



CITY PLANNING COMMISSION

August 23, 2009 / Calendar No. 9

N 090412 ZRY

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York relating to Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) concerning provisions related to the establishment of FRESH Food Stores.

The application for an amendment to the Zoning Resolution was filed by the Department of City Planning on May 15, 2009, to guide the development of FRESH food stores in areas of Manhattan, the Bronx, Brooklyn and Queens.

BACKGROUND

A 2008 study, “Going to Market”, by the New York City Departments of Health (DOHMH), City Planning (DCP) and the New York City Economic Development Corporation (EDC) found that many low- and moderate-income neighborhoods across the City are underserved by full-line grocery stores. Shortages of grocery stores are most acute in neighborhoods with higher rates of diet-related diseases, including obesity and diabetes, and are primarily concentrated in Northern Manhattan, the South Bronx, Central Brooklyn and neighborhoods in Queens, including Jamaica.

Increasing the number of neighborhood grocery stores is not only important to enhancing access to fresh food, it is essential to efforts encouraging New Yorkers to prepare and consume healthy meals. The FRESH food store program seeks to guide the development of full-line grocery stores in communities with the highest levels of diet-related diseases and largest populations with limited opportunities to purchase fresh foods. The addition of grocery stores to neighborhood retail areas

benefits neighborhoods in distinct but interrelated ways. They offer quality of life, health and economic benefits.

Quality of Life and Health Benefits

Grocery stores are a fundamental component of neighborhoods. Grocery shopping represents the largest segment of retail activity outside of automobile and automobile part sales, accounting for more than 16 percent of retail activity according to U.S. Census data on estimated annual sales from 1992 through 2007. Grocery shopping not only represents a large segment of the household budget in dollars, it also represents a significant share of the household budget in terms of time. Ensuring quality of life in New York City neighborhoods requires accessibility to this vital retail amenity. It is important that New Yorkers live within a comfortable walking distance to a grocery store in pedestrian-oriented neighborhoods. It is also important that an adequate selection of fresh food exists at prices affordable to area residents.

Real estate listings underscore the importance of nearby food retail when the advertisements use close proximity to a grocery store or a supermarket as a selling point. New Yorkers without access to an automobile rely on neighborhood stores that are close to their homes for everyday shopping needs. However, "Going to Market" found large areas in Northern Manhattan, the South Bronx, Central Brooklyn and smaller portions of Queens and Staten Island are in need of more full-line grocery stores. These neighborhoods are deficient in grocery stores and other food retailers that sell fresh food products. They are also neighborhoods with lower household incomes and limited access to an

automobile, reducing the frequency residents can travel to regional supermarkets further from their homes. The implications of this are troubling. Research conducted by the DOHMH shows that up to 26 percent of residents in these areas reported they did not eat a single serving of fresh fruits or vegetables the day prior to being surveyed.

The prevalence of diabetes and obesity is alarming. Diabetes now affects over 700,000 people in New York City, over 1.1 million New Yorkers are obese, and another 2 million are overweight. Higher rates of obesity and diabetes exist in the neighborhoods affected by the FRESH food store text amendment. Increasing the availability of fresh foods in these neighborhoods is one means to reverse these health trends.

More studies are demonstrating the food environment has a direct bearing on health. In 2006, the *American Journal of Preventive Medicine* published a study linking the food environment to health outcomes. The study found that the presence of a supermarket within a Census Tract alone or in combination with a grocery store was associated with lower prevalence ratios of obesity and overweight residents. More recently, a 2009 study of New York City's food environment published in the journal *Environmental Health Perspectives* found that the availability of supermarkets, produce markets and health food stores predicts obesity. The researchers identified that an increase in density of retailers offering opportunities for healthier food purchases was associated with a lower Body Mass Index or lower risk of obesity.

In areas lacking grocery stores and supermarkets, large amounts of the household food budget may be spent in establishments where fresh foods are often not sold, such as discount stores, drug stores and convenience stores. Fresh food is often more expensive than nonperishable goods and prices are highest when competition is limited.

Many retailers in the affected neighborhoods are averse to selling fresh foods, such as produce and meats, because of the associated increased costs to selling these products. A produce manager, butcher or fish monger's skill set usually commands higher salaries and the food must be refrigerated in equipment that is costly to purchase and operate. Unlike packaged food, fresh food will spoil rapidly if not sold. Even if successful in operating a store, grocers may find themselves unable to support the rent necessary to renew leases for large, ground floor retail space, which is in short supply in many neighborhoods.

Economic Development Benefits

Grocery stores offer a wide range of economic development benefits for neighborhoods. Grocery stores require a broad range of workers, from those new to the workforce to skilled department managers. The number of jobs a new grocery store may add depends on its size and sales volumes, but a typical store employs dozens of people. Full-line grocery stores also bring foot traffic to neighborhood retail streets and provide customers for complementary stores and services, creating opportunities for additional private sector employment. Grocery stores, in effect, contribute to the physical revitalization of communities, increase property values and expand the City's tax base.

ZONING IMPEDIMENTS TO THE DEVELOPMENT OF NEW GROCERY STORES

As a follow-up to the 2008 study, the Department of City Planning studied zoning regulations in the underserved areas of Upper Manhattan, the South Bronx, Central Brooklyn and Jamaica and found obsolete regulations created unnecessary impediments to the development of new grocery stores. Through outreach with operators and developers of grocery stores, the study evaluated zoning regulations for minimum required parking, use and bulk and found that they discouraged the development of grocery stores. The study revealed that zoning requirements for grocery stores increased the cost of land acquisition and building construction over other types of retail. In addition, the higher operating costs for grocery stores combined with lower profit margins in grocery sales over other types of retail, further disadvantaged grocery stores.

The findings from the study presented unique challenges in siting grocery stores along traditional retail streets that extend from the limited existing supply of suitable storefronts to the deterrents in developing suitable ground floor space in new buildings. For developers of new housing, providing ground-floor retail space may be less attractive economically than providing more residential space, where there is a tradeoff between them. Even where retail space is provided in newly constructed buildings, spaces are often small and not suited to the needs of food stores. Demand for the existing large storefronts necessary for operating a grocery business exceeds supply and grocers reported that they were placed at a competitive disadvantage to other retailers competing for similar-sized commercial space in a heated real estate market due to their slim profit margins.

They also reported that the higher parking requirement for grocery stores over other types of retail further increased costs. The Zoning Resolution currently applies a higher parking requirement for food stores over other types of neighborhood retail and service uses in C1-1, C1-2, C1-3, C2-1, C2-2, C4-3, C8-1, C8-2, M1-1, M1-2 and M1-3 districts. The study revealed that the cost of acquiring additional land for a parking lot or the cost of developing a parking facility drove up acquisition and development costs and were unnecessarily high in the neighborhoods affected by the FRESH text amendment. These neighborhoods are primarily pedestrian-oriented neighborhoods where rates of car ownership for area households are low.

In addition, many grocers reported that land could be acquired at a lower cost and larger sites were more readily available in M1 districts of the City. However, the Zoning Resolution limits food stores to 10,000 square feet of floor area in these districts. A City Planning Commission special permit is necessary to obtain before constructing a grocery store larger than 10,000 square feet of floor area in M1 districts. Undergoing the necessary land use and environmental review is lengthy and costly for obtaining the special permit. One of the ways in which large supermarkets have been able to locate in M1 districts is by building entirely within cellar space, which does not count as floor area. Below grade development is unattractive for retailers who rely on customer traffic generated from street-level visibility or may be impractical in engineering.

PROPOSED ZONING TEXT AMENDMENT

The Food Retail Expansion to Support Health (FRESH) food store program provides incentives for, and removes impediments to, development of stores selling a full range of food products with an emphasis on fresh fruits and vegetables, meats and other perishable goods. The proposed zoning establishes Section 63-00 in the Zoning Resolution, providing greater incentives for neighborhood grocery stores to locate in underserved neighborhoods in the City that are primarily pedestrian-oriented, local shopping districts. The addition of more grocery stores is intended to enhance the local retail amenities, offer better access to fresh, nutritious foods and provide jobs.

As referred, the proposal establishes a definition for a “FRESH food store” that requires food stores seeking benefits through this program to format their stores to at least 6,000 square feet of floor area or cellar space for retailing a general line of food and non-food grocery products, such as dairy, canned and frozen foods, fresh fruits and vegetables, fresh and prepared meats, fish and poultry, intended for home preparation, consumption and utilization. In addition, the store must provide the following:

- (a) at least 3,000 square feet or 50 percent of such retail space, whichever is greater, for the sale of a general line of food products intended for home preparation, consumption and utilization; and

(b) at least 2,000 square feet or 30 percent of such retail space, whichever is greater, for the sale of perishable goods that shall include dairy, fresh produce, and frozen foods and may include fresh meats, poultry and fish, of which at least 500 square feet of such retail space shall be designated for the sale of fresh produce. (Section 63-01)

The proposed zoning text amendment is applicable to certain Commercial and Manufacturing districts in Northern Manhattan, the South Bronx, Central Brooklyn and Queens. Generally, Community Districts 9-12 in the Borough of Manhattan, Community Districts 1-7 in the Borough of the Bronx, Community Districts 3, 4, 5, 8, 9, 16 and 17 in the Borough of Brooklyn and the Special Downtown Jamaica District are encompassed by the proposal.

Certain special districts are excluded from the program, where special regulations for grocery stores already exist or where the proposed text amendment's provisions would be inconsistent with the objectives of the special districts. These include the Special Madison Avenue Preservation District, the Special Manhattanville Mixed Use District, the Special Park Improvement District and the Special Hunts Point District.

