing on this application on October 9, 2003, and on that date, by a vote of 18 to 13 with two abstentions, adopted a resolution recommending disapproval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on November 14, 2003.

City Planning Commission Public Hearing

On November 19, 2003 (Calendar No. 2), the City Planning Commission (CPC) scheduled December 3, 2003, for a public hearing on this application (C 020244 ZSM). The hearing was duly held on December 3, 2003 (Calendar No. 4). There were two speakers in favor of the application and none in opposition.

The first speaker, the applicant's representative, addressed the issue of the rear yard as originally proposed. In response to concerns raised by the City Planning Commission that the 40-foot rear yard configuration provided insufficient light and air, the representative presented an alternate scheme in which the width of the rear yard would be increased by 10 feet and all units on the fourth through eighth floors would be reconfigured so that any unit facing the rear yard would also face the street. Floors nine and above, he explained, already had very sufficient light and air. The revised proposal would result in the loss of 13 residential units and approximately 1,500 square feet of floor area.

The representative noted that there were several site constraints that made the provision of a 60-foot rear yard difficult. He noted that the subject block is unusually narrow. Whereas normal Manhattan blocks are 200' wide, the subject block is only 184' wide. He also noted that development of the site is

significantly constrained by the presence of two landmark buildings on the zoning lot. The Landmarks Preservation Commission (LPC), whose approval is required for any development on the subject zoning lot, would not allow for any enlargement on the two existing buildings that would be visible from the street. The applicant requested a modification of their LPC-approved drawings to shift floor area from the rear yard to the top of the new portion of the development. The LPC, however, did not believe that such a shift would be appropriate. The applicant presented typical layouts for the reconfigured units with a 50-foot rear yard and stated that each unit would receive sufficient light and air. He noted that the windows that face the rear yard would be very large, allowing for maximum light and air.

The second speaker in favor of the application was one of the owners of the Adorama retail store. He stated that the proposed development would allow his business to expand and operate more efficiently.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

The Commission recognizes that the surrounding area has transitioned from a predominately manufacturing area to a mixed use commercial district with a significant residential presence. The

Commission is aware that the surrounding area was rezoned in the early 1980s in recognition of the decreasing presence of manufacturers and the increasing residential nature of the area **B** a trend that continues to today. The Commission is also aware that the Department of City Planning has studied this area extensively and will soon propose a rezoning that would allow for as-of-right residential conversions and new residential construction. The Commission therefore does not believe that the introduction of new residents to the area as proposed will have any negative impact on the conforming uses in the surrounding area.

The Commission believes that the proposal will benefit existing uses within the two existing buildings on the site. These buildings are currently occupied by Adorama, a photographic equipment store, and the proposed development would allow the store to expand which would enable the business to grow and operate more efficiently.

During its public review, the Commission had concerns regarding the rear yard of the proposed development. Though zoning normally requires a 60-foot rear yard for through block residential developments, the application, as certified, provided a 40-foot rear yard **B** the minimum required for through block lots in M1-6M zones. The Commission was concerned that the 40-foot yard would not provide sufficient light and air to the residential units on the lower floors on the building.

On December 30, 2003, the applicant revised the application to increase the size of the rear yard to 50 feet and to reconfigure the units on the lower floors so that any unit that faces the rear yard also faces

the street. The Commission notes that there are several constraints on the subject zoning lot that make the provision of a 60-foot rear yard difficult. The block is unusually narrow (184 feet instead of the normal 200-foot Manhattan block), and the zoning lot contains two landmark buildings. Recognizing these constraints, the Commission believes that each unit in the revised application will receive sufficient light and air.

The Commission is aware that the Community Board was concerned over a potential conflict between the proposed development and an existing night club across 17th Street from the subject zoning lot. In examining this application, the Commission recognizes several factors that would reduce any potential conflict: 1) the fourth floor would be the lowest floor on which residences would be located; 2) the night club is located on West 17th Street while the residential lobby to the building would be located on West 18th Street; and 3) as required in the Environmental Assessment Statement, all residential windows will be double-glazed for noise attenuation.

The Commission believes that the design of the development, which was made in consultation with the Landmarks Preservation Commission, will relate harmoniously with the surrounding historic district and will result in the full restoration of the two existing buildings on the site. The Commission also believes that the development will put currently underutilized land into better use in an area that is well served by transportation, infrastructure and services.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711

(Landmark preservation in all districts) of the Zoning Resolution:

- § such bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air; and
- § such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

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:

The applicant agrees via a restrictive declaration, to identify the existence of any potential hazardous materials impact and mitigate any such impact found in connection with the development of the subject property (Block 819, Lots 14, 15 and 66). The applicant agrees to submit a hazardous materials Sampling Protocol, including a Health and Safety Plan, which shall be submitted for the approval of the New York City Department of Environmental Protection's Office of Environmental Planning and Assessment (DEP), to test for and identify any potential hazardous materials impacts, pursuant to the approved Sampling Protocol. If an impact is found, the applicant is required to submit a hazardous materials Mitigation Plan, including a Health and Safety Plan, to DEP for their approval and will provide for the mitigation of such an impact. The applicant has agreed to implement the Sampling Protocol and all hazardous material mitigation required by the Mitigation Plan, to the satisfaction of the DEP;

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 42 West 18th Street Realty Corp. for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to permit the modification of the use regulations to allow residential use on the 4th through 16th floors, and the modification of bulk regulations to allow enlarged portions of the building to penetrate height and setback and rear yard regulations at 38-42 West 18th Street a.k.a. 41-45 West 17th Street (Block 819, Lots 14, 15 and 66), in an M1-6M District, within the Ladies-Mile Historic District, Borough of Manhattan, Community District 5, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 020244 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 Joseph Pell Lombardi & Associates Architects, filed with this application and incorporated in this resolution:

2.	<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
	Z-1	Site Plan/Plot Plan/Zoning Data/Drawing Index	12/30/03
	A-100	Cellar Plan/Sub-Cellar Plan	12/30/03
	A-301	Section A	12/30/03
	A-302	Section B	12/30/03
	A-303	Section C	12/30/03

3. 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.

4. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.

5. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners= association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners= or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

6. The development shall conform to all conditions, modifications and alterations set forth in the Conditional Negative Declaration (CEQR No. 02DCP030M) dated September 8, 2003, issued pursuant to the New York State and New York City Environmental Quality Review.

These conditions, modifications and alterations are as follows:

The applicant agrees via a restrictive declaration, to identify the existence of any potential hazardous materials impact and mitigate any such impact found in connection with the development of the subject property (Block 819, Lots 14, 15 and 66). The applicant agrees to submit a hazardous materials Sampling Protocol, including a Health and Safety Plan, which shall be submitted for the approval of the New York City

Department of Environmental Protection's Office of Environmental Planning and Assessment (DEP), to test for and identify any potential hazardous materials impacts, pursuant to the approved Sampling Protocol. If an impact is found, the applicant is required to submit a hazardous materials Mitigation Plan, including a Health and Safety Plan, to DEP for their approval and will provide for the mitigation of such an impact. The applicant has agreed to implement the Sampling Protocol and all hazardous material mitigation required by the Mitigation Plan, to the satisfaction of the DEP.

7. 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.
8. Development pursuant to this resolution shall be allowed only after the attached restrictive declarations dated December 30, 2003, executed by 42 West 18th Street Realty Corp., the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.
9. 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.

10. 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.
11. The above resolution (C 020244 ZSM), duly adopted by the City Planning Commission on January 7, 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

IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A., ALEXANDER GARVIN, JANE GOL

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