



CITY PLANNING COMMISSION

March 8, 2010/Calendar No. 2

C 080340 ZSK
CORRECTED

IN THE MATTER OF an application submitted by Rose Plaza on the River LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the requirements of former Section 62-34 (Height and Setback Regulations on Waterfront Blocks) to facilitate the construction of a mixed use development on property located at 470-490 Kent Avenue (Block 2134, Lots 1, and p/o 150), in R7-3 and R7-3/C2-4 Districts, Borough of Brooklyn, Community District 1.

*197-d(b)(2) eligible

This is an application for a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the requirements of height and setback regulations on a waterfront block to facilitate the construction of a mixed use development, and a public waterfront esplanade along the East River, in the Williamsburg neighborhood of Community District 1, Brooklyn.

RELATED ACTIONS

In addition to this application (C 080340 ZSK) for a special permit, implementation of the applicant's proposal also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

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| N 100056 ZRK | A zoning text amendment to Appendix F to apply the inclusionary housing program to the proposed R7-3 district. |
| C 080339 ZMK | A zoning map amendment to change an M3-1 district to an R7-3 district with a C2-4 overlay. |
| N 080341 ZAK | An authorization pursuant to Section 62-722(b) to modify the waterfront public access requirements. |

N 080342 ZCK A certification pursuant to Section 62-711 that a site plan has been submitted showing compliance with the zoning regulations for waterfront public access areas and visual corridors.

BACKGROUND

The Rose Plaza site, located at 470-490 Kent Avenue in the Williamsburg section of Brooklyn, Community District 1, is proposed to be developed with approximately 800 units of housing, 29,000 square feet of commercial and community facility space, 496 spaces of accessory parking, and 33,188 square feet of public waterfront esplanade along the East River waterfront. To facilitate this development, the applicant has requested: a zoning map amendment to change an M3-1 zoning district to R7-3 and R7-3/C2-4 districts, a zoning text amendment to apply the inclusionary housing program to the proposed R7-3 district, a special permit for bulk modification on a waterfront block, authorizations to modify the waterfront public access requirements and a certification by the Chairperson that the waterfront public access area and the required visual corridor comply with zoning regulations.

The subject site (Block 2134, Lot 1, and p/o 150) is located on the East River waterfront, generally bounded by Schaefer Landing to the north, Kent Avenue to the east, Division Avenue to the south, and the East River to the west. The site is currently zoned M3-1 and is occupied by 2- to 3-story industrial buildings that contain a lumber yard and two storage and wholesale distribution businesses.

The surrounding area to the east is primarily developed with residential uses, zoned R6, R7A, R7X and R7-1, while the properties along the East River and Kent Avenue contain a mix of residential, commercial and industrial uses zoned R7-3 to the north and M3-1 to the south.

The Williamsburg Bridge is four blocks to the north of the site and the Brooklyn Navy Yard is one block to the south on Kent Avenue. Just north of the Rose Plaza site is the Schaefer Landing development, a 2.5 acre parcel which was rezoned in 2001 (C 010615 ZMK) from an M3-1 to an R7-3/C2-4 district and developed with 350 units of housing in two, 15- and 25-story residential

towers with ground floor commercial space along Kent Avenue. North of Schaefer Landing is the Kedem Winery site which was rezoned in 2006 from an M3-1 district to an R7-3/C2-4 district (C 020518 ZMK) to facilitate the development of 450 dwelling units in two, 18- and 23-story residential towers. Across Kent Avenue is the 5.2 acre former Domsey clothing warehouse, which was rezoned in 2003 from M3-1 to an R7A district (C 980077 ZMK) to allow the construction of 540 dwelling units. The Kedem and Domsey sites, though rezoned, are not yet developed with housing.

Proposed Project

The proposed residential development for the Rose Plaza on the River site would consist of 801 units of housing in three residential buildings: A, B and C. The site is divided by a required visual corridor along the prolongation of South 11th Street; building A is south of the visual corridor, while buildings B and C are to the north of the visual corridor. Building A, at the corner of Division and Kent avenues, has a 6- to 7-story base and a 25-story tower containing 309 dwelling units. Building B, located along Kent Avenue, has a six-story base and an 18-story tower containing 221 dwelling units. Building C, located in the northern portion of the site, has a 6- to 7-story base and a 29-story tower containing 271 dwelling units.

The buildings are arranged to minimize the massing along Kent Avenue while maximizing both public and private open space in the interior of the site. The buildings' arrangement also allows for views along the visual corridor to expand out and toward the East River. The buildings along Kent Avenue are also set back 5-feet from the property line, thus increasing the width of sidewalk along the west side of Kent Avenue from 10 to 15 feet.

The development would also provide approximately 29,000 square feet of neighborhood retail space along Kent and Division Avenues, including a restaurant at the end of Division Avenue adjacent to the shore public walkway. An attended below-grade garage would provide 496 parking spaces with elevator and stairway access to each building, vehicular ingress from Division Avenue, and vehicular egress to Kent Avenue. An internal driveway located in the middle of the site off of Kent Avenue provides drop-off areas for the three buildings.

