



CITY PLANNING COMMISSION

October 20, 2021 / Calendar No. 11

N 210380 ZRY

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

An application (N 210380 ZRY) to amend the text of the Zoning Resolution was filed by the Department of City Planning (DCP) on May 13, 2021, to expand the FRESH program in areas of the Bronx, Brooklyn, Queens and Staten Island and to modify related regulations in eligible areas that guide the development of FRESH food stores.

BACKGROUND

The Food Retail Expansion to Support Health (FRESH) program was created in response to a 2008 study by the DCP, “Going to Market,” which used an index to identify need for additional grocery stores and supermarkets for all New York City (NYC) neighborhoods. The study identified low-income neighborhoods and found that many of these areas exhibit a widespread shortage of grocery stores and supermarkets, displaying high need. As a result, FRESH was created in 2009 to encourage the construction of supermarkets in underserved areas of the City.

Existing Program

The FRESH program, a joint effort sponsored by DCP and the New York City Economic Development Corporation (EDC), is designed to bring healthy and affordable food options to underserved communities by facilitating the development of retail spaces designed and occupied exclusively by supermarkets. The program guides development of stores selling a full range of food products with an emphasis on fresh fruits and vegetables, meats, and other perishable goods. The current program aims to encourage the opening of new grocery stores through zoning as well as financial incentives, which are described briefly below and require separate discretionary review through the New York City Industrial Development Agency (NYCIDA).

The existing zoning incentives established under ZR Section 63-00 include the following key provisions for developments that contain a qualifying FRESH food store:

- for mixed residential and commercial buildings, allowing one additional square foot of residential floor area for each square foot provided in a FRESH food store, up to a maximum of 20,000 zoning square feet (ZSF). For these buildings, an optional authorization by the City Planning Commission (CPC) is available to allow an increase in the maximum building height, up to 15 feet.
- allowing a reduction in required accessory parking;
- increasing the maximum permitted size for food stores in light manufacturing districts from 10,000 ZSF of floor area to 30,000 ZSF of floor area; and

The program establishes a definition for a “FRESH food stores” (ZR Section 63-01) that requires food stores to meet the following requirements in order to be eligible to seek benefits through the program:

- (a) A minimum of 6,000 ZSF of space for retailing of a general line of food and nonfood grocery products intended for home preparation, consumption, and utilization;
- (b) At least 50 percent of such space for retailing of general line of food products intended for home preparation, consumption, and utilization
- (c) At least 30 percent of such space for retailing of perishable goods that may include dairy, fresh product, fresh meats, poultry, fish, and frozen foods; and
- (d) At least 500 ZSF of such retail space is used for the sale of fresh produce.

All FRESH food stores are required to be certified by the CPC Chairperson. Additionally, all certified FRESH food stores are required to display a sign at the entrance to each store indicating that the store participates in the FRESH program and fresh foods are sold inside. Since the adoption of the FRESH program in 2009, there are 29 certified FRESH projects, of which eight are occupied.¹

¹ As of May, 2021

FRESH Program Review

In 2018, the City Council Subcommittee on Zoning and Franchises and the Committee on Economic Development held a joint hearing to assess the zoning and financial incentives of the FRESH program. A major concern was that there were not enough supermarket operators and developers using the FRESH program. Further, the City Council Subcommittee and relevant stakeholders urged that the program apply more widely in areas that remain in high need of fresh foods and grocery stores.

In an effort to improve the FRESH program and to respond to requests from the public and the City Council Subcommittee, DCP conducted an updated analysis of grocery stores and supermarkets across New York City to determine which Community Districts (CDs) were well-served or in need of additional fresh food stores. The analysis mainly utilized DCP's updated metric, the Supermarket Needs Index (SNI), which showed that many neighborhoods remain underserved by fresh food stores.

Grocery stores are a fundamental component of neighborhoods. Grocery shopping not only represents a large segment of a household's financial budget, it also represents an activity that requires substantial time for frequent shopping trips, particularly for perishable food items. Ensuring quality of life in New York City neighborhoods requires accessibility to this vital retail amenity. It is important that New Yorkers live within a comfortable walking distance to a grocery store in pedestrian-oriented neighborhoods. New Yorkers without access to an automobile, in particular, must rely on neighborhood stores that are close to their homes for grocery shopping. Furthermore, increasing the number of neighborhood grocery stores is not only important to enhancing access to fresh food, but also essential to efforts encouraging New Yorkers to prepare and consume healthy meals. The addition of grocery stores to neighborhood retail areas benefits neighborhoods in distinct but interrelated ways. They offer quality of life, health and economic benefits.

Expansion and improvement of the FRESH program would not only help ensure post-pandemic recovery by meeting increased neighborhood needs for greater access to fresh foods, but also

expand food benefits to reach neighborhoods that were already struggling with a limited number of supermarkets. DCP's effort to improve and update the FRESH program aligns with the City's *Food Forward NYC: A 10-Year Food Policy Plan*, published by the Mayor's office in February 2021. That report presented a comprehensive framework to reach a more equitable, sustainable, and healthy food system in New York City by 2031 and emphasized the importance of equity and choice, such that everyone is able to access the food they want, wherever they may want it. In addition, the COVID-19 pandemic highlighted the importance having access to fresh foods close to home as more New Yorkers gravitated towards cooking and eating at home.

Since the zoning program was adopted at the end of 2009, a number of FRESH projects have experienced difficulty meeting certain technical requirements of the zoning text. Additionally, potential concentrations of FRESH stores seemed to be happening in a handful neighborhoods. This zoning text amendment is intended to correct problems that have been identified with the use of the zoning program by specific projects, while at same time expanding the number of neighborhoods that are eligible to participate in the program.

PROPOSED ZONING TEXT AMENDMENT

The proposed zoning text amendment (the "FRESH Update") modifies the existing program, laid out in ZR 63-00, that provides incentives for neighborhood grocery stores to locate in underserved neighborhoods throughout New York City. The FRESH Update includes an expansion of the program boundary as well as updates to all eligible areas, a mechanism to prevent concentration of FRESH supermarkets, modification to the glazing requirement for conversions, changes to parking regulations, as well as zoning text clarifications.

Expansion of FRESH Boundary

In an effort to improve the FRESH program and to respond to requests from the public and the City Council Subcommittee, DCP conducted an updated analysis of grocery stores and supermarkets across NYC to determine which Community Districts (CDs) were well-served or in need of additional fresh food stores. The analysis mainly utilized DCP's updated metric, the

Supermarket Needs Index (SNI)², which showed that many neighborhoods remain underserved by fresh food stores.

The updated SNI identified areas of high need that are not covered by the existing FRESH program. The extension of the FRESH program to a broader range of underserved neighborhoods would encourage the development and retention of convenient, accessible stores that provide fresh meat, fruit and vegetables, and other perishable goods, in addition to a full range of grocery products. Furthermore, an increase in the number and variety of neighborhood food stores would create a greater diversity of shopping options, improving the accessibility and affordability of food available to local residents. Consequently, the increased convenience and availability of fresh foods can empower consumers to make better decisions about where to buy food and what to eat.

Based on the findings of the updated SNI, DCP proposes to expand applicability of the FRESH program to 11 additional Community Boards or portions thereof in the Bronx, Brooklyn, Queens, and Staten Island.

Table 1. Affected Community Districts

	Existing FRESH Areas	Proposed FRESH Expansion Areas
Manhattan	9, 10, 11, 12	None
Bronx	1, 2, 3, 4, 5, 6, 7	8, 9
Queens	1 (Halletts Point), 12	p/o 1, 3, 4, 14
Brooklyn	3, 4, 5, 8, 9, 16, 17	1, 2, 12, 13
Staten Island	N/A	p/o 1

The existing FRESH program has resulted in 29 approved applications. However, certain problems have emerged with the existing zoning text. The following amendments are being made to the FRESH zoning text to facilitate use of the program while at the same time instituting more appropriate program controls.

² SNI comprises a set of criteria to identify areas with less access to grocery stores to inform policies that address food insecurity. These neighborhood-level criteria include the concentration of stores, walkability, household access to car, and the presence of families with children in poverty.

Mechanism to Prevent Concentration of FRESH Supermarkets

Since the adoption of the FRESH program in 2009, applications for FRESH supermarkets have clustered in certain specific areas with strong housing markets, particularly portions of Bedford-Stuyvesant and Harlem. While the purpose of the program is to expand the availability of grocery stores offering fresh foods, the intent is not to saturate any particular area or to create an imbalance in the local market for commercial space. Unanticipated concentration of FRESH supermarkets has the potential to drive existing supermarkets out of business or to create an oversupply of space designed only for grocery stores and, in the process, produce buildings with more floor area than what the underlying zoning permits.

To prevent such an oversupply of FRESH supermarkets, DCP proposes a limit on the amount of additional residential floor area allowed by certification within any given area. Within a 0.5-mile radius of a proposed project the total additional residential floor areas resulting from the FRESH program would be capped at 40,000 square feet, as follows:

- 1) If the sum of additional residential floor area previously obtained through the FRESH program within a half-mile radius is **less than 40,000 SF**, an applicant is eligible to apply for FRESH zoning benefits.
- 2) If the sum of additional residential floor area previously obtained through the FRESH program within a half-mile radius is **less than or equal to 20,000 SF**, then the project can obtain and use up to 20,000 SF of additional residential floor area.
- 3) If the sum of additional residential floor area previously obtained through the FRESH program within a half-mile radius is **more than 20,000 SF**, then the project can obtain and use up to the difference between 40,000 SF and the previously certified amount of reallocated floor area through FRESH.

In order to ensure that FRESH projects are actually built, rather than stockpiled as speculative projects, the proposed amendment would introduce an expiration date for FRESH certifications that allow an increase in residential floor area for the provision of a FRESH store, such that the

FRESH certification will lapse if building foundations are not completed within four years after issuance.

Modification to Glazing Requirement for Conversions

FRESH supermarkets are currently required to be glazed in accordance with the provision of ZR Section 37-34, which states that transparent materials should occupy at least 50 percent of the surface area of a ground floor level street wall to ensure an active and vibrant ground floor experience for pedestrians. The transparency requirements not only positively enhance the urban design of the streetscape, but also ensure a welcoming and attractive store front.

However, evidence from projects seeking FRESH certification suggests that this requirement is impracticable for conversions of many existing buildings to FRESH food stores. For instance, the demolition of a load-bearing exterior wall may be required for an existing manufacturing building to meet the current glazing requirement, significantly adding to construction time and cost. Furthermore, transparency requirements in other districts generally only apply to new buildings or enlarged portions of buildings on the ground floor. Therefore, the proposed FRESH Update would waive the requirement under ZR Section 37-34 for conversions that include FRESH supermarkets, while retaining it for all new construction.

Update to Parking Provisions

Currently, in *C1-1*, *C1-2*, *C1-3*, *C2-1*, *C2-2*, *C2-3*, and *C4-3* districts, accessory off-street parking applicable to a *C1-4* district applies to any FRESH food store (1 per 1,000 ZSF of floor area). In *C8-1*, *C8-2*, *M1-1*, *M1-2*, and *M1-3* districts, FRESH food stores provide one space per 1,000 ZSF of floor area up to 15,000 ZSF. Any excess SF follows the underlying zoning requirement.

The proposed FRESH Update would extend FRESH provisions to some additional districts, including lower density districts. To provide suitable flexibility for Commercial Districts mapped within lower density Residential Districts (R3 through R5) and C4-1 districts, the proposal would require parking for FRESH stores based on parking category B of the *C1-3* district, which would

allow up to 10,000 SF of FRESH supermarket area to be waived from the parking requirement. Stores exceeding 10,000 SF would require one space per 400 square feet of floor area. These areas have lower residential densities and are characteristically more auto dependent than higher-density districts. These provisions would be consistent with existing FRESH parking provisions that already exist in Lower Density districts. The proposed zoning text amendment would also clarify that the parking waiver applies to the FRESH food store only, not to other commercial or residential uses within a building.

Zoning Text Technical Changes

As part of the proposed text amendment, DCP proposes to update several sections of the FRESH program to address feedback from the public, applicants, supermarket operators, and other stakeholders about how to make the program more effective and easier to use. Following are the ZR sections proposed to be modified:

ZR Section 63-01

- Small food stores with multiple stories are hard for customers to navigate and hard for retailers to manage. They require elevators which are often impractical in a small food store. To ensure that FRESH stores provide the desired service to communities consistent with industry operational practices, a change would be made in the zoning text to ensure that at least 6,000 ZSF of grocery store is contiguous and located on the same floor, even if the store has multiple levels.
- The proposal would update existing regulations regarding the distribution of perishable and non-perishable food within a FRESH food store to make regulations consistent with current food merchandising concepts. The existing regulations lack a level of flexibility for store merchandising. In particular the text limits the ability of store operators to offer a fuller line of perishable goods as well as full lines of other products commonly found in supermarkets such as paper goods and pet food. Clarifications and modifications would be made to the definition of what constitutes a FRESH store and how floor area used for retailing must be distributed within the store. Updated zoning text would require a FRESH establishment to be 25 percent perishable food and 35 percent non-perishable food. The availability of the remaining 40 percent of retail space for non-food sales

would allow greater flexibility for operators to adjust distribution of products and eliminate what has been a potentially cumbersome requirement.

ZR Section 63-24

- If a change of use to the FRESH store or any portion of it occurs less than 25 years after the initial issuance of a Department of Building's Certificate of Occupancy, accessory off-street parking regulations would apply to the new use unless City Planning Commission Authorization is received.

ZR Section 63-30

- Current certification requirements involve imposing a restrictive declaration on all FRESH food stores, which is burdensome and in some cases unnecessary. FRESH projects that comply with underlying bulk rules are at a disadvantage compared to as-of-right projects because the FRESH program requires sites containing a FRESH store to record a restrictive declaration. This creates additional process and obligations for a FRESH project as compared to a non-FRESH project. The restrictive declaration is an important feature to ensure that floor area granted on the basis of a FRESH application remains subject to the requirements of the program over time. However, DCP views this requirement as unnecessary for FRESH projects that do not build more floor area than would otherwise be permitted since the building would still comply with the underlying FAR limits. Therefore, under the proposed text, FRESH applications that do not obtain additional residential floor area would be exempted from the restrictive declaration requirement.
- In order to ensure that certifications are available to projects likely to be built, rather than stockpiled by speculative projects, the proposed actions would introduce an expiration date for certifications that allow an increase in floor area for the provision of a FRESH store, such that the certification would lapse if construction does not proceed within four years after issuance.

ZR Section 63-60

- Currently, zoning regulations require compliance reports detailing the status of the project to be sent in the first year following approval, but implementation of the FRESH program over the last 11 years has revealed that projects generally take longer to construct than anticipated. Granting more time between approval and when the compliance report must be provided would allow both applicants and DCP to determine if a FRESH store is compliant and operating in good standing which would lead to more complete and accurate reporting. Therefore, the proposed action would modify this provision to require compliance reports to be sent beginning the second year following approval.

ENVIRONMENTAL REVIEW

This application (N 210380 ZRY) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 21DCP182Y. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on May 17, 2021.

PUBLIC REVIEW

On May 19, 2021, the application (N 210380 ZRY) was duly referred to thirty affected community boards, the five Borough Presidents, and the five Borough Boards for information and review in accordance with the procedures for referring non-ULURP matters.

Community Board Public Hearings

19 of the 30 community boards in the city submitted recommendations on the application (N 210380 ZRY) as noted in the below tables:

Summary Table of Votes:

Community Boards in favor	15
Community Boards in favor with Conditions	4
Community Boards opposed with Conditions	0
Community Boards opposed	2
Community Boards that did not submit a recommendation	10

Summary Table of Community Board Recommendations

		Recommendations				Conditions
Borough	CB	# in Favor	# Opposed	# Abstaining	Date	
Bronx	2	27	0	0	9/29	Voted to approve
Bronx	3	Approve (no vote count)			5/17	Voted to approve
Bronx	4	29	0	0	6/22	Voted to approve
Bronx	6	Approve (unanimous vote)			6/21	Voted to approve
Bronx	8	28	0	11	6/8	Voted to oppose
Bronx	9	4	0	0	6/7	Voted to approve
Manhattan	9	36	2	2	6/17	Voted to approve with conditions • Clarify language in Section 63-21 (FRESH and MIH development requirements)
Manhattan	10	29	0	0	6/17	Voted to approve
Manhattan	11	29	0	0	7/13	Voted to approve
Manhattan	12	41	0	0	6/29	Voted to approve
Queens	1	24	10	0	6/15	Voted to approve with conditions • Parking restrictions in areas not served by mass transit can restrict access • Imbalance in benefits to the developer, operator, and residents • Woodside Houses (NYCHA) was excluded, yet it has need for supermarkets • Take a targeted approach to expansion areas and expand into more areas of high need

						• Limit type of supermarket to assure affordability
Queens	3	21	7	0	7/23	Voted to approve
Queens	4	21	10	0	6/8	Voted to approve with conditions • Guarantee local fresh organic goods and affordable produce
Queens	12	4	14	3	6/16	Voted to oppose
Queens	14	28	0	0	6/8	Voted to approve
Brooklyn	1	28	0	0	7/12	Voted to approve
Brooklyn	2	40	0	0	6/16	Voted to approve
Brooklyn	8	13	0	1	7/21	Voted to approve with conditions • Broaden rent regulation and other supportive programs to include existing community resources • Address rent increases that are driving out existing supermarkets
Brooklyn	13	34	0	3	5/26	Voted to approve
Staten Island	1	31	0	0	6/8	Voted to approve

Borough President Recommendations

- The Manhattan Borough President considered the application (N 210380 ZRY) on July 26, 2021 and approved with conditions as noted in the table below.
- The Queens Borough President considered the application (N 210380 ZRY) on July 22, 2021 and approved with conditions as noted in the table below.
- The Staten Island Borough President considered the application (N 210380 ZRY) on July 26, 2021 and approved without conditions.
- The Brooklyn Borough President considered the application (N 210380 ZRY) on October 5, 2021 and approved with conditions as noted in the table below.
- The Bronx Borough President did not submit a recommendation at the time of this report.

Summary Table of Borough President Recommendations

Borough BP	Recommendations				Conditions
	Yes	Yes w. Cond.	No w. Cond.	No	
Manhattan		X			<ul style="list-style-type: none"> • Manhattan CB 9, 10, 11, and 12 that are included in the existing FRESH zoning boundary have benefitted greatly from the program. • While there is no extension of the program into additional areas of Manhattan, the updates would make the process easier and limit redundancy in the future. The waiver of glazing requirement, in particular, will lift financial burden for participation. • Agree with the concerns of CB 9 that the saturation provision may lead to an arbitrary selection process. • Encourage DCP to continue to reassess the program periodically and to make further adjustments as necessary.
Queens		X			<ul style="list-style-type: none"> • Community District 13 should be included in the FRESH program; it would help in recapturing customers who reside in the area who would otherwise leave the borough to grocery shop. • DCP should create a designated staff or team to be responsible for coordinating with FRESH applications; to advise and guide applicants in the process; to monitor all locations in the program for compliance and potential saturation. • DCP should better coordinate with the NYC Economic Development Corporation on outreach and marketing of the FRESH Program to developers in the designated areas.
Brooklyn		x			The conditions stated in the Brooklyn Borough Board Recommendations are the same as the Borough Presidents.
Staten Island	x				

Borough Board Recommendations

- The Manhattan Borough Board considered the original application (N 210380 ZRY) on July 15, 2021 and adopted a resolution with conditions as noted in the table below.
- The Brooklyn Borough Board considered the original resolution (N 210380 ZRY) on October 5, 2021 and approved with conditions as noted in the table below.
- There were no other recommendations received from the other Borough Boards.

