



CITY PLANNING COMMISSION

February 13, 2008/Calendar No. 23

C 060525 ZSM

IN THE MATTER OF an application submitted by To Better Days, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the use regulations of:
 - a. Section 42-10 to allow Use Group 2 uses (residential uses) on the 2nd – 15th floors; and
 - b. Section 42-14D(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar; and
2. the height and setback regulations of Section 43-43 (Minimum Height of Front Wall and Required Front Setbacks);

to facilitate the development of a 15-story mixed use building on a zoning lot containing a landmark designated by the Landmarks Preservation Commission located at 35-39 East 4th Street (Block 544, Lots 59, 65, 66, 67 & 68) in an M1-5B District, Borough of Manhattan, Community District 2.

The application for the special permit was filed by To Better Days, LLC on June 6, 2006, to allow Use Group 6 uses on the ground floor and cellar and residential use on the upper floors of a proposed building at the northwest corner of Cooper Square and East 4th Street and the restoration to residential use of an existing building on the north side of East 4th Street between Cooper Square and Lafayette Street.

BACKGROUND

35-39 East 4th Street is an irregularly shaped property situated at the northwest corner of Cooper Square and East 4th Street. It is located within an M1-5B District. The site is immediately outside the boundary of the NoHo Historic District. The subject lot has 142 feet of frontage on Cooper Square and 215 feet of frontage on East 4th Street.

The 25,658 square foot zoning lot is comprised of a 98-space at-grade attended public parking lot which is primarily located at the eastern edge of the site, along Cooper Square; a 9,912 square foot City-owned parcel on which the Department of Environmental Protection is currently constructing access to the Third Water Tunnel; and the Samuel Tredwell Skidmore House, a NYC designated landmark. The Skidmore House is a 3½ story Greek Revival style rowhouse, constructed in 1845, that has been vacant for many years and is in a dilapidated condition

The City acquired fee title to the water-tunnel shaft site as a result of a negotiated sale with the prior owner of the property. As part of the agreement between the City and the prior owner, the City acquired fee title to the land with the development rights remaining with the prior owner.

The applicant is proposing to renovate the Skidmore House and restore the building to single family residential use and to construct a new 15-story, primarily residential building with 147 units on the portion of the site currently occupied by the parking lot. The base of the building would be at the street lines of Cooper Square and East 4th Street and would be six-stories high. The building would then set back and rise as a tower to its maximum height of 150 feet 6 inches to the top of the roof and 173 feet 6 inches to the top of the bulkhead. The building would contain a total of approximately 121,775 square feet of floor area; including 97,775 square feet of residential use and 24,000 square feet of retail use on the ground floor and cellar level.

The surrounding neighborhood is comprised of a mix of residential and commercial buildings of varying height. East 4th Street as well as other east-west streets in the area are primarily developed with four- to seven-story rowhouses with ground floor commercial uses. While the west side of Cooper Square is generally lined with buildings ranging in height from four- to 12-stories, the subject block front of Cooper Square is characterized by high street wall, bulky

seven- to 12-story loft buildings interspersed with four-story commercial buildings. In 2005, a 21-story residential tower was constructed at the northern end of the subject block. The east side of Cooper square is primarily lower in scale than the west side of the street, being characterized by three- to five-story commercial structures, but a 14-story tower-in-the-park style building is located directly across Cooper Square from the subject site.

Requested Modifications

Use Modification

Residential use is not permitted in the M1-5B zoning district and new construction is restricted to a specific set of conforming uses including light industry, warehousing, wholesaling, parking facilities, and hotels. In addition, according to the use regulations for an M1-5B district, uses below the second story are limited to wholesale, business service, warehouse and light industrial uses (Use Groups 7, 9, 11, 16, 17A, 17B, 17C and 17E). Section 74-711 of the Zoning Resolution allows the City Planning Commission, by special permit, to modify use and bulk regulations (except floor area) in order to further the preservation of designated landmark buildings or buildings located within historic districts.

This application requests a modification of the M1-5B use regulations to allow residential use on the second through fifteenth floors of the proposed building. The application also requests a modification of the M1-5B use regulations to allow retail use on the ground floor and cellar levels.

Bulk Modification

The site is governed by the bulk provisions of the M1-5B district. The building may rise to six stories or 85 feet, whichever is less and is then required to setback 15 feet on a wide street, such

as Cooper Square, or 20 feet on a narrow street, such as East 4th Street. Above the setback the building could continue to rise within a sky exposure plane of 5.6:1 on a wide street and 2.7:1 on a narrow street.

The base of the proposed building would rise six stories and would then provide 15-foot setbacks on both Cooper Square and East 4th Street. The reduced setback on East 4th Street was incorporated in the design of the building in response to a request from the Landmarks Preservation Commission (LPC) that the building have symmetrical setbacks on Cooper Square and East 4th Street and that the tower be set away from the Skidmore House. The two top floors of building also penetrate the sky exposure plane on East 4th Street.

The applicant is seeking a waiver to allow a setback on East 4th Street less than that required by the M1-5B provisions and to permit the top two floors of the building to penetrate the sky exposure plane on East 4th Street.