The text would not be applicable in certain neighborhoods of the designated districts primarily due to their closer proximity and higher level of access to fresh food retailers. The neighborhoods are also more affluent than the other areas encompassed by the FRESH program and may not be eligible for the complementary financial benefits available to food retailers located in lower and more moderate

income neighborhoods. These neighborhoods include Morningside Heights in CD 9 in Manhattan and portions of Washington Heights south of Fort Tryon Park, west of Ft. Washington Ave and north of 168th St. in CD 12 in Manhattan; a portion of CD7 in the Bronx that includes the area south of W. Mosholu Pkwy, west of Jerome Ave, north of Kingsbridge Rd and east of Goulden Ave; and a portion of CD 8 in Brooklyn that includes the area south of Pacific St, west of Washington Ave, north of Eastern Pkwy, and east of Flatbush Avenue. (Section 63-021)

The proposed amendment requires that any store seeking the program benefits to be certified as a FRESH food store by the Chairperson of the City Planning Commission. The applicant for the certification must demonstrate that the store meets the floor area requirements established in the definition of a FRESH food store, and in addition, must provide a signed lease or written commitment by a prospective grocer to occupy the space developed for the FRESH food store. All certified FRESH food stores are required to display a sign at the entrance to each store indicating that the store is a participant in the FRESH program and sells fresh foods. (Section 63-30)

FRESH food stores are subject to the following design requirements:

1. At least 70 percent of a store's ground floor level street wall up to 10 feet above the adjoining sidewalk shall be glazed and not less than 50 percent of such area shall be glazed with transparent materials. The remaining 20 percent of all glazed surfaces may be glazed with translucent materials. (Section 63-23)

2. All security gates installed between the street wall and the street line, when closed, must permit visibility of at least 75 percent of the area covered by the security gate. (Section 63-24).

In addition, the following special provisions apply to all FRESH food stores:

1. FRESH food stores up to 30,000 square feet of floor area are permitted to locate in M1 districts as-of-right within the program areas. (Section 63-11) This represents an increase from current zoning, which only permits food stores as-of-right up to 10,000 square feet of floor area. Permitting FRESH food stores up to 30,000 square feet as-of-right in M1 districts not only reduces the costs associated with the special permit process but provides certainty as to their ability to locate in those districts, encouraging new investment.
2. In mixed and mixed use buildings, the total permitted residential floor area is increased by one square foot for each square foot provided for a FRESH food store, up to 20,000 square feet. (Section 63-21) Increasing floor area in mixed and mixed use buildings where ground floor FRESH food stores are included offers an economic incentive to provide a food store, by reducing the financial risk in leasing to a typically lower-paying user.
3. To accommodate the additional permitted floor area in mixed or mixed use buildings containing a FRESH food store, the City Planning Commission may authorize modifications in the height and setback regulations of Sections 35-24 and 123-662. The City Planning Commission may permit the applicable maximum building height to be increased by up to 15 feet provided that the story occupied by a FRESH food store has a minimum finished floor to finished ceiling

height of 14 feet above the adjoining street grade, and residential stories would be required to have a minimum finished floor to finished ceiling height of eight feet six inches. (Section 63-22)

4. In C1-1, C1-2, C1-3, C2-1, C2-2, C2-3, and C4-3 districts, the accessory off-street parking regulations in Section 36-20 applicable to a C1-4 district shall apply to any FRESH food store. (Section 63-250) Reducing parking requirements for FRESH food stores will provide more flexibility and reduce land acquisition costs and construction costs in the affected districts where parking requirements for this use are unnecessarily high.
5. In C8-1, C8-2, M1-1, M1-2, and M1-3 districts, a FRESH food store shall provide 1 parking space per 1,000 square feet of floor area, or cellar space used for retailing, up to a maximum of 15,000 square feet. The underlying off-street parking regulations in Section 36-20 or 44-20 shall apply to the floor area, or cellar space used for retailing, in excess of 15,000 square feet. (Section 63-250) Reducing parking requirements will significantly reduce development costs for grocery stores in underserved areas that are primarily pedestrian-oriented in character, while ensuring that adequate parking will be provided for larger stores in C8 and M1 districts.

Certain Manufacturing and Commercial districts are excluded from the reduced parking regulations available to FRESH food stores. The excluded districts are located in retail areas that are auto-oriented and where it is appropriate to retain a higher minimum parking requirement for FRESH food stores. The excluded Commercial and Manufacturing districts are located in Manhattan, Community District 12 bounded by Broadway, the Harlem River Shoreline, 201st Street, and 10th

Avenue; in the Bronx, Community District 7 bounded by Broadway, West 225 Street, Landing Road and the Harlem River Shoreline; and in Brooklyn, Community Districts 5, 16 and 17 bounded by Linden Boulevard, Sapphire Avenue, 155 Avenue, Ruby Street, Flatlands Avenue, the prolongation of Schenck Avenue, Belt Parkway, Louisiana Avenue, Stanley Avenue, Van Sinderen Avenue, Long Island Railroad Bay Ridge Line, Albany Avenue, Clarendon Road, Utica Avenue, Tilden Avenue, 59 Street, Snyder Avenue, and Avenue A.

Additionally, in Brooklyn, in portions of Community District 5 located south of Flatlands Avenue and east of the centerline prolongation of Schenck Avenue, a FRESH food store is required to provide only as many accessory off-street parking spaces as are required for other retail uses such as department stores or hardware stores. These boundaries encompass an area targeted for two regional shopping centers - The Shops at Gateway and Gateway Estates II - that have already received special permits that are tied to specific site plans. The minimum parking requirements at these centers were approved to meet expected demand for a destination shopping center and the requirements need not distinguish between a FRESH food store and other types of retail. Customers to those shopping centers would be expected to shop at several stores during visits to the FRESH food store and it is not anticipated that the change of one type of retail to a FRESH food store would generate additional traffic or parking demand. Finally, existing special reduced parking rules are retained in the Special Downtown Jamaica District.

Because the proposal offers special benefits for buildings that include FRESH food stores, the proposed zoning has controls on changes of use, in the event that a certified FRESH food store is not a viable commercial use for a particular site. Change to an alternative use may be pursued under two options:

1. A FRESH food store for which a certification has been issued pursuant to Section 63-30 may be changed to any use permitted by the underlying districts upon certification by the Chairperson of the City Planning Commission that the alternative use complies with all the regulations of the applicable zoning districts. (Section 63-40)
2. Where the proposed change of use would not comply with underlying bulk and off-street parking regulations, the City Planning Commission may authorize modifications to these requirements of the applicable zoning districts, provided that the proposed alternative use itself is permitted by the underlying districts. To grant such authorization, the Commission must find that:
 - (a) due to the prevalent market conditions at the time of the application, there is no reasonable possibility that the continuation of a FRESH food store use will bring a reasonable return;
 - (b) the applicant, the applicant's lessee or a predecessor in lease or ownership of such FRESH food store has not created, or contributed to, such unfavorable market conditions;
 - (c) the proposed change of use will not be incompatible with or adversely affect adjacent uses including uses within the building; and
 - (d) the reduction of required parking spaces shall not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian movement.

In granting authorizations under this Section, the Commission may impose conditions and safeguards, to minimize adverse impacts on the character of the surrounding area. (Section 63-50)

ENVIRONMENTAL REVIEW

This application (N 090412 ZRY) 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 09DCP078Y. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on May 19, 2009.

PUBLIC REVIEW

This application (N 090412 ZRY) was duly referred on May 19, 2008, to all affected Community Boards, Borough Boards and Borough Presidents, in accordance with the procedure for referring non-ULURP matters.

Community Board Review

BRONX

Bronx Community Board 2: On June 24, 2009, Bronx Community Board # 2 considered the application and recommended approval with the following conditions:

- 1) Include a process for community input;
- 2) Guarantee that stores accept EBT/WIC;
- 3) Guarantee that stores provide quality food at fair prices;
- 4) Give oversight to DOHMH to ensure produce is fresh;
- 5) Include a mechanism to provide feedback on program to communities; and
- 6) Connect FRESH program to existing City programs designed to increase access to healthy, fresh food.

Bronx Community Board 4: On June 23, 2009, the Community Board voted unanimously in favor of the proposed text amendment.

BROOKLYN

Brooklyn Community Board 3: In a letter dated July 27, 2009, Community Board 3 recommended approval of the proposed text amendment.

Brooklyn Community Board 5: On June 30, 2009, Community Board 5 considered the application and recommended approval with the following conditions:

- 1) A living wage with health benefits are provided by FRESH food stores;
- 2) At least 25 employees are hired, with the majority of employees being neighborhood residents;
- 3) Electronic Benefit Transactions (EBT) for food stamps and Women, Infant and Children checks are accepted by FRESH food stores;
- 4) No membership fees are charged by FRESH food stores;
- 5) Good, quality food is provided by stores;
- 6) An opportunity for public review of all applications for FRESH food store certification;
and
- 7) A mechanism for monitoring the quality of food and jobs provided by FRESH food stores.

Brooklyn Community Board 8: On September 10, 2009, by a vote of 24 in favor, one opposed and three abstentions, Community Board 8 approved the proposed text amendment.

