CITY PLANNING COMMISSION
CITY OF NEW YORK

OFFICE OF THE CHAIR

CONDITIONAL NEGATIVE DECLARATION

Project Identification
CEQR No. 07DCP050Q
ULURP Nos. 070352ZMQ
SEQRA Classification: Unlisted

Lead Agency
City Planning Commission
22 Reade Street
New York, NY 10007
Contact: Robert Dobruskin
(212) 720-3423

Name, Description and Location of Proposal

Flushing Meadows East Rezoning

The applicant, Avery Fowler Owners, is proposing a zoning map amendment to rezone a block (Block 5076, Lots 1, 5, 7, 9, 11, 14, 16, 18, 20, 29, 31, 43, 61, 65, 67, 69, 75 and 160) from M1-1 and M1-2 to C2-6A. The proposed action would facilitate a proposal by the applicant to develop their property (Block 5076, Lots 9, 11, 14, 16, 18, 31, 43, 61, 65, 69, 75 and 160) with five, five- to seven-story, mixed-use buildings consisting of approximately 350 dwelling units and 138,000 square feet of commercial space. The proposed rezoning area is bounded by College Point Boulevard, 131st Street, Avery Avenue and Fowler Avenue in the Flushing neighborhood of Queens, Community District 7.

The eastern end of the rezoning area is located within an M1-1 zoning district. The remainder of area is within an M1-2 zoning district. M1-1 and M1-2 are light industrial districts permitting manufacturing and commercial Use Groups 4 through 14, 16 and 17 at a floor area ratio (FAR) of 1.0 and 2.0, respectively. Community Facilities without sleeping accommodations are permitted in M1-1 districts at 2.4 FAR, and in M1-2 Districts, at 4.8 FAR. Currently, the rezoning area consists of a mid-block two-family dwelling, a gas station, two live poultry establishments, office and general retail establishments, and accessory surface parking.

The proposed C2-6A district is a local service commercial district that is generally occupied by residential buildings with retail uses on the lower floors. Permitted commercial uses in C2-6A districts include retailers such as grocery stores, dry cleaners, and restaurants that serve the immediate neighborhood.

C2-6A districts permit a maximum 2.0 FAR for commercial uses and a maximum 4.0 FAR for residential uses. Residential uses in C2-6A districts are governed by the bulk regulations of the R7A district, which allows a maximum base and building height of 65 and 85 feet, respectively.

Parking is required for 50% of the total dwelling units.

In order to assess the impacts associated with the proposed action, a Reasonable Worst Case Development Scenario was established. In total five projected development sites were identified as most likely to be developed in the future with the proposed action. As a result of the proposed action, it is anticipated that new development on those sites would consist of 378 dwelling units and 148,100 square feet of retail or service space. Absent the proposed action, it is anticipated that those sites would contain 2 dwelling units and 243,947 square feet of commercial space. The projected incremental change on those sites over the no-action scenario is 376 dwelling units and a 95,847 square feet reduction of retail or service space.

Additionally, one potential development site was identified as less likely to be developed in the future with the proposed action. The build year is 2014.

The proposed rezoning includes (E) designations on projected and potential development sites in order to preclude future air quality, noise and hazardous materials impacts, which could occur as a result of the proposed action. The (E) designation number is E-290.

The (E) designation requirements related to hazardous materials would apply to the following block and lots:

Projected Development Sites 1-5
Block 5076 Lot(s) 5, 7, 9, 11, 14, 16, 67 and 160
Block 5076 Lot(s) 18, 20 and 29
Block 5076 Lot 31
Block 5076 Lot 43
Block 5076 Lot(s) 61, 65, 69 and 75

Potential Development Site 1
Block 5076 Lot 1

The text of the (E) designation for hazardous materials is as follows:

Task 1 – Sampling Protocol
The applicant must submit to the Mayor's Office of Environmental Remediation (OER) for review and approval, a Phase 1 of the site.

