



## **CITY PLANNING COMMISSION**

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November 17, 2004/Calendar No. 24

N 040497 ZRY

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IN THE MATTER OF an application submitted by 400 Park Avenue South, LLC, 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 VII, Chapter 4, concerning Section 74-721(a), expanding the modifications that may be granted pursuant to that section.

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The application for amendment of the Zoning Resolution was filed by 400 Park Avenue South, LLC on June 7, 2004, to modify the text of Section 74-721 to allow additional waivers by special permit pursuant to that section and to clarify the zoning text. The text amendment would help facilitate the development of a 40-story mixed-use building on the southwest corner of Park Avenue South and East 28<sup>th</sup> Street.

### **RELATED ACTIONS**

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

1. C 040495 ZSM      Special Permit pursuant to Section 74-721(a) to allow several bulk waivers to facilitate the development of a 40-story mixed-use building, and
  
2. C 040496 ZMM      Zoning Map Amendment from C6-4A and C5-2 to C5-3 for one block in

Midtown South.

## **BACKGROUND**

A full background discussion and description of this application appears in the report on the related application for the grant of a special permit (C 040495 ZSM).

## **ENVIRONMENTAL REVIEW**

This application (N 040497 ZRY ), in conjunction with the applications for the related actions (C 040495 ZSM) and (C 040496 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 04DCP058M. 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 August 9, 2004.

## **PUBLIC REVIEW**

On August 9, 2004, this text change was duly referred to Manhattan Community Board 5, Queens Community Board 2, the Manhattan Borough President and the Queens Borough President for

information and review in accordance with the procedure for referring non-ULURP matters.

### **Community Board Public Hearing**

Manhattan Community Board 5 issued recommendations on the special permit (C 040495 ZSM) and the map change (C 040496 ZMM), but did not issue a recommendation on the text change. Queens Community Board 2 did not issue a recommendation.

### **Borough President Recommendation**

This application was considered by the Manhattan Borough President, who issued a recommendation approving the application on September 27, 2004. The Queens Borough President did not issue a recommendation.

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

On October 6, 2004 (Calendar No. 7), the City Planning Commission scheduled October 20, 2004, for a public hearing on this application (C 040497 ZRY). The hearing was duly held on October 20, 2004 (Calendar No. 14), in conjunction with the public hearings on the applications for the related actions (C 040495 ZSM) and (C 040496 ZMM).

There were a number of speakers, as described in the report on the related application for a zoning special permit (C 040495 ZSM).

## CONSIDERATION

The Commission believes that the proposed amendment to the Zoning Resolution, in conjunction with the related proposed map amendment and special permit, is appropriate.

A full consideration and analysis of the issues, and the reasons for approving this application, appear in the report on the related application for the grant of a special permit (C 040495 ZSM).

## 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**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and 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 as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is to be deleted;

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

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

74-721

**Height and setback and yard regulations**

- (a) In C4-7, C5-2, C5-3, C5-4, C6-1A, C6-4, C6-5, C6-6, C6-7 or M1-6 Districts, the City Planning Commission may permit modification of the height and setback regulations, including tower coverage controls, for developments or enlargements located on a zoning lot having a minimum area of 40,000 square feet or occupying an entire block.

In C5-3, C6-6 and C6-7 Districts on such zoning lots, the Commission also may modify yard and court regulations, and regulations governing the minimum required distance between buildings and/or the minimum required distance between legally required windows and walls or lot lines, provided that the Commission finds that such modifications:

- (1) provide a better distribution of bulk on the zoning lot;
- (2) result in a better relationship of the building to open areas, adjacent streets and surrounding development; and
- (3) provide adequate light and air for buildings on the zoning lot and neither impair access to light and air to legally required windows in adjacent buildings nor adversely affect adjacent zoning lots by unduly restricting access to light and air to surrounding streets and properties;

As a condition of this special permit, if any open area extending along a side lot line is provided at any

level, such open area shall be at least eight feet in width:

(b) In a C6-4 District, the Commission may modify the supplementary #use# regulations of Section 32-422 (Location of floors occupied by non-residential uses), for #developments# or #enlargements# on #zoning lots# occupying an entire #block# and located in a C6-4 District with a basic commercial #floor area ratio# of 10.0, the Commission may also modify the supplementary #use# regulations of Section 32-422 (Location of floors occupied by non-residential uses); provided the following findings are made conditions are met:

