



CITY PLANNING COMMISSION

January 21, 2015/Calendar No. 13

N 150083 ZRM

IN THE MATTER OF an application submitted by D Solnick Design and Development pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 3 (Special Hudson Yards District), Borough of Manhattan, Community District 4.

This application (N 150083 ZRM) for an amendment of the Zoning Resolution relating to Article IX, Chapter 3 (Special Hudson Yards District) was filed by D Solnick Design and Development on August 18, 2014.

BACKGROUND

The applicant, D Solnick Design & Development, is seeking to amend the zoning text for Section 93-542 (Height and Setback in Subareas D4 and D5) in order to modify the underlying ‘sliver law’ affecting height limits in the two subareas. The modification would allow sites that are less than 45 feet in width on narrow streets to be built up to the height of the tallest abutting building. The proposed action would facilitate a proposal by the applicant to develop approximately 16,500 gsf of residential space (7 units) and 2,469 gsf of ground-floor community facility space on the project site in a 120-foot, 11-story building.

The project site is located at 441 West 37th Street in the Hudson Yards neighborhood of Manhattan, Community District 4. The site is located midblock between Tenth and Dyer Avenues, and has a frontage of 25 feet on West 37th Street. The property contains an existing 2-story auto repair shop and accessory office.

The project site was rezoned in 2005, from M1-5 to R8A with a C2-5 overlay, as part of the Hudson Yards Rezoning. The Special Hudson Yards District is intended to provide new publicly accessible open space, create a new commercial district to complement the Midtown Central Business District, and to reinforce existing residential areas and encourage new housing on

Manhattan's Far West Side. The Special Hudson Yards District mandates a variety of use, bulk and urban design controls applicable to six subdistricts. In the Hell's Kitchen Subdistrict (Subdistrict D), certain special regulations apply which do not apply within the remainder of the District. The Hell's Kitchen Subdistrict is divided into five subareas (Subareas D1-D5), and the project site is located in Subarea D4. The Subdistrict is mapped with underlying C1-7A, C2- 8, C6-3, and C6-4 commercial districts and C2-5 overlays, as well as residential R8A districts.

The Subdistrict contains a significant amount of transportation infrastructure serving the Lincoln Tunnel. This includes Dyer Avenue and other connector roads and ramps. Some of these roads operate at-grade while others are below grade and run below the streets. There are also several public and private parking lots in the area.

The remainder of the area is characterized primarily by residential uses including mixed commercial/residential buildings and multi-family walkup and elevator buildings. The majority of the residential buildings along West 36th, 37th and 38th streets are multifamily medium-rise elevator apartment buildings, many of which have ground floor commercial uses. Several multifamily walk-up, five- or six-story buildings are located in the area. There are also several high-rise elevator buildings within the vicinity, including the recently constructed 12-story Mantena Apartments (431 West 37th Street) adjacent to the project site to the east. The site directly across the street from the project site is a 13-story former industrial building that has been converted to a mixed-use office/residential building.

R8A districts are contextual Quality Housing Program districts that permit residential and community facility uses. Residential development is permitted to 6.02 FAR and community facilities are permitted to 6.5 FAR. Commercial uses are permitted to a maximum 2.0 FAR. C2-5 districts are mapped as a commercial overlay in residential districts. Within mixed residential/commercial building, commercial uses are limited to the first two floors and must be below the residential uses. The maximum height of residential buildings in R8A districts is 120 feet and is regulated by a setback, which begins at a base height of 60 to 85 feet above the front lot line.

The project site is additionally subject to height limitations for narrow buildings or enlargements as stipulated in Section 23-692 of the Zoning Resolution (the “Sliver Law”) which restricts the height of narrow buildings (less than 45 feet in width) to the width of the adjoining street or, in the case where adjacent buildings are built to higher heights, the height of the taller abutting building on wide streets and to the height of the shorter abutting building on narrow streets. West 37th Street is 60 feet wide and is considered a narrow street.

Absent the proposed action, any development of the project site would be restricted to a height of 60 feet, which would not allow for the full utilization of the permitted FAR, unless the project site is merged with the adjacent lot so that the building’s width equals or exceeds 45 feet.

