



CITY PLANNING COMMISSION

October 21, 2009/Calendar No. 8

C 080039 ZMM

IN THE MATTER OF an application submitted by West 129th Street Realty I LLC and West 129th Street Realty II LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 6a:

1. changing from an R7-2 District to an R7A District property bounded by:
 - a. West 130th Street, a line 100 feet easterly of Amsterdam Avenue, West 129th Street, and Amsterdam Avenue; and
 - b. West 130th Street, Convent Avenue, West 129th Street, a line 100 feet westerly of Convent Avenue; and
2. changing from an M1-1 District to an R7A District property bounded by West 130th Street, a line 100 feet westerly of Convent Avenue, West 129th Street, and a line 100 feet easterly of Amsterdam Avenue;

Borough of Manhattan, Community District 9, as shown on a diagram (for illustrative purposes only) dated June 1, 2009, and subject to the conditions of CEQR Declaration E-239.

The application for an amendment to the Zoning Map was filed to rezone part of Block 1969 from R7-2 and M1-1 to an R7A District. The requested action would facilitate the development of two nine-story residential buildings within the proposed rezoning area.

BACKGROUND

The applicant, West 129th Street Realty I and II LLC, seeks approval of a zoning map amendment from R7-2 and M1-1 to R7A. The proposed rezoning area comprises the block bounded by West 129th and West 130th streets, and Amsterdam and Convent avenues in West Harlem, Manhattan Community District 9.

The proposed rezoning area includes 13 tax lots that comprise the entire block. The block's Amsterdam Avenue frontage is zoned R7-2/C1-4. The R7-2 /C1-4 district is mapped along Amsterdam Avenue and along West 129th and West 130th streets to a point 100 feet east of Amsterdam Avenue. This area is developed with four and five-story residential buildings. The block's Convent Avenue frontage is zoned R7-2. The R7-2 district is mapped along Convent

Avenue and also along West 129th and West 130th streets, to a point 100 feet west of Convent Avenue. The R7-2 district is primarily developed with five-story residential buildings along Convent Avenue; a portion of a garage that is located on the midblock (p/o Block 1969, Lot 16) is also included in the R7-2 district.

The midblock is zoned M1-1. The midblock is developed with a two-story garage (Block 1969, Lot 16) and one-story warehouse that was formerly used by the Metropolitan Opera for theatrical storage purposes (Block 1969, Lot 5). Both lots are through-lots with frontages on West 129th and West 130th streets. Regarding Lot 5, this lot would be divided into two tax lots (Block 1969, Lot 5 and Lot 6); a portion of the Metropolitan Opera warehouse (approximately 1/3) would remain and be used for storage on Tax Lot 5; the remaining portion of the warehouse would be demolished to facilitate residential development on newly created Tax Lot 6. The applicant owns Lot 5 and would own Lot 6.

Within the area to be rezoned, R7-2 districts allow residential development up to 3.44 FAR (4.0 with the Quality Housing option) and community facilities up to 6.5 FAR. R7-2 districts can typically produce 14-16 story buildings with low lot coverage that are set back from the street. C1-4 districts allow local retail uses up to 2.0 FAR. However, in mixed residential/commercial buildings, commercial uses are limited to the ground floor.

M1-1 districts allow local retail, commercial, automotive-related and light manufacturing uses up to 1.0 FAR and certain community facility uses (i.e., houses of worship) up to 2.4 FAR. Residential uses are not permitted.

The surrounding neighborhood is zoned M1-1 and R7-2 and predominantly residential in character, typified by four to six-story multiple dwellings and high-rise residential towers. Ground floor retail activity and intermittent second floor commercial activity can be found along

portions of Amsterdam Avenue, Broadway and West 125th Street. Within the M1-1 district to the south are an MTA bus garage, located at Amsterdam Avenue and West 128th Street; a Verizon warehouse, which anchors the dead-end portion of West 128th Street east of Amsterdam Avenue, and the Mink Building, within which theatrical props are stored. The area also has several churches and schools. The neighborhood is well served by mass transit, with subway access provided at St. Nicholas Avenue and West 125th Street by the IND Sixth and Eighth Avenue lines (A, B, C, D), and by the IRT No 1 line, at Broadway and West 125th Street. Bus service is also available on all major avenues.

