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**Gale A. Brewer, Borough President**

July 26, 2021

**Recommendation on the ULURP Applications No. N210380ZRY  
FRESH Update  
by the New York City of Department of City Planning**

**PROPOSED ACTIONS**

The New York Department of City Planning (“DCP”) (the “Applicant”) is seeking a city-wide zoning text amendment to broaden the expansion of the Food Retail Expansion Program to Support Health (“FRESH”) into neighborhoods in the Bronx, Brooklyn, Staten Island, and Queens, and modify rules governing new FRESH food stores (the “Proposed Action”). The FRESH program offers zoning and financial incentives for the inclusion of high-quality grocery stores in developments in underserved neighborhoods across Manhattan. The Proposed Action is an amendment to this existing program under the New York City Zoning Resolution 63-00.

*Expansion of FRESH Boundary*

The primary goal of this application is to expand the FRESH bonus into additional neighborhoods in New York City. Currently the program applies to areas of Bronx Community Districts 1-7, Brooklyn Community Districts 3, 4, 5, 8, 9, 16 and 17, Manhattan Community Districts 9-12, and Queens Community District 12. The Proposed Action would extend the applicability of the program into Bronx Community Districts 8 and 9, Brooklyn Community Districts 1, 2, 12 and 13, Queens Community Districts 1, 3, 4 and 14, and Staten Island Community District 1. There is no expansion of the geography of the program within the Borough of Manhattan.

These additional areas were decided based on DCP’s 2018 Supermarket Needs Index, which identified areas of the city that still experience a shortage of high-quality supermarkets.

The Proposed Action, which is limited to zoning, would not expand the area eligible for FRESH supermarkets tax benefits as administered by the Economic Development Corporation.

*Mechanism to Prevent Oversaturation of FRESH Stores in Close Proximity*

In Central Brooklyn, and to a lesser extent Central Harlem, there have been multiple new construction projects that have taken advantage of FRESH zoning bonuses in the same neighborhood. The Proposed Action would limit use of the FRESH program within a 0.5-mile radius of a proposed project tax lot. Within this radius, the sum of additional residential floor areas resulting from the FRESH program would be limited to 40,000 square feet.

### *Change to Window Installation Requirements*

The Proposed Action would also waive the minimum transparency rule that requires 50 percent of the ground floor level street wall to be glazed with transparent materials, which is consistent with retail conversion transparency requirements in the zoning code. This change would make it less onerous financially for owners to take advantage of the FRESH bonus.

### *Changes to Parking Rules*

Additionally, the Proposed Action would modify the parking regulation pursuant to Section 36-23 of the Zoning Code, waiving parking requirements for up to 10,000 square feet of FRESH retail area in lower density residential districts.

### *Other Updates*

Further changes to the existing FRESH program stipulate that at least 6,000 square feet of a FRESH store must be contiguous and on the same floor to increase accessibility, that distribution of products would be reduced to 60% food instead of 80%, and FRESH projects which do not increase residential FAR would be exempt from the restrictive declaration requirement.

## **BACKGROUND**

In April, 2008, DCP released *Going to Market: New York City's Neighborhood Grocery Store and Supermarket Shortage*<sup>1</sup>, an overview of their findings during a study of supermarket shortages in some neighborhoods in New York City. According to the report, they found that there were areas that experienced such shortages, which could hamper residents' access to healthy food. Residents without a supermarket in their neighborhood often had to rely on discount stores, pharmacies, and convenience stores, which frequently did not carry any fresh food.

In response, the FRESH program was created in 2009 in order to incentivize healthy food stores with zoning and tax benefits. In exchange for dedicating ground floor retail space to stores that fit the criteria, property owners were able to construct buildings that were taller in mixed residential and commercial districts.

In 2018, the City Council Subcommittee on Zoning and Franchises and the Committee on Economic Development held a joint hearing to assess the effectiveness of the FRESH program and plan improvements. In response, DCP initiated a review to improve the program, incorporating the suggestions from the subcommittees and the public. In conclusion of the review, DCP offered this Proposed Action to expand and improve the program.

Since the program's beginning, 28 projects have been approved city-wide and 5 projects have been approved in Manhattan. Three projects are located in Community District 10 and three projects are located in Community District 11.

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<sup>1</sup> <https://www1.nyc.gov/assets/planning/download/pdf/plans/supermarket/supermarket.pdf>

## **COMMUNITY BOARD RECOMMENDATIONS**

The FRESH update application was certified by DCP on May 19 and referred to Manhattan Community Boards 9, 10, 11, and 12 for comment. Boards were given a 60-day period to review the application and submit a resolution recommending support or opposition.

All four Manhattan community boards have voted on and submitted resolutions recommending approval of the application. Manhattan Community Board 9 included conditions for their approval:

- The proposed Section 63-023 restricting the program's use within .5 miles could create a first-come, first-serve system for awarding zoning bonuses: and
- The proposed Section 63-21 includes language exempting bonus residential FAR from affordable housing requirements from sites located in Mandatory Inclusionary Housing areas.

## **BOROUGH BOARD RECOMMENDATION**

The Manhattan Borough Board received a presentation from DCP about the proposed text amendment during its July 15, 2021 meeting. During the meeting, members raised questions and concerns that were addressed by DCP. Concerns included whether or not a developer has to have a signed agreement with a grocery store to present an application to DCP, why parts of Manhattan are excluded from the FRESH program, and what would happen if there is ultimately no supermarket and the bonus is already built into the building,

Informed by these questions and the agency's responses, the Manhattan Borough Board voted to approve a resolution to recommend approval of the application with conditions. The conditions are as follows:

- Given the restrictions of concentration of FRESH sites, DCP should more strategically select developments for FRESH bonuses instead of deciding on a first-come, first-serve basis;
- DCP should apply affordable housing requirements to FAR bonuses granted at MIH sites participating in the FRESH program; and
- DCP should strengthen the definition of supermarkets to ensure that establishments such as high-end food halls do not benefit from the bonus.

## **BOROUGH PRESIDENT'S COMMENTS**

Lack of access to high quality food has been a frequent concern in communities in Northern Manhattan, and across the city. Residents often have had to turn to convenience stores, pharmacies, and other local retailers who do not sell fresh produce, or provide few healthy options. Additionally, what food products they do carry are often more expensive than they would be at a supermarket.

The inclusion of Manhattan Community Districts 9, 10, 11, and 12 in the FRESH program has had a positive impact on the food landscape of their areas. Thanks to this zoning bonus, and the attached tax incentives, Community Boards 10 and 11 have seen five additional supermarkets either built or under development because of this program.

While there is no extension of the FRESH program into additional areas of Manhattan, the updates to existing FRESH areas will make it easier for property owners to comply with the program and help limit redundancy in the future. In particular, the waiver of grazing requirements for the ground floor street level retail façade will lift an additional financial burden for participation in the program.

I understand the concerns of Community Board 9 that the .5 mile radius preventing redundant stores in close proximity could lead to an arbitrary selection process for awarding bonuses on a first-come, first-serve basis. However, this doesn't seem to be an issue yet, especially in Community Boards 9 and 12, which have not yet seen a single development take advantage of the program.

While I support this update and expect it to encourage more high-quality food stores in Manhattan, I hope that DCP continues to reassess the specifics of the program periodically and make further adjustments as necessary based on the changing real estate market of Northern Manhattan.

#### **BOROUGH PRESIDENT'S RECOMMENDATION**

Therefore, the Manhattan Borough President recommends **approval** of ULURP Application No. N210380ZRY.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer  
Manhattan Borough President