

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 200 of the New York City Charter for an amendment to the Zoning Resolution, pursuant to Section 15-021, for the legalization of residential loft units, Borough of Brooklyn, CD 1, 2.

The application for a Zoning Resolution text change was filed by the New York City Department of City Planning (the "Department") on July 27, 1984 and this proposed text change, with the related action discussed below, will facilitate the legalization of residential loft units in the Fulton Ferry and Greenpoint-Williamsburg areas of Brooklyn.

RELATED ACTION

850113 ZMK - The Department of City Planning filed an application for an amendment of the Zoning Map, Section No. 12d changing from an M3-1 District to an M1-2 District property bounded by Plymouth Street, Bridge Street, Front Street, Dock Street, Water Street, and Main Street and property bounded by Plymouth Street, Little Street, Evans Street, Hudson Avenue and a line 100 feet west of Hudson Avenue in recognition of a shift in land use patterns towards lighter manufacturing uses. The amendment of the Zoning Map application (850113ZMK) is the subject of a concurrent City Planning Commission report dated November 25, 1985.

BACKGROUND

On April 9, 1981, the Board of Estimate adopted special loft zoning regulations for Manhattan and, in June 1982, approved special loft study areas in Brooklyn. In June 1982, Article 7C of the Multiple Dwelling Law was approved by the New York State Legislature. Article 7C granted Interim Multiple Dwelling (IMD) status for eligible residential loft units in industrial buildings in the study areas. The purpose of the study areas was to provide interim protection to residential loft units until a final determination was made by the City. The zoning text (Section 42-02), which established the study areas, contains a sunset date after which Article 7C coverage lapses. Since 1982, the sunset date has been extended several times; the current sunset date is January 31, 1986.

Since 1982, the Department of City Planning has been examining the zoning in two industrial areas: Fulton Ferry and Greenpoint-Williamsburg. These two study areas contain approximately 270 illegal residential loft units, a portion of which are within areas designated in 1982 in the New York City Zoning Resolution as study areas and referred to in Article 7C of the 1982 New York State Multiple Dwelling Law (herein after referred to as the Article 7C Study Areas). In July 1984, the Department filed the above application for a zoning text change that would permit in the two areas the grandfathering of loft units in residential use on June 4, 1981. Grandfathering would permit existing illegal residential lofts to become legal non-conforming uses. The legalization would be dependent upon the dwelling units conforming to all of the requirements of the New York State Multiple Dwelling Law and New York City Building Code and obtaining a new Certificate of Occupancy. Concurrently, the Department of City Planning and the Department of Environmental Protection (DEP) conducted an extensive environmental review of the proposed affected area. A Final Environmental Impact Statement (FEIS) was completed on November 15, 1985. The FEIS recommended the exclusion of one building and its surrounding area. These proposed zoning map and text changes would fulfill policy recommendations outlined in the 1983 Fulton Ferry report by providing a mechanism for legalization of lofts residentially occupied on June 4, 1981.

ENVIRONMENTAL REVIEW

This application and the related zoning map application were reviewed by the Department of Environmental Protection and the Department of City Planning pursuant to the New York State Environmental Quality Review (SEQR) regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617. et seq. (6 NYCRR 617) and the New York City Environmental Quality Review (CEQR) regulations set forth in the Mayoral Executive Order 91 of 1977. A Draft Environmental Impact Statement (DEIS) was prepared and a notice of completion for the DEIS was issued on September 9, 1985. A public hearing on the DEIS was held on October 16, 1985 to coincide with the City Planning Commission Public Hearing pursuant to the Uniform Land Use Review Procedure. A FEIS was prepared and a notice of completion for the FEIS was issued on November 15, 1985. Possible significant adverse effects were noted as follows:

Land Use/Neighborhood Character

The proposed grandfathering action would legalize a change in land use and community character by allowing legalization of those eligible residential uses in these predominantly industrial areas. Residential uses would be incompatible with existing industrial uses where potential health impacts were identified and, in general, because of activities associated with manufacturing uses such as trucking and potential generation of interior noise and vibrations in mixed use buildings. In addition, residential uses may be incompatible with future industrial uses permitted as-of-right in these areas.

As a result of the proposed action, space to be legalized for residential use, a total of approximately 480,500 square feet, would be removed from the supply of industrial/commercial space in these areas; however, the amount of space to be grandfathered is small relative to the total manufacturing and commercial space available for new and expanding manufacturers in these areas.

Traffic and Transportation, Pedestrian Safety

Existing industrial activity in the study areas causes pedestrian/vehicular conflicts at several locations, particularly in the Fulton Ferry area; Berry Street and Wythe Avenue area. Mitigation measures that would minimize pedestrian safety hazards are disclosed in the FEIS.

