Special Permit Pursuant to ZR§ 74-681-Statement of Findings

74-681

Development within or over a railroad or transit-right-of-way or yard

*(a) In all districts, when a **development** or **enlargement**, including large-scale developments pursuant to Section 74-74, 78-00 et seq. or 79-00 et seq. is located partially or entirely within a railroad or transit right-of-way or yard and/or in railroad or transit air space, the City Planning Commission may permit:*

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*(2) any portion of the right-of-way or yard where railroad or transit **use** has been permanently discontinued or terminated to be included in the **lot area** for such **development** or **enlargement**;*

(b) As a condition for granting such special permit, the Commission shall find that:

(1) The streets providing access to all uses pursuant to paragraph (a) above are adequate to handle traffic resulting there from;

The Proposed Actions would facilitate the development of a 5-story 103,512 sf (4.0 FAR) commercial building with a ground floor supermarket and office uses above.

A Transportation assessment per Chapter 16 of the 2021 CEQR Technical Manual (CEQR TM) was performed as a part of the Environmental Assessment Statement (EAS) associated with the Proposed Rezoning and ZR § 74-681 Special Permit. As noted in the Analysis Framework of the EAS (Section 1.8), and as defined in the Future With-Action Condition of the Transportation Assessment, a 142,590 gross-square foot, mixed-use building, containing 121 residential units and 16,835 gross-square feet of local retail uses were assumed. The Analysis Framework assumes the net increment of the No-Action Condition absent the Proposed Action, which assumes the existing approximately 15,000 gross-square foot Paperific Supermarket and 5,700 gross-square feet of commercial office present would net out of the With-Action Condition. The net increment therefore analyzed per the Analysis Framework assumes 121 residential units and -3,865 gross-square feet of commercial uses.

Based on the Affected Area's location, it is within Traffic Zone 2. According to Table 16-1 of the *2021 CEQR Technical Manual*, a residential development of fewer than 200 residential units, 15,000 square feet of local retail, or 25,000 square feet of community facility space, or a weighted average below 1.00 of any of the above, typically does not warrant further assessment of the potential for adverse effects on Transportation. Incremental development under the

Proposed Actions, compared to No-Action conditions, would consist of 121 more residential dwelling units (0.61 weighted average) and a decrease of 3,865 GSF of commercial space (-0.26 weighted average), which results in a weighted average of 0.35 for the Proposed Actions. Accordingly, no further analysis was warranted and the Proposed Actions are assumed to result in no potential impact to the traffic network proximate to the Affected Area.

As the EAS associated with the Proposed Actions, including ZR § 74-681 Special Permit and zoning map amendment from R6, M1-2, and M2-1 zoning districts to an R6B and C4-4A zoning districts, analyzes a Reasonable Worst-Case Scenario (RWCDS) that differs significantly from the Applicant's Proposed Development, traffic generation and parking demand characteristics associated with this Development were analyzed. As noted above, the Applicant intends to develop a 134,840 gross-square foot building, containing a 19,985 gross-square foot supermarket, 84,573 gross-square feet of commercial office, and 25,900 gross-square foot cellar level garage with 63 spaces on Lots 15, 17, 49, and 54 that are supported by the ZR § 74-681 Special Permit subject to the (b)(1) and (d) finding.

In support of the ZR § 74-681 (b)(1) and (d) findings, the Applicant's Proposed Development was analyzed for traffic generation, parking demand and sufficiency of loading docks. The assessment of the traffic impact of the Applicant's Proposed Development assumes the net of the existing 15,000-gsf supermarket and net of existing 5,700-gsf of commercial office space - which is to be replaced by a new 19,985-gsf supermarket. In total, the Proposed Development would generate a net of 78,873-gsf of new commercial office space (proposed 84,573-gsf minus existing 5,700-gsf), and 4,985-gsf net supermarket space (proposed 19,985-gsf minus existing 15,000-gsf supermarket) supported by 63 total parking spaces on the cellar level.

Based on trip generation analysis performed in accordance with the 2021 CEQR Technical Manual, the Applicant's Proposed Development would not generate more than 50 vehicular trips at any intersection during any weekday or weekend peak traffic hour and therefore, per the CEQR Technical Manual, this additional traffic volume is not presumed to significantly impact vehicular traffic in the area.

