



CITY PLANNING COMMISSION

July 2, 2008/Calendar No. 22

N 050402 ZRM

IN THE MATTER OF an application submitted by Leader House Associates, pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York concerning Article VII, Chapter 8 (Special Regulations Applying to Large-Scale Residential Developments), relating to ownership provisions within the former West Side Urban Renewal Area, Community District 7, Borough of Manhattan.

This application to amend the ownership provisions of Section 78-06 of the Zoning Resolution was filed by Leader House Associates on April 1, 2005. The amendments would facilitate the enlargement of Leader House, an existing, 29-story mixed-use building located at 100 West 93rd Street (at Columbus Avenue), in Manhattan Community District 7.

RELATED ACTIONS

In addition to the application for amendments of the Zoning Resolution which is the subject of this report (N 050402 ZRM), implementation of the proposed enlargement also requires action by the City Planning Commission on the following non-ULURP application which is being considered concurrently with this application:

M 920493(C) ZAM: A modification of a previously approved authorization of a Large Scale Residential Development (LSRD) in the former West Side Urban Renewal Area (WSURA) in order to reflect the addition of approximately 17,870 square feet of floor area on the ground floor and approximately 16,272 square feet of community facility floor area on portions of the ground floor and second floor of Leader House (Site 20 of the LSRD).

BACKGROUND

The WSURA was enacted in 1962 and covered a 20 block area from West 87th Street to West 97th Street, from Amsterdam Avenue to Central Park West. Within the WSURA, 37 redevelopment sites, mostly located along Amsterdam and Columbus Avenues, were included in a LSRD plan (approved by the City Planning Commission in 1963) which set total allowable floor area for residential, commercial, and community facility uses, as well as minimum open

space requirements for individual sites and the LSRD as a whole. Combined, the WSURA and the LSRD constituted the public policy for the rehabilitation and redevelopment of this area of the Upper West Side from 1962 to 2002, when the WSURA plan expired.

Although the WSURA has expired, the LSRD continues to control the floor area limits and minimum open space requirements for each of the sites within the LSRD's boundaries. For many sites, the floor area allowed under the LSRD is less than what would be allowed by underlying zoning district regulations, particularly with regard to commercial and community facility development. The controls of the expired urban renewal plan, along with the LSRD limitations have resulted in a densely populated residential neighborhood with large amounts of private open space and relatively little commercial space. The retail space that does exist is mostly set back from street lines and interspersed along Amsterdam and Columbus Avenues so that continuous retail frontages generally do not exist. Additionally, many of the buildings developed under the LSRD regulations were designed as towers set back from street lines. The Leader House, for example, is set back 22 feet from its east street line along Columbus Avenue, and approximately 40 feet from its north and south street lines, along West 92nd and West 93rd streets, with minimal fenestration.

The mid-block portions of the former WSURA are generally not located within the LSRD and are mostly characterized by rehabilitated three to five story walk-up brownstones and educational facilities. Large residential apartment buildings, mostly 10-20 stories in height, line Central Park West. The neighborhood's commercial "center" is located along Broadway, two avenues to the west of Leader House.

Section 78-06 (Ownership provisions for LSRDs)

Under Section 78-06 of the Zoning Resolution, the City's urban renewal agency (HPD) or its authorized designee, may make application for and be granted authorizations or special permits under Article VII, Chapter 8 (Special Regulations Applying to Large Scale Residential Developments), for a tract of land which is part or all of an Urban Renewal Area, without regard to the general ownership provisions of Section 78-06. Those provisions require that the tract of

land which is the subject of the application be under the control of the applicant(s) as owner(s) or holder(s) of a written option to purchase.

Consistent with these provisions, HPD or its authorized designee may also apply for and be granted modifications to previously granted authorizations or special permits for a LSRD. The purpose of these special provisions relating to the urban renewal agency is to facilitate the use of the LSRD authorizations and special permits to further the implementation of urban renewal plans and their associated acquisitions and dispositions of real property. When an urban renewal plan expires, however, HPD may no longer act in such a capacity and the ability of any one individual property owner to modify LSRD authorizations and special permits becomes problematic due to the ownership requirements stated above.

