



CITY PLANNING COMMISSION

July 23, 2003/Calendar No. 34

C 030353 ZSM

IN THE MATTER OF an application submitted by Stahl 401 Fifth Avenue, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 81-82(c) to allow a bank use on the ground floor to occupy:

1. a maximum of 70% of the linear street frontage of the zoning lot on or within 50 feet of Fifth Avenue; and
2. a maximum of 57% of the total lot area of the zoning lot within 50 feet of Fifth Avenue

in an existing commercial building at 401 Fifth Avenue (Block 886, Lot 76), in a C5-3 District, within the Special Midtown District (Fifth Avenue Subdistrict).

The application for the special permit was filed by Stahl 401 Fifth Avenue, LLC on March 4, 2003, to allow a bank to be located on the ground floor of the subject lot with an area and linear street frontage greater than allowed within the Special Fifth Avenue Subdistrict of the Special Midtown District.

BACKGROUND

The applicant requests a waiver of the ground floor use regulations in the Fifth Avenue Subdistrict of the Special Midtown District. The Fifth Avenue Subdistrict limits ground floor uses to certain retail establishments that preserve, protect and enhance the retail character of Fifth Avenue in Midtown. Banks are limited to a maximum of 15 percent of the linear street frontage and 10 percent of the lot area within 50 feet of Fifth Avenue. The applicant proposes to locate a bank on the subject site which would exceed these maximums.

The proposed bank would be located in the "Old Tiffany" building, a New York City landmark

building designed by McKim, Mead and White, located on the southeast corner of Fifth Avenue and 37th Street. The proposed bank would occupy 67 feet of street frontage along Fifth Avenue and 50 feet of street frontage along East 37th Street within 50 feet of Fifth Avenue, accounting for 70 percent of the 167 feet of total street frontage within 50 feet of Fifth Avenue. The bank would occupy 3,350 square feet of floor area within 50 feet of Fifth Avenue, accounting for 57 percent of the total lot area of 5,854 square feet within 50 feet of Fifth Avenue.

Under previous ownership, a cement base was added to the building's facade which the Landmarks Preservation Commission believes is out-of-character with the historic building. As part of the application, the applicant would fully restore the landmarked building to its original first-class condition and enter into a continuing maintenance program to ensure the preservation of the landmark.

The ground floor uses along Fifth Avenue in the surrounding area contain a mix of electronic stores, eating and drinking establishments, and small clothing stores. The Lord & Taylor department store is located two blocks to the north and the CUNY Graduate Center is located two blocks to the south of the site. There are two other banks located at the same intersection of the proposed bank that existed prior to the establishment of the Fifth Avenue Subdistrict ground floor regulations in 1982.

ENVIRONMENTAL REVIEW

This application (C 030353 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 03DCP049M. 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 March 31, 2003.

UNIFORM LAND USE REVIEW

This application (C 030353 ZSM) was certified as complete by the Department of City Planning on March 31, 2003, 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 May 8, 2003, and on May 8, 2003, by a vote of 23 to 0 with 1 abstention, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on May 16, 2003 approving the application.

City Planning Commission Public Hearing

On June 4, 2003 (Calendar No. 14), the City Planning Commission scheduled June 18, 2003, for a public hearing on this application (C 030353 ZSM). The hearing was duly held on June 18, 2003 (Calendar No. 18). There were two speakers in favor of the application and none in opposition.

The chair of Community Board 5 spoke in favor of the application. He noted that the resolution to approve the subject application was passed unanimously by the board. He raised a more general concern related to the 74-711 special permit process: that the board was troubled by the bifurcated process in which 74-711 special permits are reviewed. He also suggested that the Department of City Planning re-examine the rules limiting bank uses along Fifth Avenue to see whether such rules are still necessary given the changes to banking operations over the past two decades.

A representative of the building owner also spoke in favor of the application. He provided an overview of the application, the neighborhood, and the building. He explained that the owner had searched for almost three years for a ground floor tenant that would be allowed as-of-right in the Fifth Avenue Subdistrict of the Special Midtown District. He explained that the unusually deep ground floor space and the limited show windows made the space difficult to market. National retail chains were not interested in the area, and cell phone and shoe stores were interested in only those portions closest to Fifth Avenue. Though several food service establishments expressed interest in the space, the building owners did not feel it was appropriate

to have another such use in the building which already housed a deli and a fast food establishment. The bank use, he explained, would be able to help finance the extensive restoration to be undertaken on the building.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this the special permit is appropriate.

The Commission believes that the addition of a bank use to the ground floor of 401 Fifth Avenue will not adversely affect uses within the building and in the surrounding area. The Commission notes that there are two previously-existing non-conforming banks at the same intersection of the proposed bank which began operation prior to the adoption of the Fifth Avenue Subdistrict ground floor regulations in the early 1980s. The Commission notes that although banks are a permitted use in the building, they are limited in size. While the Commission believes that the limits on bank uses along Fifth Avenue continue to serve an important function in protecting the retail character of the avenue, the Commission is aware that the nature of retail banking operations has evolved into a more active retail use since the Special Fifth Avenue regulations were established.

The Commission is aware that the configuration of the ground floor space had made the space difficult to market. The Commission is also aware that the building owner has tried to market

the space for almost three years but failed to attract a suitable tenant.

The Commission is pleased that the applicant will complete a full restoration of the landmark building. The facade of the building had been altered several times since the building was constructed. As part of the restoration, the applicant would remove the ground floor concrete facade and restore the original column design. The restoration also includes the installation of a new roof, the installation of bronze signage panels, and the restoration of the marble columns. As part of the application for the special permit, the building's owner would be obligated to maintain the building in first class condition and carry out a cyclical inspection and maintenance program.

