

Borough President Recommendation

City Planning Commission
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INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application: C 160194 ZMM

Docket Description:

C 160194 ZMM

IN THE MATTER OF an application submitted 1968 Second Avenue Realty LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 6b, by establishing within an existing R7A District a C1-5 District bounded by a line 100 feet easterly of Second Avenue, a line midway between East 101st Street and East 102nd Street, a line 155 feet easterly of Second Avenue, and East 101st Street, Borough of Manhattan, Community District 11, East Harlem neighborhood.

(See Continued)

COMMUNITY BOARD NO: 11

BOROUGH: Manhattan

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)



BOROUGH PRESIDENT

8/17/2016

DATE



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THE CITY OF NEW YORK

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Gale A. Brewer, Borough President

August 17, 2016

**Recommendation on ULURP Application Nos. C 160194 ZMM – 1968 Second Avenue Rezoning
By 1968 Second Avenue Realty LLC**

PROPOSED ACTION

Second Avenue Realty LLC seeks a zoning map amendment to Zoning Map Section 6b to establish a C1-5 District to a depth of 55 feet within an existing R7A District to legalize an existing non-conforming use on a portion of property located at 1968 Second Avenue (Block 1673, Lots 1 and 6) in the East Harlem Neighborhood, Community Board 11 (CB 11), Borough of Manhattan.

Any changes to the zoning map should be evaluated for consistency and accuracy with the existing City of New York Zoning Map, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and Borough of Manhattan.

PROJECT DESCRIPTION

The applicant seeks a zoning map amendment to map a C1-5 commercial overlay to a total depth of 155 feet from Second Avenue to facilitate on-going operations for a commercial tenant, Cherry Valley Market. The underlying R7A District will remain unchanged.

Area Context

The project site is located in the East Harlem neighborhood of Manhattan and the surrounding lots and blocks are largely zoned medium density residential districts with commercial overlays for local neighborhood retail. Second Avenue has a R8A District with a C1-5 commercial overlay while the midblocks are zoned with a R7A District. First Avenue also has a R8A district but with a C2-5 commercial overlay. The R7A district permits a maximum floor area ratio (“FAR”) of 4.6 for residential use if affordable housing is provided and the community facility maximum allowable FAR is 4.0. The district has a building height limit of 60 to 85 feet and a maximum overall height of 95 feet. The C1-5 overlay has a maximum permitted commercial FAR of 2.0 and permits the following types of uses: retail stores and personal service establishments. These may include bakeries, pharmacies, offices, clothing stores, and newsstands. The R8A district permits a maximum floor area ratio (“FAR”) of 7.2 for residential use if affordable

housing is provided; if affordable housing is not provided, the allowable FAR is 5.4. The community facility maximum allowable FAR is 6.5. The district has a building height limit of 95 to 125 feet and a maximum overall height of 145 feet. A portion of the rezoning area, not including the development site, is zoned R8-A with a C1-5 overlay which has a maximum permitted commercial FAR of 2.0.

As of 2010, East Harlem is comprised of approximately 120,500 residents with a median income of \$31,079. The predominant building typologies in CB 11 are multi-family residential and mixed residential/commercial properties that alternate between prewar tenement style buildings and tower-in-the-park style housing. There are two New York City Housing Authority (NYCHA) developments in the immediate area: the George Washington Houses one block to the west and the Metro North Plaza Houses located adjacent to the project site to the east.

Neither the George Washington Houses nor the Metro North Plaza Houses contain any food retail space within their developments. The retail spaces to the immediate north and immediate south of the development site do not contain supermarkets. Additionally, given the shortage of supermarkets providing fresh fruits, vegetables, poultry and dairy products in the neighborhood, portions CB11 was designated a FRESH area as part of the 2009 rezoning. The FRESH program allows for a zoning floor area bonus for new developments that include food stores meeting certain eligibility criteria. Tax incentives are also available through the New York City Industrial Development Agency.

The Project Site and Area are serviced by the southbound M15 local bus on Second Avenue, and northbound M15 local bus on 1st Avenue. The closest subway stop is the 6 train located on Lexington Avenue at both East 103rd and East 96th Streets. As part of the Second Avenue Subway capital construction project, the Metropolitan Transportation Authority (MTA) plans to open a new stop for the Q train on East 96th Street and Second Avenue, just to the south.

The area will also be served in the near future by Citibike, which is in the process of expanding to East Harlem. There will be a future station at East 99th Street and Second Avenue. Currently, there is a 24 dock station at East 102nd and First Avenue. The Project Area is also serviced by the NYPD 23rd Precinct and FDNY Engine 53/Ladder 43.