West Harlem Rezoning Study

In a parallel effort, the Department has undertaken a rezoning study of West Harlem. The study area comprises 90 blocks generally bounded by West 126th Street, West 155th Street, Riverside Drive and Bradhurst, Edgecombe and St. Nicholas avenues, and includes West Harlem's manufacturing district. The Department's rezoning study complements the Borough President's recent West Harlem planning efforts and Community Board 9's 197-a Plan. The proposed zoning framework would seek to protect areas with a strong, low-density brownstone character, while identifying opportunities for new commercial and residential development. At present, the Department is working with Community Board 9 and the Borough President to create and formalize mutually accepted zoning plan.

Proposed Zoning Map Amendment

The proposed rezoning, from R7-2 and M1-1 to R7A would allow residential development on the portion of the block that was previously zoned M1-1. Residential and community facility uses would be allowed up to 4.0 FAR, as currently allowed on Amsterdam and Convent avenues under the Quality Housing option. The street wall could rise 40-65 feet before setback, with a maximum building height of 80 feet (approximately 6-9 stories). Along Amsterdam Avenue, the

existing C1-4 commercial overlay would remain. The proposed rezoning would enhance the residential development potential of the block by allowing medium-density residential use.

Under R7A zoning regulations, the project would have to meet the requirements of the city's Quality Housing Program. The program regulations, which govern bulk and density, allowable lot coverage and required street wall height, promote development that would be consistent with the existing neighborhood context.

If approved, the applicant intends to develop two, 9-story residential buildings on newly created Tax Lot 6, with frontages on West 129th and West 130th streets. The buildings would have approximately 130 rental units, with the primary residential entrance on West 130th Street. Parking would be provided for 65 cars and accessed from West 129th Street.

ENVIRONMENTAL REVIEW

This application (C 080039 ZMM) 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 07DCP076M. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the subject application (C 080039 ZMM), a Conditional Negative Declaration was issued. The lead agency has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

For the properties located at Block 1969, Lots 12 and 68, the applicant, West 129th Street Realty I & II LLC, agree via a restrictive declaration to prepare a hazardous materials sampling protocol including a health safety plan, which would be submitted to the Department of Environmental Protection (DEP) for

approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol, and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

The restrictive declaration also restricts the manner in which the property may be developed or redeveloped, by requiring the sampling protocol and remediation measures to serve as a condition precedent to any change of use in any such development or redevelopment of the property.

The restrictive declaration was executed on April 21, 2008. On April 22, 2008, the DEP confirmed, via written correspondence, that the applicant filed a DEP-approved Restrictive Declaration with the New York City of Finance and the City Register.

The Conditional Negative Declaration included an (E) designation for hazardous materials to be placed on Block 1969, Lots 12 and 68. The placement of the (E) designation (E-239) on the zoning map would eliminate the potential for significant adverse impacts on those sites and would ensure that appropriate testing, remediation and corrective action, if needed, would be undertaken. The text of the (E) designation is as follows:

Due to the possible presence of hazardous materials on the aforementioned designated sites there is potential for contamination of the soil and groundwater. To determine if contamination exists and perform an appropriate remediation, the following tasks must be undertaken by the fee owners(s) of the lot restricted by this (E) designation prior to any demolition or disturbance of soil on the lot.

Task 1

The fee owner(s) of the lot(s) restricted by this (E) designation will be required to prepare a scope of work for any soil, gas, or groundwater sampling and testing needed to determine if contamination exists, the extent of the contamination, and to what extent remediation may be required. The scope of work will include all relevant supporting documentation, including site plans and sampling locations. This scope of work will be submitted to DEP for review and approval prior to implementation. It will be reviewed to ensure that an adequate number of samples will be collected and that appropriate parameters are selected for laboratory analysis.

No sampling program may begin until written approval of a work plan and sampling protocol is received from DEP. The number and location of sample sites should be selected to adequately characterize the type and extent of the contamination, and the condition of the remainder of the site. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of the sampling data. Guidelines and criteria for choosing sampling sites and performing sampling will be provided by DEP upon request.

Task 2

A written report with findings and a summary of the data must be presented to DEP after completion of the testing phase and laboratory analysis for review and approval. After receiving such test results, a determination will be provided by DEP if the results indicate that remediation is necessary.

If DEP determines that no remediation is necessary, written notice shall be given by DEP.

If remediation is necessary according to test results, a proposed remediation plan must be submitted to DEP for review and approval. The fee owner(s) of the lot(s) restricted by this (E) designation must perform such remediation as determined necessary by DEP. After completing the remediation, the fee owner(s) of the lot restricted by this (E) designation should provide proof that the work has been satisfactorily completed.

A DEP-approved construction-related health and safety plan would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This Plan would be submitted to DEP for review and approval prior to implementation.