Improvements in the Fulton Ferry area would include the rehabilitation of walkways and, when possible, the construction of new sidewalks where there has never been a distinguishable, raised curb walkway. Some effort should be made to keep at the curb and sidewalks of least one side of any given street clear of cars and trucks to keep a lane clear for pedestrian movement.

In the Berry Street and Wythe Avenue area, mitigation would include improved signage to warn traffic of unexpected pedestrians. This could be signs proposed at eye-level and also highly visible crosswalk and sidewalk markings. The reconstruction of the sidewalks and the removal of the abandoned railroad sidings that cross Wythe Avenue is needed. At North 6th Street, signs should be posted for pedestrians warning of heavy truck congestion.

The area near McCarren Park should have signange alerting pedestrians to areas of vehicular congestion. The numerous curb cuts in the area should be marked by striping the entire sidewalk width with highly visible markings. Along South 8th Street, the blocks need sidewalk improvements.

Public Health

Two public health concerns affecting residential use in mixed-use buildings and manufacturing areas were addressed in the FEIS: exposure to residues and emissions from existing and past manufacturing uses. Two locations were identified as having the potential for significant adverse health effects: 1027 Grand Street/300 Morgan Avenue in English Kills, which contains plastics and other manufacturing uses, and 65 South 11th Street in Williamsburg, which contains a plastic bag manufacturer. Based on the Department of Health (DOH) recommendation that residential use not be allowed in the building at 1027 Grand Street, this building was excluded from the boundaries of the zoning text change by the Commission prior to referral of the application. The DOH recommended that a monitoring program be conducted in the 65 South 11th Street building to measure carbon monoxide, formaldehyde, other aldehydes, alkanes and acrolein. The monitoring program was performed between the Draft and Final EIS. No evidence was found to indicate that operation of the plastic bag manufacturer is incompatible with residential occupancy in the building. A further inspection by the Department of Health and Department of Environmental Protection at 1027 Grand Street/300 Morgan Avenue on October 25, 1985 revealed no change in the building's condition and the Department of Health reiterated their recommendation that residential use not be allowed in the building. An additional public health concern identified in the FEIS was that, in the future, new industrial uses may locate as-of-right in these buildings and could create potential public health impacts on residents.

Street dust lead levels and ambient air lead levels were tested as part of the environmental impact study. Ambient air lead levels at 5 locations were found to be well within the federal and state standard of $1.5\mu\text{g}/\text{m}^3$. Measured data showed that, in all locations tested in the Fulton Ferry area, in 13 of the 16 locations in the Williamsburg/Greenpoint/English Kills area, and in 2 of the 6 locations in the control area, street dust lead levels exceed the 1,000 ppm lead dust level generally recommended by the federal Environmental Protection Agency (EPA) and the Center for Disease Control to avoid adverse health effects.

The New York City Department of Health reviewed the sampling data and other data provided as part of the FEIS and concluded that automotive emissions were the major source of the high, measured street dust lead levels.

Since federal law requires a substantial reduction in the lead content of gasoline (beginning July 1, 1986, a 90% reduction of lead in leaded gasoline is required), the Department of Health concluded that the reductions should reduce the lead in the environment to within the 1,000 ppm level generally accepted by the EPA and Center for Disease Control. The Department of Health has, therefore, concluded that environmental lead need not be a factor in decisions relating to the proposed grandfathering and rezoning actions.

Noise

As pointed out in the FEIS, existing exterior noise levels measured throughout the project area would cause a significant adverse noise impact on residential users if sound attenuation mitigation is not used to achieve a 45 dB(A) interior noise environment.

PUBLIC REVIEW PROCEDURE

This application was referred to Brooklyn Community Board Number 2 together with the related amendment to the zoning map application (850113ZMK) and to Brooklyn Community Board Number 1 and the Brooklyn Borough Board.

Community Board Public Hearing

Community Board 1 held a public hearing on September 18, 1985 and, on October 9, 1985, adopted a favorable recommendation. The vote was 27 in favor, 4 against, 3 abstentions. The Board also adopted a recommendation which asked that 1027 Grand Street/300 Morgan Avenue be restored to this grandfathering action.

Community Board 2 held a public hearing on September 18, 1985 and on September 23, 1985, adopted a favorable recommendation. The vote was 25 in favor, 0 against, 0 abstentions.