A Parking Demand Assessment was performed in accordance with ZR § 74-681 (b)(1) and (d) findings to determine whether the 63 spaces of accessory parking proposed is sufficient to meet the projected parking demand of the Applicant's Proposed Development. Based on Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Ed and Parking Demand Generation Manual, 5th Ed, the proposed 84,573-gsf of commercial office space would generate ***62 parking spaces*** of peak accumulated demand based on the conservative car utilization factors evaluated in the Travel Demand and Parking Assessment Memorandum. It is noted that the existing *Paperific* Supermarket is currently supported by approximately 8 surface parking spaces – of which no more than 3 parked vehicles have been observed in field or via historical aerial photography. Accounting for this loss of accessory parking associated with the existing *Paperific* Supermarket, a potential worst-case shortfall of approximately 2 parking stalls is possible. While on-street parking within ¼ mile is acknowledged as constrained, a 107-space parking facility adjacent to the Proposed Development Site at 1474 37th Street has been field verified as having a

minimum of 15-20 parking spaces available during weekdays and near full availability during weekends.

The Applicant's Proposed Development is focused on creating local office space and a new modern supermarket within walking and biking distance for Borough Park residents that is highly transit accessible - situated near multiple bus lines and to the Church Ave and Ditmas Ave NYCT subway stations with access to the F and G lines. Given the above traffic generation summary and consideration of the intended orientation of the commercial office space associated with the Applicant's Proposed Development, as required under paragraph (b)(1), the streets providing access to all uses proposed are adequate to handle traffic resulting therefrom.

*(2) the distribution of **floor area** and the number of **dwelling units** or **rooming units** does not adversely affect the character of the surrounding area by being unduly concentrated in any portion of such **development** or **enlargement**, including any portion of the **development** or **enlargement** located beyond the boundaries of such railroad or transit right-of-way or yard;*

By including the Right-of-Way ("ROW") lots (Lots 15 and 17) into the Development Site, the bulk of the Proposed Development would be more evenly distributed throughout the four tax lots that comprise the Development Site. Without Lots 15 and 17 as part of the Development Site, the bulk of the building would have been unduly concentrated along 38th Street and the building would have needed to be taller (at minimum six floors) to maximize its permitted floor area. The inclusion of the ROW lots as part of the Development Site also creates a through lot condition which inherently distributes floor area more evenly than a typical infill interior lot. This more equitable distribution of bulk would yield a building that would fit more appropriately within the scale of the surrounding block. The proposed 63-foot, five story building would be in context with the six-story, approximately 90-foot *Brooklyn Square* office building located along the northern side of 37th Street across from the Development Site as well as the six-story, approximately 70-foot tall residential building located along the eastern side of 15th Avenue immediately east of the Development Site. Thus, the equitable distribution of bulk would produce a building height that would not adversely affect the character of the surrounding area.

Furthermore, the proposed uses along 37th Street include parking and loading, which is appropriate considering the existing uses currently found along this portion of 37th Street. These proposed uses along the ROW lots are consistent with the level of development along other sections of the Right-of-Way, which primarily contains accessory parking and storage for local businesses. Therefore, the proposed floor area in the ROW portion of the Development Site would not be adversely affecting the character of the surrounding area.

(3) All uses, developments or enlargements located on the zoning lot or below a platform do not adversely affect one another;

The proposed uses within the Proposed Development are compatible with each other and do not adversely affect one another. The two uses proposed for the building are a 19,985 gsf Use Group 6A supermarket on the ground floor and approximately 84,573 gsf of Use Group 6B offices on floors two through five above. The proposed supermarket would be a larger, more modernized version of the existing supermarket that currently operates on the site. Office tenants would have a dedicated entrance on the westernmost portion of the Development Site along 38th Street, thus avoiding any conflicts between office tenants and supermarket customers. Furthermore, the proposed uses would complement each other as office tenants would benefit from having a convenient place to buy food or drink and the supermarket would benefit from the anticipated business borne by the office workers. These uses are also compatible with the existing uses in the surrounding area which contains larger office buildings as well as smaller to mid-sized supermarkets. Because the Right-of-Way has been abandoned, there is no concern about a railroad use being incompatible with one of the new uses to be introduced on the Development Site.

*(4) if such railroad or transit right-of-way or yard is deemed appropriate for future transportation **use**, the site plan and structural design of the **development** do not preclude future use of, or improvements to, the right-of-way for such transportation **use**.*

The transit-Right-of-Way has been abandoned and is no longer deemed appropriate for rail use. The Culver Shuttle elevated transit line, which ran along 37th Street above this site was terminated in 1975. The elevated structure was then demolished in 1985. The South Brooklyn Railroad ran beneath the former Culver-El at ground level and ran along the southern side of 37th Street between Fort Hamilton Parkway and McDonald Avenue, including through Lots 15 and 17 of the Development Site. Service terminated on the railroad line in the early 1980s. Following the demolition of the transit line, the New York City Transit Authority surrendered the railroad right-of-way to DCAS, and the City has no intention to develop a new rail line along this corridor. Therefore, this railroad right-of-way will not be used in the future.

