



CITY PLANNING COMMISSION

June 3, 2015 / Calendar No. 11

C 150218 PSQ
Corrected

IN THE MATTER OF an application submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the site selection of property located at 58-26 47th Street¹ (Block 2601, Lot 25) for use as an aeration facility, Borough of Queens, Community District 5.

This application was submitted on January 12, 2015 by the Department of Environmental Protection (DEP) and the Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter, for the site selection of property located at 58-26 47th Street² (Block 2601, Lot 25) in Queens, for use as an aeration facility.

BACKGROUND

The New York City Department of Environmental Protection (DEP) and the Department of Citywide Administrative Services (DCAS) seek approval of a site selection to facilitate the construction of an aeration facility. The proposed facility would be located at 58-26 47th Street (Block 2601, Lot 25) within an M3-1 District in the Maspeth neighborhood of Queens Community District 5.

The 71,610 square foot project site has 256 lineal feet of frontage along the 47th Street and has a depth of 294 feet on its northern boundary and 242 feet on its southern boundary. The site is mostly vacant and is partially covered by a mound of landscape debris approximately 35 feet in height. Additionally, there are some asbestos tiles and tires on site that are believed to have been illegally dumped on the property. In the Northeast corner of the property, there is an abandoned one-story concrete structure that was once used as a small truck repair shop. The entire site is paved with asphalt to the edge of the property along the waterway. More than half of the property border with the waterway is a concrete bulkhead with a top of wall height of approximately 8.25 feet. Behind the bulkhead are about 10 feet of brush and then another

¹ 58-26 47th Avenue replaced with 58-26 47th Street

² 58-26 47th Avenue replaced with 58-26 47th Street

concrete block wall to a height of approximately 13.5 feet. The remainder of the shore line is a stable rip rap that slopes from the water to the base property elevation of 13.5 feet.

The NYC Economic Development Corporation (EDC) took ownership of the property in 1993. Until 2006, the site was leased by M&C Transfer Station and Anchor Construction Services, Incorporated and used for the storing, staging, handling, and recycling of construction and demolition debris. In 2011 the ownership of the property was transferred to DCAS with the intent of being placed under DEP jurisdiction.

DEP is proposing to select the site to build an aeration facility in order to meet the third phase of the 2004 New York State Department of Environmental Conservation (NYSDEC) administrative consent order to improve the water quality of Newtown Creek and its tributaries. The previous two projects are located on Grand Street in Brooklyn and have been aerating upper and lower English Kills since 2008. Those projects, NC-EK-11 and CSO-NC-2, are completed and in operation. CSO-NC-3 (the current proposed project) and the future CSO-NC-4, will aerate other portions of Newtown Creek.

Aeration facilities improve water quality by raising dissolved oxygen (DO) levels by compressing air and blowing it down weighted air header pipes laid along the bottom of parts of East Branch and Upper Newtown Creek. The goal is to raise the DO levels to meet the NYSDEC “SD” water quality classification. A minimum dissolved oxygen (DO) level of 3.0 mg/l is required to meet the SD classification, which is considered water suitable for fish, shellfish and wildlife survival. Currently, during the summer months and other warm weather months, DO levels in Newtown Creek are near zero.

The proposed aeration facility would be composed of a one-story, 2,700 square-foot blower building housing two blowers and a diffused aeration system. The installation of the air header piping with diffusers associated with the blower building would be located along the bottom channel of the East Branch and portions of Newtown Creek. A one-story, 900 square foot storage shed for DEP emergency equipment will also be constructed on the site. Approximately 36,475 square feet of open area will be surfaced with porous pavers, and another 30,163 square

feet will be landscaped, including a naturalized open space and rain garden designed to capture on-site surface and rooftop runoff. A 1,200 square foot seating area will be built along 47th Street frontage. There would be no vehicle storage on site; staff vehicles would park on the porous pavement as needed for visits or to access the blower building or storage shed.

The facility's blowers would be activated only periodically, for 15 minutes each, during non-operating periods (October through March), for increased periods during transition periods (March through May and September), and 24 hours per day during peak operation periods (June through August). The proposed facility would not be staffed full-time, but DEP staff would visit daily when operational and weekly when non-operational.