With the implementation of the above (E) designation, no significant adverse impacts related to hazardous materials would occur.

The applicant signed the Conditional Negative Declaration on May 28, 2009. The Conditional Negative Declaration was published in the City Record on July 1, 2009 and in the New York State Environmental Notice Bulletin on July 24, 2009. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq., a 30-day comment period followed. No comments were received and the conditional negative declaration was issued on May 28, 2009.

UNIFORM LAND USE REVIEW

This application (C 080039 ZMM), was certified as complete by the Department of City Planning on June 1, 2009, and was duly referred to Community Board 9 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 9 held a public hearing on this application on July 28, 2009, and on that date, by a vote of 22 to 5 with 4 abstentions, adopted a resolution recommending disapproval of the application with the following comments:

- **Now therefore be it resolved** that Manhattan Community Board 9 votes to oppose West 129th Street Realty's proposed rezoning action unless West 129th Street agrees to:
- Allocate at least 50% of residential units as affordable housing to perpetuity.
- Further define "affordable housing" consistent with the definitions included in the CB9M 197-a Plan;
- Provide a fair percentage of affordable units for seniors;
- Engage in sustainable design and construction practices with the equivalent of a LEED standard of silver prior to the commencement of construction;
- Commit to discussions with CB9M before the implementation of any planned uses of the property;
- Conduct a financial feasibility study for the development project;
- Significantly enhance the architectural design of the buildings included in the development project;
- Otherwise meet the goals and objectives outlined in the 197-a Plan including, but not limited to, mitigating all direct and indirect adverse impacts with respect to job creation for local residents, economic development, socio-economic conditions, environmental protection and sustainable development, public transit, neighborhood character, and other impact areas, as delineated by CB9M in its 197-a Plan.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation disapproving the application on September 9, 2009 with the following comments as summarized:

“Although residential development on the Subject Block may be appropriate, the proposed rezoning and development plan are not sufficiently aligned with the goals of Community Board 9’s 197-a Plan or other activities. Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. C 080039 ZMM.

The Manhattan Borough President encourages the Applicant to withdraw the application and resubmit an application with an inclusionary housing component, or considered the Subject Block as part of the more comprehensive West Harlem Rezoning initiative by the Department of City Planning.”

City Planning Commission Public Hearing

On September 9, 2009 (Calendar No. 3), the City Planning Commission scheduled September 23, 2009 for a public hearing on this application (C 080039 ZMM). The hearing was duly held on September 23, 2009 (Calendar No. 12). Three speakers spoke in favor of the application and one speaker in spoke opposition.

Those speaking in favor included the applicant, the applicant’s attorney and an attorney representing an adjoining property owner in the proposed rezoning area.

The applicant’s attorney stated that the requested action was appropriate because it would facilitate much needed residential development. The applicant stated that he has extensive experience – over 15 years, working with HPD to develop and manage affordable housing throughout the City, including approximately 800 units in upper Manhattan. Moreover, the applicant stated that he developed and currently manages 36 units of 100 % affordable low-income housing in two residential buildings within the proposed rezoning area that anchor the block’s Amsterdam Avenue frontage.

The applicant explained the proposed build program for the former Metropolitan Opera warehouse site and underscored how the requested action would make his project economically

viable. He further stated that efforts were made to identify resources to facilitate the development of affordable housing in his project; however, due to market conditions, is unable to provide more than five percent affordable units. In response to concerns raised by the Commission regarding the remaining portion of the former Metropolitan Opera warehouse, the applicant stated that as part of the overall build program, the warehouse façade will be physically improved.

The attorney for an owner of property that adjoins the former Metropolitan Opera warehouse also spoke in support of the requested action. The applicant's architect and brother also appeared in favor.

The Director of Land Use for the Manhattan Borough President spoke in opposition to the application and reiterated the Borough President's recommendation, stating that the proposed rezoning area should be considered within the context of the Department's West Harlem rezoning efforts currently in progress. Moreover, the applicant's proposed residential development does not address housing affordability issues raised by Community Board 9, nor does it provide for commercial and light industrial uses, as envisioned for the area by the Board in their adopted 197-a Plan.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this amendment of the Zoning Map is appropriate.

The applicant seeks approval of a zoning map amendment from R7-2 and M1-1 to R7A. The proposed rezoning area comprises the block bounded by West 129th and West 130th streets, and Amsterdam and Convent avenues (Block 1969) in West Harlem, Manhattan Community District 9.