In 2003, an amendment to Section 78-06 of the Zoning Resolution (N 030404 ZRM) was approved to allow owners of vacant sites within the LSRD to make an application to modify the LSRD without meeting the ownership requirements of Section 78-06 provided that the modification (1) did not seek the distribution of floor area from any zoning lot not included within the subject parcel and (2) did not increase the total allowable floor area on any zoning lot included within the parcel(s) beyond that permitted by the underlying district regulations. The text also limited such applications to sites within the expired urban renewal areas listed in Section 78-06. The WSURA was the only former urban renewal area listed at that time. As a result of a simultaneous modification to the LSRD (pursuant to the proposed text amendment), Site 33 of the WSURA was removed from the LSRD and a new community facility use for Ballet Hispanico and the Steven Gaynor School was developed pursuant to underlying zoning district regulations. However, the 2003 text amendment did not apply to LSRD sites with existing developments, such as in the case of the Leader House.

Proposed Text Amendment

The proposed text amendment to Section 78-06 of the Zoning Resolution filed by Leader House Associates would allow individual property owners of developed parcels within a LSRD located in an expired urban renewal area listed in Section 78-06, where at least 50% of such site is located within a C1-9 or C2-8 district, to make an application to modify the previously-approved

LSRD. The text amendment would limit proposed modifications to the utilization of floor area permitted by the underlying zoning district regulations, however, such floor area could only be used for commercial or community facility uses. As with the 2003 text amendment to Section 78-06, the proposed text would only apply to the former WSURA in Manhattan Community District 7. According to the environmental assessment statement (EAS) prepared for this application, approximately 20 sites within the LSRD, including Leader House, could potentially utilize the proposed text amendment based on this criteria.

Additionally, the proposed text amendment would include several conditions and findings related to proposed modifications to the LSRD which request to increase the commercial or community facility floor area on a particular site. These include: 1) the use associated with existing floor area within a building on a particular site cannot be changed, except on the ground floor; 2) proposed community facility use cannot be located above the second story; 3) significant impacts from development, in combination with other developments which have utilized the provision of this proposed text amendment, are mitigated to the maximum extent possible; and 4) required open space must be accessible and usable by all residents of the development and have appropriate circulation, seating, lighting, and plantings.

On October 23, 2007, the applicant revised its application in response to concerns raised by Community Board 7, and to improve the readability and clarity of their proposed text amendment. The revision added an additional condition to the proposed text amendment that would require the submission of plans, including elevations, showing the proposed development and open space.

ENVIRONMENTAL REVIEW

This application (N 050402 ZRM), along with the related actions (M 920493(C) ZAM) 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 05DCP071M. The lead is the City Planning Commission.

After study of the potential environmental impact of the proposed action, a Negative Declaration was issued on August 20, 2007.

PUBLIC REVIEW

On August 20, 2007, the text amendment was duly referred to Community Board 7 and the Borough President for information and review in accordance with the procedure for referring non-Uniform Land Use Review Procedure (ULURP) matters.

Community Board Recommendation

On November 7, 2007, and on that date, by a vote of 35 in favor, 0 opposed, and 0 abstaining, adopted a resolution recommending disapproval of the application.

The Community Board recommended that the proposed text amendment to Section 78-06 of the Zoning Resolution should include language requiring that:

1. "...Any proposed development pursuant to this amendment be subject to Community Board review prior to approval by the City Planning Commission;"
2. Any proposed development pursuant to the amendment shall "improve the existing conditions on the site by increasing the vitality of street life adjacent to the structure, enhance the character of the neighborhood...and will not be detrimental to the public welfare;"
3. The proposed development incorporate several design features, including appropriate building materials, unobstructed glass, and appropriate signage and landscaping, intended to improve the architectural quality of the development and the street and ensure its compatibility with existing structures ;
4. The uses in any retail proposed be predominantly occupied by "individually owned local retail establishments;"
5. Application materials include detailed drawings showing design features, pedestrian and sidewalk lighting, and proposed signage and landscaping; and
6. "...No more than 30% of the commercial space in the proposed structure be leased to or occupied by any entity which operates or franchises more than 15 locations nationwide."

Borough President Recommendation

The Borough President did not submit a recommendation on this application.

City Planning Commission Public Hearing

On October 31, 2007 (Calendar No. 8), the City Planning Commission scheduled November 14, 2007, for a public hearing on this application (N 050402 ZRM). The hearing was duly held on November 14, 2007 (Calendar No. 27). There were six speakers in favor of the application and two speakers in opposition.

