Herkimer-Williams
Discussion of Findings
ZR 74-161 – Special Permit for Certain Use Group VI Retail Uses
May 2025

74-161
Retail and service uses

In all #Commercial Districts# and #Manufacturing Districts#, the City Planning Commission may permit modifications to #uses# listed under Use Group VI, as set forth in Sections 32-16 and 42-16 (Use Group VI – Retail and Services), pursuant to paragraph (a) of this Section, provided that the findings in paragraph (b) are met.

(a) For #uses# listed under Use Group VI, other than those #uses# for which another permit exists pursuant to Section 74-16, inclusive, the Commission may permit modifications to a size limitation, denoted in the Use Group table with an "S", beyond any size limitation established by special permit of the Board of Standards and Appeals pursuant to Section 73-16, inclusive.

The Applicant seeks the subject special permit to allow Use Group VI retail and service use with area greater than 20,000 square feet on Parcel 5 within Building E. The majority of Parcel 5 (and the entirety of Building E) will be in an M1-6 zoning district, which does not permit Use Group VI retail use greater than 20,000 square feet as-of-right. The subject special permit would allow for a total of 75,992 square feet of Use Group VI retail use and service use to be located on portions of the first two floors of Building E. For reference, Building E would contain up to approximately 514,000 square feet of commercial/manufacturing floor area, while the Proposed Project, in total, would contain up to approximately 601,000 square feet of commercial/manufacturing floor area. The special permit would allow larger retail uses (i.e. those over 20,000 square feet) to be permitted on all parcels within the LSGD—as C6-4 districts, which are mapped over Parcels 1, 2, 3 and 4, allow Use Group VI retail use over 20,000 square feet as of right.

In conjunction with such size modification, the Commission may permit: modifications to supplementary #use# regulations, including enclosure and location within #buildings# provisions; or modifications to additional conditions, denoted in the Use Group table with a "P", including environmental standards, geographic limitations, or other measures.

Not Applicable.

(b) In order to grant such permit, the Commission shall find that:

(1) such #use# will not impair the character or the future use or development of the surrounding area;

The Use Group VI retail uses on Parcel 5/Building E that would be subject to this special permit will be located in a mixed-use development (the Proposed Development) that is seen as a desirable future use. The proposed retail use subject to the special permit does not impair the character of

the surrounding area, but is instead compatible with the uses to be included in the Proposed Development and that exist nearby.

As described in the Project Description, the future use of the majority of the four blocks consisting the Project Area will be encompassed within the Proposed Development and include a mix of affordable residential, commercial uses (inclusive of commercial office, local retail, and destination retail), community facility uses and light industrial use. The proposed destination retail use facilitated by the subject special permit will not impair the future use of the Project Area because, to the contrary, it will be a key contributor to the mixed-use character of these four blocks. Larger retail spaces, along with the mix of the other uses proposed, would support the new residential uses brought into the area by the Proposed Development, as well as new visitors to Project Area arriving by one of the nearby mass transit options. As identified in the 2019 EDC report (discussed in the Project Description), to date, Broadway Junction has been deemed a missed opportunity to bring new job-dense uses, retail, and attractions to the area to serve transit riders and strengthen East Brooklyn's local economy. The EDC report notes the needs for regional scale development in the area, inclusive of new mixed-use buildings consisting of commercial office, destination retail, and modern industrial use amidst new opportunities for affordable housing. The proposed retail use greater than 20,000 sf is consistent with establishing Broadway Junction as a new regional hub.

The proposed retail use will not impair the existing uses and development in the Surrounding Area as it, too, is mixed-use in nature. The area within 600 feet of the Project Area, primarily characterized by a wide variety of manufacturing/industrial, commercial, residential, community facility, and transportation/utility land uses and various building types. More specifically, commercial and mixed-use commercial and residential buildings are generally located along Atlantic Avenue and East New York Avenue and include hotels, local retail (such as eating and drinking establishments, pharmacies, beauty salons, clothing stores, and convenience stores), and local service uses (such as wholesale, grocery, and hardware stores). The proposed larger retail uses on Building E do not impair these existing uses because, for one, it would be substantially located near the intersection of Atlantic Avenue and East New York Avenue and, secondly, it is another commercial retail use that compliments the nearby local retail and service uses. It is typical of major, commercial corridors throughout the City located near mass transit (e.g. Broadway in Manhattan, and portions of Flatbush Avenue and Atlantic Avenue near Atlantic Terminal) to have larger retail use interspersed among local retail uses. The proposed uses subject to this special permit would fit that trend.