The surrounding area is zoned M3-1, which is designated for areas with heavy industrial uses that generate noise, traffic or pollutants. Typical uses include power plants, solid waste transfer facilities and recycling plants, and fuel supply depots. M3-1 districts permit a maximum floor area ratio (FAR) of 2.0 and a maximum base height before setback of 60 feet. Uses in the surrounding area include private lumber yards, trucking, manufacturing and warehouses. The property to the north of the site is occupied by US Concrete, which recycles concrete. The property to the south is occupied by LTD Enterprises, which stages construction equipment. The property across 47th street is a MTA bus depot. The property directly across Newtown Creek is occupied by Roadway Express, which is a private trucking facility. There is also a NYC Department of Sanitation District 5 Building and grounds at 47-01 48th Street.

The site is near the Grand Avenue Bridge, which crosses the Newtown Creek at Grand Avenue. There is a bus route with stops near the site; the Q59 runs down Grand Avenue and has a stop on the corner of Grand Ave and 47th Street and another on the corner of Grand Ave and Page Place. There are no subway lines within walking distance of the site.

Pursuant to Zoning Resolution (ZR) §62-52, Use Group 6D (Public Service Establishments) uses, such as the proposed development, must provide public access to and along the waterfront. However, due the isolated location of the facility, DEP believes that there would be safety and security concerns by providing waterfront access near this facility which lacks a regular staff

presence. Therefore, in this instance, the City is exercising its option not to be subject to its zoning requirements for waterfront public access when performing this governmental function and a Mayoral override was granted. However, DEP has proposed to create a 1,200 square foot seating area along the 47th Street frontage for the community, which will include three benches and four trees along the sidewalk. Furthermore, if in the future other adjacent properties develop publicly-accessible waterfront spaces, DEP will enhance the project site with some waterfront public access.

ENVIRONMENTAL REVIEW

This application (C 140111 ZMQ) 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 New York City Environmental Quality Review (CEQR) Rules and Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR Number is 13DEP010Q. The lead is the New York City Department of Environmental Protection (DEP).

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on January 12, 2015.

UNIFORM LAND USE REVIEW

The application (C 150218 PSQ) was certified as complete by the Department of City Planning on January 20, 2015 and was duly referred to Queens Community Board 5 and the Queens Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 5 held a public hearing on the application (C 150218 PSQ) on February 11, 2015. On March 11, 2015, by a vote of 27 in favor, 8 opposed, and no abstentions, the community board adopted a resolution recommending approval of the application.

Borough President Recommendation

The application (C 150218 PSQ) was considered by the Queens Borough President, who issued a recommendation approving the application on April 23, 2015 subject to the following conditions:

- DEP should work with the community to provide public waterfront access and promenade which could invigorate the area;
- DEP should also continue working with the community on locating an alternate site for a recreational training facility as stated by the DEP representative.

City Planning Commission Public Hearing

On April 22, 2014 (Calendar No. 2), the City Planning Commission scheduled May 6, 2015 for a public hearing on the application (C 150218 PSQ). The hearing was duly held on May 6, 2015 (Calendar No. 16). There were four speakers in favor and no speakers in opposition.

Four representatives of DEP spoke in favor of the application. DEP's Associate Commissioner of Public Affairs gave a brief overview of the project and discussed DEP's rationale for seeking the Mayoral Override of waterfront public access requirements. He stated that because of the isolated location of the facility and lack of a regular staff presence, DEP believes that safety and security issues could arise on the site if waterfront public access were to be provided and is concerned that it could become an "attractive nuisance." He also stated that DEP has committed to the community to provide a seating area along 47th street as part of the construction of the facility and then described DEP's commitment to provide some waterfront public access on the site in the event that neighboring properties develop publicly accessible open space along the creek. He stated that, although community members and the Queens Borough President suggested that portions of the open area could be used by a local soccer organization, it would actually be difficult to fit a soccer field on the site and it would require a significant amount of grading to make a level field. He also stated that he was unaware of any stewardship groups that could occupy and maintain the planted portion of the site. He asserted that DEP needs to retain flexibility with the site, as it may be required house additional facilities or infrastructure to meet its mandates.

The architect for the project provided a brief overview of the site plan and the design of the facility itself. The project manager and environmental review manager for this application at DEP also appeared in favor of the application.

