



DEPARTMENT OF CITY PLANNING  
CITY OF NEW YORK

OFFICE OF THE CHAIR

**CONDITIONAL NEGATIVE DECLARATION**

**Project Identification**

CEQR No. 05DCP034X  
ULURP No. 050172 ZMX  
SEQRA Classification: Unlisted

**Lead Agency**

City Planning Commission  
22 Reade Street  
New York, NY 10007  
Contact: Robert Dobruskin  
(212) 720-3423

**Name, Description and Location of Proposal**

Westchester Avenue Rezoning

The applicant, Westpark Inc., is proposing an amendment to the Zoning Map to change an area located on the south side of Westchester Avenue, between Pugsley Avenue and Olmstead Avenue (Block 3805, Lot 1, 7, p/o 11, 13, 14, 15, 17, 20, p/o 64, p/o 67, p/o 78, and p/o 169) in the Unionport section of Bronx Community District 9, from an R5/C2-2 zoning district to an R6/C2-2 zoning district.

The proposed rezoning would facilitate a proposal by the applicant to develop lots 11, 13, 14, 15, 17, 20 and 169 with a seven-story mixed use building using the Quality Housing provisions of the Zoning Resolution. The proposed building would contain commercial/retail and community facility uses on the ground floor, medical offices on the second floor, affordable residential apartments on floors three through seven; and accessory parking for the residential, commercial, and community facility uses in the cellar. With the adoption of the proposed action, the proposed development is expected to be completed in 2009.

According to the application, Lots 1 and 7 may potentially be developed after 2016. These sites contain about 23,964sf of lot area. Each site is under separate ownership and both are active commercial and garage uses. The potential sites could each be developed with a seven-story, mixed-use building containing five stories of residential floor area, one street level of commercial uses on the ground floor, and community facility uses on the second floor. Each site could have a 43-space accessory garage.

The environmental analysis includes an (E) designation for hazardous materials to be placed on Block 3805, Lots 1 and 7. The placement of the (E) designation E-207 would eliminate the potential for significant adverse impact on those sites and would ensure that appropriate testing and/or remediation, if needed, would be undertaken.

The text of the (E) designation for hazardous materials is as follows:

***Task 1-Sampling Protocol***

***A. Petroleum***

***A soil, soil gas, and groundwater testing protocol (including a description of methods), and a site map with all sampling location represented clearly and precisely, must be submitted to the NYCDEP by the fee owner(s) of the lot which is restricted by this (E) designation, for review and approval.***

***A site map with the sampling locations clearly identified and a testing protocol with a description of methods, for soil, soil gas, and groundwater, must be submitted by the fee owner(s), of the lot which is restricted by the (E) designation, to the NYCDEP for review and approval.***

***B. Non-Petroleum***

***The fee owner(s) of the lot restricted by this (E) designation will be required to prepare a scope of work for any sampling and testing needed to determine if contamination exists and to what extent remediation may be required. The scope of work will include all relevant supporting documentation, including site plans and sampling locations. This scope of work will be submitted to NYCDEP for review and approval prior to implementation. It will be reviewed to ensure that an adequate number of samples will be collected and that appropriate parameters are selected for laboratory analysis. For all non-petroleum (E) designated sites, the three generic NYCDEP soil and ground-water sampling protocols should be followed.***

***A scope of work for any sampling and testing to be completed, which will determine the extent of on-site contamination and the required remediation, must be prepared by the fee owner(s) of the lot restricted by this (E) designation. The scope of work will include the following: site plans, sampling locations, and all other relevant supporting documentation. The scope of work must be submitted to the NYCDEP for review and confirmation that an adequate testing protocol ( i.e., number of samples collected, appropriate parameters for laboratory analysis) has been prepared. The NYCDEP must approve the scope of work before it can be implemented.***

***For non-petroleum (E) designated sites, one of the three generic soil and groundwater sampling protocols prepared by the NYCDEP should be followed.***

*The protocols are based on three types of releases to soil and groundwater sampling protocols prepared by the NYCDEP should be followed.*