Furthermore, almost all the lots located along this portion of 37th Street that were part of the former Right-of-Way have already been developed and therefore it would not be possible to bring them back for future transit use. Block 5348 Lot 7 on the southeast corner of 37th Street and 14th Avenue has been developed with a three-story ambulance garage and dispatch facility for *Hatzolah of Boro Park*, a volunteer emergency medical and ambulance service, via a special permit granted by CPC in February 2007 (C 070034 ZSK).

Moving east along the southern side of 37th Street, the 6,000 sf portion of the Right-of-Way currently part of Lot 68 was issued a Special Permit by CPC in May 2007 (C 070309 ZSK) in order to facilitate an employee parking area and unloading area for tire deliveries for the Ganin Tire distribution company.

The portion of the Right-of-Way currently classified as Block 5348 Lot 11 was issued a special permit in June 2003 (C030067 ZSK) to facilitate an accessory 30-space parking lot and one-story accessory storage building for the principal Strauss Bakery located on Block 67 immediately to the south.

Lots 15 and 17 themselves have been previously granted special permits as well. In March 2007, CPC granted a Special Permit (C 070227 ZSK) to facilitate construction of a 3-story 6,733 square foot warehouse on the current Lot 15 (formerly part of Lot 9). However, due to changed circumstances, the owner no longer needed the proposed warehouse and the site was never developed. In May 2007, CPC granted a Special Permit (C 070310 ZSK) to permit the current Lot 17 (formerly part of lot 9) to be used for accessory parking, loading and storage uses for the *Paperific* supermarket on adjacent Lot 49. This lot is currently being used for such purposes today.

Lastly, CPC granted in September 2007 a Special Permit (C 040162 ZSK) for the current Lots 118 and 119 (formerly Lot 20) to be included in the lot area of a proposed six-story residential development. This building though to date has not been built and the lots remain utilized as parking and storage areas for the Kings building material supply facility, which occupies most of the frontage along the western side of 15th Avenue between 37th and 38th Streets. The CPC reports for each Special Permit mentioned above state that the Commission noted that the railroad right-of-way has been permanently discontinued. Therefore, given the above-mentioned developments and uses allocated for the lots that were part of this former Right-of-Way, there is no way the transit Right-of-Way could be deemed appropriate for future transit use.

(d) The Commission shall require the provision of adequate accessory off-street parking spaces and loading berths necessary to prevent the creation of traffic congestion caused by the curb parking of vehicles generated by any use permitted on the zoning lot, and shall determine the required number of parking spaces and loading berths in accordance with the purposes established in this Resolution with respect to other major traffic-generating facilities.

63 accessory parking spaces are proposed in the cellar of the Proposed Development as well as one 50’ x 12’ loading berth along 37th Street.

As noted above regarding the (b)(1) finding, per the parking demand accumulation analysis, the Proposed Development provides sufficient on-site parking to meet the projected parking demand generated by the Proposed Development. Should the need arise for overflow parking, this need can be accommodated by a directly adjacent off-street parking facility. Therefore, there is not projected to be much need, if any at all, for curbside parking by occupants of the Proposed Development. Additionally, the Proposed Development provides a suitably sized, off-street loading dock accessible on 37th Street to accommodate delivery trucks associated with supermarket operations and the overall truck trip generation and operations associated with the Proposed Development are not forecast to result in traffic congestion.

Furthermore, the Proposed Development Plans were evaluated to determine whether truck loading and unloading for the land uses as proposed would generate traffic congestion. A single 50'x 12' wide loading berth, accessed by an 18'-0" curb cut is proposed on 37th Street, a 60-foot-wide street. The loading berth would allow for a truck to pull completely into the Development Site and not obstruct traffic. Truck traffic generation associated with the proposed supermarket and commercial office use is projected to generate two (2) truck trips during the AM peak hour, while other truck deliveries associated with the proposed uses are forecast to occur off-peak. Supermarket oriented deliveries would be scheduled to maximize off-peak and weekend arrivals and schedule loading bay usage to assure that simultaneous deliveries are not made. The truck trips associated with commercial office spaces are assumed to be smaller office service, parcel and material delivery vehicles that would occur curbside along the Proposed Development's 120'-foot frontage on 38th Street. Given the above, the proposed 63 parking spaces in the cellar and one 50' x 12' loading berth along 37th Street would adequately prevent traffic congestion caused by the curb parking of vehicles generated by any use permitted on the zoning lot.