



CITY PLANNING COMMISSION

January 7, 2009/Calendar No.12

C 070137 ZMM

IN THE MATTER OF an application submitted by Phipps Houses pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section 8d:

1. changing from an R8 District to a C1-9 District property bounded by East 26th Street, a line 125 feet easterly of Second Avenue, a line midway between East 23rd Street and East 24th Street, and a line 100 feet easterly of Second Avenue; and
2. changing from a C1-8 District to a C1-9 District property bounded East 26th Street, a line 100 feet easterly of Second Avenue, a line midway between East 23rd Street and East 24th Street, and Second Avenue;

as shown on a diagram (for illustrative purposes only) dated August 11, 2008, Borough of Manhattan, Community District 6.

The application for an amendment to the zoning map was filed by Phipps Houses on October 4, 2006 to change a C1-8 district and a portion of an R8 district to a C1-9 district property on the easterly side of Second Avenue from midway between East 23rd and 24th Streets to East 26th Street to facilitate the construction of two residential buildings along the north side of East 25th Street.

RELATED ACTION

In addition to the zoning map amendment which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following which is being considered concurrently with this application:

N 090105 ZRM Zoning Text Amendment allowing modification of court and side yard requirements.

BACKGROUND

The zoning area encompasses portions of 2-1/2 blocks on the east side of Second Avenue from midway between East 23rd and 24th streets on the south to East 26th Street on the north that is currently zoned C1-8 and R8 districts. The rezoning area includes a 33-story residential tower which is part of Henry Phipps Plaza South located at 444 Second Avenue (Block 931, Lot 1), the 20-story New York Towers at 305 East 24th Street (Block 930, Lot 1), and the 27-story East Midtown Plaza at 400 Second Avenue (Block 929, Lot 1). The applicant, Phipps Houses, is proposing to rezone the aforementioned property from a C1-8 and R8 to C1-9 with a depth of 125 feet. Only the northernmost portion of the rezoning area is controlled by the applicant (Block 931, Lot 1). The surrounding area is characterized by several mid-rise and a few high-rise residential buildings, community facilities and hospitals, dormitories, churches and a park.

The C1-8 district is a commercial district typically located along major avenues that accommodates a wide range of retail stores and personal service establishments for local shopping for residential and community facility uses including Use Groups 1 through 6. The C1-8 (an R9 equivalent) district allows a maximum floor area ratio (FAR) of 7.52 for residential use, 10.0 for community, and 2.0 for commercial use. The open space ratio requirement is 6.2 to 7.4. An R8 district is a general residence district which allows a maximum FAR of 6.02 for residential use and 6.50 for community facility use, and permits Use Groups 1, 2, 3 and 4. The open space ratio requirement is 10.7 and 11.6.

The proposed C1-9 district, like the C1-8, is a commercial district typically located on major avenues that accommodates the retail and personal service shops needed in residential neighborhoods. The C1-9 district (an R10 equivalent) permits a basic maximum FAR of 10.0 for residential and community facility uses and FAR of 2.0 for commercial use. There is no open space requirement in the C1-9 district.

Phipps Plaza South comprises the westerly part of the block bounded by East 26th Street, First Avenue, East 25th Street and Second Avenue (Block 931, Lot1) in the Kips' Bay neighborhood of Manhattan, Community District 6. The rezoning area and applicant's site is also located within the Bellevue South Renewal Area (BSURA), a seventeen-block area bounded by East 30th Street, First Avenue, East 23rd Street and Second Avenue that expired on September 10, 2004.

The applicant's zoning lot (Block 931, Lots 1, 17 and tentative 12) straddles the proposed C1-9 and the portion of existing R8 districts that is not being changed. Phipps Plaza South includes one 33-story residential building with 256 affordable low-middle income units and 6,050 square feet of retail space on the ground floor fronting on Second Avenue, that is currently vacant, and one 14-story residential building with 148 low-middle income units and 3,500 square feet of community facility space on the ground floor. Both residential buildings share a 160-space accessory parking garage with access on East 26th Street. Landscape areas, a basketball and handball court, children's play equipment and sitting areas are located atop these garages but have been unused and closed for over 15 years.

The applicant's request for a zoning map amendment would facilitate the construction of two new nine-story residential buildings with between 83 to 90 dwelling units on East 25th Street, add 7,700 square feet of new retail space converted from garage use in the building on Second Avenue and 3,000 square feet of new lobby area in a more secure and attractive consolidated residential entrance to the Phipps Plaza South development on East 26th Street.

Proposed Development

The applicant proposes to construct two residential buildings on the north side of East 25th Street between First and Second avenues. The first building, located on the easternmost portion of the site and referred to as "Building 1" would have between 50 to 57 dwelling units. The site of Building 1 is vacant and formerly used as a play area for basketball and handball. The second building, located on the westernmost portion of the site ("Building 2") and currently occupied by an underutilized sitting area, would have approximately 33 dwelling units. The applicant intends to develop both buildings with affordable units and financing has been obtained so Building 1 can contain all affordable units. Financing has not been obtained for Building 2. The applicant also intends to improve and enlarge retail space on Second Avenue. This would require that some of the parking spaces in the existing garage be relocated to a garage below the proposed Building 1.