MANHATTAN

Manhattan Community Board 10: The Community Board 10 Land Use Committee submitted the following comments:

- 1) All Authorizations to modify the maximum height pursuant to Section 63-22 of the proposed text be referred to the affected Community Board;
- 2) Electronic Benefit Transactions (EBT) for food stamps and Women, Infant and Children checks are accepted by FRESH food stores;

- 3) A targeted program should be developed to encourage healthy food offerings by delis and bodegas;

Manhattan Community Board 11: On June 16, 2009, the Community Board voted unanimously to support the proposal with the following conditions:

- 1) A living wage with health benefits is provided by FRESH food stores;
- 2) Preference is given to FRESH food stores that will hire at least 25 employees;
- 3) FRESH food stores participate in a “first source” hiring system to link employers to community residents seeking employment;
- 4) Community Boards are provided with an opportunity to review of all applications for FRESH food store certification;
- 5) Bi-annual or annual reports to monitor for quality of food and jobs are required by FRESH food stores, and all reports shall be posted online;
- 6) Electronic Benefit Transactions (EBT) for food stamps and Women, Infant and Children checks are accepted by FRESH food stores; and
- 7) A “supermarket” definition is used to preclude big box stores or warehouse clubs from participating in the program.

QUEENS

Queens Community Board 8: On June 10, 2009, Community Board 8 considered and recommended to approve with the following conditions:

- 1) Require spaces for deliveries, trash storage, ventilation equipment, and other services and devices located away from nearby residences;
- 2) Establish regulations to minimize the effects of deliveries and trash collection on nearby residences;
- 3) Limit the footprint of the portion of a building designated for food retail activity to no more than the minimum permitted by the amendment;
- 4) Include a penalty for maintaining a FRESH food store for less than a designated period of time; and
- 6) Include a requirement for FRESH food stores to accept food stamps.

Queens Community Board 12: The Community Board 12 Land Use Committee submitted the following comments:

“The newly residential development will result in higher rentals for the type of food store which will drive up the price of its products and prevent low income residents from purchasing food in these newly opening stores.

The plan to give developers additional space . . . will only increase density in the target area and bypass current zoning restrictions. In addition, the cost of rental of space in the buildings will eliminate small businesses from renting space. . . Also, the accompanying traffic and loading area for the grocery stores will create problems.”

Borough President Review

Bronx Borough President: On June 28, 2009, the Bronx Borough President submitted the following recommendations:

- “Saturation threshold: We want to be assured that the CPC Chair Certification process protects against oversaturation.”

- “Annual or biennial review process: We want to be assured that over saturation and actual use of required space are being addressed.”
- “Industrial Areas Protections: We recommend that potential stores of [30,000 square feet] be located within 500 feet of residential or major commercial districts in order to minimize the impact on viable industrial areas.”
- “Local Hiring: Incorporate a minimum local hiring threshold into the program requirements to assure the community has access to these jobs.”
- “Notification: Notify the Borough Presidents and Community Boards of any changes to the program or participant status.”
- “Living Wage: The Borough President is supportive of living wage standards where determined feasible. Studies should be undertaken to analyze market conditions.
- “Benefits: The Borough President supports implementing across-the-board fringe benefits for all employees of supermarkets participating in the FRESH initiative.”

Brooklyn Borough President: In a letter dated July 30, 2009, the Brooklyn Borough President submitted the following comments:

“The proposed text in general supports my initiatives. . . As we move forward, I also want to share a few concerns about the text change and possible unintended consequences. First I recommend that any changes respect existing grocery stores that may be vulnerable since the text does not set forth required distance between stores; next, we strengthen incentives for landlords to not opt out of FRESH Supermarket sites after a brief time. My last and third concern is that we protect against any displacement of blue-collar jobs in manufacturing districts.”

Manhattan Borough President: In a letter dated July 20, 2009 from the Manhattan Borough President supported the application. In summary, the letter further recommended the proposal should include a referral period for Community Board and Borough President review, and that the referral is equally important for stores seeking financial incentives to ensure living wage jobs with benefits. The Manhattan Borough President recommended that as part of the FRESH food stores certification findings, no manufacturing businesses were displaced as part of the certification process and that new stores will not result in any adverse impacts to industrial areas. In addition, the Borough

President recommended that the City should proactively seek sites for FRESH food store development, including City-owned sites.

Queens Borough President: On August 12, 2009, the Queens Borough President submitted the following recommendation:

“ . . . I hereby recommend approval of this application.

The FRESH Program is a multi-agency collaboration designed to provide fresh food choices, health and economic benefits to underserved communities. The program would be further strengthened if the following were also made part of the criteria needed to receive certification as a FRESH food store:

- All provided jobs must meet prevailing wage & benefit contributions on a par with the NYC supermarket industry for full-time and part-time workers;
- Priority should be given to stores that generate more than twenty-five (25) jobs;
- Emphasis on hiring of residents from the immediate communities served;
- Annual reports by the FRESH food store operator providing information necessary to evaluate food quality and employment standards;
- Acceptance of the EBT and WIC programs for payment;
- Big box or warehouse stores should not be qualified as FRESH food stores;
- Displacement of manufacturing jobs should be guarded against.”

City Planning Commission Public Hearing

On July 22, 2009 (Calendar #10), the City Planning Commission scheduled August 5, 2009 for a public hearing on this application (N 090412 ZRY). The hearing was duly held on August 5, 2009 (Calendar No. 25). There were 23 speakers in favor of the application and none opposed.

The Brooklyn Borough President testified in support of the proposal, citing the need for grocery stores in many areas of Brooklyn and the benefit those stores bring. In addition, he recommended a requirement for stores receiving Industrial Development Agency (IDA) benefits to use local

contractors and source local food; accept Electronic Benefit Transactions (EBT/food stamps) and Women Infant and Children (WIC) benefits; and report on wages and benefits paid to employees. The Borough President also emphasized the need for financing to existing grocery stores.

A representative of the Manhattan Borough President testified in support of the proposal. He reiterated the Borough Presidents recommendations from his July 30, 2009 letter in regard to the text amendment.

Several speakers, including the New York City Food Policy Coordinator, a representative from the New York City Department of Health and Mental Hygiene, two speakers representing the Mary Mitchell Family and Youth Center, a representative of the Citizens' Committee for Children, an entrepreneur, and a representative from a Women, Infant and Children's (WIC) vendor management agency highlighted the health benefits of the proposal.

A representative from the Food Industry Alliance (FIA) and Krasdale Wholesale testified in favor of the proposal. They also emphasized the need for a streamlined process. The representative from the FIA also emphasized the need to allow larger stores in M1 districts.

A representative from Western Beef testified in favor of the proposal and emphasized the need to allow larger stores in M1 districts.

A representative of the United Food and Commercial Workers (UFCW) testified in support of the proposal with a number of recommendations. The union recommended that prevailing wage and first source hiring standards are required by participating stores. He also recommended that the proposal incorporate public review in the amendment and a reporting mechanism to ensure quality food and wage standards are being met. The UFCW submitted a list of 29 organizations that endorse the standards outlined in their testimony. A number of speakers also provided testimony in support of these recommendations, including elected officials, WEACT for Environmental Justice, the New York City Coalition against Hunger.

A representative from the Retail, Wholesale and Department Store Union recommended that tax benefits through the FRESH program be contingent on those stores meeting wage, benefit and hiring standards.

In addition to their support for the UFCW recommendations, the speaker representing the New York City Coalition Against Hunger also encouraged the Commission to modify the FRESH program to increase grants or loans to obtain equipment for FRESH food stores, increase technical assistance on promoting bulk quantities of nutritious food, and developing loading zones for more effective deliveries.

A researcher at Columbia University's Mailman School of Public Health testified that their research found individuals living in neighborhoods with high access to healthy food outlets are less likely to be obese than individuals living in neighborhoods without healthy food outlets.

A representative from the New York Academy of Medicine provided testimony in support of FRESH but recommended that the proposal should be modified to offer additional protections to existing grocers, establish a community notification provision incorporating a small grants program, and require stores to accept EBT and WIC benefits.

Three speakers provided testimony that the grocery stores in their neighborhoods sold expired and spoiled food. They recommended that the Commission adopt quality food standards as part of the proposal.

There were no other speakers and the hearing was closed.

Waterfront Revitalization Program Consistency Review

This application was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 08-108. This

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

CONSIDERATION

The Commission believes that the application for the zoning text amendment (N 090412 ZRY), as modified, is appropriate.

The proposed text provides incentives for the creation of additional full-line grocery stores in underserved areas of the Bronx, Brooklyn, Manhattan and Queens. The neighborhoods affected by the proposal are communities suffering from higher levels of diet-related diseases. A correlation between close proximity to grocery stores and a lower body mass index has been established in research on the New York City food environment. The Commission recognizes that barriers to developing grocery stores exist and recognizes the need for land use policy to reduce these barriers. This FRESH food store proposal's zoning incentives would be matched with a package of financial benefits through the New York City Industrial Development Agency, further increasing the potential for development of grocery stores. The FRESH proposal complements existing programs to increase access to fresh foods, improving the health of New Yorkers.

The participating FRESH food stores developed in accordance with the proposed text amendment will provide economic benefits in addition to the stated health benefits. Grocery stores provide many

jobs and serve as retail anchors. The proposed FRESH program will help to revitalize neighborhoods with struggling retail corridors and bring more retail amenities where they are sorely needed.

