CITY PLANNING COMMISSION

March 15, 2023 / Calendar No. 9

C 220472 ZSK
CORRECTED[1]
CORRECTED[2]

IN THE MATTER OF an application submitted by Stamford LLC and Capri Optics, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681(a)(2) of the Zoning Resolution to allow a 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 in connection with a proposed 5-story building on property located at 1463 38th Street (Block 5348, Lots 15, 17, 49 and 54), in a C4-4A District, Borough of Brooklyn, Community District 12.

This application for a special permit was filed by Stamford LLC and Capri Optics, Inc. on July 1, 2022. This application, in conjunction with the related zoning map amendment (C 220470 ZMK) and zoning text amendment (N 220471 ZRK), would facilitate the development of a 103,512-square-foot commercial building at 1459 38th Street (Block 5348, Lots 15, 17, 49 and 54) in the Borough Park neighborhood of Brooklyn, Community District 12.

RELATED ACTION

In addition to the application for a special permit (C 220472 ZSK) that is the subject of this report, the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

C 220470 ZMK Zoning map amendment to change M1-2, M2-1, and R6 zoning districts to C4-4A and R6B zoning districts

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[1] The report (C 220472 ZSK) has been administratively corrected on April 14, 2023. The original report inadvertently referenced an incorrect Resolution section.
[2] The report (C 220472 ZSK) has been administratively corrected on April 14, 2023. The original report inadvertently referenced an incorrect Resolution section.

N 220471 ZRK Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area

BACKGROUND

A full background discussion and description of this application appears in the report for the related zoning map amendment (C 220470 ZMK).

ENVIRONMENTAL REVIEW

This application (C 220472 ZSK), in conjunction with the related zoning map amendment (C 220470 ZMK) and zoning text amendment (N 220471 ZRK), 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 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. The designated CEQR number is 22DCP045K.

A summary of the environmental review appears in the report for the related zoning map amendment (C 220470 ZMK).

UNIFORM LAND USE REVIEW

This application (C 220472 ZSK) and the related zoning map amendment (C 220470 ZMK), were certified as complete by the Department of City Planning on November 7, 2022 and duly referred to Brooklyn Community Board 12 and the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related application for a zoning text amendment (N 220471 ZRK), which was referred in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

On December 13, 2022, Brooklyn Community Board 12 held a public hearing on this application (C 220472 ZSK) and the related actions (C 220470 ZMK and N 220471 ZRK), and by a vote of 27 in favor, none opposed, and two abstaining, adopted a resolution recommending approval of the application. A summary of the community board's recommendation appears in the report for the related zoning map amendment (C 220470 ZMK).

Borough President Recommendation

On January 12, 2023, the Brooklyn Borough President held a public hearing on this application (C 220472 ZSK) and the related actions (C 220470 ZMK and N 220471 ZRK), and on February 8, 2023, issued a recommendation to approve the application with conditions. A summary of the borough president's recommendation appears in the report for the related zoning map amendment (C 220470 ZMK).

City Planning Commission Public Hearing

On February 1, 2023 (Calendar No. 5), the City Planning Commission scheduled a public hearing on this application (C 220472 ZSK) and the application for the related actions (C 220470 ZMK and N 220471 ZRK). The hearing was duly held on February 15, 2023 (Calendar No. 12). Two speakers appeared in favor of the application and none in opposition. A description of the hearing is described in the report for the related zoning map amendment (C 220470 ZMK),

CONSIDERATION

The Commission believes that this application for a special permit (C 220472 ZSK), in conjunction with the related actions (C 220470 ZMK and N 220471 ZRK), is appropriate. A full consideration and analysis of the issues and the reasons for approving this application appears in the report on the related zoning map amendment (C 220470 ZMK).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-681 of the Zoning Resolution:

(1) The streets providing access to all uses pursuant to paragraph (a) above (of §74-681) are adequate to handle traffic resulting there from.

(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.

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

(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 does not preclude future use of, or improvements to, the right-of-way for such transportation use.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and

RESOLVED, by the City Planning Commission, pursuant to Section 197-c and 200 of the New York City Charter, that based on the environmental determination and the considerations and findings described in this report, the application submitted by Stamford LLC and Capri Optics pursuant to Sections 197-c and 201 of the New York City Charter Inc. for the grant of a special

permit pursuant to Section 74-681(a)(2) of the Zoning Resolution to allow a 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 in connection with a proposed 5-story building on property located at 1463 38th Street (Block 5348, Lots 15, 17, 49 and 54), in a C4-4A District, Borough of Brooklyn, Community District 12, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 220472 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by J. Frankl Architects, filed with this application and incorporated in this resolution:

Dwg No.	**Title**	**Last Date Revised**
U-001	Zoning Lot Site Plan	10/24/2022
U-002	Zoning Analysis	10/24/2022
U-201	Section Diagrams	10/24/2022

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. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.

5. 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 whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. 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 the special permit hereby granted.

6. 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 special permit.

The above resolution (C 220472 ZMK), duly adopted by the City Planning Commission on March 15, 2023 (Calendar No. 9), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

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