



CITY PLANNING COMMISSION

March 8, 2006/Calendar No. 9

C 060210 ZMM

IN THE MATTER OF an application submitted by 200 Fifth, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 8d, changing from an M1-6 District to a C5-2 District property bounded by West 25th Street, a line 100 feet westerly of Broadway, a line 100 feet westerly of Fifth Avenue, West 23rd Street, and a line 275 feet westerly of Fifth Avenue, as shown on a diagram (for illustrative purposes only) dated November 14, 2005 and subject to the conditions of CEQR Declaration E-160, Community District 5, Borough of Manhattan.

The application for an amendment to the Zoning Map was filed by 200 Fifth, LLC on November 14, 2005. The Zoning Map amendment would rezone from M1-6 to C5-2 portions of two blocks located between Fifth Avenue/Broadway and Sixth Avenue, and West 23rd and West 25th streets.

The map change would facilitate the residential conversion of two commercial buildings currently split between M1-6 and C5-2 zoning districts.

RELATED ACTION

In addition to the amendment of the Zoning Map which is the subject of this report, 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 060211 ZSM Special Permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow an attended public parking garage with a maximum capacity of 54 spaces.

BACKGROUND

The applicant seeks to rezone an area just west of Fifth Avenue and Broadway between West 23rd Street and West 25th Street from M1-6 to C5-2 (C 060210 ZMM). The Zoning Map amendment would affect six properties, four of which are owned by the applicant;

- 200 Fifth Avenue (the “Toy Building”) is a 14-story commercial building owned by the applicant located between West 23rd and West 24th streets. The building is currently split by M1-6 and C5-2 zoning districts. The proposed rezoning would allow the building to be considered completely part of the C5-2 zoning district and redeveloped for residential use.
- 1107 Broadway (the “Toy Center North Building”) is a 16-story commercial building also controlled by the applicant located between West 24th and West 25th streets. This building is also split by M1-6 and C5-2 districts. The proposed rezoning would change the zoning of the building to entirely C5-2. The applicant seeks to convert the building to residential use and proposes a public parking garage with a maximum of 54 spaces in the cellar level of this structure in a related application (C 060211 ZSM).
- 23 West 23rd Street is a four-story commercial building, west of, and adjacent to 200 Fifth Avenue. The zoning at this building would change from M1-6 to C5-2. The property is owned by the applicant who proposes no changes for the building.
- 7 West 24th Street is a five-story building, west of, and adjacent to 1107 Broadway. The structure contains two floors of commercial use with three stories of residential use above. This building is also zoned M1-6 and would change to C5-2. It is owned by the applicant who plans no changes above the building’s ground floor where the applicant proposes locating an entrance to the proposed public parking garage.

- 25 West 23rd Street, a four-story commercial building, is currently zoned M1-6 and would become a split lot (M1-6/C5-2). Since the majority of the property would still be located in the M1-6 district, the property would remain subject to M1-6 use and bulk guidelines.
- 1115 Broadway is a 12-story commercial building that wraps around 1107 Broadway to the north and west. It is currently a split lot (M1-6/C5-2) and would remain as such.

The Toy Building and Toy Center North Building are together known as the International Toy Center (ITC). These buildings hold showroom space leased year-round by New York's wholesale toy industry – a collection of nearly 300 toy production companies and other toy-related businesses. The toy companies have been located at this site since 1938.

In March of 2005, the applicant purchased 200 Fifth Avenue and 1107 Broadway with hopes of converting the buildings to residential use and began the process of removing the toy industry from the ITC buildings. The industry has repeatedly voiced its commitment to remaining in New York City. The Economic Development Corporation (EDC) has been assisting the toy companies over the last 18 months in their search for a suitable property in the City, but no deal has yet been finalized.

The commercially-zoned blocks along the edges of Madison Square Park hold a mix of building types ranging from tall office buildings to four and five-story rowhouses. These blocks contain a wide range of commercial uses and a growing residential presence heightened by the conversion of 225 Fifth Avenue (the former New York Gift Building at Fifth Avenue and 26th Street), and the planned conversion of the tower portion of 1 Madison Avenue (the MetLife Tower).