Zoning Map Amendment (C 070137 ZMM)

The proposed development of the two residential buildings and improvements and addition to the commercial space at Phipps Plaza South would create non-compliance and therefore the

proposed zoning change (C 070137 ZMM) has been requested.

Zoning Text Amendment (N 090105 ZRM)

On September 18, 2008, Phipps Houses filed an application (N 090105 ZRM) for a zoning text amendment to the Section 23-84 of the Zoning Resolution to allow modification to court and side yard regulations in the former Bellevue South Urban Renewal Area.

The applicant's proposed buildings share side lot lines with two existing tenement buildings. The existing buildings have habitable rooms with windows along the side lot line. The new buildings do not require side lots and construction on the side lot lines would diminish light and air to the windows of the existing buildings. The proposed zoning text would allow the new buildings to provide a space at least 8 feet wide between the building and the lot line, not normally allowed by the current zoning regulations. The proposed text change, whose applicability is limited to this site, would allow the new buildings to be built with an open space along the side lot line to provide light and air to the existing adjacent buildings without a loss of units or creating a zoning non-compliance.

ENVIRONMENTAL REVIEW

This application (C 070137 ZMM), in conjunction with the application for the related action (N 090105 ZRM) were 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 07DCP015M. The lead is the City Planning Commission.

A Conditional Negative Declaration (CND) dated April 17, 2008, was published in the New York City Record (City Record) and New York State Environmental Notice Bulletin (ENB) on August 20, 2008 with respect to action C 070137 ZMM. 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. The related action (N 090105 ZRM) ensued, for which the revised CND dated October 1st, 2008, was published in the City Record and ENB on November 5, 2008, followed by the appropriate comment period.

After study of potential environmental impact of the proposed action, a revised Conditional Negative Declaration, signed by the applicant, was issued on November 25, 2008, stating the following:

1. The applicant agrees via a restrictive declaration to conduct a Phase II Environmental Site Assessment (Phase II) in accordance with the sampling protocol approved by the New York City Department of Environmental Protection (DEP) on July 19, 2007. The phase II requires the characterization of surface and subsurface soils by collecting and analyzing soil borings from the proposed development site and use of ground penetrating radar survey to locate underground storage tanks with the affected lot (Block 931, Lot 1).
2. The applicant further agrees to perform any necessary remediation of the subject

property if hazardous materials are found as the result of the Phase II. The applicant would prepare a Remedial Action plan, including a sample protocol and a health and safety plan, for DEP for approval. Remediation measures would be undertaken pursuant to the approved remediation plan.

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

UNIFORM LAND USE REVIEW

This application (C 070137 ZMM), was certified as complete by the Department of City Planning on August 11, 2008, and was duly referred to Community Board 6 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

The related non-ULURP text change application (N 090105 ZRM) was also referred for information and review on October 28, 2008, in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 6 held a public hearing on this application (C 070137 ZMM) on September 9, 2007, and on that date, by a vote of 31 in favor, 3 in opposition and 0 abstentions, adopted a resolution recommending approval of the application subject to the following conditions:

- that the unused spaces on East 28th & East 29th Streets be upgraded, semi-open, and fully accessible to the public with reasonable hours of closure;
- that in order to create a larger, more useful common rear yard, the proposed gate be removed;
- that Phipps Houses establish a Community Advisory Committee for programming of all community and open spaces;
- that lifting the income requirements in the two infill buildings above 80 % of the adjusted median income would require consent of the New York City Planning Commission and New York City Council after comment by Community Board 6 and the Manhattan Borough President's Office; and
- that both infill housing developments be permanently affordable.

On November 12, 2008, Community Board 6 voted 33 in favor, 0 opposed, and 1 abstention to approve the related application (N 090105 ZRM) for a text amendment, and recommended that the benefits of the zoning text amendment be provided citywide in all medium to high density zoning districts.

Borough President Recommendation

This application (C 070137 ZMM), in conjunction with the related action was considered by the Borough President, who issued a recommending conditional approval the zoning map amendment on November 19, 2008 conditional upon the applicant's commitment to working closely with a community advisory committee or body with a similar purpose to improve nearby open spaces, ensuring their long-term usability for area residents.

The Manhattan Borough President also recommended approval for the related zoning text amendment application (N 090105 ZRM).

City Planning Commission Public Hearing

On November 19, 2008 (Calendar No. 2), the City Planning Commission scheduled December 3, 2008, for a public hearing on this application (C 070137 ZMM). The hearing was duly held on December 3, 2008 (Calendar No. 11) in conjunction with the public hearing on the application for related action (N 090105 ZRM). There were three speakers in favor of the application and none in opposition.

