



## CITY PLANNING COMMISSION

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September 19, 2007/Calendar No. 14

N 070468 ZRM

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**IN THE MATTER OF** an application submitted by 400 Fifth Realty LLC pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York relating to Article VIII, Chapter 1, Special Midtown District, concerning Sections 81-212 (Provisions for the Transfer of Development Rights from a Landmark) and 81-81 (General Provisions), and the addition of Section 81-85 (Transfer of Development Rights from a Landmark in the 5th Avenue Subdistrict), Community District 5, Borough of Manhattan.

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This application for an amendment to Sections 81-212, 81-81, and 81-85 (new section) to the Zoning Resolution was filed by 400 Fifth Realty LLC and 401 Fifth LLC on May 10, 2007 to facilitate the construction of a 57 story mixed use building with approximately 389 residential units, 200 hotel rooms and about 28,707 square feet of retail space on the southwest corner of Fifth Avenue and West 36<sup>th</sup> Street.

### RELATED ACTIONS

In addition to the application for amendments to the Zoning Resolution which is the subject of this report (N 070468 ZRM), implementation of the proposed development also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

C 070469 ZSM	A special permit pursuant to Section 74-79, the amended Section 81-212 and the new Section 81-85 of the Zoning Resolution to transfer 173,692 square feet of floor area from the landmark zoning lot to the subject
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zoning lot and modification of Sections 81-27 (Alternative Height and Setback Regulations - Daylight Evaluation), 81-84(a) (Mandatory Regulations and Prohibitions/Pedestrian access to uses), 81-45 (Pedestrian Circulation Space), and 37-07 (Requirements for Pedestrian Circulation Space) of the Zoning Resolution.

C 070470 ZSM      Special Permit pursuant to Section 81-277 of the Zoning Resolution to allow for the modification of alternative height and setback regulations – daylight evaluation.

## **BACKGROUND**

A full background discussion and project description appears in the report on the related special permit application (C 070469 ZSM).

## **ENVIRONMENTAL REVIEW**

This application (N 070468 ZRM), in conjunction with the application for the related actions (C 070469 ZSM & C 070470 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 06DCP093M. 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 May 21, 2007.

## **PUBLIC REVIEW**

This application (N 070468 ZRM) was referred to Community Board 5 and the Borough President for information and review on May 21, 2007 along with the related actions (C 070469 ZSM & C 070470 ZSM) which was certified as complete in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

## **Community Board Review**

Community Board 5 held a public hearing on the application on June 14, 2007, and on that day, by a vote of 22 in favor to 13 opposed with two abstentions, adopted a resolution recommending approval of the application.

## **Borough President's Recommendation**

This application was considered by the Borough President, who issued a recommendation on July 20, 2007 in favor of approving the application.

## **City Planning Commission Public Hearing**

On July 25, 2007 (Calendar No. 10), the City Planning Commission scheduled August 8, 2007 for a public hearing on this application (N 070468 ZRM). The hearing was duly held on August 8<sup>th</sup>, 2007 (Calendar No. 37) in conjunction with the public hearing on the related actions (C 070469 ZSM & C 070470 ZSM) and was continued to August 22, 2007 (Calendar No. 17).

A full description of the City Planning Commission public hearing appears in the report on the related special permit application (C 070469 ZSM).

## **CONSIDERATION**

The Commission believes that this application for amendments to the Zoning Resolution (N 070468 ZRM) is appropriate. A full consideration and analysis of the issues and the reasons for approving this application appears in the report on the related special permit application (C 0707469 ZSM).

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and it be 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 December 15, 1961, and as amended subsequently, is further amended as follows:

Matter in underline is new, to be added  
Matter in strikeout is old, to be deleted;  
Matter in # # is defined in Section 12-10;  
\* \* \* indicates where unchanged text appears in the Zoning Resolution

## **81-212**

### **Special provisions for transfer of development rights from landmark sites**

The provisions of Section 74-79 (Transfer of Development Rights for Landmark Sites) shall apply in the #Special Midtown District#<sub>2</sub> subject to the modification set forth in this Section

and Sections 81-254, 81-266 and 81-277 pertaining to special permits for height and setback modifications, ~~and~~ Section 81-747 (Transfer of development rights from landmark theaters); and Section 81-85 (Transfer of development rights from landmark sites within the Special Fifth Avenue Subdistrict).

The provisions of Section 74-79 pertaining to the meaning of the term “adjacent lot” in the case of lots located in C5-3, C5-5, C6-6, C6-7 or C6-9 Districts are modified to apply in the #Special Midtown District# where the “adjacent lot” is in a C5-3, C6-6, C6-7, C6-5.5, C6-6.5 or C6-7T District.

The provisions of paragraph (c) of Section 74-792 as applied in the #Special Midtown District# shall be subject to the restrictions set forth in the table in Section 81-211 on the development rights (FAR) of a landmark “granting lot” for transfer purposes.

Wherever there is an inconsistency between any provision in Section 74-79 and the table in Section 81-211, the table in Section 81-211 shall apply.

Within the Grand Central Subdistrict, any transfer of development rights from a landmark site may be made pursuant to either Section 74-79 or Section 81-63, but not both.

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## **81-81**

### **General Provisions**

The regulations of Sections 81-82 to 81-~~84~~85, inclusive, relating to Special Regulations for the Fifth Avenue Subdistrict, are applicable only in the Fifth Avenue Subdistrict, whose boundaries are shown on Map 2 in Appendix A. They supplement or modify the regulations of this Chapter applying generally to the #Special Midtown District#, of which this Subdistrict is a part.

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## **81-85**

### **Transfer of development rights from landmark sites**

For new #developments# or #enlargements#, in addition to the provisions of Section 74-79 (Transfer of Development Rights from Landmark Sites) and Section 81-212 (Special provisions for transfer of development rights from landmark sites), the Commission may modify or waive the requirements of Section 81-40 (MANDATORY DISTRICT PLAN ELEMENTS), inclusive, and the requirements of Section 81-84 (Mandatory Regulations and Prohibitions).

In granting such special permit, the Commission shall find that the permitted transfer of #floor area# and modification or waiver of mandatory plan elements will result in a distribution of #bulk# and arrangement of #uses# on the #zoning lot# that relate more harmoniously with surrounding landmark #buildings or other structures#.

The above resolution (N 070468 ZRM), duly adopted by the City Planning Commission on September 19, 2007 (Calendar No. 14), 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**

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**NATHAN LEVENTHAL, JOHN MEROLO, DOLLY WILLIAMS, Commissioners**