The midblocks between Fifth and Seventh avenues west of Madison Square Park are zoned M1-6 for light manufacturing and commercial uses. They are characterized by large loft buildings constructed around the turn of the 20th century. At that time, and for much of the 20th century, these buildings provided space where goods were produced to be sold on the nearby avenues, particularly in what is known today as the Ladies' Mile Historic District. 200 Fifth Avenue and two other properties affected by the rezoning (23 and 25 West 23rd Street) lie within the boundaries of the historic district. Today the bulky, midblock loft buildings contain mostly commercial uses including office, wholesale, storage and hotel space with some ground floor retail uses. Though M1-6 zoning does not allow residential use as-of-right, a significant number of residences were grandfathered here in the early 1980s or were permitted by variances granted by the Board of Standards and Appeals.

The C5-2/M1-6 boundary that divides 200 Fifth Avenue and 1107 Broadway was established in 1961 to distinguish the manufacturing character of the midblocks between Fifth and Sixth avenues from the more commercial nature of the Fifth Avenue frontages. Between West 23rd and West 31st Streets, the boundary was mapped 100 feet west of Fifth Avenue and Broadway to fully include 100-foot-deep lots in the C5-2 district. Because the 200 Fifth Avenue and 1107 Broadway lots are much deeper than 100 feet, the boundary runs through them.

The nearby Sixth Avenue blockfronts between West 23rd and West 31st streets were rezoned in 1995 from M1-6 to C6-4X, resulting in the construction of over 1,000 units of housing in the past decade. In the summer of 2004, the Commission and the City Council approved a rezoning from M1-6M to C6-4A of the Fifth to Sixth Avenue midblocks between West 17th Street and West 22nd Street, just

south of the site currently proposed for rezoning. One principal goal of the rezoning was to facilitate housing production on under-utilized sites found on these midblocks.

Zoning Map Amendment (C 060210 ZMM)

Because 200 Fifth Avenue and 1107 Broadway are split between M1-6 and C5-2 zoning districts, the applicant cannot completely convert either building to residential use. The applicant proposes moving the M1-6/C5-2 boundary to a distance 275 feet west of Fifth Avenue between West 23rd and West 25th streets, which would allow both buildings to be considered wholly within the C5-2 district, and therefore allow the residential conversion of both buildings in their entirety.

M1-6 zoning permits light manufacturing and commercial uses at a maximum base FAR of 10. C5-2 districts are central commercial districts which permit commercial and residential use at a maximum base FAR of 10. The Zoning Map amendment would permit residential use within the rezoning area, and would no longer allow manufacturing, industrial, auto, maintenance, repair and large entertainment uses that M1-6 zoning currently permits. Height and setback guidelines for M1-6 and C5-2 districts are identical, allowing a streetwall of up to 85 feet with building heights determined by a sky exposure plane.

Parking Garage Special Permit (C 060211 ZSM)

Concurrent with the rezoning proposal, the applicant submitted an application for a special permit pursuant to Sections 13-562 and 74-52 for an attended public parking garage with a maximum of 54 spaces to be located in a portion of the cellar level of 1107 Broadway (C 060211 ZSM). The garage would occupy 10,890 square feet of space and would include 10 reservoir spaces. It would be

accessed from West 24th Street (a one-way, east-bound street) via a 22-foot curb cut and 20-foot wide ramp. The ramp would occupy the ground floor level of 7 West 24th Street, a five-story building with ground and second floor commercial space and residential space above, adjacent to 1107 Broadway to the west. The ramp would be located 193 feet west of Broadway.

ENVIRONMENTAL REVIEW

This application (C 060210 ZMM), in conjunction with the application for the related action (C 060211 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 05DCP089M. 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 November 14, 2005, which included (E) designations for hazardous materials, air quality and noise.

To avoid the potential for hazardous materials impacts, the proposed zoning map amendment includes (E) designations for hazardous materials on the following properties:

- Block 825, Lot 31
- Block 825, Lot 29
- Block 826, Lot 37
- Block 826, Lot 33
- Block 826, Lot 46

The (E) designation would require that the fee owner of such a site conduct a testing and sampling protocol, and remediation where appropriate, to the satisfaction of the New York City Department of Environmental Protection before the issuance of a building permit by the Department of

Buildings pursuant to the provisions of Section 11-15 of the Zoning Resolution (Environmental Requirements). The (E) designation also includes a mandatory construction-related health and safety plan which must be approved by NYCDEP.

