



CITY PLANNING COMMISSION

August 25, 2004/Calendar No. 15

C 030492 ZSK

IN THE MATTER OF an application submitted by the Two Trees Management Co. 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 use regulations of Section 42-00 (Use Regulations) to allow residential use (Use Group 2 uses) on the 2nd floor, 3rd floor and 4th floor of an existing 4-story building on a zoning lot located at 85 Water Street** (Block 26, Lots 33 and 38), in an M3-1 District, within a General Large Scale Development (Block 36, Lots 1, 3, 14, 16, and 116, Block 26, Lots 33 and 38), within M1-2/R8, M1-2/R8A and M3-1 Districts, partially within a Special Mixed Use District (MX-2), partially within the Fulton Ferry Historic District of Community District 2, Borough of Brooklyn.

The application for the special permit was filed by Two Trees Management Company on May 11, 2001, for a use conversion of a four-story building at 85 Water Street within the Fulton Ferry Landing historic district in the DUMBO neighborhood of Community District 2, Brooklyn..

RELATED ACTIONS

In addition to the special permit which is the subject of this report, 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:

1. C 010645 ZMK Amendment to the zoning map changing an M1-2 District to an M1-2/R8 (MX-2) District.
2. C 010646 ZSK Special Permit pursuant to Z.R. Section 74-743 (a)(2) for bulk modification.
3. C 010647 ZSK Special Permit pursuant to Z.R. Section 74-512 for a Public Parking

Garage in excess of 150 spaces and exemption of floor area from the definition of floor area.

BACKGROUND

A full background discussion and description of this project appears in the report on the related application for the grant of a special permit (C 010646 ZSK).

ENVIRONMENTAL REVIEW

This application (C 030492 ZSK), in conjunction with the applications for the related actions (C 010645 ZMK), (C 010646 ZSK) and (C 010647 ZSK), 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 01DCP004. The lead is the City Planning Commission.

A summary of the environmental review and the Final Environmental Impact Statement appears in the report on the related application for the grant of a special permit (C 010646 ZSK).

UNIFORM LAND USE REVIEW

This application (C 030492 ZSK), in conjunction with the applications for the related actions (C 010645 ZMK), (C 010646 ZSK) and (C 010647 ZSK), was certified as complete by the

Department of City Planning on March 24, 2004, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 2 held a public hearing on this application on April 21, 2004, and on May 12, 2004, by a vote of 39 to 0 with one abstention, adopted a resolution recommending disapproval of the application.

A summary of the recommendation of Community Board 2 appears in the report on the related application for the grant of a special permit (C 010646 ZSK).

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation disapproving the application on July 1, 2004.

The Borough President's recommendation included the following comments:

Be it resolved that the Borough President of the Borough of Brooklyn, pursuant to section 197-c of the New York City Charter, and based on the rezoning described in this attachment, recommends disapproval of the applications unless the City Planning Commission and/or City Council approve a zoning map amendment of M1-2/R7A instead of the M1-2/R8 proposed by the applicant.

Be it further resolved that, should a district permitting residential

use be approved by the City Council, Two Trees Management is urged to construct a signature building respectful of the built character of DUMBO, consistent of the quality of design and construction that has been the standard of Two Tres in its conversion of industrial lofts and new construction as demonstrated at Court Street and Atlantic Avenue.

City Planning Commission Public Hearing

On June 23, 2004 (Calendar No. 4), the City Planning Commission scheduled July 14, 2004, for a public hearing on this application (C 030492 ZSK). The hearing was duly held on July 14, 2004 (Calendar No. 22), in conjunction with the public hearings on the applications for the related actions (C 010645 ZMK), (C 010646 ZSK) and (C 010647 ZSK).

There were a number of speakers, as described in the report on the related application for the grant of a special permit (C 010646 ZSK), and the hearing was closed.

Waterfront Revitalization Program Consistency Review

This application, in conjunction with the applications for the related actions, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 03-013.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

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

The conversion of the existing, four-story building to residential use with ground floor retail would be consistent with the existing land uses in the surrounding area and would not conflict with the intent of the proposed rezoning and accompanying actions.

