



CITY PLANNING COMMISSION

September 14, 2005/Calendar No. 7

C 030276 ZMK

IN THE MATTER OF an application submitted by Middleland, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 17a changing from an M1-5 District to an R6 District property bounded by a line 50 feet easterly of Spencer Street, a line 100 feet northerly of De Kalb Avenue, Spencer Street, a line 133 feet northerly of De Kalb Avenue, a line midway between Spencer Street and Walworth Street, a line 108 feet northerly of De Kalb Avenue, Walworth Street, and De Kalb Avenue, as shown on a diagram (for illustrative purposes only) dated April 25, 2005, Borough of Brooklyn, Community District 3.

The application for an amendment of the Zoning Map was filed by Middleland, Inc. on January 29, 2003, to rezone a portion of one block in Bedford-Stuyvesant, Brooklyn, from M1-5 to R6 in order to facilitate housing development.

RELATED ACTIONS

In addition to the an amendment of the Zoning Map, which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following which is being considered concurrently with this application:

M 030440 ZMK Application for the cancellation of a restrictive declaration (D-15) that the subject property shall be used only as an accessory parking lot.

BACKGROUND

Middleland, Inc. proposes a zoning map amendment from M1-5 to R6 on the northerly side of DeKalb Avenue between Spencer and Walworth streets in Community District 3, Bedford-Stuyvesant. The proposed rezoning would facilitate new residential development.

The proposed rezoning area is an irregular 19,680 square-foot site that is currently a fenced, unused asphalt-paved former parking lot, consisting of three tax lots, all of which are owned by the applicant.

The applicant proposes extending the surrounding R6 district over their site to facilitate its redevelopment with housing. The site was originally rezoned from R6 to M1-5 in 1975 to be used for parking in conjunction with the construction of a factory for IBM across Walworth Street. IBM closed this facility in 1993 and sold it to Advanced Technology Solutions Inc., a computer repair company that in turn closed and sold the subject site to the applicant in 2002. The former factory is now used as a job training center on the second floor and the vacant first floor was the subject of a special permit application to permit a supermarket in an M1-5 zoning district (C 000023 ZSK) that has now lapsed. The parking lot, comprising the entirety of the rezoning area is fenced and has not been used since IBM closed its facility.

The remainder of the block to the north of the rezoning area primarily contains residential buildings ranging from two to nine stories, some vacant lots, and a few small auto-related uses along Walworth Street, all in an R6 zoning district. Abutting the site to the west on DeKalb Avenue are two 4-story residential buildings.

The surrounding area consists primarily of residential uses and some commercial and industrial uses. To the west of the rezoning area across Walworth Street is the former IBM plant which is currently in use as a job training center, partially vacant and located in an M1-5 zoning district.

To the south across DeKalb Avenue is an industrial laundry; across Spencer Street to the west are three- and four-story residential buildings all located in an R6 district.

The existing M1-5 zoning permits industrial and manufacturing uses in use groups 16 and 17 and limited commercial and community facility uses. The M1-5 district has a maximum floor area ratio of 5.00 for commercial and industrial uses and 6.50 for community facility uses. The proposed R6 zoning district allows for use groups 1-4, which include residential uses and community facilities. R6 districts have a maximum floor area ratio of 2.43 for residential use and 4.80 for community facilities.

In addition to the proposed zoning map amendment, the applicant requests the cancellation of a restrictive declaration (M 030440 ZMK) that limits use of the lots in the rezoning area to an accessory parking lot to the nearby, former IBM plant. The declaration was placed on the parcel when it was rezoned in 1975 to allow for accessory parking for the IBM plant across Walworth Street.

If the proposed rezoning and the cancellation of the restrictive declaration is approved, the applicant intends to construct seven, 7-unit buildings on the site.

ENVIRONMENTAL REVIEW

This application (C 030276 ZMK), in conjunction with the application for the related action (M 030440 ZMK), 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 03DCP038K. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, the lead agency has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

A Phase I Environmental Site Assessment (ESA), available in the proposal's CEQR file, was prepared in July 2003 for the project site. The Phase I ESA was reviewed by DEP's Office of Environmental Planning and Assessment, and a restrictive declaration was recommended, as stated in a memo by DEP dated October 28, 2003, due to the potential presence of hazardous materials on the site as a result of past on-site land uses. The declaration requires that detailed Phase II testing would occur and is binding upon the property's successors and assigns. The declaration serves as a mechanism to assure the potential for hazardous material contamination that may exist in the sub-surface soils, groundwater, and existing buildings on the project site would be characterized prior to any site disturbance (i.e., site grading, excavation, demolition, or building construction).

The applicant signed a conditional negative declaration on April 21, 2005. The conditional negative declaration was published in the City Record on April 27, 2005, and in the New York State Environmental Notice Bulletin on May 4, 2005. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of rules and regulations, Section 617.00 et seq., a 30-day comment period followed. No comments were received and the conditional negative declaration was issued on August 8, 2005.

On February 26, 2004, the restrictive declaration was signed, recorded and executed. In a March 9, 2005 letter sent to City Planning, DEP agreed to the conditions of the restrictive declaration.