Those speaking favor of the application included four representatives of the applicant and two tenants from the Leader House. Those speaking against the application included a representative from Community Board 7 and the City Councilmember from the 6th Council District.

The land use counsel for the applicant described the history of the LSRD and WSURA, the proposed program of the development, and the reasoning behind applying for the proposed text amendment. In addition, it was mentioned that the applicant would be open to working with the Department and community on potential adjustments to the proposed text amendment. The project developer discussed the existing conditions of the property and the proposed improvements to the site. The project architect discussed the design of the development and some of the physical constraints caused by the existing building, and the project's landscape architect discussed the landscaping which would be provided on the roof of the proposed first floor of the development. The two tenants of the Leader House said they believed the proposed enlargement would improve their building. In addition, one of the tenants noted that the applicant has been cooperative in efforts to address several tenant issues related to their proposal.

The Councilmember from the 6th District noted that the proposed text amendment would not prohibit unwanted stores and community facility uses, such as banks and medical offices, from occupying proposed first and second floor spaces within the Leader House project or other projects that could ultimately utilize the proposed text amendment in the future. The Councilmember also noted that she generally agreed with much of Community Board 7's

recommendation. The representative of Community Board 7 reiterated the Board's recommendation opposing the application citing specifically the need for Community Board referral and more assurances for quality design and uses.

CONSIDERATION

The Commission believes that this application for amendments to the Zoning Resolution (N 050402 ZRM), as modified, is appropriate.

The Commission recognizes that Section 78-06 of the Zoning Resolution does not currently provide a workable mechanism for individual property owners with developments in an expired urban renewal area to modify an LSRD. Modifications to LSRDs generally require that all owners of property within the LSRD consent to the modification. However, it would be unworkable to require that an application for any modification be made by or with the consent of the owners of all the property located within an LSRD within an expired urban renewal plan, given the size of the LSRDs associated with urban renewal areas and the large number of property owners involved. The Commission further notes that while urban renewal areas are active, modifications are commonly made to an LSRD by the urban renewal agency (HPD) on behalf of individual property owners, but with the expiration of urban renewal plans, that process is no longer available.

The Commission also notes that in 2003, a similar text amendment (N 030404 ZRM) applicable to the former WSURA was approved that allowed owners of vacant property to apply for modifications of LSRD requirements. In its report, the Commission stated that "the circumstances under which application may be made for modifications to special permits or authorizations within LSRDs associated with former Urban Renewal Areas may require redefinition as new proposals for developments or enlargements emerge at these locations." The Commission believes that the proposed text amendment generally represents the kind of redefinition contemplated in 2003.

The Commission recognizes that for many sites within the LSRD located in the former WSURA, the floor area allowed for commercial and community facility uses under the LSRD regulations

is significantly less than what would be allowed by the underlying C1-9 and C2-8 zoning districts that are mapped along Columbus and Amsterdam Avenues. The Commission notes that the urban renewal plan and the LSRD limitations have resulted in a densely populated residential neighborhood with large amounts of private, often underutilized open spaces and relatively little retail space. The retail space that does exist is mostly set back from street lines and interspersed along Amsterdam and Columbus avenues so that continuous retail frontages generally do not exist. The Commission believes that allowing applications for additional commercial or community facility uses along both Columbus and Amsterdam avenues within the LSRD would encourage the mix of uses commonly found along major avenues in the Upper West Side, provide more services for residents in the local community, and enhance the pedestrian experience.

However, the Commission is concerned about the character of potential development that could result from applications pursuant to the proposed text amendment and believes that new development should generally serve to enhance the streetscape by introducing a varied and active retail experience including generous amounts of transparent materials. The Commission believes that these concerns predominantly arise in cases where several continuous blocks with relatively little retail space are subject to new regulations intended to allow locally-serving retail establishments.