There were no other speakers, and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application, in conjunction with the application for the related action, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), adopted by the Board of Estimate on September 30, 1982 (Calendar No. 17), 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 13-041.

The City Planning Commission, acting as the City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies.

CONSIDERATION

The City Planning Commission believes that the site selection to facilitate the development of an aeration facility at 58-26 47th Street in Queens is appropriate.

The proposed facility would improve water quality by raising dissolved oxygen (DO) levels in Newtown Creek in order to make it suitable for fish, shellfish and wildlife survival, which in turn would improve the overall health of the waterway.

The Commission understands that because of the isolated location of the facility and lack of a regular staff presence, safety and security issues could arise on the site if waterfront public access were to be provided at this time.

The Commission is therefore pleased that, in a letter to the Deputy Mayor for Housing and Economic Development dated January 12, 2015, and in a letter to the Commission dated May 14, 2015, DEP committed to provide a seating area along 47th street as part of the construction of the facility and that the agency has made the additional commitment to provide waterfront public access on the site in the event that neighboring properties develop publicly accessible open space along the creek. The Commission agrees that the development of waterfront public access on neighboring properties with more active uses and larger staff presences would reduce the isolation of the site making issues with safety and security less likely to arise. However, the Commission is disappointed that, if future waterfront public access were possible, it could not be constructed continuously along the property's waterfront edge because the location of the blowers would prevent access behind the building. The Commission urges DEP to seek a solution that would someday enable public access behind the building, so that a continuous waterfront esplanade may someday link to public access areas on contiguous properties at either side of the site, without interruption.

The Commission acknowledges the Queens Borough President's recommendation in support of this project and concurs that a publicly accessible waterfront area on the site would be an asset to the community. However, the Commission recognizes that this application is for the selection of the subject site for use as an aeration facility. DEP's commitment to locate an alternate site for a recreational training facility, as identified in the Borough President's recommendation, is not part this application and is beyond its scope.

The Commission is also pleased by the correspondence received from DEP on May 14, 2014 describing additional commitments relating to signage at the facility being made by the agency. DEP will work with their design team on this project to ensure that appropriate signage describing the aeration facility is provided. DEP will also work with NYS DEC to provide signage detailing the health risks of eating fish caught in Newtown Creek, when in the future waterfront public access is developed at the site.

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 197-c of the New York City Charter, that based on the environmental determination and the considerations and findings described in this report, the application by the Department of Environmental Protection and the Department of Citywide Administrative Services for the site selection of property located at 58-26 47th Street³ (Block 2601, Lot 25) for use as an aeration facility, Borough of Queens, Community District 5, is approved.

The above resolution (C 150218 PSQ), duly adopted by the City Planning Commission on June 3, 2015 (Calendar No. 11), is filed with the Office of the Speaker, City Council, and the Queens Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

CARL WEISBROD, Chairman

KENNETH J. KNUCKLES, Esq., Vice-Chairman

RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,

MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, BOME E JUNG, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, Commissioners

³ 58-26 47th Avenue replaced with 58-26 47th Street

Queens Borough President Recommendation

APPLICATION: ULURP #C150218 PSQ

COMMUNITY BOARD: Q05

DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by New York City Department of Environmental Protection (DEP), pursuant to Section 197(c) of the NYC Charter, for site selection to allow construction of a facility for aerating the East Branch and portions of Newtown Creek proper, which is required under the CSO Order on Consent to improve water quality of Newtown Creek and its tributaries, located at **58-26 47th Street**, Block 2601, Lot 25 in an M3-1 district, Zoning Map 13a, Maspeth, Borough of Queens.

PUBLIC HEARING

A Public Hearing was held in the Borough President's Conference Room at 120-55 Queens Boulevard on March 19, 2015 at 10:30 A.M. pursuant to Section 82(5) of the New York City Charter and was duly advertised in the manner specified in Section 197-c (i) of the New York City Charter. The applicant made a presentation. There were five (5) speakers in favor of the application. The hearing was closed.