*The protocols are based on three types of releases to soil and groundwater, including: the release of a solid hazardous material to ground surface; the release of a liquid hazardous material to the ground surface; and the release of a hazardous material to the subsurface (i.e., storage tank or piping). The type of release defines the areas of soil to be sampled from surface, near-surface, to subsurface. Additionally, it determines the need for groundwater sampling.*

*A written approval of the sampling protocol must be received from the NYCDEP before commencement of sampling activities. Sample site quantity and location should be determined so as to adequately characterize the site, the source of contamination, and the condition of the remainder of the site. After review of the sampling data, the characterization should have been complete enough to adequately determine what remediation strategy (if any) is necessary. Upon request, NYCDEP will provide guidelines and criteria for choosing sampling sites and performing sampling.*

*Finally, a Health and Safety Plan must be devised and approved by the NYCDEP before the commencement on any on-site activities.*

#### *Task 2-Remediation Determination and Protocol*

*After sample collection and laboratory analysis have been completed on the soil and/or groundwater samples collected in Task 1, a summary of the data and findings in the form of a written report must be presented to the NYCDEP for review and approval. The NYCDEP will provide a determination as to whether remediation is necessary.*

*If it is determined that no remediation activities are necessary, a written notice will be released to that effect. However, if it is the NYCDEP's determination that remediation is necessary the fee owner(s) of the lot restricted by the (E) designation must submit a proposed remediation plan to the NYCDEP for review and approval. Once approval has been obtained, and the work completed, the fee owner(s) of the lot restricted by the (E) designation must provide proof to the NYCDEP that the work has been completed satisfactorily.*

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Conditional Negative Declaration**

**Statement of No Significant Effect:**

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated January 3, 2008, prepared in connection with the ULURP Application (No. 05DCP034X). The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

1. The applicant, Westpark Inc., agrees via a restrictive declaration to prepare a hazardous materials sampling protocol including a health and safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

**Supporting Statement:**

The above determination is based on an environmental assessment which finds that:

1. A Phase I Environmental Site Assessment (ESA) was prepared in May, 2006, and is available in the proposal's CEQR file, for the properties located in Bronx (Block 3805, Lots 11, 13, 14, 15, 17, 20 and 169) for the project site. The Phase I ESA was reviewed by DEP's Office of Environmental Planning and Assessment, and Phase II testing was recommended by DEP, due to the presence of hazardous materials on the site as a result of past and present on-site land uses.

The declaration, binding on all successors and assigns of the applicant, requires that Phase II testing be prepared, including a sampling protocol and a health and safety plan for DEP's review and approval. If hazardous materials impacts exist, the declaration requires that the applicant submit a remediation plan for DEP's review and approval and provide for such remediation. The declaration serves as a mechanism to assure the potential for hazardous material contamination that may exist in the subsurface soils and groundwater on the applicant's property would be characterized prior to any site disturbance.

2. The (E) designation for hazardous materials would ensure that no significant adverse impacts on Block 3805, Lots 1 and 7, due to hazardous materials would result from the proposed action.
3. No other significant adverse effects on the environment which would require an Environmental Impact Statement are foreseeable.

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With the implementation of the condition described above, no significant adverse impact related to hazardous materials would occur.

It is fully agreed and understood that if the foregoing conditions, modification, and alterations are not fully incorporated into the proposed action, this Conditional Negative Declaration shall become null and void. In such event, the applicant shall be required to prepare a Draft Environmental Impact Statement before proceeding further with said proposal.

This Conditional Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

I, the Undersigned, as the applicant or authorized representative for this proposal, hereby affix my signature in acceptance of the above conditions to the proposed action.

Date: 1/4/08

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Signature of Applicant or Authorized Representative

MAAC KURMAN

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Name of Applicant or Authorized Representative

Date: 3/7/08

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James P. Merani, R.A., Deputy Director  
Environmental Assessment & Review Division  
Department of City Planning

Date: 4/7/08

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Amanda M. Burden, AICP, Chair  
City Planning Commission