Rose Plaza would take advantage of the inclusionary housing bonus in the proposed R7-3 district by developing 160 units of affordable housing on 20% of the residential floor area. The affordable units would be 1-, 2- and 3-bedrooms in size and would be located on site in all three buildings.

The Rose Plaza development is on a waterfront lot and is required to provide public waterfront access and a visual corridor. The waterfront esplanade, as proposed by the applicant, includes 33,188 square-feet of public open space along the entire 512-foot shoreline of the development site. In addition to the waterfront esplanade there would be a 60-foot wide visual corridor at the prolongation of South 11th Street, located in the middle of the Rose Plaza site.

The waterfront esplanade would be connected to Division Avenue to the south, and to the Schaefer Landing esplanade and upland connection to the north. The esplanade would also be accessible from Kent Avenue through the visual corridor in the middle of the Rose Plaza site. The shore public walkway is designed to provide different kinds of experiences as visitors walk through it. The 12-foot wide main circulation path is more than 10 feet away from the seaward edge and traverses the site. In addition to the main circulation path there would be a five- to six-foot wide clear pathway along the water's edge.

At the Division Avenue entrance, there would be three groves of trees along the circulation path. In addition there would be benches and a planted buffer area next to the building. In the middle of the esplanade is an "urban beach" with two lawn panels and a six-foot wide clear pathway along the seaward edge terminating at a shade structure. Landward of the "urban beach" is a triangular plaza with six shade trees, round tables and chairs. The access path along the visual corridor also meets the esplanade in this area, leading down a 15-foot wide stair and a wheel chair ramp to the esplanade.

The third part of the esplanade is 58 feet wide with a 32-foot wide grass garden that extends from the “urban beach” to the Schaefer Landing esplanade. The grass garden is at the seaward edge and has a 5-foot wide pathway meandering through it with a long bench facing the water.

The shore public walkway provides a total of 68 trees, 19 large shade trees, 30 medium trees, and 19 small trees. The applicant also provides 465 linear feet of seating throughout the public access area, 23 linear feet more than required by zoning.

The required visual corridor through the applicant’s site would be an extension of South 11th Street and would be open to the sky. The visual corridor would also be a third point of access from Kent Avenue to the waterfront esplanade. The applicant has agreed that the private land within the visual corridor shall be kept open to the public and will provide additional access to the waterfront esplanade from Kent Avenue. The privately owned open space within the visual corridor would be accessible to the public during hours that the zoning requires waterfront public access areas to be open. This commitment is memorialized in a restrictive declaration. The visual corridor will contain clear pathways, planting beds and seating.

The project site has a 10-foot grade difference between Kent Avenue and the waterfront esplanade. The roof of the underground parking garage is at the same grade as Kent Avenue but is 10 feet above the level of the waterfront esplanade. Since the required visual corridor is on top of the parking garage and also serves as an access path to the esplanade, it connects to the waterfront public esplanade through steps and a wheel chair ramp.

Actions Requested

Zoning Map Amendment (C 080339 ZMK):

The applicant requests a zoning map amendment to change from an M3-1 zoning district to an R7-3 district, with a 100-foot wide C2-4 overlay along Kent and Division avenues. The existing M3-1 zoning allows heavy manufacturing uses and limited commercial uses. Buildings may be constructed to an FAR of 2.0 and building heights are controlled by sky exposure planes.

The proposed R7-3 district would permit residential and community facility uses. The proposed R7-3 district would have a base FAR of 3.75 which could be increased to 5.0 with the Inclusionary Housing bonus pursuant to the provisions of the related zoning text amendment (N 100056 ZRK). The maximum permitted building height in an R7-3 district is 185 feet with a maximum base height of 65 feet. The maximum lot coverage is 70 percent. Since the property is a waterfront site, a visual corridor and a minimum 40-foot-wide shore public walkway are also required upon development of the property.

Zoning Text Amendment to Appendix F (N 100056 ZRK)

The applicant proposes a zoning text amendment to apply the Inclusionary Housing Program to the R7-3 district mapped here as part of the proposed rezoning. Under the Inclusionary Housing Program the maximum as-of-right FAR would be 3.75. This could be increased to an FAR of 5.0 if 20% of the residential floor area were to be set aside for affordable housing. In this project the developer plans to participate in this program and would provide 160 units of affordable housing on-site.

