



IN THE MATTER OF an application submitted by The Refinery LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(b) of the Zoning Resolution to allow residential and non-residential uses to be arranged within a building without regard for the regulations set forth in Section 32-42 (Location within Buildings), in connection with a proposed mixed use development on property bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet westerly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead Line (Block 2414, Lot 1 and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a General Large-Scale Development, Borough of Brooklyn, Community District 1.

This application for the special permit pursuant to Section 74-744 to permit commercial use and residential use to occupy the same floor in adjacent building segments was filed by the applicant on December 24, 2009 to facilitate a 2.75 million-square-foot mixed use general large-scale development located at 264-350 & 317-329 Kent Avenue, Community District 1, Brooklyn.

RELATED ACTIONS

In addition to the special permit that is the subject of this report (C 100188 ZSK), implementation of the proposed development also requires action by the City Planning Commission on the following which is being considered concurrently with this application:

C 100185 ZMK Zoning map amendment to replace an M3-1 district with C6-2 districts and with R6 and R8 districts with C2-4 commercial overlays.

N 100186 ZRK Zoning text amendment relating to the inclusionary housing program and regulations for non-conforming advertising signs.

C 100187 ZSK Special Permit pursuant to ZR section 74-743 to modify height and bulk regulations as part of a general large-scale development.

N 100190 ZAK Authorization pursuant to ZR section 62-822 to modify regulations pertaining to required waterfront public access areas.

N 100191 ZCK Chair Certification pursuant to ZR section 62-811 to show compliance with waterfront public access and visual corridor requirements.

N 100192 ZCK Chair Certification pursuant to ZR Section 62-812 to subdivide a waterfront lot.

In addition to these actions, the applicant proposed a special permit pursuant to ZR section 74-53 to exceed the maximum number of permitted parking spaces accessory to uses in a general large-scale development (C 100189 ZSK). This application was certified in conjunction with the above listed applications but was withdrawn by the applicant on June 2, 2010.

BACKGROUND

A full background discussion and description of this application appears in the report on the related application for a special permit (C 100187 ZSK).

ENVIRONMENTAL REVIEW

This application (C 100188 ZSK), in conjunction with the related applications, 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The CEQR number is 07DCP094K. The lead agency is the City Planning Commission.

A full summary of the environmental review appears in the report on the related application for a special permit (C 100187 ZSK).

UNIFORM LAND USE REVIEW

This application (C 100188 ZSK), in conjunction with the applications for the related ULURP actions, was certified as complete by the Department of City Planning on January 4, 2010, and

was duly referred to Community Board 1 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP actions, which were referred for information and review on January 4, 2010 in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 1 held a public hearing on this application (C 100188 ZSK) and on applications for the related actions on February 9, 2010, and on March 9, 2010, by a vote of 23 in favor, 12 in opposition and 1 abstention, adopted a resolution recommending disapproval of the application with conditions.

A summary of the recommendations of Community Board 1 appears in the report on the related application for a special permit (C 100187 ZSK).

Borough President Recommendation

This application (C 100188 ZSK), in conjunction with the related actions, was considered by the Borough President, who recommended approval of the application with conditions on April 9, 2010.

A summary of the recommendations of the Borough President appears in the report on the related application for a special permit (C 100187 ZSK).

City Planning Commission Public Hearing

On April 14, 2010 (Calendar No.8), the City Planning Commission scheduled April 28, 2010, for a public hearing on this application (C 100188 ZSK). The hearing was duly held on April 28, 2010 (Calendar No. 33) in conjunction with the public hearing on the applications for related actions. There were 37 speakers in favor of the application and 24 speakers opposed, as described in the report on the related application for a special permit (C 100187 ZSK), and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application (C 100188 ZSK), in conjunction with related actions, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 07-058.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that the special permit proposed in this application (C 100188 ZSK), as modified, in conjunction with the related actions, is appropriate.

