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**Gale A. Brewer, Borough President**

**May 22, 2017**

**Recommendation on ULURP Application No. C 170158 ZSM - 34th Street Heliport  
By The New York City Department of Small Business Services (SBS) and the New York  
Economic Development Corporation (EDC)**

**PROPOSED ACTION**

The New York City Department of Small Business Services (SBS) and the New York Economic Development Corporation (EDC) (“the applicant”) seek a special permit pursuant to Section 74-66 of the Zoning Resolution to allow a heliport (or “project site”) on property located between the U.S. Pierhead Line of the East River and the northbound service road of the Franklin D. Roosevelt Drive, south of East 34th Street, (Block 962, part of Lot 50) in an M2-3 District, Borough of Manhattan, Community District 6. The special permit would be for a 10-year term.

**PROJECT DESCRIPTION**

**Background**

Part of the impetus for the construction of this heliport was to serve as a replacement for the landing pad atop the 59-story Pan Am Building at 200 Park Avenue, now Met-life Building, in the Grand Central Terminal area. The helipad closed in 1968 except for a short 3-month stint in 1977 leaving Manhattan with very few options for local helicopter traffic.<sup>1</sup> In March 1971, the City Planning Commission (CPC) approved an application submitted by NYC Department of Marine and Aviation (DMA) for a special permit (CP-21490) to allow for heliport use at the East 34th Street site for a period of five years. The facility, one of four public heliports in Manhattan, opened in 1972. In 1973, National Helicopter Corporation of America (NHCA) became the first operator at the heliport, under the name Island Helicopters, and entered into a lease for an initial term of 10 years. Subsequent leases were renewed and NHCA remained the operator until they were legally evicted in August 1997.

Although the special permit ended in 1976, the heliport continued to operate from 1976 to 1996 without the appropriate permissions in place. In June 1995, the applicants applied for a special permit to allow for the continued operation of the heliport under the same special permit. During the referral period for the application, both Manhattan Community Board 6 (CB6) and the Office

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<sup>1</sup> Burks, Edwards C. (1971, March 18). Plan commission Approves 34th Street Heliport *The New York Times*. Retrieved from <http://www.nytimes.com/1971/03/18/archives/plan-commission-approves-34th-street-heliport-permit-for-new.html>

of the Manhattan Borough President (MBPO) recommended disapproval of the application unless various conditions were included. The conditions ranged from a curfew on all operations to a prohibition of sightseeing services on weekends.<sup>2</sup> In March 1996, the New York City Council (NYCC) modified the CPC approval with conditions (C950635ZSM), pursuant to Resolution No. 1558. EDC, which had taken over management of this city-owned site, incorporated these terms into the request for proposals (RFP) issued in May 1996. The conditions<sup>3</sup> included:

1. the restriction of weekday operations to between 8 a.m. and 8 p.m.;
2. the restriction of weekend operations to between 10 a.m. and 6 p.m.;
3. the phasing out of weekend operations entirely;
4. the reduction of operations by a minimum of 47 percent overall;
5. the barring of Sikorsky S-58Ts, or helicopters of a similar size, from use of the heliport for sightseeing operations;
6. the prohibition of sightseeing flights over Second Avenue and the requirement that such flights heading north and south fly only over the East and Hudson Rivers; and
7. the requirement that helicopters using the heliport be marked for identification from the ground.

After a RFP was issued, National sued to challenge the terms imposed as conditions of the special permit. In January 1997, Federal District Judge Sonia Sotomayor for the U.S. District Court for the Southern District of New York ruled that the City overstepped in its authority and certain regulations were preempted by federal regulation.<sup>4</sup> In February 1998 the City appealed to the U.S. Court of Appeals for the Second Circuit which took a slightly different position. The Court ruled to restore the City's right to reduce the number of flights and regulate curfew and days of operations but also enforced the lower court's decision to strike down the City's authority to enforce routes, require markings on helicopters or prohibit the use of specific helicopter types.<sup>5</sup>

In 2001, the CPC approved a new special permit application by the applicant for a special permit, allowing them to operate for a period of 10-years. The operating agreement included similar conditions as those included by the NYCC in 1996 except those that were struck down by the court. One of the conditions unique to this application was the requirement that EDC to conduct a performance review at the 5-year point. The performance review includes an analysis of the operator's cleanliness, noise levels, and response to complaints and compliance with all applicable laws and regulations. EDC would then be responsible for using this information to determine whether to continue operating the heliport.