Summary Table of Borough Board Recommendations

Borough	Recommendations				Conditions
	Yes	Yes w. Cond.	No w. Cond.	No	
Manhattan		X			<ul style="list-style-type: none">• DCP should select FRESH developments more strategically instead of deciding by first-come, first-serve basis.• DCP should apply affordable housing requirements for FAR bonuses granted at MIH sites participating in the FRESH program• DCP should strengthen the definition of supermarkets to ensure that establishments such as high-end food halls do not benefit from the program.
Brooklyn		x			<ul style="list-style-type: none">• DCP should have the exemption for vacated FRESH food stores that are at least 25 years from the date of issuance of a C of O, to still require CPC authorization to remove such otherwise required parking, in order to remove a potential outyear financial disincentive toward retaining or reactivating a vacated FRESH food store• DCP should limit the FRESH zoning floor area exemption to be applicable to only development sites already occupied by one-story supermarkets within Brooklyn Community District 14.• DCP should remove the western section of Brooklyn Community District 12 from the FRESH zoning incentive area.

City Planning Commission Public Hearing

On September 1, 2021 (Calendar No. 2), the City Planning Commission scheduled September 22, 2021 for a public hearing on this application (N 210380 ZRY). The hearing was duly held on

September 22, 2021 (Calendar No. 41). There were two speakers in favor and no speakers in opposition.

A representative of the Food Industry Alliance of New York State, Inc. testified in support of the proposed text amendment, noting their support for the goal of the FRESH Program. In addition, the speaker suggested that in oversaturated areas, the Commission should consider other standards when determining whether a particular zone is overconcentrated and should incorporate factors such as shopping patterns, physical barriers such as highways or bodies of water and the number of neighborhood grocery stores that are not FRESH certified that are already operating in the area.

A representative from the CUNY Food Policy Institute testified in support of the text amendment, noting their support for the city to encourage supermarket development in communities with insufficient food retail and making food access more equitable. In addition, the speaker suggested that the DCP consider additional planning measures that support diversified retail options such as online grocery delivery, distribution locations, urban farms, food hubs and grocery access to NYCHA locations.

The Director of Government Relations for the National Supermarket Association (NSA) submitted written testimony in support of the text amendment in order to continue addressing disparities throughout the five boroughs in high-quality grocery store access. They asked that the FRESH Program support small operators by giving existing stores the right to reoccupy a supermarket space if it is redeveloped via the FRESH program.

There were no other speakers, and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

The application (N 210380 ZRY) was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront

Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 et seq.). The designated WRP number is 21-054. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that the application for the zoning text amendment (N 210380 ZRY) as modified herein, is appropriate.

The Commission appreciates the proposed amendments to the existing FRESH program, which address issues identified through the implementation of the program to date. These changes will ensure that the program provides the intended incentive for FRESH supermarkets selling a full line of grocery products including a selection of fresh fruits, vegetables, dairy, frozen foods, fresh meats and other grocery products.

The Commission supports the expansion of the FRESH program where it can support improved food access in areas of need. It believes the existing FRESH program has successfully helped locate new stores for underserved communities to purchase fresh food, and that the proposed expansion of eligible areas for FRESH zoning incentives will enable expanded access to supermarkets in additional communities. The FRESH zoning incentives complement a package of financial benefits through the New York City Industrial Development Agency, which also exists for the purpose of increasing the availability of grocery stores in areas of need. The FRESH expansion proposal complements existing programs to increase access to fresh foods as laid out in the Mayor's 10-year food policy plan, improving food access for all New Yorkers. The proposal is geographically targeted and provides modest relief for participating projects, such that the resulting buildings remain appropriate to their context.

The Commission notes the potential for the current program to produce a greater concentration of supermarkets than intended. The Commission recognizes that the proposed modifications to the program are designed to prevent that from occurring. The proposal to limit the amount of increased residential floor area resulting from FRESH food stores in a given area will limit the proliferation of FRESH food stores. These provisions will also limit the number of buildings

participating in the FRESH program that have more floor area than permitted by the underlying zoning. The Commission recognizes that if a certified FRESH food store is already in an over-saturated area, the proposed amendment could have the effect of preventing certain changes in the square footage of the FRESH food store or in the location of the additional residential floor area resulting from the FRESH food store. This is because such changes require a new certification, and new certifications would not be allowed in these over-saturated areas by the new text. Therefore, the Commission modifies the proposed text amendment so that previously certified stores may be re-certified, provided there is no increase in additional residential square footage beyond what was previously certified.

The Commission acknowledges comments received from several parties, including the Manhattan Borough Board and Borough President, about the proposed limits on concentration, including concerns that these may lead to an arbitrary selection process for applications, and recommendations to incorporate additional considerations in the criteria limiting concentration. The Commission notes that creating a subjective selection process or criteria would require the establishment of a discretionary review process to replace the current ministerial certification process, and erect barriers to participation that would undermine the objectives of the program. In addition, the Commission notes that DCP is promulgating a related rule pursuant to the Citywide Administrative Procedure Act that sets forth an objective basis for the order of processing applications.

The Commission understands the suggestion made by a supermarket owners association that existing store owners should be given the right to reoccupy a supermarket space if the space is redeveloped as part of a FRESH project. The Commission notes, however, that this suggestion is beyond the purview of the FRESH Program and the Commission, which cannot mandate a specific business for a specific location.

In response to testimony from Queens Community Board 1 that the program should be extended into certain high need areas, such as the neighborhoods around Woodside Houses, the Commission notes that this recommendation is beyond the scope of the current proposal, but that

in the future consideration of further expansions to the FRESH program this and other areas can be examined for the appropriateness of their eligibility for the program.

The Commission also modifies several provisions of the proposed text amendment to clarify the intent of the existing and proposed regulations.

The Commission believes that these updates to the FRESH program, with modifications, are appropriate to support the creation of grocery stores in more neighborhoods that are underserved by supermarkets, increase access to fresh foods in these neighborhoods and remove unnecessary hurdles in the FRESH application process.

RESOLUTION

RESOLVED, that having considered the Environmental Assessment Statement (EAS) for which a Negative Declaration was issued on May 17, 2021 with respect to this application (CEQR No. 21DCP182Y), the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

FRESH II ZONING TEXT AMENDMENT

CITYWIDE

N 210380 ZRY

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of

New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Matter underlined is new, to be added;

Matter ~~struck out~~ is to be deleted;

Matter within # # is defined in Section 12-10, 37-311, 63-01, 97-01, 108-01 or 116-01;

* * * indicates where unchanged text appears in the Zoning Resolution

ARTICLE II

RESIDENCE DISTRICT REGULATIONS

Chapter 3

Residential Bulk Regulations in Residence Districts

* * *

23-10

OPEN SPACE AND FLOOR REGULATIONS

* * *

23-15

Open Space and Floor Regulations in R6 Through R10 Districts

* * *

23-154

Inclusionary Housing

[text struck out in this Section is proposed to be relocated to Section 63-21]

* * *

(b) #Inclusionary Housing designated areas#

The #residential floor area# of a #zoning lot# may not exceed the base #floor area ratio# set forth in the table in this paragraph (b), except that such #floor area# may be increased on a #compensated zoning lot# by 1.25 square feet for each square foot of #low income floor area# provided, up to the maximum #floor area ratio# specified in the table, as applicable. However, the amount of #low income floor area# required to receive such #floor area compensation# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, ~~or any #floor area# increase for the provision of a #FRESH food store#, on the #compensated zoning lot#.~~

* * *

ARTICLE IV MANUFACTURING DISTRICT REGULATIONS

Chapter 2 Use Regulations

* * *

42-10 USES PERMITTED AS-OF-RIGHT

* * *

42-12 Use Groups 3A, 6A, 6B, 6D, 6F, 7B, 7C, 7D, 7E, 8, 9B, 9C, 10A, 10B, 10C, 11, 12A, 12C, 12D, 12E, 13, 14 and 16

M1 M2 M3

Use Group 3A shall be limited to museums that are ancillary to existing motion picture production studios or radio or television studios, provided they are located within 500 feet of such studios and do not exceed 75,000 square feet of #floor area#.

Use Groups 6A except that food stores, including supermarkets, grocery stores or delicatessen stores, shall be limited to 10,000 square feet of #floor area# per establishment, 6B, 6D, 6F, 7B, 7C, 7D, 7E, 8, 9B, 9C, 10A, 10B, 10C, 11, 12A, 12C, 12D, 12E, 13, 14 and 16 as set forth in Sections 32-15 to 32-23, inclusive, and Section 32-25. However, in Community District 1, in the Borough of the Bronx, in M1-4 Districts, food stores, including supermarkets, grocery stores or delicatessen stores, shall be limited to 30,000 square feet of #floor area# per establishment. In addition, the regulations of this Section are modified, where applicable, by the regulations of Section 63-11 (Special Use Regulations for FRESH Food Stores in M1 Districts).

* * *

ARTICLE VI

SPECIAL REGULATIONS APPLICABLE TO CERTAIN AREAS

Chapter 3

Special Regulations Applying to FRESH Food Stores

63-00

GENERAL PURPOSES

The provisions of this Chapter establish special regulations that guide the development of FRESH food stores to promote and protect public health, safety and general welfare. These general goals include, among others, the following purposes:

- (a) encourage a healthy lifestyle by facilitating the development of FRESH food stores that sell a healthy selection of food products;

- (b) provide greater incentives for FRESH food stores to locate in neighborhoods underserved by such establishments;
- (c) encourage FRESH food stores to locate in locations that are easily accessible to nearby residents; and
- (d) strengthen the economic base of the City, conserve the value of land and buildings, and protect the City's tax revenues.

63-01

Definitions

FRESH food store

A "FRESH food store" is a food store ~~#use#~~ as listed in Section 32-15 (Use Group 6), where at least 6,000 square feet of ~~#floor area#~~, or ~~#cellar#~~ space utilized for retailing, is ~~utilized for~~ allocated to the sale of a general line of food and non-food grocery products, such as dairy, canned and frozen foods, fresh fruits and vegetables, fresh and prepared meats, fish and poultry, intended for home preparation, and consumption and utilization. Such retail space ~~utilized for the sale of a general line of food and non-food grocery products~~ shall be distributed as follows:

- (a) ~~at least 3,000 square feet or 50 percent of such retail space, whichever is greater, shall be utilized for the sale of a general line of food products intended for home preparation, consumption and utilization; and~~
- ~~(b)~~(a) ~~at least 2,000 square feet or 30~~25 percent of such retail space, ~~whichever is greater,~~ shall be ~~utilized for~~ allocated to the sale of perishable goods that shall include dairy, fresh produce, frozen foods and fresh meats, of which at least 500 square feet of such retail space shall be designated for the sale of fresh produce.;
- (b) at least 35 percent of such retail space shall be allocated to the sale of non-perishable food; and
- (c) at least 6,000 square feet of such retail space shall be located on one #story#.

A food store shall be certified as a #FRESH food store# by the Chairperson of the City Planning Commission, pursuant to Section 63-30 (CERTIFICATION FOR A FRESH FOOD STORE).

63-02

Applicability

The regulations of all other chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

63-021

Areas permitting FRESH food stores

- (a) The provisions of this Chapter shall apply to all #Commercial# and #Manufacturing Districts# in the following #FRESH food store# designated areas, except as provided in ~~paragraph (b) of this Section~~ Sections 63-022 (Special Purpose Districts where regulations for FRESH food stores are not applicable) and 63-023 (Limitation on location of FRESH food stores):
- (1) ~~in the Borough of the Bronx, Community Districts 1, 2, 3, 4, 5, 6 and 7, except portions of Community District 7, as shown on Map 1 in Appendix A of this Chapter;~~
 - (2) ~~in the Borough of Brooklyn, Community Districts 3, 4, 5, 8, 9, 16 and 17, except portions of Community District 8, as shown on Map 2 in Appendix A;~~
 - (3) ~~in the Borough of Manhattan, Community Districts 9, 10, 11 and 12, except portions of Community District 9 and 12, as shown on Maps 3 and 4 in Appendix A; and~~
 - (4) ~~in the Borough of Queens, the #Special Downtown Jamaica District#; portions of Community District 12 outside of the #Special Downtown Jamaica District#, except those portions shown on Maps 5 and 6 in Appendix A; and those portions in Community District 1 shown on Map 1 in Appendix B of this Chapter.~~

all of Manhattan Community District 10;

all of Bronx Community Districts 1, 4, 5, 6, 7 and 9; and

all of Brooklyn Community Districts 3, 4, 5, 9, 16 and 17.

Portions of other Community Districts in which FRESH food stores are permitted are shown on the maps in Appendix A of this Chapter.

63-022

Special Purpose Districts where regulations for FRESH food stores are not applicable

~~(b)~~The provisions of this Chapter shall not apply to the following Special Purpose Districts:

~~#Special Madison Avenue Preservation District#;~~

~~#Special Manhattanville Mixed Use District#; and~~

~~#Special Park Improvement District#; and.~~

~~#Special Hunts Point District#.~~

63-023

Limitation on location of FRESH food stores

After [date of adoption], no certification shall be issued for increased #residential floor area# for a #FRESH food store# where the sum of the increased #residential floor area# generated pursuant to Section 63-21 (Special Floor Area Regulations) by all #FRESH food stores# within a half-mile radius of the #zoning lot# that is the subject of such certification would exceed 40,000 square feet.

Such calculation shall include increased #residential floor area# on all #zoning lots# containing #FRESH food stores# that have been certified by the Chairperson of the City Planning Commission pursuant to Section 63-30 (CERTIFICATION FOR A FRESH FOOD STORE), including those issued prior to [date of adoption], provided that such certification has not expired, or has not been superseded by a certification pursuant to Section 63-40 (CERTIFICATION FOR CHANGE OF USE OF A FRESH FOOD STORE) or an authorization pursuant to Section 63-50 (AUTHORIZATION FOR BULK AND PARKING MODIFICATIONS).

However, for any area that has a sum of more than 40,000 square feet of increased #residential floor area# generated pursuant to Section 63-21, the Chairperson may certify a #FRESH food store# that was previously certified pursuant to Section 63-30, provided such certification has not lapsed and that there shall be no increase in the amount of increased #residential floor area# beyond what was previously certified for such #FRESH food store#.

63-10 SPECIAL USE REGULATIONS

* * *

63-20 SPECIAL BULK AND PARKING REGULATIONS

63-21 Special Floor Area Regulations

~~63-211~~

~~For mixed buildings and zoning lots containing both residential and commercial or community facility uses in Commercial Districts with FRESH food stores~~

~~Where a #FRESH food store# is provided on a #zoning lot#, the maximum #residential floor area# permitted on the #zoning lot# shall be increased by one square foot for each square foot of #FRESH food store floor area# provided, up to 20,000 square feet. the provisions of Section 35-31 (Maximum Floor Area Ratio) relating to the maximum permitted #floor area ratio# on a #zoning lot# for each permitted #use# shall apply as modified in this Section.~~

~~Where all non #residential uses# on a #zoning lot# have a permitted #floor area ratio# equal to or less than that permitted for a #residential use# and for #zoning lots# containing #Quality Housing buildings#, the total #floor area# permitted for such #zoning lot# may be increased by one square foot of #residential floor area# for each square foot of #FRESH food store floor area#, up to 20,000 square feet.~~

~~However, for #zoning lots# that do not contain a #Quality Housing building#, wWhere any non-
#residential use# on such #zoning lot# has a permitted #floor area ratio# greater than that permitted for a
#residential use#, the total #residential floor area# permitted for such #zoning lot# may be increased by
one square foot for each square foot of #FRESH food store floor area#, up to 20,000 square feet, provided
the total #floor area ratio# of the #building# does #zoning lot# shall not exceed the maximum permitted
#floor area ratio# for a such non-#residential use#.~~

For #height factor# and #open space ratio# calculations, where applicable, the increased #residential floor
area# generated pursuant to this Section shall be exempt from such calculations.

For #compensated developments# or #MIH developments#, as defined in Section 23-911 (General
definitions), the requirements of Section 23-154 (Inclusionary Housing) shall not apply to the increased
#residential floor area# generated pursuant to this Section.

[text struck out in the Section below is proposed to be included in revisions to Section 63-21 above]

63-212

**~~For mixed buildings and zoning lots containing both residential and commercial or community
facility uses in Special Mixed Use Districts with FRESH food stores~~**

~~Where a #FRESH food store# is provided on a #zoning lot# , the provisions of Section 123-64 (Maximum
Floor Area Ratio and Lot Coverage Requirements for Zoning Lots Containing Mixed Use Buildings)
relating to the maximum permitted #floor area ratio# on a #zoning lot# for each permitted #use# shall
apply, as modified in this Section.~~

~~Where all non-#residential uses# on a #zoning lot# have a permitted #floor area ratio# equal to or less
than that permitted for a #residential use# and for #zoning lots# containing #Quality Housing buildings#,
the total #floor area# permitted for such #zoning lot# may be increased by one square foot of #residential
floor area# for each square foot of #FRESH food store floor area#, up to 20,000 square feet.~~

~~Where any non-#residential use# on such #zoning lot# has a permitted #floor area ratio# greater than that
permitted for a #residential use#, the total #residential floor area# permitted for such #zoning lot# may be
increased by one square foot for each square foot of #FRESH food store floor area#, up to 20,000 square
feet, provided the total #floor area# of the #building# does not exceed the maximum permitted #floor
area# for a non-#residential use#.~~

* * *

63-22

Authorization to Modify Maximum Building Height

For #zoning lots# ~~#buildings#~~ containing a #FRESH food store# ~~and #residences#~~, the City Planning Commission may authorize modifications to Sections 35-65 (Height and Setback Requirements for Quality Housing Buildings), ~~and 123-66 (Height and Setback Regulations)~~ or to the height and setback regulations of any Special Purpose District where maximum height limits apply, to allow the applicable maximum #building# height to be increased by up to 15 feet ~~and by up to one #story#~~, provided that the portion of the first #story# occupied by a #FRESH food store# has a minimum finished floor to finished ceiling height of 14 feet, and provided that such finished ceiling height is at least 14 feet above the #base plane# or #curb level#, as applicable.

In order to grant such authorizations, the Commission shall find that:

- (a) such modifications are necessary to accommodate a first #story# utilized as a #FRESH food store#;
- (b) the proposed modifications shall not adversely affect the essential scale and character of the adjacent #buildings# and any adjacent historic resources; and
- (c) the proposed modifications will not unduly obstruct access to light and air of adjacent properties.

The Commission may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

63-23

Special Transparency Requirements

For all #developments# containing #FRESH food stores#, or #ground floor level enlargements# containing #FRESH food stores#, the following provisions shall apply. For the portion of the #building#

containing a #FRESH food store#, the ground floor level of the #street wall# fronting upon a #primary street frontage#, ~~as defined in Section 37-311~~, shall be glazed in accordance with the provisions of Section 37-34 (Minimum Transparency Requirements).

Furthermore, for ~~#buildings#~~ #FRESH food stores# with frontage on two or more #streets#, the Chairperson of the City Planning Commission may certify that the glazing requirements of this Section shall only be applicable to the #street wall# fronting upon the principal #street#, as determined by the Chairperson.

In addition, the Chairperson may, by certification, allow a reduction in the glazing requirements of this Section, provided that the Chairperson finds that such ~~#mixed building#, or #mixed-use building#, as defined in Section 123-11~~, #building# is a recipient of #public funding# ~~as defined in Section 23-911 (General definitions)~~. For the purposes of this Section, defined terms shall include those in Sections 12-10, 23-911 and 37-311.

63-24

Required Accessory Off-street Parking Spaces in Certain Districts

For #FRESH food stores# provided as part of a #development# or #enlargement#, for any portion of such #FRESH food store# subsequently changed to any other #use# pursuant to Section 63-40 (CERTIFICATION FOR CHANGE OF USE OF A FRESH FOOD STORE) or Section 63-50 (AUTHORIZATION FOR BULK AND PARKING MODIFICATIONS), if such change of #use# occurs less than 25 years after the initial issuance of a certificate of occupancy for such #FRESH food store#, #accessory# off-street parking regulations shall apply to such changed #use# as if the #use# is at that time occurring as part of a #development# or #enlargement#. Application may be made for an authorization pursuant to Section 63-50.

- (a) In C1-1, C1-2, C1-3, C2-1, C2-2, C2-3 Districts mapped within R6, R7, R8, R9 and R10 Districts and in C4-2 and C4-3 Districts, ~~the #accessory# off-street parking regulations in Section 36-20 (REQUIRED ACCESSORY OFF-STREET PARKING SPACES FOR COMMERCIAL OR COMMUNITY FACILITY USES)~~ applicable to a C1-4 District shall apply to any #FRESH food store#. a #FRESH food store# shall provide one parking space per 1,000 square feet of #floor area# or #cellar# space utilized for retailing. The provisions of Section 36-23 (Waiver of Requirements for Spaces Below Minimum Number) shall not apply to #FRESH food stores#. In lieu thereof, no #accessory# off-street parking spaces shall be required for the #FRESH food store# if the #floor area# of such #use# is less than 40,000 square feet. In cases where there is more than one #commercial use# or #community facility use# on the #zoning lot#, the total number of #accessory# off-street parking spaces required pursuant to the provisions of Section 36-23 shall not include off-street parking spaces #accessory# to #FRESH food stores#.

- (b) In C1-1, C1-2, C1-3, C2-1, C2-2, C2-3 Districts mapped within R3, R4 and R5 Districts and in C4-1 Districts, a #FRESH food store# shall provide one parking space per 400 square feet of #floor area# or #cellar# space utilized for retailing. The provisions of Section 36-23 shall not apply to #FRESH food stores#. In lieu thereof, no #accessory# off-street parking spaces shall be required for the #FRESH food store# if the #floor area# of such #use# is less than 10,000 square feet. In cases where there is more than one #commercial use# or #community facility use# on the #zoning lot#, the total number of #accessory# off-street parking spaces required pursuant to the provisions of Section 36-23 shall not include off-street parking spaces #accessory# to #FRESH food stores#.
- (b) ~~In the Borough of Brooklyn, in those portions of Community District 5 located south of Flatlands Avenue and east of the centerline prolongation of Schenck Avenue, and in the Borough of Queens, where applicable in Community District 12 outside of the #Special Downtown Jamaica District#, a #FRESH food store# shall provide #accessory# off-street parking spaces as required for #uses# in parking requirement category B in the applicable #Commercial# and #Manufacturing Districts#.~~
- (c) In C8-1, C8-2, M1-1, M1-2 and M1-3 Districts, a #FRESH food store# shall provide one parking space per 1,000 square feet of #floor area# or #cellar# space utilized for retailing, up to a maximum of 15,000 square feet. The underlying off-street parking regulations in Sections 36-20 or 44-20 shall apply to the #floor area# or #cellar# space, in excess of 15,000 square feet, utilized for retailing in such #FRESH food store#.
- (d) The provisions of this Section shall not apply to:
- (1) ~~in the Borough of the Bronx, portions of Community District 7 and in the Borough of Manhattan, portions of Community District 12, as shown on Map 1 in Appendix C of this Chapter;~~
 - ~~(2)~~(1) in the Borough of Brooklyn, to M1 Districts in portions of Community Districts 5, 16 and 17, as shown on Maps 1 and 2 in Appendix C Appendix B of this Chapter; and
 - (3) ~~in the Borough of Brooklyn, portions of Community Districts 16 and 17, as shown on Map 3 in Appendix C; and~~
 - ~~(4)~~(2) in the Borough of Queens, to the #Special Downtown Jamaica District#.

CERTIFICATION FOR A FRESH FOOD STORE

Upon application, the Chairperson of the City Planning Commission shall certify that a food store #use# is a #FRESH food store#, provided that:

- (a) drawings have been submitted to the Chairperson that clearly specify:
 - (1) all #floor area# or #cellar# space utilized as a #FRESH food store#, showing in the form of an illustrative layout that such designated space is designed and arranged to meet the requirements for perishable and non-perishable food ~~and non-food-grocery~~ products, pursuant to Section 63-01;
 - (2) all #floor area# that will result from any permitted increase in #floor area#, pursuant to Section 63-21, including the location of such #floor area#;
 - (3) the size, format and location of the required #sign#, pursuant to Section 63-12, including detailed information about dimensions of the #sign#, lettering, color and materials; and
 - (4) the location of the ground floor level #street wall# fronting upon a ~~principal #street#~~ #primary street frontage#, pursuant to Section 63-23;
- (b) a signed lease or written commitment from the prospective operator of the #FRESH food store# has been provided in a form acceptable to the Chairperson for utilization of such #floor area# or #cellar# space and its operation as a #FRESH food store#; and
- (c) for #zoning lots# containing increased #residential floor area# generated pursuant to Section 63-21 (Special Floor Area Regulations), a legal commitment, in the form of a declaration of restrictions has been executed, in a form acceptable to the Department of City Planning, binding upon the owner and its successor and assigns, and providing for continued utilization of all #floor area# or #cellar# space as a #FRESH food store#, the operation of which shall commence within a reasonable period following the issuance of a temporary certificate of occupancy for the #floor area# or #cellar# space to be utilized by the #FRESH food store#.

Such declaration of restrictions shall provide that the legal commitment for continued occupancy of the #floor area# or #cellar space# as a #FRESH food store# shall not apply during any:

- (1) six (6) month period from the date such #floor area# or #cellar# space is vacated by the operator, provided that the owner timely notifies the Department of City Planning of such vacancy in accordance with the requirements of the restrictive declaration; or
- (2) event of force majeure, as determined by the Chairperson.

The filing and recordation of the declaration of restrictions in the Office of the City Register of the City of New York against all tax lots comprising the #FRESH food store#, and receipt of proof of recordation of such declaration in a form acceptable to the Department, shall be a precondition to certification by the Chairperson ~~the issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# under this Chapter.~~

Certification by the Chairperson shall be a precondition to the issuance of any building permit, including any foundation or alteration permit, for any #development#, #enlargement# or change of #use# under this Chapter.

~~In granting the certification, the Chairperson may specify that minor changes in store layout consistent with the definition of a #FRESH food store# shall not warrant further certification pursuant to this Section.~~

Changes to the store layout of a #FRESH food store# that has been constructed pursuant to a previous certification under this Section, where such changes result in a #FRESH food store# that continues to comply with the requirements of this Chapter, shall not require subsequent certification by the Chairperson under this Section. #FRESH food stores# certified prior to [date of adoption] that do not comply with paragraph (c) of the definition of #FRESH food store# may change the floor layout provided that there is no increase in the degree of non-compliance with such requirement.

~~No later than the date on which an application for certification is first submitted, a copy of the drawings submitted pursuant to paragraph (a) of this Section shall be submitted by the applicant to the affected Community Board, which shall have 45 days to review said application. The Chairperson shall not issue a certification for an application during the Community Board review period, unless the Community Board has submitted to the Chairperson comments regarding such proposal or informed the Chairperson that the Community Board has no comments.~~

A copy of an application for certification pursuant to this Section shall be sent by the Department of City Planning to the affected Community Board, which may review such proposal and submit comments to the

Chairperson. If the Community Board elects to comment on such application, it must be done within 45 days of receipt of such application. The Chairperson will not act on such application until the Community Board's comments have been received, or the 45-day comment period has expired, whichever is earlier.

For #zoning lots# containing increased #residential floor area# generated pursuant to Section 63-21 (Special Floor Area Regulations), if a #development# or horizontal #enlargement# fails to comply with the provisions of Section 11-331 (Right to construct if foundations completed) with respect to completion of foundations within four years of the date of certification pursuant to this Section, such certification and such building permit shall lapse, and any new building permit will require a new certification pursuant to this Section.

63-31

Requirements for Certificate of Occupancy

No certificate of occupancy shall be issued for any portion of the #development# or #enlargement# identified in the drawings submitted pursuant to paragraph (a)(2) of Section 63-30 until a temporary certificate of occupancy has been issued for the #FRESH food store# space. No final certificate of occupancy shall be issued for any such portion of the #development# or #enlargement# identified in such drawings until the #FRESH food store# space has been completed in accordance with the drawings submitted pursuant to paragraph (a)(1) of Section 63-30 and a final certificate of occupancy has been issued for the #FRESH food store# space. The declaration of restrictions, where required pursuant to paragraph (c) of Section 63-30, shall be noted on any temporary or final certificate of occupancy for the #building#.

63-40

CERTIFICATION FOR CHANGE OF USE OF A FRESH FOOD STORE

A #FRESH food store# for which a certification has been issued pursuant to Section 63-30 may be changed to any #use# permitted by the underlying district upon certification by the Chairperson of the City Planning Commission that such change of #use# would not create a new #non-compliance#, increase the degree of #non-compliance# of #buildings# on the #zoning lot#, or result in ~~reduction in the number of required~~ fewer #accessory# off-street parking spaces than required by the new #use# pursuant to Section 63-24 (Required Accessory Off-street Parking Spaces in Certain Districts) ~~under the applicable district regulations.~~

If a certification pursuant to this Section is granted, a notice of cancellation, in a form acceptable to the Department of City Planning, of the declaration of restrictions recorded pursuant to Section 63-30 shall be executed and recorded in the Office of the City Register of the City of New York against all tax lots comprising the former #FRESH food store#.

63-50

AUTHORIZATION FOR BULK AND PARKING MODIFICATIONS

The City Planning Commission may, by authorization, permit modifications to the #bulk# and #accessory# off-street parking requirements of the applicable zoning districts when a change of #use# of a #FRESH food store# for which a certification has been issued, pursuant to Section 63-30, would create a new #non-compliance#, increase the degree of #non-compliance# of #buildings# on the #zoning lot#, or result in a ~~reduction in the number of required~~ fewer #accessory# off-street parking spaces than required by the new #use# pursuant to Section 63-24 (Required Accessory Off-street Parking Spaces in Certain Districts) ~~under the applicable district regulations~~, provided that such #use# is permitted by the underlying districts.

* * *

63-60

COMPLIANCE

No later than June 30th of the year, beginning in the ~~first~~ second calendar year following the calendar year in which certification was made, and at three-year intervals thereafter, the Chairperson of the City Planning Commission shall be provided with an affidavit, in a form acceptable to the Department of City Planning, regarding compliance with the requirements of the declaration of restrictions and the regulations of this Chapter, as of a date of inspection which shall be no earlier than June 1st of the year in which the affidavit is filed. Such affidavit shall be provided by the owner(s) of the tax lot(s) on which the #FRESH food store# is located. Such affidavit shall include, without limitation:

* * *

Appendix A

FRESH Food Store Designated Areas: ~~Excluded Portions~~

~~The #FRESH food store# designated areas are; listed by community district and borough in Section 63-02 (Applicability). Excluded portions of community districts are shown on the following maps.~~

all of Manhattan Community District 10;

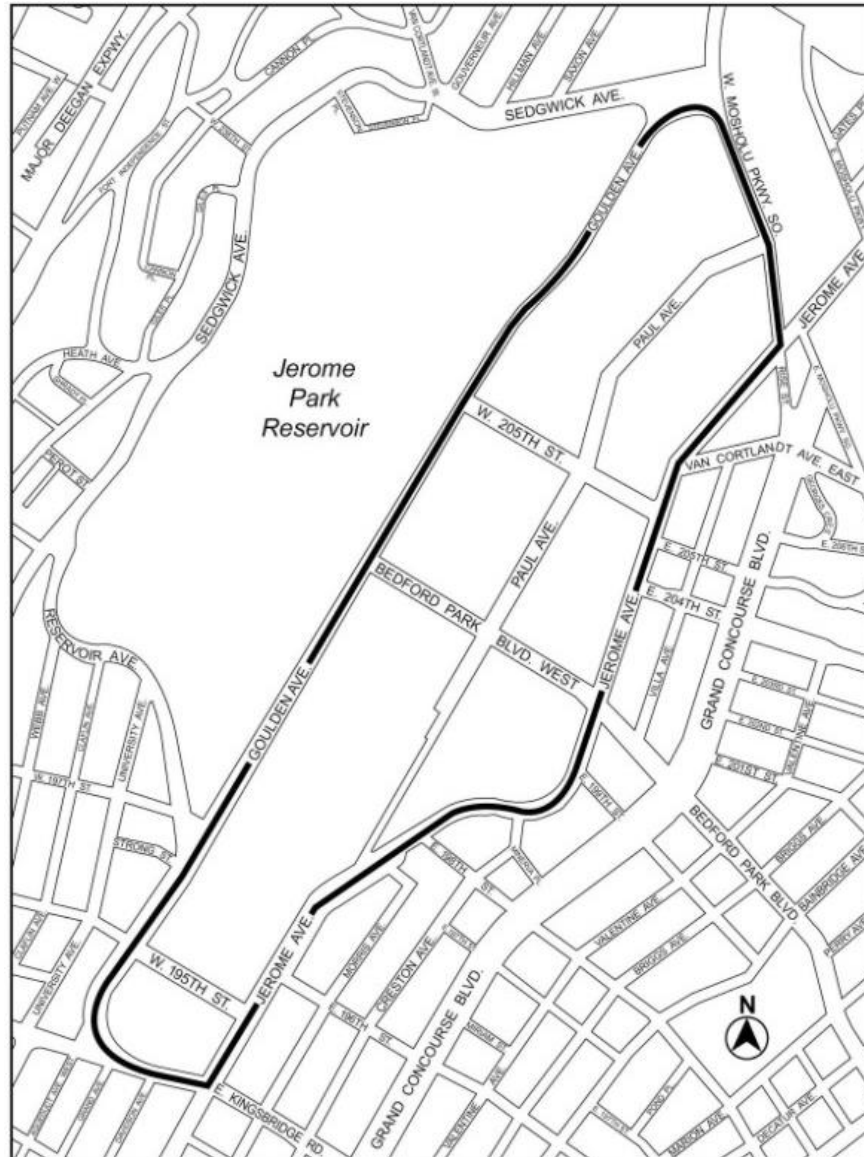
all of Bronx Community Districts 1, 4, 5, 6, 7 and 9; and

all of Brooklyn Community Districts 3, 4, 5, 9, 16 and 17.

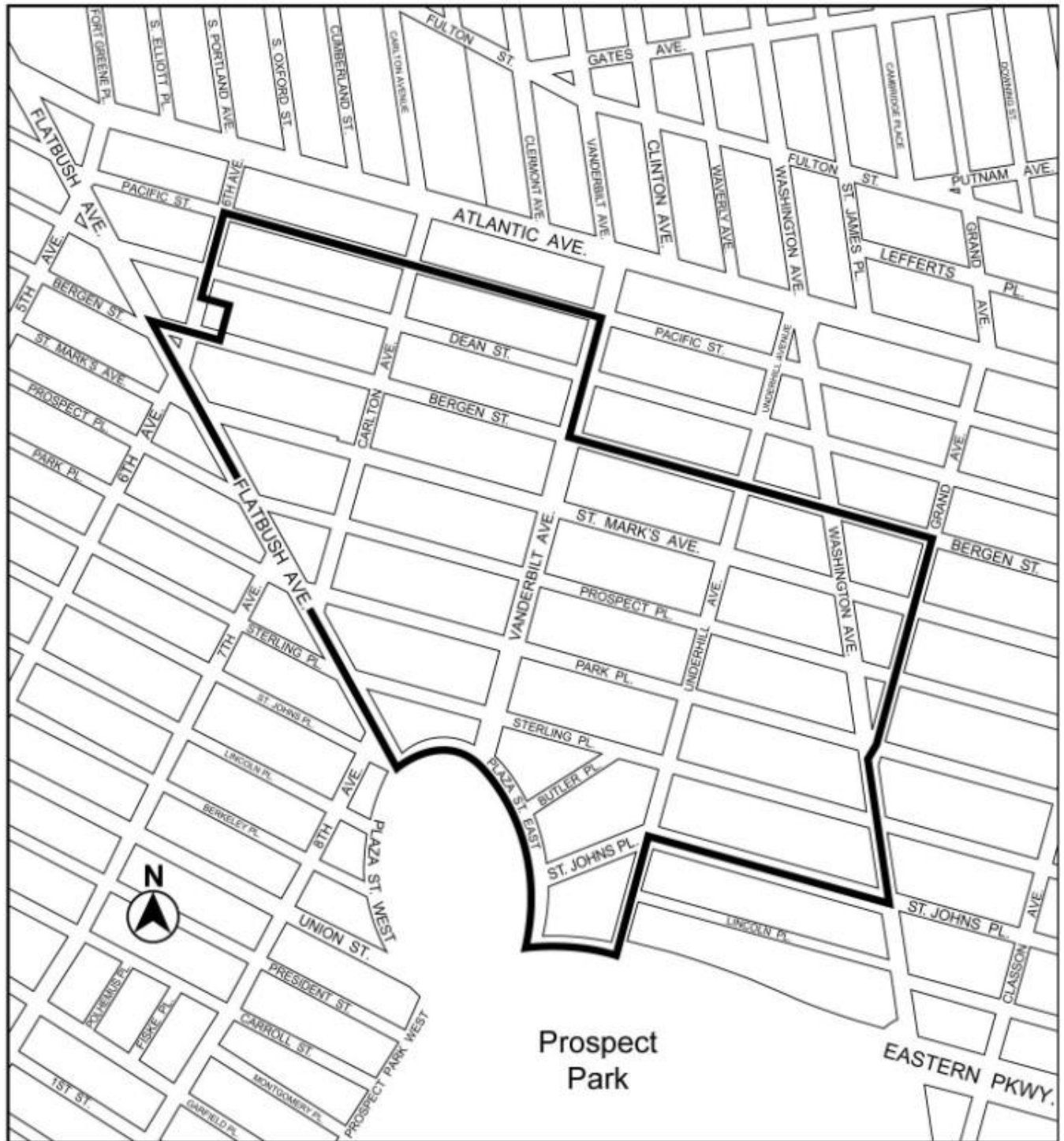
Portions of other Community Districts are shown on Maps 1 through 16 in this Appendix A.

