

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

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Wally Rubin, District Manager

May 13, 2016

Hon. Carl Weisbrod
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: ULURP Application # C 160082 ZSM, An application by 42 West 18th Street Realty Corp for a special permit to modify height and setback requirements, rear yard requirements and the minimum distance between buildings requirement to facilitate the development of mixed-use building massed in two wings of 16 and 17 stories containing approx 66 units of residential (68,000 sq ft), approx 16,000 sq ft of commercial space and a below-grade one-level parking garage.

Dear Chair Weisbrod:

At the regularly scheduled monthly Community Board Five meeting on Thursday, May 12, 2016, the following resolution passed with a vote of 40 in favor; 1 opposed; 3 abstaining:

WHEREAS, An application by 42 West 18th Street Realty Corp (Applicant) has applied for a special permit pursuant to Zoning Resolution (ZR) Section 74-711 to modify height and setback requirements, rear yard requirements and the minimum distance between buildings requirement to facilitate the development of mixed-use building massed in two wings of 16 and 17 stories containing approximately 66 units of residential (68,000 gross sq. ft.), approximately 16,000 gross sq. ft. of commercial space and a below-grade one-level parking garage; and

WHEREAS, The project site includes three tax lots (Block 819 and Lots 14, 66 and 15) where Lots 14 and 66 are contributing buildings to the Ladies Mile Historic District and Lot 15 is a through-block parcel with 25 feet of frontage on West 18th Street and 50 feet of frontage on West 17th Street currently used as an at-grade parking lot; and

WHEREAS, Both historic buildings have suffered extensive deterioration from neglect from the present owner and remain surrounded by scaffolding due to safety concerns; and

WHEREAS, According to residents of the block, this scaffolding has been in place for many years without the owner making any significant effort to restore the existing buildings and is considered an eyesore and nuisance; and

WHEREAS, The proposed development would add a three-story rear addition to Lot 66 and develop Lot 15 into a building with a 16-story building segment fronting on West 17th Street and a 17-story building segment fronting on West 18th Street; and

WHEREAS, The proposed development would require a special permit to allow for the following modifications:

- **Rear Yard Equivalent and Minimum Distance between Windows Waivers:** The underlying residential rear yard equivalent requirements do apply above the third floor where the new building becomes residential and the requested waiver of 10 feet from the required 60-foot deep rear yard equivalent is still required. This waiver will allow a rear yard equivalent of 50 feet and a minimum distance between the buildings of 50 feet; and
- **Height and Setback Waivers:** The requested height and setback waivers would allow the northern wing of the new building to rise above the 60 foot maximum building height applicable to narrow lots and would allow the south wing to rise without setback above the maximum base height of 125 feet; and

WHEREAS, Among other requirements, for the city to approve the special permit as put forth, the city must find that "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

WHEREAS, The president of the Condominium Board at 32 West 18th Street, representing her building, argued that the proposed building "will have direct and substantial adverse effects on our building's open space, light and air"; and

WHEREAS, The president of the Condominium Board at 32 West 18th Street, in particular, requested that the application for modification of the regulations pertaining to maximum height for a narrow building be rejected; and

WHEREAS, Another resident of 32 West 18th Street expressed concerns that the modifications in the rear yard would have significant and adverse impacts for access to light and clean air in his ground-level apartment; and

WHEREAS, While it is difficult to quantify the adverse impact without further study, CB5 believes that the encroachment of the South Wing of the proposed building into the rear yard equivalent by 10 feet (resulting in a 50-foot rear yard equivalent rather than a 60-foot one) certainly has an adverse impact on other properties on the block (as compared with the no-action) scenario; and

WHEREAS, While sympathetic to the concerns of the neighbors regarding the modification to the height of the portion of the building fronting 18th street, we are particularly concerned about the requested waiver for modifications of zoning requirements for a rear yard and believe that the 60-foot distance requirement between the 17th Street and 18th Street building segments should be maintained; and

WHEREAS, CB5 has, in the past, found modifications to bulk regulations pursuant to ZR Section 74-711 to be acceptable as such modifications can facilitate new construction that contributes to the historic district;

WHEREAS, ZR Section 74-32 (part of the newly adopted MIH text amendment) titled "Additional Considerations for Special Permit Use and Bulk Modifications" reads,

"Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions)"; and

WHEREAS, ZR Section 12-10 reads,

""Bulk" is the term used to describe the size of #buildings or other structures#, and their relationships to each other and to open areas and #lot lines#, and therefore includes: (a) the size (including height and #floor area#) of #buildings or other structures#; (b) the area of the #zoning lot# upon which a #building# is located, and the number of #dwelling units# or #rooming units# within a #building# in relation to the area of the #zoning lot#; (c) the shape of #buildings or other structures#; (d) the

location of exterior walls of #buildings or other structures# in relation to #lot lines#, to other walls of the same #building#, to #legally required windows#, or to other #buildings or other structures#; and (e) all open areas relating to #buildings or other structures# and their relationship thereto"; and

WHEREAS, While "significant" is not a defined term, the Department of City Planning (DCP) has communicated that the applicability threshold would be 10 residential units or 12,500 sq. ft. of residential floor area; and

WHEREAS, ZR Section 12-10 has #Residential# defined as "pertaining to a #residence#"; and

WHEREAS, ZR Section 12-10 has #Floor Area# defined as the following: "the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#."; and

WHEREAS, The only "objectives" referenced in ZR Section 74-32 are set forth in ZR Section 23-92:

"The Inclusionary Housing Program is established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood economic diversity and thus to promote the general welfare"; and

WHEREAS, The 2009-2013 American Community Survey estimates that while 22.7% of NYC's population is "Black or African American," only 1.5% of the subject site's census tract (Manhattan 54) population identifies as such; and

WHEREAS, The 2009-2013 American Community Survey estimates that while 28.7% of NYC's population is "Hispanic or Latino," only 9.0% of the subject site's census tract (Manhattan 54) population identifies as such; and

WHEREAS, The 2009-2013 American Community Survey estimates that while 17.3% of NYC's population has income below the poverty rate, only 2.0% of the subject site's census tract (Manhattan 54) population has income below the threshold.; and

WHEREAS, CB5 finds that the area surrounding the site is neither economically nor racially diverse and that the application of MIH as part of the special permit would thereby promote the creation of housing for residents with varied incomes in a redeveloping neighborhood and enhance neighborhood economic diversity—fully consistent with the objectives of ZR Section 23-92; and

WHEREAS, The Environmental Assessment Statement (EAS) for the proposed MIH text amendment reads,

"The MIH program would also apply outside of MIH areas in zoning districts as a condition of granting future special permits for use or bulk modifications that facilitate the creation of a significant number of additional dwelling units"; and

WHEREAS, The EAS for MIH, referring to neighborhoods with historic districts, reads,

"According to the Market and Financial Study conducted by BAE, these neighborhoods contain some of the strongest housing real estate markets in the city. They also represent some of the least economically diverse neighborhoods in the city, according to analysis provided in the DCP report, Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods. As shown in Figures 23.3 of the latter report (Attachment B), the community districts where 74-71 applications are concentrated overlap substantially with the neighborhoods where the majority of households are concentrated within higher income brackets"; and

WHEREAS, The EAS for MIH reads,

"In the future with the action, 74-71 permit applications that facilitate a significant increase in housing would be required to comply with the Proposed Action, creating a requirement for permanently affordable housing. . . . Where a property owner chooses to pursue modifications under 74-71 to create a substantial amount of new housing, the MIH requirements would apply. Since these

sites are concentrated in the strongest residential real estate markets in the city, an MIH development on these sites would likely be feasible even with ongoing commitments to maintain and preserve the historic character of the site consistent with the preservation purpose of the special permit. In the event that the MIH requirements would make a project infeasible, the BSA special permit created by the proposed action would be available to provide relief. Therefore, in the future with the proposed action, there is likely to be a greater amount of permanently affordable housing in some of the city's least economically diverse neighborhoods, further contributing to neighborhood economic diversity"; and

WHEREAS, The EAS for MIH reads,

"... new developments that occur under 74- 71 are likely to continue to primarily attract high income residents, further limiting the economic diversity of these neighborhoods in the future without the action"; and

WHEREAS, Manhattan Borough President Gale Brewer in testifying in favor of MIH at the City Planning Commission stated,

"I can support the MIH plan for the following reasons: 1. In addition to neighborhood rezonings, it would apply to all special-permit applications by private developers to add more than 10 residential units of housing to any area where this housing couldn't otherwise be built"; and

WHEREAS, According to the EAS for this special permit application (CEQR No. 16DCP106M 3/4/2016) reads,

"The applicant is seeking a Special Permit pursuant to Section 74-711 of the New York City Zoning Resolution to modify bulk regulations pertaining to the rear yard equivalent; rear setback; maximum base height and setback; distance between buildings; and narrow buildings to facilitate the Proposed Development at 38-42 West 18th Street/41-45 West 17th Street"; and

WHEREAS, According to the EAS for this special permit application (CEQR No. 16DCP106M 3/4/2016), the no-action condition would allow for 40 residential units with 55,828 gross sq. ft. of residential floor area (45,730 zoning sq. ft. of residential floor area) and the with-action condition would allow for 66 residential units with 79,793 gross sq. ft. of residential floor area (68,097 zoning sq. ft. of residential floor area); and

WHEREAS, The special permit, if granted would facilitate the development of 26 more market-rate residential units (at 23,965 gross sq. ft. of residential floor area and 22,367 zoning sq. ft. of residential floor area); and

WHEREAS, Despite the fact that the special permit as currently envisioned would allow for 26 new units of luxury housing that the Applicant says cannot be built absent a special permit approval, the Applicant states that there should be no MIH requirement (i.e. affordable housing) for this development; and

WHEREAS, Applicant, in a letter to CB5 dated April 26th 2016, states:

"DCP's Zoning Division and Counsel's office, who are the authors of this recently enacted text, have concluded that this special permit application does not result in "a significant increase in residential floor area" because the bulk waivers requested under the ZR Section 74-711 Special Permit application simply facilitate the use of permitted residential floor area on a zoning lot encumbered by landmark buildings"; and

WHEREAS, The argument that ZR Section 74-32 bulk modifications refer to only a change in the maximum permitted residential floor area ratio and not to other bulk modifications is not supported by the Zoning Resolution or the administrative record (including the EAS for MIH); and

WHEREAS, ZR Section 74-32 does not permit the City Planning Commission to exercise discretion as to whether it may apply the MIH requirement to this development and rather states that the City Planning Commission shall apply the MIH requirement under these circumstances; and

WHEREAS, CB5 finds that MIH must be applied consistently and that the bulk modifications sought in this special permit (pertaining to the rear yard equivalent, rear setback, maximum base height and setback, distance between buildings and narrow buildings) unquestionably qualify as bulk modifications for purposes of ZR Section 74-32; and

WHEREAS, The 26 residential units (and 23,965 gross sq. ft. of residential floor area and 22,367 zoning sq. ft. of residential floor area) would be considered a "significant increase" according to the MIH applicability threshold; and

WHEREAS, In the Zoning Resolution the term "#residential floor area#" is used to refer to the actual amount of residential floor area on a site as opposed to "maximum permitted residential floor area ratio," and an interpretation otherwise is inconsistent with a plain reading and meaning of the Zoning Resolution; and

WHEREAS, According to a plain reading and meaning of the Zoning Resolution, the requirements of MIH are triggered by this special permit and the City Planning Commission and the City Council must withhold approval of this special permit unless MIH is applied; and

WHEREAS, With extremely limited opportunities for low-income households to move into Manhattan Community District 5 and this census tract in particular, CB5 urges the City Planning Commission to require the provision of housing units affordable to households with incomes at or below 60 percent of Area Median Income (and including units for households with income at or below 40 percent of Area Media Income); and

WHEREAS, 32BJ submitted written testimony arguing that it is important for the new building to bring high quality jobs for building service workers and that the building should have an affordable housing set aside in light of the passage of the Mandatory Inclusionary Housing text amendment; and

WHEREAS, CB5 strongly encourages the owners of 42 West 18th Street to commit to creating high quality building service jobs that pay all building service workers the industry standard prevailing wage (along with family and retirement benefits); therefore be it

RESOLVED, Community Board Five **recommends denial** of the application by 42 West 18th Street Realty Corp for a special permit pursuant to Zoning Resolution Section 74-711 **UNLESS** the Mandatory Inclusionary Housing Program is applied in accordance with the Zoning Resolution as defined in Section 23-92; and be it further

RESOLVED, Community Board Five **finds** that the waiver of rear yard requirements would result in a negative impact to adjacent buildings.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Eric Stern
Chair, Land Use, Housing and Zoning Committee