



CITY PLANNING COMMISSION

May 8, 2006/Calendar No. 1

C 020517 ZSK

IN THE MATTER OF an application submitted by Rector Hylan Corporation 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 Section 62-341(a)(2) (Initial setback distance), Section 62-341(c)(1) (Maximum base height), Section 62-341(c)(2) (Maximum building height), Section 62-341(c)(4) (Maximum residential tower size), Section 62-341(c)(5) (Additional setback provisions for high buildings), and Section 62-341(c)(6) (Maximum length of walls facing shoreline) to facilitate the development of an 18-story and a 24-story mixed use development on property located at 420-430 Kent Avenue (Block 2128, Lots 5 & 25 and Block 2134, Lots 48, 50, 56 & 250), in R7-3 and R7-3/C2-4 Districts, Borough of Brooklyn, Community District 1.

* 197-d(b)2 eligible

This application for a special permit was filed by Rector Hylan Corporation on March 27, 2002, to facilitate the construction of a 450-unit residential development with approximately 26,400 square feet of neighborhood retail along Kent Avenue, and approximately 25,200 square feet of waterfront public access area on an approximately 2.89-acre site in the Williamsburg area of Community District 1, Brooklyn.

RELATED ACTIONS

In addition to the special permit which is the subject of this report, implementation of the applicant's proposal also requires action by the City Planning Commission on the following applications which are considered concurrently with this application:

C 020518 ZMK – A zoning map amendment of the Kedem Winery site from M3-1 and C4-3 districts to an R7-3 district with a C2-4 commercial overlay along Kent Avenue.

N 020516 ZCK – A Certification by the Chair of the City Planning Commission pursuant to Section 62-711 that a site plan has been submitted showing compliance with the zoning regulations for waterfront public access and visual corridors.

BACKGROUND

The project site is approximately 125,774 square feet in area, irregular in shape, and located on Kent Avenue along the East River waterfront. It is currently occupied by three buildings of the former Royal Wine Company, also known as Kedem Winery. One of the buildings is now occupied by a yeshiva, which is soon to be relocated. A second building is partially vacant and contains the temporary sales office for the adjacent Schaefer Landing residential development. The third building and the parking area are currently associated with a food distribution company. There is an existing sewer easement on the site below the prolongation of South 8th Street from Kent Avenue to the water's edge.

The project site (Block 2134, lots 48, 50, 56 & 250 and Block 2128, lots 5 & 25) is currently located within three different zoning districts: a very small portion of the lot adjacent to Schaefer Landing to the south is in an R7-3 district; the portion of the site between South 8th and South 9th streets is in an M3-1 district, and the remaining portion of the site north of South 8th Street is in a C4-3 district.

Immediately north of the Kedem site is a restaurant which is zoned C4-3. Immediately to the south of the Kedem site is Schaefer Landing (C 010616 ZSK), a 350-unit residential development currently under construction, which was rezoned in 2001 from M3-1 to an R7-3 district with a C2-4 commercial overlay along Kent Avenue. The Schaefer Landing development includes a waterfront esplanade and upland connection at South 10th Street. South of Schaefer Landing is the Certified Lumber site, a waterfront parcel containing several warehouses. Across Kent Avenue to the east, the 5.2-acre former Domsey clothing warehouse was rezoned to an R7A district in 2003 to facilitate the construction of 540 dwelling units, which have not yet been built. The remainder of the area located

to the east of the site is predominantly residential in character. The Brooklyn Navy Yard, a major industrial facility on the East River, is located several blocks to the south, west of Kent Avenue.

Proposed Development

As certified, the proposed actions would facilitate a development of two buildings, with approximately 628,870 square feet of residential and commercial space on the 2.89-acre site. These would include 450 units of housing, 225 accessory parking spaces, and 26,413 square feet of retail space along Kent Avenue. The development would also create over 25,239 square feet of waterfront public access areas, connecting to the adjacent Schaefer Landing esplanade and providing an upland connection and visual corridor that meet Kent Avenue at South 8th Street. As certified, the proposed development had an FAR of 5.0.

The development's southern tower would be 24 stories tall and contain 309 dwelling units, 140 parking spaces and 16,252 square feet of commercial space. The 18-story northern tower would contain 141 residential units, 85 parking spaces and 10,161 square feet of commercial space. Both buildings would have a base height of six stories along Kent Avenue where they would be set back five feet from the property line, effectively increasing the width of the public sidewalk along the west side of Kent Avenue from ten feet to 15 feet. Above this six-story base, the buildings would rise to 85 feet (or eight stories) along Kent Avenue and adjacent to the shore public walkway.

