



## CITY PLANNING COMMISSION

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August 25, 2010 / Calendar No. 18

C 100358 ZSK

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**IN THE MATTER OF** an application submitted by the NYC Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681 of the Zoning Resolution to allow that portion of the railroad or transit right-of-way which has been permanently discontinued or terminated to be included in the lot area in connection with the development of two 4-story residential buildings, on property located on Block 5295, p/o Lot 4 (Tentative Lots 107 & 108), in a M1-2/R6A\* District, within a Special Mixed Use District (MX-12)\*.

\* Note: The site is proposed to be rezoned from a M2-1 District to an M1-2/R6A (MX-12) District, under a concurrent related application (C 100345 ZMK).

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This application for a special permit pursuant to Section 74-681 (“Development within or over a railroad or transit right-of-way or yard”) was filed by the New York City Department of Housing Preservation and Development on May 4, 2010 to facilitate the development of two 4-story residential apartment buildings with eight units of affordable housing, and four accessory residential parking spaces, on a portion of a terminated railroad right-of-way. The proposed project would be located on 37<sup>th</sup> Street between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue in Brooklyn’s Community District 12.

### **RELATED ACTIONS**

In addition to the application for an amendment to the Zoning Resolution, which is the subject of this report (C 100358 ZSK), implementation of the proposed zoning text amendment also requires action by the City Planning Commission on the following applications which are considered concurrently with this application:

**C 100345 ZMK:** An amendment to the Zoning Map Section No. 22c, changing existing M1-2, and M2-1 Districts to (MX) M1-2/R6A, (MX) M1-2/R6B, R5,

R5/C2-3 and C2-4A Districts in an area bounded by 36<sup>th</sup> Street on the north, Old New Utrecht Road and 14<sup>th</sup> Avenue on the east, 40<sup>th</sup> Street on the south, and 12<sup>th</sup> Avenue on the west.

**N 100346 ZRK:** An amendment to the Zoning Resolution, Section 123-90 (Special Mixed Use Districts) to establish a Special Mixed Use District (MX 12) within the Borough park neighborhood of Brooklyn’s Community District 12.

**C 100347 HAK:** An application submitted by the Department of Housing Preservation and Development for the designation of the property located at 1248 37<sup>th</sup> Street (Block 5295, Lot 4) and 1300 37<sup>th</sup> Street (Block 5300, Lot9) as an Urban Development Action Area Project, and for the disposition of such property to a developer selected by HPD to facilitate the development of seventeen 4-story buildings with a total of approximately 68 units of affordable housing and 48 spaces of accessory community facility parking.

**C 100348 ZSK-  
C 100357 ZSK,  
C 100359 ZSK -  
C 100361 ZSK:** Applications submitted by the Department of Housing Preservation and Development for grants of 14 special permits pursuant to Section 74-681 of the Zoning Resolution to allow portions of a railroad or transit right-of-way which has been permanently discontinued or terminated to be included in the lot area in connection with the development of seventeen, 4-story residential buildings, and three accessory community facility parking lots on property located on Block 5300, Lot 9 and Block 5295, Lot 4.

## **BACKGROUND**

A full background discussion and project description appears in the report on the related Zoning Map amendment application (C 100345 ZMK).

## **ENVIRONMENTAL REVIEW**

This application (C 100358 ZSK), in conjunction with the related applications (C 100345 ZMK, N 100346 ZRK, C 100347 HAK, C 100348 ZSK – C 100357 ZSK, C 100359 ZSK – C 100361 ZSK), 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 10DCP029K. The lead agency is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on May 10, 2010, which included (E) designations (E-252) to avoid the potential for hazardous materials, air quality and noise impacts. A summary of the environmental review appears in the report on the related Zoning Map amendment application (C 100345 ZMK).

## **UNIFORM LAND USE REVIEW**

This application (C 100358 ZSK), in conjunction with the related applications (C 100345 ZMK, C 100347 HAK, C 100348 ZSK – C 100357 ZSK, and C 100359 ZSK – C 100361 ZSK), was certified as complete by the Department of City Planning on May 10, 2010, and was duly referred to Community Board 12 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 application (N 100346 ZRK) which was duly referred to Community Board 12 and the Borough President, in accordance with the procedure for referring non-ULURP matters.

### **Community Board Public Hearing**

Community Board 12 held a public hearing on this and the related applications on June 22, 2010 and on June 23, 2010, by a vote of 32 to 2 with 2 abstaining, adopted a resolution recommending approval without modification of this and the related applications.

### **Borough President Recommendation**

This application (C 100358 ZSK) and the related applications were considered by the Office of President of the Borough of Brooklyn, who issued a recommendation on July 26, 2010 approving the application with conditions. A summary of Borough President's recommendation appears in the report on the related zoning map amendment (C 100345 ZMK).

### **City Planning Commission Public Hearing**

On July 14, 2010 (Calendar No. 17), the City Planning Commission scheduled July 28, 2010 for a public hearing on this application (C 100358 ZSK). The hearing was duly held on July 28, 2010 (Calendar No.34), in conjunction with the public hearing on the related applications (C 100345 ZMK, N 100346 ZRK, C 100347 HAK, C 100348 ZSK – C 100357 ZSK, C 100359 ZSK – C 100361 ZSK). There were a number of speakers as described in the related zoning map amendment application (C 100345 ZMK) and the hearing was closed.

### **CONSIDERATION**

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

A full consideration and analysis of the issues and the reasons for approving this application appears in the report on the related zoning map amendment application (C 100345 ZMK).

## FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-681 of the Zoning Resolution:

- (1) The streets providing access to all uses pursuant to paragraph (a) above (of §74-681) are adequate to handle traffic resulting there from.
- (2) The distribution of floor area and the number of dwelling units or rooming units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development or enlargement, including any portion of the development or enlargement located beyond the boundaries of such railroad or transit right-of-way or yard.
- (3) All uses, developments or enlargements located on the zoning lot or below a platform do not adversely affect one another.
- (4) If such railroad or transit right-of-way or yard is deemed appropriate for future transportation use, the site plan and structural design of the development does not preclude future use of, or improvements to, the right-of-way for such transportation use.

The City Planning Commission hereby makes the following findings pursuant to Sections 74-681 (Development within or over a railroad or transit right of way or yard) of the Zoning Resolution:

1. All boundary streets meet pertinent City codes for minimum size, and the street grid is continuous. 37<sup>th</sup> Street is mapped at 60 feet and is a one-way street (west to east) with a single traffic lane and two parking lanes. 14<sup>th</sup> Avenue is mapped at 80 feet and is a one-way street (south to north) with two traffic lanes and two parking lanes. 13<sup>th</sup> Avenue is mapped at 80 feet and is a one-way street (north to south) with two traffic lanes and two parking lanes. 12<sup>th</sup> Avenue is mapped at 80 feet and is a two-way street with two traffic lanes, two parking lanes and a bike lane. There are no cul-de-sacs in the immediate area. Of these streets only 13<sup>th</sup> Avenue handles a larger number of cars since it traverses a major retail area 5 blocks to the south in the Borough Park neighborhood, with commercial uses fronting on both sides of 13<sup>th</sup> Avenue between 36<sup>th</sup> Street and New Utrecht Avenue (as opposed to the primarily residential uses fronting on 12<sup>th</sup> and 14<sup>th</sup> Avenues). There are no potential impacts on traffic which would be generated by the proposed residential development.

Pursuant to methodologies identified in the CEQR Technical Manual, the projected development scenario will not result in significant impacts on traffic and parking. The proposed actions for the entire development project, including all 68 housing units and 48 accessory community facility parking spaces, spanning the south side of 37<sup>th</sup> Street between 12<sup>th</sup> and 14<sup>th</sup> Avenues, will generate substantially fewer than fifty

(50) vehicle trips in any peak hour, the CEQR Technical Manual threshold for traffic and parking detailed analysis.

In addition, a significant portion of the subject property is currently used for commercial parking. The proposed development would eliminate this parking and likely result in a net decrease in total daily trips.

Overall, there are no potential impacts on traffic that would be generated by the proposed residential development, and streets providing access to the subject lots are adequate to handle any traffic that results.

2. The proposed residential tax lots are located 387 ft. southwest of the intersection of 13<sup>th</sup> Avenue and 37<sup>th</sup> Street. Lot 108 is 50 ft. by 52 ft. 7 in. and Lot 109 is 50 ft. by 52 ft. 7 in. The total area of the two lots is 5,258.33 square feet. Under the proposed zoning, the maximum allowable FAR is 3.0. With an FAR of 2.47, the proposed residential building will be approximately 13,040 square feet. There will be a total of 2 buildings with 8 dwelling units and 4 parking spaces on the tax lots.

All development is to occur with no utilization of additional development rights that could be generated via a zoning lot merger with adjacent private property. The distribution of floor area is compatible with that found in the immediate area. It is anticipated that the development will be similar in density to that of a project developed within the former Culver El right-of-way located on 37<sup>th</sup> Street between 15<sup>th</sup> Avenue and Dahill Road.

3. Only a single use (residential) is proposed for the subject site. There is no platform on the subject premises. The proposed development is a permitted use within the proposed zoning district and will not interfere with or adversely affect any other uses in the surrounding area.
4. Service on the rapid transit line was discontinued in 1975 and the elevated transit structure was demolished in 1985. The ground level right-of-way has been officially de-designated by the Interstate Commerce Commission, and the site has been permanently abandoned by both the Southern Brooklyn Railroad Company and the Metropolitan Transportation Authority (MTA). The MTA does not view the site as suitable for transportation use at any point in the future.

As determined by the City Planning Commission in its resolution on application C 040161 ZMK and C 040162 ZSK (*Kings Material rezoning application at 37<sup>th</sup> Street and 15<sup>th</sup> Avenue*) the former right-of-way is no longer needed for transportation use.

## RESOLUTION

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and

**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 submitted by the NYC Department of Housing Preservation and Development pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681 of the Zoning Resolution to allow the development of two four-story residential buildings containing eight affordable housing units, with four accessory residential parking spaces, within or over a railroad or transit right-of-way or yard, on property located at (Block 5295, p/o Lot 4), in a M1-2/R6A District, Borough of Brooklyn, Community District 12, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 100358 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 Bricolage Designs, incorporated in this resolution, which plans also includes waivers subject to approval by the New York City Board of Standards and Appeals for variances of Section 23-861 (General Provisions, Minimum Distance Between Legally Required Windows and Walls or Lot Lines) and Section 23-47 (Minimum Required Rear Yards) of the New York City Zoning Resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A001 (Lots # 108, 107) Zoning lot #11	Zoning – Plot Plan – Section (Lots # 108, 107) zoning lot # 11 (Special Permit Site Plan / BSA Zoning Variance)	May 10, 2010
A001 (Lots # 108, 107) Zoning lot #11	Zoning – Plot Plan – Section (Lots # 108, 107) zoning lot # 11	May 10, 2010

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. 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.
5. 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.
6. 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 agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 100358 ZSK), duly adopted by the City Planning Commission on August 25, 2010 (Calendar No. 18), 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.

**AMANDA M. BURDEN, FAICP, Chair**  
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