Therefore, the Commission believes that along both Columbus and Amsterdam avenues, additional conditions and findings should be added to the proposed text amendment. These modifications include:

- a requirement that, inclusive of any proposed enlargement, a minimum of three establishments, with separate entrances, front on Columbus or Amsterdam avenue, and that any establishment may not occupy more than 100 feet of frontage on such avenue;
- a requirement that only community facility uses and commercial uses listed in Use Groups 6A, 6C and 6F are allowed; and that any community facility use or bank or loan office may occupy no more than 25 feet of frontage on a wide street;

- a requirement that the ground floor street wall located within C1-9 or C2-8 districts must be glazed with transparent materials so that 70% of the area measured from the sidewalk to a height of 12 feet is transparent;
- a requirement to refer applications pursuant to the proposed text amendment, as modified, to the affected Community Board for 45 days; and
- a finding that any proposed enlargement enhances the streetscape and that its design promotes a harmonious relationship with the existing development on the site and within the large scale residential development.

In addition, minor changes were made to the text to improve its language and clarity. Additionally, the Commission believes that existing community facility uses and banks should not be prohibited from modest enlargements of their spaces in order to extend their establishments out to the street line.

RESOLUTION

RESOLVED, that the City Planning Commission finds the action described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 201 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:

- Matter underlined is new, to be added;
- Matter within # # is defined in Section 12-10;
- Matter in ~~strikeout~~ is text to be deleted;
- *** indicates where unchanged text appears in the zoning resolution

ARTICLE VII
ADMINISTRATION

Chapter 8:

Special Regulations Applying to Large-Scale Residential Developments

* * *

78-06

Ownership

(a) Except as otherwise provided in this Section, any #large-scale residential development# for which application is made for an authorization or special permit or modification thereto in accordance with the provisions of this Chapter shall be on a tract of land that at the time of application is all under the control of the applicant(s) as the owner(s) or holder(s) of a written option to purchase. Except as otherwise provided in this Section, no authorization or special permit or modification thereto, shall be granted for such #development# unless the applicant(s) acquired actual ownership (single fee ownership or alternate ownership arrangements according to the #zoning lot# definition in Section 12-10 (DEFINITIONS) for all #zoning lots# comprising the #development#) of, or executed a binding sales contract for, all of the property comprising such tract.

~~(b) Except as otherwise provided in paragraph (c) of this Section with respect to a #large scale residential development# within an urban renewal area or former urban renewal area, for any #large-scale residential development# located in the Community District(s) listed in this paragraph, the owner(s) of a vacant parcel(s) may make application for and be granted modifications of authorizations or special permits previously granted under the provisions of this Chapter with respect to such parcel(s), provided that such modification does not:~~

~~(1) result in the distribution of #floor area# from any #zoning lot# not coextensive with or included within such parcel(s); or~~

~~(2) increase the total allowable #floor area# on any #zoning lot# included within such parcel(s) beyond that amount permitted by the applicable district regulations.~~

~~Such modifications may include the withdrawal of such parcel(s) from the boundaries of the #large-scale residential development#, provided that such modification would not create a non-compliance within the #large-scale residential development#.~~

Community District	Borough
CD-7	Queens

(b) Notwithstanding the provisions of paragraph (a) of this Section, the following actions shall be permitted:

- (1) When a #development# is part or all of a designated urban renewal project, the City's urban renewal agency, or a person authorized by such agency, may make application for and may be granted authorizations or special permits under the provisions of this Chapter, even though such #large-scale residential development# does not meet the ownership requirements set forth ~~elsewhere~~ in paragraph (a) of this Section. All parcels comprising such #large-scale residential development# shall be within the designated urban renewal area and subject to the urban renewal controls set forth in the approved urban renewal plan.
- (2) In the event that the urban renewal plan has expired, the owner(s) of a vacant parcel(s) within such #large-scale residential development#, if located in a former urban renewal area listed in this paragraph, ~~(c) (b)(2)~~, may make application for and may be granted modifications of authorizations or special permits previously granted under the provisions of this Chapter with respect to such parcel(s), ~~pursuant to and~~ subject to the ~~limitations—~~conditions of paragraph (b)(5) of this Section.

