

Testimony

F. Carlisle Towery
President, Greater Jamaica Development Corporation

to

New York City Council
Sub-Committee on Zoning & Franchises
Anthony Avella, Chairman

Public hearing on the Jamaica Plan
of the New York City Planning Commission

City Hall
Council Chambers, Room 5

July 23, 2007

Thank you, Chairman Avella and Councilmembers, for this opportunity to applaud a huge step forward for Jamaica, and to commend the superlative efforts of the Department of City Planning and the constructive involvement of Community Board 12.

I am Carlisle Towery, President of Greater Jamaica Development Corporation. We are a not-for-profit organization devoted exclusively to downtown Jamaica -- addressing its problems and realizing its special potentials. Our work is high in public purpose. We celebrate, this year, our 40th year of effort in what is, we submit, an exemplary public-private partnership. We salute our very able and active elected officials. The results of their collaboration in this rezoning will be a hotel, office jobs, affordable housing, quality shopping, amenities, cultural activities -- a renewed downtown that is transit-oriented and a safe and hospitable, efficient place that better serves its neighborhoods and functions as a prominent multi-purpose center for Queens and the region.

Our work is focused on a core area of the Jamaica Central Business District, bounded roughly by Hillside Avenue on the north, Liberty Avenue on the south, 170th Street on the east, Van Wyck Expressway on the west. We enthusiastically support the proposed Jamaica Plan with its Special District, and the related actions being considered -- the **re-zoning** of this area, (with text amendments we will outline, so as to enable key projects), the small **urban renewal district** around AirTrain/Jamaica Station, and the several proposed **infrastructure improvements** there, including de-mapping of a street section, the latter being considered in a separate ULURP action today.

This welcome action is a culmination of exceptional communication and collaboration among the City's planners, government agencies and the Downtown Jamaica community.

For us, this re-zoning began with "Vision 2000" a three-year process that reported to community leaders and an inter-agency group. That effort was prefaced by much analysis by the Queens Department of City Planning and by projects and program in our cooperative work with DSBS, EDC, and the PANY/NJ.

So today's action reflects completion of a key phase in Jamaica progress, but more importantly it represents a particular beginning. It is the start of a serious initiative focused on attracting and accommodating private investment; we are at a pivotal point in Jamaica's improvement.

Please note that urban renewal has meant much for Jamaica! Sites for: York College, a public school, two federal anchors; two new courts; industrial job retention and reinvestment, a commercial/theatre complex, a multi-service center, a mental health center, 1,000 units of housing (mostly owner-occupied), NYPD Crime lab, performing arts center.

The City's role in the revitalization of this community and its downtown has indeed been productive and beneficial for Jamaica's citizens. The City's administration of its urban renewal program over the last 30 years here has been sensitive and benign. We are confident this will be true of the small, 3-block proposed area in this action.

Our work is premised in large part on the primacy of jobs. The location of jobs shapes local economies; the quality-of-life there is determined mainly by the quality of the local economy. And we have learned that job locations produce the most public benefits when their development is transit-related, reducing reliance on the automobile -- generating fewer journeys-to-work by automobile.

The action you consider today positions Jamaica by enabling it to accommodate the growth which its assets and locational attributes make possible. Jamaica's strengths are considerable

- easy accessibility to a large and skilled labor force;
- its direct rail connection to JFK Airport and proximity to both JFK and La Guardia airports;
- its location, central in Queens and midway between the Manhattan CBD and Long Island suburbs

More jobs in Jamaica will mean shorter commutes and material time-savings for many thousands of workers.

More jobs in Jamaica would mean utilization of unused transit capacity -- a precious resource now wasted. (LIRR trains return to Jamaica in the peak hours 80% empty. This action follows cities who have intelligently influenced the placement of jobs, and housing -- origins and destinations -- at both ends of their transit systems to insure utilization both ways.)

Our plans for Downtown Jamaica envisage affordable housing and retail services that support job development. And we see the supportive potentials of linking the arts with local economic development, and providing amenities and open spaces. This rezoning enables clustering these uses around Jamaica's transportation nexus; it promotes transit-oriented development.

We have respectfully asked our City planners to give special attention to three matters that warrant in our view, inclusion in this Jamaica Plan.

1. It is vital that the FUCA to the Proposed Zoning Text Amendment Establishing the Special Downtown Jamaica District be processed and adopted expeditiously. These text amendments address two problems not previously resolved in the text that, if not remedied, would preclude development on the key station area sites. We have been informed by the staff of the City Planning Department that the FUCA will be referred out of the City Planning Commission on August 8th. It is essential that this take place as scheduled.
2. Sutphin Boulevard property owners have brought to our attention that the Rezoning could take better advantage of key sites surrounding the Court Houses there. As a result, we would urge consideration of a new, special Court House district along Sutphin Boulevard that would allow for higher density immediately across the street from the Court Houses. Increased density would create the possibility of the development of modern offices for attorneys and others who serve the courts that is currently incorporated in the Plan.
3. We recognize that concerns have been raised about changes to the zoning along Hillside Avenue. On the portion of Hillside that is within the area on which we focus – west of 170th Street – we believe that fostering mid-rise residential development along a wide boulevard that is particularly well served by both bus and subway would be an asset to the neighborhood. Housing and related uses there would be desirable and would strengthen our downtown development objective.

We have made known our strong support for Assemblyman William Scarborough's recommendation to the Mayor for an active multi-agency task force working concurrent and coterminous with the rezoning. His advice reflects concerns uppermost in the minds of many people in Southeast Queens. Attached is our letter to the Mayor commending the Assemblyman's proposal.

QUEENS CIVIC CONGRESS

Patricia Dolan
Executive Vice President

The Jamaica Plan

070314ZMQ; 070315ZRQ; 070316HUQ; 070317HGQ; 070322HDQ;
070318PPQ; and 070158MMQ

City Council
July 23, 2007

I am Patricia Dolan, executive vice president of the Queens Civic Congress, a coalition of more than 110 community, tenant, co-op and condo and homeowner organizations representing every corner of Queens--including South-east Neighbors, Hollis Park Gardens Civic, United Neighbors, Cambria Heights Civic and other South-east Queens neighborhood based civics.

The Queens Civic Congress supports the proposal for Jamaica Center. This part of the Jamaica Plan would create a greater concentration of commercial and residential development in the Special District (Gateway Area) and provide long overdue opportunities for residential development and business growth.

When the Plan turns to the low density, low rise neighborhoods adjacent to Jamaica Center, it reinforces the kind of heedless, unplanned, overdevelopment that has burdened these communities in recent years. The Jamaica Plan for the smaller, outlying residential neighborhoods of Jamaica is deeply flawed and fails to follow the example of recent zoning actions. In those rezonings of several Queens neighborhoods, the Department of City Planning completed contextually accurate rezonings that closely reflect the character of each block and section. We urge the Council to separate these Jamaica neighborhoods from the Plan and to direct the Department of City Planning to undertake a fast follow up rezoning of them.

The Jamaica Plan's proposal for Hillside Avenue would introduce high rise, high density, out of scale development to a swath of Queens that could not support the influx of thousands of new residents and the impacts they would bring. The Plan would **establish Hillside Avenue as a model for future development of the borough's major corridors, using Fourth Avenue in Brooklyn as a template—an unacceptable prospect that Queens communities will not accept.** We urge the City Council to remove Hillside Avenue from the Plan.

The Plan allows continued, largely uncontrolled growth of waste transfer stations and other noxious uses in the manufacturing districts without protecting small homes that preexist the creation of the M districts. The Plan's proposals for these manufacturing districts do not Correct any of the burdens these facilities impose on Jamaica—nor does it explain how to develop a thriving business core within sniffing distance of a concentration of waste transfer stations.

The Plan offers developers of "inclusionary housing" opportunities to build higher and bulkier buildings without requiring developers to produce on site "affordable" housing units for current residents of Jamaica. The Congress will not support exporting affordable housing from the neighborhoods where it is most needed.

We urge the Council to make good its promise to the people of Jamaica to "fix" the inequities of the Jamaica Plan by sending it back to the Commission for correction.

Patricia Dolan, executive vice-president of the Queens Civic Congress can be reached at 718 263-1760.

STATEMENT ON BEHALF OF THE BRIARWOOD COMMUNITY ASSOCIATION
RE: THE JAMAICA REDEVELOPMENT PLAN

The proposal for up-zoning the Hillside Avenue Corridor as part of the Jamaica Development plan, to include a portion of Briarwood, reflects the expressed policy of our city's current administration to create conditions for the major expansion of population through upzoning. This far-sighted posture is laudable, but in this instance does not withstand the test of open-minded thinking.

The optimistic notion of encouraging and imposing such large, dense multi-unit buildings out of context with the community's current zoning for one and two-family private homes is completely lacking in any consideration for, nor in addressing the necessary maintenance and repair of our currently aging infrastructure in our neighborhood that would be a necessary concomitant in serving such population increases. We in particular share and suffer the sad realization that all of New York City's infrastructure is growing increasingly old and obsolete, and is hardly ready to meet the service needs of an expanding population. Such a process creates a peculiar toxicity that leeches into every aspect of neighborhood life.

There are sections of Briarwood adjacent to the Hillside Avenue Corridor that continue to suffer from known long term water supply pipe leaks, sub-standard water pressure and drainage problems that have undermined and destroyed homes, power brownouts, irregular telephone service and lack of police presence. Add to it the generally dirty, overcrowded subway service and insufferable surface transportation, and the latest reports by the MTA that our subway line is currently at 100% of capacity and simply cannot increase its service. And who can ignore our underserving public libraries and shortages of school facilities with overcrowded classrooms. These are the increasing problems of daily living: the lack of school after-school programs, youth, senior and health centers, and acute inadequacy of street parking.

Altogether, we are witness to the savaging of our quiet communities and homes, the loss of low density, public lands, grass, trees and open spaces that are increasingly giving way to unfettered development and population increases. Its concentration is intense, creating a welter of enmeshed problems that fuels spiraling quality of life issues, and an air of hopelessness that leeches into every aspect of neighborhood life. It is an invitation to tragedy that is gliding our neighborhoods and city into a depression of overcrowding, increased foulness and tumult.

For these reasons, we in Briarwood are opposed to City Planning's current proposal for upzoning along the Hillside Avenue corridor. Together with the other affected neighboring communities, we have been unified in our call for a modification of the plan as we have proposed and previously submitted. However, the current position of Department of City Planning, its refusal to address our concerns for the need for significant infrastructure improvements before any new zoning should be enacted, the disingenuousness of its Final Draft Environmental Impact Study, and the fact that DCP has not adopted any of the suggestions contained in a counter-proposal offered by the Briarwood Community Association together with the other affected communities, we have now elected to take our counter-proposal off the table and prefer to leave the existing zoning in place.