The Commission believes that the proposed text amendment provides new opportunities to develop grocery stores by providing more floor area for those mixed and mixed use buildings that include FRESH food stores, reducing parking requirements for FRESH food stores and permitting FRESH food stores up to 30,000 square feet in Manufacturing districts. The proposed zoning requirements are carefully crafted to provide incentives for grocery stores and supermarkets selling a full line of grocery products including a healthful selection of fresh fruits and vegetables, dairy, frozen foods, fresh meats and other grocery products. Stores that sell a limited assortment of food products, but not fresh foods, would not qualify for the program, consistent with the proposal's stated goal of increasing access to full-line grocery stores. The certification process for establishing a FRESH food store certification is a less time-consuming and less costly approval process than the authorization or special permit processes, yet it ensures that these stores which provide significant health benefits to neighborhoods, are developed.

The Commission notes that it received written testimony from the Citizens Housing and Planning Council (CHPC) and the Real Estate Board of New York (REBNY) in support of the proposed text amendment with recommendations for modifications. With respect to the provision that allows modification to the maximum building height by CPC Authorization (Section 63-22), CHPC and REBNY recommended eliminating the requirement to provide 8 feet 6 inch finished floor to finished

ceiling heights of residential stories in any mixed building that exceeds the maximum permitted building height in order to achieve consistency with the NYC Building Code and to reduce construction costs. The Commission agrees with this recommendation and is eliminating this requirement to maintain consistency with the NYC Building Code and to reduce costs.

Concerns were raised by the Commission and REBNY that the special glazing rules may be inappropriate for buildings fronting multiple streets and could increase construction costs for subsidized projects. The proposed text amendment required 70 percent glazing of the ground floor street wall with at least 50 percent of transparency of all glazed surfaces. In response to concerns related to the special transparency requirements, the Commission is modifying the proposal to make these requirements more flexible. Under the modification, the Chair may, by certification, allow buildings with frontage along more than one street, to be subject to the glazing requirement only on the street wall facing the principal street. Also by Chair certification, the 70 percent glazing requirement may be reduced to 50 percent in a mixed building that receives public funding, to ensure that public subsidy costs are not unduly increased.

The Commission notes that it also received recommendations to permit increased floor area in commercial developments as well as mixed buildings including a FRESH food store, a further reduction of parking in C8 and M1 districts, and an increase in the permitted size of FRESH food stores to 50,000 or 60,000 square feet in the affected M1 districts of the proposal. These recommendations are beyond the scope of the action as heard by the Commission. Several requests

by the Real Estate Board of New York and the Food Industry Alliance in public testimony are also beyond the scope of the action as heard by the Commission, and are not necessary to achieve the goals of the FRESH food program. Similarly, the request by Citizens Housing and Planning Council to allow modification to the maximum streetwall height in addition to permitting modification of the maximum building height, and to allow those actions as-of-right or by certification, were determined to be out of scope for this proposal.

The United Food and Commercial Workers Union (UFCW), as well as many Community Boards and Borough Presidents urged the CPC to create opportunities for public scrutiny of proposed FRESH food stores. The Commission agrees that such scrutiny should be facilitated and is modifying the proposal to require all applicants seeking certification as a FRESH food store to submit a copy of the application with drawings to the affected Community Board for 45-day review. The Chairperson will not issue a certification for the application until the 45-day review period closes unless the Community Board submits comments before that time.

In response to concerns related to monitoring and enforcement expressed by the Commission and many others in submitted testimony, the Commission is modifying the text amendment to include a new compliance reporting provision. The compliance provision would require submission every three years by the property owner of an affidavit attesting that the certified FRESH food store continues to operate in accordance with a restrictive declaration that was executed and recorded upon

certification. The affidavit must include accompanying photos documenting the condition of the store as further evidence of compliance.

The Commission notes it received testimony that FRESH food stores should be required to abide by job and food quality standards, be subject to local hiring requirements, and participate in the Electronic Benefits Transfer and Women, Infants and Children programs (WIC). The Commission shares the view that providing good jobs is a desirable goal, and that participation in programs which would maximize access to fresh foods by local residents should be encouraged. However, establishing conditions upon the operation of businesses with respect to wages, hiring requirements and similar issues, cannot be accomplished via zoning regulation, which regulates land use.

The Commission received testimony from CHPC recommending that the program should provide for long term review of the FRESH food store program's success in addressing the needs of underserved neighborhoods by "sunsetting" the program at a date certain. The Commission believes that to establish a "sunset" period now would be to assign an arbitrary timeframe since it is not known how quickly the program's effects will be established. In addition, the proposal is not expected to produce dramatic changes resulting in an "oversupply" of FRESH food stores. The Environmental Assessment Statement anticipates the creation of 15 FRESH food stores in the broad area covered by the program over a 10- year period. The Commission has modified the proposed text amendment to incorporate a compliance reporting mechanism. This provision provides the public with an

opportunity to follow activity related to the FRESH program and to evaluate the need for any follow-up actions in the future.

The Commission also received testimony from REBNY recommending reducing or eliminating the requirement to designate 30 percent of the selling area of certified FRESH food stores for the sale of perishable food products at a certain minimum store size at approximately 20,000 square feet. The Commission believes this requirement is essential to the stated goal of FRESH, which is to increase the number of full-line grocery stores and thereby provide the most health benefits to a community. If it were to reduce the floor area requirement for perishable goods, the Commission believes that variety stores, drug stores and other types of retailers that sell a limited assortment of frozen foods and dairy, but which are distinctly different from full-line grocery stores, could inappropriately receive incentives contrary to the Commission's intent.

The Commission further notes it received testimony suggesting the need for more analysis on the effects of the M1 provision on manufacturing businesses and Industrial Business Zones from the Manhattan, Brooklyn and Bronx Borough Presidents. Written testimony was also received from the Pratt Center for Community Development and the New York Industrial Retention Network (NYIRN), recommending that a more targeted strategy be implemented in the M1 districts within the FRESH food store program areas. They cited a number of concerns related to permitting FRESH food stores up to 30,000 square feet in size in M1 districts, including:

1. There is a shortage of manufacturing space, particularly in the Industrial Business Zones (IBZ), and allowing larger stores in M1 districts will result in direct displacement of manufacturers;
2. FRESH is not “targeted in a geographic sense” and easing supermarket development in M-zones will fuel speculation leading to indirect displacement of manufacturing firms;
3. More supermarkets in M Zones will lead to new retail clusters in manufacturing areas;
4. New retail clusters in manufacturing areas will lead to loss of retailers along existing commercial corridors;
5. Most of the population in need of grocery stores does not live within an easy walking distance of an M1 district;
6. New stores developed in M1 districts will be auto-dependent stores;
7. Subsidizing both grocery stores and manufacturing firms in M Zones creates a conflicting economic development strategy; and
8. FRESH is “overly broad” and will result in few stores in the affected M1 districts, yet the resulting real estate speculation will “destabilize” the M Zones.

The Commission believes the proposed text amendment with respect to the M1 provision to permit larger stores and reduce parking is appropriate.

The M1 areas affected by the proposed text amendment are home to over 50,000 New Yorkers, and more than one million additional New Yorkers live within a quarter mile, a comfortable walking

distance, of these areas. The proposal is particularly important for meeting the needs of low-income New Yorkers. Over 40 percent of all New York City Housing Authority housing units are located within a quarter mile of an affected M1 district. These households are less likely to have access to an automobile to go grocery shopping and least able to afford the cost of transportation to and from grocery stores. The suggestion by the Bronx Borough President to restrict FRESH food stores in M1 districts to areas within 500 feet of districts that permit residential uses does not reflect a comfortable walking distance. A distance of 500 feet is shorter than the length of a typical New York City Block. Most New Yorkers walk a distance considerably longer than this to arrive at the nearest grocery store and the effects of this provision would exclude FRESH food development in portions of manufacturing districts in walking distance from dense neighborhoods.

In addition, retail businesses, including grocery stores, are already part of the fabric of light manufacturing districts. Grocery stores are currently permitted up to 10,000 square feet of floor area in size in these districts, with larger stores permitted by City Planning Commission special permit. A total of 48 grocery stores already exist in M1 districts citywide, 16 of which are located within an Industrial Business Zone (IBZ). In recent proposals, modified rules for grocery stores were adopted to permit food stores unrestricted in size in the M1 districts as part of the Special Downtown Jamaica District, Special Long Island City District, and Special Hunts Point District. In a text amendment that accompanied the recent Lower Concourse rezoning, rules for food stores were modified to permit them up to 30,000 square feet in size in all M1-4 districts in Community District 1 of the Bronx. The 30,000 square feet size threshold was recommended and endorsed by NYIRN.

The Commission believes that the proposal as it affects M1 districts within an IBZ is appropriate. Businesses that relocate to an IBZ may be eligible for tax incentives. In addition, the Bloomberg Administration has stated its intent not to rezone the IBZs for residential use. As previously described, there are currently 16 grocery stores located in the City's Industrial Business Zones. The Department of City Planning examined two of these stores – a store in the Northern Brooklyn IBZ and a store in the Steinway IBZ in Queens – and neither store has worked to the detriment of existing manufacturing and industrial firms nor to the detriment of existing nearby local retail streets. The modified rules have not changed the fundamental character of the manufacturing districts by creating new retail clusters or destabilizing the industrial base. The areas affected by the amendment represent a small portion of the City's IBZs, capturing slightly more than seven percent of the total area of these zones within the City. These areas are mixed in character, located adjacent to dense neighborhoods, and have substantial land capacity for new businesses of all types including FRESH food stores. In the Bronx IBZs affected by the proposal, approximately 16 percent of the total lot area is vacant, used for open salvage yards or used for parking. In the Brooklyn IBZs affected by the proposal, approximately 22 percent of the total lot area is vacant, used for open salvage yards or used for parking.