The vehicular entrances to the north and south tower garages would be provided separately at the north and south ends of the site. The south curb cut and corresponding driveway, including ingress and egress, is 60 feet wide and would be shared with the adjacent Schaefer Landing site through reciprocal easements between the two properties, in order to reduce traffic conflicts and the number

of curb cuts along Kent Avenue. The entrance to the northern tower garage would be located between South 8th Street and Broadway and has a curb cut on Kent Avenue 30 feet wide. A third curb cut, between the buildings at South 8th Street, is 55 feet wide and would lead to a driveway providing access to the front entrances of both residential buildings.

As required pursuant to waterfront zoning regulations, the proposed development would provide approximately 25,239 square feet of publicly accessible waterfront access areas in a 40-foot-wide shore public walkway and upland connection. The shore public walkway would be designed to match the configuration and materials of the Schaefer Landing development to the south. The eastern portion of the upland connection at South 8th Street would be provided as two 14-foot sidewalks adjacent to a private drive. Beyond a vehicular turnaround, the upland connection would widen to 60 feet. A 60-foot-wide visual corridor would be located in the middle of the site and extends from the end of South 8th Street to the water's edge, partly coinciding with the upland connection.

Zoning Map Amendment (C 020518 ZMK)

The applicant proposes to extend the R7-3 district and associated C2-4 overlay along Kent Avenue existing on the southern portion of the project site northward to a line 117 feet south of the centerline prolongation of Broadway, replacing the M3-1 and C4-3 districts currently mapped on the majority of the site.

The existing M3-1 zoning which covers most of the subject site allows heavy manufacturing and limited commercial uses at a maximum FAR of 2.0 and prohibits residential and most community facility uses. The C4-3 zoning district on a portion of the site allows for commercial

uses at a maximum FAR of 3.4, with up to 2.43 FAR for residential use or 4.8 FAR for community facility use.

The proposed R7-3 district would permit residential and community facility uses at a maximum FAR of 5.0. The maximum permitted building height for R7-3 districts on the waterfront is 225 feet, subject to setback regulations, with a maximum base height of 65 feet. The bulk regulations of Article VI, Chapter 2 (waterfront zoning) include a 40-foot waterfront yard requirement; a 15-foot setback above the maximum base height adjacent to visual corridors, upland connections, and streets; and a 30-foot setback above the maximum base height from the shore public walkway. In addition, a shore public walkway, upland connection, and visual corridor are required in the R7-3 district for zoning lots within waterfront blocks. The C2-4 overlay proposed at a depth of 100 feet from Kent Avenue would allow local commercial uses with a maximum FAR of 2.0, with commercial use limited to the ground floor of a building containing residential use.

Special Permit for Bulk Modifications on a Waterfront Block (C 020517 ZSK)

The proposed zoning map change would allow a development of up to 5 FAR on the subject site. In order to accommodate this floor area on the site, the applicant also seeks a special permit pursuant to Section 62-736 to modify height and setback regulations. The irregular shape of the site and the requirement to provide a visual corridor and upland connection through the site, presents constraints to the configuration and location of building and tower footprints, particularly on the northern half of the site. The applicant is requesting several bulk modifications in order to accommodate the proposed floor area:

1. Maximum Building Height

The maximum permitted building height in an R7-3 district on waterfront lots is 225 feet subject to setbacks above 185 feet. The requested waiver would allow the south building to rise to a height of 245 feet or 24 stories, exceeding the maximum permitted building height limit by 20 feet, and waiving the required setbacks above 185 feet.

2. Maximum Base Height

The R7-3 district within the waterfront includes a maximum base height of 65 feet for portions of a building located within the initial setback distance adjacent to a street, upland connection, or visual corridor. The requested waiver would allow the north and south buildings to rise to a height of 85 feet adjacent to the shore public walkway, and would allow the north building to rise to 185 feet without setback along the visual corridor.

3. Maximum Residential Tower Size

The maximum as-of-right floor plate above the 65 foot base height is limited to 8,100 square feet. The requested waiver would allow a floor plate of 12,745 square feet above a height of 85 feet in the south building, and a floor plate of 27,730 square feet between a height of 65 feet and 85 feet. A waiver is also requested to allow a floor plate of 15,607 square feet in the north building between a height of 65 feet and 85 feet. The north building floor plate reduces to the required 8,100 square feet at a height of 85 feet.

