



CITY PLANNING COMMISSION
CITY OF NEW YORK

OFFICE OF THE CHAIRMAN

REVISED NEGATIVE DECLARATION

Supersedes the Negative Declaration Issued on October 20, 2014¹

Project Identification

CEQR No. 14DCP167M
ULURP Nos. C140404ZSM and C140405ZSM
SEQR Type: Type I

Lead Agency

City Planning Commission
22 Reade Street
New York, NY 10007
Contact: Robert Dobruskin
(212) 720-3423

Name, Description and Location of Proposal:

39-41 West 23rd Street

The Applicant, 39 W. 23rd Street, LLC, is seeking a special permit pursuant to Zoning Resolution (ZR) Section 74-711 to modify the rear yard equivalent regulations of Section 43-28, the rear yard regulations of Section 43-313, the streetwall height and sky exposure plane regulations of Section 43-43, and the use regulations of Section 42-10 to allow Use Group 2 residential uses. The Applicant is also seeking a special permit pursuant to Section 13-451 to allow for an accessory parking garage (collectively, the “proposed actions”). The proposed actions would facilitate a proposal by the Applicant to construct a 128,713 gross square foot (gsf) mixed use building on a single zoning lot (Block 825, Lots 20, 60, and 1001-1005, the “project site”). The project site is located at 39-41 West 23rd Street and 20-22 West 24th Street in the Flatiron neighborhood of Manhattan, Community District 5. The project site is located in an M1-6 zoning district and is within the New York City Landmark Preservation Commission (LPC) designated Ladies’ Mile Historic District.

The proposed actions would facilitate a proposal by the Applicant to transfer approximately 24,000 gsf of unused development rights from Lot 1001-1005 to Lots 20 and 60 in order to construct a new, mixed use residential and commercial 128,713 gsf building. The Applicant’s development proposal would consist of 119,173 gsf of residential space (38 market-rate units and 4 affordable units), 2,500 gsf of retail space, and a 50-space public parking garage accessed by an existing curb cut along West 24th Street. The proposed new development would consist of two towers, a 24-story (278-foot tall) residential tower facing West 23rd Street and a 10-story (130-foot-tall) residential tower facing West 24th Street, atop a building base containing retail,

¹ This Revised Negative Declaration reflects a proposal by the Applicant to include affordable housing in the proposed project, as discussed further in the supporting statement of this document.

parking garage, and residential lobby uses. The east side of the proposed new building would cantilever over a five-story existing building located on Lot 1001-1005.

At present, Lot 20 is occupied by a public parking lot containing 42 spaces. Lot 60, located to the west of Lot 20 on West 24th Street, is currently vacant. Lot 1001-1005, located to the east of Lot 20, is currently occupied by an 80-foot-tall, residential and retail building that is a contributing building in the Ladies' Mile Historic District.

For the purposes of a conservative analysis, a Reasonable Worst Case Development Scenario (RWCDS) assumes the project site would be developed with an average dwelling unit size of 1,000 gsf, smaller than the average dwelling unit size anticipated by the Applicant. The RWCDS assumes the same amount of residential floor area (119,173 gsf) as the proposed project, but with 75 more dwelling units for a total of 111 market rate units and 4 affordable units. It is expected that the proposed project would be constructed and occupied by 2017.

Absent the proposed actions, the Applicant has stated that Lots 20 and 60 would be developed with a seven story (77-foot-tall roof and 80-foot-tall parapet) 45,862 sf commercial building that complies with the underlying zoning regulations. The development would contain approximately 8,152 sf of retail space on the first floor and approximately 37,710 sf of office space on the upper floors. The development would require a Certificate of Appropriateness from LPC.

The proposed actions include an (E) designation (E-356) applicable to a portion of the project site (Block 825, Lots 20 and 60). The (E) designation would preclude significant adverse impacts related to air quality, noise, and hazardous materials.

The text for the (E) designation related to air quality is as follows:

Any new residential and/or commercial development on the above-referenced properties must ensure that heating and hot water equipment exhaust stack(s) on the above-referenced property must be located at the highest tier or at least 281 feet high to avoid any potential significant air quality impacts.

