



CITY PLANNING COMMISSION

September 10, 2003/Calendar No. 20

C 030192 ZSM

IN THE MATTER OF an application submitted by SAMA, LLC 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 requirements of:

1. Sections 81-25 and 81-27 to allow the reduction of the required daylight evaluation score;
2. Sections 77-02 and 77-22 to allow the requirements of Article 7, Chapter 7 to apply to the proposed zoning lot and to allow the distribution of floor area without regard to the maximum floor area allowed in each portion of the zoning lot divided by district boundaries;
3. Sections 37-071 and 37-073 to allow a reduction in the required amount and the required minimum depth of the required pedestrian circulation space;
4. Section 81-42 to allow an increase in the maximum allowed street frontage occupied by lobby space;
5. Section 81-72 to allow a reduction of the required amount of street frontage occupied by Use Group T uses; and
6. Section 36-62 to waive the requirement for one loading berth;

to facilitate the construction of a 23-story commercial building on a zoning lot located at 140 West 42nd Street (Block 994, Lots 16,45,47,49 and 148), in C6-7 and C5-2.5 Districts, within the Special Midtown District (Theater Subdistrict), Community District 5, Borough of Manhattan.

The application for the special permit was filed by SAMA, LLC on November 6, 2002, to facilitate the construction of a 23-story office building containing approximately 143,000 square feet. The applicant requests six modifications to the Zoning Resolution in order to achieve a building design that they believe relates harmoniously with the neighboring landmark buildings.

BACKGROUND

The proposed building site is located on the south side of 42nd Street midblock between Sixth Avenue and Broadway. The site is within the Times Square/42nd street area, a high density office and entertainment district. The eastern edge of the subject block transitions into the Bryant Park area.

The proposed building is between two landmark buildings. To the east is the 30-story Bush Tower (part of the subject zoning lot), and to the west is the 15-story former Knickerbocker building. Across the street is the 48-story Conde Nast building (4 Times Square) and several smaller buildings which are being assembled for a new office building.

The subject zoning lot is a through block lot that consists of five individual lots: Lots 16, 45, 47, 49 and 148. The proposed building would be constructed on three of these lots (Lots 47, 49 and 148). Currently, two of these lots (Lots 49 and 148) are vacant, and the other lot (Lot 47) is developed with a 5-story commercial building which would be demolished. The buildings on the remaining two lots (Lots 16 and 45) of the zoning lot would remain. Lot 16 contains a 5-story commercial building that fronts on West 41st Street and Lot 45 contains the landmark 30-story Bush Tower.

The zoning lot is divided by district boundaries. Lots 16, 47, 49, 148 and most of 45 are within a C6-7 (15 FAR) zoning district. The remaining portion of Lot 45 is within a C5-2.5 (12 FAR) zoning district.

The applicant proposes to build a 23-story primarily commercial building containing 142,982 square feet of zoning floor area. The building would contain 4,776 square feet of retail space on the cellar and ground levels, 133,587 square feet of office space on floors 3 through 22, and one 4,619 square foot accessory residential penthouse on the 23rd floor. The building's mass would be located on 42nd Street and would rise without setback to the 21st floor, matching the street wall of the Bush Tower building.

The top two floors would be set back, shifting the bulk away from Bush Tower in order to preserve the view of the landmark building's crown.

Zoning Resolution Section 74-711 allows zoning lots containing a landmark building and buildings within a historic district to modify use and bulk (except floor area ratio) regulations. The applicant is requesting the following six actions:

1. Waiver of the height and setback requirements of Section 81-25 and 81-27

Section 81-25 of the Zoning Resolution states that development within the Special Midtown District is subject to one of two alternate sets of height and setback regulations: 1) the daylight compensation method (Section 81-26) or 2) the daylight evaluation method (Section 81-27). Both methods replace the sky exposure plane regulations. The applicant has chosen to analyze the proposed building using the second method (daylight evaluation) because it provides a quantitative measurement.

The daylight evaluation method involves analyzing the impact of a building on the amount of sky area visible from the pedestrian level. It assigns a score for a building's overall impact on the surrounding area and a score for its impact on individual streets. A passing score of 75% is required for the overall impact and 66% is required for each street.

