

Testimony of the Real Estate Board of New York concerning the proposed rezoning of North Tribeca, ULURP 100369 ZMM and N 100370(A) ZRM.

August 11, 2010

The Real Estate Board of New York, Inc. (REBNY) is a broadly based trade association of almost 12,000 owners, developers, brokers and real estate professionals active throughout New York City. We are here today to express our support for the proposed North Tribeca rezoning and zoning text amendment. We have long been advocates of allowing more residential development, both higher-density new construction and as-of-right conversion, in North Tribeca. This proposed rezoning will allow for such residential conversions, residential infill and opportunities for affordable housing. Replacing the existing M1-5 zoning with a C6-2A better reflects the mixed-used character of the neighborhood.

However, one provision that we strongly recommend be deleted is the proposed special permit for hotels that have more than 100 rooms. We believe that this limitation on transient hotels does not have a sound basis in planning theory or history, and places an unwarranted burden on a desirable and compatible use. We asked our Zoning & Design Committee to review previous zoning actions in the Tribeca Mixed-Use District and to assess this new proposal. We are submitting their analysis as part of our written testimony.

Background

The Rezoning of the Special Tribeca Mixed-Use District (“TMU”) would, among other things, change the zoning of Subareas B1 and B2 from M1-5 to C6-2A, and would permit residential uses on an as-of-right basis in these areas. Dwelling units in these subareas are currently permitted only as Joint-Living Work Quarters for Artists. The Rezoning would also institute new bulk regulations to encourage development in keeping with the existing scale of buildings in the neighborhood. Transient hotels, which are generally permitted on an as-of-right basis in C6 zoning districts throughout the City, would be limited to no more than 100 rooms, except by special permit.

Overall, the Rezoning is a welcome attempt to remove outmoded restrictions on residential use in Tribeca and improve zoning flexibility. The proposed hotel limitation, however, moves in the opposite direction. It restricts flexibility for property owners and limits the natural evolution of the neighborhood. Worse still, it represents a disturbing precedent in the administration of the City’s zoning regulations, by imposing unnecessary regulatory hurdles on legitimate and compatible uses. As discussed below, the proposed hotel limitation violates traditional planning principles, diverges from the recent history of zoning changes in the TMU, and fails to advance the stated goals of the Rezoning.

Traditional Euclidean Zoning

The proposed limitation on hotel use violates the traditional hierarchy of “Euclidean” zoning,¹ which imposes progressively greater restrictions on uses in accordance with their sensitivity and impact on other neighboring uses. Thus, in a traditional Euclidean zoning framework, industrial uses are more restricted than commercial uses, which are in turn more restricted than residential uses. The Rezoning would subvert this hierarchy, by imposing greater restrictions on one particular commercial use – transient hotels – than on the more intense uses of office and light manufacturing, which would be permitted on an as-of-right basis.

While there is no requirement that the New York City Zoning Resolution mirror traditional Euclidean zoning principles in every respect, the Euclidean framework reflects a fundamental truth about the compatibility of uses. In general, uses have been segregated based on their incompatibility. Thus, if residential uses are deemed to be compatible with the light manufacturing uses in the TMU and with new office uses, then there is no reason that residential uses should not also be considered compatible with hotel uses. Hotels are an accepted commercial use that add to the diversity and vitality of a neighborhood, and they are permitted in every other C6 district throughout the City. Indeed, hotels were permitted in all residential districts in the City until the enactment of the 1961 Zoning Resolution. If hotels were judged to be incompatible with residential uses in Tribeca, then a residential zoning designation would be appropriate for this area, rather than the C6 designation.

