

**Brooklyn 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 representatives as indicated on the Notice of Certification.

APPLICATION # 090386 ZRK – 090387 ZMK

Sunset Park Rezoning

In the matter of applications submitted by the Department of City Planning, pursuant to Sections 197-c and 201 of the New York City Charter seeking an amendment of the zoning text and zoning map to facilitate the rezoning of 128 blocks in the Sunset Park neighborhood.

COMMUNITY DISTRICT NO.

7

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

See Attached Report

BOROUGH PRESIDENT

June 22, 2009

DATE

**RECOMMENDATION FOR THE PROPOSED
REZONING OF SUNSET PARK
090386 ZRK – 090387 ZMK**

These applications by the Department of City Planning (DCP) request approval for amendments to the Zoning Map and Zoning Text in order to facilitate the contextual rezoning of parts of the Sunset Park community.

Public Hearing

On June 10, 2009 the borough president held a public hearing on this matter.

DCP presented a proposal that would: eliminate the existing R6 zoning which has allowed out of context buildings to be interspersed within areas characterized by two to four story row houses and primarily low-to-mid-rise apartment buildings; establish zoning districts with height limits and precludes commercial intrusions into residential mid-blocks; and, create incentives for affordable housing through the Inclusionary Housing Program (IHP) floor area bonus.

There were 22 speakers, four in favor and 18 against. In addition, written testimony was submitted by Council Member Sara Gonzalez acknowledging the need for a rezoning to prevent out of scale development while creating and preserving affordable housing and welcoming sensible development. She is seeking continued dialogue towards working to advance the best possible plan.

Testimony in favor was provided by the Chair of CB7, a representative of Friends of Sunset Park and of SPAR-Z. CB7 called for eliminating the upzoning along Fourth Avenue as a means to preserve harbor views from the park and to prevent displacement through anti-displacement measures made applicable along Seventh Avenue. Other supporters testified that although the scale of the plan should be reassessed and cited other concerns, it was stated that the plan's benefits should not be lost through a dismissal of the proposal.

Testimony against the proposed rezoning was presented on behalf of Congresswoman Nydia Velazquez. The Congresswoman called for the preservation and creation of affordable housing; protecting rent-regulated units; preventing landlord harassment of existing tenants; mandating 20 percent of the as-of-right development for very-low income households (\$38,000 for a family of four); and, grants and low-interest loans to help small businesses stay competitive. Other organizations presenting testimony against included the Asian American Legal Defense and Education Fund, Association of Indians in America, Chinese Staff Workers Association, Committee to Protect Sunset Park, Fifth Avenue Committee (FAC), Friends of Sunset Park, and the Sunset Park Alliance of Neighbors (SPAN).

Generally, the project's opponents noted that the upzoning of Fourth and Seventh Avenues could result in unwanted luxury development. As a result, eviction pressures and harassment could intensify; thereby displacing working-class families from homes that are still affordable and causing the direct displacement of approximately 90 rent-regulated units resulting in further gentrification of the neighborhood. There was also concern that it would displace small businesses. It was also believed that the few units of affordable housing that might be produced would still be beyond the means for the neighborhood's working class and immigrant residents. Tenant protection was called for including anti-harassment language to be part of the zoning plan. Many believed the plan should be rejected.

Subsequent to the hearing, the borough president's staff had a meeting with FAC and one with SPAN. FAC noted that in the past year a few hundred individuals visited its offices seeking assistance for the harassment and/or eviction they have faced. FAC also submitted a supporting document that highlighted the plight of 40 low-moderate income State Division of Housing and Community renewal (DHCR) regulated units where the tenants were displaced from five abutting small four story walk-ups. These buildings, located at 150-158 Fourth Avenue, were demolished to facilitate new luxury residential development, doubling the floor area of what had existed. While located in Community District 6, FAC noted that this was an example of what could happen in Sunset Park.