An (E) designation for air quality would be placed on Block 826, Lot 46 as follows:

The boiler for any change to residential use in the building at 1115 Broadway (Block 826, Lot 46) must use natural gas as the type of fuel for HVAC systems and the boiler stack must be located at a minimum distance of at least 50 feet from the façade of the building at 1107 Broadway (Block 826, Lot 37).

To avoid the potential for significant adverse impacts related to noise, the proposed action included (E) designations for noise on the following properties:

- Block 825, Lot 31
- Block 826, Lot 37
- Block 826, Lot 46

In order to ensure an acceptable interior noise environment, future residential uses must provide a closed window condition with a minimum of 35 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation would also have to be provided. Alternate means of ventilation would include, but would not be limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.

UNIFORM LAND USE REVIEW

This application (C 060210 ZMM), in conjunction with the application for the related action (C 060211 ZSM), was certified as complete by the Department of City Planning on November 14, 2005, 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 December 8, 2005, and on that day, by a vote of 29 to one with one abstention, adopted a resolution recommending disapproval of the application with the following comments:

- 1) The Board has concerns regarding the potential burden on local public schools that would be created by a large influx of residents.
- 2) Community Board Five sees advantages to additional hotel space in the district.
- 3) The Board wishes to encourage the continued commercial usage of the property.
- 4) The Toy Industry Association spoke in support of the plans, and the International Toy Center Tenants Association spoke in opposition to the proposal.

Borough President's Recommendation

This application was considered by the Borough President, who issued a recommendation on January 18, 2006 approving the application with the following conditions:

1. That the applicant commit, in writing, to the Borough President, that, until March 1, 2006, notwithstanding any rights the applicant may possess under its lease agreements with any tenant, the applicant will not seek to interrupt, disconnect, or make any significant changes to the electrical service currently received by any tenant, nor will it request or demand that any tenant relocate its occupancy to any other part of the building, and that, in the opinion of the Borough President, this commitment is honored.²

[² This should not be construed as prejudicing any other rights or obligations the applicant or any tenant may have under their lease or applicable law.]

2. That, in the opinion of the Borough President, the parties to the toy show agreement continue to honor the commitments made in that agreement (the applicant by permitting the tenants the undisturbed use of the building before and during the February toy fair, and the toy industry representatives by making all reasonable commercial efforts to find a new location), and that significant progress continues to be made toward the goal of finding a new permanent home for the toy shows. In making this determination, the Borough President shall be advised by the parties, the Department of City Planning, the City Economic Development Corporation, the Office of the Deputy Mayor for Economic Development & Rebuilding, and the City Council.

City Planning Commission Public Hearing

On January 25, 2006 (Calendar No. 1), the City Planning Commission scheduled February 8, 2006 for a public hearing on this application (C 060210 ZMM). The hearing was duly held on February 8, 2006 (Calendar No. 27) in conjunction with the public hearing on the related action (C 060211

ZSM). Four speakers discussed the application and related application. Three speakers spoke in favor of the application, and one gave testimony for informational purposes. There were no speakers in opposition.

The applicant's representative spoke in favor of the applications explaining the land use rationale for the proposed rezoning and the challenge of relocating the toy industry within New York City. He noted that the Madison Square Park area was becoming increasingly residential in character and that the proposed rezoning would be in keeping with that trend. The representative discussed an agreement signed by the applicant and the Toy Industry Association (TIA) authorizing the toy companies to use 200 Fifth Avenue and 1107 Broadway through the end of February, 2006, in order to assure that the industry's February toy fair would run smoothly. He also mentioned the applicant's willingness to help the toy companies find interim space or move them into a building controlled by the applicant.

A representative of the Toy Industry Association also spoke in favor of the applications. He explained the history of the TIA and operation of the toy industry in New York. He discussed the industry's seasonal conventions, its year-round space requirements and its current relocation efforts.

The Borough President's director of land use spoke in favor of the rezoning and special permit applications. He restated the Borough President's two conditions of his approval of the application which related to the Toy Center's relocation.

In addition to these speakers, a representative of the Economic Development Corporation (EDC) spoke about the agency's 18-month effort to locate a new home for the toy companies.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the zoning map amendment (C 060210 ZMM), in conjunction with the related special permit for public parking garage (C 060211 ZSM), is appropriate.