The applicant is seeking to amend the text for Section 93-542 (Height and Setback in Subareas D4 and D5) of the Zoning Resolution. Specifically, the proposed amendment would add an exception to the height limit in Subareas D4 and D5, which would allow sites that are less than 45 feet in width on narrow streets to be built up to the height of the tallest abutting building. This is currently allowed on wide streets. Given the site’s location adjacent to a building developed to the maximum 120 foot height limit, this would allow the project site to be developed to that height, therefore permitting the full use of the permitted FAR. The applicant provided an area analysis which demonstrated that the only likely development site that would be affected by the proposed amendment was the project site at 441 West 37th Street.

ENVIRONMENTAL REVIEW

The application (N 150083 ZRM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 15DCP024M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed action, a Negative Declaration was issued

on September 29, 2014.

PUBLIC REVIEW

On September 29, 2014, this application (N 150083 ZRM) was duly referred to Community Board 4 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

Community Board Review

Community Board 4 held a public hearing on the application on December 8, 2014, and on that date, by a vote of 35 in favor, 0 opposed, and 1 present but eligible to vote, adopted a resolution recommending approval of the application.

Borough President Review

This application was considered by the Borough President, who issued a recommendation in support of the application on December 8, 2014. The recommendation also noted that a more general action applying to all ‘sliver’ sites in contextual zones within special districts should be considered in the future.

City Planning Commission Public Hearing

On December 3, 2014 (Calendar No. 2), the City Planning Commission scheduled December 17, 2014 for a public hearing on this application (N 150083 ZRM). The hearing was duly held on December 17, 2014 (Calendar No. 16).

There were two speakers both who spoke in support of the proposed application. The applicant described the proposed development and the need for the text amendment, while a representative from the Borough President’s office reiterated the comments in their recommendation.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the zoning text amendment (N 150083 ZRM) is appropriate.

The Commission notes that the ‘sliver law’ was put into place in the early 1980s to control what was considered out-of-scale development in high density districts in Manhattan, particularly along side streets predominantly made up of rows of low-rise brownstone buildings. At the time, contextual zoning districts (R8A, Bs, for example) with specific height limits did not yet exist and earlier height factor regulations which permitted much higher buildings were in effect. The D4 and D5 Subarea is far more varied in character, with a great deal of transportation infrastructure and mixed-use buildings of varying heights. Further, building heights in the area are also limited by the contextual R8A zoning districts which has a maximum building height of 120 feet.

The proposed text amendment limits the additional height flexibility to only those narrow buildings that are adjacent to buildings taller than 60 feet, the condition of the 441 West 37th Street site. The Commission believes that this provision would effectively keep such narrow buildings from being out of scale with surrounding context. In addition, the D4 and D5 subareas’ anti-harassment and anti-demolition provisions offer robust protection measures for the existing lower-scaled tenement housing stock.

The Commission acknowledges that the expected effect of the amendment is limited to the development site, but still believes it offers a possible precedent for other areas of the City, particularly those where contextual zoning districts already provide specific height limits. Given the great need for housing in the City, and the limited number of development sites that exist, the Commission concurs with the Manhattan Borough President and believes that provisions to make smaller sites more equally developable should be explored in the future.

RESOLUTION

RESOLVED, that the City Planning Commission has determined that the action described herein will have no significant adverse impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 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 as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter within # # is defined in Section 12-10;

* * * indicates where unchanged text appears in the Zoning Resolution

ARTICLE IX SPECIAL PURPOSE DISTRICTS

Chapter 3 Special Hudson Yards District

* * *

93-542

Height and setback in Subareas D4 and D5

In Subareas D4 and D5 of Hell's Kitchen Subdistrict D, the underlying height and setback regulations shall apply, except that:

(a) the rooftop regulations set forth in Section 93-41 shall apply;

(b) within the C2-5 District of Subarea D4, #commercial uses# shall be limited to two #stories# or a height of 30 feet, whichever is less; ~~and~~

(c) within the C1-7A District of Subarea D5, recesses in the #street wall# of any #building# facing Ninth Avenue shall not be permitted within 20 feet of an adjacent #building# or within 30 feet of the intersection of two #street lines#, except as provided for permitted corner articulation; and

(d) the regulations set forth in paragraph (d) of Section 23-692 (Height limitations for narrow buildings or enlargements) shall be modified to allow portions of #buildings# with #street walls# less than 45 feet in width to reach the height of the tallest #abutting# #building# without regard to the width of the #street# onto which such #building# fronts.