Approximately 55 percent of all buildings found in these IBZs were built prior to 1940. Much of this building stock is obsolete for today's manufacturing needs. Fresh food stores offer additional opportunities for adaptive reuse of this outdated stock where buildings are vacant or underutilized. In

addition, recently built buildings house a variety of commercial and industrial establishments. The uses for nearly 50 percent of the total lot area with new construction permits issued since 1999 in M1 districts in which the FRESH program is applicable are for storage, auto related and other non-manufacturing industrial uses. These uses, particularly warehousing and storage, representing approximately 34 percent of the total lot area where new construction permits were issued, are not job-intensive uses. Permits for new retail outlets account for 8 percent of the total lot area with new constructions, whereas permits for new manufacturing facilities only account for 7 percent of the total lot area.

Grocery stores will bring benefits to area workers as much as they will benefit area residents as nearby retail amenities are often a positive factor in business location decisions. The Commission believes that the proposal does not prioritize the needs of grocers over the needs of manufacturers and that the proposal strikes a balance in its efforts to maintain the health of the economy and the health of New Yorkers.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; 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 Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Article VI
Special Regulations Applicable to Certain Areas

* * *

Chapter 3
Special Regulations Applying to FRESH Food Stores

63-00
GENERAL PURPOSES

The provisions of this Chapter establish special regulations that guide the development of FRESH food stores to promote and protect public health, safety and general welfare. These general goals include, among others, the following purposes:

- (a) encourage a healthy lifestyle by facilitating the development of FRESH food stores that sell a healthy selection of food products;
- (b) provide greater incentives for FRESH food stores to locate in neighborhoods underserved by such establishments;
- (c) encourage FRESH food stores to locate in locations that are easily accessible to nearby residents; and
- (d) strengthen the economic base of the City, conserve the value of land and buildings, and

protect the City's tax revenues.

63-01

Definitions

FRESH food store

A "FRESH food store" is a food store #use# as listed in Section 32-15 (Use Group 6), where at least 6,000 square feet of #floor area#, or #cellar# space utilized for retailing, is utilized for the sale of a general line of food and non-food grocery products, such as dairy, canned and frozen foods, fresh fruits and vegetables, fresh and prepared meats, fish and poultry, intended for home preparation, consumption and utilization. Such retail space utilized for the sale of a general line of food and non-food grocery products shall be distributed as follows:

- (c) at least 3,000 square feet or 50 percent of such retail space, whichever is greater, shall be utilized for the sale of a general line of food products intended for home preparation, consumption and utilization; and
- (d) at least 2,000 square feet or 30 percent of such retail space, whichever is greater, shall be utilized for the sale of perishable goods that shall include dairy, fresh produce, and frozen foods and may include fresh meats, poultry and fish, of which at least 500 square feet of such retail space shall be designated for the sale of fresh produce.

A food store shall be certified as a #FRESH food store# by the Chairperson of the City Planning Commission, pursuant to Section 63-30 (CERTIFICATION FOR FRESH FOOD STORE).

63-02

Applicability

- (a) The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.
- (b) The provisions of this Chapter shall apply to all #Commercial# and #Manufacturing Districts# in the following #FRESH food store# designated areas, except as provided in paragraph (c) of this Section:
 - (1) In the Borough of the Bronx, Community Districts 1, 2, 3, 4, 5, 6 and 7 except portions of Community District 7, as shown on Map 1 in Appendix A of this Chapter;

- (2) In the Borough of Brooklyn, Community Districts 3, 4, 5, 8, 9, 16 and 17 except portions of Community District 8, as shown on Map 2 in Appendix A;
 - (3) In the Borough of Manhattan, Community Districts 9, 10, 11 and 12 except portions of Community District 9 and 12, as shown on Maps 3 and 4 in Appendix A; and
 - (4) In the Borough of Queens, the #Special Downtown Jamaica District#.
- (c) The provisions of this Chapter shall not apply to the following Special Purpose Districts:
- #Special Madison Avenue Preservation District#;
 - #Special Manhattanville Mixed Use District#;
 - #Special Park Improvement District#; and
 - #Special Hunts Point District#.

**63-10
SPECIAL USE REGULATIONS**

**63-11
Special Use Regulations for FRESH Food Stores in M1 Districts**

In M1 Districts, the regulations of Section 42-12 (Use Groups 3A, 6A, 6B, 6D, 6F, 7B, 7C, 7D, 7E, 8, 9B, 9C, 10A, 10B, 10C, 11, 12A, 12C, 12D, 12E, 13, 14 and 16) are modified to permit #FRESH food stores# with up to 30,000 square feet of #floor area#. The provisions of this Section shall not apply where the regulations of the underlying district permit Use Group 6A food stores with #floor area# greater than 30,000 square feet.

**63-12
Special Sign Regulations**

All permitted #signs# shall be subject to the provisions of the #sign# regulations of the underlying districts. In addition, a #FRESH food store# shall provide signage pursuant to this Section.

A #sign# comprised of the #FRESH food store# graphic as shown on the Department of City Planning website (www.nyc.gov) shall be mounted on an exterior #building# wall adjacent to and no more than five feet from the principal entrance of the #FRESH food store#. The #sign# shall be placed so that it is directly visible, without any obstruction, to customers entering the #FRESH food store#, and at a height no less than three feet and no more than five feet above the adjoining grade. Such #FRESH food store# graphic shall be no less than 12 inches by 12 inches

and no more than 16 inches by 16 inches in size and shall be fully opaque, non reflective and constructed of permanent, highly durable materials.

63-20

SPECIAL BULK AND PARKING REGULATIONS

63-21

Special Floor Area Regulations

63-211

For mixed buildings in Commercial Districts containing FRESH food stores

The provisions of Section 35-31 (Maximum Floor Area Ratio for Mixed Buildings) relating to the maximum permitted #floor area ratio# for each permitted #use# shall apply, and the provisions relating to the total of all such #floor area ratios# shall be modified in accordance with the provisions of this Section. Where all non-#residential uses# in such #mixed building# have a permitted #floor area ratio# equal to or less than that permitted for a #residential use#, the total #floor area# permitted for such #mixed building# may be increased by one square foot for each square foot of #FRESH food store floor area#, up to 20,000 square feet.

63-212

For mixed use buildings in Special Mixed Use Districts containing FRESH food stores

The provisions of Section 123-64 (Maximum Floor Area Ratio and Lot Coverage Requirements For Mixed Use Buildings) relating to the maximum permitted #floor area ratio# for each permitted #use# shall apply, and the provisions relating to the total of all such #floor area ratios# shall be modified in accordance with the provisions of this Section. Where all non-#residential uses# in such #mixed use building# have a permitted #floor area ratio# equal to or less than that permitted for a #residential use#, the total #floor area# permitted for such #mixed use building# may be increased by one square foot for each square foot of #FRESH food store floor area#, up to 20,000 square feet.

63-22

Authorization to Modify Maximum Building Height

For #mixed buildings# or #mixed use buildings# containing a #FRESH food store#, the City Planning Commission may authorize modifications to Sections 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts) and 123-66 (Height and Setback Regulations) to allow the applicable maximum building height to be increased by up to 15 feet, provided that the first #story# occupied by a #FRESH food store# has a minimum finished floor to finished ceiling height of 14 feet, and provided that such finished ceiling height is at least 14 feet above the #base plane# or #curb level#, as applicable.

In order to grant such authorizations, the Commission shall find that:

- (a) such modifications are necessary to accommodate a first #story# utilized as a #FRESH food store#;
- (b) the proposed modifications shall not adversely affect the essential scale and character of the adjacent buildings and any adjacent historic resources; and
- (c) the proposed modifications will not unduly obstruct access to light and air of adjacent properties.

The Commission may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

63-23

Special Transparency Requirements

For all #FRESH food stores#, the ground floor level of the #street wall# fronting upon a principal #street# shall be glazed with materials which may include show windows, glazed transoms or glazed portions of doors. Such glazing shall occupy at least 70 percent of the area of such ground floor level #street wall#, measured to a height of 10 feet above the level of the adjoining sidewalk. No less than 50 percent of the area of such ground floor level #street wall# shall be glazed with transparent materials and up to 20 percent of such area may be glazed with translucent materials.

Furthermore, for #buildings# with frontage on two or more #streets#, the Chairperson of the City Planning Commission may certify that the glazing requirements of this Section shall only be applicable to the #street wall# fronting upon the principal #street#, as determined by the Chairperson.

In addition, the Chairperson of the City Planning Commission may, by certification, allow a reduction in the glazing requirements of this Section, provided that the Chairperson finds that such #mixed building# or #mixed use building# is a recipient of #public funding# as defined in Section 23-911 (General Definitions). Such reduced glazing may occupy no less than 50 percent of the area of such ground floor level #street wall# and shall be glazed with transparent materials.

63-24

Security Gates

All security gates installed between the #street wall# and the #street line# (after effective date of amendment), that are swung, drawn or lowered to secure #FRESH food store# premises shall, when closed, permit visibility of at least 75 percent of the area covered by such gate when viewed from the #street#.