In March 2003 Macquarie Aviation North America, part of the Macquarie Infrastructure

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<sup>2</sup> National Helicopter Corp. of America, v. the City of New York et al, 952 F.Supp 11 (SDNY 1997). Retrieved from <http://caselaw.findlaw.com/us-2nd-circuit/1306579.html>

<sup>3</sup> National Helicopter Corp. of America, 952 F.Supp 11.

<sup>4</sup> National Helicopter Corp. of America, 952 F.Supp 11.

<sup>5</sup> National Helicopter Corp. of America, v. the City of New York et al, 137 F.3d 81 (2d Cir. 1998) Retrieved from <http://law.justia.com/cases/federal/appellate-courts/F3/137/81/606037/>

Corporation, was chosen as the new fixed-base operator. After further negotiation an agreement was signed in September 2005 for a 12 year term and a minimum investment by the lessee of \$2.2 Million. The heliport is operated under the Macquarie subsidiary, Atlantic Aviation. The current contracts expires on August 31, 2017 with an option for a 6-month extension that would allow the lessee to continue to operate until February 2018. According to our discussions with EDC, the extension available under the current contract will be activated and during that time a competitive RFP for an operator to manage the heliport will be issued and awarded for the entirety of the special permit if approved.

In February 2017, the Department of City Planning (DCP) certified an application by the applicant for an extension of the special permit. This special permit is pursuant to Zoning Resolution Section 74-66, which allows the heliport to continue operating for another 10 years. The conditions for this application reflect the conditions as modified by the court included in the previous permit approved back in 2001, including the prohibiting of weekend flight operations with exceptions made for emergency situations.

Currently the heliport only operates on weekdays from Monday to Friday from 8AM to 8PM. There is a maximum limitation of 28,800 annual flight operations and no touring or sightseeing services are permitted.

In Spring 2016, EDC came before CB6 to seek input for the replacement of the perimeter fence that surrounds the East 34<sup>th</sup> Street Heliport. In an effort to respond to previous public safety concerns flagged by the community, EDC proposed new lighting and closed-circuit security cameras positioned around the exterior of the heliport. EDC's proposal would replace the current chain link fence with "Type A" non-opaque fencing anchored two feet below grade and rising to eight feet above grade. CB6 issued out a favorable resolution in May 2016 with several requested modifications that were later incorporated into a design presented to the Public Design Commission (PDC). In June 2016 the PDC gave unanimous preliminary approval subject to final review and approval before June 27, 2018.<sup>6</sup>

### **Area context**

The heliport is located at 499 East 34<sup>th</sup> Street (Block 962, part of Lot 50) between the U.S. Pierhead Line of the East River to the east, the northbound service road of the Franklin D. Roosevelt Drive to the west, a city-owned lot managed by SBS to the north and East 34th Street Ferry to the south, Surrounding the project site are institutional and residential buildings. Institutional uses include NYU Langone Medical Center to the northwest and Bellevue Hospital to the southwest. Residential buildings in close proximity to the project site include Kips Bay Towers to the southwest, 626 First Avenue to the northwest and Rivergate to the west. The buildings in this area range in height from 100 to 300 feet.

There are a number of transportation options accessible to the project site. The closest subway access is the 6 train located at East 33rd Street, which is approximately .57 miles away from the project site. The M15 bus provides northbound service via First Avenue and southbound service

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<sup>6</sup> NYC Public Design Commission. Certificate #25258 (June 27, 2015). Retrieved from <http://www1.nyc.gov/assets/designcommission/downloads/pdf/meeting-minutes-6-27-16-2.pdf>

via Second Avenue within a quarter mile of the project site. The M34 and M34A Select Bus Service provide crosstown service from the East River to Twelfth Avenue with a stop located approximately .06 miles away at the East 34<sup>th</sup> Street Ferry. The East 34th Street-Midtown ferry terminal is two blocks north of the project site and serves as one of the nodes of the recently launched City-wide Ferry Service.

Additionally Citi Bike has two bike stations installed near the project site, all approximately within a quarter mile radius of the site. Those bike stations are located at the East 34<sup>th</sup> Street Ferry and the intersections of East 33<sup>rd</sup> Street and First Avenue. Bike lanes near the site include a northbound lane along First Avenue and southbound lane along Second Avenue. The site is also adjacent to the East River Greenway which runs along the East Side from The Battery and past South Street Seaport to East Harlem with a 2.5 mile gap from East 34<sup>th</sup> to East 83<sup>rd</sup> streets in Midtown. A recent announcement by the City to invest \$100 Million will fill in the gap in the greenway from East 53<sup>rd</sup> to East 61<sup>st</sup> streets. Construction on this project is expected to begin in 2019 and take at least three years.<sup>7</sup>

A number of educational institutions surround the Project Site. It sits in Manhattan Community Education Council 2. To the north is PS 281 – The River School serving Pre-Kindergarten through third grade. To the west is PS 116 serving kindergarten through fifth grade. To the south is Churchill School, an independent K-12 school. The closest open spaces are St. Vartian Park located at the First Avenue and East 35<sup>th</sup> Street as well as the East River Esplanade, which have segments north, and south of the project site.

