



## CITY PLANNING COMMISSION

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October 19, 2011/Calendar No. 16

M 830094(B) ZMK

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**IN THE MATTER OF** an application submitted by 8902 Foster Avenue, LLC for a modification to Restrictive Declaration D-86, which was approved as part of a Zoning Map Amendment (C 830094 ZMK), involving:

1. eliminating the restriction on Use Group 16B (automotive service establishments) uses only on Block 5807, Lot 40, with a prohibition on automotive paint spraying;
2. allowing open accessory parking on the zoning lot; and
3. updating the plan attached as Exhibit D, governing tree replacement, to reflect the proposed conditions;

on property bounded by 2<sup>nd</sup> Avenue, 63<sup>rd</sup> Street, 3<sup>rd</sup> Avenue and 64<sup>th</sup> Street (Block 5807, Lots 1 and 40), in a C8-1 District, Borough of Brooklyn, Community 7.

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**WHEREAS**, on November 28, 2003, 8902 Foster Avenue LLC submitted an application (M 830094(B) ZMK) for the further modification of a restrictive declaration (D-86), dated October 24, 1983 (the “1983 Declaration”), as modified in 1988, to facilitate the use of an existing building on Lot 40 of Block 5807 (the “Smaller Building”) for an automotive service establishment (Use Group 16B), to allow off-street accessory parking on the zoning lot and to update planting plan; and

**WHEREAS**, the 1983 Declaration was recorded on December 22, 1983 in the New York City Register at Reel 1458, page 1633 in connection with ULURP Application No. M 830094 ZMK and superseded a restrictive declaration (D-39) that was executed on April 28, 1978 in connection with ULURP Application No. C 770602 ZMK but never recorded; and

**WHEREAS**, the 1983 Declaration limited uses in the “Arsenal Building” (located on Lot 1 of Block 5807) primarily to offices (Use Group 6B), with the exception of veterinarians’ offices and record storage (Use Group 10A), and it permitted only certain retail uses as well as uses within Use Group 16D, such as warehouses, moving and storage, and packing and crating, within the Arsenal building and the Smaller Building; and

**WHEREAS**, in 1987, under non-ULURP Application No. M 870581 ZMK, the 1983 Declaration was superseded by a restrictive declaration dated March 1, 1988 and recorded on May 9, 1988 at Reel 2212, Page 347 (“Restrictive Declaration D-86”), which permitted those uses in Use Group 16D that were previously limited by the 1983 Declaration to the basement and first floor of the Arsenal Building and Smaller Building to be unlimited with regard to floor area and location within the Arsenal Building; and

**WHEREAS**, the Declarant wishes to redevelop the property that is the subject of this application in a manner inconsistent with certain aspects of Restrictive Declaration D-86 and has submitted an application designation number M 830094(B) ZMK (the “2011 Application”) to the New York City Planning Commission (the “Commission”); and

**WHEREAS**, the application is filed in order to modify the restrictions contained in the restrictive declaration so as to occupy the premises as an automotive service establishment for a car dealership and allow off-street accessory parking on the zoning lot. The zoning lot is subject to a Restrictive Declaration in connection with prior Commission approvals, which prohibits some uses otherwise allowed as-of-right in the existing C8-1 zoning district. The subject building is currently being used for the storage and preparation of cars awaiting delivery to a car dealership, which is the intended use requested by this applicant. While this use is permitted as-of-right within the underlying C8-1 zoning district, it is not permitted under the current terms of the Restrictive Declaration. The applicant is now before the Commission to request legalization of this use.

**WHEREAS**, proposed modifications to Restrictive Declaration D-86 include the following:

1. Eliminating the restriction on Use Group 16B (automotive service establishments) uses only on Block 5807, Lot 40, with a prohibition on automotive paint spraying;
2. Allowing open accessory parking on the zoning lot; and
3. Updating the plan attached as Exhibit D, governing tree replacement, to reflect proposed conditions.

**WHEREAS**, this application (M 830094(B) ZMK) was reviewed pursuant to City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order

91 of 1977 and was issued a Negative Declaration on January 24, 2011; and

**WHEREAS**, this application was referred to Community Board 7 for 45 days and in a letter dated January 31, 2011, Community Board 7 did not comment on the modification to Restrictive Declaration D-86; and

**WHEREAS**, the Commission has determined that the application warrants approval; and

**RESOLVED**, that the application (M 830094(B) ZMK) submitted by 8902 Foster Avenue LLC for a modification to Restrictive Declaration D-86 involving:

1. eliminating the restriction on Use Group 16B (automotive service establishments) uses only on Block 5807, Lot 40, with a prohibition on automotive paint spraying;
2. allowing open accessory parking on the zoning lot; and
3. updating the plan attached as Exhibit D, governing tree replacement, to reflect the proposed conditions;

on property bounded by 2<sup>nd</sup> Avenue, 63<sup>rd</sup> Street, 3<sup>rd</sup> Avenue and 64<sup>th</sup> Street (Block 5807, Lots 1 and 40), in a C8-1 District, Borough of Brooklyn, Community 7, is approved.

The above resolution (M 830094B ZMK), duly adopted by the City Planning Commission on October 19, 2011 (Calendar No. 16), is filed with the Office of the Speaker, City Council.

**AMANDA M. BURDEN, FAICP, Chair**  
**RICHARD W. EADDY, Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,**  
**NATHAN LEVENTHAL, ANNA HAYES LEVIN, ORLANDO MARIN,**  
**SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners**