



CITY PLANNING COMMISSION

September 4, 2007/ Calendar No. 2

C 040161 ZMK

IN THE MATTER OF an application submitted by the Kings Material Co., Inc., pursuant to Sections 197-c and 201 of the New York City Charter, for an amendment of the Zoning Map, Section No. 22c, changing from an M1-2 District to an R6 District property bounded by 37th Street, 15th Avenue, 38th Street, and a line 100 feet northwesterly of 15th Avenue, as shown on a diagram (for illustrative purposes only) dated April 9, 2007, and subject to the conditions of CEQR Declaration E-176, Borough of Brooklyn, Community District 12.

The application for an amendment of the Zoning Map was filed by the Kings Material Co., Inc., on October 31, 2003, to rezone property on the west side of 15th Avenue between 37th and 38th streets for a proposed six-story residential development.

RELATED ACTION

In addition to the amendment of the Zoning Map, implementation of the proposed development also requires the following action which is being considered concurrently with this application:

C 040162 ZSK: A special permit pursuant to Section 74-681(a)(2) of the Zoning Resolution to allow a portion of a railroad right-of-way that has been permanently discontinued or terminated to be included in the lot area for a development.

BACKGROUND

Kings Material Co., Inc., proposes a zoning map amendment from M1-2 to R6 for a portion of Block 5348 on the west side of 15th Avenue between 37th and 38th streets in the Borough Park section of Brooklyn Community District 12. In addition, the applicant is requesting a special permit pursuant to Section 74-681(a)(2) of the Zoning Resolution to permit use of a property within a permanently discontinued railroad right-of-way, the former Culver El. The two proposed actions would facilitate the development of a six-story residential building containing 35 dwelling units on property currently used as a building material supply facility.

The proposed rezoning area contains eight privately-owned lots of which the applicant owns seven (Lots 20, 41, 42, 44-47). Lot 20 was originally part of the former Culver El right-of-way and was acquired by the applicant from the City of New York in June of 1997. That lot was the subject of two actions approved by the City Council on January 8, 1997. An application (C960473HAK) for UDAAP designation, project approval and disposition of city-owned property included a restriction requiring use of the property for the storage of building supplies

for a minimum of ten years, or until June, 2007. An application for a special permit (C960472ZSK) facilitated expansion of Kings Material's business onto the subject lot, located within the right-of-way for the former Culver elevated line.

Kings Material's seven-lot property consists of a total of 21,383 square feet and is currently used as a building material supply facility. Lot 48 is a 2,000 square-foot property located at the northeast corner of 15th Avenue and 38th Street, is owned by a religious institution and contains a three-story, non-conforming residential building used as a parsonage.

The area adjacent to the rezoning area is predominantly residential to the east and south and zoned R6 and consists of older two-family, two-story semi-detached homes and row houses and more recently-built three-story multi-family buildings. Non-conforming residential uses also exist west of the rezoning area on Block 5348 as well as on blocks directly north and south of the rezoning area located in M1-2 and M2-1 districts. Directly north of the rezoning area on Block 5349 are industrial uses. Kings Material also owns property on the east side of 15th Avenue between 37th and 38th streets, zoned R6, which the applicant is currently developing with a similar six-story residential building.

Under the existing M1-2 zoning district, new residential uses are not permitted. The M1-2 district has a maximum Floor Area Ratio (FAR) of 2.0 for manufacturing and commercial uses.

Under the proposed R6 zoning district, residential developments can be constructed with a maximum FAR of 2.43 or 3.0 if constructed under the Quality Housing Program.

The applicant proposes to construct a six-story residential building with 35 dwelling units under the Quality Housing Program and accessory parking for 30 spaces provided behind the proposed building and accessed from 37th Street. A portion of lot 20 located more than 100 feet from 15th Avenue is not included in the proposed rezoning area and will remain in an M1-2 district.

The former transit right-of-way, that is the subject of proposed special permit, was part of the former Culver El Shuttle elevated transit line and, at ground level, the South Brooklyn Railroad. The right-of-way ran along 37th Street between Fort Hamilton Parkway and McDonald Avenue

in the Borough Park section of Brooklyn. Service on the rapid transit line was terminated in 1975 and the elevated structure was demolished in 1985. The railroad line was discontinued in the early 1980's. Following the demolition of the elevated structure, the Transit Authority surrendered the right-of-way to the Department of Citywide Administrative Services (DCAS).

Because the site occupies a former transit right-of way, a special permit pursuant to Section 74-681. is required for the proposed residential development.

ENVIRONMENTAL REVIEW

This application 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. This application was determined to be an Unlisted action. The designated CEQR number is 04DCP041K. The lead agency is the City Planning Commission.

The conditional negative declaration included an (E) designation. The placement of the (E) designation (E-176) on the zoning map would ensure that appropriate testing, remediation and corrective action, if needed, would be undertaken. To avoid any potential impacts associated with noise, the proposed action would place an (E) designation for noise on the development site, consisting of Block 4348, Lots 41, 42, 44, 45, 46 and 47. The text of the (E) designation is as follows:

In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 35 dB(A) window/wall attenuation in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.

After a study of the potential environmental impact of the proposed action (ULURP Nos. C 040161 ZMK, C 040162 ZSK), a Conditional Negative Declaration was issued. 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:

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.

The restrictive declaration also restricts the manner in which the property may be developed or redeveloped, by requiring the sampling protocol and remediation measures to serve as a condition precedent to any change of use in any such development or redevelopment of the property.

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

The applicant signed the conditional negative declaration on March 22, 2007. The conditional negative declaration was published in the New York State Environmental Notice Bulletin on April 25, 2007. 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 July 9, 2007.

