



CITY PLANNING COMMISSION

January 7, 2009 / Calendar No. 10

C 080051 ZSK

IN THE MATTER OF an application submitted by Morgan B. Realty, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-922 of the Zoning Resolution to allow the development of large retail establishments (Use Group 6 and 10A uses) with no limitation on floor area on property located at 830 Fountain Avenue (Block 4452, Lot 425), in an M1-1 District, Community District 5, Borough of Brooklyn.

The application for the special permit was filed by Morgan B. Realty, LLC, on August 9, 2007, to facilitate the development of three one-story buildings with approximately 230,000 square feet of retail space on an approximately 10-acre site in East New York, Community District 5, Brooklyn.

BACKGROUND

Morgan B. Realty, LLC, submitted an application for a special permit pursuant to Section 74-922 of the Zoning Resolution to facilitate the development of certain retail establishments without limitation to floor area in a M1-1 District in the Spring Creek Section of Community District 5, Brooklyn.

The proposed development site is currently vacant and occupies 431,305 square feet (9.9 acres) of land bounded by Erskine Street to the west, Fountain Avenue to the east, Flatlands Avenue to the north and mapped, but un-built, Old Vandalia Street to the south. The applicant proposes to develop 230,000 square feet of commercial space in three buildings for approximately 25 tenants.

In 1967, the site became part of the Fresh Creek Urban Renewal Area when the Board of Estimate adopted the Fresh Creek Urban Renewal Plan on December 21, 1967 (CP 20013). On July 23, 1982, the Board of Estimate adopted the First Amendment to the Fresh Creek Urban Renewal Plan (C 820749 HUK) which removed the site from the plan to allow for the development of a Hughes

Communications, Inc., satellite communications facility. Related to this action were the rezoning of the site from R3-2 to M1-1 (C 820741 ZMK), the disposition of the site (C 820742 PPK), and the disposition of aerial easements to allow for the proper functioning of the communications facility (C 820797 HDK). The facility was built and operated at this location until its demolition in the early 2000s. The applicant for the subject special permit purchased the vacant site on October 24, 2004.

The area to the south and west of the development site is within the Fresh Creek Urban Renewal Area and is zoned R6 and R3-2. The vacant land within the Urban Renewal Area is planned for future residential development with up to 2,385 units of affordable housing and a proposed 620,000 square foot shopping center with regional and local retail as part of the Gateway Estates, Phase II project, a joint venture by the New York City Department of Housing Preservation and Development and the Related Companies. The Gateway Estates II project requires several ULURP actions that will be the subject of a Commission public hearing on January 7, 2009. Also to the south is the New York State Office of Mental Retardation and Developmental Disabilities' Brooklyn Developmental Center, and, immediately north of Shore Parkway, is the existing Gateway regional shopping center in a C4-2 zoning district. Immediately to the west of the site, across Erskine Street, is the Thomas Jefferson High School athletic field. Further to the west, between Elton and Essex Streets, 378 dwelling units, built by the Nehemiah Housing Development Fund, are in various stages of completion as part of the first two phases of the residential portion of the Gateway Estates II development. The area to the east is occupied by Spring Creek Park, a 99-acre public park, consisting of undeveloped land and wetlands. The area immediately to the north across Flatlands Avenue is part of the Flatlands Fairfield Industrial Business Zone and is dominated by light industrial uses including warehousing, truck and bus parking in a M1-1 zoning district. To the

northwest, west of Elton Street, are low and medium density residential uses in a R5 district. To the northeast, east of Fountain Avenue, is a mix of light industrial and low density residential uses in a R4 district and the MTA Bus Spring Creek Depot in a M1-1 district.

The subject site is served by the B13 and Q8 bus lines from the north and east, respectively, and the B83 bus which terminates one block to the south of the site. The closest subway station is the 3-Train New Lots Avenue Station, approximately one mile to the northwest.