We urge the members of the City Council to reject the irrational, flinty and unserviceable proposal by the Department of City Planning for the Hillside Avenue Corridor.

Seymour Schwartz, President

For further information, please call (718) 657-9163

TESTIMONY OF KEVIN J. FORRESTAL
THE JAMAICA PLAN
PUBLIC HEARING
Zoning & Franchises
July 23, 2007

Good morning Chairman Avella and committee members. My name is Kevin J. Forrestal, and I am President of the Hillcrest Estates Civic Association. I am speaking this morning on behalf of my civic association. I am also a member of Community Board 8 and the former Community Board 12's Ad-Hoc Committee concerning The Jamaica Plan.

First I will speak about Hillside Avenue. City Planning has spoken about what could be built because of how it was zoned in 1961. They say what they propose would not allow for buildings that are not much taller than what could be built today. What happen to looking at what the condition are today? Where has contextual zoning gone? In fact there are three pods on Hillside Avenue where there are high rise buildings; the rest are one and two story buildings. Why conform to the exception.

The goals of The Jamaica Plan are laudable. However, the Plan is critically flawed! Since the introduction of the Mayor's NY2030 initiative the "in word" has been sustainability. In our view this plan is not sustainable.

During CB 8 and the Ad-Hoc Committee meetings there were extensive discussions concerning infrastructure issues. The Ad-Hoc committee prepared questions for many City Agencies and other critical suppliers of resources. This was done to allow the committee members an opportunity to measure the preparedness of government agencies and utilities to The Jamaica Plan and beyond. Only New York City Agencies responded. With the exception of Department of Environmental Protection (DEP), the responses were public relations spin. Our fears were confirmed. They could not demonstrate that they are prepared.

Let us look briefly at one agency that has a plan--DEP. On January 19, 2007 Commissioner Lloyd and her staff made a presentation to the Queens Borough President about ground water in South Jamaica. This presentation did not account for the Jamaica Plan. Commissioner Lloyd stated it would take "30 to 50 years to complete the needed sewer work". At CB 12s meeting on April 11th, 2007, Commissioner Lloyd stated, "20 to 30 years." In the DEP response to the Ad-hoc committee's questions, the DEP states that some of the work will not be complete by 2030. The growth projected in the RWCDs is complete in 2018. They will not be ready on time.

Hillside Avenue has seepage drainage not storm sewers. Every major rain brings flooding. I urge you to take the proposal for Hillside Avenue rezoning out of the proposal and send it back to DCP so they can do it right.

FOR THE RECORD

Melinda R. Katz
Chairperson, Land Use Committee
New York City Council
City Hall
New York, NY 10006



July 23, 2007

Re: The Jamaica Plan

Dear Council Member Katz:

The New York Metro Chapter of the American Planning Association represents more than 1,250 planners, designers, engineers and other professionals involved in planning for the region's communities. Our members work in the private sector, in nonprofit organizations and in government agencies to address planning issues affecting the physical, social and economic environment of the metropolitan region (New York City, Long Island and the Hudson Valley). We are part of the American Planning Association whose 46,000 members are dedicated to creating livable communities of lasting value.

The NY Metro APA Chapter is particularly committed to promoting planning-related public education, encouraging broad participation in planning decisions, and collaborating with other organizations to advocate the highest standards of the planning profession.

The Jamaica Plan

The APA commends the Department of City Planning on a rezoning that will positively shape 368 blocks of the Jamaica area for years to come. The Jamaica Plan should create new economic growth and housing through mixed-use, transit-oriented development in Downtown Jamaica; new development on underutilized blocks in the area adjacent to the Jamaica Long Island Rail Road and AirTrain stations; preserve the scale and density of existing neighborhoods; and protect industrial uses.

Given the ongoing need for affordable housing and the possible socioeconomic changes in the Jamaica area, the APA supports using a floor area bonus for provision of permanently affordable housing through the Inclusionary Housing Program.

With the Jamaica Plan, City Planning is staying ahead of the development curve and putting its imprint on an area where growth is expected to be

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accommodated in years to come. To maximize the effectiveness of this rezoning plan, the APA wishes to offer a number of recommendations for critical followup by the Department or the City. These recommendations are largely related to appropriate densities, infrastructure upgrades, and interagency coordination:



Manufacturing Districts

- The proposed action is expected to result in a net decrease of 500,000 square feet of industrial space. While the DEIS states that the changes are expected to occur in areas where manufacturing uses are in decline, the APA encourages active protection of industrial uses in the manufacturing districts which are to remain, as well as relocation of displaced businesses. Such protection could be facilitated through coordination with the Industrial Development Agency and other appropriate organizations and we would like to see this work begin.

Contextual Residential Districts

The APA supports the Jamaica Plan's downzoning to R3A., R3X and R4-1 districts in areas where one- and two-family homes predominate. APA also commends the introduction of a "transition rule" for providing a buffer where R6 or higher districts abut R5 or lower districts. This is an innovative tool that could be useful in other parts of the city.

- Given community concerns over the increase in density along Hillside Avenue, we urge City Planning to consider further measures, such as a greater buffer, to address concerns about new density.

Accommodation of High-Density Development

The expected net increase of approximately 3,400 housing units and potential increase of 3,000,000 square feet of commercial space will help to accommodate a portion of the tremendous growth that is expected in the coming years. Downtown Jamaica's convenience to the Long Island Railroad, the Airtrain and multiple subway lines makes it particularly suitable for such growth and we support the upzoning to C6-2, C6-3, and C6-4 districts. Additionally, the creation of the Special Downtown Jamaica District (SDJD) with controls pertaining to glazing, streetwalls, retail frontage and other streetscape elements should result in an attractive healthy, viable Downtown Jamaica with a strong mix of uses.

Given the tremendous amount of growth that is facilitated by ambitious rezoning proposals such as the Jamaica Plan, we believe it is incumbent on the

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Department of City Planning, along with the City, to take a more active role in planning for infrastructure and public amenities necessary to comfortably and sustainably accommodate such growth. This may involve working closely with the Mayor's Office on implementation of PlaNYC and greater interagency coordination.



With respect to the expected growth in Jamaica, we recommend further review and greater participation by City Planning in the following areas:

Open Space

- The proposed rezoning is expected to reduce passive open space ratios by 8.6% in the non-residential study area and by 6.5% in the residential study area. APA urges further open space creation in additional areas more convenient to the expected increases in density. Well-planned open space for lunch areas, respite places and sunshine are crucial elements in a high-density area.
- We urge City Planning to consider additional areas for public open space, including existing City land or acquisition of vacant or blighted land for open space use. One possible tool to assist in the creation and improvement of open space would be a District Improvement Bonus, such as that currently being utilized in the Hudson Yards District and Greenpoint-Williamsburg. The APA also encourages interagency coordination with the Department of Parks and Recreation to ensure the improvement of existing open spaces inside or adjacent to the area of the Jamaica Plan.

Sewer and Water

A number of communities in the vicinity of Jamaica have experienced water supply and sewer system problems in recent years. These issues in the area must be addressed and improved if the area is to accommodate additional development density.

- Although the Department of Environmental Protection may have actions planned in the study area which are to improve the water and sewer systems, the City must coordinate the anticipated new development with such improvements. A district improvement bonus or requirement for on-site infrastructure upgrades may help facilitate necessary improvements.



Energy

The DEIS states that Con Edison has identified a number of service upgrades to better serve the Jamaica community's existing needs and future growth.

- In areas where the existing energy infrastructure is overburdened, we would like to see City Planning consider policies which require that certain energy-intensive uses or commercial buildings of a certain size utilize alternative energy sources such as solar energy, on-site generators, or co-generation.

Traffic & Parking

- The APA urges close coordination between the Department of City Planning and the Department of Transportation to ensure that the anticipated signal and roadway improvements are followed through to completion and appropriately monitored for success.
- We also would prefer to see no minimum parking requirements within the Downtown Special District and closest to the transit hub. Additional parking in these areas uses valuable land that could be dedicated to active uses and increases the cost of development by requiring tenants to pay for parking they may not need due to alternative modes or existing excess capacity.

Transit

- We urge the City to engage MTA so that the agency is informed of all anticipated impacts and can plan accordingly. City Planning should make the MTA aware of all anticipated impacts so that the agency can plan accordingly.

Bicycle Network

- To further encourage the use of non-automobile transportation, APA encourages the implementation of bicycle routes as proposed in the City's Master Bicycle Plan and based on the identification of potential major biking corridors in relation to redevelopment areas, transit stations, and open space.
- To further support and encourage cycling, we urge City Planning to include requirements for on-street and off-street bicycle parking as part of the proposed Special Downtown Jamaica District.

Conclusion

The NY Metro Chapter of APA supports the City's Jamaica Plan. However, such an ambitious rezoning proposal creates growth which stresses overburdened infrastructure and may disrupt stable communities. Rather than relying on outside agencies or private parties to address emergent infrastructure problems, we urge the Department of City Planning to take a more active role in addressing these issues through zoning controls and inter-agency coordination. We also urge continuing coordination with the local community boards as ULURP proceeds.



Monday, July 23, 2007

Testimony of Samuel Henderson, 108-30A Liverpool Street, P.O.Box 350127, Jamaica, NY 11435; twc7182914339@earthlink.net; (Phone)718 291 4339; (Fax) 718 291 4852

Thank you for the opportunity to come before you today to address the Jamaica Plan. I will limit my remarks to neighborhoods.

- Our one and two family neighborhoods are in jeopardy in Jamaica.
- The down zoning proposed by Queens Department of City Planning does not go far enough.
- The infrastructure is not adequate to handle our current population. The agencies have admitted to the CB12 Ad hoc Committee that they are not prepared for the proposed growth.
- Former Councilmember Archie Spigner has summed it very well. Our people want and are entitled to: air, light and a place to park their car in front of their homes. That is why we moved to Queens. This is what we want to preserve.
- John Young, Queens Director of the Department of City Planning, has promised to do a follow up so as to fine tune the contextual zones, both in and out of scope, of our neighborhoods, but this promise has not been put in writing.
- We are asking City Council to direct the Queens Department of City Planning to undertake a fast follow up of this matter.
- For details, I direct you to the suggestions made by the CB12 Ad hoc Committee's Alternative Plan of which I am a member.

Thank you again.