Zoning Special Permit (C 080340 ZSK):

This application (C 080340 ZSK) and the related applications for an authorization and certification (N 080341 ZAK and N 080342 ZCK) were filed pursuant to the provisions of ZR Sections 62-736, 62-722(b) and 62-711, respectively. These provisions, along with much of Article 6 Chapter 2, were amended by action of the City Planning Commission and City Council on April 22, 2009 (N 090239 ZRY). However, ZR Section 62-12(b) and (d), as amended, permit applications for special permits, authorizations and certifications pursuant to Article 6 Chapter 2 that were filed with the Department of City Planning prior to April 22, 2009 to proceed under the zoning text in effect on the date they were filed. This application and the related certification and authorization applications were filed on March 24, 2008 and therefore have proceeded pursuant to the applicable sections of the zoning resolution in effect on that date.

A special permit pursuant to Section 62-736 for bulk modifications on a waterfront block is being requested. The Zoning Resolution requires that findings be met related to the uniqueness of the site, which includes natural features, significant grade changes or wetlands; or an irregular shoreline or shape. The bulk modifications requested by the applicant are for the permitted obstructions above the maximum building height, floor plate size, setbacks, and the width of buildings facing the shoreline.

According to the applicant, the proposed waivers would allow the relocation of the bulk on the site, creating a site plan with a configuration of three buildings of varying heights that opens up the site and allows larger private and public open spaces and greater light, air and visual access to the water. Furthermore, the waivers are proposed to move the bulk of the massing away from Kent Avenue and from the public open spaces along the waterfront.

A brief description of the each waiver is given below:

- I. Permitted obstructions above the maximum building height; Sec 62-341 (a)(4)(ii): A penthouse portion of a building is permitted to exceed 185 feet in height only if each story above that height does not exceed 80 percent of the gross area of the story directly below. The applicant proposes that the floor plates of stories above 185 feet are 100 percent of the story below, with the exception of the top four floors at each building.
- II. Maximum Building Heights; Sec 62-341 (c)(2): The maximum building height in R7-3 districts is 185 feet, subject to setback regulations. The proposed actions include a waiver of this provision to allow: Building A to rise to a height of 249 feet, which exceeds the maximum building height by 64 feet, and Building C to rise to a height of 287 feet, which exceeds the maximum building height by 102 feet.
- III. The maximum floor plate size; Sec (62-341) (c)(4): The maximum floor plate sizes permitted above the 65-foot base height is 8,100 sf. The proposed actions include a waiver of this provision to allow: Buildings A and B to have a floor plate size of 9,443 square feet,

and building C would have a floor plate size of 9,081 square feet above the base heights of 65 feet.

- IV. Additional Setback at 150 Feet; Sec 62-341 (c)(5): The floor plate of each story located above 150 feet may not exceed 85 percent of the highest story located below 150 feet. The proposed actions include a waiver of this provision. All three buildings do not setback at 150 feet, thus not reducing the floor area to 85 % of the floor area below 150 feet.
- V. Maximum Length of Walls facing Shoreline; Sec 62-341(c)(6): The wall length of any story of a building facing the shoreline and entirely above the maximum base height of 65 feet is limited to 100 feet. The applicant proposes a waiver of this provision to allow the length of the seventh floor of building A facing the shore line to be 119 feet, exceeding the maximum permitted length by 19 feet. The length of the seventh floor of building C facing the shore line would be 160 feet exceeding the maximum permitted length by 60 feet.

Zoning Authorization (N 080341 ZAK): Modification of the Design Standards for the Waterfront Area pursuant to Section 62-722:

The applicant further requests a City Planning Commission authorization pursuant to Section 62-722(b), to modify the design standards of the waterfront area. The City Planning Commission may authorize modifications of the requirements of 62-60, if the Commission finds that such modifications would result in a design of the public access areas that is functionally equivalent or superior to the design prescribed by strict adherence to the provisions of 62-60.

Because this application was filed before adoption of the waterfront text amendment on August 22, 2009, pursuant to section 62-12(b), this authorization would modify the regulations in effect before the recent waterfront text amendment was adopted.

- 1) Obstruction of Visual Corridors: Section 62-642: Visual corridors are required to be open from their lowest level to the sky. The lowest level is defined as a plane from Kent Avenue,

sloping downward to the parcel's seaward edge. The subject site has a 10-foot grade difference between Kent Avenue and the waterfront esplanade.

A sub-grade parking structure is proposed beneath the visual corridor. The garage is at grade with Kent Avenue but it is 10-foot above the waterfront esplanade due to the grade difference in the site. The 10-foot-high portion of the parking structure abutting the waterfront esplanade is considered an obstruction in the visual corridor. In addition, one shade tree within the triangular plaza in the waterfront esplanade is proposed to be within the visual corridor and is also considered an obstruction.

- 2) The buffer zone: Buffer zone is a landscaped area required within the waterfront public access area, except where obstructions are permitted. The project seeks an authorization to allow an ancillary pathway, handicap access ramp and additional seating to be located within the buffer zone. These are not permitted obstructions in the buffer zone.

- 3) Circulation Path: One circulation path with a minimum clear width of 12 feet is required to be within ten feet of the seaward edge of the shore public walkway. The proposed authorization would allow the 12-foot-wide circulation path to be located more than 10 feet away from seaward edge.