[EXISTING MAPS – TO BE DELETED]

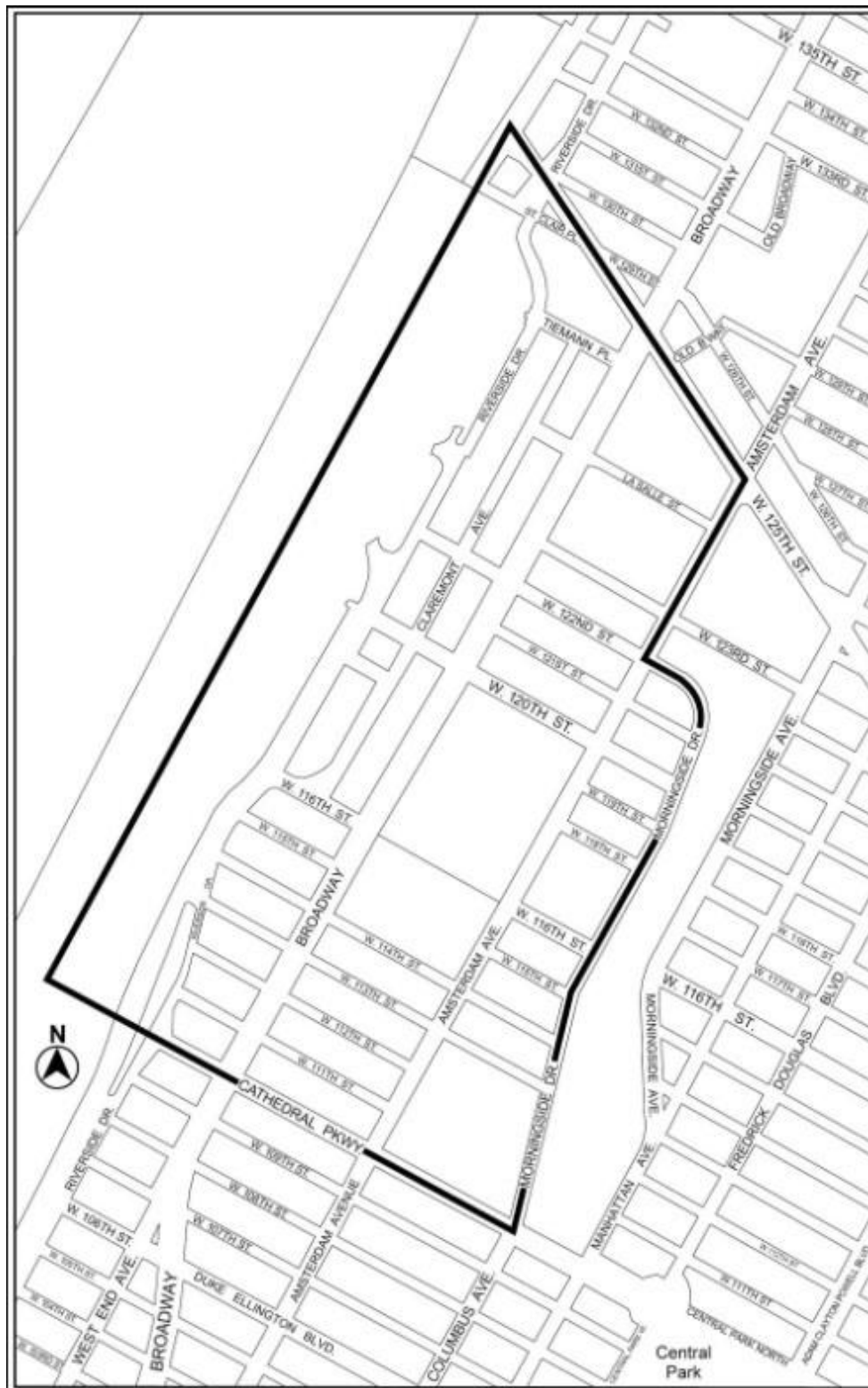
~~Map 1. Excluded portions of Community District 7, the Bronx~~



Map 2. Excluded portions of Community District 8, Brooklyn



Map 3. Excluded portions of Community District 9, Manhattan



~~Map 4. Excluded portions of Community District 12, Manhattan~~

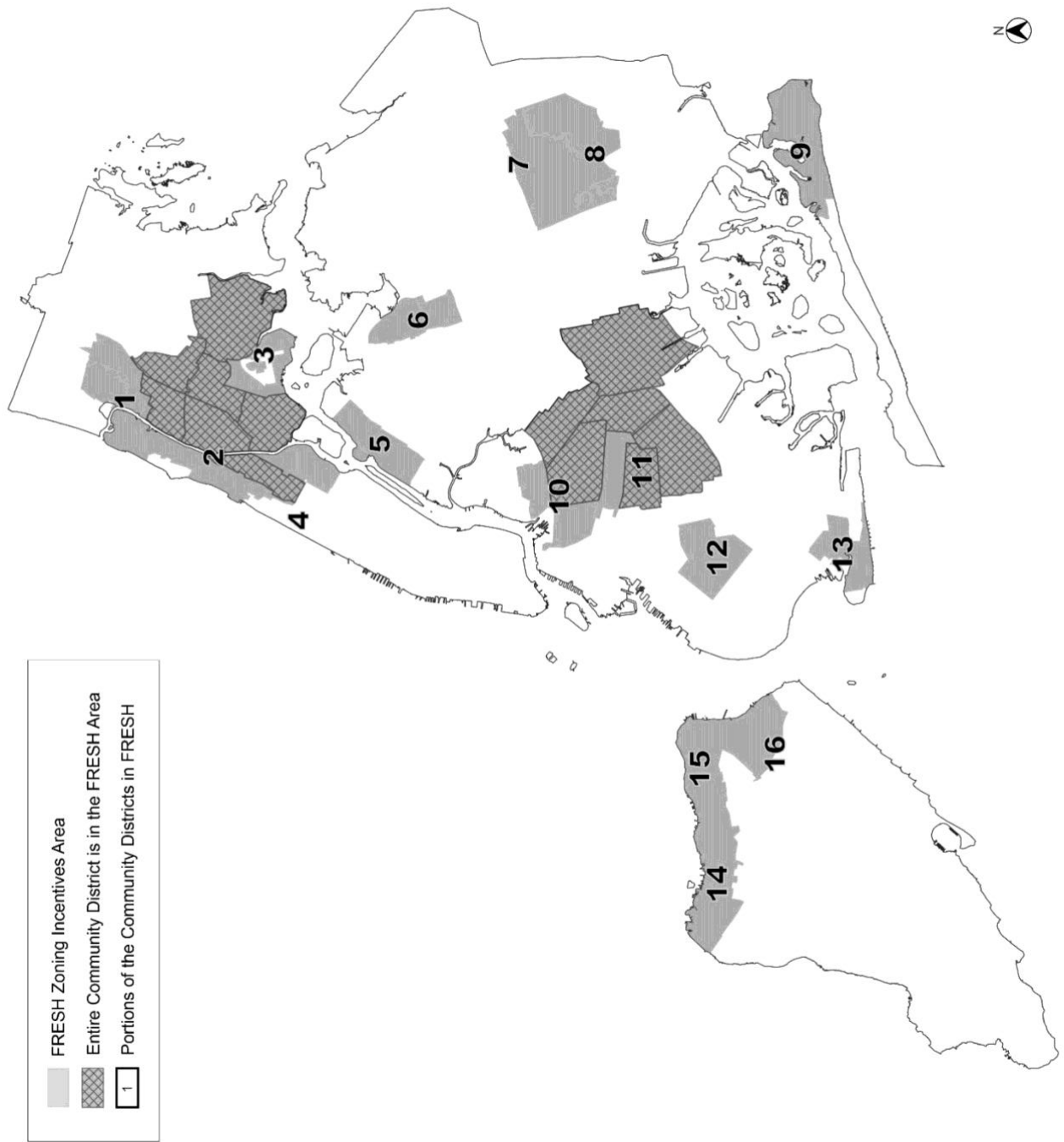


~~Map 5. Excluded portions of Community District 12, Queens~~

Map 6. Excluded portions of Community District 12, Queens

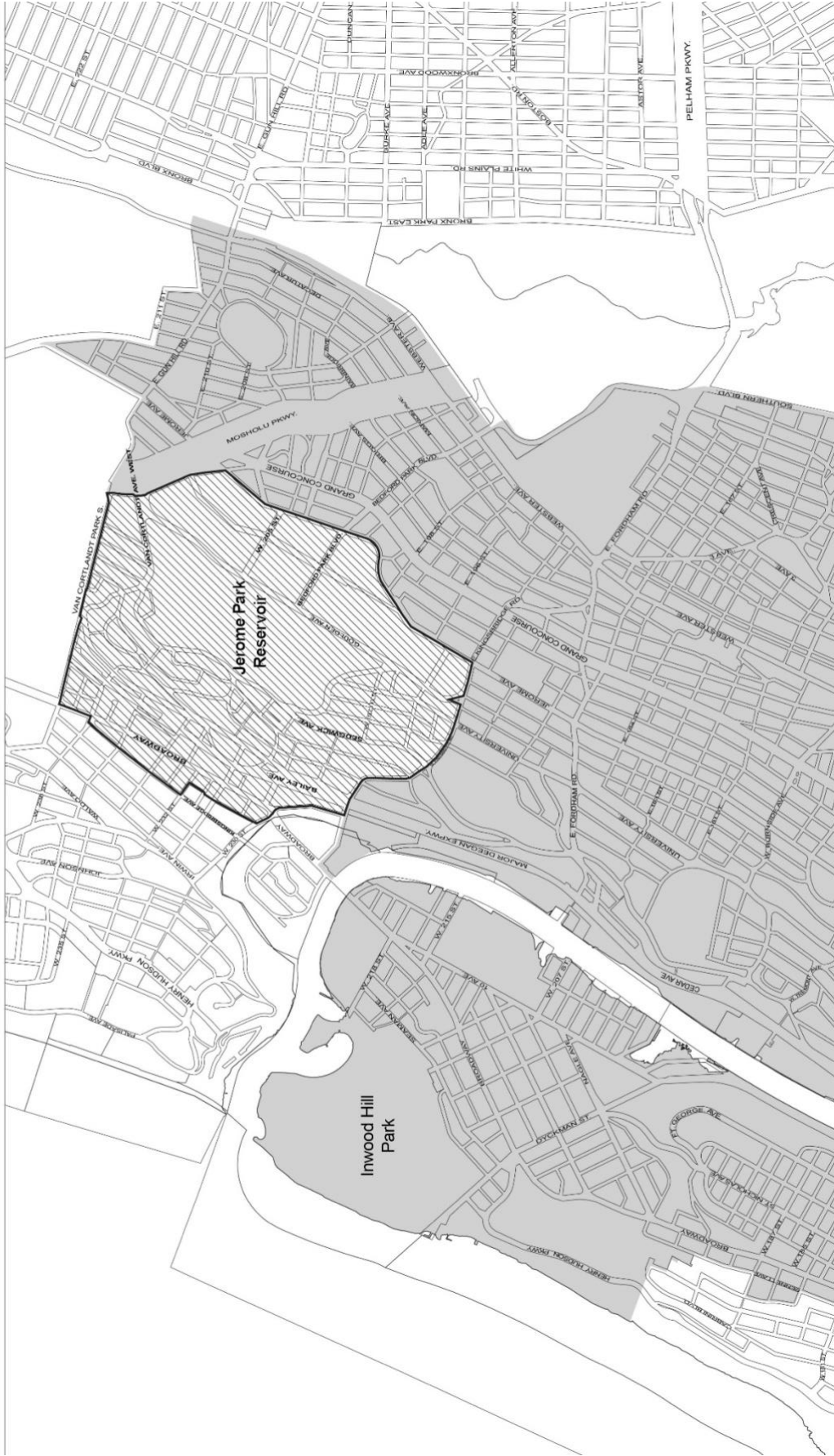


[PROPOSED MAPS]



FRESH Map 1

FRESH 1 Area FRESH Expansion Area



FRESH Map 2

FRESH 1 Area FRESH Expansion Area



FRESH Map 3



FRESH Map 4

FRESH 1 Area FRESH Expansion Area



FRESH 1 Area **FRESH Expansion Area**



FRESH Map 6

FRESH 1 Area



FRESH Expansion Area



0 0.25 0.5 Miles



FRESH Map 7

FRESH 1 Area



FRESH Map 8

FRESH 1 Area



FRESH Expansion Area



0 0.25 0.5 Miles

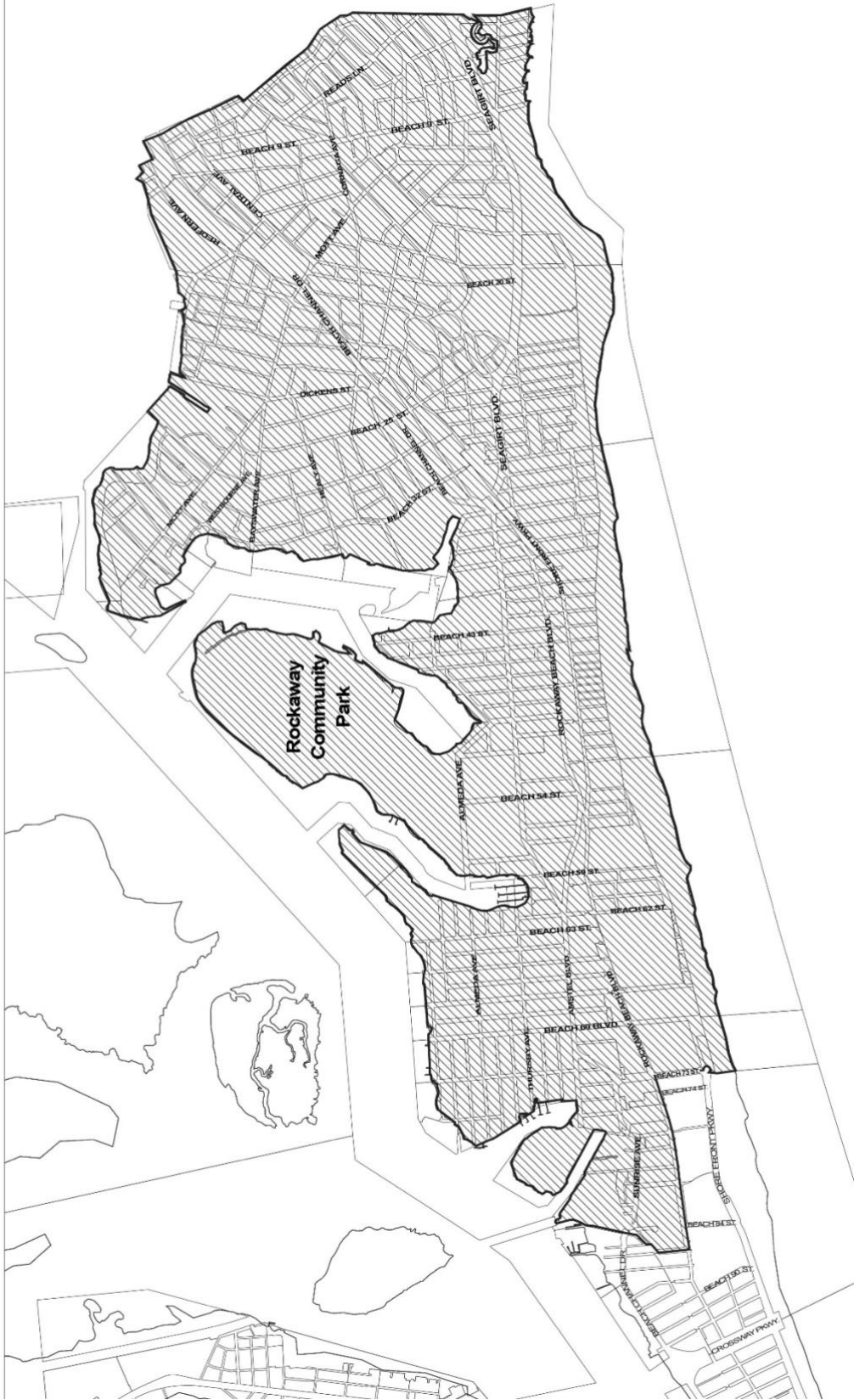


FRESH Map 9

FRESH 1 Area



FRESH Expansion Area



FRESH Map 10

FRESH 1 Area



FRESH Expansion Area



FRESH Map 11

 FRESH 1 Area
  FRESH Expansion Area





FRESH Map 13

FRESH 1 Area



FRESH Expansion Area



0 0.25 0.5 Miles



FRESH Map 14

FRESH 1 Area



FRESH Expansion Area



FRESH Map 15

 FRESH Expansion Area



FRESH Map 16

 FRESH Expansion Area



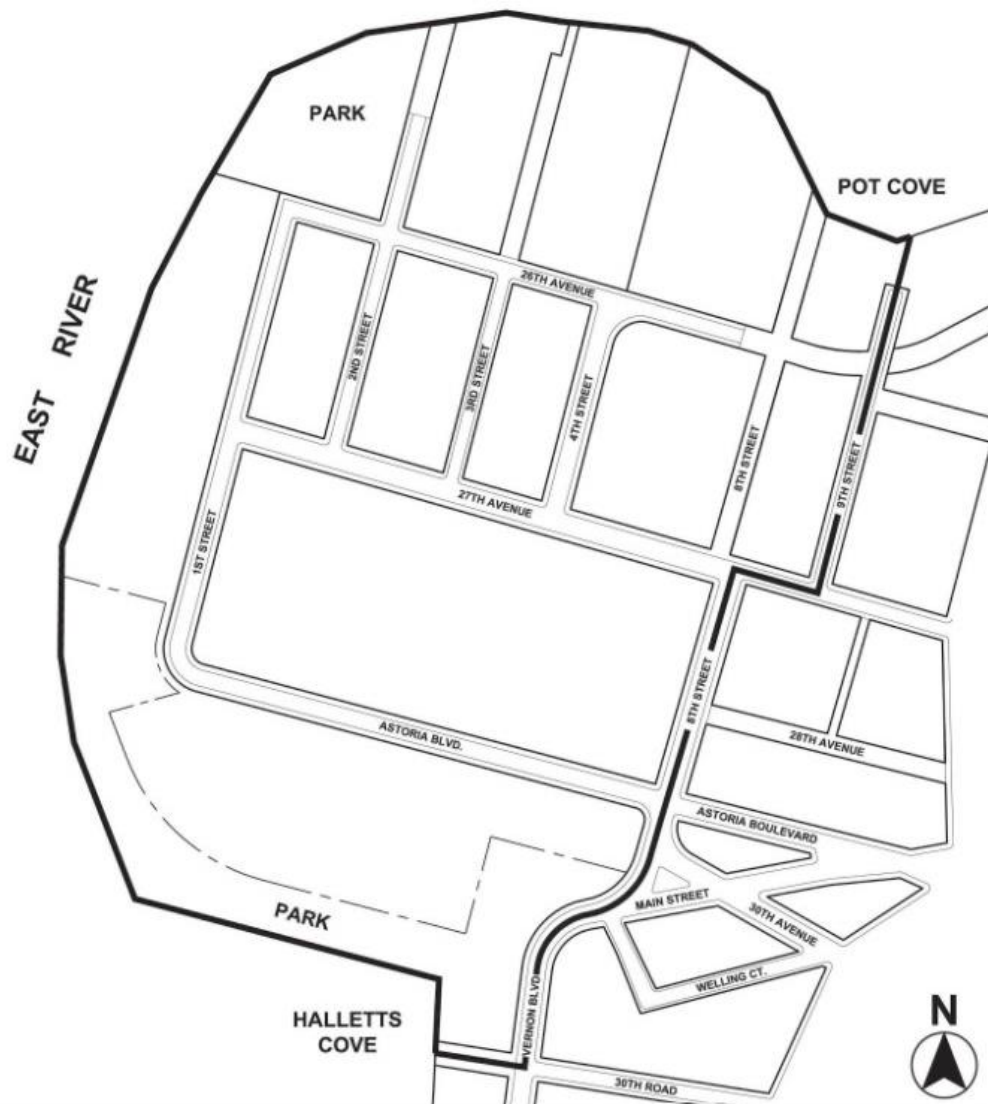
Appendix B

FRESH Food Store Designated Areas: Included Portions

The FRESH food store designated areas are listed by community district and borough in Section 63-02 (Applicability). When a FRESH food store designated area occupies only a portion of a community district, the included portions of such community districts are shown on the following maps:

Map 1. Included portions of Community District 1, Queens

[EXISTING MAP – TO BE DELETED]

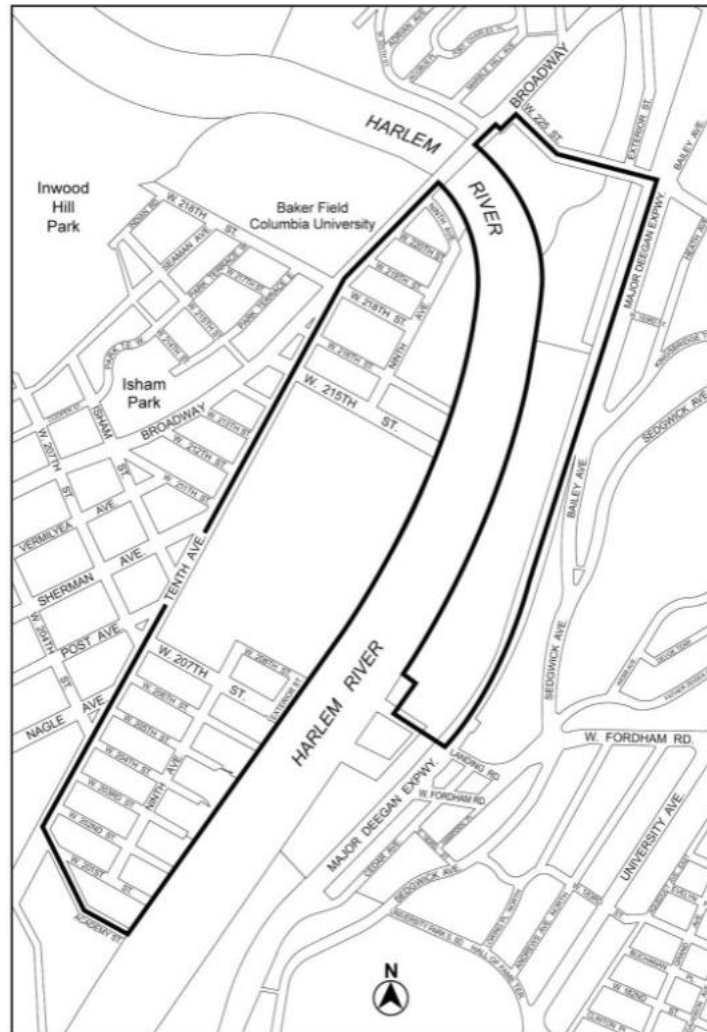


Appendix C Appendix B

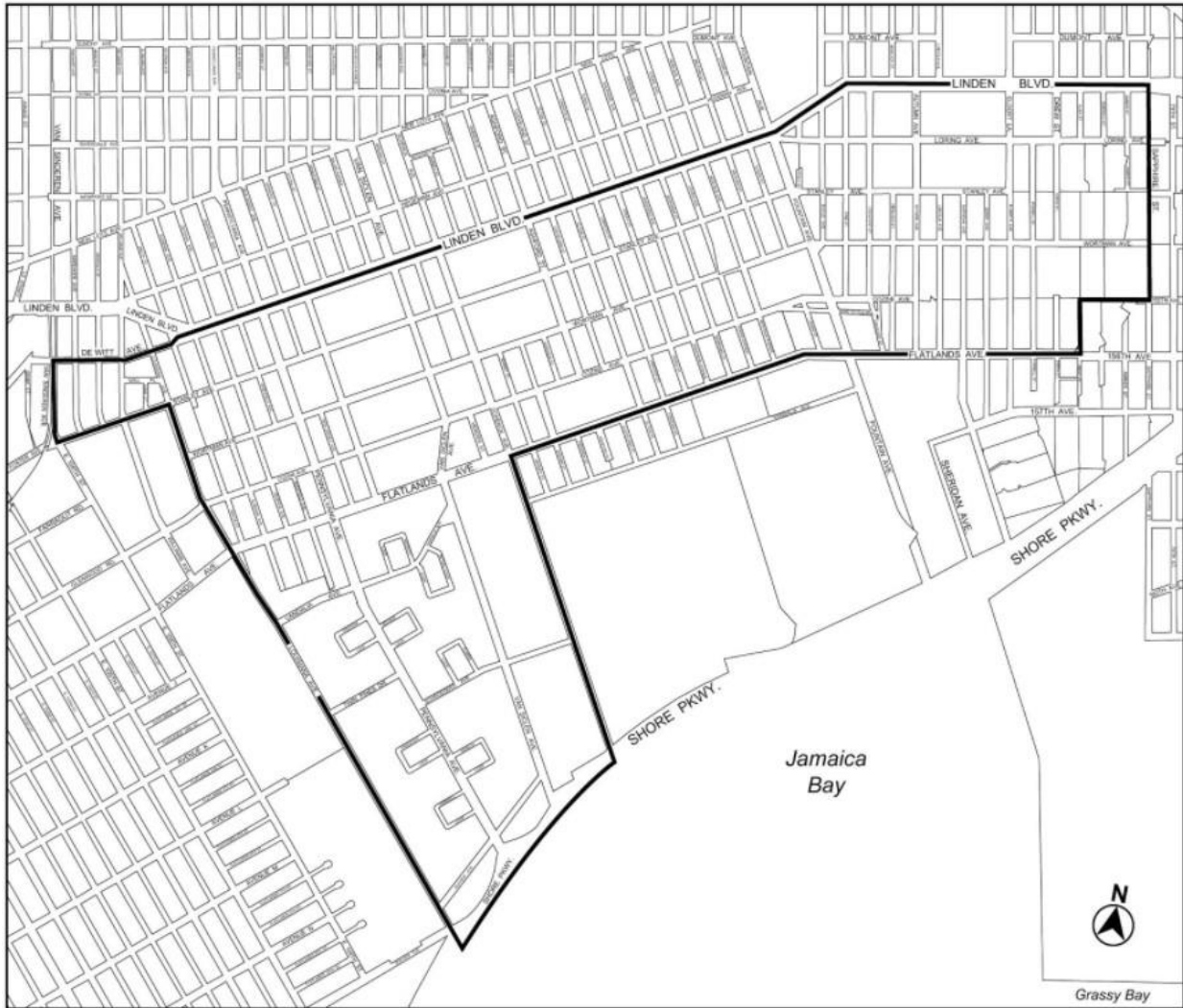
Required Off-Street Accessory Parking Exceptions

Map 1. Excluded portions of Community District 12, Manhattan and a portion of Community District 7, the Bronx

[EXISTING MAP 1 – TO BE DELETED]



~~Map 2.~~ Map 1. Excluded portions of Community District 5, Brooklyn



~~Map 3:~~ Map 2. Excluded portions of Community District 16 and 17, Brooklyn



* * *

ARTICLE IX

SPECIAL PURPOSE DISTRICTS

Chapter 7

Special 125th Street District

* * *

97-40

SPECIAL BULK REGULATIONS

* * *

97-41

Special Floor Area Regulations

* * *

97-412

Maximum floor area ratio in the Park Avenue Hub Subdistrict

Within the Park Avenue Hub Subdistrict, as shown on Map 1 in Appendix A of this Chapter, the maximum #floor area ratio# for #zoning lots# is set forth in paragraph (a) of this Section, and is modified for certain #zoning lots# in accordance with paragraph (b) of this Section.

(a) Maximum #floor area ratio#

The maximum #floor area ratio# shall be 12.0. Where a #development# or #enlargement# contains #residential floor area#, such #zoning lot# shall satisfy the provisions of either:

- (1) a minimum non-#residential floor area ratio# of 2.0 shall be provided on such #zoning lot#. Such #floor area# shall not include any #floor area# containing a #transient hotel# pursuant to the provisions of Section 97-14 (Transient Hotels Within the Park Avenue Hub Subdistrict); or

- (2) a minimum #floor area ratio# of 0.5, or a minimum amount of floor space equivalent to such 0.5 #floor area ratio#, shall be provided on such #zoning lot#. Such #floor area# or equivalent floor space shall be exclusively used for those visual or performing arts #uses#, designated in paragraph (b) of Section 97-11 (Special Arts and Entertainment Uses), and shall be certified by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-423 (Certification for floor area bonus for visual or performing arts uses) have been met.

Where the provisions of Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) apply, the total #floor area# permitted for such #zoning lot# may be increased by one square foot of #residential floor area# for each square foot of #floor area# of a #FRESH food store#, as defined by Article VI, Chapter 3, up to 20,000 square feet.

- (b) Modified maximum #floor area ratio# for certain #zoning lots#

For #zoning lots# existing on or before November 30, 2017, with a #lot area# of less than 5,000 square feet, or for #zoning lots# subject to the provisions of paragraph (d)(4) of Section 23-154 (Inclusionary Housing), the maximum #floor area ratios# set forth in paragraph (a) of this Section shall be modified, as follows:

- (1) the minimum non-#residential floor area# requirements set forth in paragraph (a) of this Section shall be optional for #zoning lots# existing on or before November 30, 2017, with a #lot area# of less than 5,000 square feet. For #zoning lots# utilizing the provisions of this paragraph, the minimum non-#residential floor area# or visual or performing arts space requirements set forth in paragraph (a) of this Section shall not apply;
- (2) for #zoning lots#, subject to the provisions of paragraphs (d)(4)(i) or (d)(4)(iii) of Section 23-154, the maximum #residential floor area# provision of the underlying district as specified in Section 23-153 (For Quality Housing buildings) shall apply; and
- (3) for #zoning lots# utilizing the provisions of paragraph (b)(1) or (b)(2) of this Section, the maximum overall #floor area ratio# shall be 10.0, except that such maximum #floor area ratio# may be increased pursuant to the provisions of paragraph (b) of Section 97-422 (Floor area bonus for visual or performing arts uses). For #zoning lots# utilizing the provisions of paragraph (b)(2) of this Section, such maximum #floor area ratio# may also be increased pursuant to the provisions of Article VI, Chapter 3.

* * *

ARTICLE X

SPECIAL PURPOSE DISTRICTS

Chapter 8

Special Hunts Point District

* * *

108-01

General Provisions

In harmony with the general purposes and content of this Resolution and the general purposes of the #Special Hunts Point District#, the provisions of this Chapter shall apply to all #developments# and #enlargements# within the #Special Hunts Point District#. The regulations of all other Chapters of this Resolution are applicable except as modified, supplemented or superseded by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), the provisions of Article VI, Chapter 4, shall control.

The provisions of Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) shall apply in the Residential Buffer Subdistrict, and shall not apply in the Food Industry Subdistrict. For any food store subject to the provisions of Article VI, Chapter 3, the parking regulations of Section 63-24 (Required Accessory Off-street Parking Spaces in Certain Districts) shall supersede the provisions of Section 108-20 (MODIFICATION OF PARKING REQUIREMENTS IN THE RESIDENTIAL BUFFER SUBDISTRICT).

* * *

ARTICLE XI

SPECIAL PURPOSE DISTRICTS

Chapter 6

Special Stapleton Waterfront District

* * *

116-20

SPECIAL BULK REGULATIONS FOR SUBAREAS A, B, AND C, THE ESPLANADE, PIER PLACE AND THE COVE

* * *

116-22

Maximum Floor Area Ratio

* * *

116-221

Special floor area regulations for mixed buildings

For #buildings# containing #residences#, the area in such #buildings# occupied by non-#residential uses# on the ground floor, or within two feet of the as-built level of the adjoining sidewalk, shall be excluded from the calculation of permitted #floor area# in the #building#. However, the area occupied by non-#residential uses# on the ground floor shall be included as #floor area# for other purposes including calculating:

- (a) requirements for #accessory# off-street parking spaces;
- (b) #accessory# off-street loading berths; ~~and~~
- (c) limitations on #floor area# occupied by certain #uses#; and
- (d) satisfying requirements for #FRESH food stores# as defined in Article VI, Chapter 3, and the special #floor area# regulations of that Chapter.

In #flood zones#, the #floor area# exclusion permitted by this Section shall also apply to the area occupied by non-#residential uses# on the #lowest occupiable floor#, as defined in Section 64-11.

* * *

(page break)

The above resolution (N 210380 ZRY), duly adopted by the City Planning Commission on October 20, 2021 (Calendar No. 11), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

ANITA LAREMONT, Esq., *Chair*

KENNETH J. KNUCKLES, Esq., *Vice Chair*

DAVID J. BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III,

JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,

ORLANDO MARIN, RAJ RAMPERSHAD, *Commissioners*



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 0	# Against: 0	# Abstaining: 0	Total members appointed to the board: 0
Date of Vote: 5/17/2021 12:00 AM		Vote Location: Cisco Webex Virtual Teleconference	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: Bronx Community Board Three "favorable" recommendation by Housing, Land Use and Economic Development committee

Recommendation submitted by	BX CB3	Date: 5/28/2021 2:33 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable

# In Favor: 27	# Against: 0	# Abstaining: 0	Total members appointed to the board: 44
Date of Vote: 9/29/2021 12:00 AM		Vote Location: virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/29/2021 6:00 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Virtual

CONSIDERATION: Community Board input necessary

Recommendation submitted by	BX CB2	Date: 10/5/2021 1:40 PM
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The City of New York
Bronx Community Board Three

1426 Boston Road, Bronx, NY 10456
Telephone No.: (718) 378-8054 – Fax No.: (718) 378-8188
E-mail Address: jdudley@cb.nyc.gov

DIAL	Government Services
311	& Information for NYC
Comm. Bd. Info go to: nyc.gov/bronxcb3	

RUBEN DIAZ, JR.
BRONX BOROUGH PRESIDENT

REV. DR. BRUCE RIVERA
CHAIR

JOHN W. DUDLEY
DISTRICT MANAGER

May 28, 2021

Ms. Carol Samol
Director
NYC DCP – Bronx Office
1775 Grand Concourse, Suite 503
Bronx, NY 10453

RE: FRESH UPDATE TEXT AMENDMENT– N210380ZRY
CEQR NO. 21DCP182Y

Dear Ms. Samol:

At a meeting of the Housing, Land Use and Economic Development committee of Bronx Community Board Three held Monday, May 17, 2021, members present expressed a consensus of “**approval**” for the above proposed citywide text amendment, to modify and expand the existing Food Retail Expansion to Support Health (FRESH) program under ZR Section 63-00, for neighborhood grocery stores in Use Group 6 throughout New York City.

Thank you.

Sincerely,

John Dudley
District Manager

CC: Rev. Dr. Bruce Rivera, Chair
Kolaco Acqui, Chairperson, Housing, Land-Use and Economic Development committee
Aazam Otero, Co- Chairperson, Housing, Land-Use and Economic Development committee

EXECUTIVE OFFICERS

Rev. Dr. Frederick Crawford Joetta Brown
1st Vice-Chairperson 2nd Vice-Chairperson

Keziah Sullivan
Secretary

Kathy Johnson Morris
Treasurer

Rita Jones
Sgt.-at-Arms/Parliamentarian



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

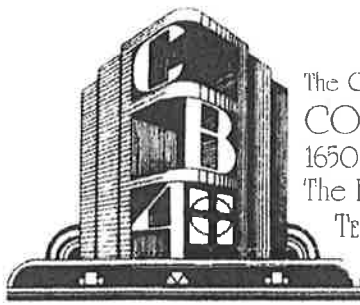
RECOMMENDATION: Favorable			
# In Favor: 29	# Against: 0	# Abstaining: 0	Total members appointed to the board: 38
Date of Vote: 6/22/2021 12:00 AM		Vote Location: Vta Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/22/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Via Zoom

CONSIDERATION:

Recommendation submitted by	BX CB4	Date: 7/20/2021 10:36 AM
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The City of New York
COMMUNITY BOARD 4
1650 Selwyn Avenue, Suite 11A
The Bronx, New York 10457
Tel: 718-299-0800 Fax: 718-294-7870
Email: bx04@cb.nyc.gov

HONORABLE RUBEN DIAZ, JR.
Bronx Borough President

MR. ROBERT GARMENDIZ
Board Chair

MR. PAUL A. PHILPS
District Manager

June 24, 2021

Ms. Marisa Lago
Chairperson
NYC Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: Food Retail Expansion to Support Health Program (FRESH) ULURP Number: N210380 ZRY

Dear Chairperson Lago:

Please be advised that on June 22, 2021, at its regularly scheduled General Board Meeting, Bronx Community Board Four voted in the affirmative to issue a letter of support for the proposed citywide zoning Text amendment to update the existing Food Retail Expansion to Support Health (FRESH) program which provides greater incentives for neighborhood grocery stores and supermarkets to locate in underserved neighborhoods.

Please feel free to reach out if you have any questions.

Regards,

Paul A. Philps
District Manager
Community Board Four

Cc: Jackson Strong, Housing & Land Use Committee Chair
Mr. Robert Garmendiz, Board Chairperson



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 0	# Against: 0	# Abstaining: 0	Total members appointed to the board: 0
Date of Vote: 5/20/2021 12:00 AM		Vote Location: Zoom Audio and Video Conference	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 5/20/2021 6:30 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom Audio and Video Conference

CONSIDERATION:

Recommendation submitted by	BX CB6	Date: 6/23/2021 3:48 PM
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**THE CITY OF NEW YORK
BRONX COMMUNITY BOARD 6**

1932 Arthur Avenue, Room 403-A, Bronx, NY 10457

Telephone: (718) 579-6990 Fax: (718) 579-6875 Email: bronxcb6@bronxcb6.org

Honorable Ruben Diaz Jr., Bronx Borough President

MS. EVONNE CAPERS
Board Chairperson

MR. JOHN SANCHEZ
District Manager

June 23, 2021

Honorable Marisa Lago, Chair
New York City Department of City Planning
City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271

Re: FRESH Program Update Citywide Text Amendment
ULURP Number: N210380 ZRY

Dear Chair Lago:

This is to inform you that at a meeting of the Health and Human Services Committee of Bronx Community Board #6 held on Thursday, May 20, 2021, a representative from the New York City Department of City Planning provided a briefing on the proposed FRESH Program Update Citywide Text Amendment to expand the FRESH food stores program.

After hearing such presentation, it was consensus of the Health and Human Services Committee to support the proposed FRESH Program Update Citywide Text Amendment. Bronx Community Board #6's Health and Human Services Committee recognizes that there continues to be a strong and growing demand for food access. Given the critical importance and hardship, this proposal will ensure that FRESH stores are evenly distributed and financially viable.

Sincerely,

John Sanchez
District Manager



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 28	# Against: 0	# Abstaining: 11	Total members appointed to the board: 39
Date of Vote: 6/8/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/7/2021 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom Conference

CONSIDERATION: Proposed FRESH Amendment (REJECTED)

WHEREAS, The Department of City Planning is proposing to update and expand the FRESH food stores program. The update would bring the FRESH program to more communities across the city, among other changes to ensure FRESH stores are evenly distributed and financially viable;

WHEREAS, The Land Use Committee opposed the FRESH Amendment on June 7, 2021;

THEREFORE BE IT RESOLVED, Bronx Community Board No. 8, rejects this zoning text amendment.