CONSIDERATION

Subsequent to review of the application and consideration of testimony received at the public hearing, the following issues and impacts have been identified:

- The applicant is proposing site selection of city-owned property for the purpose of construction of an aeration facility that will aerate the East Branch and portions of Newtown Creek proper;
- NYC Department of Environmental Protection (DEP) is proposing to build a 2,700 sf, 32' high blower building to house the machinery space for the aeration system blower and a 900 sf accessory shed for equipment storage. The buildings and the porous paved area will occupy 55% of the site. The rest of the site will be a sloped naturalized open space and rain garden providing drainage for the site. A 1,200 sf seating area with three benches and four trees planted along the sidewalk on 47th Street will be provided for community use. The site will be fenced and gated for security purposes. The aeration facility's two air blowers with diffusers would be activated periodically for 15 minutes during non-operating periods (October to March), with increased frequency during transition periods from March to May and September, on a 24-hour basis June to August. There will be no full-time staff on site. DEP operations and maintenance staff will visit the site daily when operational and weekly when non-operational;
- A Mayoral Override was issued exempting this project from the requirement to provide waterfront public access to and along the waterfront pursuant to NYC Zoning Resolution Section 62-52;
- DEP is proposing this project pursuant to a Consent Order between DEP and the New York State Department of Environmental Conservation (DEC) to improve the water quality of Newtown Creek Overflow (CSO). Per the consent order, the East Branch and Newtown Creek must achieve DEC Class SD water quality which is suitable for the survival of fish, shellfish and wildlife. Class SD waters must contain a minimum level of dissolved oxygen of at least 3mg/L. The proposed project would bring the affected waterbodies into compliance with the minimum dissolved oxygen requirement;
- The 71,610 sf (1.64 acres) site is currently occupied by a vacant one-story concrete structure used as a truck repair facility and an approximately 35 ft mound of landscape debris covering about half of the site. The site was used by a fertilizer company in the early 1900s, as a truck storage and repair facility in the 1970s through 1990, and storage, handling recycling of soil and construction debris until 2006. The site was acquired by the NYC Economic Development Corporation in 1993 and currently is owned by Department of Citywide Administrative Services and under DEP jurisdiction;
- The site is located between 58th Road and Grand Avenue. The surrounding area is predominantly developed with industrial uses including private lumber yards, trucking, manufacturing and warehouses. US Concrete, which recycles concrete, occupies and operates on a property located directly north of the project site. A property located directly to the south is occupied and used for storage for construction equipment. The property across Newtown Creek is occupied by a private trucking facility and directly across 47th Street is a MTA bus depot;
- In a letter to CB 5 dated February 12, 2015, DEP states that they will install benches and trees along 47th Street. In addition, DEP will further enhance the site with waterfront access, if and when, nearby properties have developed publicly-accessible waterfront spaces which will consist of a walkway to the water and a walkway adjacent to the water;

Continued...

- CB 5 approved this conditionally application by a vote of twenty-seven (27) in favor with eight (8) against and none (0) abstaining at a community board meeting held on March 11, 2015. CB 5's condition of approval is that DEP should provide prompt community access to the site while securing the site such as adoption of the open space of the facility by a community organization;
- At the Borough President Land Use Public Hearing, representatives from CB 5 testified for the application, however, they requested DEP to provide waterfront public access as part of this project and not to delay as stated in the letter provide to CB 5. Also, a representative of the area youth sports organization testified that their needs for a training facility in the neighborhood and this might be a potential site to be located. The applicant responded this facility may not be suitable for the purpose because of the maintenance and security reasons. However, DEP would look into other facilities if there is an alternate site to accommodate the community needs. DEP has not identified and alternate site for recreational use.

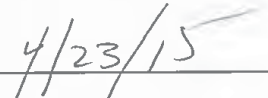
RECOMMENDATION

Based on the above consideration, I hereby recommend approval of this application with the following conditions:

- DEP should work with the community to provide public waterfront access and a promenade as part of this project which could invigorate the area;
- DEP should also continue working with the community on locating an alternate site for a recreational training facility as stated by the DEP representative.



PRESIDENT, BOROUGH OF QUEENS



DATE



Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application # C150218PSQ	Project Name Newtown Creek Aeration Facility
CECR Number: 13DEP010Q	Borough: Queens Community Board/District: 5

Please use the above application number on all correspondence concerning this application

SUBMISSION INSTRUCTIONS

- Complete this form and return to the Department of City Planning by one of the following options:
 - EMAIL (recommended):** Send email to CalendarOffice@planning.nyc.gov and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
 - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
 - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER OF an application submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter for the site selection of property located at 58-26 47 Street, (Block: 2601, Lot: 25) for use as an aeration facility.