Samuel Henderson/Member/AHC

Testimony on the Jamaica Plan
to the City Council Zoning & Franchises Subcommittee
Brad Lander, Pratt Center for Community Development
May 23, 2007

Chair Avella, members of the committee, thank you for this opportunity to provide testimony today. My name is Brad Lander and I am the director of the Pratt Center for Community Development, a university-based center that works for a more just, equitable, and sustainable city for all New Yorkers by helping communities to plan for and realize their future.

The Pratt Center was honored to work with Community Board 12's Ad Hoc Committee on the Jamaica Plan. We have deep respect for their work, and all of the time, research, and passion they have put into this effort. We encourage you to give serious consideration to their position, which we believe reflects strong sentiments within the community. Our testimony today, however, is our own.

In general, the Pratt Center supports the City's approach to balanced rezonings that allow for a mix of neighborhood preservation with targeted growth in business centers, and along major transportation and transit corridors, with inclusionary zoning to insure that some of the housing will be affordable. In a city projected to grow by nearly 1 million people by 2030, in a borough where recent and future growth are adding tremendous economic and social vitality, and in the face of an intense affordable housing crisis that is squeezing hundreds of thousands of Queens residents, we need to find appropriate places for growth and development.

We believe that the City's plan for Jamaica offers a reasonable balance of preservation and growth, and we support its adoption. We know that there are community concerns about some of the corridors targeted for growth; however, we believe that avenues such as Hillside Avenue are appropriate places for additional development.

At the same time, for that growth to truly work for this community, we believe that some meaningful modifications are in order. We urge the City Council to adopt and modify the plan to:

- **Amend the urban renewal plan to require both (a) 50% affordable housing, and (b) living wage jobs, employment and business opportunities for Jamaica residents on or urban renewal sites** that the City takes through eminent domain and/or offers through RFPs.
- **Commit to piloting a new "displacement mitigation tax credit" to protect tenants** in small buildings from being displaced by rising rents, a significant problem identified in the DEIS.
- **Do more to address critical infrastructure, transportation, parking and school needs** that already exist in Jamaica, and that growth will strain further unless concrete action is taken.

Create and Preserve Affordable Housing and Good Jobs

The need to create & preserve existing affordable housing in Jamaica is clear. Over the past three years across New York City, real incomes have fallen, while rents have risen significantly. According to the Jamaica Plan DEIS, in the total study area, median incomes have dropped almost 16% from \$47,478 in 1989 to \$39,940 in 1999. Yet home values, especially 1 and 2-family residences have had a sharp increase of 77%. Between 1991 and 2004, one-family home prices increased from \$189,500 to \$335,000; two-family home values increased by 89 percent, and small walk-up apartments increased by over 100% from \$254,000 and \$517,000. This trend has significantly increased the housing cost burden on Jamaica households, particularly for working families such as health care workers, salespeople, office clerks, and day care workers.

We need to create more affordable units to address this need, and the downtown areas and transit corridors identified in the Jamaica Plan are appropriate locations to do so. In addition, we need to preserve the affordable housing that already exists. While we think of Jamaica as a homeownership community, nearly two-thirds of the housing units (65%) in Jamaica are rentals, mostly in small homes. According to the DEIS, 43% of tenant households (5,246) in the project area are vulnerable to indirect residential displacement because the units are located in small buildings not protected by tenant laws.

In addition to creating and preserving affordable housing, the Jamaica Plan can do more to guarantee good jobs for local residents. The urban renewal and downtown revitalization plans have the potential to create many jobs and business opportunities. But we need to make sure that these create quality jobs for local residents.

We therefore urge the following amendments to the plan:

- **Amend the urban renewal plan to require both (a) 50% affordable housing, and (b) living wage jobs, employment and business opportunities for Jamaica residents on any public or urban renewal sites** that the City takes through eminent domain and/or offers through RFPs. To create more development opportunities, the Plan includes the designation of Jamaica Gateway Urban Renewal Area (JGURA) of three blocks around the Air Train Station in Downtown Jamaica. The JGURA plan projects a total of 2.1 million sq. ft. of commercial development and 206 new residential units.

To address issues of affordable housing, the Urban Renewal Plan should be modified to require that:

- At least 20% of the units should be affordable to low-income families.
- 30% of the units should be affordable to moderate and middle-income.
- The affordable housing units created must be affordable in perpetuity.

To address job opportunities, the Urban Renewal Plan should be modified to require that developers, construction contractors, firms with building maintenance contracts, and major retail and office tenants:

- **create first source hiring systems** intended to maximize employment opportunities for disadvantaged residents, and especially those from the immediate neighborhoods; and
- **pay prevailing wages and benefits** to insure that jobs created through publicly-supported economic development in the area are sufficient to support a family.

- **Pilot new tools, such as a “displacement mitigation tax credit” to protect tenants in small buildings from being displaced by rising rents, a significant problem identified in the DEIS.**

To address the risk of secondary displacement identified in the DEIS, we recommend that the City pilot a new “displacement mitigation tax credit” to benefit landlords who continue to rent to low-income tenants at affordable rents. This would give an owner a property tax credit worth 50% of the difference between the affordable rent they are charging and the market-rate rent they could get if they kicked out the existing tenants. This would encourage landlords to be good neighbors, help enable tenants to stay in this community as it grows, and provide a very cost-efficient way for the City to preserve affordable housing.

Providing a more solid infrastructure for growth

Finally, we are concerned that the plan as it currently exists does not do enough to provide a solid infrastructure for growth. When the City is proposing significant new development, especially in the face of local concerns, it is imperative that the plan provide adequate physical and social infrastructure. We hope that more can be done to address the community’s genuine concerns:

- **Parking needs:** To address the severe parking shortage identified in the DEIS, the City should commit to develop at least one new parking structure, and explore alternate mitigations such as variable rate MUNI meters, public bicycle parking, and residential parking permits.
- **Traffic & transit:** Reconsider the demapping of 148th Street and explore instead reconnecting it under the LIRR tracks, creating a much-needed new north-south connection. Explore traffic calming along Parsons Boulevard (which now features 3 of the 10 worst intersections for pedestrians in the borough). Explore better bike lanes that do not conflict with bus routes. And consider additional plans for bus rapid transit, LIRR, and subway service that help to reduce congestion and accommodate growth (e.g. better service to eastern Brooklyn stations, to provide a convenient commuting option for workers in those neighborhoods to work in Jamaica).
- **Water & sewers:** DEP should provide a more specific scope and timeline for its water supply trunk main project, and new drainage plan, to address severe gaps in water supply & sewers.
- **Schools:** Finally, but perhaps most important, the Commission should insist that SCA provide a specific plan and timetable for where the 9,000 new permanent seats are going to be located, and additional seats should be developed so that TCUs (trailers) can be removed. The City should explore sites within the JGURA and the Jamaica Center for potential school development.

With these modifications, we believe that the Jamaica Plan can help to make this an even greater community in the years and decades to come. Again, thank you for this opportunity to testify.



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DISTRICT MANAGER

Commissioner Burden, Council members, and other city officials.

Good Morning. I, Gloria Black, Chairperson of Community Board 12, Jamaica, NY, thank you for the opportunity to participate in this public hearing, the results from which, will affect the core of residents' existence.

Having been a resident, a homeowner for 45 years in the area, I have seen a beautiful residential site and blooming economical corridors deteriorate in infrastructure, economic development, health, sanitation conditions, unemployment and educational opportunities dwindle. We the residents have not sat by and watch this happen without concern, but it has taken 30 plus years for "sleeping giants" to wake up, and public officials to truly become accountable to us. We currently intellectually understand what has happened and we are now energized to work with you through cooperative effect for a new birth in opportunities for Community Board 12.

It has been a struggle for two plus years in Jamaica with rezoning, but I do commend and hail City Planning for cooperation with the board, committees, and individuals who desire a positive quality of life restored to our community. This is a humanistic, and constitution right for all of my people.

Shifting gears, I reviewed the City Planning Commission's modification, summary which involves Hillside Ave, east of Midland Parkway/181st Street to 191st Street, Jamaica Ave, Liberty Ave, Merrick Blvd., and the Special District (details will be shared by City Planning - I am sure). Text changes have been made for businesses bounded by 95th Ave, 147th Place, 97th Ave, and 148th Street. These changes, I understand will give non-conforming concrete production businesses in a proposed R5 district the ability to expand within 10 years of the adoption of the rezoning.

Two other text changes have been made related to environmental conditions. Safety values have been incorporated in the draft as recommended in the E.I.S. report to control air emissions. Brownfields are under study and financed by agencies of the State.

Residents commend the agencies for its fine work; however, we want more profound and effective plans included in projects. Continued deleterious waste stations and putrescibles exist. There must be restrictions in place and law enforcement adhered to.

In spite of the perceived positive modifications to rezoning, CB12 is on watch, is cooperating with stake holders and is launching a campaign to monitor the following:

1. Congested and inadequate public parking.
2. Overcrowded housing developments.
3. Creeping high density modules. Negotiations continue to be held for low density in areas of close proximity to 1 and 2 family structures.
4. Employment for indigenous residents, particularly for African Americans and Women.
5. Eminent Domain proceedings of 7 properties

We have stressed and reinforced that the property owners must be given the Right to Refusal and ancillary amenities must be given to them if they desire to relinquish ownership on designated sites of any ongoing project.

The re-zoning plan is not picture perfect, therefore, CB12 and its residents will continue to partner, network, and hold significant conversations to protect and to advance our desires for Jamaica.

Thank you again for this public hearing.

Gloria Black
Chairperson
Community Board 12, Q

FOR THE RECORD



Partnership for New York City

THE JAMAICA PLAN

TESTIMONY SUBMITTED TO THE CITY COUNCIL COMMISSION ON CITY PLANNING ZONING SUBCOMMITTEE

MONDAY, JULY 23, 2007

KATHRYN WYLDE
PRESIDENT & CEO

PARTNERSHIP FOR NEW YORK CITY

The Partnership for New York City represents the city's business leadership and its largest private sector employers. It is committed to working in partnership with government, labor and the non-profit sector to enhance the economy and create jobs.

We believe the plan before you today will usher in a new phase of economic growth for this area and solidify the significant public and private investment that has been made in the area over the past two decades.

Through its housing programs, the Partnership was a major participant in the redevelopment of South Jamaica during the 1980s and early 1990s. The Housing Partnership was responsible for construction of nearly 1,000 units of affordable housing in collaboration with the city, state and community organizations, which helped helping spur widespread economic revitalization in the area. We also supported a number of minority-owned development and contracting firms, including R.W. Hall and Kendrick Jobe, which have made a major contribution to minority participation in the city's affordable housing industry.