VOTE

In Favor (28): B. Bender, J. Campbell-Priveterre, C. Dastis-Galvin, Della, M. Donato, P. Ellis, D. Escaño-Bell, M. Esema, R. Fanuzzi, N. Fazio, S. Froot, J. Gomez, E. Green, R. Jacklosky, M. Joyce, D. Leverett, L. Lopez, C. G. Moerdler, T. Morris, O. Murray, D. Padernacht, T. Pardo, K. Pesce, J. Reyes, G. Santiago, D. Travis, S. Villaverde, M. Wolpoff

Abstained (11): C. Tepelus, R. Ginty, L. Spalter, L. Daub, J. Townes, S. Alexander, R. Singh, M. Goodman, D. Gellman, R. Pochter- Lowe, R. Kaplan

Opposed: 0

Recommendation submitted by	BX CB8	Date: 6/28/2021 4:00 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 4	# Against: 0	# Abstaining: 0	Total members appointed to the board: 6
Date of Vote: 6/7/2021 12:00 AM		Vote Location: Bronx CB9 Land & Zoning Committee Meeting (Remote via WebEx)	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	BX CB9	Date: 6/24/2021 10:44 AM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable

# In Favor: 28	# Against: 0	# Abstaining: 0	Total members appointed to the board: 28
Date of Vote: 7/12/2021 12:00 AM		Vote Location: WEBEX	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/8/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	https://nyccb.webex.com/nyccb/onstage/g.php?MTID=e71284208290306e6c442b3234e8cb25a Event number: 129 814 9461 Event password: SRrqBepD244 Audio conference: +1-646-992-2010 [New York City] Show all

CONSIDERATION: Please see the attached report.

Recommendation submitted by	BK CB1	Date: 7/14/2021 9:44 AM
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COMMUNITY BOARD No. 1

435 GRAHAM AVENUE - BROOKLYN, NY 11211- 8813

PHONE: (718) 389-0009

FAX: (718) 389-0098

Email: bk01@cb.nyc.gov

Website: www.nyc.gov/brooklyn1

HON. ERIC L. ADAMS
BROOKLYN BOROUGH PRESIDENT



SIMON WEISER
FIRST VICE-CHAIRMAN

DEL TEAGUE
SECOND VICE-CHAIRPERSON

GINA BARROS
THIRD VICE-CHAIRPERSON

MARIA VIERA
FINANCIAL SECRETARY

SONIA IGLESIAS
RECORDING SECRETARY

PHILIP A. C
MEMBER-A

DEALICE FULLER
CHAIRPERSON

GERALD A. ESPOSITO
DISTRICT MANAGER

HON. STEPHEN T. LEVIN
COUNCILMEMBER, 33rd CD

HON. ANTONIO REYNOSO
COUNCILMEMBER, 34th CD

July 12, 2021

COMMITTEE REPORT

Land Use, ULURP, Landmarks (subcommittee) Committee

TO: Chairperson Dealice Fuller
and CB#1 Board Members

FROM: Del Teague, Committee Chair

RE: Land Use Committee Report for June 28, 2021

The committee met virtually on June 28, 2021 via WEBEX in the evening at 6:30 PM

Attendance:

Present: Teague; McKeever; Chesler; Drinkwater; Miceli; Niederman; Sofer; Weidberg; Vega; Andrews; Berger; Kawochka; Naplatarski.

Absent: Viera; Barros; Indig; Kaminski; Lebovits; Solano; Weiser; Kantin; Stone.
(a quorum was present)

AGENDA:

1. PRESENTATION: Citywide Hotel Text Amendment N 210406 ZRY—The special permit would newly require a CPC special permit for new hotels and enlargements where hotels are permitted as-of-right today: C1, C2, C4, C5, C6, C8, mixed Use (MX), and paired M1/R districts. The proposed CPC special permit would replace existing CPC special permit for new hotels in the special purpose districts. The special permit for hotels in M1 manufacturing districts would retain its findings that are specific to light industrial areas. Presented by Alexandra Paty-Diaz, NYC Department of City Planning. (Item to be Voted before 7/13/21.

Alexandra Paty-Diaz explained that the goal of this amendment is to have a system using uniform criteria that will make sure hotel development does not negatively impact on the surrounding areas. There will be an environmental review and a full ULURP review for each application.

Projects filed with DOB prior to 2018 will be vested.

Recommendation: Write a letter of support to DCP.

11 - yes

1 - recusal

2.PRESENTATION: 824 Metropolitan Avenue N 200314 ZMK & N 200315 ZRK-Private application for a Zoning Map Amendment to facilitate the development of an eight-story mixed use residential building of 36 dwelling units, of which 11 would be permanently affordable under MIH Option 2, and 7,000 square feet of commercial use at 824 Metropolitan Avenue(Block 2916, Lots p/o 8, 14, 16 & p/o 17) in Greenpoint Williamsburg, Community District 1.Presented by Lauren George, Senior Vice President, Constantinope & Vallone Consulting LLC. (10 minutes) (Item to be Voted on 7/13/21)

Lisa Orrantia presented. She explained that after hearing the community's requests for 3 BR units at the pre-certification presentation, the developer decreased the overall design of 36 residential units to 34. The developer also committed to using MIH option 1 instead of 2, requiring at least 25% of the units to be 60%AMI or lower, and 10% at 40%AMI. The developer also committed to change its goal for the ground floor commercial use from a supermarket to different usage that would better serve the surrounding area.

The overall breakdown is 6 studios, 19 1BR, 7 2BR, 2 3BR, with proportional affordability.

Committee Questions /concerns and answers:

- 1- The status of the gas station in the adjacent lot. The gas station can continue.
- 2- Noise level on terraces. There will be house rules regarding tenant activities.
- 3- Rents for affordable units. The owner has contracted with St. Nick's to be the managing agent.
- 4- The possibility of damage to the adjacent three-story building. The owner agreed to add that building as a co-insured on its insurance policy. The owner also agreed, for the benefit of all of the surrounding buildings, to have a liaison from the project with the phone number displayed.
- 5- Noise concerns from air conditioners. The committee suggested not using VRF units, utilizing noise mitigation if the units are placed on the roof, or using passive house technology.

Recommendation:

Approve with the following conditions:

- 1- The owner of the adjacent building at 834 Metropolitan Ave. will be named as a co-insured on the developer's insurance policy for the duration of the construction; and there will be a liaison from the project for surrounding property owners with the phone number displayed. The developer will also provide vibration monitors answerable to DOB.
- 2- The air conditioners will not be vented to the outside facades of the building and noise mitigators will be utilized, or passive house technology will be used.

-3- The committee recommends dividing the commercial space and choosing a diverse selection of businesses that will serve the character of the neighborhood. The developer can reach out to Evergreen to locate local businesses that are in danger of displacement and non-profits, as potential tenants.

8- yes
1-recusal
1- no

3.PRESENTATION: Fresh Update Non-ULURP N 210380 ZRY-A citywide text amendment to expand the FRESH program to other underserved neighborhoods of the Bronx, Brooklyn, Queens, and Staten Island. In addition, the proposal will modify rules for certification of a FRESH food store. Presented by Alexandra Paty-Diaz, NYC Department of City Planning. (10 Minutes) (Item to be Voted on 7/13/21)

Alexandra Paty-Diaz explained that the goal of this amendment is to have a system using uniform criteria that will encourage construction of supermarkets in underserved areas of the city in order to increase accessibility of fresh foods. There must be at least 6,000 SF of contiguous grocery store located on the same floor, with 60% fresh products.

The amendment contains an evaluation process to avoid over-saturation to protect pre-existing supermarkets.

Incentives include:

There is an allowance of additional FAR in mixed-use buildings, one square foot for each square foot of fresh food, up to 20,000 SF. However, if a developer uses this incentive, the supermarket must remain in perpetuity.

There is also an easing of the glazing requirements, and of parking requirements in lower density residential districts (R3 - R5).

Recommendation: Write a letter of support to DCP with a request for clarification regarding the enforcement mechanism for the perpetuity requirement when additional FAR is utilized.

10-yes
1-abstain

4.PRESENTATION: Health and Fitness Citywide Text Amendment N 210382 ZRY-Non ULURP-Proposal to amend the Zoning Resolution to modify regulations related to gyms, spas, licensed massage therapy, and other health and fitness facilities defined as “Physical Culture or Health Establishments.” The proposed text amendment will remove the requirement for such facilities to receive a special permit by the Board of Standards and Appeals (ZR 73-36). Presented by Alexandra Paty-Diaz, NYC Department of City Planning. (Item to be Voted on 7/13/21)

Alexandra Paty-Diaz explained that the goal of this amendment is to reduce costly and time-consuming barriers to the establishment of gyms, spas, and massage therapy businesses. They will be allowed as-of-right in commercial and manufacturing districts up to 10,000 square feet.

Establishments with high impact equipment will be subject to review by DOB to make sure they will install sufficient noise/vibration reduction measures. Massage therapy businesses will be treated the same as other ambulatory health care uses.

Recommendation: Write a letter of support to DCP.

10- yes

1- no



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 40	# Against: 0	# Abstaining: 0	Total members appointed to the board: 40
Date of Vote: 6/16/2021 12:00 AM		Vote Location: Virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: Unanimous vote to recommend as presented without comment

Recommendation submitted by	BK CB2	Date: 6/22/2021 1:17 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable			
# In Favor: 13	# Against: 0	# Abstaining: 1	Total members appointed to the board: 15
Date of Vote: 7/21/2021 12:00 AM		Vote Location: Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/21/2021 6:15 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex

CONSIDERATION: Please See Attached

Recommendation submitted by	BK CB8	Date: 7/27/2021 2:08 PM
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COMMUNITY BOARD NO. 8

1291 ST. MARKS AVENUE • BROOKLYN, NEW YORK 11213
(718) 467-5620/5574 • BROOKLYNCB8.ORG • BROOKLYNCB8@GMAIL.COM

Eric Adams
Borough President

Irsa Weatherspoon
Chairperson

Michelle T. George
District Manager

July 26, 2021

Ms. Marisa Lago, Chairperson
City Planning Commission
120 Broadway
New York, NY 10271

RE: Zoning Text Amendment for FRESH

Dear Chairperson Lago:

At the July 21, 2021 at the Land Use Committee meeting of Community Board 8 the NYC Department of City Planning presented the Zoning Text Amendment for the Food Retail Expansion to Support Health Program (FRESH) which was created in 2009 to encourage stores in these communities that provide a full range of grocery products including fresh meat, fruit and vegetables. Members voted 13 in favor with 1 abstention to support the citywide Zoning Text Amendment for FRESH on condition that the rent regulation and other supportive program aspects be broadened to include existing community resources/markets. Members also mentioned a need to address rent increases that are driving out existing supermarkets. Newly zoned market locations must include a restrictive declaration in the property's deed for this particular use in perpetuity.

Please note that Community Board 8 By-Laws gives the Land Use Committee full authority to vote on its behalf during July and August when the full board is on hiatus.

Thank you for the opportunity to review and participate in such an important decision facing our city. If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Irsa Weatherspoon". The signature is fluid and cursive, with a long horizontal line extending to the right.

Irsa Weatherspoon
Chairperson



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 34	# Against: 0	# Abstaining: 3	Total members appointed to the board: 37
Date of Vote: 5/26/2021 12:00 AM		Vote Location: Community Board General Board Meeting via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 5/20/2021 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Community Board #13 via Zoom

CONSIDERATION:

Recommendation submitted by	BK CB13	Date: 6/7/2021 2:37 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable			
# In Favor: 36	# Against: 2	# Abstaining: 2	Total members appointed to the board: 49
Date of Vote: 6/17/2021 12:00 AM		Vote Location: ZOOM Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/17/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Hearing Held via Zoom at regularly scheduled General Board Meeting

CONSIDERATION: Please see MCB9's attached Proposed Citywide Zoning Text Amendment for FRESH II

Recommendation submitted by	MN CB9	Date: 6/24/2021 1:31 PM
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THE CITY OF NEW YORK
COMMUNITY BOARD 9
MANHATTAN

Morningside Heights
Manhattanville
Hamilton Heights

June 21, 2021

Hon. Marisa Lago
Commissioner/Chair
New York City Department of City Planning
Equitable Life Building, 120 Broadway, 31st Floor
New York, NY 10271

Reso re: Proposed Citywide Zoning Text Amendment for FRESH II

Dear Commissioner Chair Lago,

At its regularly scheduled General Board Meeting held remotely on Thursday, June 17, 2021, Manhattan Community Board No. 9 passed the following **Reso re: Proposed Citywide Zoning Text Amendment for FRESH II** by a vote of 36 in favor, 2 opposed and 2 abstentions.

WHEREAS, Manhattan Community Board No. 9 (MCB9) recognizes the importance of having food retailers with high-quality selections of fresh fruits, vegetables, dairy, and meat products within walking distance of residents in our community; and

WHEREAS, Manhattan Community Board No. 9 has benefited for over a decade from inclusion in the Food Retail Expansion Program to Support Health (FRESH) in much of Community District 9 north of 125th Street to incentivize new development of ground floor retail featuring food retailers selling fresh produce via tax incentives and additional residential Floor Area Ratio (FAR); and

WHEREAS, other neighborhoods in New York City suffer from a lack of food retail featuring fresh produce and are not zoned for inclusion in the FRESH program; and

WHEREAS, certain requirements for ground floor glazing under the current FRESH program currently make it prohibitively expensive to retrofit existing ground floor retail for food retailers and property owners to participate in the FRESH program; and

DOUBTING, that the FRESH program incentivizes overdevelopment of supermarket ground floor retail under the current requirements; and

NOTING, that neighborhoods that suffer from a lack of produce are unlikely to have high demand for luxury residential units; and

Hon. Marisa Lago
June 21, 2021
Page - 2

THEREFORE OBJECTING, to the exclusion of bonus residential FAR from affordable housing requirements on MIH sites as an unnecessary exemption of residential FAR from the protections afforded rent regulated apartments in New York; now

THEREFORE BE IT RESOLVED, that Manhattan Community Board No. 9 supports the expansion of the FRESH program into additional areas of the City experiencing a lack of access to fresh produce and food products; and be it further

RESOLVED, that MCB9 supports the proposed text of Section 63-23 modifying the transparency requirements for existing developments being retrofitted or renovated to allow FRESH-eligible food retail establishments with transparent glazing over only 30% of the wall area, as opposed to the current 50% requirement while still retaining the 50% transparency requirement for new developments; and be it further

RESOLVED, that MCB9 opposes proposed Section 63-023 of the FRESH II text amendment, which would limit total additional residential development created by the FRESH program to 40,000 square feet within a half-mile radius of any given development site participating in the FRESH program on a first-come, first-serve basis; and be it further

RESOLVED, that MCB9 requests that the Department of City Planning consider striking the language in Section 63-21 clarifying that bonus residential FAR created at MIH development sites participating in the FRESH program not be subject to affordable housing requirements and instead amending the zoning text to apply affordable housing requirements to the additional residential FAR created at MIH sites participating in the FRESH program, given the City's overriding need for additional affordable housing.

If you have any questions and/or further information is needed, please do not hesitate contacting me or District Manager, Eutha Prince, at the board office (212) 864-6200.

Sincerely,



Barry Weinberg
Chair

cc: Hon. Bill De Blasio, Mayor
Hon. Scott Stringer, NYC Comptroller
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Brian Benjamin, State Senator
Hon. Robert Jackson, State Senator
Hon. Daniel J. O'Donnell, Assembly Member
Hon. Inez Dickens, Assembly Member

Hon. Al Taylor, Assembly Member

Hon. Mark Levine, City Council Member

Hon. Bill Perkins, City Council Member

Mr. Zead Ramadan, Interim Executive Director, West Harlem Development Corporation

Mr. Timothy Anderson, Urban Planner, Manhattan Borough Presidents Office

Mr. Ryan Cote, Community Development & Public Policy, NYC Department of City Planning



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant: DCP - Department of City Planning (NYC)		Applicant's Primary Contact: DCP - Department of City Planning (NYC)	
Application # N210380 ZRY		Borough:	
CEQR Number: 21DCP182Y		Validated Community Districts: CY00	

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 29	# Against: 0	# Abstaining: 0	Total members appointed to the board: 29
Date of Vote: 6/17/2021 12:00 AM		Vote Location: Zoom- Virtual Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	MN CB10	Date: 7/2/2021 10:09 AM
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CICELY HARRIS
Chairperson

SHATIC MITCHELL
District Manager

CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 10
215 West 125th Street, 4th Floor
New York, NY 10027
T: 212-749-3105 F: 212-662-4215

RESOLUTION
Manhattan Community Board 10

RESOLUTION: To approve the FRESH Update Text Amendment that provides greater incentives for neighborhood grocery stores to locate in underserved neighborhoods in the City

WHEREAS, New York City Department of City Planning (*hereafter known as "DCP"*) is seeking approval of the Food Retail Expansion to Support Health Update (*hereafter known as "FRESH Update"*) application, N210380ZRY, that provides greater incentives for neighborhood grocery stores to locate in underserved neighborhoods in the City; and

WHEREAS, there will be no expansion of the FRESH program in Manhattan Community Board 10 as it will only occur in the Bronx, Brooklyn, Queens, and Staten Island; and

WHEREAS, FRESH Update requires future applications to meet specific criteria (within ½ mile radius, the sum of bonus residential floor does not exceed 40,000 square feet) to prevent saturation of FRESH supermarkets in certain areas; and

WHEREAS, waivers will be granted for window installations or glazing requirements for conversions or renovations to an existing building in order to construct a FRESH supermarket; and

WHEREAS, FRESH Update will reduce parking requirements in R3-R5 districts to ensure that parking regulations do not stop a needed project; and

WHEREAS, on Thursday, May 20, 2021, the Land Use Committee of Manhattan Community Board 10, after hearing all of the views, had additional concerns regarding the number of existing FRESH stores and current applications in Manhattan Community Board 10, as well as the availability of programs or opportunities for entrepreneurs and local grocery stores to partner with developers to qualify as a FRESH store; and



CICELY HARRIS
Chairperson

SHATIC MITCHELL
District Manager

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD 10
215 West 125th Street, 4th Floor
New York, NY 10027
T: 212-749-3105 F: 212-662-4215

WHEREAS, on May 25, 2021 DCP provided responses to the aforementioned questions, by identifying three FRESH supermarkets located at 2395 Frederick Douglass Boulevard, 2630 Frederick Douglass Boulevard, and 223 St. Nicholas Avenue in the district, and also recommending NYC Economic Development Corporation to assist entrepreneurs and local grocery stores seeking opportunities for new stores and renovations; and

WHEREAS, on June 17, 2021, during the Land Use Committee meeting to review and discuss the FRESH Update Text Amendment, the full board voted unanimously to approve and support.

