



CITY PLANNING COMMISSION

April 1, 2009/ Calendar No.8

M910478 (E) ZMK

IN THE MATTER OF an application submitted by Brighton Development, LLC **for the modification of Restrictive Declaration D -131 and its subsequent amendments**, pursuant to Section 2b of that Restrictive Declaration (1998 Declaration) which was previously approved as part of an application for a modification of Restrictive Declaration D-131 (C 910478(A) ZMK), and originally approved as part of an application for a Zoning Map Amendment (C 910478 ZMK) for a residential development on property generally bounded by Brighton Beach Avenue, Seacoast Terrace, a park and Coney Island Avenue (Block 8720, part of Lot 14), in an R7-1 District, Community District 13, Brooklyn.

WHEREAS, on November 7, 2008 Brighton Development, LLC submitted an application (M 910478(E) ZMK), for the modification of Restrictive Declaration D-131 and its subsequent amendments, for the residential development located on Block 8720, part of Lot 14, in the Borough of Brooklyn; and

WHEREAS, Restrictive Declaration D-131 (the 1992 Declaration) was originally entered into in connection with approval of an amendment to the Zoning Map (C 910478 ZMK), change in City Map (C 910479 MMK), and special permits for an attended parking garage and height and set back waivers (C 910480 ZSK), submitted by Alexander Muss and Sons (AMS) to facilitate a large scale residential development on Block 8720, part of Lot 14 in Community District 13, Borough of Brooklyn; and

WHEREAS, the zoning map amendment application (C 910478 ZMK) and all related actions and the AMS Project were the subject of a Final Supplemental Environmental Impact Statement which was certified as complete on July 10, 1992 (the "1992 FSEIS"); and

WHEREAS, the AMS Project did not proceed and AMS no longer had any interest in developing the subject property pursuant to the earlier approval and A Notice of Cancellation of

the 1992 Declaration was filed by the applicant on May 10, 1999; and

WHEREAS, in furtherance of a modified project, a new Restrictive Declaration D-131 (the 1998 Declaration) was approved by the City Planning Commission on August 5, 1998, Calendar No. 16, as part of an approved application (M 910478(A) ZMK), and was subsequently approved by the City Council on August 27, 1998 (Reso. No. 445), allowing for and including: a maximum of 850 dwelling units and 1.25 million square feet of floor area in buildings, ranging in height from 3 to 12 stories, as shown on three alternative layouts; a maximum of 1,200 accessory parking spaces; and a requirement to provide publicly accessible open space and improvements; and the maintenance of certain off-site areas adjacent to the property. In addition, concurrent application (N 980424 ZAK) was approved, pursuant to Section 62-722 of the Zoning Resolution, for an authorization to modify the elevation requirement for a visual corridor; and

WHEREAS, Restrictive Declaration D-131 (the 1998 Declaration) was modified (M 910478 (B) ZMK) and approved by the City Planning Commission on June 25, 2001, changing the phasing and the scheduling of public improvements and their temporary certificate of occupancy milestones; and

WHEREAS, Restrictive Declaration D-131 (the 1998 Declaration) was modified (M 910478 (C) ZMK) and approved by the City Planning Commission on July 24, 2002 and by the City Council on September 12, 2002, expanding the Brighton Beach Avenue open space from 43,700 to 53,700 square feet; allowing an increase in the number of 12-story buildings from two- to five; allowing an additional floor to be added to four buildings, increasing their size from seven- to eight-stories; reducing the width of the pedestrian easement on the west side of

Seacoast Terrace from ten- to eight feet and relocating the four-foot street planting strip from the east side to the west side of the pedestrian easement; and to allow private beach access through the 50-foot natural park strip at the southern end of the development and beneath the boardwalk; and

WHEREAS, Restrictive Declaration D-131 (the 1998 Declaration) was modified (M 910478 (D) ZMK) and approved by the City Planning Commission on January 25, 2006 and by the City Council on March 1, 2006, allowing an increase in the maximum floor area for the site from 1,250,000 square feet to 1,285,000 square feet; and increasing the number of dwelling units on the site from 850 to 865 units; and

WHEREAS, pursuant to the subject modification (M 910478(E) ZMK), there would be an increase in the maximum floor area for the site from 1,285,000 square feet to 1,373,546 square feet; and

WHEREAS, the modification would increase the number of dwelling units on the site from 865 to 927 units; and

WHEREAS, the modification would increase the number of twelve-story buildings on the site from 5 to 6; and

WHEREAS, Restrictive Declaration D-131 is proposed to be amended to incorporate these modifications; and

WHEREAS, a Technical Memorandum (CEQR No. M89-299K) was filed in conjunction with the subject modification (M 910478 (E) ZMK). The Technical Memorandum assessed

whether the proposed actions would have the potential to cause any significant adverse environmental impacts not previously identified in the Final Environmental Impact Statement (“FEIS”) for the Brighton by the Sea Project (ULURP Nos. C910478 ZMK, C910479 MMK and C910580 ZSK) issued on July 10, 1992 by the City Planning Commission, and the three subsequent Technical Memorandums: a 1998 Technical Memorandum of the Revised Brighton by the Sea Project; the 2002 Technical Memorandum of the Fourth Amended Declaration of the Brighton Beach “Oceana” Residential Project; and the 2005 Technical Memorandum analyzing proposed revisions to the program for the Oceana development’s Building K. The Technical Memorandum 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 of Procedure of 1991 and Executive Order No. 91 of 1977. The lead agency is the City Planning Commission (CPC). A Notice of Minor Modification was issued on November 14, 2008, which concluded that the action represents a minor modification and does not alter the conclusions of the earlier review. Therefore, the Notice of Completion of the FEIS issued on July 10, 1992 and the subsequent technical memorandums in 1998, 2002, or 2005 remain valid.

WHEREAS, this application was referred by the Department of City Planning to Community Board 13 on November 26, 2008; and Community Board 13 held a public hearing on this application on December 17, 2008, and on January 28, 2009, by a vote of 27 to 1, adopted a resolution recommending approval of the application with conditions. A summary of the recommendations of Community Board 13 appears on the related application for a zoning map amendment (C 090179 ZMK).

WHEREAS, this application was considered by the Brooklyn Borough President who issued a recommendation approving the application on February 15, 2009.

WHEREAS, this application, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 22, 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 WRP number is 01-096. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

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

THEREFORE, be it **RESOLVED** that the City Planning Commission, after consideration of the proposed modification, and the sufficiency of information in the 1992 FSEIS and subsequent Technical Memorandums, finds that the application will not result in environmental impacts substantially different from or greater than those described in the 1992 FSEIS and would not alter the conclusions of the 1992 FSEIS, and that having considered such materials and the 1992 FSEIS for which a Notice of Completion was issued on July 10, 1992, the City Planning Commission certifies that the requirements of the New York State Environmental Quality Review Act and regulations promulgated pursuant thereto have been met, and finds that, consistent with social, economic, and other essential considerations from among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable, by incorporating as conditions to the decision those mitigation measures that were identified as practicable.

The report of the City Planning Commission, together with the 1992 FSEIS and subsequent Technical Memorandums and the Notice of Minor Modification dated November 14, 2008 constitutes the written statement of facts that form the basis of the decision; and

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, that the application (M 910478(E) ZMK) submitted by Brighton Development, LLC for the modification of Restrictive Declaration D-131 and its subsequent amendments, pursuant to Section 2b of that Restrictive Declaration (1998 Declaration) which was previously approved as part of an application for a modification of Restrictive Declaration D-131 (C 910478(A) ZMK), and originally approved as part of an application for a Zoning Map Amendment (C 910478 ZMK), for a residential development on property generally bounded by Brighton Beach Avenue, Seacoast Terrace, a park and Coney Island Avenue (Block 8720, part of Lot 14), in an R7-1 District, Community District 13, Brooklyn is approved subject to the following conditions:

1. The property that is the subject of this application (M 910478(E) 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 Moss Gilday Group (MGG), filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
BB-Alt-01	Alternate Plan No.1	10/28/08
SP-1	Building "P" - Proposed Site Plan, Elevations, Site Data	10/28/08

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. A copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document 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.
5. The development shall include those mitigation measures listed in the Final Supplemental Environmental Impact Statement (CEQR No. 89-299(A)) dated July 10, 1992.
6. 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.
7. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated October 28, 2008 and executed by Brighton Development,

LLC., the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of Kings.

8. 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.
9. 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 910478(E) ZMK), duly adopted by the City Planning Commission on April 1st, 2009 (Calendar No. 8), is filed with the Office of the Speaker, City Council.

AMANDA M. BURDEN, FAICP, Chair

KENNETH J. KNUCKLES, ESQ., Vice Chairman

ANGELA M. BATTAGLIA, ANGELA R. CAVALUZZI, AIA, ALFRED C. CERULLO, III,

BETTY Y. CHEN, MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN

LEVENTHAL, SHIRLEY A. McRAE, JOHN MEROLO, KAREN A. PHILLIPS,

Commissioners