City Planning Commission Public Hearing

On September 30, 1985 (Calendar No. 15) the City Planning Commission scheduled October 16, 1985 for a public hearing on the proposed text change. On October 16, 1985 (Calendar No. 26), the public hearing was duly held. Nine speakers were in support of the proposed zoning text amendment. The speakers in support of the amendment included a State Assemblyman, Community Board

representative and many loft tenants, including residents of 1027 Grand Street/300 Morgan Avenue. Proponents of the action generally support it because it would provide residential rent protection for the current tenants. Some speakers urged that building dropped at certification, 1027 Grand Street/300 Morgan Avenue be put back in the grandfathering action.

A representative from Community Board 1 spoke in favor of the proposed text change as a limited action providing residential tenants with code-compliant dwelling units and clear signal to the public that no future illegal residential use would be permitted. It was also argued that the 1027 Grand Street/300 Morgan Avenue be put back in this action. Fifteen speakers opposed the amendment. These speakers were primarily building owners, manufacturing tenants, architectural and planning consultants, real estate brokers and a union spokesman.

The following is a summary of the statements about the possible ramifications of the proposed grandfathering that opponents of this amendment made at the public hearing:

1. Concern was expressed that the legalization of residential loft units by the proposed grandfathering may establish a precedent that would encourage people to move illegally into industrial buildings with the expectation of being grandfathered in the future. An alternative to the Department's proposed grandfathering text amendment was a proposal to grandfather only buildings entirely residentially occupied regardless of size or buildings under 5,000 square feet per floor. Under this alternative proposal, these buildings would be allowed to convert to full residential use.
2. The issue of potential conflicts between residential and industrial tenants of grandfathered buildings was raised. Specific conflicts include residential parking, which might impede industrial truck deliveries, residential refuse and its collection, elevator use, and the spaces where children play. Additionally, operational problems causing interior noise and odors were discussed.
3. The last concern mentioned was the impact of grandfathering and legalization of the residential lofts on the future for industrial building space. The landlords fear that manufacturers would not be able to comply with regulations that satisfy residential and

industrial tenants cotenanting the same building. In their view, legalizing residential space may also preclude future expansion of manufacturing uses that fall into the high hazard category under Article 7B of the Multiple Dwelling Law.

CONSIDERATION

Changing technological and economic conditions for industry in the City and the nation have contributed significantly to changes in land use within the City. In North Brooklyn over the last decade, there has been a gradual decline in manufacturing operations. Currently, some new manufacturing operations are moving into the area, in great part as a result of economic pressures on manufacturing operations in Manhattan. Certain industrial buildings have been occupied partially by residential loft tenants, often artists in need of joint living/work space. The movement of artists into industrial buildings in lower Manhattan is a well-documented and significant land use change during the past fifteen years. In April 1981, the Board of Estimate approved loft zoning regulations. On June 11, 1982, the Zoning Resolution was amended to include study areas in Brooklyn; on June 21, 1982, Article 7C of the Multiple Dwelling Law was approved by the State Legislature granting, among other things, IMD status for residential loft tenants in industrial buildings in the study areas.

The Department of City Planning examined the Brooklyn 7C study areas. Based on these analyses, this text change proposes to permit grandfathering of illegal lofts in specific areas within Fulton Ferry and Greenpoint Williamsburg. Careful consideration was given to the mix of land uses. The amount of floor area that can be "grandfathered" is small relative to the total manufacturing and commercial floor space and to the overall vacant space available for new and expanding manufacturers.

The text provides a mechanism for legalization of units in residential occupancy on June 4, 1981. Illegal occupancy after this date would not be permitted and the Commission believes that active code enforcement efforts should be undertaken upon approval of these actions. This is the final zoning action contemplated as a result of the City Planning Commission 1981 Loft Legislation that extended the geographical areas in which grandfathering of residential units would be permitted.

In a letter to the Commission, the Office of Business Development expressed concerns about the impact that this grandfathering would have on existing manufacturing users and the potential hardship faced by building owners required to legalize the residential units in their buildings. The office of Business Development recommends that the filing period for Article 7C hardship exemptions at the New York City Loft Board be reopened. The relevant City agencies are reviewing the recommendation; it may require State legislation.

This text amendment would allow the grandfathering of all loft units in the areas covered by these actions that can prove residential occupancy on June 4, 1981. Only those grandfathered units included in the definition of interim multiple dwelling set forth in Section 281 of Article 7C would be covered by the provisions of Article 7C. Corporation Counsel has advised the Commission that some of the units that may be grandfathered pursuant to this action would not be eligible for Article 7C coverage. In particular, those units that were not within the Article 7C Study Areas would not be protected by the provisions of Article 7C. Section 281 (1) of Article 7C provides that an Interim Multiple Dwelling is a manufacturing building in which, as of December 1, 1981 three (3) or more families have resided since April 1, 1980. To avoid any misunderstanding concerning the relationship of this zoning text to Article 7C, the reference to Article 7C in the advertised text has been deleted.

