



CITY PLANNING COMMISSION

June 25, 2014/Calendar No. 7

M 770445 (D) ZMK

IN THE MATTER OF an application submitted by Mikes Hop, Inc. for the modification to the Restrictive Declaration D-47, which was approved as part of a Zoning Map Amendment (C 770445 (A) ZMK) to allow an increase in the permitted floor area for satellite stores from 16,400 square feet to 18,600 square feet to facilitate the enlargement of an existing restaurant located at 11000 Flatlands Avenue (Block 8235, Lot 48) in an R5/C2-1 and R5/C2-1 District, Community District 18, Borough of Brooklyn.

WHEREAS, on January 8, 2014, Mike's Hop Inc. submitted an application (M 770445(D) ZMK) for the modification of Restrictive Declaration D-47 and its subsequent amendments for a commercial development located on Block 8235, Lot 48, in the Borough of Brooklyn; and

WHEREAS, Restrictive Declaration D-47 was entered into in connection with approval of an amendment to the Zoning Map (M 770445(A)ZMK), submitted by Sheradel Realty Corporation to facilitate a commercial development on Block 8235, Lot 14 in Community District 18, Borough of Brooklyn; and

WHEREAS, the zoning map amendment and Restrictive Declaration (M 770445(A) ZMK), was approved by the City Planning Commission on October 19, 1979 (Calendar No. 3), and was subsequently approved by the Board of Estimate on December 6, 1979, allowing for and including: a maximum of 409 parking spaces; 50,930 square feet of supermarket, and 12,500 square feet of satellite stores; and

WHEREAS, a modification to Restrictive Declaration D-47 (M 770445 (B) ZMK) to allow reciprocal parking with an adjacent lot was approved by the City Planning Commission on June 28, 1982; and

WHEREAS, another modification (M770445(C) ZMK) to Restrictive Declaration D-47 to permit an increase in the allowed size of the satellite stores from 12,500 square feet to 16,400 square feet, to facilitate a stand-alone restaurant and provide for parking lot landscaping, safety islands, decorative concrete walkways and curb improvements, was approved by the City Planning Commission on November 20, 2002 (Calendar No. 12); and was subsequently approved by the City Council on December 18, 2002 (Reso. No. 641); and

WHEREAS, the subject modification (M770445(D) ZMK) would permit an increase of 2,200 square feet in the allowed size of the satellite stores, from 16,400 to 18,600 square feet; and

WHEREAS, the subject modification (M770445(D) ZMK) would allow for the enlargement of the existing restaurant, Mike's HOP Inc., from 3,814 square feet to 6,024 square feet, and the addition of 15 parking spaces for a total of 388 spaces on the zoning lot; and

WHEREAS, the subject modification (M770445 (D) ZMK) would provide new landscaping/planters, a decorative concrete crosswalk, a bicycle parking rack and the widening of pedestrian walkways at the perimeter of the restaurant; and

WHEREAS, this application (M 770445(D) 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 61.7.00 et seq., and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order 91 of 1977. It was determined that this application was a Type II and therefore required no further environmental review.

WHEREAS, this application was referred by the Department of City Planning to Community Board 18 in a letter dated April 28, 2014; and

WHEREAS, Community Board 18 in a letter dated May 22, 2014 indicated that, while they reviewed the application at their regular monthly meeting, the Board decided not to offer a specific recommendation concerning the proposed modification; and

WHEREAS, the Commission has determined that the application warrants approval; and

THEREFORE, be it **RESOLVED** that the City Planning Commission, based on the environmental determination and after consideration of the proposed modification, that the application (M 770445(D) ZMK) submitted by Mike's IHOP Inc. for the modification of Restrictive Declaration D-47, for the property located southeasterly of the intersection of Flatlands Avenue and Louisiana Avenue (Block 8235, Lots 48), in an R5/C2- 1 District and an R5/C2-2 District, Community District 18, Borough of Brooklyn is approved subject to the following conditions:

1. The property that is the subject of this application (M770445(D) ZMK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by N R D with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-0	<u>Zoning and Building Code Analysis</u>	February 28, 2014
Z-3	<u>Proposed Site Plan</u>	March 18, 2014

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 which 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 approval to the lessee, sub lessee or occupant.
5. Development pursuant to this resolution shall be allowed only after the Restrictive Declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, Kings County. The Restrictive Declaration shall be deemed incorporated herein as a condition of this resolution.
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 and the attached restrictive declaration whose provisions shall constitute conditions of the approvals granted herein, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said approval. 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 any approvals hereby granted or of the attached restrictive declaration.