Former Urban Renewal Area	Community Board
West Side Urban Renewal Area	CD7, Manhattan

<u>Borough</u>	<u>Community District</u>	<u>Former Urban Renewal Area</u>
<u>Manhattan</u>	<u>Community District 7</u>	<u>West Side Urban Renewal Area</u>

- (3) The owner(s) of a developed parcel(s) within a #large-scale residential development# located in a former urban renewal area listed in paragraph (b)(2), where at least 50 percent of such parcel(s) is located within a C1-9 or C2-8 District, may make application for, and may be granted, modifications of authorizations or special permits previously granted under the provisions of this Chapter, in order to utilize available #floor area# for #commercial# or #community facility uses#, subject to the conditions of paragraph (b)(5) of this Section and provided further that:

- (i) no #residential use# existing prior to (date of enactment) located above the level of the ground floor may be changed to a non-#residential use#;
- (ii) the #enlarged# portion of the #building# shall be restricted to #community facility uses# and #commercial uses# listed in Use Groups 6A, 6C and 6F, provided that any ground floor #community facility use#;

and any bank or loan office shall occupy not more than 25 feet of the #wide street# frontage, measured to a depth of 30 feet from the #wide street line#, and no #community facility use# shall be permitted above the level of the second #story# ceiling;

- (iii) any #enlargement# fronting upon Columbus or Amsterdam Avenue shall contain a number of establishments, such that the entire #block#front on Columbus or Amsterdam Avenue shall contain no fewer than three establishments, each with a separate entrance on Columbus or Amsterdam Avenue. The Columbus or Amsterdam Avenue frontage of any one such establishment shall not exceed 100 feet;
- (iv) the ground floor street wall of an #enlargement# located within C1-9 or C2-8 Districts shall be glazed with transparent materials which may include show windows, glazed transoms or glazed portions of doors. Such glazed area shall occupy at least 70 percent of the area of each such ground floor street wall, measured to a height of 12 feet above the level of the adjoining sidewalk or public access area;
- (v) required #open space# with appropriate circulation, seating, lighting and plantings shall be accessible and usable by all residents of the #development#;
- (vi) a plan, including elevations, shall be submitted showing the proposed #building(s)# and modification, and #open space#; and
- (vii) the #enlargement# enhances the streetscape and the design promotes a harmonious relationship with the existing #development# and contiguous blocks within the #large-scale residential development#.

In addition, any significant adverse impacts resulting from a #development# or #enlargement# pursuant to such modifications, considered in combination with #developments# or #enlargements# within the same former urban renewal area listed in paragraph (b)(2), previously the subject of modifications under this paragraph, (b)(3), shall have been avoided or minimized to the maximum extent practicable by incorporating as conditions to the modification those mitigative measures that have been identified as practicable.

The provisions of paragraphs (b)(3)(ii) and (b)(3)(iii) shall not apply to #enlargements# of #community facility uses# and bank or loan offices existing prior to (date of enactment), provided that such #enlargement# does not

increase existing street frontage on Columbus or Amsterdam Avenues by more than ten feet.

An application filed pursuant to this paragraph, (b)(3), shall be referred to the affected Community Board, and the Commission shall not grant any modification of an authorization or special permit pursuant thereto prior to 45 days after such referral.

- (4) For any #large scale residential development# located in the Community District(s) listed in this paragraph, (b)(4), the owner(s) of a vacant parcel(s) may make application for and may be granted modifications of authorizations or special permits previously granted under the provisions of this Chapter with respect to such parcel(s), subject to the conditions of paragraph (b)(5).

<u>Borough</u>	<u>Community District</u>
Queens	Community District #7

- (5) Modifications of authorizations or special permits previously granted under the provisions of this Chapter, as permitted in paragraphs (b)(2), (b)(3) and (b)(4) of this Section, shall not:

- (i) result in the distribution of #floor area# from any #zoning lot# not coextensive with or included within such parcel(s); or
- (ii) increase the total allowable #floor area# on any #zoning lot# included within such parcel(s) beyond that amount permitted by the applicable district regulations.

Such modifications may include the withdrawal of such parcel(s) from the boundaries of the #large scale residential development#, provided that such modification would not create a #non-compliance# within the #large-scale residential development#.

- ~~(d)~~ (6) When a ~~#residential~~ large-scale residential development# is to be #developed# or #enlarged# through assemblage by any other governmental agency, other than the City's urban renewal agency, or its agent, having the power of condemnation, authorizations or special permits may be applied for and may be granted under the provisions of this Chapter, even though such #large scale residential development# does not meet the ownership requirements set forth elsewhere in this Section.

* * *

The above resolution (N 050402 ZRM), duly adopted by the City Planning Commission on July 2, 2008 (Calendar No. 22), 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

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