* * *

The above resolution (N 150083 ZRM), duly adopted by the City Planning Commission on January 20, 2015 (Calendar No. 13), 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.

CARL WEISBROD, Chairman
KENNETH J. KNUCKLES, ESQ., Vice Chairman
RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,
MICHELLE R. DE LA UZ, RICHARD W. EADDY,
CHERYL COHEN EFFRON, BOME E JUNG, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ Commissioners



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Gale A. Brewer, Borough President

December 8, 2014

Carl Weisbrod, Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Re: N 150083 ZRM – Hudson Yards D4, D5 Text Amendment

Dear Chair Weisbrod:

I write in support of the application by D. Solnick Design and Development, LLC for an amendment to Section 93-542 (Height and Setback in Subareas D4 and D5) of the New York City Zoning Resolution (“ZR”). The proposed application would allow sites within Subareas D4 and D5 of the Special Hudson Yards District (“HY”) that are less than 45 feet in width to be built up to the height of the tallest abutting building or the height of the underlying zoning, whichever is less. This action would facilitate the development of an 11-story residential building with a ground floor community facility use at 441 West 37th Street (Block 735, Lot 12), in an R8A District, in the Hell’s Kitchen neighborhood of Manhattan Community District 4.

The project site is subject to the height limitations for narrow lots of ZR § 23-692 (the “Sliver Law”) which restricts buildings 45 feet in width or less to the height of the taller abutting building on wide streets and the height of the shorter abutting building on narrow streets. This rule, intended to prevent narrow buildings that are taller than their neighbors, applies in medium and high-density residential districts across the city. In this case, an as of right new building on the project site would be limited to a maximum height of 60 feet.

The project site was rezoned in 2005 from an M1-5 to an R8A district with a C2-5 overlay as part of the Hudson Yards Rezoning. The rezoning, which primarily sought to encourage high-density residential and commercial development on Manhattan’s far west side, included a Hell’s Kitchen Subdistrict in which special bulk and height regulations apply. Unlike other contextual rezonings, which seek to maintain an existing built character, the R8A rezoning here sought to create a medium-density contextual district on streets with existing rowhouses and low-scale manufacturing buildings. In general, R8A districts allow a maximum residential height of 120 feet and require a setback after a base height of 60 to 85 feet. Furthermore, buildings must conform to the bulk regulations of the Quality Housing Program. The building directly to the east of the project site, 431 West 27th Street, is a 12-story apartment building constructed pursuant to the new zoning.

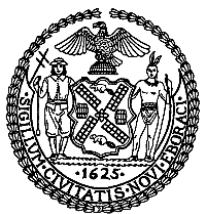
The proposed text amendment would modify the applicability of the Sliver Law within Subareas D4 and D5 of the HY to allow narrow buildings on narrow streets to rise to the height of the higher adjacent building as long as that height does not exceed the underlying 120 foot height limit. The ability to rise to the height of the taller existing neighbor is currently allowed on wide streets, and on all streets in other Subareas and Subdistricts of the HY. The proposed text amendment would create a building on this site that is consistent with the bulk controls and goals of the HY, and that is in contextual with the remainder of this block of West 37th Street.

