



CITY PLANNING COMMISSION

August 19, 2009/Calendar No. 23

C 090445 ZSK

IN THE MATTER OF an application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit to Section 78-312(d) of the Zoning Resolution to modify the height and setback requirements of Section 23-632 (Front Setbacks in districts where front yards are not required) to facilitate the construction of a mixed-use development on property located at 136-50 Flushing Avenue (Block 2033, Lot 1), in an R8/C2-4 District, within a Large-Scale Residential Development, Borough of Brooklyn, Community District 2.

This application for a Special Permit pursuant to Section 78-312 (d) of the Zoning Resolution was submitted by the New York City Department of Housing Preservation and Development on May 18, 2009 to modify height and setback requirements of Section 23-632 to facilitate the construction of a mixed-use development within a Large-Scale Residential Development in the Wallabout area of Community District 2, Brooklyn.

RELATED ACTIONS

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

C 090444 ZMK Zoning map amendment changing an M1-2 district to an R8/C2-4 district.

C 090446 HAK UDAAP Designation and project approval and disposition of City-owned property.

BACKGROUND

A full background discussion and description of this project appears in the report on the related application for UDAAP designation and disposition of City-owned property (C 090446 HAK).

ENVIRONMENTAL REVIEW

This application (C 090445 ZSK), in conjunction with the applications for the related actions (C 090444 ZMK and C 090446 HAK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09HPD030K. The lead agency is the New York City Department of Housing Preservation and Development.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on May 20, 2009.

UNIFORM LAND USE REVIEW

This application (C 090445 ZSK), in conjunction with the applications for the related actions (C 090444 ZMK and C 090446 HAK) was certified as complete by the Department of City Planning on June 1, 2009, and was duly referred to Community Board 2 and the Borough President, in accordance with accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 2 held a public hearing on this application on June 10, 2009, and on that date by a vote of 37 to 0 with 1 abstention adopted a resolution recommending approval of the application with conditions.

A full discussion of Community Board 2's recommendation appears in the report on the related application for UDAAP designation and disposition of City-owned property (C090446 HAK.)

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on July 17, 2009 approving the application with conditions.

A full discussion of the Borough President's recommendation appears in the report on the related application for UDAAP designation and disposition of City-owned property (C090446 HAK.)

City Planning Commission Public Hearing

On July 1, 2009 (Calendar No. 4), the City Planning Commission scheduled July 22, 2009, for a public hearing on this application (C 090445 ZSK). The hearing was duly held on July 22, 2009 (Calendar No. 18), in conjunction with the public hearings on the applications for the related actions (C 090444 ZMK and C 090446 HAK).

There were a number of speakers, as described in the report on the related application for UDAAP designation and disposition of City-owned property (C090446 HAK), and the hearing was closed.

Waterfront Revitalization Program Consistency Review

This application, in conjunction with the applications for the related actions, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), 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 09-028.

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

CONSIDERATION

The Commission believes that this Special Permit (C 090445 ZSK) is appropriate.

A full consideration and analysis of the issues, and the reasons for approving this application appear in the report on the related application for UDAAP designation and disposition of City-owned property (C090446 HAK.)

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 78-313

(Findings) of the Zoning Resolution:

- (a) that such modifications will aid in achieving the general purposes and intent of this Chapter as set forth in Section 78-01 (General Purposes);
- (b) that such distribution of #floor area#, #dwelling units#, #rooming units#, #open spaces#, locations of #buildings#, or location of primary business entrances, #show windows# or #signs# will permit better site planning and will thus benefit both the residents of the #development# and the City as a whole;
- (c) that such distribution or location will not unduly increase the #bulk# of #buildings#, density of population, or intensity of #use# in any one block, to the detriment of the occupants of #buildings# in the #block# or nearby #blocks#;
- (d) that such distribution or location will not affect adversely any other #zoning lots# outside the #development# by restricting access to light and air or by creating traffic congestion;
- (e) where portions of the total required #open space# are pooled in common #open space# areas or common parking areas, that such common areas will, by location, size, shape and other physical characteristics, and by their relationship to the surrounding #development# and the circulation system, permit realization of the full community service of advantages for which such pooled areas are designed;
- (f) not applicable; and
- (g) the modification of height and setback will not impair the essential character of the surrounding area and will not have adverse effects upon the access to light, air and privacy of adjacent properties.

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 Sections 197-c and 200 of the New York City Charter, that based on the consideration and findings described in this report, the application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 78-312(d) of the Zoning Resolution to modify the height and setback requirements of Section 23-632 (Front Setbacks in districts where front yards are not required) to facilitate the construction of a mixed-use development on property located at 136-50 Flushing Avenue (Block 2033, Lot 1), in an R8/C2-4 District, within a Large-Scale Residential Development, Borough of Brooklyn, Community District 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 090445 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by FX Fowle Architects, LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
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<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-10	Zoning Analysis and Site Plan	April 29, 2009
Z-11	Site Plan	April 29, 2009
Z-20	Height and Setback Encroachment Diagrams	April 29, 2009
Z-21	Height and Setback Encroachment Diagrams	April 29, 2009
Z-22	Height and Setback Encroachment Diagrams	April 29, 2009
Z-23	Height and Setback Encroachment Diagrams	April 29, 2009

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above that have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

5. In the event that the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 090445 ZSK), duly adopted by the City Planning Commission on August 19, 2009 (Calendar No. 23), 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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KAREN A. PHILLIPS, Commissioners