Furthermore, per the Rezoning, the majority of the Project Area will be zoned as a C6-4 district, which permits Use Group VI retail and service uses without a limit on floor area as-of-right. The subject special permit would facilitate uniformity of retail use size within the Proposed Development, regardless of zoning district designation, which is in keeping with the concept of the LSGD as a single development unit.

This special permit would therefore not impair future use or development of the surrounding area because the proposed retail uses are consistent with the City's future development vision for the Project Area, the nearby commercial uses on Atlantic Avenue and East New York Avenue, and

would match the adjacent C6-4 districts and the size of retail uses permitted throughout the Proposed Development.

(2) such #use# will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow; and

The proposed retail use greater than 20,000 sf of floor area in Building E will not create or contribute to serious traffic congestion due to the location of vehicle entrance along the upper, local level of westbound East New York Avenue, and that the proposed below-grade parking garage, which would contain up to approximately 119 parking spaces, is sufficient supply to meet the demand of visitors to the retail use. Further, the proposed retail use would not inhibit pedestrian traffic due to the sidewalk widening along Van Sinderen Avenue and East New York Avenue, and the new open spaces along Herkimer Street and the Van Sinderen Avenue/East New York Avenue corner would further contribute additional off-street space for pedestrian flow and movement. Moreover, because of this site's close proximity to multiple mass transit options, the Applicant's expectation is that most visitors to the Proposed Development—and the large retail use—would use mass transit to arrive at the site, thereby reducing overall vehicular traffic in and around the Proposed Development and to the proposed Building E retail use.

Accessory parking and loading in Building E—a portion of which would serve the proposed retail uses—would not increase or contribute to traffic in the area or affect the flow of traffic in and around the Development Site. Parking access and exits would be on the north side of East New York Avenue. Curb cuts for Building E's garage and its loading would be separate—with the loading access further west than the parking access. Vehicles would make right hand turns off East New York Avenue into the site, head down a two-way ramp to a sub-cellar parking level that would be self-parked and contain up to 119 spaces. Drive aisles in the garage would be approximately 20 feet wide, offering adequate vehicle circulation to all spaces. Vehicles exiting the garage would head back up the two-way ramp, make a right out of the site and onto the westbound lane of East New York Avenue. At each of the access points, East New York Avenue becomes a one-way westbound lane, so only vehicles and trucks heading west on East New York Avenue (away from the Herkimer Street intersection) could enter the site; and exiting vehicles trucks could only turn right onto East New York Avenue towards Atlantic Avenue. This ingress/egress arrangement—on a street on the edge of the LSGD—promotes vehicles and trucks utilizing the major streets in the area, such as Atlantic Avenue, and not traversing street network internal to the LSGD. By locating these parking and loading access points here, traffic will be shepherded towards the streets that can better handle it and will not unduly affect existing vehicular flow in the area.

Additionally, the proposed retail use greater than 20,000 sf would not contribute to traffic congestion because there would be a sufficient supply of parking spaces in the Building E garage. As noted above, the garage will be located in the subcellar of the building, with ingress/egress from a curb cut along East New York Avenue, and the garage is proposed to have up to 119 permitted accessory parking spaces. Based on a parking analysis performed by Philip Habib & Associates (PHA), the peak weekday parking demand period (1-2 PM) would generate a demand for 92 parking spaces, while the peak weekend parking demand period (2-3 PM) would generate a demand for 96 spaces. As such, in both the weekday and weekend peak demand hours, there

would be a surplus of over 20 parking spaces in the Building E garage. While the Applicant anticipates most visitors to the retail would utilize one of the many nearby public transit options, the size of the Building E garage would help to avoid the potential for on-street queueing or congestion since there would be ample parking availability to handle vehicles seeking to visit the site and enter the garage.

