



## CITY PLANNING COMMISSION

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February 22, 2006/Calendar No. 20

C 050203 ZMK

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**IN THE MATTER OF** an application submitted by 22 Caton Place Corporation pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 16d and 22c, changing from an R6 District to an R7A District property bounded by Caton Place, a line 100 feet southwesterly of East 8<sup>th</sup> Street, a line midway between Caton Place and Kermit Place, and the northerly prolongation of a line midway between Ocean Parkway and East 7<sup>th</sup> Street, Borough of Brooklyn, Community District 7, as shown on a diagram (for illustrative purposes only) dated September 26, 2005, and subject to the conditions of CEQR Declaration E-154.

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The application for an amendment of the Zoning Map was filed by 22 Caton Place Corporation on December 10, 2004, for the rezoning of two lots (Block 5320, Lot 55 and a portion of Lot 46) from R6 to R7A in the East Windsor Terrace neighborhood of Community District 7, Brooklyn.

### **BACKGROUND**

22 Caton Place Corporation proposes the rezoning of two lots from R6 to R7A, to facilitate the construction of an eight-story, 68 unit residential building. The subject site is located on the south side of Caton Place, between Ocean Parkway and East Eighth Street in the East Windsor Terrace neighborhood of Community District 7, Brooklyn. The rezoning area is bounded by Caton Place, a line 100 feet southwesterly of East 8<sup>th</sup> Street, a line midway between Caton Place and Kermit Place, and the northerly prolongation of a line midway between Ocean Parkway and East 7<sup>th</sup> Street, which is the existing R7A boundary (approximately 100 feet east of Ocean Parkway).

22 Caton Place, the applicant's property (Block 5320, Lot 55), measures approximately 20,625 square feet, and currently contains a vacant one-story manufacturing building, formerly used for wire forming and making chalkboards. The proposed zoning map change would facilitate the development of a residential building containing 68 rental units, with a height of eight stories (80 feet), and a total floor area of 80,700 square feet. Adjacent to the site to the west, and also subject to this rezoning proposal, is 81 Ocean Parkway (Block 5320, Lot 46), developed with a six-story (66 feet), 92,805-square foot residential cooperative containing 80 units.

Adjacent land uses surrounding the site include the six-story 81 Ocean Parkway to the west, and on Caton Place to the east, two two-story semi-detached buildings. To the south of the site on Kermit Place are a number of two- and three-story houses. Other land uses on the same block include two- and three-story homes on East Eighth Street, and a six-story apartment building on Ocean Parkway.

Directly across Caton Place from the subject site, in an R7A district, is a one-story warehouse, with permits approved for demolition and the construction of an eight-story, 107-unit apartment building. There are also two six-story apartment buildings in this R7A district. On the block east of the rezoning area, in a C8-2 district, are the Calvary Pentecostal Church (40 feet tall); a site where a new nine-story, 58-unit building is being constructed on Coney Island Avenue, pursuant to a Board of Standards and Appeals variance; and a public high school. To the northeast of the rezoning area, land uses include: the Kensington Horse Stables, a ramp to a pedestrian bridge owned by the Department of Parks and Recreation, and a Baptist Church. Three blocks east of the rezoning area is Prospect Park and the Parade Grounds.

The subject site is located in an R6 zoning district, which extends south from Caton Place to Caton Avenue, and east from an R7A district boundary to East Eighth Street. Zoning districts adjacent to subject R6 district include: an R7A district, mapped at approximately 100 feet parallel to Ocean Parkway and the entire block north of Caton Place; an R5 district on the east side of East Eighth Street; and a C8-2 district which runs south down Coney Island Avenue. The subject site is also located within the Special Ocean Parkway District.

The existing R6 district is a medium density district which allows residential uses up to 2.43 FAR, with height and setback controlled by the sky exposure plane. Alternately, under the Quality Housing program, on a street less than 75 feet in width residential buildings are permitted up to 2.2 FAR, with a height limit of 45 feet at the streetwall, and up to 55 feet after a 15-foot setback. New residential developments with height factor zoning must provide one parking space for 70% of the units; new developments built under Quality Housing regulations must provide one parking space for 50% of the units. In the Special Ocean Parkway District, community facility uses are limited to the maximum residential FAR.

The proposed R7A district is a contextual district which allows residential and community facility uses up to 4.0 FAR, with a maximum streetwall height of 65 feet, and a total permitted height of 80 feet after a setback. The building's streetwall must be located no closer to the street line than the closest street wall of an existing building to such street line, located on the same block and within 150 feet. New residential developments must provide one parking space for 50% of the units.