- 4) Seating Location: At least 60% of the seating required in the pedestrian circulation zone of the shore public walkway is required to be located landward of the required circulation path. The proposal has only 40% of seating landward of the required circulation path.

- 5) Pedestrian Circulation Zone Planting and Trees: A minimum of 50 percent of the pedestrian circulation zone shall be planted, excluding the required circulation path. The project provides 48.6 percent of the pedestrian circulation zone as planted area, which is 1.4 percent short of the required planting area.

Also, one row of shade trees is required within the pedestrian circulation zone of the shore public walkway. In this case, 20 trees would be required. The proposal provides 19 shade trees, though only 5 are within the pedestrian circulation zone of the shore public walkway.

6) Pedestrian Circulation Zone of the Supplemental Public Access Area:

At least 50% of supplemental public access areas are required to be pedestrian circulation zone. The proposal has only 41 % of the supplemental access area designated as pedestrian circulation zone, with the remainder designated as buffer zone.

7) Dimensions of the Supplemental Public Access Area: At least 70% of the supplemental public access area must have a width to depth ratio between 1:1 and 2:1. The proposed supplemental public access area has a much higher width to depth ratio than permitted because it is used to widen the shore public walkway.

8) Required Seating: One linear foot of seating per 50 square feet of pedestrian circulation zone is required. For this project a total of 98 linear feet of seating is required. The project seeks an authorization to allow 93 linear feet of seating, 5 linear feet short of the required seating located within the pedestrian circulation zone of the supplemental public access area.

9) Supplemental Public Access Area Prototype II: Supplemental Public Access Area Prototype II requires that a minimum of 50 percent of the pedestrian circulation zone within the supplemental public access area be planted. The planted area of the proposed pedestrian circulation zone within the supplemental public access area is 25 percent.

10) Supplemental Public Access Area Prototype II: Supplemental Public Access Area Prototype II requires at least 35 percent of the supplemental public access area to be lawn area. The proposed lawn area is only one percent within the supplemental public access area.

- 11) Seating along Circulation Paths: Seating is required to be at least 3 feet from any circulation path. The proposed design provides seating along secondary circulation paths, with less than the required 3 feet of clearance.
- 12) Trees and Shrub Spacing: Large trees are required to be spaced at least 25 feet apart, medium trees are required to be spaced at least 20 feet apart and small trees are required to be spaced at least 15 feet apart. The proposed open space design has 24 trees (out of 82 trees total) in three locations in the center of the public access area that are closer than is permitted under the zoning.
- 13) Raised Planting Beds and Berms: The height of a raised planting bed or berm from an adjacent paved walking surface is required to be no more than 60 inches (5 feet). The height of the parking structure adjacent to the waterfront esplanade is 10 feet, the proposed 9 foot high landscaped berm at the foot of the parking structure provides a buffer between the garage and the shore public walkway, and is higher than the 60 inches permitted by waterfront zoning.

ENVIRONMENTAL REVIEW

This application (C 080340 ZSK), in conjunction with the applications for the related actions (C 080339 ZMK, N 100056 ZRK, N 080341 ZAK and N 080342 ZCK) 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 08DCP056K. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action (C 080340 ZSK), a Conditional Negative Declaration was issued. The Conditional Negative Declaration included several restrictive declarations to avoid any potential impacts associated with historic resources, hazardous materials, traffic, air quality and noise. 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:

Historic Resources:

The applicant, Rose Plaza on the River LLC, has entered into a restrictive declaration with the New York City Landmarks Preservation Commission (LPC) to develop and implement an archaeological monitoring program in consultation with LPC. The historic resources analysis concluded that land filling features dating to the early 19th century have the potential to yield significant archaeological data. Consequently, construction on the project site could create the potential for a significant adverse impact related to archaeological resources. Pursuant to the restrictive declaration, the applicant, Rose Plaza on the River LLC, agrees to develop and implement an archaeological monitoring program in consultation with LPC.

With the implementation of the restrictive declaration measures, no significant adverse impacts related to historic resources would occur.

Hazardous Materials:

The applicant agrees via a restrictive declaration with the New York City Department of Environmental Protection (DEP) to require that the applicant identify and remediate any hazardous materials found in connection with the development of the project site. The declaration states that the applicant would not undertake grading, excavation, foundation, alteration, building or other permits for the site until DEP has issued a Notice of Satisfaction.

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

Traffic:

The applicant agrees via a restrictive declaration with the New York City Department of Transportation (DOT) to identify the existence of any additional potential traffic impacts, if any,

resulting from the development of the property thirty days from the implementation of the Kent Avenue Improvement, a date no later than December 31, 2011, and has agreed to submit to DOT and DCP a traffic study prepared by a qualified traffic consultant, to test and identify whether any potential additional traffic impacts would result, if any. If the analysis identifies any potential impacts, the applicant agrees to coordinate any relevant mitigation measures with the DOT and Department of City Planning.