The application being considered is quite narrowly targeted. There are 17 lots within Subareas D4 and D5 that fall into this category, and according to the Environmental Assessment Statement (EAS) this is the only site likely to be redeveloped as a result of the amendment. The condition of a narrow lot within a contextual zone of a special district, however, is not unique. There are likely many sites in the city where a similar applicable text amendment would be appropriate. Furthermore, this is not the first time an amendment of this type has been enacted. For example there are already specific carve-outs for sliver buildings in Special Tribeca Mixed-Use District. When evaluating proposed amendments to the zoning text, it is important to examine not just the potential development that would result, but also the clarity and consistency of the zoning text as a whole and the likelihood of necessary future amendments. While the proposed zoning text amendment is appropriate for this site, a more general action applying to all sliver sites in contextual zones within special districts may have been a more appropriate action. Where bulk and height controls are more finely tailored than the basic residential zoning designations, those bulk regulations are likely more appropriate to the area than the potentially fickle rules of the Sliver Law, which can often serve to encourage the assemblage of large development sites rather than the fine-grained infill development special districts target.

I would encourage the City Planning Commission to approve this proposed text amendment, which would allow a contextual building by a small developer. In the future, however, if similar relief is sought in other special districts, the Commission should consider larger modifications to the Sliver Law to avoid a trend of future zoning text written for only a single development.

Gale A. Brewer
Manhattan Borough President





CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE BODINE
District Manager

December 8, 2014

Carl Weisbrod
Chair
NYC Department of City Planning
22 Reade Street
New York, NY 10007

Re: N 150083 ZRM
D. Solnick Design & Development, LLC
441 West 37th Street, Manhattan

Dear Chair Weisbrod,

Manhattan Community Board 4 (MCB4) is pleased to provide its recommendation on land use application N 150083 ZRM by D. Solnick Design & Development, LLC for a text amendment of the Zoning Resolution.

The applicant is seeking to amend the text for Section 93-542 (Height and Setback in Subareas D4 and D5) of the Zoning Resolution. The proposed action would add an exception to the height limit in Subareas D4 and D5 in the Special Hudson Yards District (SHYD), which would allow sites that are less than 45-feet in width on narrow streets to be built up to the height of the tallest abutting building or the height of the underlying zoning, whichever is less.

The Board by a vote of 35 for, 0 against, and 1 present but not eligible to vote¹, recommended **approval** of the application.

In 2013, Manhattan Community Board 4 voted to approve in concept proposed changes in a text amendment to the sliver law at it relates to Subareas D4 and D5 in the Special Hudson Yards District. The proposed text amendment would add those two subareas to the exemption that already exists in the rest of the SHYD, but only in cases where the building would be adjacent to an existing taller building.

MCB4's Clinton/Hell's Kitchen Land Use and Zoning Committee met three times to review the

¹ David Solnick, a member of Manhattan Community Board 4 and the Clinton/Hell's Kitchen Land Use and Zoning Committee, is an applicant to this proposed text amendment and owns property within Subarea D4 of the SHYD. He has openly disclosed his interest and did not vote on this matter at either Committee or the Full Board meetings.

proposed change and ultimately found the proposal reasonable, given the understanding that there is no intent to seek exceptions to the FAR, height, and setback regulations of the underlying R8A contextual zoning for a Quality Housing building.

The text amendment would allow a narrow building on a narrow street to have a height up to that of the taller of the two adjacent buildings, as is already allowed on wide streets. In no event could a building be taller than the 120' height limit of the underlying zoning.

As the Board stated in its December 3, 2013, letter to the Department of City Planning, the justifications are twofold:

(1) A narrow building becomes an unsightly "sliver" only when it is free-standing, i.e., only when it is taller than the buildings on both sides of it. When it is equal to or shorter than the building on either side, it cannot appear as an isolated sliver; and,

(2) This application of the sliver law has the unintended consequence of deterring the development of small sites in the Special Hudson Yards district. In effect it lowers the permissible FAR of narrow lots only, hence reducing their value as separate development sites, incentivizing small landowners to sell their property to developers of adjacent sites who are assembling larger parcels.

This might be positive in locations where large assemblages are desirable. That is not the case where a 'finer grain' is preferred, such as mid-block sites on side streets.

Sincerely,



Christine Berthet
Chair



Jean-Daniel Noland
Chair, Clinton / Hell's Kitchen Land Use Committee