The borough president received a copy of a letter from the Commissioner of HPD to Council Member Sara Gonzalez and Congresswoman Velazquez, dated June 10, 2009. This letter was in response to a correspondence sent by these elected officials to the commissioner. The commissioner noted that HPD finds that in practice, for the affordable units developed as part of the IHP, resulting units are generally provided for households that earn between 50 and 60 percent of the federally defined income limits. In regard to harassment issues, the Tenant Protection Act (TPA) (Local Law 7 of 2008) is a more effective tool for protecting the rights of tenants threatened with harassment, rather than a remedy at the point of filing for building permits when tenants are often already vacated from their homes.

Consideration

This proposal was developed by DCP in response to a request made by Council Member Sara Gonzalez and CB7 to address out of context development and other stated goals, such as facilitating affordable housing. DCP has responded with a proposal that downzones more than three-quarters of the area as a means of discouraging the demolition of perfectly-sound housing stock and its resulting displacement. For residential development, the zoning of the avenues would generally be either neutral or slightly increased (with opportunities for affordable housing to result), subject to height limits. The proposal would prevent construction of 12 story buildings as had recently been proposed for 42nd Street.

However, the borough president recognizes that this rezoning may result in unforeseen circumstances. These include the potential to directly and/or indirectly increase the pace of displacement of those living in housing where the rent might no longer remain within a tenant's financial means. Also, it is not known for certain whether the proposed contextual height limits sufficiently prevent the obscuring of views from Sunset Park's observation areas within this city park.

Displacement

It is believed by members of the community that the residential floor area increase of 15 percent, per the proposed upzoning along Fourth and Seventh Avenues, would further exacerbate displacement by promoting new construction. These more expensive residences are often perceived as making the surrounding area more attractive to those with more disposable income than those within the existing community, thereby encouraging landlords to raise rents of unregulated units to what ever the market bears. In addition, it is theoretically possible that some new construction sites would rely on demolishing properties that contain residences, thus displacing existing tenants.

FAC Analysis

The FAC is conducting an analysis of the potential for displacement based on zoning map changes. As part of its analysis for Sunset Park, FAC is examining where redevelopment has already occurred along Fourth Avenue in Park Slope subsequent to that section of the avenue being upzoned. FAC compared this redevelopment to the EAS that was done for the Park Slope rezoning. Per common practice, the EAS did not list lots containing rent-regulated units among the identified projected and potential sites. Subsequent to the adoption of the Park Slope rezoning, redevelopment occurred in accordance with the mapped zoning district. Certain buildings with occupied rent-stabilized units were demolished. FAC highlighted one particular redevelopment site where five adjoining buildings, between Butler and Douglas Streets, were demolished and its tenants displaced. As pointed out by FAC, this was not identified in the EAS for Park Slope as a reasonable worst case scenario.

As the upzoning of Fourth Avenue in Park Slope resulted in unforeseen circumstances, FAC and area residents are concerned that the same thing could happen in certain rent stabilized buildings along Fourth and Seventh Avenues in Sunset Park. If all of the identified buildings along both avenues were redeveloped, FAC estimates that 87-89 affordable units could be lost in Sunset Park.

The borough president thanks FAC for its efforts to preserve affordable housing and assist at-risk tenants. Though there may be other circumstances that could lead to displacement, the borough president agrees with FAC that a residential upzoning of Fourth and Seventh Avenues might create an incentive for a developer to demolish occupied rent-stabilized housing in order to develop luxury housing. The resulting displacement of a building's tenants and loss of the neighborhood's affordable housing stock are both of equal importance for affordable housing advocates.

Borough President's Consideration of Direct Displacement Potential

The degree to which this upzoning adds additional risk of rent-regulated tenants being displaced and losing affordable housing units is not quantifiable or easy to predict. There may be other reasons why the tenants might be displaced that have nothing to do with upzoning. Even standard rent increases approved by the Rent Guidelines Board could be enough of a burden to eventually lead to an inability to maintain the payment of rent. Furthermore, Major Capital Improvements lead to much more substantial increases that can result in displacement simply by the inability to afford such a jump in rent. Finally, there is always the risk of the residential building being sold to a developer for gut rehabilitation, where units are vacated in accordance with the DHCR Operation Bulletin.