Zoning Map Amendment (C 060210 ZMM)

The Commission recognizes the changing character of the blocks surrounding Madison Square Park, specifically noting the recent conversion of the former Gift Building and the planned conversion of the MetLife Tower. The Commission also notes that M1-6 zoning on the Fifth to Sixth Avenue midblocks between West 23rd and West 25th streets preserves loft space for commercial and manufacturing uses that provide many jobs. Because the subject buildings face onto Madison Square Park, the Commission believes they are more readily identified with the park-centered neighborhood than the M1-6 zoned midblocks. The Commission believes that the proposed C5-2 zoning which would allow 200 Fifth Avenue and 1107 Broadway to be converted to residential use would not be inappropriate and would not affect the commercial and manufacturing character of the midblocks west of the rezoning area which would remain zoned M1-6.

The Commission notes that the Toy Industry Association supports the application and is pleased to note that the industry has renewed its commitment to remain in New York City even as it searches

for a new permanent home. The Commission hopes the toy companies, the applicant and the Economic Development Corporation will continue to work together to identify a suitable new location for one of the City's important industries.

The Commission notes that all existing uses within the boundaries of the rezoning area would continue to be conforming uses under C5-2 zoning and that C5-2 bulk controls are identical to those of M1-6 districts. The Commission notes that besides 200 Fifth Avenue and 1107 Broadway, the rezoning would change the zoning of two additional buildings, both of which are owned by the applicant. The commercial uses at 23 West 23rd Street would conform with the proposed zoning, and the applicant plans no change of use for the structure. 7 West 24th Street contains two floors of commercial space and three floors of grandfathered residential units that would become conforming uses under the rezoning. The rezoning would affect only small portions of two other buildings.

The Commission believes that the proposed amendment to the Zoning Map recognizes the evolving nature of the Madison Square Park neighborhood and more accurately reflects existing conditions in the area. The Commission also believes the proposed rezoning would help contribute to the City's ongoing efforts to increase its supply of housing without disrupting businesses found on the Fifth to Sixth Avenue midblocks adjacent to the rezoning area.

Special Permit for Public Parking Garage (C 060211 ZSM)

The Commission believes that the 54-space public parking garage will be compatible with, and supportive of, the wide range of commercial uses and the rapidly increasing number of residential units found in the surrounding area. The Commission notes that as a result of the concurrent

rezoning application, approximately 500 new residential units are expected at the site of the proposed garage (1107 Broadway) and 200 Fifth Avenue, located directly across West 24th Street from the proposed garage. The Commission believes that the proposed public parking garage will help meet the demand for parking created by the existing commercial uses and growing number of residences in the area.

The Commission notes that the Environmental Assessment Statement prepared in connection with this application stated that the garage would generate nine, five and nine vehicle trips during the weekday morning, noon and evening peak hours, respectively. The Commission believes that this would not contribute to serious congestion or unduly inhibit pedestrians. The Commission notes that the EAS indicated that nearby streets can accommodate the trips generated by the garage. The Commission notes that the nearby streets providing access to the garage are not local residential streets, but are wide avenues surrounded by office and commercial uses and smaller (60-foot wide) commercial streets. The Commission notes that the garage will provide ten reservoir spaces on the ramp and cellar levels of the garage in order to prevent queuing issues and prevent traffic back-ups that could otherwise be caused by vehicles attempting to enter the garage.

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 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 further amended by changing the Zoning Map, Section No. 8d, changing from an M1-6 District to a C5-2 District, property bounded by West 25th Street, a line 100 feet westerly of Broadway, a line 100 feet westerly of Fifth Avenue, West 23rd Street, and a line 275 feet westerly of Fifth Avenue, as shown on a diagram (for illustrative purposes only) dated November 14, 2005 and which includes CEQR Designation E-160.

The above resolution (C 060210 ZMM), duly adopted by the City Planning Commission on March 8, 2006 (Calendar No. 9), 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
IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A., ALFRED C. CERULLO, III,
RICHARD W. EADDY, JANE D. GOL, LISA A. GOMEZ, CHRISTOPHER KUI,
JOHN MEROLO, DOLLY WILLIAMS, Commissioners
KAREN A. PHILLIPS, Commissioner, Voting No