Furthermore, the applicant agrees to contact the DOT within six months after the completion of this project and to inform it of the need to implement the following traffic mitigation. DOT agrees to investigate the need of implementing this mitigation measure once the project is built and occupied:

At the intersection of Broadway and Kent Avenue, during the weekday PM peak hour, 2 seconds a 2-second shift in green time from eastbound/westbound phase to the northbound/southbound phase.

With the implementation of the restrictive declaration and traffic mitigation measures, no significant adverse impacts related to traffic would occur.

Air Quality

The applicant agrees via a restrictive declaration to restrict the fuel type for all HVAC systems to ensure that no significant adverse impacts associated with Air Quality will occur. The restrictive declaration will require that the heating, ventilation, and air conditioning (HVAC) system, serving the proposed project, burn natural gas exclusively.

With the implementation of the restrictive declaration measures, no significant adverse impacts related to stationary source air quality would occur.

Noise

The applicant agrees via a restrictive declaration to provide window attenuation to ensure that no

significant adverse impacts associated with Noise will occur. The restrictive declaration will require that the residential windows bordering Division Avenue, the East River, and the north project site boundary require 30 dBA of composite window attenuation, and the proposed residential/commercial windows at the facades bordering Kent Avenue require 35 dBA and 30 dBA respectively, of composite window attenuation.

With the implementation of the restrictive declaration measures, no significant adverse impacts related to noise would occur.

The applicant signed the Conditional Negative Declaration on October 29, 2009. The conditional negative declaration was published in the City Record on November 9, 2009 and in the New York State Environmental Notice Bulletin on November 11, 2009. 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 March 8, 2010.

UNIFORM LAND USE REVIEW

This application (C 080340 ZSK), in conjunction with the applications for the related actions (C 080339 ZMK), was certified as complete by the Department of City Planning on November 2, 2009, and was duly referred to Community Board 1 and the 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 applications (N 100056 ZRK and N 080341 ZAK) which were referred for information and review.

Community Board Public Hearing

Community Board 1 held a public hearing on November 24, 2009 on this application (C 080340 ZSK), and the related applications and on December 1, 2009, by a vote of 31 in favor, 8 opposed, 0 abstentions adopted a resolution recommending disapproval of the application with the following conditions:

1. Substantially increase the amount of affordable housing to at least 33% of the project, while maintaining the proposed R7-3 zoning.
 - a. 20% of the housing should remain affordable at 80% of AMI or below, while additional affordable housing could be provided at higher income levels;
 - b. 20% of the affordable housing should be onsite, however additional affordable housing could be provided elsewhere within CB 1;
2. Reduce the number of studio and one-bedroom units and increase the number of two-bedroom, three-bedroom and four-bedroom units, both affordable and market-rate;
3. Through a restrictive declaration or other binding action, guarantee the construction of the agreed-upon affordable housing as part of any future residential development on the site;
4. Through a restrictive declaration or other binding action, commit to obtaining the approval of CB1 for any substantive design changes to the architecture or landscape architecture (resulting from value engineering, change of ownership or regulatory requirements), either in the form of fixtures, materials, massing, height, or other ways that would impact the aesthetic excellence of the project;
5. Build out the entire street-end park at the foot of Division Avenue, including any necessary bulkhead repairs;
6. In order to help lessen the impact of secondary displacement and help people from-being harassed or illegally evicted from their homes, provide funding to continue the City's Tenant Service Provider Program (established as a community benefit upon approval of the City's 2005 rezoning);
7. The traffic and parking study commissioned for the EAS is based on outdated traffic and parking conditions on Kent Avenue, and the new conditions will need to be completely restudied. Through a restrictive declaration or other binding action, commit to obtaining the approval of CB1 for the revised traffic and parking study under attachment K of the EAS ("Traffic and Parking").
8. The historic use of the site as a manufactured gas plant raises the potential for serious health issues, both to future residents of this property and to residents of nearby properties. Therefore, CB1 requests that it be granted a meaningful participatory role in any future environmental review, and that the Board be copied on all correspondence with NYC DEP, NYS DEC, US EPA and all other relevant agencies regarding any environmental studies or remediation related to this site.
9. Submit restrictive declaration governing public access to the visual corridor to CB1 for review and approval;
10. Submit documentation from the New York State Department of Environmental Conservation indicating that the agency has reviewed all plans for the site and has no objections or modifications, particularly with regard to the configuration of the public open space.