The text for the (E) designation related to noise is as follows:

To ensure an acceptable interior noise environment, the building façade(s) or future development at Block 825, Lots 20 and 60 must provide a minimum of 31 dBA composite building façade attenuation at elevations up to 100 feet above the street level and 28 dBA at elevations between 101 and 200 feet above street level for the façade along West 23rd Street for residential or other noise-sensitive uses, to provide an interior L10 noise level not greater than 45 dBA. The minimum required composite building façade attenuation for future commercial or other non-noise-sensitive uses would be 5 dBA less than for residential uses, to provide an interior L10 noise level not greater than 50 dBA. To maintain a closed-window condition in these areas, an alternate means of ventilation that brings outside air into the building without degrading the acoustical performance of the building façade(s) must also be provided.

The text for the (E) designation related to hazardous materials is as follows:

Task 1: Sampling Protocol

Prior to construction, the Applicant submits to OER, for review and approval, a Phase II Investigation protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented.

No sampling should begin until written approval of a protocol is received from OER. The number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e., petroleum-based contamination and non-petroleum-based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of the sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2: Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated from the test results, a proposed remedial action plan must be submitted to OER for review and approval. The Applicant must complete such remediation as determined necessary by OER. The Applicant should then provide proper documentation that the work has been satisfactorily completed.

An OER-approved construction health and safety plan would be implemented during evacuation and construction and activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This plan would be submitted to OER for review and approval prior to implementation.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Revised Environmental Assessment Statement, dated March 27, 2015, prepared in connection with the ULURP Application (ULURP Nos. C140404ZSM and C140405ZSM). The City Planning Commission has determined that the proposed actions will have no significant effect on the quality of the environment.

Supporting Statement:

The above determination is based on an environmental assessment which finds that:

1. A portion of the project site (consisting of Lots 20 and 1001-1005) was previously the subject of a special permit approved by the City Planning Commission on December 6, 2006. An environmental assessment statement (CEQR No. 06DCP004M) was completed and a Negative Declaration was issued on August 7, 2006. On March 26th 2012 a special permit renewal application (CEQR No. 11DCP076M) was approved by the City Planning Commission and expires on March 26, 2015. Subsequent changes to the building design and the incorporation of an additional tax lot into the project site have led to the current new special permit application.
2. As the project site is located within a NYC-designated historic district, the proposed project requires a Certificate of Appropriateness from LPC. A Certificate of Appropriateness was granted on October 29, 2013. On April 9, 2014, LPC issued a Memorandum of Understanding (MOU) for the proposed project, which confirms that a continuing maintenance program for the building at 35-37 West 23rd Street (Lot 1001-1005) will be established and that a Restrictive Declaration will be filed against the property that will bind the Applicants and all heirs, successors and assigns to maintain the continuing maintenance program in perpetuity. In addition, LPC granted a Certificate of No Effect on April 1, 2014 for restoration of the building at 35-37 West 23rd Street. Therefore, the proposed action will not result in significant adverse impact related to Historic Resources.
3. The (E) designation for air quality, noise, and hazardous materials would ensure that the proposed actions would not result in significant adverse impacts.
4. The Revised Environmental Assessment Statement issued on March 27, 2015, reflects a proposal by the Applicant to include affordable housing in the proposed project. Since the project was certified on October 20, 2014, the Applicant has agreed to provide four affordable units within the proposed project. The number of market rate units would decrease from 40 to 38 to accommodate this change. As detailed in the March 27, 2015 Revised EAS, it was determined that the proposed modifications to the original project would not have the potential for significant adverse impacts and would not alter the conclusions of the previous environmental review.
5. No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable.

This Revised Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law 6NYCRR part 617 (SEQRA).

Should you have any questions pertaining to this Revised Negative Declaration, you may contact Ingrid Young at (212) 720-3425.



Olga Abinader, Deputy Director
Environmental Assessment & Review Division
Department of City Planning

Date: March 27, 2015

Carl Weisbrod, Chairman
City Planning Commission

Date: March 30, 2015

cc: Robert Dobruskin
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