If site sampling is necessary, a soil and groundwater testing protocol including a description of methods and a site map with all sampling locations clearly and precisely represented must be submitted to OER. No sampling program should begin until written approval of a protocol is received from the OER. The number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e., petroleum based contamination or non-petroleum based contamination) and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after

review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by the OER upon request.

Task 2 – Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to the OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such tests results, a determination will be made by the OER if the results indicate that remediation is necessary.

If the OER determines that no remediation is necessary, written notice shall be given by the OER.

If based on the test results, the OER concludes that remediation is required; a remediation plan must be prepared and submitted to the OER for review and approval. The applicant must complete such remediation when and as determined necessary by the OER. The applicant should then provide proper documentation, including an engineering certification, that the work has been satisfactorily completed.

An OER-approved construction-related health and safety plan would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This Plan would be submitted to the OER with the remediation plan for review and approval prior to implementation.

The (E) designation for air quality would preclude the potential for significant adverse air quality impacts related to heating and hot water systems (HVAC) emissions. The following properties require both natural gas and setbacks for the HVAC systems in order to avoid the potential for significant adverse impacts related to air quality:

Projected Development Sites 1-5
Block 5076 Lot(s) 5, 7, 9, 11, 14, 16, 67 and 160
Block 5076 Lot(s) 18, 20 and 29
Block 5076 Lot 31
Block 5076 Lot 43
Block 5076 Lot(s) 61, 65, 69 and 75

The text for the (E) designations for air quality for the above properties is as follows:

Block 5076, Lots 5, 7, 9, 11, 14, 16, 67 and 160 (Projected Development Site 1): Any new residential and/or commercial development on the above-referenced properties must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the HVAC stack(s) are located on a 6-story roof at least 25 feet from the lot line facing 131st Street to avoid any potential significant adverse air quality impacts.

Block 5076, Lots 18, 20 and 29 (Projected Development Site 2): Any new residential and/or commercial development on the above-referenced properties must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the HVAC stack(s) are located on the 6-story rooftop at least 25 feet from the lot lines facing 131st Street and College Point Boulevard to avoid any potential significant adverse air quality impacts.

Block 5076, Lot 31 (Projected Development Site 3): Any new residential and/or commercial development on the above-referenced properties must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the HVAC stack(s) are located on the 6-story rooftop t least 20 feet from the lot line facing, College Point Boulevard, to avoid any potential significant adverse air quality impacts.

Block 5076, Lot 43 (Projected Development Site 4): Any new residential and/or commercial development on the above-referenced properties must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the HVAC stack(s) are located on the 5-story roof top at least 25 feet from the lot lines facing College Point Boulevard to avoid any potential significant adverse air quality impacts.

Block 5076, Lots 61, 65, 69 and 75 (Projected Development Site 5): Any new residential and/or commercial development on the above-referenced properties must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the HVAC stack(s) are located on the five-story rooftop at least 20 feet from the lot lines facing Fowler Avenue and College Point Boulevard to avoid any potential significant adverse air quality impacts.

With the placement of the (E) designations on the above block and lots, no significant air quality impacts related to HVAC emissions would be expected as the result of the proposed action.

There are two levels of required noise attenuation. Depending on the ambient noise levels they would require 31 and 33 dBA of window/wall attenuation. The (E) designation for noise would preclude the potential for significant adverse impacts related to high levels of ambient noise. The text of the (E) designation for certain noise attenuation requirements for the properties identified follows below.

The following properties require 31 dBA of noise attenuation in order to avoid the potential for significant adverse impacts related to noise:

Projected Development Sites 2 and 3
Block 5076 Lot(s) 18, 20 and 29
Block 5076 Lot 31

The text for the (E) designation for noise for the above properties 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 31 dB(A) window/wall attenuation on all facades 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.**

The following properties require 33 dBA of noise attenuation in order to avoid the potential for significant adverse impacts related to noise:

Projected Development Sites 1, 4 and 5
Block 5076 Lot(s) 5, 7, 9, 11, 14, 16, 67 and 160
Block 5076 Lot 43
Block 5076 Lot(s) 61, 65, 69 and 75

The text of the (E) designation for noise for the above properties 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 33 dB(A) window/wall attenuation on all facades 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.**

With the attenuation measures specified above, the proposed action would not result in any significant adverse noise impacts, and would meet CEQR guidelines.