History of the TMU

The proposed hotel limitation also contradicts recent and historical zoning precedents in Tribeca. Residential uses were not permitted in this district until 1976, when the Lower Manhattan Mixed-Use District was adopted to allow a “limited residential opportunity.” (See CP-23198, June 1, 1976 / Cal. #11) The 1976 zoning permitted Joint Living-Work Quarters for Artists, which were viewed as essentially a manufacturing use: artists living in the places where their artwork is made. In Subarea B2 of the Special District, the use restrictions of the prior M2-4 zoning district were preserved, such that hotel uses were not permitted. The restriction to M2-4 uses in Subarea B2 survives today as Section 111-104(e) of the TMU.

The evolution of the TMU has been marked by a concern about protecting commercial and manufacturing uses against residential conversions. For example, in 2005, in connection with the One York Street project, the City Planning Commission (“CPC”) created a new special permit mechanism to allow the enlargement of loft dwellings, but required a finding that the enlargement “will not unduly burden commercial and manufacturing uses in the building and the neighborhood.” (See C050281 ZRM, July 13, 2005 / Cal. No. 13) Thus, the CPC, only five years ago, was focused on the burdens of residential activity to this formerly industrial area. Given this history, it would be anomalous to lift the restrictions on residential uses entirely, while at the same time imposing new restriction on hotels. In 2006, when the western blocks of North Tribeca were rezoned from M1-5 to C6-2A and C6-3A, no similar restriction on hotel use was deemed necessary (See C040543 ZMM, July 12, 2006 / Cal. No. 11; N040544 ZRM, July

¹ Euclidean zoning takes its name from the zoning ordinance challenged, an upheld, in the U.S. Supreme Court’s decision in Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926), which is widely recognized as establishing the constitutional authority for modern zoning.

12, 2006 / Cal. No. 13). There is no evidence that now, only four years later, hotels have begun to cause such negative effects to warrant the proposed restriction.

Inconsistency with the Goals of the Rezoning

The proposed limitation on hotel use does not serve the stated goal of the Rezoning to enhance the mix of uses in the neighborhood. This is because there is no rationale offered in the Department of City Planning's study as to why hotels with more than 100 rooms are somehow more inimical to the appropriate use and development of this area than hotels with fewer than 100 rooms. There is no planning rationale advanced for this restriction on hotel size other than to "preserve" and "enhance" the "unique mixed use character of the neighborhood." But this restriction on hotels will limit the mix of uses in the neighborhood, not expand it, as there are relatively few hotels that will be feasible at a size of less than 100 rooms. Hotels are a critical ingredient in a dynamic neighborhood. They add street life and activity that drives local restaurants and shopping. They are appropriate for this neighborhood and should not be restricted.

It cannot be said that the hotel restriction will serve to protect existing manufacturing uses. The Rezoning would permit the free conversion of manufacturing uses to residential uses, which will likely create sufficient economic pressure for the conversion of most remaining manufacturing uses in the neighborhood, even without the limitation on hotel use. And to the extent that a limitation on hotel size is desired from an urban design perspective, the maximum height and minimum street wall requirements of the Rezoning will adequately protect against out-of-scale development and preserve the built character of the TMU. These contextual envelope controls will act to limit the natural size of hotel buildings, without the explicit restriction on the number of units.

Instead, the additional discretionary review for hotels mandated by the Rezoning appears to serve a political rationale: to create the opportunity for City Council review, and thus for City Council negotiations, for what would be an as-of-right use in any other C6-2 district (and any other M1-5 district) in the City. A special permit under the Zoning Resolution is a quasi-legislative mechanism to permit particular uses only where specific findings can be made by the CPC regarding the compatibility of the use with the surrounding neighborhood, subject to optional Council review. There is no reason that hotels – a compatible use in C6 districts – should be subject to this quasi-legislative approval process. This use of the special permit mechanism creates a disturbing precedent for the administration of the City's Zoning Resolution, where uses that are generally compatible are channeled into an administrative review process rather than allowing them on an as-of-right basis. It is important to preserve the City's as-of-right zoning in order to protect the predictability of zoning administration; to undermine this predictability for no clear reason does not make sense to us.

Therefore, we urge the Commission to reject this proposed limitation on hotel uses.