This Jamaica Plan is one of the largest rezoning efforts in the City's history. It will provide long-needed zoning updates to approximately 368 blocks in Downtown Jamaica and portions of the adjacent neighborhoods. The plan capitalizes on the area's excellent transportation infrastructure and proximity to the JFK AirTrain station and the Airport.

Finally, the plan would provide opportunities for 3,400 new units of housing to be provided over the next ten years in residential and mixed-use developments at higher densities in and near Jamaica's downtown. Few places in NYC could offer such a rich opportunity.

Increased residential density is the only way to insure a strong and vibrant future for Jamaica. There has never been the population density in the communities surrounding the central business district needed to attract and sustain high quality commercial and retail activity. The proposed zoning will not only match the scale of existing buildings but also will facilitate new affordable housing as well as the preservation --in perpetuity-- of existing affordable apartments in Jamaica.

Under the plan, building height restrictions and affordable housing requirements would be in place to protect the integrity of the existing neighborhood, while providing new housing and commercial opportunities. The new businesses, residents and planned planting of street trees would contribute to an improved corridor for shopping and walking.

The timing of this plan and its approval is important. Mayor Bloomberg has launched a long-term plan and sustainability program for the city that will involve investment of billions of dollars in upgrading city infrastructure and improving neighborhoods. As a transportation hub that has been underutilized, downtown Jamaica is ideally positioned to benefit under this plan and to quickly see long-awaited development come to fruition. We urge the City Council to take advantage of this unique opportunity to establish the zoning and planning framework that will insure a prosperous future for this important area of our city.

**Testimony by
Fran Vella-Marrone
President of
The Dyker Heights Civic Association
Before the NYC Council Subcommittee on Zoning and
Franchises
Reference to ULURP Application No. 070387 ZMK**

July 23, 2007

I would like thank the Chairman of the City Council Subcommittee on Zoning and Franchises, Councilman Tony Avella, for this opportunity to present my views here today and all the members of the committee for your consideration.

On behalf of the officers and members of the Dyker Heights Civic Association, I am speaking in favor of the Department of City Planning's Dyker Heights / Ft. Hamilton rezoning proposal.

First, I would like to thank the Department of City Planning for their efforts on behalf of the Dyker Heights community, specifically Director Amanda Burden, Brooklyn Director Purnima Kapur and Project Manager Richard Jacobs. I would also like to thank Community Board Ten for all its hard work in making this rezoning a reality and our local elected officials for their support including Councilman Vincent Gentile.

This rezoning proposal is the result of years of hard work, dedication and a belief that working together we could maintain the good quality of life in our community.

Dyker Heights is made up of mainly one and two family homes, which like other similar neighborhoods in NYC, has experienced the negative effects of overdevelopment. This proposal will virtually halt this type of development and as such will ensure that Dyker Heights will retain its existing character.

We at the Dyker Heights Civic Association are proud to have played a role in this down zoning and look forward to it final approval.

Thank you.

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FOR THE RECORD



NEW YORK
BUILDING
CONGRESS

BY HAND AND U.S. MAIL

July 20, 2007

The Honorable Melinda Katz
Chair, Land Use Committee
New York City Council
250 Broadway, 17th Floor
New York, NY 10007

The Honorable Tony Avella
Chair, Zoning and Franchises Subcommittee
New York City Council
250 Broadway, 17th Floor
New York, NY 10007

Dear Council Member *Melinda* Katz and Council Member *Tony* Avella:

On behalf of the New York Building Congress, please accept this letter in lieu of testimony at the July 23 public hearing of the Zoning and Franchises Subcommittee on the proposed rezoning plan for Jamaica ("Jamaica Plan" or "the Plan").

The Building Congress is the City's largest and most diverse coalition serving the design, construction and real estate industry, involving 1,500 members from 400 constituent organizations. Part of our mission is to evaluate major government initiatives and promote productive capital spending. Our members are keenly interested in well-planned development and related mass transit investments that improve New York's economic health and quality of life.

Over the past several months, the Building Congress has enthusiastically supported the Jamaica Plan, urging Queens Borough President Helen M. Marshall and the City Planning Commission ("CPC") to give it favorable consideration. The Building Congress continues to endorse this important initiative by the Department of City Planning, because it will build on the area's existing strengths to help Jamaica realize its significant growth potential.

The Jamaica Plan presents a comprehensive rezoning strategy that capitalizes on Jamaica's pivotal location and transit infrastructure to maximize the opportunities for commercial, retail, cultural and residential development. The Plan epitomizes smart growth by positioning high-density zones where it makes the most sense -- at the transit hubs and major thoroughfares -- while gradually lowering density in zones farther from major transportation infrastructure. Updating Jamaica's zoning in this way has the dual benefits of furthering the City's broader strategy to invest in its regional economic centers and preserving the unique character of adjacent neighborhoods.

As an added benefit, the Jamaica Plan advances the Bloomberg Administration's PlaNYC 2030 strategies for addressing New York's projected growth rates and long-term future. In outlining the strategies for accommodating New York's growing housing needs, for example, PlaNYC acknowledges the City's fixed land supply and stresses the importance of using space more efficiently. Consistent with that objective, the Jamaica Plan makes efficient use of space by increasing housing densities, especially along corridors with good transportation access, which will add up to 3,660 new housing units by 2015. Of those units, approximately 793 will be affordable housing units provided through inclusionary zoning incentives.


At the same time, the proposed rezoning has been designed to ensure that the scale of new housing development complements existing building patterns and the area's character. Recent modifications to the Plan by the City Planning Commission go even further to protect the low-rise character of residential blocks by improving the transition in density and scale in those sections of major corridors, such as Hillside Avenue, Jamaica Avenue, Liberty Avenue and Merrick Boulevard, which are primarily developed with one-and two-story residential, commercial and/or mixed use buildings.

From an economic development perspective, the rezoning will permit development that, by 2015, could create nearly 3 million square feet of commercial space in Downtown Jamaica and add up to 9,300 jobs. The rezoning also facilitates industrial development or expansion by increasing densities on 32 blocks zoned for light manufacturing and, coupled with an Urban Renewal Plan, enables the replacement of underutilized or derelict industrial properties with mixed-use development. Development of these sites maximizes the use of a scarce resource – land – and will help attract additional private investment to Downtown Jamaica.

The development envisioned by the Jamaica Plan will be supplemented, moreover, by two recent city applications for roadway improvements jointly filed with the Department of City Planning by the New York City Economic Development Corporation and the New York City Department of Transportation. Those two projects, the Atlantic Avenue Extension and the Station Plaza Enhancement, will improve vehicular movement and pedestrian safety and reduce traffic congestion on key streets providing access to the Long Island Rail Road and JFK AirTrain station.

The Building Congress applauds the Bloomberg Administration for its commitment to transit-oriented development and its continued collaboration with the community and City agencies to craft a plan that will revitalize and prepare Jamaica for future growth. The Jamaica Plan merits approval, and we encourage you to give it your full support.

Sincerely,



Richard T. Anderson
President

Council Member Katz and Council Member Avella

July 20, 2007

Page 3

cc: The Honorable Christine C. Quinn, Speaker, New York City Council
Members of the New York City Council Land Use Committee
The Honorable Leroy Comrie, New York City Council
The Honorable James Gennaro, New York City Council
The Honorable David Weprin, New York City Council
The Honorable Thomas White, New York City Council
Ms. Gail Benjamin, Director of Land Use, New York City Council

Department of City Planning

Hearing, June 20, 2007

RE: Zoning Change in Fort Greene & Clinton Hill, Brooklyn

I am Sharon Barnes representing the Society for Clinton Hill, and Fort Greene Association of Brooklyn, New York.

We support the proposed zoning change for a number of reasons, most clearly because it helps preserve a scale and neighborhood character which the residents of these communities appreciate and love.

New York City is not known for things like the grand plazas of European cities or the monuments of Washington, DC. It is known for its appealing and distinct neighborhoods. Such a monstrously large City, with the small jewels of neighborhoods. From the upper east side to Washington Heights to Times Square, Greenwich Village, Gramercy Park, Wall Street and Brooklyn Heights, Park Slope, Fort Green, Clinton Hill, Wallabout and Bedford Stuyvesant – just a few of the wonderful neighborhoods, each of which brings to mind a very different environment. This is NYC. This is part of the great seductiveness of this City. These neighborhoods are worth preserving. We don't want them to be homogenized...made to all look the same. And contextual zoning is a great tool, a powerful tool to preserve the character of our neighborhoods and the enduring attraction of our magnificent city.

As the development pressures on our community grew over the last dozen years, the community began to push for a zoning change. This culminated in the community doing the surveys of 1000's of buildings in an effort to jump start the process. We have held numerous educational meetings, prepared materials, raised money to support the effort, reached out to everyone in the community through mailings, the internet, other organizations, churches, our

Community Board, elected officials and others. And, surprisingly, we have encountered very little opposition. What little there was really came in the form of developers who didn't directly oppose what we were doing, but just worked very hard to get out in front of us by completing foundations before City Council could act. Other than that, there has been overwhelming support at all levels.

We believe that this zoning change is a positive thing for all constituencies. It does not prevent or slow development. It just guides it to the most appropriate locations and controls height. Square footage is much less affected. So, jobs will not be lost because of this change.

This very large and across the board effort has been very productive. City Planning has been a helpful partner by producing excellent graphics, knowing the study area down to specific buildings and holding many educational presentations. And we know that they will continue to work with us in the future.

Our local electeds including our City Council member, our state senator, boro president and others have been involved and helpful. Our Community Board, churches, many other organizations and residents have all played an important role. We are all grateful for all of this and for the fact that City Council will now take this issue over the final hurdle. We feel that we are leaving a critically important decision in the hands of people who understand NYC and its many neighborhoods and who will also become part of this large team of people who work to protect our neighborhoods.

Thank you.

Honorable Christine C. Quinn
Speaker
New York City Council
City Hall
New York, NY 10007

Re: Hill Country Holdings, LLC Sidewalk Café Application

Dear Speaker Quinn,

I write to memorialize the understanding we have agreed to with the local community.

First, I would like to thank you and your staff for working with us to better understand our neighbors' concerns and to identify the ways in which we can ensure that we will enjoy a copasetic relationship with the surrounding neighborhood. Having a productive relationship with our neighbors is important to our business operation and we appreciate your advising us how to best accomplish this.

We agree to the following:

Reduction in Size

Hill Country will remove four tables and six chairs from the currently planned café. Two tables and four chairs will be removed from the portion of the café that is situated in front of the freight entrance on private property. In addition, as opposed to having two tables on the front, outside corners of the café, we will remove one table on each side and convert the second table on each side to a three-person table. This will reduce the sidewalk café by an additional two seats for a total of a six seat reduction.