With the implementation of the condition described above, no significant adverse impact related to hazardous materials would occur.

UNIFORM LAND USE REVIEW

This application (C 030276 ZMK), was certified as complete by the Department of City Planning on April 25, 2005, and was duly referred to Community Board 3 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules, along with the application for the related action (M 030440 ZMK) which was referred for review and comment.

Community Board Public Hearing

Community Board 3 held a public hearing on this application on June 27, 2005, and on that date, by a vote of 25 to 0 with no abstentions, adopted a resolution recommending disapproval of the application with the following comments:

In accordance with the public hearing the Community Board voted to disapprove the application for the following reasons:

1. The need for Economic Development (Jobs)

The Community wants to encourage manufacturing businesses and jobs in the industrial northwest quadrant.

2. Housing Available to all the Diverse Segments of the Community

Recently, the Northwest quadrant has experienced residential conversions. However, builders have not been sensitive to the critical need for housing that affects the entire community.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation

disapproving the application on August 4, 2005.

The Borough President's recommendation included the following comments:

After thorough consideration, the Borough President concluded that the proposal by Middleland, Inc. to develop housing on the parking lot of the former IBM facility is inadequate because it does not address the community's vision of creating permanent jobs at this location. Job creation goals of the community might have been met by incorporating retail or commercial use as part of development. The Borough President encourages the developer to reconsider his project and proceed in a manner in alignment with the goals of the community.

City Planning Commission Public Hearing

On July 27, 2005 (Calendar No. 1), the City Planning Commission scheduled August 10, 2005, for a public hearing on this application (C 030276 ZMK). The hearing was duly held on August 10, 2005 (Calendar No. 17). There were three speakers in favor of the application and none opposed.

The speakers in favor included two representatives of the applicant and his attorney.

They noted that the site was vacant and fenced and not contributing to the community. The proposed rezoning would allow the construction of housing that would fit in with the predominant residential uses in the area. It was further stated that the proposed housing development would contain an affordable housing component.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this amendment of the Zoning Map and cancellation of the

restrictive declaration is appropriate.

The proposed rezoning would facilitate residential development on a parcel of land on a block that is primarily residential. The proposed rezoning area is 19,680 square feet area along DeKalb Avenue between Spencer and Walworth Streets. The parcel, vacant for at least 13 years, is currently fenced, asphalt-paved former parking lot, consisting of three lots, all of which are owned by the applicant.

The related action would cancel a restrictive declaration which restricts the subject site use to accessory parking. The 1975 rezoning of the subject site was done only to allow its use as parking for IBM; all other uses were prohibited. Further, the area surrounding the subject site to the north, west and south is primarily residential and there is a need for housing in the area. Finally, both the subject site and the IBM site are underutilized and the rezoning site is too small to support significant industrial or commercial uses.

Regarding the recommendations of the Community Board the Commission notes that the applicant, in a letter to Brooklyn Borough President Markowitz dated August 3, 2005, has stated his intention to make 20 percent of the proposed units affordable and thus contribute to addressing the housing needs of the entire community.

The Commission further notes, in response to Borough President's concerns about the draft 197- a plan that the original IBM facility closed in 1993 and that efforts to reoccupy it with

manufacturing or commercial uses not been successful. In addition, the Commission notes that the draft 197-a plan has not gone through the required review process.

The restrictive declaration, which limited use of the rezoning area to accessory parking for the IBM facility was created to be supportive of that use, and was required as part of the 1975 rezoning. With the closure of the IBM plant along with this subject rezoning, the declaration is no longer needed and it prevents appropriate uses on the site.

RESOLUTION

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

For the properties located at 223/225 Spencer Street and 557 Dekalb Avenue (Block 1763, Lots 1, 2, and 62), the applicant agrees via a restrictive declaration to prepare a hazardous materials sampling protocol including a health and safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the 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 by changing the Zoning Map, Section No. 17a, changing from an M1-5 District to an R6 District property bounded by a

line 50 feet easterly of Spencer Street, a line 100 feet northerly of De Kalb Avenue, Spencer Street, a line 133 feet northerly of De Kalb Avenue, a line midway between Spencer Street and Walworth Street, a line 108 feet northerly of De Kalb Avenue and Walworth Street, and De Kalb Avenue, Borough of Brooklyn, Community District 3, as shown on a diagram (for illustrative purposes only) dated April 25, 2005 (C 030276 ZMK).

The above resolution (C 030276 ZMK), duly adopted by the City Planning Commission on September 14, 2005 (Calendar No. xx), 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, AICP, Chair,
KENNETH J. KNUCKLES, Esq., Vice-Chairman,
ANGELA M. BATTAGLIA, **IRWIN G. CANTOR**, P.E.,
ANGELA R. CAVALUZZI, R.A., **ALFRED C. CERULLO, III**,
JANE D. GOL, **LISA A. GOMEZ**, **CHRISTOPHER KUI**, **JOHN MEROLO**,
DOLLY WILLIAMS, Commissioners.

KAREN A. PHILIPS voting no