- (1) ~~that~~ the non-#residential uses# are located in a portion of a #mixed building# ~~which~~ that has separate access to the #street# with no openings of any kind to the #residential# portion of the #building# at any #story#; and
- (2) ~~that~~ the non-#residential uses# are not located above the lowest #story# containing #dwelling units# unless the #residential# and non-#residential# portions are separated in accordance with the provisions of Section 23-82 (Building Walls Regulated by Minimum Spacing Requirements).

(c) In C5-3, C6-6 and C6-7 Districts, the Commission may modify height and setback and #yard# regulations, including tower coverage controls, for #developments# or #enlargements# located on a #zoning lot# having an area less than 40,000 square feet, ~~provided the #zoning lot#~~ that occupies an entire #block# front on a #wide street#, subject to the following conditions:-

~~As a condition for the special permit, the Commission shall make the following findings:~~

- (1) ~~that the modification of height and setback will provide a better distribution of #bulk# on the #zoning lot# and will not adversely affect other adjacent #zoning lots# by unduly restricting access to light and air to surrounding public spaces, #streets# and properties; and~~

- (21) ~~that~~ where #buildings# or portions thereof penetrate the established #sky exposure plane#, the aggregate area occupied by such #buildings# or portions thereof at such elevation shall not exceed:
- (i) 55 percent of the area of such #zoning lot#; or
  - (ii) an equivalent of 55 percent of the aggregate area of such #zoning lot# and any adjoining #zoning lots# with a common #lot line# for at least 90 feet with negative easements limiting height of existing and future #developments# on the adjoining #zoning lots# by recorded deed or other written instruments; ~~and~~
- (32) ~~that~~ the #development# or #enlargement# includes on-site amenities, such as #arcades#, #through block arcades# or #covered pedestrian spaces# where the size and dimensions of such spaces are substantially greater than the required minimum standards, and includes~~—~~ sky lights or other provisions for additional access of direct natural light so as to provide for an increased penetration of light and air therein at the #street# level of the #development#, or a transit station improvement that results in a direct major connection to a subway station.
- (3) In lieu of ~~this finding, condition~~ (c)(32), the ~~Commission finds that the~~ #development# or #enlargement# ~~may provide~~<sup>1</sup> in the same or an adjoining #block# of such #development# or #enlargement#<sup>2</sup> compensatory "off-site public open space." For the purposes of this ~~Section~~ paragraph, (c3), the term "adjoining block" shall mean a #block# that is contiguous to the development #block# but for its separation by a #street# or #street# intersection. The area of such off-site public open space shall be at least 4,000 square feet, or 15 percent of the #lot area# of a #zoning lot# containing the #development#, whichever is more, and a width of at least 40 feet at any point.

Such public open areas shall have a southern exposure, and adjoin a public sidewalk and be #developed# pursuant to the provisions of Section 37-04 (Requirements for Urban Plazas). A plan for the development and maintenance of such off-site public space shall be approved by the Commission. The off-site public area shall be kept open to the general public in accordance with a time schedule specified by the Commission. In no event shall such off-site public open space be eligible for #floor area# or bonus computation in connection with this or any other #development# or #enlargement#.

For such #developments#, the Commission may also modify the applicable regulations of Sections 32-51 (Limitations on Business Entrances, Show Windows or Signs) and 36-683 (Restrictions on location of berths near Residence Districts) where adjoining frontage within a distance of 75 feet on the same side of the #street# is occupied by a #community facility# or ground floor #commercial use#, provided that such modification is part of an overall design for #show windows#, signage and entrances or off-street loading berths developed in conjunction with a public amenity such as an #urban plaza#, #through block arcade# or #covered pedestrian space#, and will not alter the essential character of the immediate neighborhood.