Hours of Operation

Hill Country will stop serving customers in the café at 10 PM each day.

Noise Attenuation

In an effort to reduce the noise emanating from the sidewalk café, the restaurant and the music venue in the basement, Hill Country will:

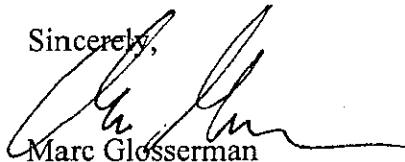
- (a) Keep the doors to the customer entrance and the sidewalk café entrance closed when not in use.
- (b) Purchase lightweight furniture for the sidewalk café.
- (c) For the portion of the sidewalk café that is not covered by the existing awning, Hill Country will look into the purchase of umbrellas or another temporary solution to provide cover of the sidewalk café.

Community Communication

Hill Country agrees to meet with the neighbors, Speaker Quinn's office and the local community board when the sidewalk café closes for 2007 and/or at the request of Speaker Quinn's office anytime during the operation of the café.

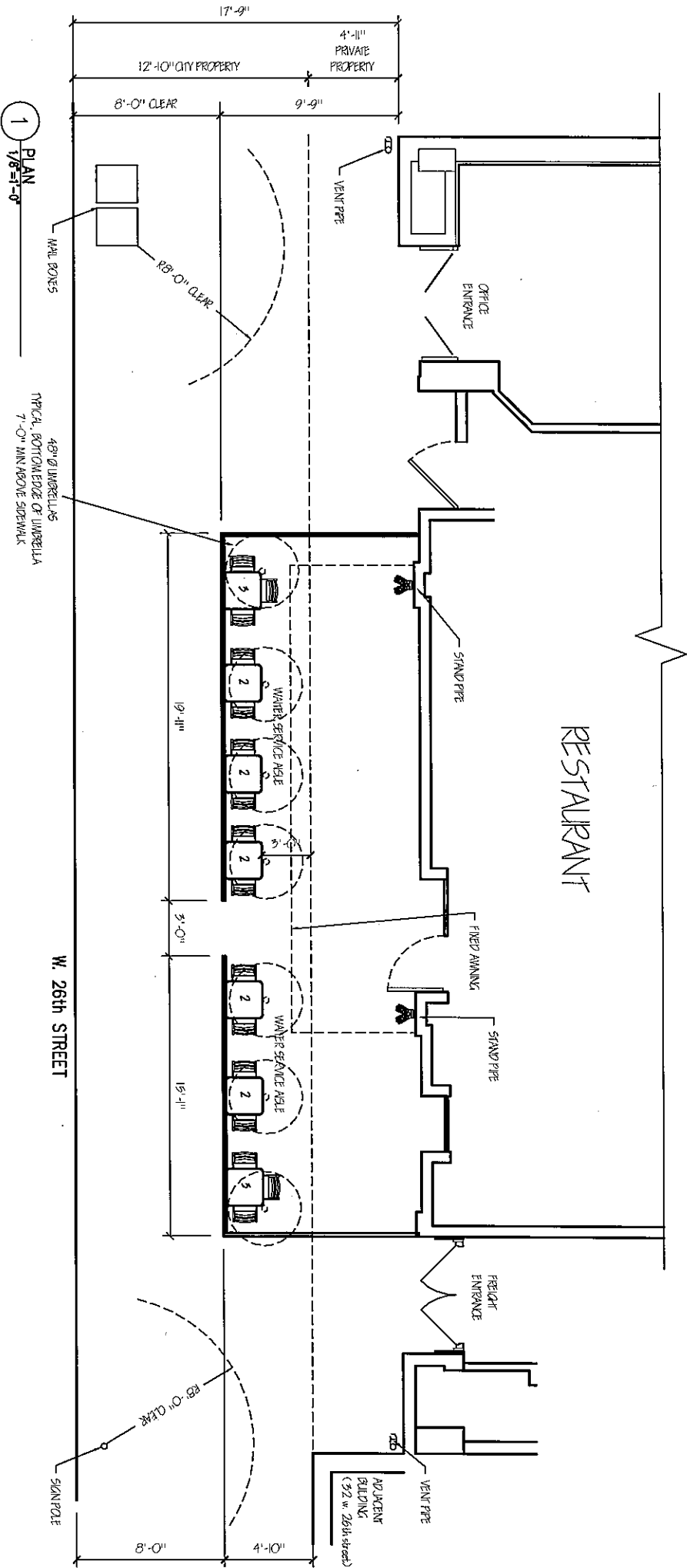
Thank you again for working with us to ensure a successful operation that proactively addresses concerns raised by our neighbors.