Project Site

The project site is located at 1968 Second Avenue (Block 1673, Lots 1 and 6) in the East Harlem Neighborhood of Manhattan Community Board 11. The site is located on the southeastern corner of the intersection of Second Avenue and East 101st Street and is currently split between an R8A/C1-5 District and an R7A District beyond 100 feet of Second Avenue. Currently there is a two-story building with 29,990 square feet of floor area. Within that floor area the supermarket on the first floor occupies 19,889 square feet and the offices on the second floor occupy 10,101 square feet. Accessory storage to the supermarket is located in the building's cellar.

The current building was erected without a New Building permit in or around 1994. The first documented instance of objection from the Department of Buildings regarding this structure did not occur until 1997. The current owner of the building purchased the property in 2005 and was not aware that the commercial use in the R7A portion of the zoning lot was a non-conforming use. The owner became aware of this issue in 2011, at which the owner began steps to correct the issue. The current owner of the building also believes that the loading berth was built as part of the original structure and not a later alteration.

Proposed Actions

The applicant is proposing a zoning map amendment to establish a C1-5 District within an existing R7A District on a portion of a zoning lot currently split between a R8A/C1-5 District and a R7A District located at the southeastern intersection of Second Avenue and East 101st Street. The extension of the existing commercial overlay will result in an overlay depth of 155 feet and will facilitate the legalization of the commercial supermarket use on the site. In addition to the zoning map change, in order to bring the existing building into compliance, a 25-foot by 20-foot portion of the second floor office use is proposed to be demolished. Supermarket operations will not be impacted by this removal of floor area.

COMMUNITY BOARD RECOMMENDATION

On July 13, 2016 at the General Meeting of Manhattan Community Board 11 (CB11), the board passed a resolution approving the proposed zoning amendment to correct the zoning non-conformance and non-compliance of the Cherry Valley Market's loading berth. The amendment would modify Zoning Sectional Map 6b to expand the existing C1-5 commercial overlay district onto an area currently zoned R7A. The Board approved the resolution with 37 in favor and 1 abstention. At the Land Use Meeting of CB11 on July 13, 2016, members of the Board acknowledged the area surrounding the property has a shortage of supermarkets. The abstaining vote voiced concerns over future redevelopment consequences of the site should the commercial overlay take effect.

BOROUGH PRESIDENT'S COMMENTS

The proposed zoning map change is appropriate, allowing a vibrant and needed commercial use to conform to zoning. The proposed commercial overlay extension is consistent with the overlay district already existing on Second Avenue. In addition, given the development of the East Harlem neighborhood and borough-wide pressures on existing affordable supermarkets, it is important to support these existing businesses' efforts to remain, especially in underserved areas for fresh food stores.

The proposed zoning map change will therefore allow an affordable neighborhood supermarket to continue serving an enormous number of East Harlem residents. Clearly,

preserving access to fresh and affordable food is a very strong rationale to extend the commercial overlay and allow for the supermarket's loading berth location and its operations to conform to zoning.

It is important to note that unfortunately it took a long time for the issue of non-conformance to be resolved. It is troubling that a new building was constructed without building permits, that the Department of Buildings (DOB) did not issue a violation until three years after that construction occurred, and only after the property changed owners multiple times and after two decades is illegal floor area being removed and the situation remedied.

While this rezoning change will help this supermarket, it is clear that simply making the loading berth legal may not be enough to preserve this supermarket for another twenty years. The operators of affordable supermarkets are finding it very difficult to remain in business in Manhattan. Supermarkets operate on famously low-margins and must now compete for retail space with national drug-store chains. That is why so many affordable supermarkets, such as the Associated Supermarket on West 14th Street, have been closing in the Borough and it is expected this trend will continue.

The FRESH zoning incentive program of 2009 can be a tool to ensure that supermarkets continue to be built and remain in perpetuity. In exchange for guaranteeing supermarkets with a retail space the developer receives a residential floor area bonus in new buildings. I am encouraged to see developers use this program in food deserts or areas that are nearly food deserts. However, this program needs to be made stronger to compete with development pressures and nimble enough to be applied in new areas. Food deserts are expanding and new ones forming as supermarkets enter into bankruptcy and encounter the loss of commercial space to drug chains. Any expansion of the FRESH program must also include novel ways to preserve existing supermarkets as today the program is focused on new buildings alone. We must entertain ways in which zoning can do more for all New Yorkers.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 160194 ZMM, to extend the CI-5 commercial overlay to the extent necessary to legalize the supermarket use of the entire existing ground floor commercial space.



Gale A. Brewer
Manhattan Borough President