## **ENVIRONMENTAL REVIEW**

This application (C 060054 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 Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 05DCP047K. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, the lead agency has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

A Phase I Environmental Site Assessment (ESA), available in the proposal's CEQR file, was prepared on September 16, 2003 for the properties under the control of the applicant located at Block 5320, Lot 55. The Phase I ESA was reviewed by the Department of Environmental Protection's (DEP) Office of Environmental Planning and Assessment, and a restrictive declaration was recommended, as stated in a memo by DEP, on June 8, 2005, due to the potential presence of hazardous materials on the site as a result of past and present land uses at, adjacent to, and surrounding the applicant's sites. A restrictive declaration was prepared by the applicant and filed against properties under the control of the applicant located at Block 5320, Lot 55. The declaration requires that Phase II testing for hazardous materials would occur under the direction of DEP and is binding upon the property's successors and assigns. The declaration serves as a mechanism to assure the potential for hazardous material contamination that may exist in the sub-surface soils and groundwater on the applicant's sites would be characterized prior to any site disturbance (i.e., site grading, excavation, demolition, or building construction).

With the implementation of the restrictive declaration described above, no significant adverse impacts related to hazardous materials would occur.

The applicant signed the conditional negative declaration on September 22, 2005. The conditional negative declaration was published in the City Record on January 10, 2006 and in the New York State Environmental Notice Bulletin on January 11, 2006. 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 January 23, 2006.

## **UNIFORM LAND USE REVIEW**

This application (C 050203 ZMK) was certified as complete by the Department of City Planning on September 26, 2005 and was duly referred to Community Board 7 and the Borough President in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

### **Community Board Public Hearing**

Community Board 7 held a public hearing on the application (C 050203 ZMK) on November 10, 2005, and on November 16, 2005, by a vote of 30 to 0 with no abstentions, adopted a resolution recommending disapproval of the zoning map change application, with the following comments:

1. There is no guarantee that the applicant/developer will in fact build the stated development project at the site and could in fact sell the property under the new zoning.
2. The EIS does not accurately reflect conditions in the area because it does not take into account two other major projects under development in the near vicinity. When examined in aggregate, the three projects total a 45% increase in the number of dwelling units in a 7-block area.
3. There is no guarantee that the development will have rental units, or be affordable.
4. The area is already overburdened by a lack of parking, and any proposed development under the new zoning would not require 100% parking.
5. The proposed development is out of character with the community, in particular, the surrounding blocks which include many small one and two family homes and the horse stables.
6. The majority of residents oppose the change, as was clearly stated at the public hearing held on November 8, 2005.

The Community Board also requested that the Department of City Planning undertake a study of rezoning the surrounding community to comply with the “original intent of the Special Ocean Parkway District, to protect the interior blocks.”

### **Borough President Recommendation**

The application (C 050203 ZMK) was considered by the Borough President, who issued on December 29, 2005 a recommendation disapproving the proposed zoning map application subject to the follow condition: “that the zoning district designation is changed to R7B.”

In addition, the Borough President expressed concerns about parking, requesting that one parking space be provided for each apartment, and about existing lot line windows at 81 Ocean Parkway, requesting that the proposed development give adequate side yard separation from these windows. He also requested a written commitment from the applicant to provide affordable housing, and called on the Department of Transportation to re-install the four-way traffic controls at the intersection of Caton Place and East 8th Street, and evaluate whether East 8th Street and Caton Place should remain as two-way streets.

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

On December 19, 2005 (Calendar No. 24), the City Planning Commission scheduled January 11, 2006, for a public hearing on the application (C 050203 ZMK). The hearing was duly held on January 11, 2006 (Calendar No. 23).

There were three speakers in favor of the application and ten speakers in opposition.

Speakers in favor of the application included a representative of the applicant and current and former neighborhood residents. A representative of the applicant stated that the R7A district allows a better built form than the current R6, which could allow a ten story building with no side yards and surface parking in the rear. He indicated that the applicant intends to build an 8-story building with parking for 90% of the units in an underground garage, with a landscaped rear yard, and also indicated that the applicant would enter into an enforceable provision guaranteeing that 14 units of the new development (or 20% of the total number of units) would be affordable to moderate-income renters, earning between 100 and 150% of Area Median Income. The representative stated this guarantee would be made even in the event that no government funds or tax incentives from HPD, HDC or other agencies were available to the developer. In response to discussions with the co-op board and local community groups, the speaker said that the building would be designed with an 8-foot side yard adjacent to 81 Ocean Parkway. The speaker also noted that the proposed R7A district would bring the neighboring building, 81 Ocean Parkway, into compliance, as it is overbuilt for the existing R6 designation by 12,000 square feet.