4. Initial Setback Distance

Initial setback distances of 15 feet on a narrow street, ten feet on a wide street, and 30 feet from the shore public walkway are required under zoning. The requested waivers would enable the north building to rise without setback along the visual corridor, and would allow both buildings to rise without setback to 85 feet within the 30 feet adjacent to the shore public walkway.

5. Additional Setback for High Buildings

As-of-right developments require an additional setback for all buildings that exceed a height of 150 feet, with the floor area of any story located above 150 feet limited to 85 percent of the highest story located below 150 feet. The proposed actions include a waiver of this setback requirement for both the north and south buildings.

6. Maximum Length of Walls Facing Shore Line

As of right, 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 requests a waiver to allow the south building a wall length of 207 feet, 11 inches between a height of 65 and 85 feet. Above a height of 85 feet the building would comply with as-of-right limitations. The requested waivers would also allow the north building a wall length of 143 feet, five inches between a height of 65 and 85 feet, and a length of 101 feet, six inches above the height of 85 feet.

ENVIRONMENTAL REVIEW

This application (C 0020517 ZSK), in conjunction with the related application (C 020518 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 02DCP045K. 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:

1. 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. With the implementation of the condition described above, no significant adverse impact related to hazardous materials would occur.
2. The applicant agrees via a restrictive declaration to fund the installation of a traffic signal at the intersection of Kent Avenue and Division Avenue, if determined to be warranted by the NYC Department of Transportation (DOT), upon completion of construction of the project. With the implementation of this condition, no significant adverse traffic impacts would result from the proposed project.

The applicant signed a Conditional Negative Declaration (CND) on December 2, 2005.

Subsequently, the EAS was revised to include an analysis of the project with an affordable housing component and the applicant signed a revised CND on March 17, 2006, which superseded the CND signed on December 2, 2005. The revised CND was published in the New York State Environmental Notice Bulletin on March 29, 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 revised CND was issued on May 8, 2006.

UNIFORM LAND USE REVIEW

This application (C 020517 ZSK), in conjunction with the related application (C 020518 ZMK), was certified as complete by the Department of City Planning on December 5, 2005, and was duly referred to Community Board 1 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 1 held a public hearing on this application and the related application (C 020518 ZMK) on January 11, 2006 and on February 7, 2006 by a vote of 34 in favor, one opposed, with two abstentions, adopted a resolution recommending disapproval of the applications with the following concerns:

Affordable housing proposal should be clearly and completely defined.

Strong consideration should be given to making all open space public.

A contribution to the Industrial Retention fund established under the Greenpoint/Williamsburg rezoning should be made.

Borough President Recommendation

This application, along with the related application (C 020518 ZMK), was considered by the Borough President, who issued a recommendation to disapprove the applications on March 9, 2005 subject to the following modifications:

Housing

1. That the affordable housing units be priced to be affordable to families earning 50 to 60% of AMI, or some similar equivalent, e.g. an equal portion of units for families with 80% AMI and 40% AMI.
2. That the development be subject to the following:
 - a) The filing of a “lower income housing plan” subject to review and approval by the Commissioner of HPD as per ZR 23-95e;
 - b) The execution of a restrictive declaration satisfactory to the Commissioner of HPD, recorded against the zoning lot as Per ZR 23-95e;
 - c) That no building permit be executed and Certificate of Occupancy (C of O) be granted that exceeds 200 units unless a permit has been granted and C of O’s issued for the affordable housing units;

- d) To identify the likely “administering agent” intended to market, oversee tenant selection, manage and possibly retain ownership of the affordable housing units;
- e) Should any of the affordable housing units be rentals, that such units would adhere to the “fair rent” provisions of ZR 23-90 governing subsequent rent increases;
- f) That tenant (owner equivalent standard) selection would conform with ZR 23-95b to ensure that eligible households qualify;
- g) That a plan be specified to market the affordable units, beyond complying with standard outreach required by any affordable housing financing or tax credit, in consultation with local elected officials, CB1, and community organizations.
- h) That factors be identified that might be waived that often result in the disqualification of income eligible affordable housing applicants in consultation with local elected officials, CB1 and community organizations,
- i) That a mechanism be established to ensure the affordable units remain affordable in perpetuity.