A full consideration and analysis of the issues, and the reasons for approving this application, appear in the report on the related application for the grant of a special permit (C 010646 ZSK).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Article VII, Chapter 4, Section 74-711, Landmark preservation in all districts, of the Zoning Resolution:

(a) The following conditions are met:

- (1) any application pursuant to this Section shall include a report from the Landmark Preservation Commission stating that a program has been established for continuing maintenance that will result in the preservation of the subject *building* or *buildings*, and that such *use* or *bulk* modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;

- (2) any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the Landmarks Preservation Commission stating that such *bulk* modifications relate harmoniously to the subject landmark *building* or *buildings* in the Historic District, as applicable; and
- (3) the maximum number of *dwelling units* shall be set forth in Section 15-111 (Number of permitted dwelling units).

(b) In order to grant a special permit, the City Planning Commission shall find that:

- (1) such *bulk* modifications should 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
- (2) such *use* modifications shall have minimal adverse affects on the conforming *uses* within the *building* and in the surrounding area.

The City Planning Commission may prescribe appropriate additional conditions and safeguards which will enhance the character of the *development* of said *zoning lot*.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on August 13, 2004, with respect to this application (CEQR No. 01DCP004), the City Planning Commission finds that the requirements of Part 617, State Environmental Quality Review, have been met and that, consistent with social, economic and other essential considerations:

1. From among the reasonable alternatives thereto, the actions to be approved are ones which minimize or avoid adverse environmental impacts to the maximum extent practicable; and

2. The adverse environmental impacts revealed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval those mitigative measures that were identified as practicable.

3. The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; 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 Two Trees Management Company for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-00 (Use Regulations) to allow residential use (Use Group 2 uses) on the 2nd floor, 3rd floor and 4th floor of an existing 4-story building on a zoning lot located at 85 Water Street (Block 26, Lots 33 and 38), in an M3-1 District, within a General Large Scale Development (Block 36, Lots 1, 3, 14, 16, and 116, Block 26, Lots 33 and 38), within M1-2/R8, M1-2/R8A and M3-1 Districts, partially within a Special Mixed Use District (MX-2), partially

within the Fulton Ferry Historic District of Community District 2, Borough of Brooklyn, is approved pursuant to Section findings of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 030492 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Beyer, Blinder, Belle Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
2a	Site Plan/Zoning Analysis	August 13, 2004
2b	Zoning Calculations	August 13, 2004
3	Encroachment Diagrams - Site 1	August 13, 2004
4a	Parking Plans - Site 1	August 4, 2004
4b	Parking Plans - Site 1	August 4, 2004
6	Floor Plans - Site 2	August 13, 2004

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

4. The development shall include those mitigative measures listed in the Final Environmental Impact Statement (CEQR No. 01DCP004) issued on August 13, 2004, (and identified as practicable), as follows:

MITIGATION

Historic Resources

Archaeological Resources

To avoid any adverse effects to archaeological resources on the site of the proposed project, a Stage 1B field investigation would be undertaken on the applicant-owned properties prior to construction to test for the presence or absence of archaeological resources. A protocol for this effort would be designed in consultation with LPC prior to initiating any work. This protocol, however, would only apply to the site of the proposed project where the requirement for archaeology mitigation could be implemented. Because this mitigation cannot be performed on the non-applicant owned sites (e.g., the projected development site), this would be an unavoidable adverse impact of the proposed project for which no mitigation is available.

Architectural Resources

Partial Mitigation for Demolition of S/NR Historic Building (54-62 Water Street)

The proposed project includes the demolition of 54-62 Water Street, one of the two contributing buildings on the project site located within the D.U.M.B.O. Historic District. This is a significant adverse impact on historic architectural resources.

The CEQR Technical Manual identifies a number of potential mitigation measures for significant adverse effects on historic architectural resources. First among them is redesign of the proposed project to avoid the impact. This is the preferred mitigation measure. Among the redesign alternatives are: relocating the proposed action (moving the proposed action or development away from the resource), adaptive reuse, which would incorporate the historic structure into the project rather than demolishing it; data recovery, which is a recordation or recovery of artifacts or plans that would document the historic value of the structure; and relocating the impacted historic architectural resource. Of these alternative mitigation approaches, according to the CEQR Technical Manual, the last two are not the preferred mitigation. Regarding “relocating” the proposed action, the rezoning of the west portion of this block cannot specifically exclude this building. However, preservation of the building through adaptive reuse of the building as a stand-alone structure was examined (see Chapter 22, “Alternatives” of the FEIS). As discussed in that chapter of the FEIS, preserving the building at 54-62 Water