The president of the co-op board of 81 Ocean Parkway expressed conditional support for the proposed rezoning, provided that the applicant establishes a side yard between the two buildings, to allow light and air to the 18 units in the co-op that have lot-line windows. The speaker indicated that the support of the co-op board is also based on the promise that new building will provide 100% of the units with parking spaces, and that the applicant make commitments regarding the side yard and parking in an enforceable agreement.

A third speaker in favor of the application, a commercial real-estate broker who used to live in the neighborhood, supported the rezoning to R7A.

Speakers in opposition included a representative of the New York State Assembly member for the 44<sup>th</sup> District, representatives of a local civic group, a pastor of a local church and the owner and customers of the Kensington Horse Stables.

A representative of the member of the New York State Assembly for the 44<sup>th</sup> District read a statement in opposition to the rezoning, stating that density should be confined to Ocean Parkway, and not permitted on the interior blocks. The statement argued that the number of new units under construction in the area will have a cumulative negative impact on the current residents of the neighborhood.

A representative of Stable Brooklyn, a local civic group, spoke in opposition to the rezoning, saying that the cumulative impact of the proposed building, combined with the two developments under construction across the street on Caton Place and on Coney Island Avenue, represents a 45% increase in the number of dwelling units in a seven-block area. Both this speaker and another speaker, another local resident, requested that this R6 district be rezoned to R5, to preserve the character of the two- and three-story homes in the area. Several other local residents spoke to express similar concerns about the effect of new housing development on the neighborhood.



The pastor of a local church spoke of the difficulties he has parking his church buses and his parishioners have parking their private cars in the area on Sundays, and expressed concern about the effect on the neighborhood's parking when the new buildings were completed.

The owner of the Kensington Stables, an active business located across East Eighth Street from the subject property (at 51 Caton Place), and patrons of the stables spoke in opposition, because of potential impacts new construction might bring on the daily operations of the stables, such as positioning horses for rides in Prospect Park and removing manure. Five local residents also testified to the benefits of having an active horse stable in the area.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The City Planning Commission believes that this amendment of the Zoning Map (C 050203 ZMK), as modified herein, is appropriate.

In response to concerns expressed by the Community Board and Borough President and testimony from local residents regarding the existing built character of the neighborhood, the Commission is modifying the proposed action from an R7A to an R7B district. The Commission believes that the R7B district will allow new development on the subject site, a vacant industrial building, at a scale appropriate to its location on a midblock between the apartment houses of Ocean Parkway and the small homes along Caton Place, East Eighth Street and Kermit Place. The R7B designation has a maximum streetwall height of 60 feet, a maximum total height of 75

feet, and a maximum FAR of 3.0. The proposed development would reinforce the residential character of the neighborhood and return an underutilized property into active use. The proposed action as modified would facilitate the development of a building with approximately 55 units.

The Commission heard testimony from the residents of an adjacent building, 81 Ocean Parkway, regarding their concern that a side yard be provided between the two structures where 81 Ocean Parkway has lot-line windows. The Commission notes that the applicant, in a letter to the Commission dated February 17, 2006, has indicated a commitment to provide two eight-foot side yards on either side of the proposed building.

The Commission acknowledges the concerns expressed by the Community Board and the Borough President regarding the importance of affordable housing. However, the Commission notes that requiring such units is beyond the purview of this application.

Regarding the availability of on-street parking in the neighborhood, the Commission notes that the proposed action as modified requires parking for 50% of the units, which is the same requirement as the higher-density R7A district along Ocean Parkway and across the street from the subject site.

## **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 conditions:

The applicant agrees via a restrictive declaration to prepare a hazardous materials sampling protocol including a health and safety plan, 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 protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

The restrictive declaration also restricts the manner in which the property may be developed or redeveloped, by requiring the sampling protocol and remediation measures to serve as a condition precedent to any change of use in any such development or redevelopment of the property.

and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 16d and 22c, changing from an R6 District to an R7B District property bounded by Caton Place, a line 100 feet southwesterly of East 8th Street, a line midway between Caton Place and Kermit Place and the northerly prolongation of a line midway between Ocean Parkway and East 7th Street, as shown on a diagram (for illustrative purposes only) dated September 26, 2005, modified by the City Planning Commission on February 22, 2006, and subject to the conditions of CEQR Declaration No. E-154.

The above resolution (C 050203 ZMK), duly adopted by the City Planning Commission on February 22, 2006 (Calendar No. 20), 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, AICP, Chair**

**KENNETH J. KNUCKLES, Esq., Vice-Chairman**

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