Sincerely,



Marc Glosserman
Co-Owner

Cc: Kate Seely-Kirk, District Chief of Staff

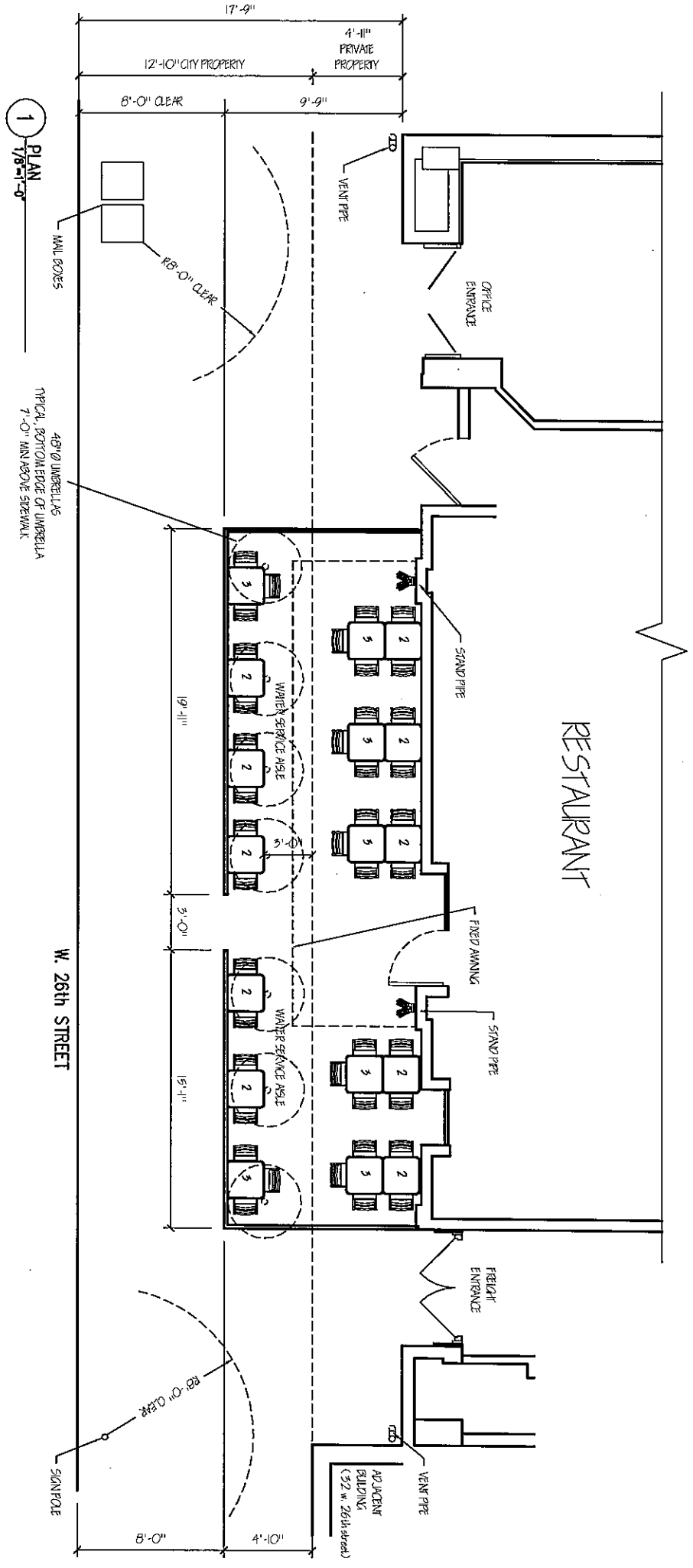


1 PLAN
1/8"=1'-0"

49" Ø UMBRELLAS
TYPICAL, BOTTOM EDGE OF UMBRELLA
7'-0" MIN. WALK SIDEWALK

W. 26th STREET

JULY '07
7 TABLES- 16 SEATS- PUBLIC

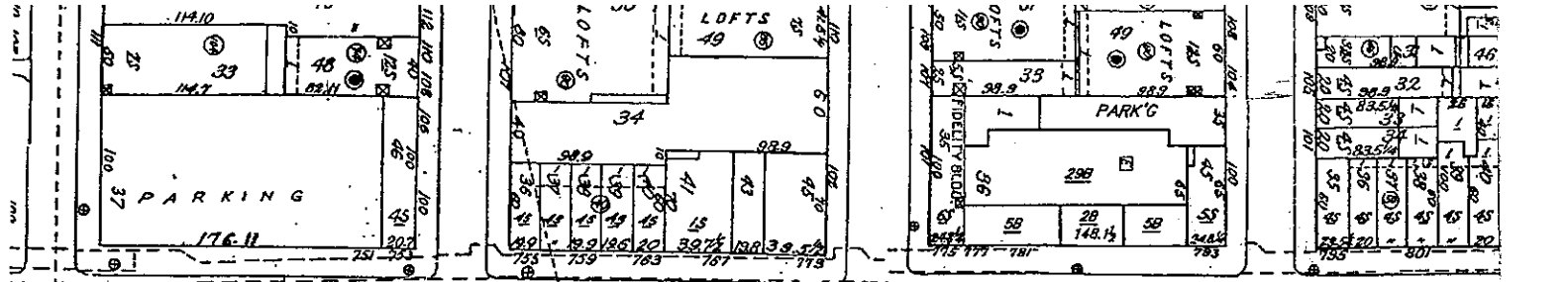


1 PLAN
7/8-1-0

W. 26th STREET

JULY '07

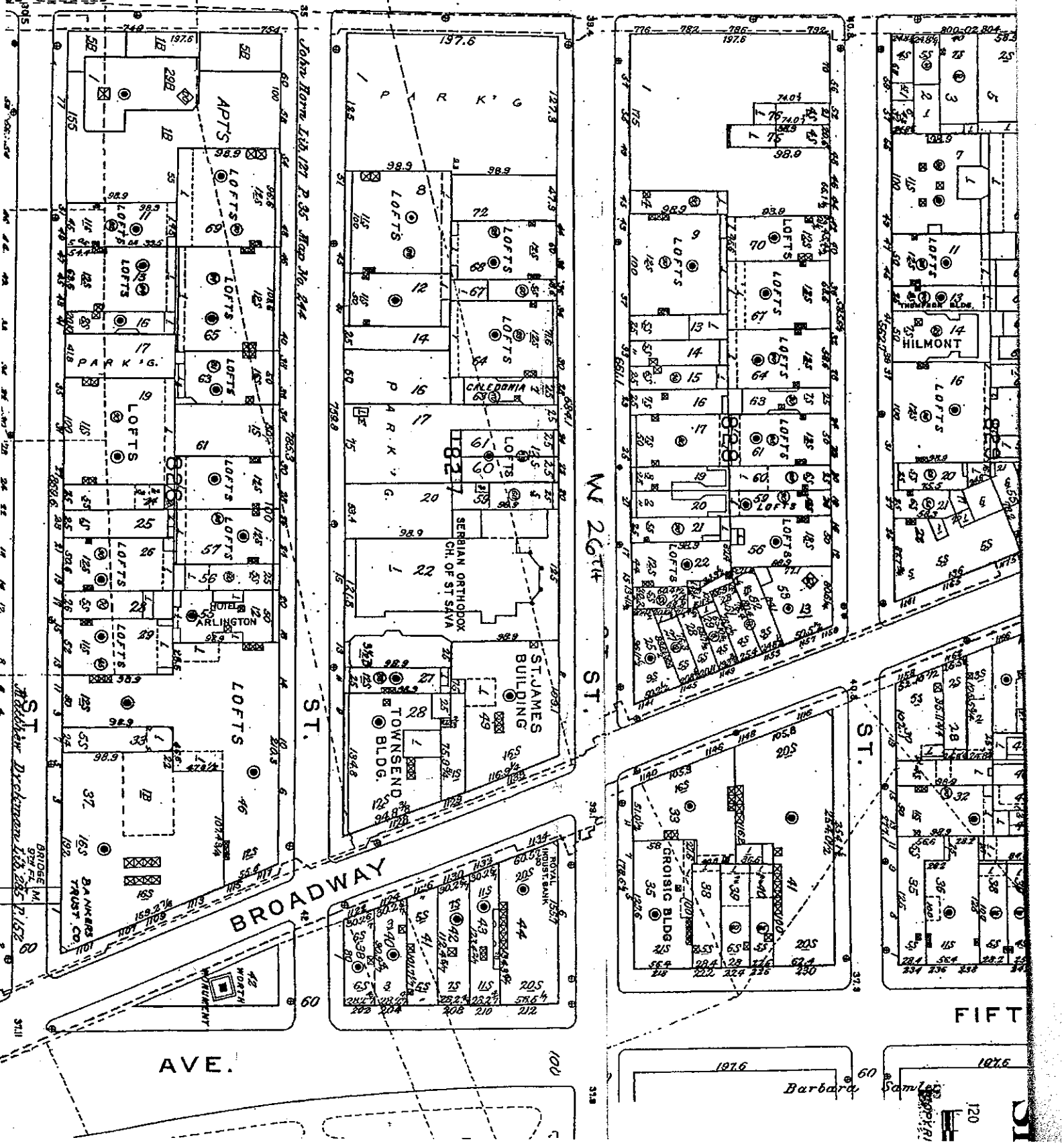
17 TABLES- 41 SEATS- COMBINED



THE AMERICAS

HUDSON TUBES

AVE. OF



AVE.

Barbara

Santer

FIFT





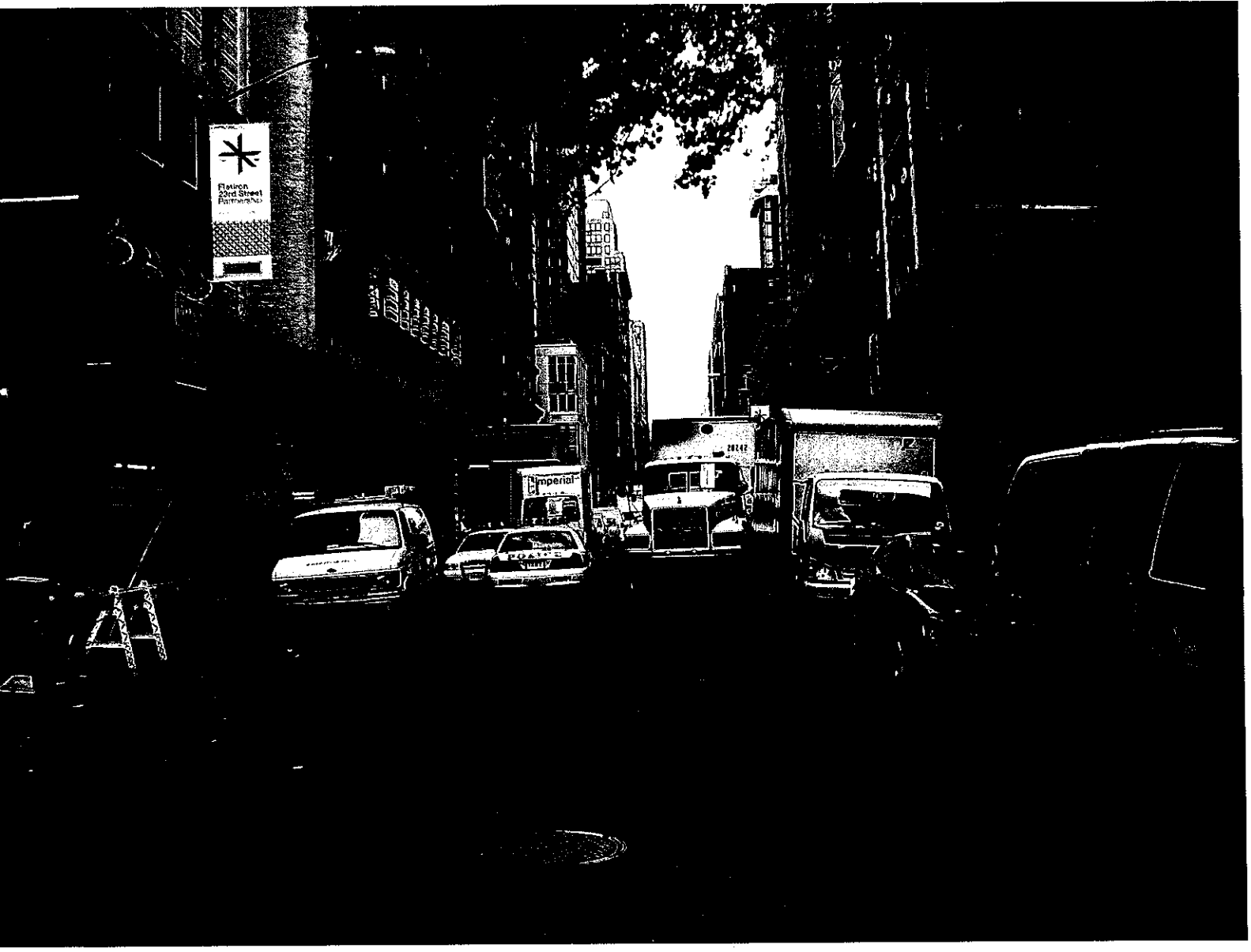
Flatiron
Ford Street
Partnership

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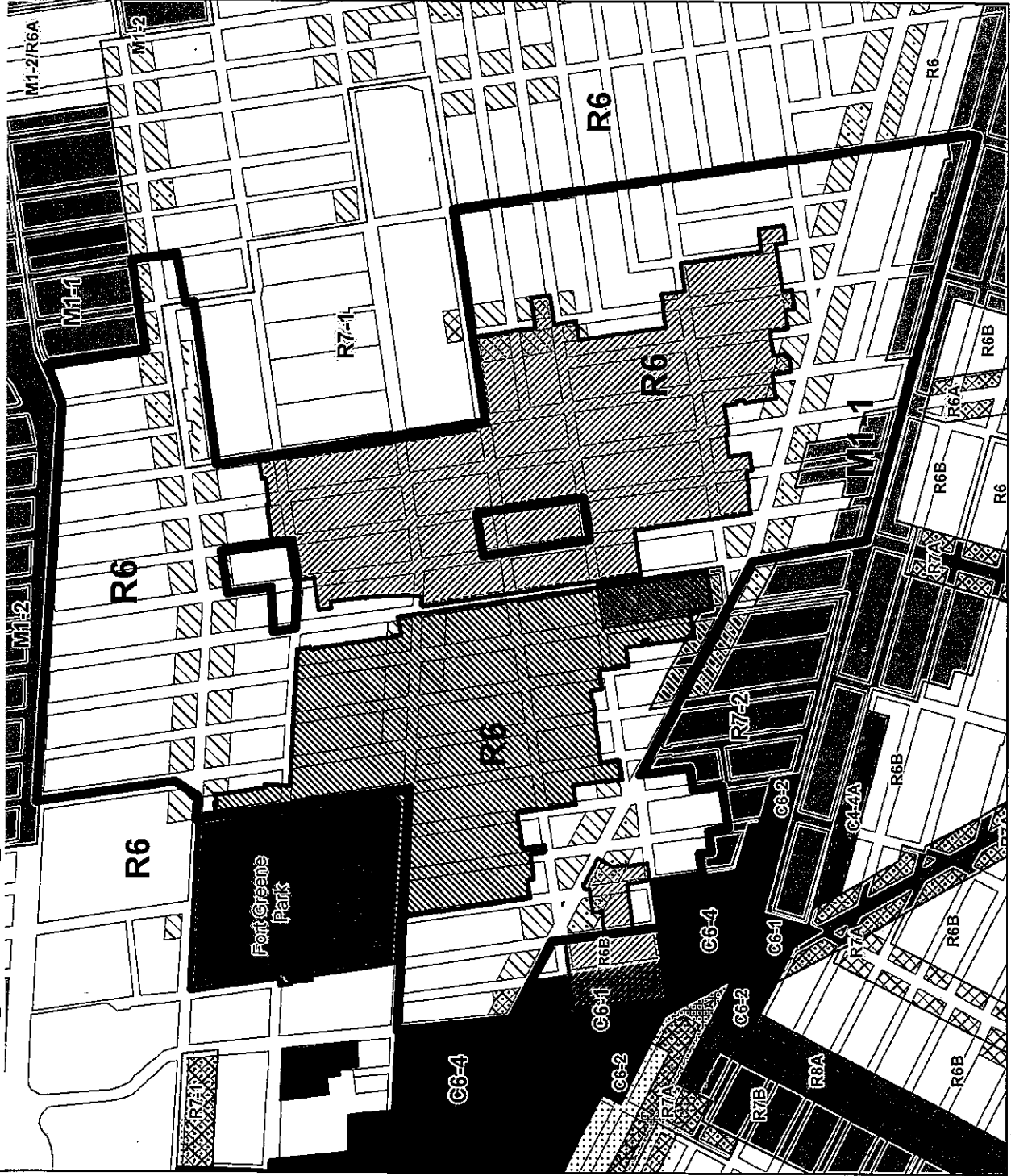
Imperial