The project site is served by New York Police Department's (NYPD) 13<sup>th</sup> Precinct, located at 230 East 21<sup>st</sup> Street. The Fire Department of New York's (FDNY) Engine 21, 16 and Ladder 7 Firehouse is located approximately .4 and .55 miles away. The NYPD and FDNY also have separate marine operations that can respond to emergencies in water.

The heliport is located in an M2-3 District with an as-of-right maximum floor area of 2.0. Parking is not required in this district. According to DCP's website, M2-3 districts are unique to Manhattan. Other nearby zoning districts include C1-9A, C1-9, C2-7, C4-6, C6-2, R8A, and R8. The zoning district has remained unchanged since the special permit was first issued in 1971.

### **Project Area and Project Site**

The site (Block 966, Lot 50) has a total lot area above water of 40,000 square feet, of which 26,442 square feet is used for heliport operations. On the lot are two modular trailers, one north and south of the site, an underground fuel tank, six accessory parking spaces and four helicopter landing pads. Pedestrian and vehicle access is from the FDR service road via East 34th Street. All the remaining areas are open and paved. There are no changes currently planned for the site.

### **Proposed Actions**

Pursuant to Section 74-66 (Heliports) of the Zoning Resolution in C3, C4, C5, C6, C7 or C8 Districts or in any Manufacturing District, the City Planning Commission may permit the

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<sup>7</sup>Nir, Sarah M. (2017, April 25). City Commits \$100 Million to Narrowing a Gap in Manhattan Greenway. *The New York Times*. Retrieved from <https://www.nytimes.com/2017/04/25/nyregion/city-commits-100-million-to-narrowing-a-gap-in-manhattan-greenway.html>

construction, reconstruction, or enlargement of heliports and their facilities where the applicant has submitted a site plan showing the location of landing areas, in addition to all other information required in Section 74-20 (REQUIREMENTS FOR APPLICATIONS), provided that the following findings are made:

- a) that the heliport is an appropriate use of the land and will not unduly interfere with surrounding land uses; and
- b) that due consideration has been given to the selection of a site situated near or adjacent to large parks or other open areas, or bodies of water.

The Commission shall refer the application to the Federal Aeronautics Administration (FAA) for the report of such agency as to whether the heliport is either an integral part of, or will not interfere with, the general plan of airports for New York City and the surrounding metropolitan region.

The Commission may prescribe appropriate additional conditions and safeguards to minimize adverse effects on the character of the surrounding area. The City Planning Commission shall require the provision of adequate accessory off-street parking spaces necessary to prevent the creation of traffic congestion caused by the curb parking of vehicles generated by such #uses# and shall determine the required spaces in accordance with the purposes established in the Resolution with respect to the other major traffic-generating facilities.

With regards to the aforementioned Section 74-20 of the Zoning Resolution, an application to the City Planning Commission for the grant of a special permit respecting any of the uses specified in this Chapter shall include:

- a) a site plan showing the location and proposed #use# of all #buildings or other structures# on the site,
- b) the location of all vehicular entrances and exits and off-street parking spaces,
- c) and such other information as may be required by the Commission.

## **COMMUNITY BOARD'S RECOMMENDATION**

At its full board meeting on April 12, 2017, CB 6 passed a favorable resolution, with conditions, to support the granting of a special permit pursuant to Section 74-66 of the Zoning Resolution to renew heliport operations at 499 East 34<sup>th</sup> Street (Block 961, part of lot 50). The Board conditioned its support of an extension on the following conditions:

- No weekend operations be permitted;
- Flight operations are limited to a maximum of 28,800 flights a year;
- No tour (sightseeing) operations be permitted;
- The operator of the heliport shall provide good maintenance to the terminal buildings and the environment under the control of the City;
- Noise and other environmental impacts will continue to be observed as well as any other public safety considerations;
- Operations be limited (with exception for emergency medical, public safety, fire, police;

- and print and electronic news media) to 8am to 8 p.m., Monday through Friday;
- At the end of the fifth year of the operations under the new lease terms or conditions of the agreement be brought to the Board for its review to provide oversight and ensure compliance with terms and an avenue for community impact;
- The heliport operations be required to maintain adequate lighting, visibility and safe access for pedestrians, vehicles and bicycles in the immediate area outside the perimeter fence in cooperation and coordination with EDC, NYC Department of Transportation and the New York City Police Department.

