



## **CITY PLANNING COMMISSION**

September 4, 2007/ Calendar No. 3

C 040162 ZSK

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**IN THE MATTER OF** an application submitted by Kings Material Co. Inc, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681(a)(2) of the Zoning Resolution to allow a portion of a railroad right-of-way that has been permanently discontinued or terminated to be included in the lot area for a proposed six-story residential development on property located northwesterly of 15<sup>th</sup> Avenue between 37<sup>th</sup> Street and 38<sup>th</sup> Street (Block 5348, Lots 20,41,42,44,45,46 and 47)), in an R6 District, Borough of Brooklyn, Community District 12.

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The application for a special permit pursuant to Section 74-681(a)(2) was filed by Kings Material Co., Inc., on October 31, 2003, to allow a portion of a railroad right-of-way which has been permanently discontinued or terminated, to be included in the lot area for a proposed six-story residential development on property located on the west side of 15<sup>th</sup> Avenue between 37<sup>th</sup> and 38<sup>th</sup> streets in the Borough Park section of Brooklyn Community District 12.

### **RELATED ACTION**

In addition to the special permit pursuant to Section 74-681(a)(2), the following action is being considered concurrently with this application:

C 040161 ZMK: Amendment of the Zoning Map to change from an existing M1-2 district to an R6 district for an area generally bounded by the west side of 15<sup>th</sup> Avenue between 37<sup>th</sup> and 38<sup>th</sup> Streets.

### **BACKGROUND**

A full background discussion and description of this application appears in the report on the related application for Amendment to the Zoning Map (C 040161 ZMK).

### **ENVIRONMENTAL REVIEW**

This application 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 04DCP041K. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Conditional Negative Declaration was issued on July 9, 2007. A summary of the environmental review

appears in the report on the related application for an amendment to the Zoning Map (C 040161 ZMK).

## **UNIFORM LAND USE REVIEW**

This application (C 040162 ZSK) in conjunction with the related application (C 040161 ZMK) was certified as complete by the Department of City Planning on April 9, 2007, and was duly referred to Community Board 12 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Community Board 12 held a public hearing on this application on May 29, 2007, and, on that day, by a vote of 33 in favor, 0 against, and 2 abstaining, adopted a resolution recommending approval of the application with the following modifications/conditions:

The Community Board approved this application with the stipulation that 25% of these units be set aside for affordable housing. The fact that 10 years the owners purchased this parcel from the City for an M1 district for storage of supplies and materials for their business and is now requesting a zoning change on this parcel to an R6, the Board feels that the owner's should give back to community with 25% affordable housing which is something that is much needed in this District.

### **Borough President Recommendation**

This application was considered by the Brooklyn Borough President, who issued a recommendation on July 3, 2007, approving the application with the following conditions:

that the applicant provide to the City Council prior to it's [sic] public hearing the following:

- A minimum household income with one or more income tiers; and,
- A demonstration that the developer will guarantee the provision of affordable housing.

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

On June 20, 2007 (Calendar No. 10), the City Planning Commission scheduled July 11, 2007, for a public hearing on this application (C 040162 ZSK). The hearing was duly held on July 11, 2007 (Calendar No. 40) in conjunction with the public hearing on the related application (C 040161 ZMK). There were 5 speakers in favor of the application and none opposed.

There were a number of appearances, as detailed in the report on the related application for Amendment to the Zoning Map (C 040161 ZMK).

## **CONSIDERATION**

The Commission believes that the grant of this special permit is appropriate.

A full consideration of the issues and the reason for approving this application appears in the report on the related application for Amendment of the Zoning Map (C 040161 ZMK).

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-681 (Development within or over a railroad or transit right-of-way or yard) of the Zoning Resolution:

- (1) the streets providing access to all uses are adequate to handle increased traffic therefrom;
- (2) the distribution of floor area and the number of rooms or dwelling units does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such development; including any portion of the development located beyond the boundaries of such railroad right-of-way;
- (3) all uses, and developments or enlargements located on the zoning lot do not adversely affect one another;
- (4) the railroad right-of-way is not deemed appropriate for future transportation use.

## **RESOLUTION**

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

Pursuant to a Phase I Environmental Site Assessment (ESA) dated February, 2004, for the project site, available in the proposal's CEQR file, DEP's Office of Environmental Planning and Assessment, recommended a restrictive declaration, due to the potential presence of hazardous materials on the site as a result of past and present land uses. The applicant filed and recorded such a declaration to require that detailed Phase II testing would occur, binding upon the property's successors and assigns. The declaration serves as a mechanism to assure the potential for hazardous material contamination that may exist in the sub-surface soils and groundwater on the project site would be characterized prior to any site disturbance (i.e., site grading, excavation, demolition, or building construction). With the implementation of the declaration described above, no significant adverse impact related to hazardous materials would occur; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of Kings Material Co. Inc. for the grant of a special permit, pursuant to Section 74-681(a)(2) of the Zoning Resolution to allow a portion of a railroad right-of-way that has been permanently discontinued or terminated to be included in the lot area of a proposed six-story residential development on property located northwesterly of 15<sup>th</sup> Avenue between 37<sup>th</sup> Street and 38<sup>th</sup> Street (Block 5348, Lots 20, 41, 42, 44, 45, 46 and 47) in an R6 District, Borough of Brooklyn, Community District 12, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 040162 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plan, prepared by Simino Architect filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
SK – 1.1	Zoning Analysis	07-07-06
SK – 1.2	Site Plan	07-07-06

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. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
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 said special permit. Such power of evocation shall be in addition to and not limited to any other powers of the City Planning Commission, or 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 modification, cancellation or amendment of the special permit hereby granted.

7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.
8. The development shall conform to all conditions, modifications and alterations set forth in the conditional negative declaration (CEQR No. 04DCP041K) dated July 9, 2007, issued pursuant to the New York State and New York City Environmental Quality Review. These conditions, modifications and alterations are as follows:

“The applicant agrees via a restrictive declaration to prepare a hazardous materials sampling protocol including a health and safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan. The restrictive declaration also restricts the manner in which the property may be developed or redeveloped, by requiring the sampling protocol and remediation measures to serve as a condition precedent to any change of use in any such development or redevelopment of the property.”

The above resolution (C 040162 ZSK), duly adopted by the City Planning Commission on September 4, 2007 (Calendar No. 3), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, 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 Chair**  
**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,**  
**ALFRED C. CERULLO, R.A., BETTY Y. CHEN, RICHARD W. EADDY,**  
**NATHAN LEVENTHAL, JOHN MEROLO, KAREN A. PHILLIPS,**  
**DOLLY WILLIAMS, Commissioners**