FINDINGS

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

- 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 Stahl 401 Fifth Avenue, LLC for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 81-82(c) to allow a bank use on the ground floor to occupy:

1. a maximum of 70% of the linear street frontage of the zoning lot on or within 50 feet of Fifth Avenue; and
2. a maximum of 57% of the total lot area of the zoning lot within 50 feet of Fifth Avenue

in an existing commercial building at 401 Fifth Avenue (Block 886, Lot 76), in a C5-3 District, within the Special Midtown District (Fifth Avenue Subdistrict), Borough of Manhattan, Community District 5, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 030353 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Beyer Blinder Belle, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
3	First Floor Plan	February 27, 2003

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 report and resolution and any subsequent modifications 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 July 1, 2003, executed by Stahl 401 Fifth Avenue, 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.

6. 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 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.

7. 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 030353 ZSM), duly adopted by the City Planning Commission on July 23, 2003 (Calendar No. 34), 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.

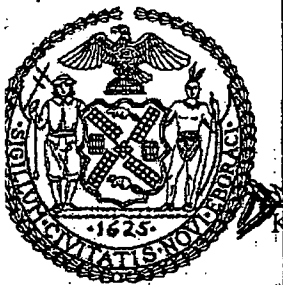
Amanda M. Burden, AICP, Chair

Kenneth J. Knuckles, Esq., Vice Chairman

Angela M. Battaglia, Irwin G. Cantor, P.E., Angela R. Cavaluzzi, R.A., Richard W. Eaddy,

Alexander Garvin, Jane D. Gol, Christopher Kui, John Merolo, Karen A. Phillips,

Joseph B. Rose, Dolly Williams Commissioners



MANHATTAN COMMUNITY BOARD FIVE

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11/00/03

Kyle Merker, Chair

Kathy Kinsella, District Manager

CITY PLANNING COMMISSION
2003 MAY 13 PM 1:17
DEPT. OF CITY PLANNING

May 9, 2003

Hon. Amanda Burden
Commissioner
City Planning Commission
22 Reade Street
Room 2E
New York, NY 10007

RE: ULURP Application # C 030353 ZAM - Application for special permit to allow a bank at 401 Fifth Avenue (Old Tiffany Building)

Dear Commissioner Burden:

At the regularly scheduled monthly meeting of Community Board Five on Thursday, May 8, 2003, the Board passed the following resolution with a vote of 23 in favor, 0 opposed, 1 abstention:

WHEREAS, the applicant seeks to lease the northern corner of the ground floor of the building at 401 Fifth Avenue to a bank for retail banking uses; and

WHEREAS, the Special Regulations of the Fifth Avenue Subdistrict limit the amount of the lot area and street frontage that can be occupied by a banking use on Fifth Avenue and East 37th Street; and

WHEREAS, the proposed retail banking use would exceed the frontage and lot area restrictions of this Special Subdistrict; and

WHEREAS, the use restrictions enacted in 1982 to encourage retail growth along this portion of Fifth Avenue between 34th Street and 38th Street as a major shopping destination have not increased the growth of major retail uses nor lessened the disappearance of major retail uses now that B Altman's Department Store has been replaced by CUNY Graduate Center; and

WHEREAS, the originator of the use restrictions in the Fifth Avenue Subdistrict, the Fifth Avenue Association and the Grand Central Partnership both support this application; and

WHEREAS; the proposed use is a compatible use and will have no negative impact on the neighborhood; and

WHEREAS, the storefront display windows located between the 23 grand marble Corinthian columns are too narrow to adequately serve the display needs of most 21st century merchandise retail uses; and

WHEREAS; the proposed use will support the NYC Landmarks Preservation Commission approved preservation and restoration master plan for this historic landmark building designed by McKim, Mead and White; therefore, be it

RESOLVED, that Community Board Five recommends approval of the special permit under Section 74-711 to modify the special use restrictions of the Fifth Avenue Subdistrict of the Special Midtown District to allow the applicant to use a portion of the ground floor of 401 Fifth Avenue for retail banking purposes.

Sincerely,

Kyle Merker

Kyle Merker
Chair

Micnael Utevsy

Micnael Utevsy
Chair, Land Use & Zoning

cc: Hon. C. Virginia Fields
Hon. Christine Quinn
Calendar Information Office, City Planning Commission
Elise Wagner, Paul Hastings Janofsky & Walker LLP

**Borough President
Recommendation**

City Planning Commission
22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application #: C 030353 ZSM

Docket Description:

IN THE MATTER OF an application submitted by Stahl 401 Fifth Avenue, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 81-82(c) to allow a bank use on the ground floor to occupy:

1. a maximum of 70% of the linear street frontage of the zoning lot on or within 50 feet of Fifth Avenue; and
2. a maximum of 57% of the total lot area of the zoning lot within 50 feet of Fifth Avenue

of an existing commercial building at 401 Fifth Avenue (Block 866, Lot 76), in a C5-3 District, within the Special Midtown District (Fifth Avenue Subdistrict), Borough of Manhattan, Community District 5.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, New York 10007

COMMUNITY BOARD NO.: Five

BOROUGH: Manhattan

CITY PLANNING COMMISSION
2003 MAY 16 PM 2:39
DEPT. OF CITY PLANNING

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITIONS (List below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)


BOROUGH PRESIDENT

5/16/03
DATE