Permanent Affordable Housing Through Zoning

There are several means to address the supply of affordable housing through rezonings. These include providing new housing stock or preserving, in perpetuity, existing units through the City's IHP; establishing anti-harassment areas; and, limiting development rights as a means to reduce the incentive to redevelop. The preservation option of IHP provides an important opportunity to keep tenants from being displaced. In addition, the existing rents at the time apartments become part of the IHP allow the program to benefit households of lesser financial means.

Anti-Displacement Measures

Anti-Harassment Areas can be established through a zoning text change, such as those established in the Special Clinton District and in Williamsburg and Greenpoint. Implementation of such areas requires HPD to conduct investigations whenever the

Department of Buildings receives a demolition request. Many affordable housing advocates believe that the potential recourse resulting from an investigation that determines that harassment occurred (setting aside affordable housing in the resulting redevelopment) would minimize the number of situations where the property owner would continue to pursue displacement-resulting building demolition. Tenant advocates believe that the typical tenants benefitting from this process are those most vulnerable/unable to combat landlord harassment by themselves. These include: seniors, recent immigrants, the disabled, those with low literacy skills; and, those with low incomes. This measure requires the City to be proactive.

Last year the City Council enacted the Tenant Protection Act (Local Law 7 of 2008) as a means of establishing a self-help course of action in housing court for a tenant to sue their landlord for harassment. As compared to the Anti-harassment Area, the TPA shifts the emphasis from the City to the tenant to be proactive. If, after a hearing, the court finds that harassment has occurred, a judge can issue an order instructing the landlord to cease the harassment. The question is whether the fines ranging from \$1,000 to \$5,000 or the possibility of compounded fines for subsequent findings of harassment, are substantial enough (as compared to anti-harassment area penalties) to preemptively discourage the harassment of tenants broadly. Advocates believe that in order to make the best use of TPA for combating harassment, it likely requires that a tenant be knowledgeable enough and have the resources to initiate a pro se court action and prove a pattern of harassment. Additionally, because such actions are tenant initiated, landlords who "successfully" displace their tenants through harassment escape sanction. Advocates believe that TPA was never conceived as a "cure-all" for the harassment of tenants and was certainly not meant to substitute for establishing more anti-harassment areas. The borough president agrees with this position.

Addressing the Potential for Displacement

The City has dismissed the suggestion of establishing additional anti-harassment areas – responding that such zoning controls are no longer necessary with the passage of the TPA because of apparent redundancy. Since it was the City Council that established this law in 2008 on behalf of tenants, it is important that the City Council takes appropriate action to best protect tenants. The borough president believes that it is appropriate to implement measures that retain its regulated affordable housing stock.

As CD 7 has been reported to have 40 percent of its units rent regulated, measures that have the potential to protect tenants warrants further consideration. The borough president believes that the City Council should review anti-harassment measures of Sections 23-90 and 93-90 of the Zoning Resolution and the TPA to determine the best means of protecting the tenants of Sunset Park from harassment that may arise as a result of the threat of displacement that may result from the adoption of this zoning map amendment. The City Council should then take appropriate action to protect tenants in Sunset Park, including possible amendments to Local Law 7.

In its recommendation to the City Planning Commission and the City Council, CB7 called for measures to protect the affordable housing stock. These include the establishment of an anti-harassment area and zoning Fourth Avenue to R6A instead of the R7A proposed by DCP. The borough president believes that tenant protection measures can be a deterrent to displacement. However, given the displacement that happened along Fourth Avenue in Park Slope, he believes it is still possible that developers may decide that it would be more profitable to demolish one or more buildings and then construct the maximum allowable residential development.