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 approval.

The above resolution (M 770445 (D) ZMK), duly adopted by the City Planning Commission on June 25, 2014 (Calendar No. 7), is filed with the Office of the Speaker, City Council together with a copy of the plans of the development.

CARL WEISBROD, Chairman

KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,

ALFRED C. CERULLO III, MICHELLE DE LA UZ,

MARIA M. DEL TORO, JOSEPH DOUEK, RICHARD W. EADDY,

ANNA HAYES LEVIN, ORLANDO MARIN, Commissioners

COMMUNITY BOARD No. 18



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1097 BERGEN AVENUE • BROOKLYN, NEW YORK 11234-4841
718.241.0422 tel
718.531.3199 fax
bkbrd18@optonline.net

May 22, 2014

City Planning Commission
Calendar Information Office
22 Reade Street, Room 2E
New York, NY 10007

RE: M770445 (D) ZMK
Modification of Restrictive Declaration (D-47)
11000 Flatlands Avenue, Brooklyn, NY
Block 8235, Lot 48
R5/C2-1 & R5/C2-2 Districts

To Whom It May Concern:

The Community Board met, at a regularly scheduled meeting of the Board, on Wednesday, May 21, 2014 and reviewed the above referenced application.

Please be advised that the Community Board decided not to offer a recommendation concerning the proposed modification of the Restrictive Declaration for the enlargement of the IHOP Restaurant at 11000 Flatlands Avenue, Brooklyn, NY, Block 8235, Lot 48.

If you require additional information, please contact us. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Saul Needle'.

Saul Needle
Chairperson

Cc: Richard Lobel, P.C.
Richard Bearak, Director of Land Use, Brooklyn Borough President's Office

THIRD MODIFIED DECLARATION

THIS THIRD MODIFIED DECLARATION made the _____ day of _____, 2014 by SHERADEL ASSOCIATES, L.P., a Limited Partnership, with offices at 560 Sylvan Avenue, Englewood Cliffs, New Jersey, hereinafter called the “Declarants.”

WITNESSETH:

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Brooklyn, City and State of New York, Tax Block 8235, Lot 48 described more fully in Exhibit A attached hereto, and said Lot 48, together with adjacent Lot 53 of Tax Block 8235 owned by 11000 Flatlands Avenue LLC and described more fully in Exhibit B attached hereto, are hereinafter referred to as the “Subject Property”; and

WHEREAS, Lot 48 of the Subject Property is subject to a certain Declaration (D-47) dated October 18, 1979 (hereafter the “1979 Declaration”), which was executed by and between HARRY WAXMAN and HARRY WAXMAN and RAY STEINBORN, d/b/a SEAVIEW ASSOCIATES, and SHERADEL REALTY CORP., as Declarants, and which was recorded in the Office of the City Register, Kings County, at Reel 1127, Page 96 on December 17, 1979; and

WHEREAS, the Subject Property is also subject to a certain Modified Declaration, dated January 15, 1983 (hereafter the “1983 Declaration”), made by SHERADEL ASSOCIATES as Declarant, which set forth a joint parking agreement covering both Lot 48 and Lot 53 of the Subject Property, and which was recorded in the office of the City Register, Kings County, At Reel 1399, Page 1788 on May 31, 1983; and

WHEREAS, the Subject Property is also subject to a certain Second Modified Declaration (hereafter the “2002 Declaration”), dated November 6, 2002, made by SHERADEL ASSOCIATES L.P. as Declarant, to permit an addition of 3,900 square feet in the allowed size of the satellite stores, from 12,500 square feet to 16,400 square feet, pursuant to New York City Planning Commission (the “Commission”) and City Council approval under application M

770445(C) ZMK, which 2002 Declaration was recorded in the office of the City Register, Kings County under CRFN No. 2003000000176 on January 9, 2003 (the 1979 Declaration, as modified by the 1983 Declaration and the 2002 Declaration, are referred to together herein as the “Declaration”).