Open Space

1. That the developer explores the potential to transfer ownership and management of the waterfront esplanade to the City.
2. That the hours of public access to the waterfront esplanade and supplemental open space be significantly extended beyond the minimum requirements of ZR 62-624 (a).
3. That the City Planning Commission and City Council review landscape plans for the private open space and ensure the design is inviting for public use.

Industrial Retention

1. That the developer contributes \$708,000 to a fund managed by the Office of Industrial and Manufacturing Businesses to assist efforts to relocate businesses at risk of displacement.

City Planning Commission Public Hearing

On March 8, 2005 (Calendar No. 4), the City Planning Commission scheduled March 22, 2006, for a public hearing on this application (C 020517 ZSK) in conjunction with the related application (C 020518 ZMK). The hearing was duly held on March 22, 2006 (Calendar Nos. 26 & 27, respectively). There were four speakers in favor of the application and three in opposition.

Speakers in favor were representatives of the applicant including their attorney, architect, environmental consultant, and affordable housing consultant, who described the proposed development and the applicant's stated intention to provide affordable housing in conjunction with the development. The applicant's architect described the project's overall site plan, citing the site's irregular shape and the required upland connection and visual corridor as constraints that make height and bulk waivers suitable in order to provide a superior site. The architect explained that the requested waivers would allow a development with two towers, while as-of-right development would lead to three.

Representatives for the applicant outlined an affordable housing commitment for the development of the site, under which 20 percent of the proposed residential units would be provided as affordable to households at or below 80 percent of Area Median Income (AMI). A representative of the applicant also noted that, in the period following certification of the subject applications, the Department of City Planning had indicated its intention to apply for a zoning text amendment that would apply the provisions of the Greenpoint-Williamsburg Inclusionary Housing Program to R7-3 districts. The speaker indicated that such a text amendment would be a suitable means of embodying the applicant's commitment to provide affordable housing in conjunction with the proposed development.

Representatives of the applicant also indicated that the private open space provided on the site is permitted under zoning, and that this open space provides a greater sense of openness for both adjacent public access areas and the proposed residential buildings. One speaker also observed that private open space had been provided in the adjacent Schaefer Landing development.

Speakers in opposition included representatives of community housing groups Los Sures and St. Nicholas Neighborhood Preservation Corporation. These speakers testified that the applicant's proposed affordable housing component was inadequate and called for lower target affordability levels for the affordable units as well as a detailed community marketing plan. Two speakers acknowledged the Department of City Planning's proposed zoning text amendment to apply the Inclusionary Housing Program to this site, and indicated support for a codified affordable housing program for this and similar developments.

One speaker in opposition from Neighbors Against Garbage objected to the proposed private open space, requesting that the private open space be made publicly accessible in return for the private benefits that would be produced by the proposed actions. The speaker also requested that the applicant be required to contribute to an industrial retention fund.

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 02-020.

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

CONSIDERATION

The Commission believes that this special permit (C 020517 ZSK), as modified herein, in conjunction with the related application to amend the zoning map (C 020518 ZMK), is appropriate.

The proposed actions, as modified herein, would facilitate the construction of new housing and public open space, bringing activity and public access to an underutilized waterfront site. The development of housing and local retail on Kent Avenue would be consistent with recent development in the adjacent and surrounding area.

The Commission notes that the site has an irregular shape, and that site planning is also constrained by a required visual corridor and an existing sewer easement on the site. The provision of a visual corridor and upland connection connecting to South 8th Street will provide important access between Kent Avenue and the waterfront. Given these constraints, the waivers proposed under the special permit application would generally reduce the number of towers on the site from the as-of-right condition, providing for a better site plan with greater light, air, and visual access to the water and skyline for the public access areas of the site.

However, the Commission believes that the proposed waivers to the maximum permitted base height, floorplate, and length of walls facing the shoreline to allow building heights of 85 feet near Kent Avenue and the shore public walkway would result in inappropriately bulky buildings adjacent to the important public spaces at the waterfront and on Kent Avenue. Therefore, the Commission is modifying the application for a special permit to reduce the permitted waivers at

these locations, requiring a maximum height of 65 feet in the south building along Kent Avenue and in the portions of both buildings adjacent to the shore public walkway. The special permit as modified herein would accommodate bulk while maintaining limits on height and setback appropriate to the site and its context. The Commission notes that the modifications to the special permit would result in a development of approximately 4.7 FAR which is consistent with the regulations recently adopted for the Greenpoint-Williamsburg Rezoning.