Furthermore, the proposed retail use allowed via the special permit would not unduly inhibit surface traffic or pedestrian flow due to the proposed sidewalk widenings and new open spaces surrounding Building E/Parcel 5. Specifically, along Williams Place—where one of the retail entrances will be located—the sidewalk will be widened by 5'-1" for much of the length of the street, and then be further widened to 10'-1". Along East New York Avenue, the adjacent sidewalk will be widened first by 6' and then up to 11' as it heads towards PAA-5B. These wider sidewalks and the new Williams Place/East New York Avenue corner open space will provide for greater space for surface traffic and pedestrian movement in and around the proposed larger retail. Additionally, along Herkimer Street—which would contain another entrance to the retail use—while no sidewalk widening is proposed, just east would be the located new PAA-5A that would be contiguous to PAA-4 wrapping around the curve of Herkimer Street, offering greater nearby open space and pathways for pedestrian foot-traffic for visitors of the retail use. Accordingly, the widened sidewalks and nearby open spaces function as an outlet for surface and pedestrian traffic from the retail use and help minimize any undue inhibition of their movement or flow.

(3) the modifications are necessary to support the operation of such #use#.

The Proposed Development is envisioned as a regional destination for new mixed-use development due to its excellent proximity to mass-transit at the nearby Broadway Junction subway and Atlantic Avenue LIRR train stations. Central to the creation of the Proposed Development as a regional hub is the inclusion of destination retail uses greater than 20,000 sf of floor area, and the proposed use modification is necessary to support establishing such larger retail uses at the Development Site—and particularly enhancing marketability and operations of retail use on Parcel 5.

The majority of the Proposed Development will be located within a C6-4 zoning district, which permits Use Group VI retail of any size of right. However, without the subject special permit, the portion of the Project Area to be mapped M1-6 would be limited in its Use Group VI retail offerings to 10,000 square feet of floor area. As noted above, the subject special permit would allow for destination retail use to be over 20,000 sf across Parcel 5, which is more consistent with the neighboring C6-4 zoning.[1]

Regarding Building E, the first and second floors retail uses would be contained in the large, irregular shaped floor plates that have three, long street frontages on Herkimer Street, Williams Place and East New York Avenue. On the first floor, 31,997 square feet would be designated for large retail use and on the second floor, 43,995 square feet would be designated for large retail

[1] Note that under the recently-enacted City of Yes-Economic Opportunity, Use Group VI retail with 10,000 sf to 20,000 sf of floor area would now require a special permit from the NYC Board of Standards and Appeals per ZR 73-161.

use. While the specific layout of the retail space within each of the lower two floors has not been finalized, but for accessory loading, parking and the office lobby entrances, this retail use could occupy the entire floor plates of both floors. Without the subject special permit, the M1-6 district limits the permitted retail uses under 10,000 square feet per establishment, significantly reducing the building's marketability to destination retailers who require the greater amounts of contiguous space.

Notwithstanding the above, while 10,000-sf establishments of Use Group VI retail use could still be located in the M1-6 district, the necessary arrangement of such spaces would not be sufficient to prominently market the store to pedestrians along Williams Place and East New York Avenue and could not take full advantage of the second floor of the base for retail. Retailers of stores with 10,000 square feet or less typically do not want to be on the second floor because such spaces to do not receive sufficient foot traffic to support the stores, as street frontage is paramount for those operators. Also, the irregular shape of the building floor plates, and the location of the accessory loading at the far eastern portion of the site along East New York Avenue, would make it difficult to operate a smaller store—particularly near the Herkimer Street/Williams Place intersection that is furthest from the loading docks.

Accordingly, the modifications of the subject special permit support the operation of the proposed destination retail uses in Building E because they allow such uses to occupy almost the entire floor plates of the commercial base, appropriately market the retail use on all three street frontages, and avoids potential vacancies and difficulties the Applicant might face in trying to tenant the commercial base with smaller stores (of which some would be located on the second level and far from the requisite loading areas).

Moreover, not only would the operation of larger retail uses serve the support residential community west of the Project Area, but would also serve new residents in the approximately 988 units proposed in the Proposed Development—as well as people visiting the site by way of the LIRR and one of the many nearby subway lines. Allowing for larger retail uses within Building E promotes the goals of the 2019 EDC report by facilitating new opportunities to bring commercial development and jobs to the area and help strengthen East Brooklyn's local economy.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

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