



E-248

CITY PLANNING COMMISSION  
CITY OF NEW YORK

OFFICE OF THE CHAIR

**REVISED**  
**CONDITIONAL NEGATIVE DECLARATION (CND)**  
**Supersedes CND issued on February 19, 2010**

June 7, 2010

**Project Identification**

CEQR No. 05DCP093Q  
ULURP No. 050522ZMQ  
SEQRA Classification: Unlisted

**Lead Agency**

City Planning Commission  
22 Reade Street  
New York, NY 10007  
Contact: Robert Dobruskin  
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**Name, Description and Location of Proposal**

Elmhurst Zoning Map Change

The applicant, 45-10 94<sup>th</sup> Street LLC and 91<sup>st</sup> Place Realty, LLC, as co-applicants, are proposing an amendment to the Zoning Map to rezone a portion of a block bounded by 91<sup>st</sup> Place to the west, Corona Avenue to the south, the Long Island Railroad viaduct to the north, and 94<sup>th</sup> Street to the east (Block 1600, Lots 61, 80, 86, 99, 110 and 130) in the Elmhurst section of Queens, Community District 4, from an M1-1 zoning district to an R7B zoning district. A C2-3 zoning district would also be mapped at a depth of 100 feet along Corona Avenue between 94<sup>th</sup> Street and 91<sup>st</sup> Place.

The proposed rezoning would facilitate a proposal by the applicant to redevelop a 58,313 square foot parcel located at 43-23 91<sup>st</sup> Place (Block 1600, Lot 130), with a mixed use development consisting of two buildings and containing approximately 112 dwelling units; 6,000 square feet of ground floor commercial space; and approximately 75 accessory parking spaces, 50 of which would be located in the cellar floor of one building and 25 of which would be provided in on-site parking lots. In addition, a 34-foot fire access road along the northern boundary of the property would be provided. The site is currently developed with one story brick shipping warehouse which would be demolished.

The previously proposed development program included three buildings on Lot 130 and had a fire access lane to the interior of one of the buildings on Lot 130 from 94th Street and ran the length of the property on Lot 61. At over 400', the FDNY deemed this access lane too long. Accordingly, the applicant has revised the site plan to remove one of the buildings on Lot 130. Emergency and fire access to buildings on Lot 130 will now be provided from 91st Place via a curb cut.

In addition, the proposed action could facilitate additional development within the rezoning area

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on up to projected three sites and one potential development site in the rezoning area that are not under the control of the applicant. The three projected development sites, located on Lots 80, 86, and 110, could be developed with a total of approximately 117 dwelling units, and 21,090 square feet of commercial/community facility use. These sites are currently developed with auto related uses (Lots 80 and 110) and manufacturing/ warehousing uses (Lots 86). The potential development site is located on Lot 99 and is currently occupied by a Hindu Temple. Lot 61, the site of a new public high school (Elmhurst Education Campus), would not be redeveloped as a result of the proposed rezoning and is expected to remain as a school. Absent the action, no new development is expected to occur within the rezoning area.

The (E) designation for hazardous materials would be placed on Block 1600, Lots 80, 86, 99 and 110.

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 groundwater 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 obtain, 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.**

The proposed (E) designation for air quality would be mapped on Block 1600, Lots 80, 86, 99, 110 and 130. The text of the (E) designation is as follows:

**Block 1600, Lot 80:** Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning (HVAC) stack(s) are located at least 20 feet from the lot line facing 91<sup>st</sup> Place AND MAY USE Oil No. 2 or Natural Gas as the type of fuel for space heating and hot water systems, to avoid any potential significant adverse air quality impacts.

**Block 1600, Lot 86:** Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning (HVAC) stack(s) are located at least 33 feet from the lot line facing 94<sup>th</sup> Street and 91<sup>st</sup> Place AND MAY ONLY USE Oil No. 2 or Natural Gas as the type of fuel for space heating and hot water systems, to avoid any potential significant adverse air quality impacts.