UNIFORM LAND USE REVIEW

This application (C 040161 ZMK), in conjunction with the related application for a special permit (C 040162 ZSK), was certified as complete by the Department of City Planning on April 9, 2007 and was duly referred to Community Board 12 and the 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 12 held a public hearing on this application on May 29, 2007, and, on that day, by a vote of 33 in favor, 0 against, and 2 abstaining, adopted a resolution recommending approval of the application subject to the condition that :“25% of These [sic] units be set aside for affordable housing.”

Borough President Recommendation

This application was considered by the Brooklyn Borough President, who issued a recommendation on July 3, 2007, approving the application with the following conditions:

that the applicant provide to the City Council prior to its [sic] public hearing the following:

- A minimum household income with one or more income tiers; and,
- A demonstration that the developer will guarantee the provision of affordable housing.

City Planning Commission Public Hearing

On June 20, 2007 (Calendar No. 9), the City Planning Commission scheduled July 11, 2007, for a public hearing on this application (C 040161 ZMK). The hearing was duly held on July 11, 2007 (Calendar No. 39) in conjunction with the public hearing on the related application (C 040162 ZSK). There were 5 speakers in favor of the application and none opposed.

The speakers in favor of the applications included the Council Member from the 39th District, the applicant, the applicant's attorney, the applicant's affordable housing consultant and an employee of the applicant.

The Council Member from the 39th District stated his support for the applications conditioned on the provision of affordable housing. The applicant's attorney stated that the applicant was considering the Community Board and the Borough President's requests to add affordable housing to the residential development facilitated by the rezoning. The applicant testified that the proposed rezoning would facilitate a new residential building with 35 dwelling units similar to the building the applicant was developing across 15th Avenue from the rezoning area.

There were no other speakers and the hearing was closed.

CONSIDERATON

The Commission believes that this amendment of the Zoning Map (C 040161ZMK), in conjunction with the related application for a special permit pursuant to Section 74-681, is appropriate.

Approval of the proposed rezoning, in conjunction with the special permit to allow development within a former railroad right-of-way, would facilitate the development of a six-story residential building with accessory parking. According to the applicant, the existing manufacturing use on the site is increasingly in conflict with the growing residential population in the surrounding area. The area adjacent to the rezoning site is predominantly residential to the east and south and is zoned R6. This area is developed with two-story attached and semi-detached homes and, three-story apartment buildings. The proposed R6 district is an extension of the adjacent R6 residential district and would be consistent with other residential uses across and along 15th Avenue and on the side streets. The proposed zoning would facilitate the construction of much needed housing in the area.

The Commission notes that the proposed development within a former railroad right-of-way meets the findings of Section 74-681(a); The Commission believes that the streets providing access to the site would be adequate to handle the traffic resulting from the proposed development. The proposed development site is a corner lot that fronts on two streets - 15th Avenue and 37th Street – and would be accessed from 37th Street, a lightly-traveled street. The Environmental Assessment prepared for the project concluded that the projected traffic by proposed project would be adequately handled by the existing streets and would be less than the traffic generated by the current light manufacturing use.

The Commission also believes that the proposed development would not result in floor area being unduly concentrated on any one portion of the project site. Plans for the proposed six-story building evenly distribute floor area and dwelling units throughout the site and do not concentrate them in one area. The proposed building would thus not adversely affect the character of the surrounding area and would be an extension of the existing surrounding residential area while the proposed building height would be in context with other nearby buildings.

The Commission acknowledges that the proposed development consists of a single residential use with required accessory parking and thus would not cause conflict between different uses. Finally, the Commission believes that the former right-of-way is no longer needed for

acknowledge transportation use because it was discontinued in 1975, the elevated transit structure demolished in 1985 and the land ceded to the City of New York. Accordingly, other portions of the former right-of-way have been disposed by the City for re-development.

The Commission recognizes the importance of affordable housing and notes the recommendations that the project be required to incorporate affordable units. However, it believes that the relevant zoning determination to be made is whether the rezoning should incorporate the regulations of the City's Inclusionary Housing Program, which provides an incentive for affordable housing rather than establishing a mandate. In this regard, the Commission notes that situations may exist where a private rezoning application should incorporate the Inclusionary Housing Program regulations, such as when a private applicant proposes a large scale residential project which will effectively result in the creation of a new residential community or establish a new context for future land actions in the surrounding area. In this case, however, the proposed rezoning from M1-2 to R6 encompasses only a small block frontage, with adjacent areas to the east and south already zoned R6. The project is essentially 'infill' development that would add to an existing residential neighborhood; it would not open up a large area for new residential use or otherwise establish a new land use framework. In this context, applying the provisions of the Inclusionary Housing Program to a single development would not be an appropriate zoning determination.

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 condition:

Pursuant to a Phase I Environmental Site Assessment (ESA) dated February, 2004, for the project site, available in the proposal's CEQR file, DEP's Office of Environmental Planning and Assessment, recommended a restrictive declaration, due to the potential presence of hazardous materials on the site as a result of past and present land uses. The applicant filed and recorded such a declaration to require that detailed Phase II testing would occur, 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 and groundwater on the project site would be characterized prior to any site disturbance (i.e., site grading, excavation, demolition, or building construction). With the implementation of the declaration described above, no significant adverse impact related to hazardous materials would occur; 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. 22c, changing from an M1-2 District to an R6 District property bounded by 37th Street, 15th Avenue, 38th Street, and a line 100 feet northwesterly of 15th Avenue, Borough of Brooklyn, Community District 12 as shown on a diagram (for illustrative purposes only) dated April 9, 2007, and which includes CEQR Designation E-176.

The above resolution (C 040161 ZMK), duly adopted by the City Planning Commission on September 4, 2007 (Calendar No. 2), 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
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