At the full board meeting 32 voted in favor, 11 opposed, and no abstentions.

## **BOROUGH PRESIDENT'S COMMENTS**

After reviewing the application, it is my opinion that the applicant has laid out a comprehensive argument for continuing heliport operations at the city-owned site. The information provided by the applicant suggests that this use has continued with minimal disturbance to the surrounding community and established a set of parameters which allows this to be an appropriate use at this location. The parameters include controls on noise levels, hours of operations, helicopter uses, and weekend restrictions.

The applicant has met all the conditions of the special permit and provided the required documentation. The M2-3 zoning district supports this as an appropriate location for the heliport given its accommodation of transportation and municipal facilities in other areas where it is mapped. Physical barriers such as the elevated FDR Drive create a buffer between this use and the adjacent mixed-use neighborhood. The location of the heliport is ideally located in close proximity to Midtown Manhattan, still a major destination for potential users of this service.

Additionally, the applicant has provided to DCP information about their Year 5 review required as part of the 2001 special permit. The analysis completed in 2007 concluded that the operator had not exceeded the stipulations of the prior agreement with strengthens the applicants argument for continuing this use.

In our conversations with EDC, I have made clear the need for regular updates to the affected board, councilperson and borough president on the performance of the fixed-base operator regarding compliance with regulations and mitigation against adverse effects resulting from this siting of this use. In response to that, EDC has provided in writing a list of commitments, **dated May 22, 2017**, attached to my recommendations outlining the agency's commitment to a quarterly reporting framework so that the community is better informed.

The applicants have been specifically responsive to concerns about public safety around the parameter of the site. EDC has committed to constructing a new exterior fence with design and program changes provided by CB6. According to our conversations with the applicant, construction of the new fence will be finished by end of June 2017. Completion of this project and the engagement strategy that was used to reach a consensus on design, point to a credible example of the applicant's longer term commitment to collaborating with the community moving forward.

## **BOROUGH PRESIDENT'S RECOMMENDATION**

**Therefore, the Manhattan Borough President recommends approval of ULURP Application No. 170158 ZSM on the conditions that:**

- 1. The conditions outlined by Manhattan Community Board 6 be integrated into an operating agreement, and**
- 2. a quarterly report be provided to the affected board, council person and borough president regarding:**
  - a. noise, cleanliness, and response to complaints (through 311 or otherwise) and compliance with all applicable laws and regulations;**
  - b. the number of flights per month broken down by, but not limited to, heliport operational statistics (i.e. airtaxi, general aviation and military)<sup>8</sup>;**
  - c. the number of variances granted for flights before or after set hours of operations (monthly and cumulative); and**
  - d. during the sixth month of each contract year, an update on any planned maintenance and improvement plans for the site**

**Gale A. Brewer  
Manhattan Borough President**

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<sup>8</sup> Data points supplied by AirNav.com, a supplemental resource for pilots and aviation enthusiasts. Retrieved from <http://www.airnav.com/airport/6N5>

May 22, 2017

The Honorable Gale A. Brewer  
Office of the President of the Borough of Manhattan  
1 Centre Street, 19<sup>th</sup> Floor  
New York, New York 10007

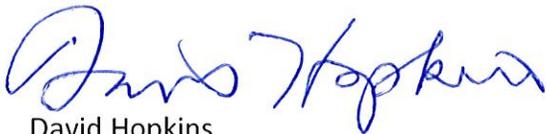
Dear Manhattan Borough President Brewer,

In response to your recommendation to the Department of City Planning's review of the East 34<sup>th</sup> Street Heliport Special Permit Renewal (ULURP Application No. 170158 ZSM), the New York City Economic Development Corporation hereby agrees to the following proposed reporting framework:

- 1.) Quarterly data on the East 34<sup>th</sup> Street Heliport submitted to the affected Community Board and Manhattan Borough President that will include:
  - a. The number of flights per month operating out of the East 34<sup>th</sup> Street Heliport, and
  - b. The number of variances granted for flights before or after set hours of operation per month
- 2.) Update(s) on any planned maintenance and improvement plans for the East 34<sup>th</sup> Street Heliport site every 6 months.
- 3.) Inclusion of the affected Community Board and Manhattan Borough President on a monthly report currently submitted to the New York City Council that includes a summary of 311 helicopter complaints across the City

We appreciate your ongoing feedback for this vital piece of New York City's transportation infrastructure. Please let me know if you have any additional questions or concerns.

Sincerely,



David Hopkins  
Senior Director of Aviation