In the case of existing #residential buildings# to remain temporarily on such #zoning lot#, the provisions of Sections 23-70 (MINIMUM REQUIRED DISTANCE BETWEEN TWO OR MORE BUILDINGS ON A SINGLE ZONING LOT) and 23-80 (COURT REGULATIONS AND MINIMUM DISTANCE BETWEEN WINDOWS AND WALLS OR LOT LINES) may be modified provided that each and every one of the following conditions are met:

- (i) that such existing #buildings# with unexpired leasehold interests are located upon such #zoning lot#;



- (ii) that the portions of the #zoning lot# where such existing #buildings# are located and are to be demolished shall be redeveloped according to the approved site plan;
- (iii) that no temporary or final certificate of occupancy shall be issued for that portion of #floor area# in the new #development# equal to twice the #floor area# in the temporary existing #buildings# until such #buildings# are vacated, demolished and their sites are redeveloped in accordance with the approved project plan, except that where the ~~City~~ ~~Planning~~ Commission shall have determined that the applicant for a special permit has made an offer to purchase the leasehold interests from the lessees at a fair market value of the remainder of the lease term, the Commission may decrease the amount of #floor area# for which no certificate of occupancy may be issued; and
- (iv) that the #development# conform with all the applicable laws relating to construction, operation and maintenance.

The owner of the #zoning lot# shall have prominently displayed thereon a sign stating the date by which the #buildings# are to be demolished.

- (~~4~~) As a further condition for the issuance of a permit under this ~~Section, paragraph, (c)~~, the owner of the #zoning lot# upon which new #developments# are to take place, must post a bond or other security payable to the City of New York and approved by the Corporation Counsel as to form, sufficient in amount as determined by the ~~City Planning~~ Commission to cover the cost of demolishing the existing #buildings# should the owner fail to so demolish within the prescribed time set forth in the approved project plan, and insure that all #floor area# which is to be vacant in the new #development# shall remain unfinished and vacant.

The bonds or other securities shall be payable to the City of New York if any of the above conditions are violated.

The Commission must find, with each grant for a special permit under this paragraph, (d) of this Section, that the #development#:

(1)i shall result in improved circulation; and

(2)ii would eliminate the undesirable pre-emption of ground level space by private #buildings or other structures#.

In making ~~this~~ these findings, the Commission may consider the provision of improved connections to rapid transit facilities, where applicable.

The site plan accompanying each application for a grant of special permit under this Section paragraph, (c), shall include a schedule indicating the timetable of demolition of all existing #buildings# and the schedule of new #development# and other improvements on the #zoning lot#.

In addition to the conditions in paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this Section, the Commission shall find that the modification of height and setback will provide a better distribution of #bulk# on the #zoning lot# and will not adversely affect other adjacent #zoning lots# by unduly restricting access to light and air to surrounding public spaces, #streets# and properties;

(e)d Notwithstanding any other provisions of the Zoning Resolution, where a #development# shares an aggregate #lot line# with a landmark building site for a distance of at least 90 feet, or contains a historically significant #street# that has been demapped and an archeologically significant site, both of which have

been identified by the Landmark Preservation Commission, the Commission may permit modification of the height and setback and #yard# regulations regardless of the lot size, provided that the following findings are made:

- (1) there is a harmonious architectural relationship between the landmark and the new structure, and such relationship is approved by the Landmarks Preservation Commission or, in the case of a #development# which contains a historically significant #street# that has been demapped and an archeologically significant site, there is a visual recognition of the location of the demapped #street# and of the archeologically significant site created by a design treatment that has been approved by both the Landmarks Preservation Commission and the City Planning Commission and, if such #development# is located within 200 feet of a historic district, there is a harmonious relationship between the proposed #development# and the historic district; and
- (2) pedestrian amenities are contained in the new structure including, where appropriate, retail stores and substantial pedestrian space at the principal levels of circulation, such as wider sidewalks, #arcades#, #covered pedestrian space#, subsurface concourses and convenient subway connections.

The above resolution (N 040497 ZRY), duly adopted by the City Planning Commission on November 17, 2004 (Calendar No. 24), 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, AICP, Chair**

**Kenneth J. Knuckles, Esq., Vice Chairman**

**Angela M. Battaglia, Irwin G. Cantor, P.E., Angela R. Cavaluzzi, R.A., Alfred C. Cerullo, III,  
Jane D. Gol, Christopher Kui, John Merolo, Karen A. Phillips, Dolly Williams Commissioners.**