Borough President Recommendation

This application (C 080340 ZSK) and the related applications were considered by the Borough President who issued a recommendation on January 6, 2010, disapproving this application, while approving the related applications (C 080339 ZMK and N 100056 ZRK) with the following conditions:

AFFORDABLE HOUSING

1. That the applicant establish a legal instrument that guarantees that the developer provides at least 33 percent of the floor area of the development be developed for affordable housing, consisting of:
 - a. 20 percent affordable housing pursuant to the IHP zoning bonus.
 - b. The remainder be affordable for moderate- to middle-income households and that such units be “Affordable Forever.”
2. That the developer be obligated to provide the following bedroom distribution as a means to increase the number of three- and four bedrooms apartment amongst the tiers of affordable housing as follows:

	One Bedrooms	Two Bedrooms	Three Bedrooms	Four Bedrooms
IHP low-income units	10%	20%	35%	35%
Moderate and middle income units	17%	17%	33%	33%

OPEN SPACE

3. That the applicant and/or successive developer be obligated to coordinate the rebuilding of the entire street end bulkhead of Division Avenue and construct adjacent upland street end open space consistent with the development’s esplanade design prior to obtaining a temporary or final certificate of occupancy for any of the housing.

RETAIL

4. That the developer be obligated to make best efforts to incorporate a supermarket consistent with the attributes of the City’s FRESH food store initiative as part of the retail space on Kent Avenue.

COMMUNITY ROLE

5. That the applicant and/or any successive developer provide CB 1 with a non-binding consultation role for the following:
 - Site or building design modifications that may arise.
 - The pending traffic and parking study.
 - Site environmental remediation process.
 - Public access restrictive declaration preparation (prepared with the

- Department of Parks and Recreation).
- State Department of Environmental Conservation permit review plan Improvements of the public waterfront esplanade.

City Planning Commission Public Hearing

On January 6, 2010 (Calendar No. 2), the City Planning Commission scheduled January 27, 2010, for a public hearing on this application (C 080340 ZSK). The hearing was duly held on January 27, 2010 (Calendar No. 12), in conjunction with the hearing on the related actions (C 080339 ZMK and N 100056 ZRK). There were eight speakers in favor of this application and the related applications, and four speakers in opposition.

Speakers in favor included representatives of the applicant, including their attorney and architects, who described the proposed development, the related actions and the applicant's intention to provide affordable housing according to the requirements of the Inclusionary Housing Program. The applicant's architects described the project's overall site plan, pointing out that the site's irregular shape, grade differences and the requirements of a visual corridor and waterfront esplanade were constraints that necessitated the proposed height and bulk waivers. They further stated that the special permit waivers meet the required findings in the Zoning Resolution and provide a superior site plan. The landscape architect described the proposed waterfront public access areas and the landscaped visual corridor.

An attorney representing the applicant outlined the affordable housing component of the development pursuant to the Inclusionary Housing Program, stating that 20 percent of the residential floor area would be developed with 160 units of housing as affordable at or below 80 percent of the Area Median Income (AMI). The representative stated that they would consider adding more large units to the affordable part of the development in response to Community Board 1 and Borough President's request.

Three neighborhood residents and a Community Board 1 member also spoke in favor of the proposed application, stating that the proposed application has been in the planning stages for the past six years and is similar to the proposals that have been approved on the East River

waterfront north of the site. They stated that Rose Plaza on the River would provide much needed affordable housing and public access to the East River waterfront.

Speakers in opposition included the New York City Council member for District 33 and a representative of the New York State Assembly member for District 53. They both reiterated Community Board 1's recommendation that the applicant should provide more than 20 percent of the units as affordable and should address traffic, archeological and site contamination issues prior to the approval. A representative of the United Jewish Organization and a Community Board 1 member also spoke against the application stating that the project should provide more affordable housing and larger units to satisfy the need of the Williamsburg community.

There were no other speakers and the hearing was closed.

Waterfront Revitalization Program Consistency Review

This application, in conjunction with the applications for the 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 New York 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 Resources Act of 1981 (New York State Executive Law, Section 910 et seq.) The designated WRP number is 08-047.

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

CONSIDERATION

The Commission believes that this special permit application (C 080340 ZSK), in conjunction with the related applications for an authorization and certification, and amendments to the Zoning Map and Resolution, is appropriate.

The proposed actions would facilitate the development of approximately 800 units of new housing, including 160 affordable dwelling units, and the construction of a new public waterfront

esplanade, on a manufacturing site on the East River waterfront in Williamsburg, Brooklyn. The development of housing along with an affordable component and the new waterfront public open spaces would be consistent with recent nearby developments on the East River waterfront and the surrounding area.

The Commission notes that the applicant's site is irregular in shape and has an irregular shoreline with significant grade change from Kent Avenue to water's edge. The site is also constrained by the required visual corridor on the site as an extension of South 11th Street. Given these constraints, the waivers proposed under the special permit application would produce a superior site plan than an as-of-right development under the proposed R7-3 zoning district. The Commission further notes, these waivers are consistent with similar waivers granted along the East River waterfront sites in this area, including Schaefer Landing and Kedem Winery to the north.