The proposed building receives failing scores on both its overall impact (54.46%) and its impact

on West 42nd Street (26.45%). This is in part due to the presence of the landmark Bush Tower which is part of the zoning lot and therefore figures into the daylight evaluation analysis.

Because Bush Tower, which was built prior to 1916 zoning, rises with a very high street wall which casts a large shadow, any new construction on the adjacent lot would fail under the daylight evaluation method.

The proposed building has been designed in a way that relates to the adjacent Bush Tower. In order to achieve this design, the proposed building would create slightly more shadow on street level.

The action requested is to allow for the reduction of the overall daylight evaluation score from 75% to 54.46%, and a reduction of the score for West 42nd Street from 66% to 26.45%.

2. Modification of Sections 77-02 and 77-22 to modify split lot regulations

Section 77-02 of the Zoning Resolution defines split lots as pre-existing lots divided by zoning boundaries. The merged subject zoning lot would not qualify as a split lot under this definition because the split condition was created after the zoning was in place. The applicant requests waiving the split lot definition so that split lot rules can apply to the subject zoning lot.

Section 77-22 states that no portion of a split lot can exceed the FAR for the zoning district or the weighted mean of the two or more zoning districts that divide the zoning lot. In order to

place more bulk on the West 42nd Street portion of the zoning lot, the applicant proposes to transfer 22,959 square feet of floor area from the C5-2.5 (12 FAR) portion of the zoning lot to the C6-7 (15 FAR) portion of the zoning lot.

3. Reduction of the size and dimension requirements for pedestrian circulation space pursuant to Sections 37-071 and 37-03

Within the Special Midtown District, pedestrian circulation space is required for all new development with more than 70,000 square feet of new floor area. Pursuant to Section 37-071, 476.6 square feet of pedestrian circulation space is required for the proposed building.

Because the proposed building has only 74.5 linear feet of street frontage along 42nd street, providing 476.6 feet of pedestrian circulation space would result in a very deep and wide recess which would break the street wall established by adjacent buildings. The applicant instead proposes to provide 196.5 square feet of pedestrian circulation space. The smaller size does not meet the dimension requirements of Section 37-03.

4. Reduction of retail continuity pursuant to Section 81-42

Certain streets within the Special Midtown District, including 42nd Street, have a retail continuity requirement which limits the amount of lobby frontage. For the proposed building, a maximum of 20 feet of lobby space is allowed. The applicant proposes to exceed this maximum by 3.75 feet in order to provide adequate space on a narrow frontage for the lobby.

5. Reduction of Theater Subdistrict ground floor use regulations pursuant to Section 81-72

Within the Theater Subdistrict of the Special Midtown District, 80% of a building's frontage must consist of Use Group T uses (entertainment-related uses). Lobbies are a permitted Use Group T up to a maximum of 15 feet. For the proposed building, the regulation requires 59.6 feet of Use Group T uses. Because of the need for adequate lobby space, the applicant proposes 54.75 feet of Use Group T uses, 4.85 feet less than what is required.

6. Waiver of one accessory off-street loading berth pursuant to Section 36-62

Pursuant to Section 36-62, one loading berth is required for the proposed office building.

Section 81-44 prohibits curb cuts on West 42nd Street, though the City Planning Commission may authorize such a curb cut upon approval of the Commissioner of Buildings. The applicant believes that it is inappropriate to introduce a curb cut on West 42nd Street which would interrupt retail continuity and pedestrian circulation. The applicant also believes it is not feasible to introduce a curb cut on the West 41st Street portion of the zoning lot. One of the buildings on West 41st Street is not directly under the applicant's control, and the other is Bush Tower. The applicant believes that the LPC would likely not allow the introduction of a loading berth in the landmark building.

The applicant believes that a loading berth is not necessary to accommodate the loads generated by the 142,982 square foot building. Deliveries would be made through the 41st

Street lobby of Bush Tower which would connect through a doorway to the lobby of the proposed building.

ENVIRONMENTAL REVIEW

This application (C 030192 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 03DCP004M. 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 June 2, 2003.

