



## **CITY PLANNING COMMISSION**

February 17, 2009 / Calendar No. 6

C 090081 ZSK

**IN THE MATTER OF** an application submitted by the New York City Department of Housing Preservation and Development and Gateway Center Properties Phase II, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(c) of the Zoning Resolution to modify the regulations of Section 32-64 (Surface Area and Illumination Provisions), Section 32-65 (Permitted Projection or Height of Signs) and Section 33-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) in connection with a proposed commercial development, on property generally bounded by Gateway Drive, a line approximately 750 southeasterly of Schroeders Avenue, Erskine Street, and a line approximately 115 feet southeasterly of Schroeders Avenue (Block 4452 p/o Lots 170 and 400, and Block 4586 p/o Lot 1), in a C4-2 District, within a general-large scale development, Borough of Brooklyn, Community District 5.

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The application for the special permit was filed by the New York City Department of Housing Preservation and Development and Gateway Center Properties Phase II, LLC. on August 25, 2008 to modify the sign regulations within a General Large Scale Development for the proposed Gateway Estates regional and local shopping center in the Spring Creek Section of Community District 5, Brooklyn.

### **RELATED ACTIONS**

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

- 1. C 080089 MMK:** Amendment of the New York City Map to eliminate, map, realign and extend certain streets and to relocate park lands within the Fresh Creek Urban Renewal Area.
- 2. C 090078 HUK:** Third amendment to the Fresh Creek Urban Renewal Plan for the Fresh Creek Urban Renewal Area

**3. C 090079 ZMK:** Zoning Map Amendment from R6 to R7A, C2-4 and C4-2.

**4. C 090082 HAK:** Designation of an Urban Development Action Area and Project and disposition of City-owned property.

## **BACKGROUND**

A description of this application, the surrounding area and the proposed project is included in the report on the related action for the Third Amendment of the Fresh Creek Urban Renewal Plan (C 090078 HUK).

## **ENVIRONMENTAL REVIEW**

This application (C 090081 ZSK), in conjunction with the applications for the related actions (C 080089 MMK, C 090078 HUK, C 090079 ZMK, C 090082 HAK), 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 07HPD021K. The lead agency is the Department of Housing Preservation and Development.

A Summary of the environmental review and the Final Environmental Impact Statement appears in the report on the related application for the Third Amendment of the Fresh Creek Urban Renewal Plan (C 090078 HUK).

## **UNIFORM LAND USE REVIEW**

This application (C 090081 ZSK), in conjunction with the applications for the related actions (C 080089 MMK, C 090078 HUK, C 090079 ZMK, C 090082 HAK), was certified as complete by the Department of City Planning on September 8, 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 November 17, 2008, and, on that date, by a vote of 22 to 0 with 2 abstentions, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

This application (C 090081 ZSK) was considered by the Borough President, who issued a recommendation approving the application with conditions on December 18, 2008.

A summary of the Borough President's recommendation appears in the report on the related application for the Third Amendment of the Fresh Creek Urban Renewal Plan (C 090078 HUK).

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

On December 17, 2008 (Calendar No. 4), the City Planning Commission scheduled January 7, 2009 for a public hearing on this application (C 090081 ZSK). The hearing was duly held on January 7,

2009 (Calendar No.22), in conjunction with the public hearings on the applications for the related actions (C 080089 MMK, C 090078 HUK, C 090079 ZMK, C 090082 HAK).

There were a number of appearances, as described in the report on the related application for the Third Amendment of the Fresh Creek Urban Renewal Plan (C 090078 HUK), and the hearing was closed.

### **Waterfront Revitalization Consistency Review**

A discussion of WRP Consistency Review appears in the report on the related application for the Third Amendment of the Fresh Creek Urban Renewal Plan (C 090078 HUK).

### **CONSIDERATION**

The Commission believes that this special permit (C 090081 ZSK) is appropriate. The special permit, if exercised, binds the applicant to the proposed site plan including building configuration, location and square footage.

This application would facilitate the development of Gateway Estates II, a mixed-use development, on a site that has been lying vacant for many years and would provide much-needed new affordable housing, parkland, community facilities, jobs, and retail opportunities to the residents of East New York. The development would provide a 620,000 square foot regional and local retail center, up to 2,385 units of affordable housing, 68,000 square feet of local retail, 36.5 acres of newly developed parks, community facilities, including a planned intermediate and high school with 1,226 seats, and

would create jobs and tax revenue for the City of New York.