The advertised text was also modified to permit an exclusion from relocation incentive payments for the residential units eligible for grandfathering. The zoning text as advertised has been further modified to require double-glazed windows in order to mitigate the noise impact identified in the FEIS.

The Commission is concerned about several comments raised during the public hearing. With regard to the 5,000 square feet per floor proposal, that size limitation is inappropriate for Brooklyn given the diversity and mix of the 45 buildings within this action. Additional potential operational conflicts may exist in some buildings and are discussed in greater detail in the FEIS. Future expansion possibilities of high hazard industrial uses listed under Article 7B of the Multiple Dwelling Law will be limited within buildings grandfathered.

It is recommended that the Department of Health initiate a yearly voluntary blood testing program based on a public outreach program targeted to residents in the grandfathered area. This would provide empirical evidence that lead levels do not pose any health danger as leaded gasoline requirements take effect and emissions levels are reduced.

To assure that eligible tenants are aware of their ability to grandfather, should this amendment be adopted by the Board of Estimate, the Department of City Planning will disseminate information about the loft grandfathering requirements to the appropriate buildings. Application forms would be available from the Department of City Planning after adoption by the Board of Estimate.

The Commission believes that changes provided by this text amendment would recognize that grandfathering the relatively small number of units, with the protections cited in the FEIS, would allow legalized residential loft tenants to coexist successfully with manufacturing tenants in the Fulton Ferry and Greenpoint-Williamsburg areas.

ENVIRONMENTAL FINDINGS

Having considered the FEIS, the City Planning Commission finds that, consistent with social, economic and other essential considerations:

1. From among the reasonable alternatives thereto, the actions to be approved are ones that minimize or avoid adverse environmental effects to the maximum extent practicable; and
2. To the maximum extent practicable, the adverse environmental impacts revealed in the environmental impact statement process would be minimized or avoided by incorporating as conditions to the decision those mitigative measures identified as practicable.

This report, with the FEIS, shall constitute the written statement of facts supporting the decision and indicating the social, economic, and other factors and standards that form the basis of the decision, pursuant to 6 NYCRR 617.9 (c) (3).

Consequently, the Commission has determined that this application warrants approval.

The Commission has determined that the amendment as modified is appropriate and has adopted the following resolution:

RESOLVED, by the City Planning Commission that the Zoning Resolution of the City of New York effective as of December 15, 1961, and as subsequently amended, is further amended by a change relating to Section 15-021 concerning the legalization of residential loft units in the Fulton Ferry and Greenpoint Williamsburg areas in the Borough of Brooklyn as follows:

All matter is new.

Matter underlined is defined in Section 12-10.

15-021
Special Use Regulations

* * *

- (f) In C8 and M1 districts no new dwelling units are permitted. However, within such districts in the following areas:
- 1) Area in Brooklyn Community District 1 bounded by Division Avenue, the Brooklyn-Queens Expressway, Grand Street Extension, Union Avenue, Meeker Avenue, Bayard Street and Wythe Avenue;
 - 2) Area in Brooklyn Community District 2 bounded by Water Street, Bridge Street, Front Street, Jay Street, York Street, Front Street, and New Dock Street;

dwelling units, which the Chairman of the City Planning Commission determines were occupied on June 4, 1981 shall be a permitted use provided that a complete application for a determination of occupancy is filed by the owner of the building or the occupant of a dwelling unit in such building not later than July 31, 1986. Such a determination of residential occupancy on June 4, 1981 shall be deemed to permit residential use as-of-right for such dwelling units. Any floor area permitted for use as dwelling units pursuant to this paragraph shall qualify for exclusion from the conversion contribution required pursuant to the provisions of Section 15-50 et seq. (Relocation Incentive Program) provided that a complete application for authorization to exclude such floor area is filed with the Board of Standards and Appeals not later than October 31, 1986. The filing deadline in Section 15-551 b (Existing Conversion) shall not apply to floor area permitted as dwelling units pursuant to this paragraph. The provisions of Section 15-025 (Double Glazed Windows) shall not apply to dwelling units permitted pursuant to this paragraph. All dwelling units permitted pursuant to this paragraph shall be required to have double glazed windows.

The above resolution, duly adopted by the City Planning Commission on November 25, 1985 (Calendar No. 8), is herewith filed with the Secretary of the Board of Estimate in accordance with the requirements of Section 200 of the New York Charter.

HERBERT STURZ, Chairman
JOHN P. GULINO, R. SUSAN MOTLEY,
DENISE M. SCHEINBERG, THEODORE E. TEAH, Commissioners

MARTIN GALLENT, Vice Chairman, Voting No.

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