NOW THEREFORE, BE IT RESOLVED

Manhattan Community Board 10 **APPROVES** application N210380ZRY, the FRESH Update Text Amendment. During the June 17, 2021 Land Use Committee Meeting, the board voted **29 Yes 0 No 0 Abstention and 0 Recusal.**



COMMUNITY BOARD ELEVEN

BOROUGH OF MANHATTAN
1664 PARK AVENUE
NEW YORK, NY 10035
TEL: 212-831-8929
FAX: 212-369-3571
www.cb11m.org

Nilsa Orama
Chair

Angel D. Mescaín
District Manager

July 19, 2021

Marisa Lago
Director
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: Recommendation on Land Use Application # N 210380 ZRY- FRESH Update Text Amendment

Dear Director Lago,

Community Board 11 (CB11) appreciates the opportunity to review and comment on the Department of City Planning's proposed FRESH Update Text Amendment.

The New York City Department of City Planning (DCP) proposes to amend the Zoning Resolution to modify and expand the existing Food Retail Expansion to Support Health (FRESH) program under ZR 63-00 for neighborhood grocery stores in Use Group 6 throughout the City

Description of the Proposed Action

The proposed zoning text amendment, FRESH II, would update the existing program under the NYC ZR 63-00 that provides incentives for neighborhood grocery stores to locate in underserved neighborhoods in the City. FRESH II would include an expansion of the program boundary as well as updates to all eligible areas, including a mechanism to prevent saturation of FRESH supermarkets, modification to the glazing requirement for conversions, changes to parking regulations, as well as zoning text clarifications.

Expansion of FRESH Boundary. DCP is proposing a zoning text amendment to expand applicability of the FRESH program to ten additional neighborhoods in the Bronx, Brooklyn, Queens, and Staten Island. The extension of the FRESH program to a broader range of underserved neighborhoods would encourage the development and retention of convenient, accessible stores that provide fresh meat, fruit and vegetables, and other perishable goods, in addition to a full range of grocery products. Furthermore, an increase in the number and variety of neighborhood food stores would create a greater diversity of shopping options, improving the accessibility and affordability of food available to local residents. Consequently, the increased convenience and availability of fresh foods can provide options for healthier choices.

Mechanism to Prevent Concentration of FRESH Supermarkets. The proposed text amendment's provisions to prevent oversaturation would ensure more even distribution of FRESH food stores throughout neighborhoods of high need. To prevent a saturation of FRESH supermarkets, DCP proposes that within a 0.5-mile radius of a proposed project tax lot, the sum of additional residential floor areas resulting from the FRESH program to be capped at 40,000 square feet.

Other Updates. To improve the program based on assessments from various stakeholders, the text amendment would waive the glazing requirement for conversion projects, which is consistent with transparency requirements for retail conversions in other parts of the Zoning Resolution; add parking relief in lower density residential districts; remove onerous requirements for deed restrictions when reallocated residential floor area is not requested as part of the FRESH project; and, lastly, the text amendment responds to requests to clarify particular sections of the zoning text and eliminate potential confusion in interpretations.

Community Board Recommendation

Community Board 11 met on July 13, 2021 and voted to recommend that this application be approved.

Full Board Vote: In Favor: 29; Opposed: 0; Abstentions: 0; Present not Voting: 0

If you have any questions regarding our recommendation, please contact Angel Mescaín, District Manager, at 212-831-8929 or amescain@cb11m.org.

Sincerely,



Nilsa Orama
Chair

cc: Hon. Gale A. Brewer, Manhattan Borough President (via email)
Hon. Diana Ayala, New York City Council (via email)
Hon. Bill Perkins, New York City Council (via email)
Hon. Ben Kallos, New York City Council (via email)
Hon. Keith Powers, New York City Council (via email)
Hon. Brian Benjamin, New York State Senate (via email)
Hon. Jose M. Serrano, New York State Senate (via email)
Hon. Robert J. Rodriguez, New York State Assembly (via email)
Hon. Inez Dickens, New York State Assembly (via email)
Elsie Encarnacion, Community Board 11 (via email)
Judith Febbraro, Community Board 11 (via email)



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 29	# Against: 0	# Abstaining: 0	Total members appointed to the board: 50
Date of Vote: 7/13/2021 12:00 AM		Vote Location: 1991 Second Avenue, NY NY 10029	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/22/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	zoom.us/webinar/register/WN_Iv4SMResQD2RCBE9Rzi0tA

CONSIDERATION: Approved.

Recommendation submitted by	MN CB11	Date: 7/19/2021 11:54 AM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 41	# Against: 0	# Abstaining: 0	Total members appointed to the board: 41
Date of Vote: 6/29/2021 12:00 AM		Vote Location: Zoom Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: At the General Meeting on Tuesday, June 29th, 2021, Community Board 12 Manhattan passed the following resolution with a vote of 41 in favor, 0 opposed, 0 abstentions, and 0, not voting, supporting the Department of City Planning's Fresh II Zoning Text Amendment as presented to the June 2, 2021 meeting of CB12-M's Land Use Committee.

Recommendation submitted by	MN CB12	Date: 7/22/2021 1:13 PM
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Community Board 12 - Manhattan Washington Heights & Inwood

530 West 166th St. 6th Floor, New York, NY 10032

Phone: (212) 568-8500, Fax: (212) 740-8197

Eleazar Bueno, Chairperson
Ebenezer Smith, District Manager

July 1, 2021

Hon. Marisa Lago, Chair
New York City Department of City Planning
120 Broadway
31st Floor
New York, NY 10271

Re: Resolution supporting the Department of City Planning's FRESH II Zoning Text Amendment.

Dear Chair Lago:

At the General Meeting on Tuesday, June 29th, 2021, Community Board 12 Manhattan passed the following resolution with a vote of 41 in favor, 0 opposed, 0 abstentions, and 0, not voting, supporting the Department of City Planning's Fresh II Zoning Text Amendment as presented to the June 2, 2021 meeting of CB12-M's Land Use Committee.

Whereas: In September 2009, Community Board 12-Manhattan ("CB12-M") passed a resolution supporting the Food Retail Expansion to Support Health ("FRESH") Zoning Text Amendment, a joint initiative of the Department of City Planning ("DCP") and the NYC Economic Development Corporation ("EDC") that provides zoning and financial incentives to encourage grocery stores to locate in underserved areas that reapply to new construction and the renovation of existing buildings. At the time FRESH was adopted approximately three million people citywide resided in areas underserved by grocery stores; and

Whereas: FRESH was enacted after a 2008 study by the NYC Department of Health and Mental Hygiene, DCP and EDC found many low- to moderate-income neighborhoods across the city are underserved by grocery stores offering a full line of products, including fresh fruit and vegetables, fresh meat, dairy, and other food items. The study demonstrated an association between the density of retailers offering opportunities for healthier food purchases with the level of obesity, diabetes, and other health conditions and identified the neighborhoods of Upper Manhattan, including Washington Heights and Inwood, among the underserved areas; and

Whereas: The zoning incentives provided by FRESH allow for additional floor-area-ratio ("FAR") in mixed residential and commercial buildings, reduction in parking requirements, and larger as-of-right stores in light manufacturing, i.e.: M1, districts, and additional building height up to 15 feet. The FAR incentive allows for one additional square foot of residential floor area for each one square foot of a FRESH food store up to a maximum of 20,000 square feet for any individual store. FRESH food stores of up to 30,000 square feet are permitted as-of-right in M1 districts; and

Whereas: To qualify for the FRESH zoning incentives, a store must be a minimum of 6,000 square feet; a minimum of 50% of the store's floor area must be dedicated to food products intended for home Preparation, consumption, and utilization; a minimum of 30% of the store's floor area must be dedicated to perishable goods, and a minimum of 500 square feet must be dedicated to fruits and vegetables.

Hon. Marisa Lago, Chair

Re: Resolution supporting the Department of City Planning's FRESH II Zoning Text Amendment

July 1, 2021

Page 2

The FRESH program also requires 70% of the store's façade to be glazed and requires 50% of the glazing to be free of signs to enhance transparency; and

Whereas: Since its adoption in 2009, 27 FRESH applications have been approved, including 17 in Brooklyn, five in Manhattan (East and Central Harlem), four in The Bronx, and one in Queens. However, an updated 2018 DCP supermarket analysis shows many neighborhoods are still underserved by fresh food stores. DCP has proposed a zoning text amendment to update FRESH (the "Text Amendment" or "FRESH II") to provide greater incentives for grocery stores to locate in underserved areas; and

Whereas: The Text Amendment would expand the boundaries of the FRESH program to include Staten Island and additional areas of The Bronx, Queens, and Brooklyn; prevent over-concentration of FRESH markets by limiting the aggregate residential FAR bonus within a half-mile of a new FRESH market to 40,000 square feet including the square footage of the proposed new food store; modify the glazing requirement for FRESH markets in renovations of existing buildings; lower the parking requirement in residential districts by waiving the first 10,000 square feet of a FRESH market from the parking requirement; require that at least 6,000 square feet of space be contiguous and on the same floor to ensure greater accessibility, and redefine the distribution of perishable and non-perishable produce required for a FRESH food store to provide for more flexibility; and

Whereas: The Text amendment was certified by DCP on May 19 and referred to all community boards for review and comment. Community boards have 60 days, ending July 27, 2021, to provide comments. DCP representatives attended the June 2, 2021 meeting of CB12-M's Land Use Committee and presented FRESH II; now, therefore, be it

Resolved: Community Board 12-Manhattan supports the Department of City Planning's Fresh II Zoning Text Amendment.

Sincerely,



Eleazar Bueno
Chairperson

cc: Hon. Bill de Blasio, Mayor
Hon. Jumaane Williams, Public Advocate
Hon. Scott M. Stringer, Comptroller
Hon. Brian Benjamin, State Senator
Hon. Robert Jackson, State Senator

Hon. Gale Brewer, Manhattan Borough President
Hon. Al Taylor, Assembly Member
Hon. Carmen De La Rosa, Assembly Member
Hon. Ydanis Rodriguez, Council Member
Hon. Mark Levine, Council Member

MANHATTAN BOROUGH BOARD RESOLUTION
JULY 15, 2021

**RECOMMENDING APPROVAL FOR AN APPLICATION BY THE NEW YORK CITY
DEPARTMENT OF CITY PLANNING FOR AN AMENDMENT TO THE ZONING
RESOLUTION: APPLICATION NUMBER N21038ZRY - UPDATE THE FOOD
RETAIL EXPANSION PROGRAM TO SUPPORT HEALTH (“FRESH”)**

WHEREAS Low- to moderate-income communities across Manhattan and New York City have a shortage of grocery stores and supermarkets that carry fresh food; and

WHEREAS The New York City Department of City Planning (“DCP”) introduced the Food Retail Expansion Program to Support Health (FRESH) program in 2009 to provide zoning and financial incentives for the inclusion of grocery stores and supermarkets in underserved neighborhoods in New York City; and

WHEREAS, DCP is seeking an amendment to the FRESH zoning text to expand the FRESH program incentives into new areas in the Bronx, Brooklyn, Queens, and Staten Island; and

WHEREAS, DCP has noted that ground floor glazing requirements in the current FRESH program could present a financial barrier for supermarkets to participate in the program; and

WHEREAS, There has been a geographic concentration of developments taking advantage of the FRESH program in central Brooklyn; and

WHEREAS, The proposed FRESH zoning text amendment would reduce parking requirements in lower density residential districts; and

WHEREAS, On June 21, 2021, Manhattan Community Board 9 recommended approval of the proposed zoning text amendment with comments; and

WHEREAS, On June 17, 2021, Manhattan Community Board 10 recommended approval of the proposed zoning text amendment; and

WHEREAS, On July 13, 2021, Manhattan Community Board 11 recommended approval of the proposed zoning text amendment; and

WHEREAS, On July 1, 2021, Manhattan Community Board 12 recommended approval of Land Use Application N210380ZRY – FRESH Update text amendment; and

WHEREAS, The Manhattan Borough Board acknowledges the importance of updating the FRESH program in order to prevent oversaturation of supermarkets taking advantage of zoning bonuses, while lowering financial barriers to participation;

THEREFORE, BE IT RESOLVED, The Manhattan Borough Board supports all recommendations made by Manhattan Community Boards 9, 10, 11, and 12 and recommends approval of Land Use Application N210380ZRY – FRESH Update with the following conditions:

- (1) Given the restrictions of concentration of FRESH sites, DCP should more strategically select developments for FRESH bonuses instead of deciding by a first-come, first-serve basis;
- (2) DCP should apply affordable housing requirements to FAR bonuses granted at MIH sites participating in the FRESH program; and
- (3) DCP strengthen the definition of supermarkets to ensure that establishments such as high-end food halls do not benefit from the bonus.

Adopted by the Manhattan Borough Board on the 15th day of July, 2021

A handwritten signature in black ink, reading "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President
Chair of the Manhattan Borough Board



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

July 26, 2021

**Recommendation on the ULURP Applications No. N210380ZRY
FRESH Update
by the New York City of Department of City Planning**

PROPOSED ACTIONS

The New York Department of City Planning (“DCP”) (the “Applicant”) is seeking a city-wide zoning text amendment to broaden the expansion of the Food Retail Expansion Program to Support Health (“FRESH”) into neighborhoods in the Bronx, Brooklyn, Staten Island, and Queens, and modify rules governing new FRESH food stores (the “Proposed Action”). The FRESH program offers zoning and financial incentives for the inclusion of high-quality grocery stores in developments in underserved neighborhoods across Manhattan. The Proposed Action is an amendment to this existing program under the New York City Zoning Resolution 63-00.

Expansion of FRESH Boundary

The primary goal of this application is to expand the FRESH bonus into additional neighborhoods in New York City. Currently the program applies to areas of Bronx Community Districts 1-7, Brooklyn Community Districts 3, 4, 5, 8, 9, 16 and 17, Manhattan Community Districts 9-12, and Queens Community District 12. The Proposed Action would extend the applicability of the program into Bronx Community Districts 8 and 9, Brooklyn Community Districts 1, 2, 12 and 13, Queens Community Districts 1, 3, 4 and 14, and Staten Island Community District 1. There is no expansion of the geography of the program within the Borough of Manhattan.

These additional areas were decided based on DCP’s 2018 Supermarket Needs Index, which identified areas of the city that still experience a shortage of high-quality supermarkets.

The Proposed Action, which is limited to zoning, would not expand the area eligible for FRESH supermarkets tax benefits as administered by the Economic Development Corporation.

Mechanism to Prevent Oversaturation of FRESH Stores in Close Proximity

In Central Brooklyn, and to a lesser extent Central Harlem, there have been multiple new construction projects that have taken advantage of FRESH zoning bonuses in the same neighborhood. The Proposed Action would limit use of the FRESH program within a 0.5-mile radius of a proposed project tax lot. Within this radius, the sum of additional residential floor areas resulting from the FRESH program would be limited to 40,000 square feet.

Change to Window Installation Requirements

The Proposed Action would also waive the minimum transparency rule that requires 50 percent of the ground floor level street wall to be glazed with transparent materials, which is consistent with retail conversion transparency requirements in the zoning code. This change would make it less onerous financially for owners to take advantage of the FRESH bonus.

Changes to Parking Rules

Additionally, the Proposed Action would modify the parking regulation pursuant to Section 36-23 of the Zoning Code, waiving parking requirements for up to 10,000 square feet of FRESH retail area in lower density residential districts.

Other Updates

Further changes to the existing FRESH program stipulate that at least 6,000 square feet of a FRESH store must be contiguous and on the same floor to increase accessibility, that distribution of products would be reduced to 60% food instead of 80%, and FRESH projects which do not increase residential FAR would be exempt from the restrictive declaration requirement.

BACKGROUND

In April, 2008, DCP released *Going to Market: New York City's Neighborhood Grocery Store and Supermarket Shortage*¹, an overview of their findings during a study of supermarket shortages in some neighborhoods in New York City. According to the report, they found that there were areas that experienced such shortages, which could hamper residents' access to healthy food. Residents without a supermarket in their neighborhood often had to rely on discount stores, pharmacies, and convenience stores, which frequently did not carry any fresh food.

In response, the FRESH program was created in 2009 in order to incentivize healthy food stores with zoning and tax benefits. In exchange for dedicating ground floor retail space to stores that fit the criteria, property owners were able to construct buildings that were taller in mixed residential and commercial districts.

In 2018, the City Council Subcommittee on Zoning and Franchises and the Committee on Economic Development held a joint hearing to assess the effectiveness of the FRESH program and plan improvements. In response, DCP initiated a review to improve the program, incorporating the suggestions from the subcommittees and the public. In conclusion of the review, DCP offered this Proposed Action to expand and improve the program.

Since the program's beginning, 28 projects have been approved city-wide and 5 projects have been approved in Manhattan. Three projects are located in Community District 10 and three projects are located in Community District 11.

¹ <https://www1.nyc.gov/assets/planning/download/pdf/plans/supermarket/supermarket.pdf>

COMMUNITY BOARD RECOMMENDATIONS

The FRESH update application was certified by DCP on May 19 and referred to Manhattan Community Boards 9, 10, 11, and 12 for comment. Boards were given a 60-day period to review the application and submit a resolution recommending support or opposition.

All four Manhattan community boards have voted on and submitted resolutions recommending approval of the application. Manhattan Community Board 9 included conditions for their approval:

- The proposed Section 63-023 restricting the program's use within .5 miles could create a first-come, first-serve system for awarding zoning bonuses: and
- The proposed Section 63-21 includes language exempting bonus residential FAR from affordable housing requirements from sites located in Mandatory Inclusionary Housing areas.

BOROUGH BOARD RECOMMENDATION

The Manhattan Borough Board received a presentation from DCP about the proposed text amendment during its July 15, 2021 meeting. During the meeting, members raised questions and concerns that were addressed by DCP. Concerns included whether or not a developer has to have a signed agreement with a grocery store to present an application to DCP, why parts of Manhattan are excluded from the FRESH program, and what would happen if there is ultimately no supermarket and the bonus is already built into the building,

Informed by these questions and the agency's responses, the Manhattan Borough Board voted to approve a resolution to recommend approval of the application with conditions. The conditions are as follows:

- Given the restrictions of concentration of FRESH sites, DCP should more strategically select developments for FRESH bonuses instead of deciding on a first-come, first-serve basis;
- DCP should apply affordable housing requirements to FAR bonuses granted at MIH sites participating in the FRESH program; and
- DCP should strengthen the definition of supermarkets to ensure that establishments such as high-end food halls do not benefit from the bonus.

BOROUGH PRESIDENT'S COMMENTS

Lack of access to high quality food has been a frequent concern in communities in Northern Manhattan, and across the city. Residents often have had to turn to convenience stores, pharmacies, and other local retailers who do not sell fresh produce, or provide few healthy options. Additionally, what food products they do carry are often more expensive than they would be at a supermarket.

The inclusion of Manhattan Community Districts 9, 10, 11, and 12 in the FRESH program has had a positive impact on the food landscape of their areas. Thanks to this zoning bonus, and the attached tax incentives, Community Boards 10 and 11 have seen five additional supermarkets either built or under development because of this program.

While there is no extension of the FRESH program into additional areas of Manhattan, the updates to existing FRESH areas will make it easier for property owners to comply with the program and help limit redundancy in the future. In particular, the waiver of grazing requirements for the ground floor street level retail façade will lift an additional financial burden for participation in the program.

I understand the concerns of Community Board 9 that the .5 mile radius preventing redundant stores in close proximity could lead to an arbitrary selection process for awarding bonuses on a first-come, first-serve basis. However, this doesn't seem to be an issue yet, especially in Community Boards 9 and 12, which have not yet seen a single development take advantage of the program.