A full analysis of the issues, and the reasons for approving this application (as modified), appear in the report on the related actions for the Third Amendment of the Fresh Creek Urban Renewal Plan (C 090078 HUK).

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-744 (Modification of *sign* regulations) of the Zoning Resolution:

1. the modification of sign regulations will result in a better site plan.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on February 4, 2009, with respect to this application (CEQR No. 07HPD021K), the City Planning Commission finds that the requirements of Part 617, State Environmental Quality Review, have been met and that, consistent with social, economic and other essential considerations:

1. From among the reasonable alternatives thereto, the actions to be approved are ones which minimize or avoid adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts revealed in the FEIS will be minimized or avoided to the maximum extent possible by incorporating as conditions to the approval those mitigative measures that were identified as practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.9(c)(3) of the SEQRA regulations; and be it further

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action 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 the New York City Department of Housing Preservation and Development and Gateway Center Properties Phase II, LLC, for the grant of a special permit to allow to modify the regulations of Section 32-64 (Surface Area and Illumination Provisions), Section 32-65 (Permitted Projection or Height of Signs) and Section 33-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) in connection with a proposed commercial development, Community District 5, Borough of Brooklyn, is approved, pursuant to the findings of Section 74-744 (c) (Modification of sign regulations) of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 090081 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 Greenberg Farrow, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z 10.0	General Large-Scale Development Site Plan and Zoning Analysis	9/5/2008
Z 10.0W	GLSD Enlarged Partial Site Plan – West	9/5/2008
Z 10.0E	GLSD Enlarged Partial Site Plan – East	9/5/2008
Z 10.2	Local Retail, Town Center and Rain Garden Plan	9/5/2008
Z 10.3	Local Retail Plan and Details	9/5/2008
Z 10.4	Town Center & Rain Garden Plan and Details	9/5/2008
Z 11.1	Signage Elevations	9/5/2008
Z 11.2	Building Elevations	9/5/2008
Z 12.0	Height and Setback Diagrams	9/5/2008

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 include those mitigative measures listed in the Final Environmental Impact Statement (CEQR No. 07HPD021K) issued on February 4, 2009, and identified as practicable, as follows:

*HAZARDOUS MATERIALS*

In order to prevent potential risks and thereby avoid the potential for significant adverse impacts related to hazardous materials, the Proposed Project would include appropriate health and safety and remedial measures (conducted in compliance with all applicable laws and regulations and conforming to appropriate engineering practice) that would govern both soil disturbance activities and subsequent construction at the site.

These measures would include the development of a Remedial Action Plan (RAP) and

environmental Health and Safety Plan (HASP) for soil disturbance that would include detailed procedures for managing both known contamination issues (e.g., fill) and any unexpectedly encountered contamination issues. When the project design has progressed sufficiently to determine the areas of proposed soil disturbance and details of foundation construction (with sufficient additional soil, soil gas and/or groundwater testing both to characterize the materials that would be disturbed and to design the required methane gas venting systems), the RAP and HASP would be sent to NYCDEP for review and approval. The HASP would include procedures for avoiding the generation of dust that could affect the surrounding community as well as any monitoring necessary to ensure that no such impacts would occur. The RAP would include design and installation of methane gas venting systems in all new buildings and would ensure that in areas not otherwise capped by buildings, pavements, or other impervious materials that surface soil (at least two feet deep) meets applicable guideline requirements for their respective commercial or residential uses. All work would be performed in accordance with applicable city, state, and federal requirements.