The Commission believes that the proposed special permit waivers relating to building heights, floor plate sizes, setbacks and length of walls facing the shoreline, and the permitted obstructions above the maximum building height are appropriate and would allow for a superior arrangement of bulk on the site with greater public and private open spaces. The special permit waivers would allow the relocation of the bulk away from Kent Avenue and public open spaces. It would also reduce the number of residential towers from four to three, with a better variation of building heights along the East River waterfront, with heights of 18-, 24- and 28-stories rather than four, 18-story towers under an as-of-right proposal.

The Commission believes that the use of the special permit waivers, which allow lower lot coverage by allowing more floor area at height, allow the applicant to substantially increase open space, and thus enables the applicant to dedicate 14,000 square-feet of the space in the visual corridor for public access to the waterfront esplanade. The hours of access through this private space along the visual corridor would be from 6 a.m. to 10 p.m. between April 15 and October 31; and from 7 a.m. to 8 p.m. between November 1 and April 14. These are the same hours required by zoning for the waterfront public access area. The special permit waivers would

move the bulk away from the public access area and the visual corridor, allowing more light and air to reach the public portions of the site. The relocation of the bulk on the site also opens up views toward the water along the visual corridor.

The Commission further notes, that the applicant's use of special permit waivers allows the applicant to set back their buildings 5 feet from the property line along Kent Avenue, thus increasing the width of sidewalk from 10 to 15 feet. The widening of the sidewalk would improve pedestrian flow along the western side of Kent Avenue and would bring more light and air to the street.

The Commission believes that the rezoning of the subject site from an M3-1 manufacturing district to an R7-3 district with a C2-4 commercial overlay along Kent and Division avenues is appropriate. The proposed R7-3 district has an FAR of 3.75 with six-story maximum base heights and 185-foot maximum building heights. An R7-3 district with a C2-4 overlay is mapped to the north of the site on the adjacent Schaefer Landing and Kedem Winery sites. The proposed rezoning would permit the development of new housing and neighborhood commercial uses to serve the adjacent community, which is consistent with development trends throughout the area. The development of the site under the proposed zoning would also require a visual corridor and the development of a public waterfront esplanade.

The Commission notes that the related zoning text amendment (N 100056 ZRK) would make the proposed R7-3 district on the applicant's property an Inclusionary Housing Designated Area. The affordable housing component of the proposed development was the subject of extensive discussion during the public review process and both the Community Board and the Borough President recommended that the applicant provide more than 20 percent of the proposed housing on the site as affordable, exceeding what would be required to receive the inclusionary bonus.

The Commission further notes that the applicant, in a letter dated February 4, 2010, stated that it intends to utilize the Inclusionary Housing Program, which the related zoning text amendment makes applicable on the site. To utilize the full 5.0 FAR available under the inclusionary

housing program the applicant must dedicate at least 20 percent of the residential floor area to affordable housing which in this case would result in 160 dwelling units. The Commission notes that this is consistent with the city-wide Inclusionary Housing Program, the requirements of which have been carefully calibrated to maximize the program's overall production of affordable housing.

The Commission also believes that the waivers proposed in the related authorization application to modify the waterfront public access area requirements would result in a design of the public access areas that would be functionally equivalent or superior to a design resulting from strict adherence to the former design standards of the waterfront zoning text. Furthermore, the waivers proposed for the public access area and visual corridor comply with the spirit of the new waterfront zoning text adopted on April 22, 2009.

The Commission notes that in response to Community Board and the Borough President's request for a greater number of larger apartments, the applicant, in a letter dated February 4, 2010, stated that it intends to increase the number of three-bedroom units by 25 percent in the entire development. Twenty percent of the additional 10 three-bedroom units (2 units) would be added to the affordable housing component. The Commission notes that the applicant, in response to the Councilmember's recommendation for community facility uses at the site, has committed to set aside 5,000 square feet for a future community facility use.

The Commission also notes that the applicant stated in their letter to the Borough President, dated January 6, 2010, and in their testimony at the Commission's public hearing, that they would improve the end of Division Avenue as an extension of the Rose Plaza shore public walkway. The Commission further notes that Division Avenue is a public street and that completion of this work would require approvals from city agencies and Con Edison, who owns the property on the south side of Division Avenue. However, the Commission urges the applicant to improve the end of Division Avenue in order to create an inviting entrance to the public space on their property.

The City Councilmember raised several concerns at the Commission's public hearing which include contamination of the site, concerns for possible archeological artifacts at the site, and a required future traffic study of Kent Avenue. The Commission notes that the applicant has executed and recorded restrictive declarations against the property that will require the property owner to fully remediate all existing contamination, to undertake an archeological investigation to determine the presence of, and remove, historic artifacts found on the property, to initiate a further traffic study and mitigate any identified traffic impacts, and to develop the waterfront public access area, transfer title to the City of New York and fund its on-going operation and maintenance.

