



CITY PLANNING COMMISSION

March 18, 2009/Calendar No. 7

C 070396 ZMK

IN THE MATTER OF an application submitted by ESP Group LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 17b:

1. changing from an M1-1 District to an R7A District property bounded by Clarkson Avenue, a line 100 feet westerly of New York Avenue, a line midway between Clarkson Avenue and Lenox Avenue, and a line 100 feet easterly of Nostrand Avenue; and
2. establishing within the proposed R7A District a C2-4 District bounded by Clarkson Avenue, a line 100 feet westerly of New York Avenue, a line midway between Clarkson Avenue and Lenox Avenue, and a line 100 feet easterly of Nostrand Avenue;

Borough of Brooklyn, Community District 17, as shown on a diagram (for illustrative purposes only) dated November 17, 2008 and subject to the conditions of CEQR Declaration E-224.

The application for an amendment to the Zoning Map was filed by ESP Group LLC on March 21, 2007, and was revised, to include all property within the M1-1 district on block 4837, on October 7, 2008. The Zoning Map amendment would change an M1-1 district to an R7A district with a C2-4 overlay on the southerly side of Clarkson Avenue between Nostrand and New York avenues.

BACKGROUND

The applicant seeks to change an M1-1 district to an R7A district with a C2-4 overlay on the southerly side of Clarkson Avenue to facilitate a mixed use residential, commercial, and community facility development in East Flatbush, Community District 17, Brooklyn. The Zoning Map amendment would affect ten lots on, block 4837, lots 21, 22, 23, 27, 29, 31, 33, and 38 (owned by the applicant), and 44, and 52. It is located on the southerly side of Clarkson Avenue at CD17's boundary with Community District 9 to the north.

The portion of the rezoning area owned by the applicant consists of two-story light industrial buildings and vacant land and once housed the now-defunct Products Finishing Corporation

which produced portable luggage carriers which have become obsolete with the introduction of wheeled luggage. Vehicle parking is presently the primary use on the property, providing a garage and surface spaces; two automobile repair establishments are located here as well.

Lots 44, and 52 within the proposed rezoning area, not owned by the applicant, contain the rear portions of a seven-story apartment building and a one-story pharmacy building, both of which front on New York Avenue.

The remaining properties on the block are predominantly residential with one six-story multiple dwelling and three-story wood-frame houses fronting on Lenox Road to the south, and three-story wood-frame houses fronting on New York Avenue to the east. The westerly end of the block is along the Nostrand Avenue commercial corridor and characterized by attached two- and three-story buildings with ground-floor commercial with residential above and parking facilities.

This surrounding neighborhood is primarily zoned for residential uses (R7-1, R6 and R5) and is mixed in character; the East Flatbush and Lefferts Gardens residential communities are south and north of Clarkson Avenue. Along Clarkson Avenue, to the north and to the east, are Kings County Hospital Center, SUNY Down State Medical Center, Kingsboro Psychiatric Center, and Kingsbrook Jewish Medical Center.

The surrounding area contains a mix of one- and two-family houses, medium density row houses, and high density lot coverage, pre-war apartment buildings.

The existing M1-1 district is a light manufacturing zoning district with a maximum FAR of 1.0 for commercial and light manufacturing uses, and 2.40 for community facility uses. Building envelopes are regulated by the sky exposure plane.

The proposed R7A district is a medium-density residential contextual zoning district with a maximum FAR of 4.0 for residential and community facility uses, a maximum lot coverage for interior lots of 65 percent, a required base height of 40 to 65 feet, and a maximum overall

building height of 80 feet. The C2-4 commercial overlay permits a broad range of commercial retail and service uses. C2-4 has a maximum commercial FAR of 2.0 and commercial uses are restricted to the ground-floor of mixed buildings.

If approved, the applicant proposes to develop the approximately 98,900 square-foot site with a seven-story mixed-use building to be constructed as three attached buildings. Each of the three buildings are proposed to contain approximately 93 condominium units, with accessory underground parking, and ground-level commercial and community facility uses. Front and back building cores off a common open space are utilized in the building design to cover the 200-foot deep lot and maximize access to light and air. The three buildings would have separate entrances from Clarkson Avenue and lobbies with access to circulation cores in the front and back. Garden plaza open space for residents of the buildings would be located on the second level.

Mass transit to the project site is available via IRT 2 and 5 subway lines at the Winthrop Street Station on Nostrand Avenue two blocks north of the site. The B12 bus runs east and west on Clarkson Avenue, and the Brooklyn B44 bus runs north and south Nostrand Avenue.

ENVIRONMENTAL REVIEW

This application (C 070396 ZMK) 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 Procedures of 1991 and Executive Order No. 91 of 1977. This application was determined to be an Unlisted action. The designated CEQR number is CEQR #07DCP056K. The City Planning Commission is the lead agency.

The conditional negative declaration included (E) designations. The placement of (E) designations (E-224) on the zoning map would eliminate the potential for significant adverse impact on the sites and would ensure that appropriate testing, remediation and corrective action, if needed, would be undertaken. The proposed rezoning includes (E) designations for noise and

air quality on the project site (Block 4837, Lots 22, 23, 27, 29, 31, 33, and 38) and (E) designations for noise, air quality, and hazardous materials on an adjacent lot (Block 4837, Lot 44) , as described below. In addition, the applicant has entered into a restrictive declaration for the project site to ensure that the appropriate hazardous materials sampling protocols, including health and safety plans, will occur prior to construction, which would be submitted to the Department of Environmental Protection (DEP) for approval.

The (E) designation for noise would be mapped on Block 4837, Lots 22, 23, 27, 29, 31, 33, 38 and 44. The text of the (E) designation is as follows:

In order to ensure an acceptable interior noise environment, future residential uses must provide a closed window condition with a minimum of 30 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.

With the implementation of the above (E) designation, no significant adverse impacts related to noise would occur.

The (E) designation for hazardous materials would be placed on Block 4837, Lot 44. The (E) designation would require that the fee owner of the sites conduct a testing and sampling protocol, and remediation where appropriate, to the satisfaction of the NYCDEP before the issuance of a building permit by the Department of Buildings pursuant to the provisions of Section 11-15 of the Zoning Resolution (Environmental Requirements). The (E) designation will also include a mandatory construction-related health and safety plan which must be approved by NYCDEP. The text of the (E) designation is as follows:

Task 1

The fee owner(s) of the lot(s) restricted by this (E) designation will be required to prepare a scope of work for any soil, gas, or groundwater sampling and testing needed to determine if contamination exists, the extent of the contamination, and to what extent remediation may be required. The scope of work will include all relevant supporting documentation, including site plans and sampling locations. This scope of work will be submitted to DEP for review and approval prior to implementation. It will be reviewed to ensure that an adequate number of samples will be collected and that appropriate parameters are selected for laboratory analysis.

No sampling program may begin until written approval of a work plan and sampling protocol is received from DEP. The number and location of sample sites should be selected to adequately characterize the type and extent of the contamination, and the condition of the remainder of the site. 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 choosing sampling sites and performing sampling will be provided by DEP upon request.

Task 2

A written report with findings and a summary of the data must be presented to DEP after completion of the testing phase and laboratory analysis for review and approval. After receiving such test results, a determination will be provided by DEP if the results indicate that remediation is necessary.

If DEP determines that no remediation is necessary, written notice shall be given by DEP.

If remediation is necessary according to test results, a proposed remediation plan must be submitted to DEP for review and approval. The fee owner(s) of the lot(s) restricted by this (E) designation must perform such remediation as determined necessary by DEP. After completing the remediation, the fee owner(s) of the lot restricted by this (E) designation should provide proof that the work has been satisfactorily completed.

A DEP-approved construction-related health and safety plan would be implemented during excavation and construction 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 DEP for review and approval prior to implementation.

With the implementation of the above (E) designation, no significant adverse impacts related to hazardous materials would occur.

The project also includes (E) designation for air quality on Block 4837, Lots 22, 23, 27, 29, 31, 33, 38 and 44. The text of the (E) designation is as follows:

Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning systems use Natural Gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

With the implementation of the above (E) designation, no significant adverse impacts related to air quality would occur.

After a study of the potential environmental impact of the proposed action (C 070396 ZMK), a Conditional Negative Declaration was issued. The lead agency has determined that the proposed action will have no significant effect on the quality of the environment.

The applicant signed the conditional negative declaration on 11/17/2008. The conditional negative declaration was published in the City Record on 12/3/08 and in the New York State Environmental Notice Bulletin on 12/10/08. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq., a 30-day comment period followed. No comments were received and the conditional negative declaration was issued on 3/16/09.

UNIFORM LAND USE REVIEW

This application, C 070396 ZMK, was certified as complete by the Department of City Planning on November 17, 2008, and was duly referred to Community Board 17 and the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 17 held a public hearing on this application on January 14, 2009, and on January 14, 2009, by a vote of 29 to 2 with 5 abstentions, adopted a resolution recommending approval of the application.

Borough President's Recommendation

This application was considered by the Borough President, who issued a recommendation on February 13, 2009 approving the application.

City Planning Commission Public Hearing

On February 4, 2009 (Calendar No.3), the City Planning Commission scheduled February 18, 2009, for a public hearing on this application (C 070396 ZMK). The hearing was duly held on February 18, 2009 (Calendar No. 29). There were three speakers in favor of the application and none in opposition.