Prior to site excavation, a construction-specific HASP would be prepared to address both the known contamination issues (based on the previous studies) and contingency items (e.g., finding unexpected petroleum storage tanks or petroleum-contaminated soil). The HASP would describe in detail the health and safety procedures to minimize exposure of hazardous materials to workers and the public. The hazards across the Project Site would be evaluated by determining the subsurface contaminants of concern and their chemical and physical characteristics. Health hazards would be considered within the potential exposure associated with the work to be performed. The HASP would be developed in accordance with United States Occupational Safety and Health Administration (OSHA) regulations and guidelines and is expected to include the elements described below:

- Appropriate personnel would be designated to ensure that all requirements of the HASP are implemented, including an on-site Site Safety Officer (SSO). The SSO would be responsible for coordinating and reporting all health and safety activities and would have completed a 40-hour training course, supervisory training, and updated annual refresher courses that meet OSHA requirements codified in 29 Code of Federal Regulations (CFR) Part 1910. The SSO would have stop-work authorization, which they would execute on their determination of an imminent safety hazard, emergency situation, or other potentially dangerous situation. If the SSO were to be absent from the site, they would designate a suitably qualified replacement familiar with the HASP.
- The HASP would require that on-site personnel are qualified and have received the required training. All those entering the work area while intrusive activities were being performed would receive mandatory instruction regarding the potential hazards to health and safety. Any construction worker in a hazardous materials area would be required to be 40-hour OSHA trained. All construction personnel upon entering the site would attend a mandatory training meeting to:



- Inform workers of the potential hazards they may encounter;
  - Provide the knowledge and skills necessary for workers to perform the work with minimal risk to health and safety;
  - Inform workers of the purpose and limitations of safety equipment; and,
  - Ensure that workers can safely avoid or escape from emergencies.
- Each member of the construction crew would be instructed in these objectives before they would go onto the site. The SSO or other suitably trained individuals would be responsible for conducting the training program. Others who enter the site would have to be accompanied by a suitably trained construction worker.
  - The HASP would include contingency response plans. All excavation would be continuously monitored for the presence of buried tanks, drums or other containers; along with sludges or soil that show evidence of potential contamination, such as discoloration, staining, or odors. The HASP would include a table of action levels for the particular monitoring equipment (photoionization detector and particulate monitor) and contingencies if these action levels are exceeded. If any of these are detected, excavation in the area would be halted, and appropriate personnel would be notified, including the SSO. The affected area would be cordoned off and no further work would be performed at that location until the appropriate contingency response plan described in the HASP was implemented. All contingency response actions would be carried out in accordance with special contingency health and safety procedures.
  - To prevent the potential off-site transport of dust, dust control measures would be implemented during all earth-disturbing operations. Water would be available on-site for sprinkling/wetting to suppress dust in dry weather or as necessary. Water would also be available to suppress dust on haul roads, to wet equipment and excavation faces, and would be sprayed on buckets during excavation and dumping. All haul trucks would have tarp covers, and dust or mud would be removed from tires before leaving the site. Vehicle speeds would be limited on the Project Site.

Soil gas sampling identified methane at many locations within the Project Site. As such, all project components would include precautionary measures (such as sub-slab and active venting) which would be in place during building construction and would be operational prior to occupancy.

The LDA between HPD and Gateway Center Properties Phase II, LLC and Nehemiah Housing Development Fund Co., Inc. would include provisions related to hazardous materials mitigation. In connection with the disposition of City-owned property to the developers, a restrictive declaration would be recorded to restrict future use and/or development to a manner which is consistent with the hazardous materials mitigation systems. The provisions of the restrictive declaration would be designed to control land use and ensure long term maintenance and operations of engineering controls, which are part of the hazardous material mitigation systems.

The restrictive declaration is a covenant, which binds the present owners, and all successors, and serves as notice to any future owner of the conditions and restrictions that are continuously binding on the land.

The SCA is an Involved Agency and would be responsible for the design and construction of the school facility on Block 4449. Under the terms of its enabling legislation, the SCA must comply with the requirements of the State Environmental Quality Review Act (SEQRA). Therefore, the SCA would conduct a Phase II Environmental Site Investigation to confirm subsurface conditions. Based on the findings of the Phase II Environmental Site Investigation, the SCA would develop management plans (e.g., soil management plan, groundwater management plan, construction HASP, etc.) to address any hazardous materials that may be encountered during construction of the school. The management plans prepared by the SCA would be separate from the RAP and HASP described above, but would include equally stringent requirements. At a minimum, the design of the new school would include a vapor barrier and an active sub-slab depressurization system (SSDS) to prevent potential migration of organic vapors and methane into the proposed school building. Additionally, for areas of the school where exposed soils may exist (i.e., landscaped areas), a twenty-four (24) inch thick layer of certified-clean fill would be placed over the soils.