The requested action would facilitate the redevelopment of the former Metropolitan Opera warehouse site, which is owned by the applicant, with two 9-story residential buildings with

frontages on West 129th and West 130th streets. The buildings would have approximately 130 rental units, with the primary residential entrance on West 130th Street. Parking would be provided for 65 cars and accessed from West 129th Street.

The proposed rezoning, from R7-2 and M1-1 to R7A would allow residential development on the M1-1-zoned portion of the block. Residential and community facility uses would be allowed up to 4.0 FAR, as currently allowed on Amsterdam and Convent avenues under the Quality Housing option. The street wall could rise 40-65 feet before setback, with a maximum building height of 80 feet (approximately 6-9 stories). Along Amsterdam Avenue, the existing C1-4 commercial overlay would remain.

The applicant would subdivide the warehouse; two-thirds of the warehouse would be demolished to create the proposed residential development site; the remaining portion would continue to operate as a storage/warehouse facility. The Commission notes that the applicant will undertake facade improvements to the smaller, reconfigured warehouse to enhance its appearance. In response to concerns about the proposed residential buildings' design, the Commission encourages the applicant to continue to meet with the community board to discuss practicable changes to improve the proposed buildings' design.

The Commission is aware of concerns raised by the Community Board and Borough President regarding affordable housing. However, the Commission notes that for nearly two decades the applicant has developed and currently manages several hundred units of affordable housing in upper Manhattan, including low-income rental housing developed through various HPD programs. The Commission also notes that the applicant has developed and manages 36 units of 100% affordable housing in two residential buildings located in the proposed rezoning area that abut the former Metropolitan Opera warehouse site and anchor the block's Amsterdam Avenue frontage. Although not part of the proposed build program for the proposed development site, the Commission notes that the applicant has shown a long-standing commitment to develop and manage affordable housing within the proposed rezoning area.

The Commission is also aware that the Department has undertaken a 90-block rezoning study of West Harlem. The anticipated rezoning plan, which complements the Borough President's recent West Harlem planning efforts and Community Board 9's 197-a Plan, would protect areas with a strong, low-density brownstone character, while identifying opportunities for new commercial and residential development. At present, the Department is working with Community Board 9 and the Borough President to create and formalize a mutually accepted zoning plan. The Commission encourages the Department, going forward, to examine where appropriate, the potential for Inclusionary Zoning on the block which is the subject of this application, to facilitate future affordable housing opportunities as articulated by the Borough President and in Community Board 9's 197-a Plan.

The Commission further notes that the West Harlem Rezoning plan will not be completed before the end of this year and not undergo public review until 2010. At the public hearing, the applicant stated that he currently has the resources to move forward to develop his property. Since the requested action seeks to facilitate new housing development, the Commission believes that the applicant's proposed residential project is consistent with the West Harlem rezoning study's key goal of expanding housing opportunities, with contextual zoning controls, in West Harlem. Accordingly, the Commission has no objection with the requested action moving forward.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment, subject to the condition that the applicant, West 129th Street Realty I & II LLC, agrees via a restrictive declaration to prepare a hazardous materials testing protocol, including a health and safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan, including a health and safety

plan, to DEP for approval. If necessary, remediation measures would be taken pursuant to the remediation plan, 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 described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961 and as subsequently amended, is hereby amended by changing the Zoning Map, Section No 6a;

1. changing from an R7-2 District to an R7A District property bounded by:
 - a West 130th Street, a line 100 feet easterly of Amsterdam Avenue, West 129th Street, and Amsterdam Avenue; and
 - b West 130th Street, Convent Avenue, West 129th Street, a line 100 feet westerly of Convent Avenue; and
2. changing from an M1-1 District to an R7A District property bounded by West 130th Street, a line 100 feet westerly of Convent Avenue, West 129th Street, and a line 100 feet easterly of Amsterdam Avenue;

Borough of Manhattan, Community District 9, as shown on a diagram (for illustrative purposes only) dated June 1, 2009, and subject to the conditions of CEQR Declaration E-239.

The above resolution (C 080039 ZMM), duly adopted by the City Planning Commission on October 21, 2009 (Calendar No. 8), 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, **RAYANN BESSER**,
ALFRED C. CERULLO, III, **BETTY Y. CHEN**,
MARIA M. DEL TORO, **RICHARD W. EADDY**,
ANNA HAYES LEVIN, **SHIRLEY A. MCRAE**, Commissioners

KAREN A. PHILLIPS, Commissioner voting no

NATHAN LEVENTHAL, Commissioner recused