ROADS
VILLAGE








20142






Fort Greene - Clinton Hill Rezoning Existing Zoning

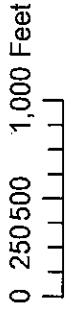


Legend

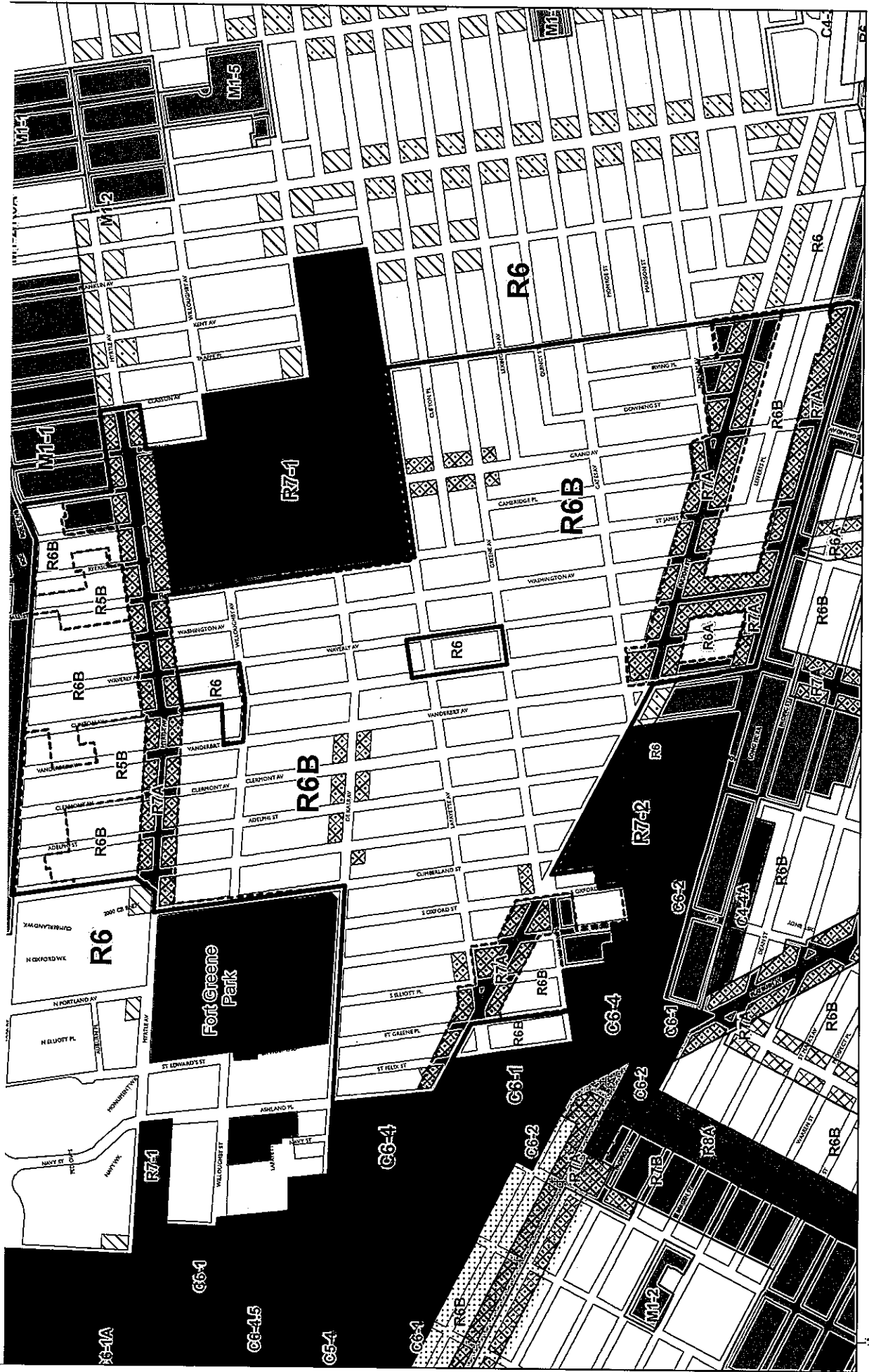
-  Rezoning Area
-  Open Space
-  C1-3 Overlay
-  C1-4 Overlay
-  C1-5 Overlay
-  C2-3 Overlay
-  C2-4 Overlay

LPC - Historic Districts

-  Clinton Hill Historic District
-  Fort Greene Historic District
-  Brooklyn Academy of Music Historic District



Fort Greene - Clinton Hill Rezoning Proposed Zoning Map



April 2007

BROOKLYN OFFICE

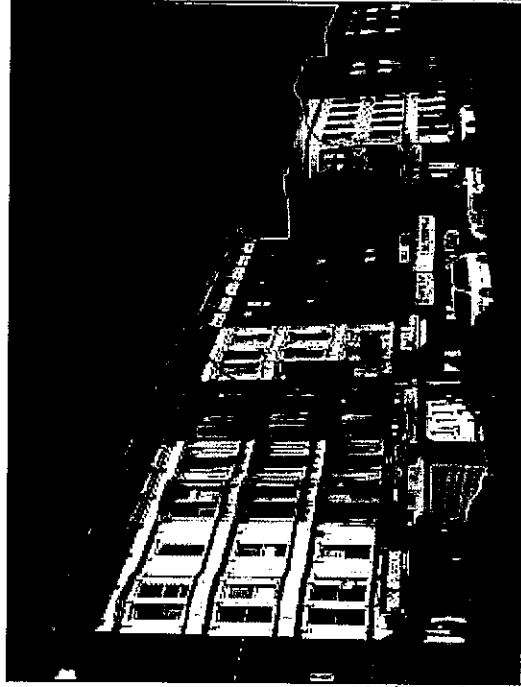
CITY OF NEW YORK
DEPARTMENT OF CITY PLANNING



Existing Built Character



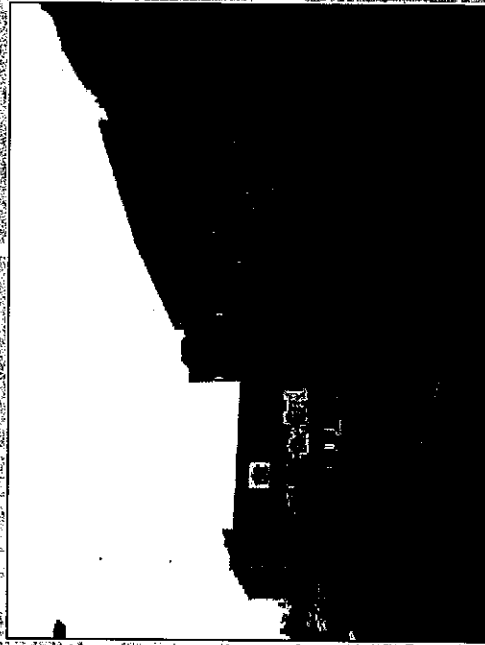
Brownstones on Washington Avenue



Fulton Street



Wallabout neighborhood from Park and Myrtle Avenue



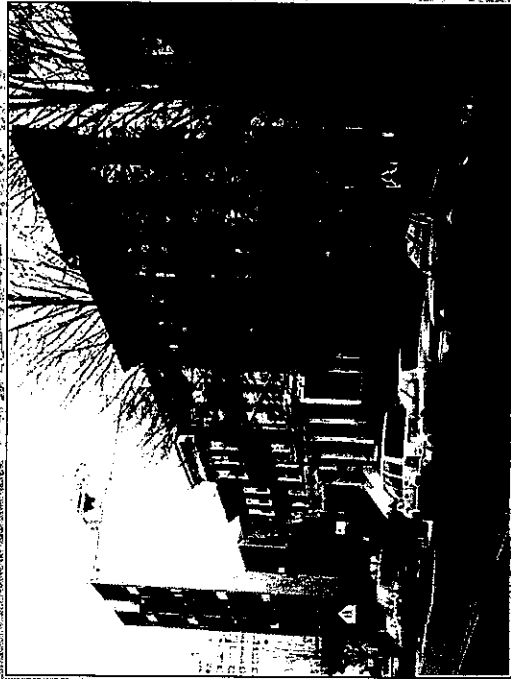
Atlantic Avenue at Grand Avenue

Department of City Planning | Brooklyn Borough Office | Fort Greene-Clinton Hill Rezoning

Out of Character Development



Wallabout area between Park Ave. and Myrtle Ave.



Wallabout area between Park Ave. and Myrtle Ave.