63-25

Required Accessory Off-street Parking Spaces in Certain Districts

- (a) In C1-1, C1-2, C1-3, C2-1, C2-2, C2-3, and C4-3 Districts, the #accessory# off-street parking regulations in Section 36-20 (REQUIRED ACCESSORY OFF-STREET PARKING SPACES FOR COMMERCIAL OR COMMUNITY FACILITY USES) applicable to a C1-4 District shall apply to any #FRESH food store#.
- (b) In the Borough of Brooklyn, in those portions of Community District 5 located south of Flatlands Avenue and east of the centerline prolongation of Schenck Avenue, a #FRESH food store# shall provide #accessory# off-#street# parking spaces as required for #uses# in parking category B in the applicable #Commercial# and #Manufacturing Districts#.
- (c) In C8-1, C8-2, M1-1, M1-2, and M1-3 Districts, a #FRESH food store# shall provide one parking space per 1,000 square feet of #floor area# or #cellar# space utilized for retailing, up to a maximum of 15,000 square feet. The underlying off-street parking regulations in Sections 36-20 or 44-20 shall apply to the #floor area# or #cellar# space, in excess of 15,000 square feet, utilized for retailing in such #FRESH food store#.
- (d) The provisions of this Section shall not apply to:
 - (1) In the Borough of the Bronx, portions of Community District 7 and in the Borough of Manhattan, portions of Community District 12, as shown on Map 1 in Appendix B of this Chapter;
 - (2) In the Borough of Brooklyn, portions of Community District 5, as shown on Map 2 in Appendix B;
 - (3) In the Borough of Brooklyn, portions of Community Districts 16 and 17, as shown on Map 3 in Appendix B; and
 - (4) In the Borough of Queens, the #Special Downtown Jamaica District#.

63-30

CERTIFICATION FOR A FRESH FOOD STORE

Upon application, the Chairperson of the City Planning Commission shall certify that a food store #use# is a #FRESH food store#, provided that:

- (a) drawings have been submitted to the Chairperson that clearly specify:
 - (1) all #floor area# or #cellar# space utilized as a #FRESH food store#, showing in the form of an illustrative layout, that such designated space is designed and arranged to meet the requirements for food and non-food grocery products, pursuant to Section 63-01;
 - (2) all #floor area# that will result from any permitted increase in #floor area#, pursuant to Section 63-21, including the location of such #floor area#;
 - (3) the size, format and location of the required #sign#, pursuant to Section 63-12, including detailed information about dimensions of the #sign#, lettering, color and materials;
 - (4) the location of the ground floor level #street wall# fronting upon a principal #street#, pursuant to Section 63-23;
- (b) a signed lease or written commitment from the prospective operator of the #FRESH food store# has been provided in a form acceptable to the Chairperson for utilization of such #floor area# or #cellar# space and its operation as a #FRESH food store#; and
- (c) a legal commitment, in the form of a declaration of restrictions has been executed, in a form acceptable to the Department of City Planning, binding upon the owner and its successor and assigns, and providing for continued utilization of all #floor area# or #cellar# space as a #FRESH food store#, the operation of which shall commence within a reasonable period following the issuance of a temporary certificate of occupancy for the #floor area# or #cellar# space to be utilized by the #FRESH food store#.

Such declaration of restrictions shall provide that the legal commitment for continued occupancy of the #floor area# or #cellar space# as a #FRESH food store# shall not apply during any:

- (1) six (6) month period from the date such #floor area# or #cellar# space is vacated by the operator, provided that the owner timely notifies the Department of City Planning of such vacancy in accordance with the requirements of the restrictive declaration; or

(2) event of force majeure, as determined by the Chairperson.

The filing and recordation of the declaration of restrictions in the Office of the City Register of the City of New York against all tax lots comprising the #FRESH food store#, and receipt of proof of recordation of such declaration in a form acceptable to the Department, shall be a precondition to the issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# under this Chapter.

In granting the certification, the Chairperson may specify that minor changes in store layout consistent with the definition of a #FRESH food store# in Section 63-01 shall not warrant further certification pursuant to this Section.

No later than the date on which an application for certification pursuant to this Section is first submitted, a copy of the drawings submitted pursuant to paragraph (a) of this Section shall be submitted by the applicant to the affected Community Board, which shall have 45 days to review said application. The Chairperson shall not issue a certification for an application during the Community Board review period, unless the Community Board has submitted to the Chairperson comments regarding such proposal or informs the Chairperson that the Community Board has no comments.

63-31 Requirements for Certificate of Occupancy

No certificate of occupancy shall be issued for any portion of the #development# or #enlargement# identified in the drawings submitted pursuant to paragraph (a) (2) of Section 63-30 until a temporary certificate of occupancy has been issued for the #FRESH food store# space. No final certificate of occupancy shall be issued for any such portion of the #development# or #enlargement# identified in such drawings until the #FRESH food store# space has been completed in accordance with the drawings submitted pursuant to paragraph (a) (1) of Section 63-30 and a final certificate of occupancy has been issued for the #FRESH food store# space. The declaration of restrictions shall be noted on any temporary or final certificate of occupancy for the #building#.

63-40 CERTIFICATION FOR CHANGE OF USE OF A FRESH FOOD STORE

A #FRESH food store# for which a certification has been issued pursuant to Section 63-30 may be changed to any #use# permitted by the underlying district upon certification by the Chairperson of the City Planning Commission that such change of #use# would not create a new #non-compliance#, increase the degree of #non-compliance# of #buildings# on the #zoning lot#,

or result in reduction in the number of required #accessory# off-street parking spaces under the applicable district regulations.

If a certification pursuant to this Section is granted, a notice of cancellation, in a form acceptable to the Department of City Planning, of the declaration of restrictions recorded pursuant to Section 63-30 shall be executed and recorded in the Office of the City Register of the City of New York against all tax lots comprising the former #FRESH food store#.

63-50

AUTHORIZATION FOR BULK AND PARKING MODIFICATIONS

The City Planning Commission may, by authorization, permit modifications to the #bulk# and #accessory# off-street parking requirements of the applicable zoning districts, when a change of #use# of a #FRESH food store# for which a certification has been issued pursuant to Section 63-30, would create a new #non-compliance#, increase the degree of #non-compliance# of #buildings# on the #zoning lot#, or result in reduction in the number of required #accessory# off-street parking spaces under the applicable district regulations, provided that such #use# is permitted by the underlying districts.

In order to grant such authorization, the Commission shall find that:

- (e) due to the market conditions prevalent at the time of the application, there is no reasonable possibility that the operation of a #FRESH food store# will bring a reasonable return;
- (f) the applicant, the operator or a prior operator of such #FRESH food store# has not created, or contributed to, such unfavorable market conditions;
- (g) the applicant, the operator or a prior operator of such #FRESH food store# has undertaken commercially reasonable efforts to secure a new operator, and demonstrates to the City Planning Commission that such efforts have been unsuccessful;
- (h) any proposed #non-compliance# or increase in the degree of #non-compliance# will not be incompatible with or adversely affect adjacent #uses# including #uses# within the building; and
- (i) any reduction of required #accessory# off-street parking shall not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian movement.

If such authorization is granted, a notice of cancellation, in a form acceptable to the Department of City Planning, of the declaration of restrictions recorded pursuant to Section 63-30, shall be executed and recorded in the Office of the City Register of the City of New York against all tax

lots comprising the former #FRESH food store#.

In issuing authorizations under this Section, the Commission may impose conditions and safeguards, to minimize adverse impacts on the character of the surrounding area.

63-60 COMPLIANCE

No later than June 30 of the year, beginning in the first calendar year following the calendar year in which certification was made and at three year intervals thereafter, the Chairperson shall be provided with an affidavit, in a form acceptable to the Department of City Planning, regarding compliance with the requirements of the declaration of restrictions and the regulations of this Chapter, as of a date of inspection which shall be no earlier than June 1st of the year in which the affidavit is filed. Such affidavit shall be provided by the owner(s) of the tax lot(s) on which the #FRESH food store# is located. Such affidavit shall include, without limitation.

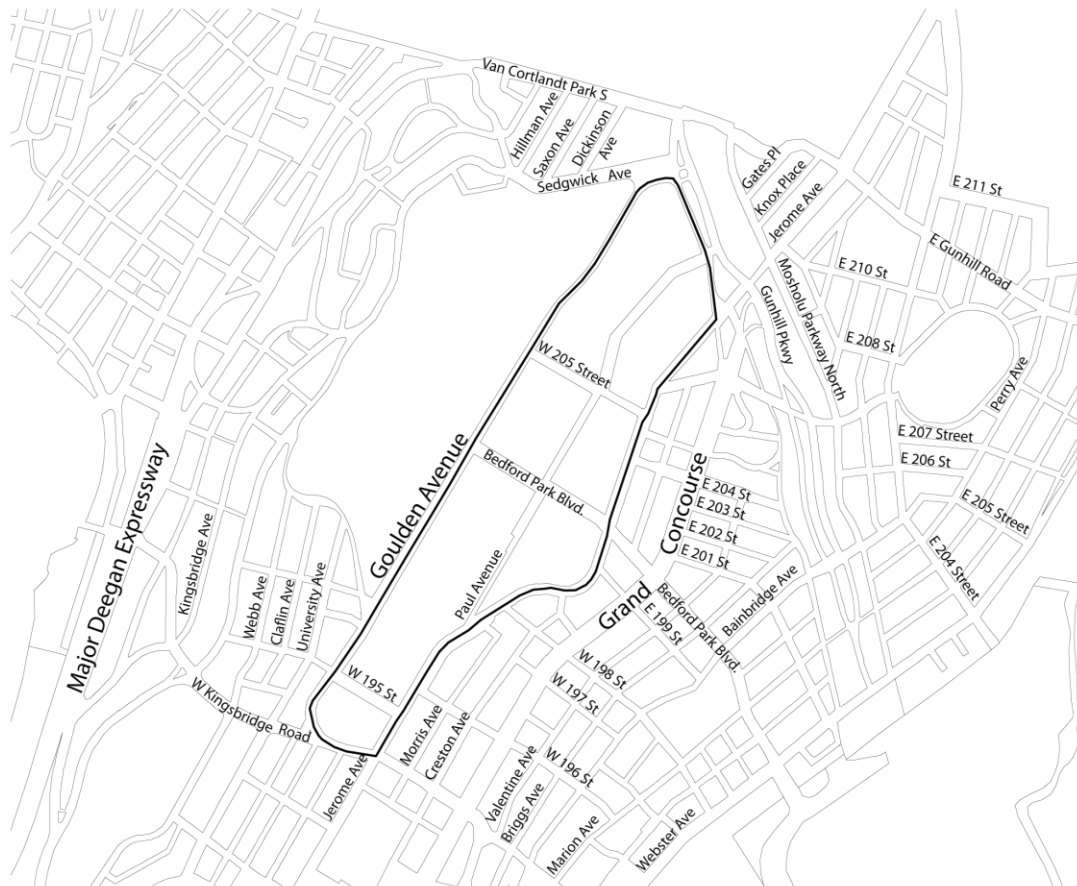
- (a) A copy of the original #FRESH food store# certification letter and if applicable, any approval letter pertaining to any other authorization or certification pursuant to this Chapter;
- (b) A statement that the #floor area# or #cellar# space that was certified to be operated as a #FRESH food store# continues to be operated as such in accordance with the declaration of restrictions; and
- (c) Photographs documenting the condition of the #FRESH food store# at the time of inspection, sufficient to clearly show all #floor area# or #cellar# space operated as a #FRESH food store#.

