



## **CITY PLANNING COMMISSION**

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June 4, 2008/Calendar No. 12

N 070462 ZRM

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**IN THE MATTER OF** an application submitted by West 38<sup>th</sup> Street L.L.C. 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 XII, Chapter 1 (Special Garment Center District), Community District 4, Borough of Manhattan.

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This application for an amendment to Section 121-32 of the Zoning Resolution was filed by West 38<sup>th</sup> Street L.L.C. on May 8, 2007 to facilitate the construction of a 24-story predominantly residential mixed-use building with approximately 569 residential units and 10,600 square feet of retail space on property located at 310-328 West 38<sup>th</sup> Street.

### **RELATED ACTION**

In addition to the application for amendments to the Zoning Resolution which is the subject of this report (N 070462 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 070463 ZSM      Special Permit pursuant to Sections 74-52, 93-80 and 121-40 of the Zoning Resolution to allow an attended public parking garage with a maximum capacity of 400 spaces.

## **BACKGROUND**

The applicant proposes a zoning text amendment to amend the street wall requirements of Section 121-32, which currently does not allow flexibility in the location of the required street wall for developments in Preservation Area P-2 of the Special Garment Center District.

A more detailed description of this application appears in the report on the related special permit application (C 070463 ZSM).

## **ENVIRONMENTAL REVIEW**

This application (N 070462 ZRM), in conjunction with the application for the related action (C 070463 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 08DCP003M. 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 January 7, 2008.

## **PUBLIC REVIEW**

This application (N 070462 ZRM) was referred to Community Board 4 and the Borough President for information and review on January 7, 2008 along with the related actions (C 070463 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 Public Hearing**

Community Board 4 held a public hearing on this application on February 6, 2008, and on that date, by a vote of 30 to 6 with 0 abstentions, adopted a resolution recommending approval of the application subject to the following conditions:

- i) It applies on zoning lots with frontages of at least 240 feet (rather than the 200 foot minimum in the application), and
- ii) Recesses must be at least 25 feet from any adjacent building, so that the unfinished side walls of adjacent buildings are not exposed.

### **Borough President's Recommendation**

This application was considered by the Borough President, who issued a recommendation approving the application on March 12, 2008 subject to the conditions that “it is amended to apply only to zoning lots with frontages of at least 240 feet, and to require recesses to be at least 25 feet from any adjacent buildings.”

### **City Planning Commission Public Hearing**

On April 9, 2008 (Calendar No. 2), the City Planning Commission scheduled April 23, 2008 for a public hearing on this application (C 070462 ZRM). The hearing was duly held on April 23, 2008 (Calendar No. 17), in conjunction with the public hearing on the application for the related action (C 070463 ZRM).

There were several speakers as described in the report on the related special permit application (C 070463 ZSM) and the hearing was closed.

## CONSIDERATION

The Commission believes that this application for amendments to the Zoning Resolution (N 070468 ZRM) is appropriate as modified.

A full consideration and analysis of the issues, and reasons for approving this application as modified, appear in the related application for the proposed special permit (C 070463 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 # # is defined in Section 12-10;

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

\* \* \*

### **121-32 Height of Street Walls and Maximum Building Height**

The #street wall# of any #development# or #enlargement# shall be located on the #street line# and extend along the entire #street# frontage of the #zoning lot# not occupied by existing

#buildings# to remain. On a #zoning lot# with frontage of at least 200 feet, up to 20 percent of the #aggregate width of the street wall#, for a maximum width of 50 feet, may be recessed to a maximum depth of 15 feet from the #street line# provided the recessed area is located a minimum of 20 feet from an adjacent #building# and that a minimum of 60% of such area be planted with any combination of grass, ground cover, shrubs, trees or other living plant material. Such #street wall# shall rise without setback to a maximum height of 90 feet or the height of the #building#, whichever is less. However, if the height of an adjacent #street wall# fronting on the same #street line# is higher than 90 feet before setback, the #street wall# of the new or #enlarged building# may rise without setback to the height of such adjacent #street wall#, up to a maximum height of 120 feet. Above a height of 90 feet or the height of the adjacent #street wall# if higher than 90 feet, no portion of the #development# or #enlargement# shall penetrate a #sky exposure plane# that begins at a height of 90 feet above the #street line# or the height of the adjacent #street wall# if higher than 90 feet and rises over the #zoning lot# at a slope of four feet of vertical distance for each foot of horizontal distance to a maximum height limit of 250 feet, except as provided below:

- (a) any portion of the #building or other structure developed# or #enlarged# pursuant to the tower regulations of Sections 33-45 or 35-63, as applicable, may penetrate the #sky exposure plane#, provided no portion of such #building or other structure# exceeds the height limit of 250 feet; and
- (b) permitted obstructions, as listed in paragraph (a) of Section 93-41, may penetrate the #sky exposure plane# and the height limit of 250 feet. In addition, a dormer, as listed in paragraph (c) of Section 23-62, may penetrate the #sky exposure plane#.

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The above resolution (N 070462 ZRM), duly adopted by the City Planning Commission on June 4, 2008 (Calendar No. 12), 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**  
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