Applicant(s): NYC Dept. of Environmental Protection 96-05 Horace Harding Expressway, Corona, NY 11368 NYC Dept. of Citywide Administrative Services 1 Centre Street, New York, NY 10007	Applicant's Representative: Vincent Sapienza 718-595-4906 Randy Fong 212-386-0616
Recommendation submitted by: Community Board 5	
Date of public hearing: February 11, 2015	Location: 68-02 Metropolitan Avenue, Middle Village, NY 11379
Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.
Date of vote: March 11, 2015	Location: 68-02 Metropolitan Avenue, Middle Village, NY 11379
RECOMMENDATION	
<input checked="" type="checkbox"/> Approve	<input type="checkbox"/> Approve With Modifications/Conditions
<input type="checkbox"/> Disapprove	<input type="checkbox"/> Disapprove With Modifications/Conditions
Please attach any further explanation of the recommendation on additional sheets, as necessary.	
Voting	
# In Favor: 27 # Against: 8 # Abstaining:	Total members appointed to the board: 42
Name of CB/BB officer completing this form: Gary Giordano <i>Gary Giordano</i>	Title: District Manager
	Date: 3/24/2015



Vincent Arcuri, Jr.
Chairperson

Community Board No. 5

Borough of Queens
Ridgewood, Maspeth, Middle Village and Glendale
61-23 Myrtle Avenue • Glendale, NY 11385
(718) 366-1834
E-mail: qnscb5@nyc.rr.com



Gary Giordano
District Manager

RESOLUTION/RECOMMENDATION

Re: Application # C150218PSQ
Project Name: Newtown Creek East Branch Aeration

The Zoning and Land Use Review Committee of Community Board 5, Queens reports the following IN THE MATTER OF an application submitted to the N.Y. City Planning Commission and the Dept. of City Planning, by the N.Y. City Dept. of Environmental Protection and the Dept. of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the site selection of property located at 58-26 47 Street (Block 2601, Lot 25), in Maspeth, Queens, N.Y., for use as an aeration facility.

WHEREAS, Community Board 5, Queens conducted a Public Hearing regarding this application on Wednesday, February 11, 2015, shortly after 7:30pm. The hearing was conducted in the cafeteria of Christ the King High School, located at 68-02 Metropolitan Avenue in Middle Village, Queens. At this hearing, Mr. Ray Meshkati, the Project Engineer for the proposed aeration facility, explained that this facility is part of an overall project the goal of which is to increase the water oxygen content of the creek in an effort to meet state and federal mandates.

Mr. Meshkati gave a power point presentation that included recent photographs of the site, along with renderings of the proposed aeration facility on the Newtown Creek waterway. He explained that several aeration facilities are required to raise creek oxygen levels, which are near zero at the east end of the waterway. Mr. Meshkati stated that increasing the oxygen content would serve to eliminate most of the heavy sulfur dioxide levels. He said that the subject 1.64 acre site on 47 Street is located approximately 150 feet north of Grand Avenue, in the industrial area of Maspeth, and that the site is City owned. He explained that this particular project includes plans for the installation of 6 pipelines that fan out into the creek from the proposed facility, and that these pipes are the mechanism used to pump air into the water.

Mr. Meshkati stated that the proposed aeration facility will occupy 4,900 square feet on the Creek. He pointed to the illustration which indicated that trees would be planted along the creek, along 47 Street at this aeration facility, and in the grassy area at this address. He said that the construction of this proposed aeration facility is estimated to begin in 2017.

Resolution/Recommendation

Re: Application # C150218PSQ

Project Name: Newtown Creek East Branch Aeration

At this hearing, Walter Sanchez, Chairperson of the Zoning and Land Use Review Committee, asked about provisions being made to ensure public waterfront access at the proposed aeration facility site. Mr. Meshkati, Project Engineer, replied that public access to Newtown Creek at this site would be difficult because of the 15 foot drop from the creek bank down to the water. He said that, since there are no plans to staff this facility to any extent, there may be safety risks. Board Chairman Vincent Arcuri objected to the fact that the presentation given at the hearing does not include any waterfront access for the public at this site. Richard Huber, Board 5 Queens member, asked about the noise level of the aeration equipment that would be at this location. Mr. Meshkati replied that the pumps will operate at approximately 90 decibels. He said the pumps will be installed inside the facility, where sound proofing will be installed to buffer the sound; and,