Affordable housing was the subject of extensive discussion during the public review process. The Community Board and Borough President both submitted recommendations describing the high priority they place on the provision of affordable housing in new developments. The Commission is pleased that the applicant has indicated a commitment to provide 20 percent affordable housing in conjunction with the proposed development. The inclusion of affordable housing in developments such as this one is an important element in creating and maintaining an economically diverse community in Greenpoint and Williamsburg. The Commission recently referred for public review and is having a hearing on May 10, 2006, a zoning text amendment application (N 060413 ZRK) from the Department of City Planning that would make the Inclusionary Housing program applicable to the proposed Kedem redevelopment. This text change, which would allow the proposed Kedem development to achieve its full FAR only if at least 20 percent affordable housing is provided, would essentially codify the applicant's stated commitment to providing affordable housing, thereby addressing the concerns of the Community Board and Borough President with respect to the establishment of standards and oversight for the affordable housing.

The Commission heard testimony recommending that the applicant make a contribution to an industrial development fund in conjunction with the rezoning and development of this site. The Commission notes that the site and the surrounding properties currently contain little industrial activity, and that the environmental review identified no potential impacts on industry as a result of the proposed action.

The Commission also heard testimony recommending that the proposed development should provide public rather than private open space in the area between the north and south buildings.

The proposed development provides the required amount of public access area on the site, including a 40-foot shore public walkway along the shoreline and a 60-foot-wide upland connection at South 8th Street, which exceeds the minimum required width of 30 feet under zoning. Private open space is permitted under zoning and is provided in many developments, including the Schaefer Landing development immediately to the south of the subject site. In addition, the Commission notes that the proposed configuration of bulk on the site as modified herein, including both public and private open space, provides for greater light and air to the public access areas and between buildings on the site than would be achieved under as-of-right development.

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 modifications 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 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.
2. The applicant agrees via a restrictive declaration to fund the installation of a traffic signal at the intersection of Kent Avenue and Division Avenue, if determined to be warranted by the NYC Department of Transportation (DOT), upon completion of construction of the project; 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 201 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of Rector Hylan Corporation for the grant of a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the requirements

of Section 62-341(a)(2) (Initial setback distance), Section 62-341(c)(1) (Maximum base height), Section 62-341(c)(2) (Maximum building height), Section 62-341(c)(4) (Maximum residential tower size), Section 62-341(c)(5) (Additional setback provisions for high buildings), and Section 62-341(c)(6) (Maximum length of walls facing shoreline) to facilitate the development of an 18-story and a 24-story mixed use development on property located at 420-430 Kent Avenue (Block 2128, Lots 5 & 25 and Block 2134, Lots 48, 50, 56 & 250), 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 020517 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 of Pasanella, Klein, Stolzman & Berg, P.C., filed with this application and incorporated in this resolution:

<u>Drawing No</u>	<u>Title</u>	<u>Date</u>
Z3	Zoning Calculations & Site Plan	05/02/2006
Z3A	Zoning Calculations & Site Plan	05/02/2006
Z4	Site Plan	05/02/2006
Z6	Sections	05/02/2006
Z9	Materials Samples	05/02/2006

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans

listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. The development shall conform to all conditions, modifications and alterations set forth in the conditional negative declaration (CEQR No. 02DCP045K) dated May 8, 2006, issued pursuant to the New York State and New York City Environmental Quality Review. These conditions, modifications and alterations are as follows:

1. 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.

2. The applicant agrees via a restrictive declaration to fund the installation of a traffic signal at the intersection of Kent Avenue and Division Avenue, if determined to be warranted by the NYC Department of Transportation (DOT), upon completion of construction of the project.

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, sublessee 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 said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

The above resolution (C 020517 ZSK), duly adopted by the City Planning Commission on May 8, 2005 (Calendar No. 1), 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
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,
ANGELA R. CAVALUZZI, R.A., ALFRED C. CERULLO, III, RICHARD W. EADDY,
JANE D. GOL, LISA A. GOMEZ, CHRISTOPHER KUI, JOHN MEROLO,
KAREN A. PHILLIPS, Commissioners

DOLLY WILLIAMS, Commissioner, Voting No