A full description of Commission modifications, and consideration and analysis of the issues, and reason for approving this application appear in the related report for a special permit amendment (C 100187 ZSK).

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Sections 74-744(b) of the Zoning Resolution:

1. the commercial uses are located in a portion of the mixed building that has separate access to the outside with no opening of any kind to the residential portion of the building at any story; and
2. the commercial uses are not located directly over any story containing dwelling units; and
3. the modifications shall not have any adverse effect on the uses located within the building.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on May 28, 2010, with respect to this application (CEQR No. 07DCP094K), together with the Technical Memorandum, dated June 4, 2010, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that, consistent with social, economic, and other essential considerations:

1. From among the reasonable alternatives thereto, the action to be approved, with the modifications set forth and analyzed in the Technical Memorandum, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration attached as Exhibit A to the report on the related application for a special permit (C 100187 ZSK), those mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FEIS and the Technical Memorandum, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter that based on the environmental determination, and the consideration and

findings described in this report, the application submitted by The Refinery LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(b) of the Zoning Resolution to allow residential and non-residential uses to be arranged on the same floor of adjacent building segments without regard for the regulations set forth in Section 32-42 (Location within Buildings) to facilitate the construction of a mixed use development on property located at 264-350 & 317-329 Kent Avenue, (Block 2414, Lot 1 and Block 2428 Lot 1), in a general large-scale development, Borough of Brooklyn, Community District 1, as modified, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 100188 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Rafael Vinoly Architects PC, filed with this application and incorporated in this resolution:

<u>Number</u>	<u>Title</u>	<u>Last Date Revised</u>
T-1	Title Sheet	06-07-10
Z00-2	Zoning Lot Calculations, Actions, and Design Guidelines	06-07-10
Z00-3	Upland/Seaward Lot Calculations	12-24-09
Z01-1	Site Plan	06-07-10
Z05-A	Zoning Lot A Site A – Adjusted Base Plane Calculations	12-24-09
Z05-B	Zoning Lot A Site A – Site Plan	06-07-10
Z05-C	Zoning Lot A Site A – Height and Setback Diagrams	06-07-10
Z06-A	Zoning Lot A Site B – Adjusted Base Plane Calculations	12-24-09
Z06-B	Zoning Lot A Site B – Site Plan	12-24-09
Z06-C	Zoning Lot A Site B – Height and Setback Diagrams	12-24-09
Z07-A	Zoning Lot A Site C – Adjusted Base Plane Calculations	12-24-09
Z07-B	Zoning Lot A Site C – Site Plan	12-24-09
Z07-C	Zoning Lot A Site C – Height and Setback Diagrams	12-24-09
Z08-A	Zoning Lot A Site D – Adjusted Base Plane Calculations	12-24-09
Z08-B	Zoning Lot A Site D – Site Plan	12-24-09
Z08-C	Zoning Lot A Site D – Height and Setback Diagrams	12-24-09

Z09-A	Zoning Lot C Site A – Adjusted Base Plane Calculations	12-24-09
Z09-B	Zoning Lot C Site A – Site Plan	12-24-09
Z09-C	Zoning Lot C Site A – Height and Setback Diagrams	12-24-09
Z10-A	Zoning Lot B Site A – Adjusted Base Plane Calculations	12-24-09
Z10-B	Zoning Lot B Site A – Site Plan	12-24-09
Z10-C	Zoning Lot B Site A – Height and Setback Diagrams	12-24-09
Z11-1	Special Permit Drawing – Site A	06-07-10

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. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached as Exhibit A to the report on the related special permit (C 100187 ZSK), with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed and recorded in the Office of the Register, King County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
5. The development shall include those mitigative measures listed in the Final Environmental Impact Statement (CEQR No. 07DCP094K) issued on May 28, 2010 and identified as practicable.
6. 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.

7. 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, sub-lessee or occupant.
8. 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.
9. 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 100188 ZSK), duly adopted by the City Planning Commission on June 7, 2010 (Calendar No. 4), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

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