Failure to comply with a condition or restriction in an authorization or certification granted pursuant this Chapter or with approved plans related thereto, or failure to submit a required compliance report, shall constitute a violation of this Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy, or for a revocation or such authorization or certification, and for all other applicable remedies.

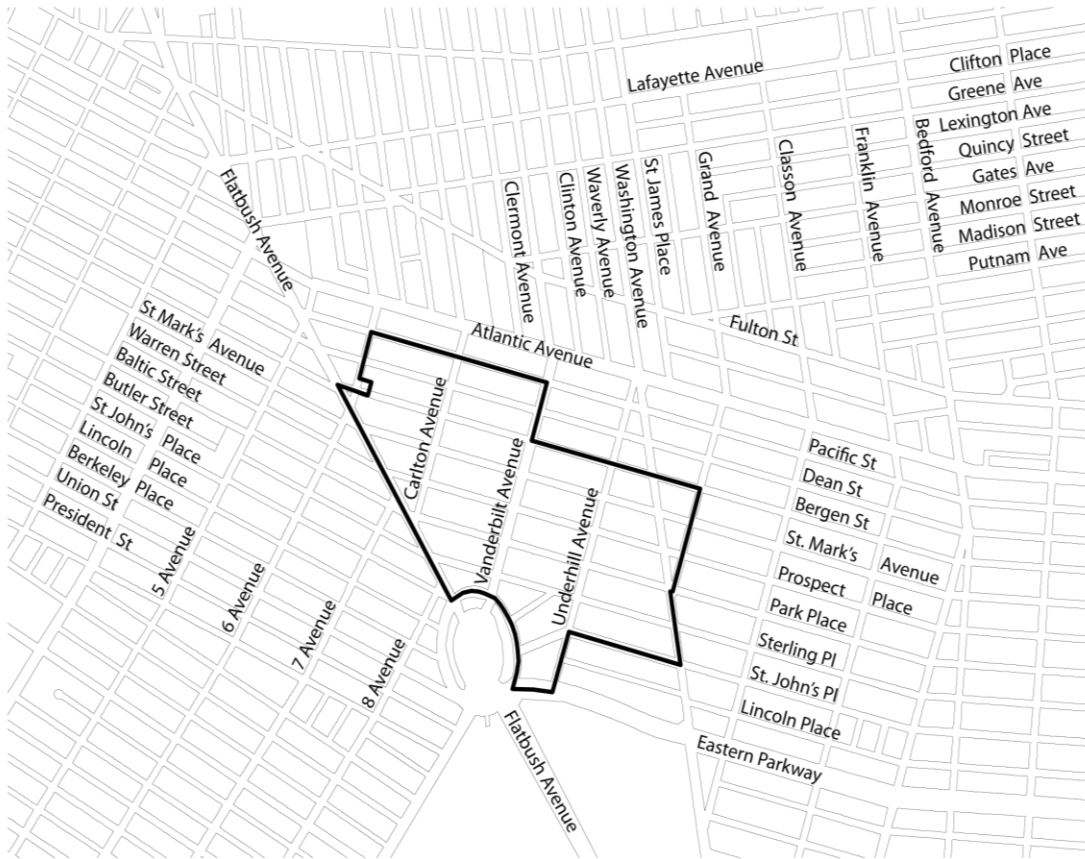
APPENDIX A
FRESH FOOD STORE DESIGNATED AREAS: EXCLUDED PORTIONS

The #FRESH food store# designated areas are listed by community district and borough in Section 63-02 (Applicability) of this Chapter. Excluded portions of community districts are shown on the following maps.

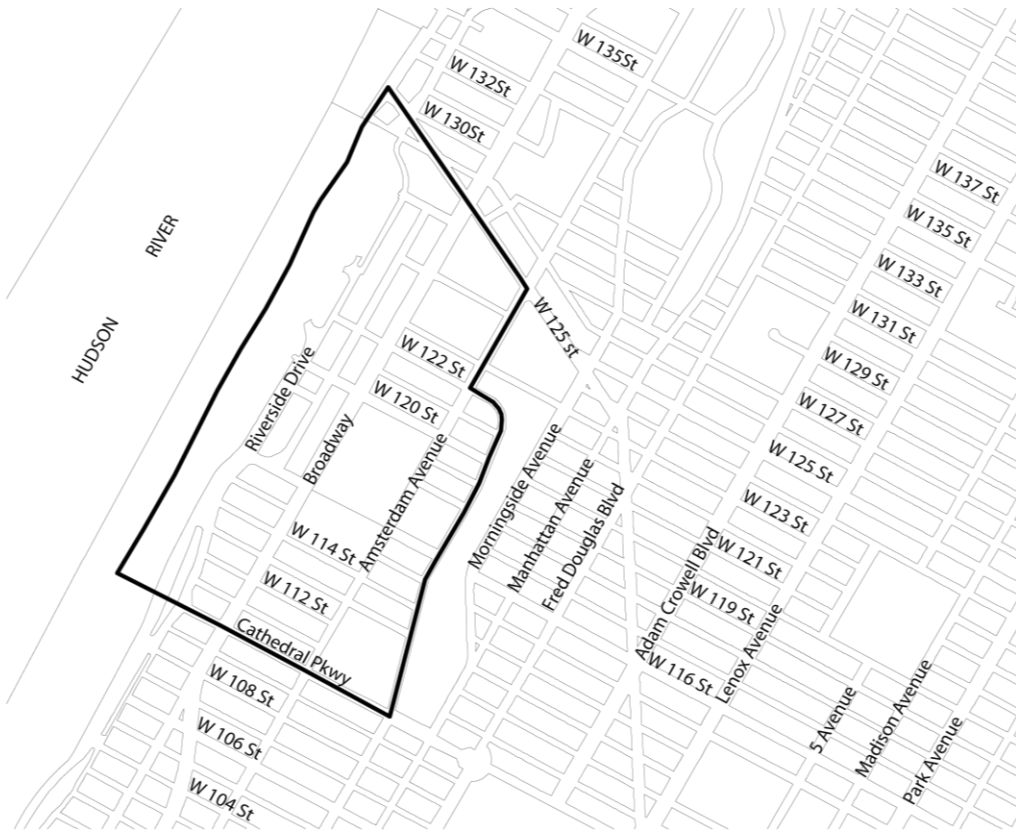
Map 1. Excluded Portions of Community District 7, Bronx