#### *TRAFFIC AND PARKING*

A detailed evaluation of mitigation measures indicated that significant adverse impacts would be fully mitigated at all but six locations (three to four locations per time period) by standard traffic engineering improvements such as installation of traffic signals, signal phasing and timing modifications, parking prohibitions, and lane restriping. These modifications represent standard traffic capacity improvements that have been proposed and implemented to mitigate anticipated traffic impacts for numerous projects in New York City.

During certain peak hours, the intersections of Flatlands Avenue and Pennsylvania Avenue, Linden Boulevard and Pennsylvania Avenue, Flatlands Avenue and Rockaway Parkway, Linden Boulevard and Rockaway Avenue, and Linden Boulevard and Kings Highway and Remsen Avenue would be only partially mitigated. Partial mitigation occurs when some, but not all, of the significantly impacted movements in a time period are mitigated. In addition, three of these five intersections would not be mitigated at all during certain peak hours. Also, the intersection of Pennsylvania Avenue and Atlantic Avenue would not be mitigated for all peak hours analyzed.

Three Shore Parkway segments would experience significant impacts in the 2011 Build condition during certain peak hours. All segments except the westbound Shore Parkway between the on-ramp and off-ramp would experience significant impacts in the 2013 Build condition during certain peak hours. Although these impacts would not be mitigated, the reduction of speeds for the significantly impacted segments would be in the range of 0.2 mph to 3.7 mph and would generally be unnoticeable to motorists.

Implementation of the traffic engineering improvements described above would require the approval of NYCDOT. Coordination would be undertaken with NYCDOT to implement these proposed mitigation measures.

#### *TRANSIT*

The bus line-haul impacts would be fully mitigated with increased peak hour service on the routes that serve the Project Site. Table 7 shows the required number of bus runs to fully mitigate the impacts of the Proposed Project in the 2011 and 2013 build years.

A component of the Proposed Project is a proposed bus layover facility, to be located in the parking area of the shopping center on the western side of the Project Site, adjacent to Gateway Drive. The facility would provide space for up to six buses to layover concurrently, and would include a canopy to shelter bus passengers while loading and unloading. NYCT is considering extending existing bus service and providing new routes to this facility. It is anticipated that increases in service to the Project Site would result in improved operating conditions and reduced loads on the B6 and B13 bus routes.

Implementation of the bus service improvements described above would require the approval of NYCT. Coordination would be undertaken with NYCT to implement these proposed mitigation measures.

**Table 7 2011 and 2013 Build and Build with Mitigation Conditions: Bus Line Haul at NYCT Maximum Load Points**

Analysis Year	Route	Peak Period	Direction	Build without Mitigation		Build with Mitigation		
				Buses Per Hour	Passengers per Bus	Buses per Hour	Passengers per Bus	Additional Buses
2011	B6 LTD	AM	Eastbound	9	40	NA	NA	NA
			Westbound	17	(65)	21	53	4
		PM	Eastbound	13	(63)	15	54	2
			Westbound	8	(62)	10	50	2
	B13	AM	Northbound	7	(65)	9	51	2
			Southbound	4	52	NA	NA	NA
		PM	Northbound	5	49	NA	NA	NA
			Southbound	6	(74)	9	49	3
	B83	AM	Northbound	11	(61)	13	52	2
			Southbound	6	47	NA	NA	NA
		PM	Northbound	6	46	NA	NA	NA
			Southbound	14	48	NA	NA	NA
	Q8	AM	Northbound	5	36	NA	NA	NA
			Southbound	5	10	NA	NA	NA
		PM	Northbound	5	23	NA	NA	NA
			Southbound	5	34	NA	NA	NA
2013	B6 LTD	AM	Eastbound	12	(56)	13	52	1
			Westbound	19	(71)	25	54	6
		PM	Eastbound	16	(69)	21	53	5
			Westbound	10	(72)	14	51	4
	B13	AM	Northbound	11	(73)	15	54	4
			Southbound	7	(66)	9	51	2
		PM	Northbound	6	(63)	7	54	1
			Southbound	10	(81)	15	54	5
	B83	AM	Northbound	13	(66)	16	54	3
			Southbound	9	(64)	11	52	2
		PM	Northbound	6	(56)	7	48	1
			Southbound	14	54	NA	NA	NA
	Q8	AM	Northbound	6	(59)	7	51	1
			Southbound	5	34	NA	NA	NA
		PM	Northbound	5	42	NA	NA	NA
			Southbound	6	(58)	7	49	1
<b>Note:</b> The B6 Local service does not operate in the vicinity of the Project Site. AP = average passengers per bus; maximum load ridership data provided by NYCT, March 2006. (#) = exceeds NYCT guideline capacity; denotes significant adverse impact								