The Commission notes that the proposed application would help revitalize the Williamsburg waterfront, produce approximately 800 units of housing including 160 affordable units and provide public access to the East River waterfront through a newly developed waterfront esplanade.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 62-736 (height and setback Regulations on Waterfront Blocks) of the Zoning Resolution that:

- a) The zoning lot has unique natural features such as rock outcroppings, significant grade changes or wetlands; or has an irregular shoreline or shape; or contains existing buildings or other structures;
- b) The site plan of the proposed development would result in better bulk placement and articulation of buildings, and a better arrangement of open spaces than would be possible by strict adherence to the bulk regulations;
- c) The proposed development would provide physical or visual public access to the waterfront in a way that is superior to that which would be possible by strict adherence to the bulk regulations; and
- d) Such modification would significantly enhance the relationship between the proposed development and the surrounding area.

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:

1. The applicant, Rose Plaza on the River LLC, has entered into a restrictive declaration with the New York City Landmarks Preservation Commission (LPC) to develop and implement an archaeological monitoring program consultation with LPC.
2. The applicant agrees via a restrictive declaration with the New York City Department of Environmental Protection (DEP) to require that the applicant identify and remediate any hazardous materials found in connection with the development of the project site.
3. The applicant agrees via a restrictive declaration with the New York City Department of Transportation (DOT) to identify the existence of any additional potential traffic impacts, if any, resulting from the development of the property thirty days from the implementation of the Kent Avenue Improvement, a date no later than December 31, 2011, and has agreed to submit to DOT and DCP a traffic study prepared by a qualified traffic consultant, to test and identify whether any potential additional traffic impacts would result.
4. The applicant agrees via a restrictive declaration to restrict the fuel type for all HVAC systems to ensure that no significant adverse impacts associated with Air Quality will occur.
5. The applicant agrees via a restrictive declaration to provide window attenuation to ensure that no significant adverse impacts associated with Noise will occur.

And be it further

RESOLVED, that the City Planning Commission, in its capacity as the City's Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed project is consistent with WRP policies; 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 consideration described in this report, the application submitted by Rose Plaza on the River LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the requirements of former Section 62-34 (Height and Setback Regulations on Waterfront Blocks) to facilitate the construction of a mixed use development on property located at 470-490 Kent Avenue (Block 2134 Lots 1 and p/o 150), in R7-3 and R7-3/C2-4 districts, Borough of Brooklyn, Community District 1 is approved pursuant to Section 62-736 of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 080340 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 the architecture firm Gruzen Samton Architects LLP and Thomas Balsley Associates, filed with this application and incorporated in this resolution:

Drawing No	Title	Date
<u>CPC Report/Special Permit:</u>		
Z-2	Proposed Site Plan	10/26/09
Z-4A	Zoning Analysis – Base Plan Calculation	7/31/09
Z-4B	Zoning Analysis	10/26/09
Z-5A	Encroachment Diagrams	7/31/09
Z-5B	Encroachment Diagram	7/31/09
<u>Waterfront Public Access Area:</u>		
Z-2	Proposed Site Plan	10/26/09
Z-2B	Proposed Waterfront Public Access & Visual Corridor	7/31/09
Z-3A	Shore Public Walkway Site Plan A	7/31/09
Z-3B	Shore Public Walkway Site Plan B	7/31/09

Z-3D	Shore Public Walkway Furnishing & Lighting Plan A	7/31/09
Z-3E	Shore Public Walkway Furnishing & Lighting Plan B	7/31/09
Z-3G	Shore Public Walkway Planting Plan A & Schedule	7/31/09
Z-3H	Shore Public Walkway Planting Plan B	7/31/09
Z-3J	Shore Public Walkway Zoning Analysis Chart	7/31/09
Z-3K	Shore Public Walkway Sections	7/31/09
Z-3L	Shore Public Walkway Site Details	7/31/09
Z-3M	Shore Public Walkway Site Details	7/31/09
Z-3N	Shore Public Walkway Site Details	7/31/09

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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 and maintenance.
 4. The development shall conform to all conditions, modifications and alterations set forth in the Conditional Negative Declaration (CEQR No. 08DCP056K) dated February 24, 2010, issued pursuant to the New York State and New York City Environmental Quality Review.
 5. 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.
 6. 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 the said special permit. Such power of

revocation shall be in addition to any 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.

7. Development pursuant to this resolution shall be allowed only after restrictive declaration, dated February 18, 2010, executed by Waterfront Realty II LLC and Certified Lumber Corporation, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of Kings.

The above resolution (C 080340 ZSK), duly adopted by the City Planning Commission on March 8, 2010 (Calendar No. 2), is filed with the Office of the Speaker, City Council and the Brooklyn Borough President, pursuant to Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
RAYANN BESSER, ALFRED C. CERULLO, III,
BETTY Y. CHEN, MARIA M. DEL TORO, RICHARD W. EADDY,
ANNA HAYES LEVIN, Commissioners

KENNETH J. KNUCKLES, ESQ., Vice Chairman,
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,
SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners
Voting No.