While I support this update and expect it to encourage more high-quality food stores in Manhattan, I hope that DCP continues to reassess the specifics of the program periodically and make further adjustments as necessary based on the changing real estate market of Northern Manhattan.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **approval** of ULURP Application No. N210380ZRY.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is fluid and cursive, with the first name "Gale" written in a more stylized, connected manner to the middle name "A." and the last name "Brewer".

Gale A. Brewer
Manhattan Borough President



City of New York
Community Board #1, Queens
 The Pistilli Grand Manor
 45-02 Ditmars Boulevard, LL Suite 1025
 Astoria, N.Y. 11105
 Tel: 718-626-1021, Fax: 718-626-1072
 E-mail: qn01@cb.nyc.gov

Donovan Richards
Borough President, Queens
 Maricela Cano
Director, Community Boards
 Marie Torniali
Chairperson
 Florence Koulouris
District Manager

EXECUTIVE BOARD

Marie Torniali
Chairperson
 Edward Babor
First Vice Chairperson
 Amy Hau
Second Vice Chairperson
 Richard Khuzami
Third Vice Chairperson
 Avninder Aujla
Executive Secretary
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Sergeant-at-Arms

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 Antonella Di Saverio
 Dominic Stiller
Health & Human Services
 Judy Trilivas
 Daniel Aliberti
Housing
 Evie Hantzopoulos
Land Use & Zoning
 Gerald Caliendo
 Elizabeth Erion
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 Avninder Aujla
Office-Staff/Budget/PR
 Marie Torniali
Parks/Recreation/Cultural
 Katie Ellman
 Kathleen Warnock
Public Safety
 Ann Bruno
 Antonio Meloni
Transportation
 Mitchell Waxman

July 14, 2021

Honorable Marisa Lago
 Chair
 NYC City Planning Commission
 120 Broadway, 31st Floor
 New York, New York 10271

RE: N 210380 ZRY Food Retail Expansion to Support Health (FRESH)
 Update Text Amendment

Dear Chair Lago:

On June 15, 2021 Community Board 1 Queens (CB1Q) held a duly advertised virtual public hearing on the referenced application. With a quorum present, the Board voted by roll call 24 in favor, 10 against and 0 abstentions, approved a motion to recommend **approval** of application N 210380 ZRY with a recommendation to expand the Proposed Expansion Area to include a high need area along Broadway near NYCHA Woodside Houses.

Background

DCP is applicant for this text amendment which was referred out to all community boards on May 19, 2021 for comment by July 27th. If approved the text amendment would:

- Expand FRESH boundaries into areas that demonstrate a high need using a Supermarket Need Index;
- Prevent concentration of FRESH supermarkets by requiring that the sum of bonus residential floor area does not exceed 40,000 SF within a ½ mile radius;
- Waive the ground floor glazing requirement for conversion projects and
- Waive part of the parking requirement in lower density areas (R3-R5) for up to 10,000 ZSF of supermarket area and modify the parking requirement to 1 space/400 SF of FRESH floor area.

Committee and CB Review

DCP representatives presented the text amendment to the Land Use Committee on May 26, 2021 and again on June 2nd. Committee members had concerns and questions that pertained to clarifying the community board's role in reviewing authorizations and Chair certifications; if the supermarket closes, what happens to the bonused floor area; parking restrictions in areas not served by mass transit can restrict number of shoppers; Woodside Houses

BOARD MEMBERS (cont.)

Helene Abiola
 Rose Anne Alafogiannis
 George Alexiou
 Louise Bordley
 Shoma Brahmanandam
 Irak Dahir Cehonski
 Jean Marie D'Alleva
 Dean O. Feratovic
 Shahenaz Hamde
 Helen Ho
 Vanessa Jones-Hall
 Nancy Konipol
 Amr Kotb
 Jerry Kril
 Cristina Lastres
 Diana Limongi
 Chelsea Lopez
 Hannah Lupien
 Jeffrey Martin
 Amin Mehedi
 Doreen Mohammed
 Mary O'Hara
 Dino Panagoulas
 Juliet Payabyab
 Yawne Robinson
 Brian Romero
 Andre Stiith
 Rod Townsend
 Rosemary Yelton

NYCHA area was excluded from the FRESH zone in CD1Q and how the need for a FRESH market is defined. A request was made that DCP take a more targeted approach to the expansion area, more closely aligning it with the area of needs index and working with the Committee and other community organizations to expand to areas of high need. The Committee voted to approve the text amendment with a recommendation to add a high need area near NYCHA Woodside Houses (southeast CD1Q) to the Proposed Fresh Expansion Area.

At the Community Board's June 15, 2021 public hearing, there were no speakers from the general public to testify on the FRESH text amendment. Board members, however, were advised that the board office received community petitions in support of the Fresh Zone Expansion Area as proposed by DCP and objected to shrinking the proposed expansion area. Some board members stated competition can incentivize lower food prices and better food options. A few wanted to limit the type of supermarket permitted in the Fresh Zone to assure affordability. There were also comments about the imbalance in benefits to the developer with FRESH floor area given and to the market operator with City tax relief compared with the possibility of affordable food prices for area residents.

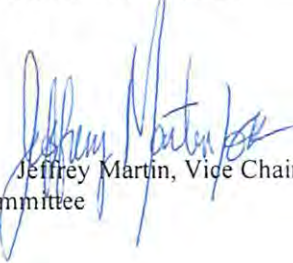
Sincerely,



Marie Torniali
Chairperson



Gerald Caliendo, Co-Chair
Land Use and Zoning Committee



Jeffrey Martin, Vice Chair
Land Use and Zoning Committee

cc: Honorable Donovan Richards, Queens Borough President
Honorable Michael Gianaris
Honorable Jessica Ramos
Honorable Zohran Mamdani
Honorable Catherine Nolan
Honorable Brian Barnwell
Honorable Jimmy Van Bramer
Mr. Frank B. Perez, New York City Council, District 22
Mr. Irving Poy, Director, Land Use, BPQ
Ms. Alexis Wheeler, Director, Queens Office DCP
Ms. Sarit Platkin, DCP



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable

# In Favor: 24	# Against: 10	# Abstaining: 0	Total members appointed to the board: 34
Date of Vote: 6/15/2021 12:00 AM		Vote Location: ZOOM- Virtual live meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/15/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Full Board Meeting Zoom (Public Hearing)

CONSIDERATION: Please see the attached letter outlining CB1, Queens perspective on N 210380 ZRY. The letter clarifies the review and findings for this text amendment. CB1, Queens letter contains recommendations for expansion area to include Broadway near NYCHAs Woodside Houses.

Recommendation submitted by	QN CB1	Date: 7/15/2021 4:18 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 21	# Against: 10	# Abstaining: 0	Total members appointed to the board: 31
Date of Vote: 6/8/2021 12:00 AM		Vote Location: via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: Local fresh farm organic goods guaranteed; Affordable produce; Emphasis on community gardens and green markets where food is grown in the community; Nutritional education given; composting. This text amendment restricted to supermarkets City chooses not allowing for competition.

Recommendation submitted by	QN CB4	Date: 6/28/2021 1:57 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable

# In Favor: 4	# Against: 14	# Abstaining: 3	Total members appointed to the board: 51
Date of Vote: 6/16/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	QN CB12	Date: 7/14/2021 12:38 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 28	# Against: 0	# Abstaining: 0	Total members appointed to the board: 50
Date of Vote: 6/8/2021 12:00 AM		Vote Location: ZOOM	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/8/2021 7:15 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	via zoom

CONSIDERATION:

Recommendation submitted by	QN CB14	Date: 6/9/2021 9:34 AM
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COMMUNITY BOARD No. 3, Q.
82-11 37th Avenue, Suite 606
Jackson Heights, New York 11372
Telephone: (718) 458-2707 Fax: (718) 458-3316
Website: www.CB3QN.NYC.GOV
Email: Communityboard3@nyc.rr.com

July 12, 2021

Community Board 3 at its monthly meeting held on June 17, 2021 reviewed and voted on the following text amendments:

Fresh Food 11

Proposed - Citywide Zoning Text Amendment: FRESH II – Grocery Store Expansion [Food Retail Expansion to Support Health (FRESH)] This proposal is aimed at helping create a fairer and more equitable economic recovery for local communities and small businesses from the COVID-19 pandemic and incentivize the creation of grocery stores in communities with healthy and fresh food access needs.

The COVID-19 pandemic dramatically highlighted the vital need for local access to fresh food for New Yorkers, especially in underserved communities. In partnership with the City Council, DCP will seek to expand the existing Food Retail Expansion to Support Health (FRESH) program, which offers zoning incentives and financial benefits to encourage the creation of convenient, accessible stores that provide fresh fruit, meats, vegetables and other perishable goods, in addition to a full range of grocery products. The new FRESH program will seek to bring the program to 11 more community districts, on top of the 19 where FRESH already applies.

The new proposal is based in part on a 2018 study of the effectiveness of the existing FRESH program as well as comments received by communities and community boards when they had previously reviewed FRESH projects.

Recommendation: Community Board 3 after review of this matter recommends that the proposed Citywide Zoning Text Amendment, FRESH II- Grocery Store Expansion, be **approved**.

Upon motion duly made to approve the application was passed with 21 in Favor, 7 Opposed and 0 Abstentions.

Physical Culture Facilities (Gyms)

Proposed - Citywide Zoning Text Amendment: Health and Fitness Text Amendment.

This proposal is aimed at helping create a fairer and more equitable economic recovery for local communities and small businesses from the COVID-19 pandemic and reduce barriers to establishing and opening gyms and other health facilities. Based on outmoded zoning regulation that date to the 1970s, exercise gyms, licensed massage therapy, martial arts studios, and spas, among other health-related businesses, are not allowed as of right in New York City and instead, these businesses are required to obtain special permission from the City's Board of Standard and Appeals (BSA) to open. The process for obtaining a permit is extremely costly, often adding six months and \$50,000 in additional startup costs to open a gym. The process creates a high barrier for small and independent businesses and is likely to slow the economic recovery of a sector that has been significantly impacted by the pandemic.

Because health and fitness facilities offer valuable and beneficial amenities to communities, DCP is working to allow these business to open "as of right," or without first seeking special permission from the City. At this time and within this pandemic climate we share a heightened appreciation for physical and mental health. This text amendment acknowledges the need for health and fitness facilities.

Recommendation: Community Board 3 after review of the proposed Citywide Zoning Text Amendment for Health and Fitness be **approved with the following conditions:**

Proviso:

- The Department of City Planning (DCP) will keep Community Board 3 informed of all applications for new facilities within Community Board 3.
- There are existing unlicensed massage parlors in Community Board 3 that have been problematic for our community. We request that the community board be notified when new facilities are approved and that they be subject to periodic inspection so as to prevent possible illicit activities.

Upon motion duly made to approve the application was passed with 24 in Favor, 6 Opposed and 0 Abstentions.



BOROUGH PRESIDENT RECOMMENDATION

Project Name: FRESH Update	
Applicant: DCP - Department of City Planning (NYC)	Applicant's Administrator: DCP - Department of City Planning (NYC)
Application # N210380 ZRY	Borough: Citywide
CEQR Number: 21DCP182Y	Validated Community Districts: CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable

Please attach any further explanation of the recommendation on additional sheets as necessary

CONSIDERATION:

Recommendation submitted by	QN BP	Date: 7/22/2021 2:43 PM
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Queens Borough President Recommendation

APPLICATION: ULURP #N220380 ZRY

CITYWIDE

DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Sections 197-d and 201 of the New York City Charter, for a zoning text amendment to update the existing FRESH Program expanding coverage as well as zoning text clarifications that would improve food choices and nutrition in underserved areas of New York City.

PUBLIC HEARING

A hybrid Public Hearing was held in the Borough President's Conference Room at 120-55 Queens Boulevard and via Zoom webinar livestreamed at www.queesnbp.org on July 1, 2021 at 9:30 A.M. pursuant to Section 82(5) of the New York City Charter and was duly advertised in the manner specified in Section 197-c (i) of the New York City Charter. The applicant made a presentation. There were no other speakers. The hearing was closed.

CONSIDERATION


Subsequent to a review of the application and consideration of testimony received at the public hearing, the following issues and impacts have been identified:

- The Department of City Planning has proposed expansion of the FRESH Program to encourage availability of better healthy nutritious food choices and development of new food stores in underserved neighborhoods. The areas to be added in this application were based on a study and an index designed to identify underserved neighborhoods;
- The FRESH Program is proposed to be expanded in Queens to Community Districts 1, 3, 4 & 14. The program is now only available to Community District 12. The FRESH Program allows floor area bonuses up to 20,000 SF in return for supermarket space over 6000 SF in the designated areas. To prevent saturation and concentration of too many markets there would be a limitation of 40,000 SF FRESH program space within .5 miles of any new proposed site. Conversions of space for participation in the FRESH Program would be allowed a waiver of the requirement for a 50% glazing with transparent materials. Parking requirements on smaller sites in lower density areas would also be relaxed.
- The Queens Borough Board approved this application by a vote of eleven (11) in favor with one (1) against with five (5) abstaining including four abstentions for cause at the July 12, 2021 meeting of the Borough Board. During discussion on the proposal the Borough President commented that it was reported that an interested applicant had difficulty in finding a staff person at the Department of City Planning (DCP) to discuss utilization of the FRESH Program. The Borough President stated that there should be a DCP point person and that there should be more coordination with the NYC Economic Development Corporation to do better outreach and marketing of the FRESH Program to developers in the eligible community districts. The Borough President also stated that Community District 13 should be included in the expansion of the FRESH program. Comments from Borough Board members included: suggested extension of FRESH Program to smaller corner stores; attention to local farm sourcing and green markets; need for guarantees on quality of food provided in the program.

RECOMMENDATION

Based on the above consideration, I hereby recommend approval of this application with the following conditions:

- Community District 13 (CD 13) should be included in the FRESH Program. Inclusion of CD 13 in the program would help with recapture of money spent by area residents who would otherwise leave the borough and NYC to purchase quality produce and food;
- The Department of City Planning (DCP) should create a unit or designate staff to be responsible for coordinating with any interested applicants to the FRESH Program to advise them and guide them through the application process. An additional responsibility would be to monitor all locations in the program for compliance and potential saturation;
- There should also be better coordination with the NYC Economic Development Corporation on outreach and marketing of the FRESH Program to developers in the designated areas;


PRESIDENT, BOROUGH OF QUEENS

7/21/2021
DATE



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 31	# Against: 0	# Abstaining: 0	Total members appointed to the board: 39
Date of Vote: 6/8/2021 12:00 AM		Vote Location: virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: Motion made and seconded to approve application as submitted.

Recommendation submitted by	SI CB1	Date: 6/10/2021 1:24 PM
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Application #: **N 210380 ZRY**

Project Name: **FRESH UPDATE**

CEQR Number: 21DCP182Y

Borough(s): STATEN ISLAND

Community District Number(s): 1

Please use the above application number on all correspondence concerning this application

Docket Description:

IN THE MATTER OF a citywide text amendment to expand the FRESH program to other underserved neighborhoods of the Bronx, Brooklyn, Queens and Staten Island. In addition, the proposal will modify rules for certification of a FRESH food store.

RECOMMENDATION:

☒ Approve

☐ Approve with Modifications / Conditions

☐ Disapprove

☐ Disapprove with Modifications / Conditions

Explanation of Recommendation, Conditions or Modification:

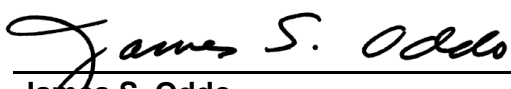
Related Application(s):

Address all questions about this Recommendation to:

OFFICE OF THE STATEN ISLAND BOROUGH PRESIDENT
ATTN: LAND USE DIRECTOR

Address: 10 Richmond Terrace, Room G-12
Staten Island, NY 10301

Phone: 718-816-2112



James S. Oddo
President, Borough of Staten Island

07/26/2021

Date



October 12, 2021

Anita Laremont
Director
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: FRESH Update Zoning Text Amendment

Dear Director Laremont:

At its meeting on October 5, 2021, the Brooklyn Borough Board (“Borough Board”) adopted the enclosed resolution by a vote of 12 yes, one no, and five abstentions, for the FRESH Update.

I applaud the New York City Department of City Planning (DCP) for developing a zoning text amendment that would offer incentives to grow the FRESH program and facilitate development of neighborhood grocery stores across the city. I support expanding the program boundary and the introduction of updates that would apply to existing and proposed areas of eligibility. FRESH provides incentives for the creation and retention of grocery stores in underserved communities that provide a full range of groceries, including fresh fruits and vegetables, meats, and other perishable goods. The program helps ensure a greater variety of shopping options, extends access to affordable food, and addresses concerns about over-saturation.

While there are clear benefits, the Borough Board is concerned about instances where the City Planning Commission (CPC) may receive requests to change FRESH food stores to other conforming retail uses that would seek exemptions from otherwise required parking. The Borough Board believes it would be inappropriate for CPC to consider such applications based merely on the passage of 25 years since the issuance of the initial certificate of occupancy (C of O). DCP has not provided a justification to support relaxing existing requirements to allow changes of use without community board input. Therefore, instead of removing a potential outyear financial disincentive to retain or reactivate a vacated FRESH food store, the Borough Board seeks to eliminate this aspect of the proposed zoning text amendment.

In addition, the depicted map used for establishing the Supermarket Need Index (SNI) in DCP's Environment Assessment Statement (EAS) indicates that significant portions of the Sunset Park neighborhood in Brooklyn Community District 7 (CD 7) have a high concentration of food deserts. Moreover, since this map was prepared, the Red Hook neighborhood in CD 6 has lost two-thirds of its supermarkets, including the two most proximate to the New York City Housing Authority (NYCHA)'s Red Hook Houses. Finally, while the northern end of CD 14 does not currently have deficiencies, this section includes multiple single-story taxpayer supermarkets with extensive development rights, which threaten the long-term existence of these stores. The Borough Board seeks to limit the applicability of the FRESH zoning floor area exemption to development sites already occupied by single-story supermarkets.

One area proposed for extension, the western section of CD 12, is listed in the SNI as having an absence of FRESH food stores. However, this section of CD 12 contains many specialty food stores that collectively provide shoppers with abundant fresh food, in a neighborhood where patrons typically shop by visiting multiple food merchants. The Borough Board recognizes that these existing stores provide a supply of fresh foods equivalent to what would be found in a grocery store and does not believe that this section of CD 12 meets the definition of a food desert. Therefore, the Borough Board calls on DCP to remove this area from consideration.

Should you have any questions, your office may contact my director of Land Use, Richard Bearak, at (718) 802-4057. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Eric L. Adams".

Eric Adams
Brooklyn Borough President

EA/rb

enc.

cc: Members of the Brooklyn Borough Board
Winston Von Engel, Brooklyn Office Director, New York City Department of City Planning
Frank Ruchala Jr., Director, Zoning Division, New York City Department of City Planning



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: FRESH Update			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210380 ZRY	Borough:	Citywide
CEQR Number:	21DCP182Y	Validated Community Districts:	CY00

Docket Description:

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article VI, Chapter 3 (Special Regulations Applying to FRESH Food Stores) and related Sections, to expand areas in which the program is applicable and to update various requirements.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable

# In Favor: 12	# Against: 1	# Abstaining: 5	Total members appointed to the board: 17
Date of Vote: 10/5/2021 12:00 AM		Vote Location: Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 10/5/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex

CONSIDERATION:

Recommendation submitted by	BK BP	Date: 10/13/2021 2:14 PM
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