The borough president is aware that merely zoning from R6 to R7A does not result in immediate redevelopment of the lots flagged by FAC. Other rezonings from R6 to R7A with sites very similar to Sunset Park, were not redeveloped until many years after they were rezoned. This was true of the northern section of Park Slope along Fourth Avenue as was the case of Vanderbilt Avenue in Prospect Heights, where no development occurred in the first decade after the rezoning. Though, the real estate market has softened, it is impossible to predict how developers will view this area. Therefore, the borough president believes that CB7 and concerned advocates should monitor factors such as building demolition requests that may result in direct residential displacement along both Fourth and Seventh Avenues in Sunset Park as a means of determining whether targeted downzoning may be warranted as an appropriate deterrent to prevent direct displacement.

Providing More Housing Affordable to the Community

The community has voiced its concern that they cannot afford the rent or purchase price of new homes being constructed in Sunset Park. In addition, should a developer use IHP, the income thresholds are beyond what they can afford. The borough president believes that the City should do everything it can to achieve a result where 30 percent of the number of units constructed in the area is affordable. A significant percentage of these units need to be affordable to very-low income households with at least a fifty percent preference given to residents of CD7.

While the preservation option addresses the concern of providing units benefiting very-low income residents, the City needs to educate developers and landlords of this option and actively link these parties. In addition, for new construction, the City needs to develop a pilot program to target very low-income households. It should identify resources that provide more subsidies to developers reaching households making less than 30 percent of AMI, as these incomes represent 30 percent of the rental households in CD 7. These subsidies should be so compelling enough to developers that it would be more financially rewarding than merely building without the IHP.

The City needs to be creative with publicly-owned land. This includes rebuilding the library on Fourth Avenue as a mixed use building with 100 percent very-low income housing above a state-of-the art new library facility. Another example was noted in the Sunset Park 197-a Plan, which was approved by CD7 on June 17 and is still subject to adoption by the City Council. The plan identifies several recommendations that could yield more housing. These include reusing the vacant residential space in the upper floors of mixed-use buildings along Fifth Avenue; and, the possibility of decking the 38th Street rail road cut between Third and Fifth Avenues. The recommendations of CB7 provide significant land resources to achieve a significant amount of housing for very low-income residents, as long as adequate financial resources are identified.

Protecting Views from Sunset Park

As noted, CB 7 and those in the community are concerned that the zoning might not adequately protect the views from park. The borough president recognizes the appropriateness of those interested in preserving the views from the park to the harbor. He believes that the park located east of Fifth Avenue between 41st and 44th Streets provides impressive views of Upper New York Bay and Lower Manhattan. The existing zoning does not ensure that such views could not be blocked by new construction. It is not apparent to the borough president that there has been any analysis that demonstrates whether the proposed zoning addresses such concern for whether development might affect the views. Therefore, the concern raised by CB7 and others merits further examination of whether redevelopment according to the proposed zoning might obscure views from within the park, and if so whether any obscured view might be considered

significant. If requested, the borough president will assist CB7 in understanding whether there are any implications.

RECOMMENDATION

Be it resolved that the Brooklyn Borough President, pursuant to section 197-c of the New York City Charter, recommends the approval, with conditions, of these applications by the City Planning Commission and the City Council for changes to the Zoning Map and Zoning Text.

Be it further resolved:

1. That the City Council should review anti-harassment measures of Sections 23-90 and 93-90 of the Zoning Resolution and The Tenant Protection Act (Local Law 7 of 2008) to determine the best means of protecting the tenants of Sunset Park from harassment that could arise as a result of the threat of displacement that may result from the adoption of this zoning map amendment. The City Council should then take appropriate action to protect tenants in Sunset Park, including possible amendments to Local Law 7.
2. That Community Board 7 and concerned advocates monitor building demolition requests that may result in direct residential displacement along both Fourth and Seventh Avenues in Sunset Park as a means of determining whether targeted downzoning may be warranted as an appropriate deterrent to prevent direct displacement.
3. That the City should do everything it can to achieve a result where 30 percent of the number of units constructed in the area are affordable, with a significant percentage affordable to very-low income households and that at least fifty percent preference be given to residents of CD7.