UNIFORM LAND USE REVIEW

This application (C 030192 ZSM) was certified as complete by the Department of City Planning on June 2, 2003, and was duly referred to Community Board 5 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 5 held a public hearing on this application on June 12, 2003, and on June 12, 2003, by a vote of 26 to 0 with one abstention, adopted a resolution recommending approval of the

application with the following condition:

that the adjoining landmark building grant an easement to the new building for ingress and egress through the ground floor and cellar levels of the landmark building to and from 41st Street for tenants and delivery persons and for the disposal of rubbish, which easement shall be recorded against the land and shall remain in effect for so long as the new building shall stand.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on July 8, 2003.

City Planning Commission Public Hearing

On July 23, 2003 (Calendar No. 12), the City Planning Commission scheduled August 13, 2003, for a public hearing on this application (C 030192 ZSM). The hearing was duly held on August 13, 2003 (Calendar No. 14). There were three speakers in favor of the application.

The applicant's representative introduced himself and the two other speakers in favor of the application: the architect and the environmental consultant.

The architect explained the massing of the building, noting that the decision for the higher street wall was made in consultation with the Landmarks Preservation Commission. By matching the proposed building's street wall with that of the adjacent landmark Bush Tower, the architect stated that a more harmonious relationship between the buildings was achieved. He compared the proposed building with

a potential as-of-right building on the site and noted that the as-of-right building would obscure views of the iconic crown of the Bush Tower building. Shifting the bulk of the building as proposed, he stated, would lower the overall height of the building and would allow for views of the crown of Bush Tower from the west.

The environmental consultant discussed the traffic that would be generated by the proposed building. All loading and unloading would be made through the West 41st Street side of the existing Bush Tower building which would be connected to the proposed building. The consultant explained that the projected 3-4 delivery trips generated by the proposed building during peak hours could be adequately accommodated because there is not significant traffic volume on West 41st Street. West 41st Street, he noted, is not a through street due to the presence of Bryant Park.

The applicant's representative explained how garbage collection would function on the site. Trash would be collected in the evening and stored in the cellar level of the Bush Tower. At 4:00-4:30a.m., it would then be brought to street level and loaded onto garbage trucks.

The representative explained that it was not feasible to place a loading dock on the zoning lot. Loading docks are prohibited on West 42nd Street because they would break the mandatory retail requirements and impede pedestrian movement. One of the buildings with frontage on West 41st Street, Bush Tower, would not be able to accommodate a loading dock because, according to the applicant, the Landmarks Preservation Commission said that it would be inappropriate to alter the facade of the

landmark building. It would also not be possible to place a loading dock in the other building on West 41st Street because that building is not directly under the applicant's control. The representative explained that the applicant has tried for many years to purchase the property but the property owner was not willing to sell.

The applicant's representative explained that the proposed building and Bush Tower would be structurally connected at several levels. Though each building would have separate Certificates of Occupancy, it was highly unlikely that the buildings would ever fall under separate ownership.

The representative answered questions from the Commission about the signage that would be placed on the facade of the proposed building. The applicant explained that, at the urging of the Landmarks Preservation Commission, there would be no signage on the rooftop of the proposed building.

There were no other speakers and the hearing was closed.

CONSIDERATION

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

The Commission believes that the proposed height and setback modifications will have minimal adverse effects on the surrounding area. By matching the street wall of the neighboring landmark Bush Tower, the proposed building will achieve a more harmonious relationship with the landmark building. Though

the Commission is aware that the proposed building fails under the daylight evaluation method of the Special Midtown District, the Commission is also aware that, because of the presence of Bush Tower on the zoning lot, any new construction would fail under this method.

The Commission believes that the shifting of approximately 23,000 square feet of floor area from the C5-2.5 portion of the zoning lot to the C6-7 portion of the zoning lot would not adversely effect the area. Shifting the bulk toward West 42nd Street would allow for a more harmonious relationship with Bush Tower and is consistent with the built character of the surrounding area.

The Commission understands that the limited street frontage of the proposed building on West 42nd Street creates difficulties in meeting some of the requirements of the Special Midtown District. The Commission does not believe the increase of permitted lobby street frontage by 3.75 feet and the decrease of Use Group T frontage by 4.85 feet will adversely affect the area. The Commission believes the applicant has successfully balanced the need for adequate lobby space with the ground floor goals of the Special Midtown District.

The Commission is comfortable with the reduction in pedestrian circulation space. The Commission agrees that providing the full 476.6 square feet of pedestrian circulation space required under Special Midtown District regulations would result in an excessively deep and wide recess that would break the street wall established by the neighboring buildings.

The Commission had expressed concern over the relationship between the signage planned for the proposed building's facade and the neighboring landmark buildings. The applicant's explanation of the signage has since satisfied the Commission. The Commission is pleased that the proposed signage would be oriented west toward Times Square and is pleased that no signage is proposed for the top of the building that might detract from views of the crown of Bush Tower.

The Commission understands the difficulty in placing a loading dock on the subject site. The Commission agrees that it would be inappropriate to introduce a loading dock on West 42nd Street because of the street's heavy pedestrian traffic. The Commission recognizes that it would be inappropriate to introduce a loading dock on the West 41st Street frontage of the Bush Tower because doing so would significantly alter the landmark building's street level facade. The Commission is also aware that the applicant has tried for several years to acquire the five-story building on West 41 Street but its owner has been unwilling to sell.

The Commission recognizes that the proposed building is relatively small compared to much of the new construction in the Times Square area and would not generate very significant amounts of loading and unloading. The Commission is satisfied with the applicant's explanation for how the loading and unloading will be arranged. Though the Commission is aware that the Community Board was concerned that such an arrangement would not be possible if the proposed building and Bush Tower fell under separate ownership in the future, the Commission believes this possibility is highly unlikely since the two buildings will be structurally connected.

Finally, the Commission is pleased that, as required by this special permit, the property owner will fully restore the landmark Bush Tower building to sound first-class condition and enter into a continuing maintenance program to ensure that the building remains in excellent condition for the benefit of the public.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark preservation in all districts) of the Zoning Resolution:

- such bulk modifications shall 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
- such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; 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 SAMA, LLC for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the requirements of:

1. Sections 81-25 and 81-27 to allow the reduction of the required daylight evaluation score;
2. Sections 77-02 and 77-22 to allow the requirements of Article 7, Chapter 7 to apply to the proposed zoning lot and to allow the distribution of floor area without regard to the maximum floor area allowed in each portion of the zoning lot divided by district boundaries;
3. Sections 37-071 and 37-073 to allow a reduction in the required amount and the required minimum depth of the required pedestrian circulation space;
4. Section 81-42 to allow an increase in the maximum allowed street frontage occupied by lobby space;
5. Section 81-72 to allow a reduction of the required amount of street frontage occupied by Use Group T uses; and
6. Section 36-62 to waive the requirement for one loading berth;

to facilitate the construction of a 23-story commercial building on a zoning lot located at 140 West 42nd Street (Block 994, Lots 16,45,47,49 and 148), in C6-7 and C5-2.5 Districts, within the Special Midtown District (Theater Subdistrict), Community District 5, Borough of Manhattan, subject to the following terms and conditions:

1. The property that is the subject of this application (C 030192 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Gruzen Sampton LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
2	Site Plan	05/31/02
4.1	Zoning Analysis	12/16/02
4.2	Zoning Analysis	05/31/02
5.1	Daylight Evaluation Diagram	03/08/02
5.2	Daylight Evaluation Diagram	03/08/02
5.3	Daylight Evaluation Diagram	03/08/02
5.4	Daylight Evaluation Diagram	03/08/02
5.5	Daylight Evaluation Diagram	03/19/02
5.6	Daylight Evaluation Diagram	03/19/02
5.7	Daylight Evaluation Diagram	03/19/02
5.8	Daylight Evaluation Diagram	03/19/02

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. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy

of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

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.

5. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated August 14, 2003, executed by RYAN LLC and SAMA LLC, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

7. 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 and the attached restrictive declaration 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 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 or of the attached restrictive declaration.

8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 030192 ZSM), duly adopted by the City Planning Commission on September 10, 2003 (Calendar No. 20), 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

Irwin G. Cantor, P.E., Angela R. Cavaluzzi, R.A., Richard W. Eaddy, Alexander Garvin,

Jane D. Gol, Christopher Kui, John Merolo, Karen A. Phillips, Dolly Williams, Commissioners

Joseph B. Rose, Commissioner, voted No