Project Description

The applicant proposes to develop three one-story buildings to be called “The Shops at Gateway” containing up to 230,000 square foot commercial retail floor area with 780 accessory parking spaces located at grade and on the roof of the largest, easternmost building. The retail floor area would be used by approximately 25 commercial tenants, with the majority of these stores ranging in size from 2,000 to 5,000 square feet. The Shops at Gateway would also include two or three large retail establishments with a combined floor area of 134,000 square feet. Proposed retail uses could include discount department stores, restaurants, a bank, a pharmacy, book, furniture, electronic goods, beauty aid and clothing stores.

The easternmost building located at the corner of Fountain and Flatlands Avenues is planned to be 105,000 square feet in size, with approximately 80,000 square feet devoted to one or two large retail establishments and the remaining 25,000 square feet occupied by six small local retail stores. The center building, located along Flatlands Avenue, would consist of eleven small (2,000-5,000 square feet) local retail stores, with an overall building size of approximately 48,000 square feet. The

77,000 square foot rectangular-shaped building located in the northwestern portion of the development along the intersection of Flatlands Avenue and Erskine Street would be designed for one 55,000 square foot store and six smaller local retail stores. All three retail buildings would be approximately 25 feet high and would feature a red brick façade, similar in design to the existing Gateway Shopping Center further south on the Belt Parkway and Erskine Street.

The Shops at Gateway would have three vehicular two-way access points, located on Flatlands Avenue, Fountain Avenue and Erskine Street. The Fountain Avenue access would be located approximately 200 feet south of the intersection of Fountain and Flatlands Avenues and would be 22 feet wide. Fountain Avenue is a 100 feet wide arterial road with two travel lanes and one parking lane in each direction. The Flatlands Avenue entrance would be located approximately 200 feet east of the intersection of Flatlands Avenue and Erskine Street and would be 30 feet wide. Flatlands Avenue is 120 feet wide and has two travel lanes and a parking lane in each direction and a median. A left turn lane on Flatlands Avenue would be provided to for vehicles entering the site from the east. The Erskine Street entrance would mainly serve local residents and would be located approximately 380 feet south of the intersection of Flatlands Avenue and Erskine Street, a narrow street, and would be 22 feet wide. . Off-street truck loading facilities would be located on Fountain Avenue, a DOT designated local truck route, 70 feet from the intersection with Flatlands Avenue, with four loading berths, and on Erskine Street, 50 feet from the intersection with Flatlands Avenue, with three loading berths. The loadings berths on Erskine and Fountain Avenues would be served by one curb cut each.

The three buildings would cluster around a 450-space interior at-grade parking lot that would

provide customers with access to all of the retail stores. A 330-space roof-top parking area would be placed on top of the largest building at the corner of Flatlands and Fountain Avenues, and would be connected via stairs and elevators to the retail below. This parking would be accessible from a 21 feet wide ramp on the site, 72 feet from the Fountain Avenue entrance. The provided total of 780 parking spaces would exceed the parking required by zoning (767 spaces). To minimize impact on neighboring lots the lighting poles on the roof top parking would be shielded. Bicycle parking for 28 bicycles would be provided near the southwest corner of the eastern building and the southwest corner of the western building, close to the store entrances.

The at-grade lot is designed to comply with the newly adopted Design Regulations for Commercial and Community Facility Parking Lots, and would be improved with street, perimeter and interior trees, planted buffer areas, bioswales in every other row, shrubs and other required green space.

According to Section 42-12 (USES PERMITTED AS-OF-RIGHT) of the Zoning Resolution, certain retail uses in M1-1 districts are limited to 10,000 square feet of floor area. The applicant is requesting a special permit pursuant to Section 74-922 of the Zoning Resolution to permit retail and service establishments without limitation on floor area from use groups 6 and 10A, such as department stores, floor covering stores, clothing stores, fabric stores, household appliance stores or variety stores.