WHEREAS, the inclusion of Lot 53 herein pertains only to the joint parking obligation and Lot 53 has no other obligation under this Third Modified Declaration or the Declaration; and

WHEREAS, Everest Abstract Services, as agent for Fidelity National Title Insurance Company, has certified that as of December 30, 2013, Declarant is the fee owner of Lot 48, Flushing Savings Bank and Bethpage Federal Credit Union are Mortgagees on Lot 48, 11000 Flatlands Avenue LLC is the fee owner of Lot 53, and that the above-named parties are the sole “parties in interest” to the Subject Property as defined in Section 12-10 (“Zoning Lot”) of the New York City Zoning Resolution, a copy of the certifications being annexed hereto as Exhibit C; and

WHEREAS the Parties in Interest who have not executed this Third Modified Declaration have executed instruments waiving their rights and consenting to the execution of this Declaration, copies of which are attached hereto as Exhibit D; and

WHEREAS, the 2002 Declaration modified paragraph 1 of the 1979 Declaration, which refers to the original site plan, to refer instead to the site plan annexed to the 2002 Declaration as “Exhibit E” and modified paragraph 2(b) of the 1979 Declaration to provide as follows:

2. The Declarants shall develop:
 - a) ...
 - b) Satellite commercial uses containing no more than 16,400 square feet, in total, on Lot 48; and
 - c)

WHEREAS, the Declarant has submitted an application designated M 770445(D) ZMK, dated January 8, 2014, to the Commission requesting modification of the Declaration (the

“Application”) to further increase the total amount of satellite commercial floor area allowed on Lot 48 by 2,200 square feet for a total of 18,600 square feet to facilitate the 2,210 square foot enlargement of an existing restaurant (the “Proposed Development”) and to, accordingly, modify the site plan attached to the 2002 Declaration; and

WHEREAS, in connection with the Proposed Development, the Declarant is required to provide a visual corridor pursuant to Section 62-50 of the Zoning Resolution and has submitted a related application designated N 140232 ZCK, dated January 8, 2014, to the Chairperson of the Commission to certify that pursuant to Section 62-811 of the Zoning Resolution the site plan complies with the provisions for visual corridors, which visual corridor requirement is the subject of a separate restrictive declaration recorded against Lot 48; and

WHEREAS, the Declarant by this Third Modified Declaration desires to restrict the manner in which Lot 48 of the Subject Property may be redeveloped, maintained, and operated in the future and intends these restrictions to benefit all the land, including City-owned land, lying within one-half mile of the Subject Property; and

WHEREAS, the Declarant represents and warrants that no restrictions of record on the use of the Subject Property, nor any present or presently existing future estate or interest in the Subject Property, nor any lien, obligation, covenant, limitation or encumbrance of any kind precludes presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Third Modified Declaration or the development of the Subject Property in accordance herewith.

NOW, THEREFORE, the Declarant does hereby declare that Lot 48 of the Subject Property shall be held, sold, conveyed and occupied subject to the following restrictions, covenants, obligations, easements and agreements which are for the purpose of protecting the value and desirability of Lot 48 and which shall run with such real property binding every party having any right, title or interest in the Subject Property or any part thereof and binding all heirs, successors and assigns.

1. Paragraph 1 of the Declaration, which refers to the site plan attached to the 2002 Declaration, is hereby deleted. The new Paragraph 1 shall read: “Declarant covenants to develop the Subject Property in substantial conformance with the Site Plan annexed hereto as Exhibit E.”
2. Paragraph 2(b) of the Declaration is hereby modified to read:
 - “2. The Declarant shall develop: . . .
 - b. Satellite commercial uses containing no more than 18,600 square feet, in total, on Lot 48; and”.
3. The Declarant makes no other changes to the Declaration.
4. Lot 53 is not affected by this Third Modified Declaration beyond the joint parking obligations as set forth in the 1983 Modified Declaration and as illustrated on the attached Site Plan, attached hereto as Exhibit E.
5. Except as otherwise provided in this Third Modified Declaration, the Declaration is hereby ratified and confirmed and continued in full force and effect.
6. The Declarant recognizes that the City of New York is an interested party to this Third Modified Declaration and consents to the City enforcing the covenants, conditions, restrictions and agreements herein contained by whatever means may be appropriate to the situation.
7. This Third Modified Declaration shall become effective upon approval of the Application by the Commission and the City Council.
8. This Third Modified Declaration shall run with the land and bind the Declarant, successors and assigns.
9. The Declarant covenants that when the Commission and the City

Council have approved the Application, it shall promptly file and record this Third Modified Declaration in the Office of the Register of the City of New York, County of Kings indexing it against the entire Subject Property. The Declarant further covenants to provide the Commission with a copy of this Third Modified Declaration, certified as recorded by the Register of Kings County. The City of New York shall also have the right, but not the obligation, to record this Third Modified Declaration. However, all costs of recordation and certification whether undertaken by the Declarant or by the City, shall be borne by the Declarant, who shall immediately pay such costs to the City.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

SHERADEL ASSOCIATES, L.P.

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of New York
County of _____

On the ____ day of _____ in the year ____ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.