WHEREAS, Zoning and Land Use Review Committee of Community Board 5, Queens met to consider this Application on Monday, March 9, 2015. Eric Landau, NYC DEP Associate Commissioner for Public Affairs, and Rafael Betenit, DEP Project Manager, attended this meeting. Mr. Betenit gave a power point presentation regarding the proposed aeration facility. He stated that, in 2004, NYC DEP entered into a consent agreement with the N.Y. State Dept. of Environmental Conservation, to improve dissolved oxygen levels in Newtown Creek, and that the minimum goal is 3 mg. of dissolved oxygen per liter of water. It was explained that currently the oxygen content in the subject area of the creek is near zero.

Several committee members asked about plans for public access to the creek at this location. Mr. Landau explained that, in the short term, NYC DEP, as part of this proposed project, plans to install benches along the 47 Street portion of this property, and that DEP would likely be willing to provide a pathway to the creek and along the creek when nearby properties have developed publically accessible waterfront spaces. Mr. Landau stated that the NYC DEP budget is virtually totally funded through water and sewer charges.

Walter Sanchez, Chairperson of the Zoning and Land Use Review Committee, said that on the Brooklyn side of the creek there is waterfront access and a promenade on the creek. He said that he would like to see waterfront access at the 58-26 47 Street planned aeration facility site, as part of the proposed project. He said that there is a nearby unofficial 58 Road creek access area. Paul Kerzner of CB5Q said that DEP could have a liability issue by providing creek access. Mr. Sanchez questioned whether the aeration facility planned will actually cause odors and whether this aeration plan is just a band aid approach to deal with the problems of combined sewer overflows into the creek. After some additional discussion, Walter Sanchez, Committee Chairperson, offered the following Recommendation:

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COMMUNITY BOARD 5, QUEENS

Resolution/Recommendation

Re: Application # C150218PSQ

Project Name: Newtown Creek East Branch Aeration

We are in favor of the proposed Aeration Facility Project at 58-26 47 Street, in Maspeth, Queens. However, it does not include a reasonably prompt approach for community access to the site and to the waterfront at this location. We feel that the entire site can be secured with high fencing so that people will not trespass, and a community organization could adopt the space. A reasonably prompt community access plan for the site would allow change from no public access to potentially outstanding community use of a portion of the property and the waterfront. Members of the Zoning and Land Use Review Committee voted 7 in favor, -0- opposed and -0- abstaining for this recommendation; and,

WHEREAS, Community Board 5, Queens met on Wednesday, March 11, 2015. Walter Sanchez, Committee Chairperson, presented this committee recommendation to the members of Community Board 5, Queens. After some discussion, the Members of Community Board 5, Queens voted in favor of the committee recommendation: - 27 – for; - 8 – opposed; - 0 – abstaining; and – 0 - not voting.

The foregoing is a copy of a Resolution/Recommendation of Community Board 5, Queens, which shall be sent to: the N.Y. City Planning Commission; the Department of City Planning; the Dept. of Environmental Protection; the Dept. of Citywide Administrative Services; the Hon. Melinda Katz, Borough President of Queens; and the Hon. Elizabeth Crowley, City Council Member.




Office of the Deputy Mayor
For Housing and Economic Development

MEMORANDUM

TO: Emily Lloyd
Commissioner, DEP

Vicki Been
Commissioner, HPD

FROM: Alicia K. Glen 

DATE: January 12, 2015

RE: Zoning Override for Newtown Creek Aeration Facility
58-26 47th Street, Queens, NY 11378

Based on the information contained in your January 12, 2015 memo, I support your request to proceed with the project at the named site despite non-compliance with the Zoning Resolution.