In order to grant a special permit for such large retail establishments, the Commission shall find that the principal vehicular access for such use is not located on a local narrow street, that such use is so located to draw a minimum of vehicular traffic to and through local streets, that adequate reservoir

space at the vehicular entrance and sufficient vehicular entrances and exits are provided to prevent congestion, that vehicular entrances and exits are provided for such uses and are located not less than 100 feet apart, that in selecting the site due consideration has been given to the proximity and adequacy of bus and rapid transit facilities, that such use is so located as not to impair the essential character or the future use of or development of the surrounding area, and that such use will not produce any adverse effects which interfere with the appropriate use of land in the district or in any adjacent district.

ENVIRONMENTAL REVIEW

This application (C 080051 ZSK) 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 08DCP005K. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed action (C 080051 ZSK), a Conditional Negative Declaration was issued. 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:

That the proposed project incorporate the exclusive use of natural gas as a fuel and the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site as noted in the plans dated August 8th, 2008 and approved as part of the ULURP application (C 080051 ZSK).

With the implementation of the condition described above, no significant adverse impact related to air quality is expected.

The applicant signed the conditional negative declaration on August 8, 2008. The conditional negative declaration was published in the New York State Environmental Notice Bulletin on August 20, 2008. 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 November 25, 2008.

UNIFORM LAND USE REVIEW

This application (C 080051 ZSK) was certified as complete by the Department of City Planning on August 11, 2008, and was duly referred to Community Board 5 and the Brooklyn 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 5 held a public hearing on this application on October 20, 2008. In a communication dated October 20, 2008, the Community Board stated:

The Land Use Committee met several times with the applicants regarding this project. The committee is very impressed with the past work of the applicant and recommends that this project proceeds forward.

Since no vote was taken and a quorum was not present the Community Board was non-complying.

Borough President Recommendation

This application (C 080051 ZSK) was considered by the Borough President, who issued a

recommendation approving the application on November 19, 2008 subject to the following conditions:

that 8,000 square feet shall be set aside for the inclusion of a food store establishment and that the Department of City Planning should undertake an investigation of zoning modifications that might enhance the siting of supermarkets.

City Planning Commission Public Hearing

On November 19, 2008 (Calendar No. 1), the City Planning Commission scheduled December 3, 2008, for a public hearing on this application (C 080051 ZSK). The hearing was duly held on December 3, 2008 (Calendar No. 10). There were two speakers in favor of the application and one speaker in opposition.

The speakers in favor of the project were the applicant and the applicant's counsel. The speakers pointed out that the project would create long-term employment opportunities for the community and a greater variety of shopping options for residents. They stressed their willingness to cooperate with the community with regard to job placement and choice of tenants for the site, including a food store as requested by the Borough President.

The speaker opposing the application was a local resident who stated that the subject site was illegally converted from parkland, that the environmental review was flawed and that the scholarships for local students that were given by the previous owners of the parcel would be discontinued. The speaker added that the project would be inconsistent with the City's waterfront revitalization program and that it would create adverse traffic impacts on local residents and business owners on Pitkin Avenue.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 080051 ZSK) is appropriate.

The grant of this special permit would facilitate the development of three one-story buildings, to be called “The Shops at Gateway”, containing up to 230,000 square feet of commercial retail floor area with 780 accessory parking spaces located at-grade and on the roof of the largest, easternmost building. The development would have approximately 25 commercial tenants, with the majority of these stores ranging in size from 2,000 to 5,000 square feet. The special permit would permit large retail establishments exceeding 10,000 square feet.

The Commission believes that the proposed development would provide a wider variety of products and services typically currently not found in the nearby community and thus offer greater shopping options for surrounding community residents.

The proposed retail development would be an appropriate transition in land use between the light manufacturing industrial area to the north and the residential area being developed through HPD to the south, and would not interfere with the land uses in the adjacent areas. The site plan is so configured as to minimize any conflicts with the residential area by acting as a buffer to the industrial park to the north, providing a landscaped planting area to the south, allowing pedestrian and bicycle access to the development from the residential area while concentrating vehicular access points on adjacent large streets away from residential uses.