The applicant, the applicant's urban designer, and the applicant's attorney spoke in support of the proposal. The applicant stated that his family planned to develop housing on the site after the failure of their light manufacturing business. The applicant's urban designer described the proposed development, and the phasing of its construction. The applicant's attorney described the neighborhood context and need for the proposed development, the population it would serve, and the uses it would provide.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the zoning map amendment (C 070396 ZMK) is appropriate.

The current M1-1 zoning allows light manufacturing and limited retail uses only. The proposed change from M1-1 to R7A with a C2-4 overlay would facilitate development which would be more compatible with the residential character of the East Flatbush neighborhood.

Establishing a C2-4 commercial district over the rezoning area would allow for much needed ground floor commercial uses, extending to the adjacent Nostrand Avenue Commercial corridor. The C2-4 zoning would allow the ground floor of the proposed development to contain retail, which would be in keeping with the mix of residential, commercial, and community facility uses characteristic of this portion of East Flatbush and Lefferts Gardens neighborhoods, and the proposed commercial uses would serve the residential uses nearby.

During its review the Commission had concerns about the proposed project's affordability, the staging of the three buildings and the provision of bicycle parking. In a letter dated February 27, 2009, the applicant stated:

Affordability

The applicant, ESP Group LLC ("ESP"), has spoken with the NYS Affordable Housing Corp (AHC), which provides New York State subsidies to homebuyers earning under 130% of Area Medium Income (AMI). ESP has also met with the Housing Partnership, which works with NYS AHC and other NYC agencies. If a private developer sets aside a significant portion of the development for affordable housing, the Housing Partnership

will provide financial incentives to the developer. It is ESP's intention to work with AHC and the Housing Partnership to make a significant portion of the proposed condominium units affordable to buyers earning from 100% to 130% of AMI.

ESP believes a significant portion of the East Flatbush homebuyers' market will qualify for the affordable housing subsidies. In addition, it is our opinion that the market-rate condo's in East Flatbush sell at a price close to what the affordable units will sell for. Accordingly, we believe our development will be a great success for the neighborhood.

Phasing Strategy

ESP has designed the project so that it can be built in three separate phases to allow for maximum flexibility. ESP intends to build lot 38 first. This will be Phase I, and consists of 65 units, along with underground parking for 115 cars. Phase II will be built on lots 29, 31 & 33, and will consist of 115 units, along with underground parking for 115 cars. Phase III will be built on lots 22, 23 & 27 and will consist of 100 units, along with underground parking for 115 cars.

During the phased construction, ESP intends to continue to operate the existing public parking garage and make improvements to the site. ESP intends to work on the construction documents after the project is approved and anticipates construction will start in

2011 for Phase 1. Barring unforeseen circumstances, we anticipate that Phase I will be completed by the end of 2013. Phase II will start in 2014 and be completed in 2016, and Phase III will start in 2016 and be completed in 2018.

Bicycle Parking Requirements

Pursuant to the proposed "Bicycle Parking" Zoning Text Amendment, ESP intends to comply with the current proposed requirements as follows:

ESP will provide required bike racks in a fully enclosed weather protected area located in the cellar garage space of each of the three phases. The space will be designated with an appropriate sign. Based on our interpretation, Phase I of the development will provide space for 40 bicycles, Phase II will provide space for 61 bicycles, and Phase III will provide space for 54 bicycles.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment, subject to the following condition(s):

1. The applicant agrees via restrictive declarations to prepare hazardous materials sampling protocols, including a health and safety plans, which would be submitted to the

Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocols and, if any such impact is found, submit hazardous material remediation plans including health and safety plans to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plans. ; and be it further

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 described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 17b:

1. changing from an M1-1 District to an R7A District property bounded by Clarkson Avenue, a line 100 feet westerly of New York Avenue, a line midway between Clarkson Avenue and Lenox Avenue, and a line 100 feet easterly of Nostrand Avenue; and
2. establishing within the proposed R7A District a C2-4 District bounded by Clarkson Avenue, a line 100 feet westerly of New York Avenue, a line midway between Clarkson Avenue and Lenox Avenue, and a line 100 feet easterly of Nostrand Avenue;

Borough of Brooklyn, Community District 17 as shown on a diagram (for illustrative purposes only) dated November 17, 2008 and which includes CEQR Designation E-224.

The above resolution (C 070396 ZMK), duly adopted by the City Planning Commission on March 18, 2009 (Calendar No. 7), 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
KENNETH J. KNUCKLES, Esq., Vice Chair
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA CAVALUZZI, AIA,
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