The Vice Chair of Manhattan Community Board Six reiterated the community's concern for affordable housing and open space. The speaker indicated that the community board would like to see affordable units for low, moderate and middle income families on the applicant's site.

A representative of the applicant spoke in favor of the application. The speaker pointed out their intention was to develop affordable units but has yet to obtain financing for the second building. She also noted that the applicant has agreed to work with the community board to form a Community Advisory Committee for programming community and open space.

A representative of the Manhattan Borough President reiterated the borough president's recommendations.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the application for a zoning map amendment, in conjunction with the related application for a zoning text amendment, is appropriate.

Approval of these applications would facilitate construction of two nine-story residential buildings with between 83 to 90 units of housing on currently underutilized or vacant property. In addition, the proposed rezoning would facilitate enlargement and improvement of commercial space on Second Avenue.

The Commission notes that the proposed rezoning would bring two overbuilt buildings within the rezoning area (the New Yorker Tower with an approximate FAR of 11.25 and East Midtown Plaza with an approximate FAR of 8.84) into compliance.

The proposed zoning text amendment (N 090105 ZRM) would further facilitate construction of the new residential buildings by allowing them to set back from the side lot line to provide light and air to windows in adjoining existing buildings, while not reducing the number of proposed dwelling units. The Commission notes the Community Board's recommendation that the benefits of the zoning text amendment be provided citywide in all medium to high density zoning districts is outside the scope of this application.

Recognizing the concerns of relating to open space on the Phipps Plaza site, the Commission notes that, the applicant, in a letter dated August 6, 2008:

“proposes to renovate the interior court of Phipps Plaza South in order to achieve the following objectives:

- Softening and updating its landscape design, which is currently nearly entirely hard surface and out of date;
- Integrating the rear yards of the potential new infill housing with the Phipps Plaza South interior courtyard to make the space more accessible for a variety of uses;
- Locating active play equipment for a community facility pre-school to the pre-school and installing safety surfacing;
- Achieving better access control to this new courtyard garden.

The letter further states that

the applicant expects these renovations to be completed contemporaneously with the first infill affordable housing building on parcel 1. The projected date of completion on the interior garden (and first infill affordable building) would be approximately 18-24 months from the date of the ULURP approval.”

The letter also notes that

“Phipps Houses also controls a site nearby, fronting on East 29th Street, within the former Bellevue South Urban Renewal Area... We have not yet begun concept planning for this site... The 29th Street site, while not part of the Phipps Plaza South property, would make for an excellent vest-pocket passive recreational area, four blocks from Parcels 1 and 2. We anticipated that the work on the 29th Street site could begin at the completion of the ULURP action and be complete within a year after commencement.”

The Commission notes that while the applicant’s original intent was to develop two new buildings with all affordable units, and secured financing for such in the first of the two buildings with all affordable units, the current economic climate is creating difficulties for the second building that might make it difficult to create all affordable units. The Commission understands that it cannot mandate the income levels of the tenants in the proposed buildings. The Commission also recognizes that Phipps Houses has long been a developer of affordable

housing in the city and therefore strongly urges Phipps to make every effort to seek financing for the second building that would allow a maximum number of units if not all, to be affordable units.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein would have no significant impact on the environment once it is modified as follows:

1. The applicant agrees via a restrictive declaration to conduct a Phase II Environmental Site Assessment (Phase II) in accordance with the sampling protocol approved by the New York City Department of Environmental Protection (DEP) on July 19, 2007. The phase II requires the characterization of surface and subsurface soils by collecting and analyzing soil borings from the proposed development site and use of ground penetrating radar survey to locate underground storage tanks with the affected lot (Block 931, Lot 1).
2. The applicant further agrees to perform any necessary remediation of the subject property if hazardous materials are found as the result of the Phase II. The applicant would prepare a Remedial Action plan, including a sample protocol and a health and safety plan, for DEP for approval. Remediation measures would be undertaken pursuant to the approved remediation plan; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 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 further amended by changing the Zoning Map, Sections 8d and 12c:

1. changing from an R8 District to a C1-9 District property bounded by East 26th Street, a line 125 feet easterly of Second Avenue, a line midway between East 23rd Street and East 24th Street, and a line 100 feet easterly of Second Avenue; and
2. changing from a C1-8 District to a C1-9 District property bounded East 26th Street, a line 100 feet easterly of Second Avenue, a line midway between East 23rd Street and East 24th Street, and Second Avenue;

as shown on a diagram (for illustrative purposes only) dated August 11, 2008, Borough of Manhattan, Community District 6,

The above resolution (C 070137 ZMM), duly adopted by the City Planning Commission on January 7, 2009 (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
IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA, BETTY Y. CHEN,
MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,
SHIRLEY A. McRAE, KAREN A. PHILLIPS, Commissioners