Additionally, to avoid any potential significant adverse impacts, the applicant has entered into a Restrictive Declaration for archaeology for their properties at Block 5076 Lots 9, 11, 14, and 16.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated July 31, 2012, prepared in connection with the ULURP Application (No. 070352ZMQ). The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

1. The applicant agrees via a restrictive declaration to conduct archaeological identification, investigation and mitigation in accordance with the *CEQR Technical Manual* and New York City Landmarks Preservation Commission (LCP) Guidelines for Archaeological Work in New York City. The restrictive declaration also restricts the applicant from

submitting any permit applications to the DOB that would allow for soil disturbance on the subject property until such time that LPC provides the necessary written notice to DOB.

Supporting Statement:

The above determination is based on an environmental assessment which finds that:

1. By letter dated April 12, 2010, LPC determined that the site may be archaeologically significant and that further testing would be required in order to determine if the site contains Native American remains from burials and occupation as well as from circa 1859 residential occupation. As such, the applicant has entered into a restrictive declaration which requires that prescribed archaeological work be conducted in accordance with *CEQR Technical Manual* and LPC Guidelines for Archaeological Work in New York City.

   The restrictive declaration is binding upon the property's successors and assigns. The declaration serves as a mechanism to assure the archaeological testing be conducted and that any necessary mitigation measures be undertaken prior to any site disturbance (i.e., site grading, excavation, demolition, or building construction). The restrictive declaration was prepared in a form acceptable to the LPC and the restrictive declaration was executed on August 4, 2010 and submitted for recordation with the City's Department of Finance on December 7, 2010.

   Consequently, no significant adverse impacts to archaeological resources are expected.

2. The (E) designation for air quality, noise and hazardous materials for properties at Block 5076 and Lots 1 (Potential Development Site #1), 5, 7, 9, 11, 14, 16, 67, 160 (Projected Development Site #1), 20, 29 (part of Projected Development Site #2), 31 (Projected Development Site #3), 61, 65, 69 and 75 (Projected Development Site #5), where new construction is projected for these sites, would ensure that the proposed actions would not result in significant adverse impacts.

3. (E) designations for air quality, noise and hazardous materials on existing buildings at Block 5076 and Lots 18 (part of Projected Development Site #2), and 43 (Projected Development Site #4) would ensure the projected enlargement of the existing warehouse/office buildings on the site and the conversion of the enlarged buildings to residential use would incorporate appropriate window wall attenuation, HVAC stack location and fuel type, and hazardous materials controls. With these measures in place no significant adverse impacts are expected to occur.

4. No other significant adverse effects on the environment which would require an Environmental Impact Statement are foreseeable.

It is fully agreed and understood that if the foregoing conditions, modification, and alterations are not fully incorporated into the proposed action, this Conditional Negative Declaration shall become null and void. In such event, the applicant shall be required to prepare a Draft Environmental Impact Statement before proceeding further with said proposal.

Flushing Meadows East Rezoning
CEQR No. 07DCP050Q
Conditional Negative Declaration

This Conditional Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

I, the Undersigned, as the applicant or authorized representative for this proposal, hereby affix my signature in acceptance of the above conditions to the proposed action.

Patrick W. Jones
Signature of Applicant or Authorized Representative

Date: October 10, 2012

Patrick W. Jones
Name of Applicant or Authorized Representative

Celeste Evans
Celeste Evans, Deputy Director
Environmental Assessment & Review Division
Department of City Planning

Date: 10/10/12

Amanda M. Burden, FAICP, Chair
City Planning Commission

Date: 2/7/13