## NOISE

The Proposed Project would place sensitive land uses (receptors) in areas with relatively high levels of ambient noise, which would result in significant adverse noise impacts. The *CEQR Technical Manual* recommends a maximum interior noise environment of 50 dBA L10(1) for commercial uses. For residential, day care, schools, and similar noise-sensitive uses, the *CEQR Technical Manual* recommends a maximum interior noise environment of 45 dBA L10(1). As shown in Table 6, the highest level of attenuation required for the Proposed Project's commercial uses would be 25 dBA, and the level of attenuation for residential and community facility uses

would range from 20 to 35 dBA. With respect to commercial uses, 25 dBA of window-wall attenuation is typically provided as part of standard construction materials.

Window-wall attenuation is required for the Proposed Project's residential, commercial, and community facility uses. Window-wall attenuation measures, including alternate means of ventilation, would be incorporated into the LDA between HPD and Gateway Center Properties Phase II, LLC and Nehemiah Housing Development Fund Co., Inc. in order to ensure that the required level of attenuation is provided. To achieve up to 25 dBA of building attenuation, double glazed windows with good sealing properties as well as an alternate means of ventilation such as well-sealed window air conditioning, would be provided. To achieve 30 dBA of building attenuation, double glazed windows with good sealing properties as well as alternate means of ventilation such as well sealed through-the-wall air conditioning, would be provided; and to achieve 35 dBA of building attenuation, double glazed windows with good sealing properties as well as alternate ventilation such as central air conditioning, would be provided.

The SCA is an Involved Agency and would be responsible for the design and construction of the school facility on Block 4449. Under the terms of its enabling legislation, the SCA must comply with the requirements of SEQRA. Therefore, the SCA would incorporate the necessary level of attenuation into the design of the school facility. The SCA would install double glazed windows with good sealing properties, and ventilation would be provided through ducted systems. These window-wall attenuation measures would achieve between 30 and 35 dBA of attenuation.

## **UNAVOIDABLE ADVERSE IMPACTS**

### ***TRAFFIC AND PARKING***

Most of the locations that would be significantly impacted could be mitigated using standard traffic engineering improvements such as installation of traffic signals, signal phasing and timing modifications, parking prohibitions, and lane restriping.

With the Proposed Project, five intersections— Erskine Street and Gateway Drive, Flatlands Avenue and Pennsylvania Avenue, Linden Boulevard and Pennsylvania Avenue, Flatlands Avenue and Rockaway Parkway, and Pennsylvania Avenue and Atlantic Avenue—would experience unmitigated impacts for at least one peak analysis hour in the 2011 and 2013 Build conditions. In addition, at Flatlands Avenue and Pennsylvania Avenue, Linden Boulevard and Pennsylvania Avenue, and Linden Boulevard and Rockaway Avenue significant impacts during other peak hours would only be partially mitigated

Other unmitigated significant adverse impacts for each Build condition were identified along the Shore Parkway near the Erskine Street interchange. However, the reduction of speeds for these segments would be in the range of 0.2 mph to 3.7 mph and would generally be unnoticeable to motorists.

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 090081 ZSK), duly adopted by the City Planning Commission on February 17, 2009 (Calendar No. 6), 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  
**KENNETH J. KNUCKLES, Esq.**, Vice Chairman

**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,  
ANGELA R. CAVALUZZI, AIA, ALFRED C. CERULLO, III,  
BETTY Y. CHEN, MARIA M. DEL TORO  
RICHARD W. EADDY, SHIRLEY A. MCRAE,  
JOHN MEROLO, KAREN A. PHILLIPS, Commissioners**