The application includes a report from the LPC stating that a continuing maintenance program has been established that will result in the preservation of the Skidmore House, and that the proposed use and bulk modifications contribute to a preservation purpose.

ENVIRONMENTAL REVIEW

This application (C 060525 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 07DCP049M. 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 October 1, 2007.

UNIFORM LAND USE REVIEW

This application (C 060525 ZSM) was certified as complete by the Department of City Planning on October 1, 2007 and was duly referred to Community Board 2 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 2 held a public hearing on this application on November 8, 2007 and on November 15, 2007 by a vote of 39 to 2 with 0 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on December 19, 2007, approving the application.

City Planning Commission Public Hearing

On December 19, 2007 (Calendar No. 5), the City Planning Commission scheduled January 9, 2008 for a public hearing on this application (C 060525 ZSM). The hearing was duly held on January 8, 2008 (Calendar No. 22). There were five speakers in favor of the application and two speakers in opposition.

The attorney for the project described the subject proposal and stated that it met the requisite findings. Two of the architects for the project appeared in favor. A representative of the owner stated that the owner was planning to develop the site as a market rate rental development.. A

representative of the Borough President reiterated the Borough President's support for the application.

The two speakers in opposition were neighborhood residents who stated their belief that the project was out of scale with the surrounding built context and would erode the character of the neighborhood.

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 modification of use regulations to allow residential and Use Group 6 uses at 35-39 East 4th Street will have minimal adverse effects on the conforming uses in the surrounding area. The predominant conforming uses in the surrounding area include a mix of institutional, commercial, residential uses and JLWQAs on the upper floors and retail uses on the ground floors of buildings. The Commission recognizes that the surrounding area contains a significant number of dwelling units and that both conforming and non-conforming commercial uses line the ground-level frontages along East 4th Street and Cooper Square. The Commission notes that the ground floor Use Group 6 use and the upper floor residential use proposed for the building are analogous to the uses occupying many of the surrounding buildings. The Commission therefore believes that the introduction to the neighborhood of 147 residential units and ground floor retail use would not impact neighborhood character.

The Commission believes that the modification of bulk regulations to allow a 15 foot setback on Cooper Square rather than a 20 foot setback as required would be compatible with the scale of the surrounding area. The Commission notes that the location of the tower and the requested waivers responds to a request made by LPC that the tower portion of the building be located away from the Skidmore House and that there be symmetrical setbacks on both Cooper Square and East 4th Street.

The Commission notes that the height and massing of the proposed development corresponds to the built context of both Cooper Square and East 4th Street. The former is primarily characterized by taller buildings, such as the 14-story building immediately opposite on the site on the east side of Cooper Square, while the latter is primarily characterized by rowhouses and other lower buildings. The Commission notes that the long side of the tower fronts on Cooper Square, thereby complementing the other taller buildings which line both sides of Cooper Square, and visually completing the subject block front. The Commission further notes that the tower would be located at a sufficient distance from the Skidmore House to not visually impact the designated building.

The Commission believes that the smaller setback requested on East 4th Street and the related penetration of the sky exposure plane on East 4th Street, would not adversely affect structures or open space in the vicinity in terms of access to light and air. The Commission notes that both the requested setback and the sky exposure waivers are relatively minor. The Commission further notes that the EAS completed for the project found that the incremental shadows resulting from the proposed project would not result in any significant adverse shadow impacts.

The Commission believes that proposed use and bulk modifications will facilitate the renovation and preservation of the Skidmore House and that the proposed mixed-use building will be consistent with and supportive of the character of the surrounding mixed-use area.

FINDINGS

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

- (1) 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
- (2) 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, 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 To Better Days, LLC, for a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the the use regulations o Section 42-10 to allow Use Group 2 uses (residential uses) on the 2nd – 15th floors; and Section 42-14D(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar; and the height and setback regulations of Section 43-43 (Minimum Height of Front Wall and Required Front Setbacks) to facilitate the development of a 15-story mixed use building on a

zoning lot containing a landmark designated by the Landmarks Preservation Commission located at 35-39 East 4th Street (Block 544, Lots 59, 65, 66, 67 & 68) in an M1-5B District, Borough of Manhattan, Community District 2 is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 060525 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plan, prepared by Gerner Kronick & Valcarel, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-2	Zoning Sheet	10.30.06
Z-4	Site Plan	07.03.07
Z-5	Floor Plans	10.30.06
Z-6	Sky Exposure Planes	10.30.06

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 resolution and the restrictive declaration described below and any subsequent modifications to either document 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.
6. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated January 29, 2008, executed by To Better Days, 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 060525 ZSM), duly adopted by the City Planning Commission on February 13, 2008 (Calendar No.23), 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
ANGELA M. BATTAGLIA, ANGELA R. CAVALUZZI, R.A.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, NATHAN LEVENTHAL, SHIRLEY A. MCRAE,
JOHN MEROLO, KAREN A. PHILLIPS, Commissioners

KENNETH J. KNUCKLES, Esq., Vice Chairman, RECUSED
IRWIN G. CANTOR, P.E., Commissioner, RECUSED