**Block 1600, Lot 99:** Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning (HVAC) stack(s) are located at least 18 feet from the lot line facing 94<sup>th</sup> Street and 91<sup>st</sup> Place AND MAY ONLY USE Oil No. 2 or Natural Gas as the type of fuel for space heating and hot water systems, to avoid any potential significant adverse air quality impacts.

**Block 1600, Lot 110:** Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning (HVAC) stack(s) are located at least 18 feet from the lot line facing 94<sup>th</sup> Street AND MAY ONLY USE Oil No. 2 or Natural Gas as the type of fuel for space heating and hot water systems, to avoid any potential significant adverse air quality impacts.

**Block 1600, Lot 130:** Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning (HVAC) stack(s) use ONLY USE Natural Gas as the type of fuel for space heating and hot water systems, to avoid any potential significant adverse air quality impacts.

With the implementation of the above (E) designation, no significant adverse impacts related to air quality would occur.

The (E) designation for noise would be mapped on Block 1600, Lots 80, 86, 99, 110 and 130. The text of the (E) designation is as follows:

**In order to ensure an acceptable interior noise environment, future residential and commercial uses must provide a closed window condition with a minimum of 30 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners or HUD-approved fans.**

With the implementation of the above (E) designation, no significant adverse impacts related to

noise would occur.

**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 27, 2010, prepared in connection with the ULURP Application (No. 050522ZMQ). 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:

The applicant, 45-10 94<sup>th</sup> Street LLC, and 91<sup>st</sup> Place Realty, LLC, 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 February 2005, and is available in the proposal's CEQR file, for the project site located at 43-21 91<sup>st</sup> Place (Block 1600, Lot 130) in Queens. A Phase II Subsurface Investigation of Lot 130 was conducted on January 6, 2005. The Phase I ESA and Phase II Subsurface were reviewed by DEP's Office of Environmental Planning and Assessment.

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.

The restrictive declaration was executed on March 27, 2009. On April 21, 2009 the DEP confirmed, via written correspondence, that the applicant filed a DEP-approved Restrictive Declaration with the New York City Department of Finance and the City Register.

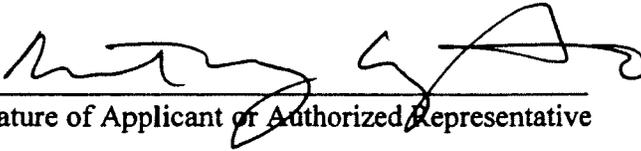
2. The change to the proposal for the applicant's property would not affect or alter any of the analysis conclusions of the EAS dated January 27, 2010.
3. No other significant adverse effects on the environment which would require an Environmental Impact Statement are foreseeable.

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

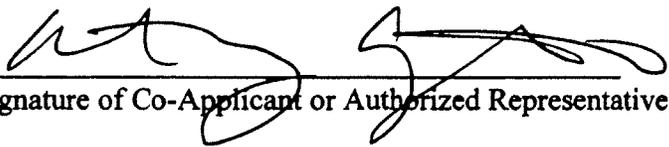
It is fully agreed and understood that if the foregoing conditions, modification, and alterations are not fully incorporated into the proposed action, this Conditional Negative Declaration shall become null and void. In such event, the applicant shall be required to prepare a Draft Environmental Impact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

  
\_\_\_\_\_  
Signature of Applicant or Authorized Representative

Date: 6-3-2010

  
\_\_\_\_\_  
Signature of Co-Applicant or Authorized Representative

Date: 6-3-2010

Anthony Argento  
\_\_\_\_\_  
Name of Applicant or Authorized Representative

Robert Dobruskin  
\_\_\_\_\_  
Robert Dobruskin, AICP, Director  
Environmental Assessment & Review Division  
Department of City Planning

Date: 6/4/10

  
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Amanda M. Burden, FAICP, Chair  
City Planning Commission

Date: 6/7/10