The Commission notes that the two primary vehicular access points to the proposed development are from Flatlands and Fountain Avenues, which are 120 and 100 feet wide, respectively and connect to the Belt Parkway to the south and Linden Boulevard to the north, two major arterials. The third vehicular access point on Erskine Street would allow local traffic from the adjacent residential area to enter the site. The access points are more than 100 feet apart and the self parking areas provide ample reservoir space. The location and configuration of the access points along major streets would prevent any project-bound traffic from traveling along local residential streets and minimize traffic impact on other adjacent residential streets. Loading facilities would be provided on Fountain Avenue, a local truck route, and Erskine Street, away from residential uses, thus avoiding the impact of truck traffic on residents. Further, the proposed development would exceed the off-street parking requirements established by zoning so that there would be no parking impacts on neighboring streets or the operations of nearby businesses.

The Commission notes that two bus lines, the B13 and the Q8 buses, immediately serve the project site on Fountain Avenue, and that one bus line, the B83 bus, terminates one block to the south on Fountain Avenue. The B13 and Q 8 buses connect to the A and C subway trains at the Euclid Avenue Station and that the B83 bus connects to the 3 subway train at the Pennsylvania Avenue Station, providing transit access to the subject site.

Regarding the recommendation of the Borough President, the Commission notes that the applicant stated at the Commission's public hearing he would be seeking a tenant for a food store in the retail center.

The Commission notes that the subject site was never mapped as park and was never proposed to be used as park or open space. This site is not within an area subject to the Waterfront Revitalization

Program (WRP) and thus is not subject to WRP review.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-922 (Certain large retail establishments) of the Zoning Resolution:

- (a) that the principal vehicular access for such use is not located on a local *narrow street*; and
- (b) that such *use* is so located to draw a minimum of vehicular traffic to and through local *streets*; and
- (c) that adequate reservoir space at the vehicular entrance and sufficient vehicular entrances and exits are provided to prevent congestion; and
- (d) that vehicular entrances and exits are provided for such uses and are located not less than 100 feet apart; and
- (e) that in selecting the site due consideration has been given to the proximity and adequacy of bus and rapid transit facilities; and
- (f) that such *use* is so located as not to impair the essential character or the future use of or development of the surrounding area; and
- (g) that such *use* will not produce any adverse effects which interfere with the appropriate *use* of land in the district or in any adjacent district; and
- (h) not applicable; and
- (i) not applicable.

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:

The applicant, Morgan B. Realty, LLC, agrees to the exclusive use of natural gas as a fuel and agrees to the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site.

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 Morgan B. Realty, LLC, for the grant of a special permit to allow the development of large retail establishments (Use Group 6 and 10A uses) with no

limitation on floor area on property located at 830 Fountain Avenue (Block 4452, Lot 425), in an M1-1 District, Community District 5, Borough of Brooklyn, is approved, pursuant to the findings of Section 74-922 (Certain large retail establishments) of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 080051 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 Felix Pustynnik, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-1	Project Plan	7/28/2008
P-1	Roof Parking	5/1/2008
P-2	Street Level Parking	5/1/2008
Z	Zoning Analysis	5/1/2008

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. 08DCP005K), dated August 11, 2008, issued pursuant to the New York State and New York City Environmental Quality Review. These conditions, modifications and alterations are as follows:

The applicant, Morgan B. Realty, LLC, agrees to the exclusive use of natural gas as a fuel and agrees to the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site.

5. All leases, subleases, or 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 080051 ZSK), duly adopted by the City Planning Commission on January 7, 2009 (Calendar No. 10), 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, FAICP, Chair
IRWIN G. CANTOR, P.E.,

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KAREN A. PHILLIPS, Commissioners**