



CITY PLANNING COMMISSION

July 2, 2008/Calendar No. 19

N 080177 ZRM

IN THE MATTER OF an application submitted by Park Avenue Hotel Acquisition, LLC, and 375 Park Avenue L.P., 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 VIII, Chapter 1, Special Midtown District, concerning Section 81-212 (Special provisions for transfer of development rights from landmark sites).

This application for an amendment to Section 81-212 (Special provisions for transfer of development rights from landmark sites) of the Zoning Resolution was filed by Park Avenue Hotel Acquisition, LLC and 375 Park Avenue, L.P., on November 17, 2007, to facilitate the construction of a 63 story, approximately 712-foot tall, mixed-use building at East 53rd Street and Lexington Avenue in Manhattan Community District 5.

RELATED ACTION

In addition to the application for amendments to the Zoning Resolution which is the subject of this report (N 080177 ZRM), implementation of the proposed development also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

C 080178 ZSM Special permit pursuant to Section 74-79, 81-277 and the amended Section 81-212 of the Zoning Resolution to allow the transfer development rights from designated landmark and to modify bulk and loading berth requirements.

BACKGROUND

A full background discussion and project description appears in the report on the related special permit application (C 080178 ZSM).

ENVIRONMENTAL REVIEW

This application (N 080177 ZRM), in conjunction with the application for the related actions (C 080178 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 08DCP042M. 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 February 11, 2008.

UNIFORM LAND USE REVIEW PROCEDURE

This application (N 080177 ZRM) was referred to Manhattan Community Boards 4-8, the Manhattan Borough President and the Manhattan Borough Board for information and review on February 11, 2008, along with the related action (C 080178 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 this and the related application (C 080178 ZSM) on April 10, 2008, and on that date, by a vote of 36 in favor, 0 opposed, and 1 abstaining, adopted a resolution recommending disapproval of the proposed application. A summary of the board's recommendation is included in the report on the related application (C 080178 ZSM).

Community Board 5's resolution noted concern that the building, "does not include an off street loading berth, and there is no agreement for sharing an off street loading berth and/or driveway with the adjacent Seagram building, making it necessary for passenger and bulk loading, including hotel garbage, to take place on the sidewalk or street(s)..."

The resolution expressed further concern, “about the immediate and long term impacts of the proposed text amendment to Section 74-79 of the Zoning Resolution for the Special Midtown District, the principle of amending the Zoning Resolution for one building and the precedent that would be set in the Special Midtown District for future applications with similar modifications...”

Community Boards 4, 6, 7, and 8 did not make a recommendation on this application.

Borough President's Recommendation

This application (N 080177 ZRM) was considered by the Borough President, who issued a recommendation disapproving the application on May 16, 2008, subject to the following conditions:

1. The text is amended to require a loading/unloading strategy to be referred to the Department of Transportation for their review and approval.
2. The text is amended to empower the Commission to evaluate findings relating to potential negative impacts on land use and pedestrians created by the proposed waiver of circulation space
3. The text is amended to empower the Commission to ensure that appropriate legal agreements have been reached to ensure the monitoring and enforceability of any traffic management plan
4. The findings of the special permit, as amended, have been satisfied.

The Borough Board did not make a recommendation on this application.

City Planning Commission Public Hearing

On May 7, 2008 (Calendar No. 3), the City Planning Commission scheduled May 21, 2008, for a public hearing on this application (N 080177 ZRM). The hearing was duly held on May 21, 2008 (Calendar No. 14), in conjunction with the hearing on the related application (C 080178 ZSM). There were three speakers in favor of the applications and six speakers in opposition.

A full description of the City Planning Commission public hearing appears in the report on the related special permit application (C 080178 ZSM).

CONSIDERATION

The Commission believes that this application, as modified, for amendments to the Zoning Resolution (N 080177 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 080178 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 text to be deleted;

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

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

ARTICLE VIII

SPECIAL PURPOSE DISTRICTS

Chapter 1:

Special Midtown District

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# 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, 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.

For new #developments# or #enlargements# in C5-3, C6-6, C6-7 and C6-7T Districts, the Commission may also modify or waive the requirements of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) and requirements governing the minimum dimensions of a #court#, where:

- (a) the required minimum distance as set forth in Section 23-86 is provided between the #legally required windows# in the new #development# or #enlargement# and a wall or #lot line# on the an adjacent #zoning lot# occupied by the landmark; and
- (b) such required minimum distance is provided by a light and air easement on the #zoning lot# occupied by the landmark, and such easement is acceptable to the Department of City Planning and recorded in the County Clerk’s office of the county in which such tracts of land are located.

For new #developments# or #enlargements#, on #zoning lots# located in C5-3, C6-6, C6-7 and C6-7T Districts and with frontage on streets on which curb cuts are restricted pursuant to

Section 81–44, the Commission may also modify or waive the number of loading berths required pursuant to Section 36–62 (Required Accessory Loading Berths). In granting such special permit, the Commission shall find that:

(a) a loading berth permitted by City Planning Commission authorization pursuant to Section 81–44 would have an adverse impact on the landmark #building or other structure# that is the subject of the special permit;

(b) because of existing #buildings# on the #zoning lot#, there is no other feasible location for the required loading berths; and

(c) the modification or waiver will not create or contribute to serious traffic congestion or unduly inhibit vehicular and pedestrian movement. For new #developments# or #enlargements#, on #zoning lots# located in C5–3, C6–6, C6–7 and C6–7T Districts, the Commission may also modify the dimensions and minimum clear height required for pedestrian circulation space pursuant to Section 81–45 (Pedestrian Circulation Space) and 37–50 (Requirements for Pedestrian Circulation Space). In granting such special permit, the Commission shall find that the modification will result in a distribution of #bulk# and arrangement of #uses# on the #zoning lot# that relate more harmoniously with the landmark #building or other structure# that is the subject of the special permit.

The above resolution (N 080177 ZRM), duly adopted by the City Planning Commission on July 2, 2008 (Calendar No. 19), 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, FAICP, Chair

KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, ANGELA R. CAVALUZZI, AIA, BETTY Y. CHEN,

MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,

JOHN MEROLO, KAREN A. PHILLIPS, Commissioners

IRWIN G. CANTOR, P.E., Commissioner, Voting ‘No’