This approval is limited only to the noncompliance defined in your memo and is based solely on the information contained therein.

cc: Rick Chandler, DOB
Purnima Kapur, DCP
Jeffrey D. Friedlander, Law Department
Susan Choi-Hausman, Law Department
Maya Wiley, Mayor's Office
Marcella Eckels, DEP




THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Phone: (212)356-1100
E-mail: jfriedla@law.nyc.gov

JEFFREY D. FRIEDLANDER
First Assistant Corporation Counsel

MEMORANDUM

TO: ALICIA GLEN
Deputy Mayor for Housing and Economic Development

FROM: JEFFREY D. FRIEDLANDER 

RE: Zoning Override for Newtown Creek Aeration Facility
58-26 47th Street, Queens NY 11378

DATE: January 12, 2015

We have reviewed the January 12, 2015 letter from the New York City Department of Environmental Protection concerning the need for an override of specific provisions of the Zoning Resolution in order to permit construction of an aeration facility to increase the dissolved oxygen level in the East Branch tributary and portions of Newtown Creek.

<u>Site</u>	<u>Zoning Resolution</u>
Block 2601, Lot 25, Queens	62-33 Inclusive, 62-50 Inclusive, 62-60 Inclusive, 62-80 Inclusive

New York courts have long recognized that governments are not subject to zoning restrictions in the same manner as private persons. Nehrbas v. Incorporated Village of Lloyd's Harbor, 2 NY 2d 190 (1958). In the most recent formulation of this rule, the Court of Appeals adopted a balancing test in determining whether a government was required to comply with zoning, comparing the public interest served by the proposed use with the purposes served by the zoning provision in question. Matter of County of Monroe, 72 NY2d 338 (1988).

The letter explains the public benefits of the project and discusses the specific zoning restrictions impacted by the project. You may authorize the project notwithstanding the provisions of the Zoning Resolution if you determine that the public purpose to be served

justifies this in the circumstances described in the January 12, 2015 letter. On the basis of the information provided in that letter, such approval would be appropriate and consistent with applicable law.

January 12, 2015

The Honorable Alicia Glen
Deputy Mayor for Housing and Economic Development
City Hall
New York, NY 10007

**RE: Request for Mayoral Zoning Override Approval
Newtown Creek Aeration Facility
58-26 47th Street
Queens, New York 11378
Block 2601, Lot 25**

Dear Deputy Mayor Glen:

The New York City Department of Environmental Protection (DEP) proposes to construct an aeration facility adjacent to Newtown Creek in the Maspeth neighborhood of Queens, NY to increase the dissolved oxygen (DO) level in the East Branch tributary and portions of Newtown Creek (the Project). The construction of the Project is required pursuant to the terms of an administrative consent order between DEP and the State Department of Environmental Conservation (DEC).

The Project is located in an M3-1 zoning district and falls within Use Group 6D. Pursuant to Zoning Resolution (ZR) §62-52, developments in M3-1 districts (with limited exceptions not relevant here) and which are located on the waterfront must meet certain public open space requirements.¹ Due to safety and security concerns, DEP does not believe compliance with these requirements is in the public interest. As such, DEP requests your concurrence that the need for the Project and the related safety and security concerns outweighs the resulting zoning non-compliance.

In consultation with Queens Community Board 5, DEP has developed a plan to install benches and trees along only the sidewalk to create a seating area for the community outside of the Project fence line. Furthermore, if in the future nearby properties have developed publicly-accessible waterfront spaces, DEP will enhance the site with waterfront access.

Description of the Proposed Project

The Project will improve the water quality of Newtown Creek and its tributaries by increasing the DO level in the East Branch and portions of Newtown Creek. The aeration facility will consist of a building to house blowers (the blower building) and a diffused aeration system which will be located along the bottom channel of the East Branch and portions of Newtown Creek. The blower building will be located at 58-26 47th Street in Maspeth, New York, and the

¹ NYC Zoning Resolution, Article VI: Special Regulations Applicable To Certain Areas, Chapter 2 - Special Regulations Applying in the Waterfront Area, Section 62-52, "waterfront public access shall be provided for all waterfront zoning lots with a lot area of at least 10,000 square feet and a shoreline of at least 100 feet that are developed..."

air header piping with diffusers will be located along the bottom channel of the East Branch and portions of Newtown Creek. The Project will use approximately half of Lot 25 and the remaining portion of the Lot will be developed as a meadow. Once constructed, no DEP staff will be stationed at the Site; rather, DEP staff will visit the facility on an as-needed basis. This facility is designed to be “Machinery Space” as defined by the ADA Standards,² which is a facility frequented only by service personnel for maintenance, repair or occasional monitoring.