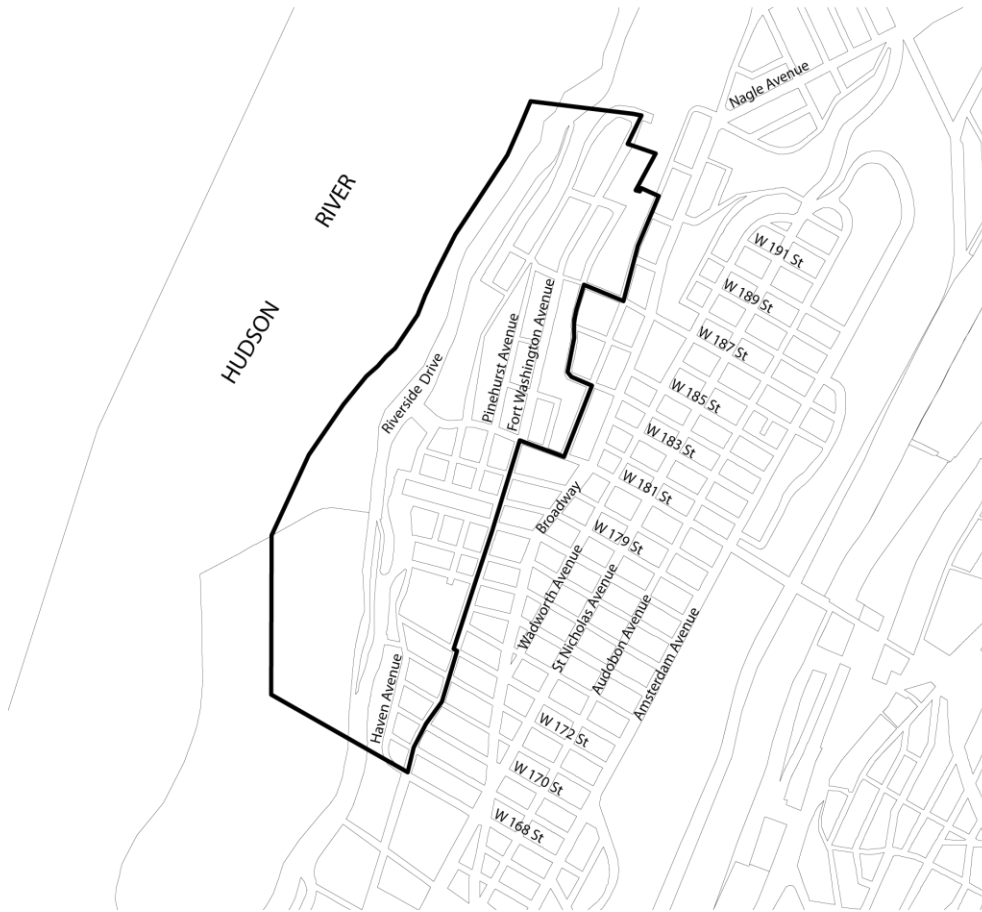
Map 2. Excluded Portions of Community District 8, Brooklyn



Map 3. Excluded Portions of Community District 9, Manhattan

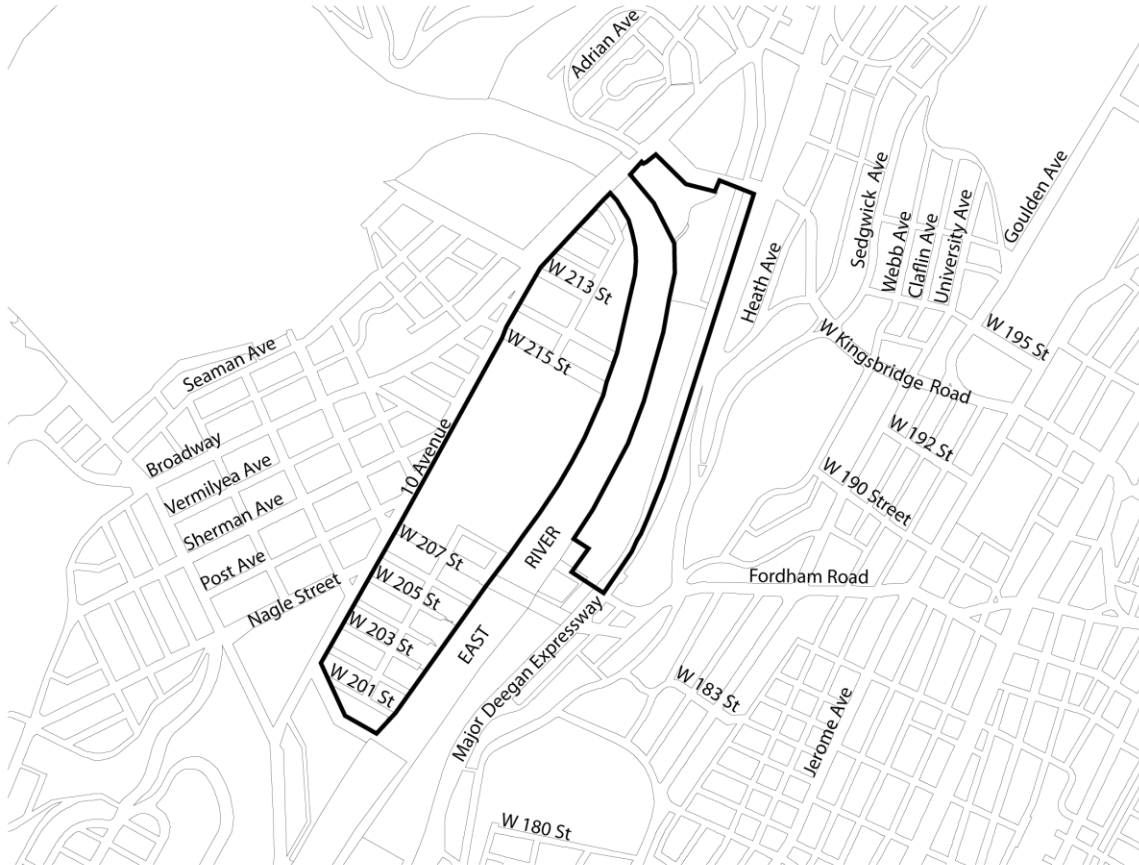


Map 4. Excluded Portions of Community District 12, Manhattan



APPENDIX B
REQUIRED OFF-STREET ACCESSORY PARKING EXCEPTIONS

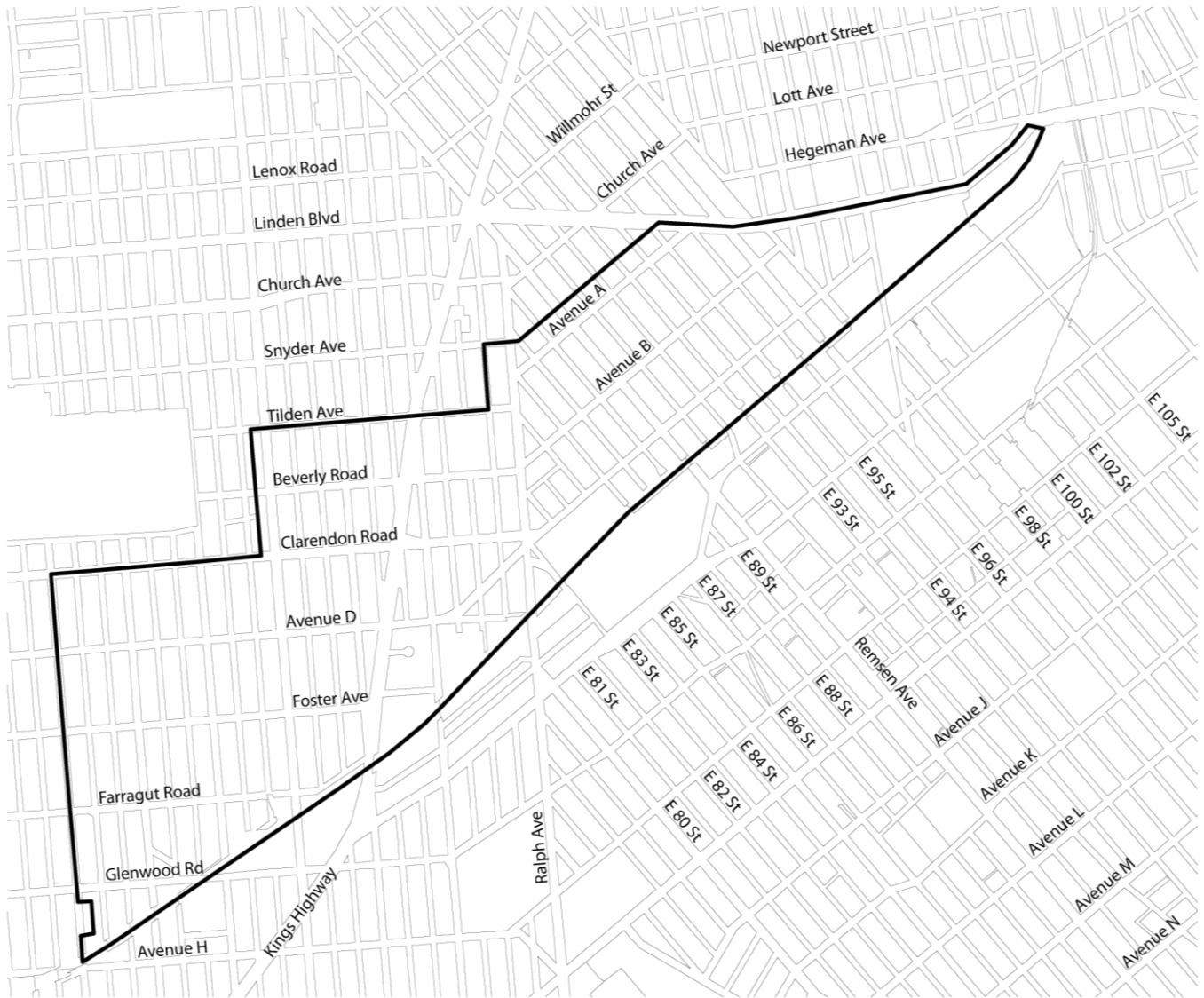
Map 1. Excluded portions of Community District 12, Manhattan
and portion of Community District 7, Bronx



Map 2. Excluded portions of Community District 5, Brooklyn



Map 3. Excluded portions of Community Districts 16 and 17, Brooklyn



* * *

The above resolution (N 090412 ZRY), duly adopted by the City Planning Commission on September 23, 2009 (Calendar No. 9), 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, FAICP, Chair

KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,

ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,

RICHARD W. EADDY, NATHAN LEVENTHAL, SHIRLEY A. McRAE,

KAREN A. PHILLIPS Commissioners

ANNA HAYES LEVIN, Commissioner, Abstaining