Street would result in a narrower footprint than the proposed new building. Assuming the same amount of floor area and housing units as in the proposed new building, this would result in a taller tower which could have a significant contextual impact on the D.U.M.B.O. Historical District. Alternatively, if the building height is maintained at 178 feet, between Dock Street on the west and the buildings at 54-62 Water Street on the east, it could not provide the wider setback from the Brooklyn Bridge (proposed is a 134-foot setback) without a significant loss of floor area and units. In addition, this alternative would also require the cost of repair, upgrade, and maintenance of the existing building at 54-62 Water Street. In the opinion of the applicant, who has renovated and converted numerous buildings in the D.U.M.B.O. Historic District, with two more renovations proposed under this project, the conversion and maintenance of the building at 54-62 Water Street is not economically viable. Thus, demolition of the building and partial mitigation is proposed. Proposed is photographic recording of the building in accordance with Historic American Building Survey (HABS) and Historic American Engineering Record (HAER) requirements and the salvage of representative and significant exterior architectural features (to the extent they exist). All work related to this recordation would be performed in accordance with an approved LPC protocol, and all reports would be submitted to LPC for review and approval. A final report would go to the LPC as well as the Municipal Archives, and other appropriate repositories, such as the Brooklyn Historical Society.

Construction Protection Plan for S/NR Building at 64 Water Street

The proposed project would implement construction protection measures to protect the existing historic building at 64 Water Street from impacts during construction from the proposed and projected development. This historic building would be restored under the proposed project; however, the adjacent building at 54-62 Water Street would be demolished and a new building constructed in its place as well as a new building at 35-43 Front Street. To address the concern for construction impacts on the historic building to remain, the project sponsor, in coordination with the LPC, would establish a construction protection plan to avoid damage to the building to be preserved at 64 Water Street during construction. As per the CEQR Technical Manual, the construction protection plan would be developed by independent structural and foundation engineers. It would describe in detail the demolition and construction procedures of the proposed project and would also provide for the inspecting and reporting of existing conditions at the adjacent architectural resources; establish protection procedures; implement a monitoring program to measure vertical and lateral movement and vibration; establish and monitor construction methods to limit vibrations; and establish methods and materials to be used for any repairs. The independent engineers would be empowered to issue “stop work” orders to prevent any damage to adjacent architectural resources, and any re-commencement of work would require

approval by LPC. With these procedures in place, which would also be mandated through the restrictive declaration, no significant adverse impacts to historic resources are expected to occur during construction.

Hazardous Materials

Due to the age and historical uses of the structures in the proposed rezoning area, it is expected that some building materials contain asbestos and some painted surfaces contain lead. Polychlorinated biphenyls (PCBs) may also be present in older fluorescent light ballasts observed in some structures. These materials would be tested and disposed of in accordance with Federal and State regulations.

Prior to demolition or excavation activities, a soil, soil gas, and groundwater testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented, would be submitted to DEP for review and approval. Once testing is performed, if the results indicate that remediation is necessary, a proposed remediation plan would be submitted to DEP for review and approval. After completing the remediation, the DEP would be provided with proof that the work has been satisfactorily completed. For applicant-owned properties (Block 36, Lots 1, 3, and 14) this work would be performed in accordance with a restrictive declaration and a sampling plan provided in Appendix C of the FEIS. That sampling plan has been developed in conjunction with DEP. For non-applicant-owned properties (Block 36, Lots 49, 52, and 53), preparation of a protocol and implementation of an approved testing program would be required in conformance with an (E) designation that would be mapped as part of the proposed zoning.

5. 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.

6. 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 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

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.

7. The Development, pursuant to this Resolution, shall be permitted only after the Restrictive Declaration, dated August 25, 2004, and executed by Brooklake Associates, the terms of which are hereby incorporated into this Resolution, shall have been recorded and filed in the Office of the County Register of the City of New York, County of New York.

The above resolution (C 030492 ZSK), duly adopted by the City Planning Commission on August 25, 2004 (Calendar No. 15), 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
ANGELA M. BATTAGLIA, **IRWIN G. CANTOR**, P.E.,
ANGELA CAVALUZZI, R.A., **RICHARD W. EADDY**,
CHRISTOPHER KUI, **KAREN A. PHILLIPS**,
Commissioners
DOLLY WILLIAMS, Commissioner, voting no