Need for the Proposed Project

Newtown Creek and its tributaries, including East Branch, are designated by DEC as Class SD waterbodies which are required to be suitable for fish, shellfish, and wildlife survival. DO concentration in Class SD waterbodies should be equal to or exceed 3.0 mg/L at all times. However, the DO concentration in certain portions of Newtown Creek and its tributaries rarely exceeds 0.0 mg/L, and surface DO concentration varies widely during the summer months. The Project is expected to raise the DO concentration in East Branch and the southern portions of Newtown Creek, to levels necessary to meet the SD standard.

State Environmental Quality Review

DEP, as lead agency, completed an environmental review of the Project. The environmental review was completed pursuant to City Environmental Quality Review Act (CEQR), codified at Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review which collectively contain the requirements for the CEQR process. The environmental review followed CEQR, and the City Environmental Quality Review Technical Manual (2012)³ was used as a guide with respect to environmental analysis methodologies and impact criteria for evaluating the effects of the Project. The Project was also reviewed in conformance with the New York State Historic Preservation Act of 1980.

DEP representatives visited the Project site and environs and discussed the Project’s possible environmental effects with involved agencies, and members of the public. Based on the above, and the additional information set forth below, DEP, as lead agency, analyzed the areas of environmental concern and determined that the Project would not have a significant adverse effect on the environment. Accordingly, DEP issued a Negative Declaration Notice of Determination of Non-significance dated January 12, 2015, a copy of which is attached.

Status of Required Land Use Approvals

DEP is seeking approval from the City Planning Commission (CPC) for site selection of the Project pursuant to the City’s Uniform Land Use Review Procedure (ULURP). In accordance with ULURP, this process will include input from Community Board 5 and the Queens Borough President.

² 2010 ADA Standards for Accessible Design. Department of Justice, 2010. p53.

³ The City of New York, Mayor’s Office of Environmental Coordination, City Environmental Quality Review Technical Manual, 2012 edition (revised 6/18/12).

Zoning Override Request

Developments in M3 districts, with certain limited exceptions not relevant here, on waterfront zoning lots are required to provide and maintain public open space at the water's edge with pedestrian links to upland communities.⁴ DEP believes, for the reasons detailed below, that safety and security concerns justify a waiver of the following ZR provisions:

- §62-33 Inclusive - Special Yard Regulations on Waterfront Blocks
- §62-50 Inclusive - General Requirements for Visual Corridors and Waterfront Public Access Areas
- §62-60 Inclusive - Design Requirements for Waterfront Public Access Areas
- §62-80 Inclusive Special Review Provisions

Given the isolated location of the facility, DEP believes that there are safety and security concerns. The proposed facility would be located on 47th Street, a narrow side street that draws little pedestrian traffic from the more heavily utilized Grand Avenue, which is 450 feet to the south. The facility would be surrounded by industrial uses which would not be required to provide a connection to any waterfront public access area on the project site. The 241 foot depth of the lot would result in the waterfront public access area being setback significantly from the street even if the required upland connection was provided. As previously noted the facility will not have a regular staff presence, but rather would be visited only on an as-needed basis. Due to these unique conditions DEP believes any waterfront public access could result in safety and security issues. Therefore, DEP does not believe compliance with these requirements is in the public interest.

Conclusion

Accordingly, as discussed above, DEP seeks to override the following provisions of the Zoning Resolution:

- Zoning Resolution, Article VI: Special Regulations Applicable To Certain Areas, Chapter 2 - Special Regulations Applying in the Waterfront Area.

DEP respectfully requests your concurrence that the benefits of this public facility and its importance for the benefit of the public welfare outweigh the non-conformance with the zoning regulation as described.

Sincerely,

Emily Lloyd
Commissioner

⁴ NYC Zoning Resolution, Article VI: Special Regulations Applicable To Certain Areas, Chapter 2 - Special Regulations Applying in the Waterfront Area.

Attachments:

Site Plan
Site Photos
Negative Declaration Notice of Determination of Non-significance

c: Robin Levine, Esq. – NYC DEP
Marcella Eckels, Esq. – NYC DEP
Jeffrey D. Friedlander, Esq. – Law Department
Steve Stein-Cushman, Esq. – Law Department
Susan Choi-Hausman, Esq. – Law Department
Julie Lubin, Esq. – Department of City Planning