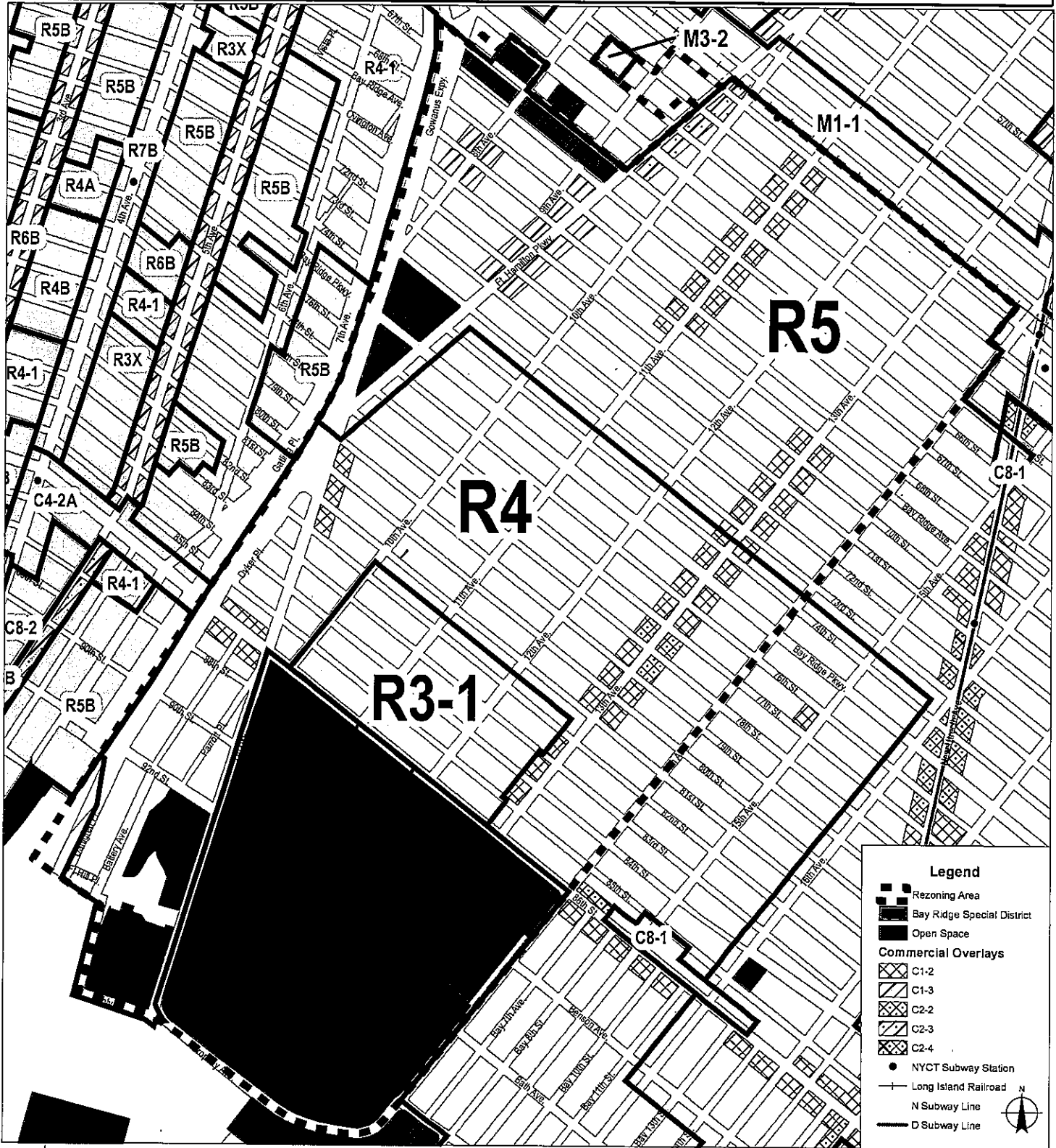
- Currently zoned R6
- Permits buildings with no height limit
- Out-of-scale developments inconsistent with neighborhood character



Carlton and Greene Avenues

Dyker Heights/Ft. Hamilton Rezoning

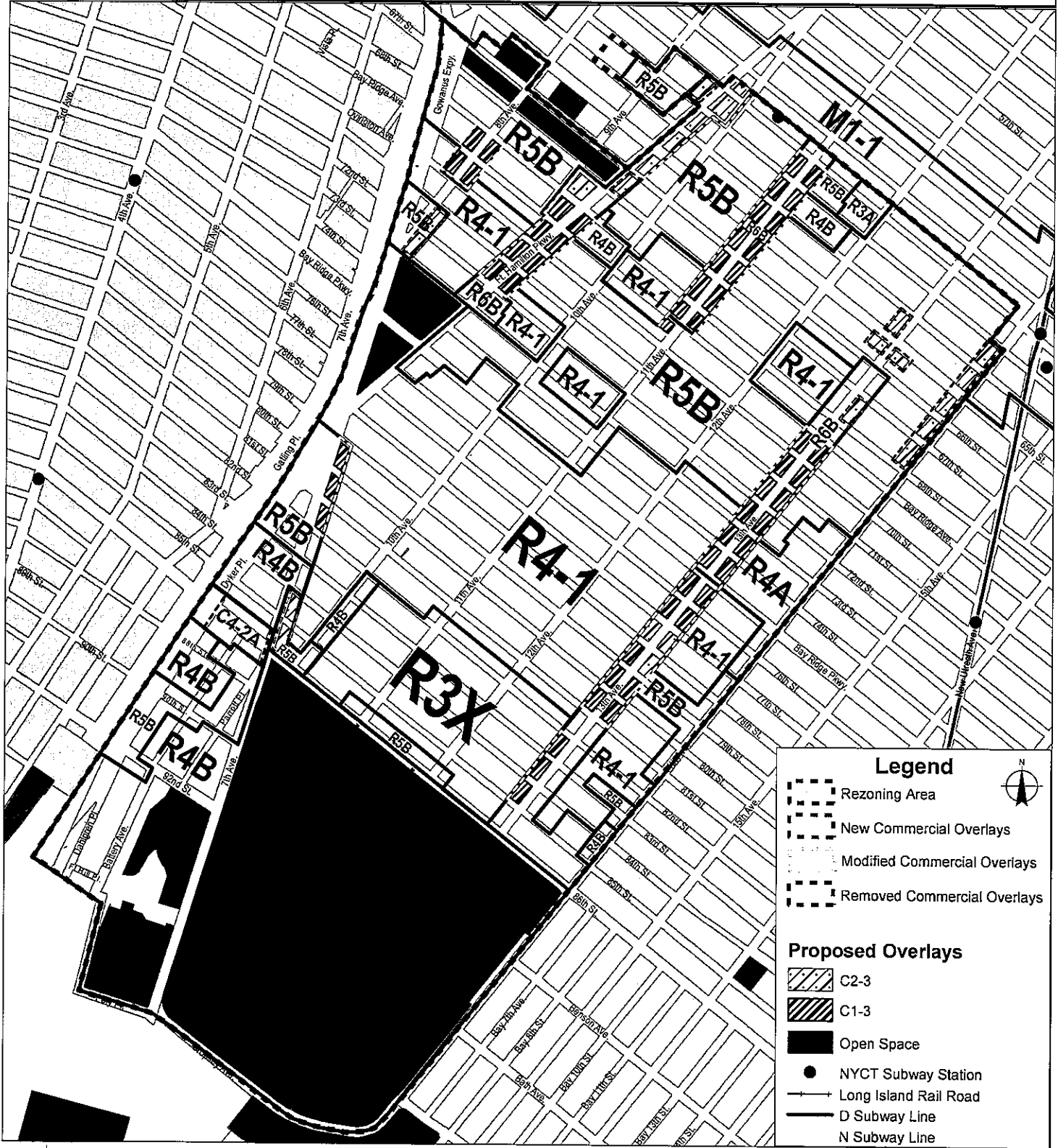
EXISTING ZONING



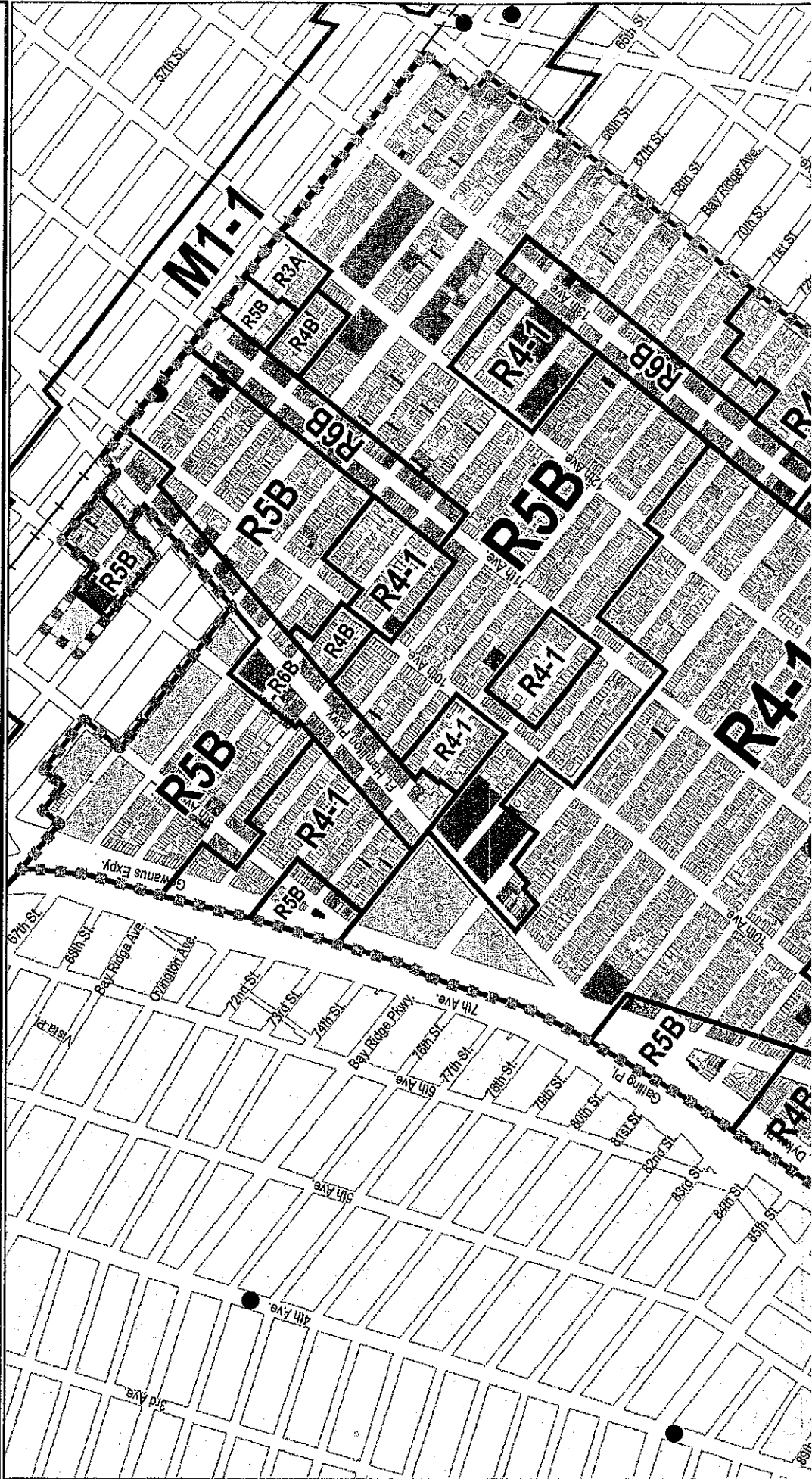
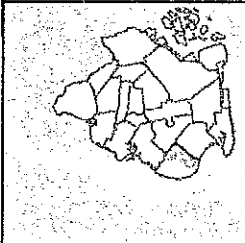


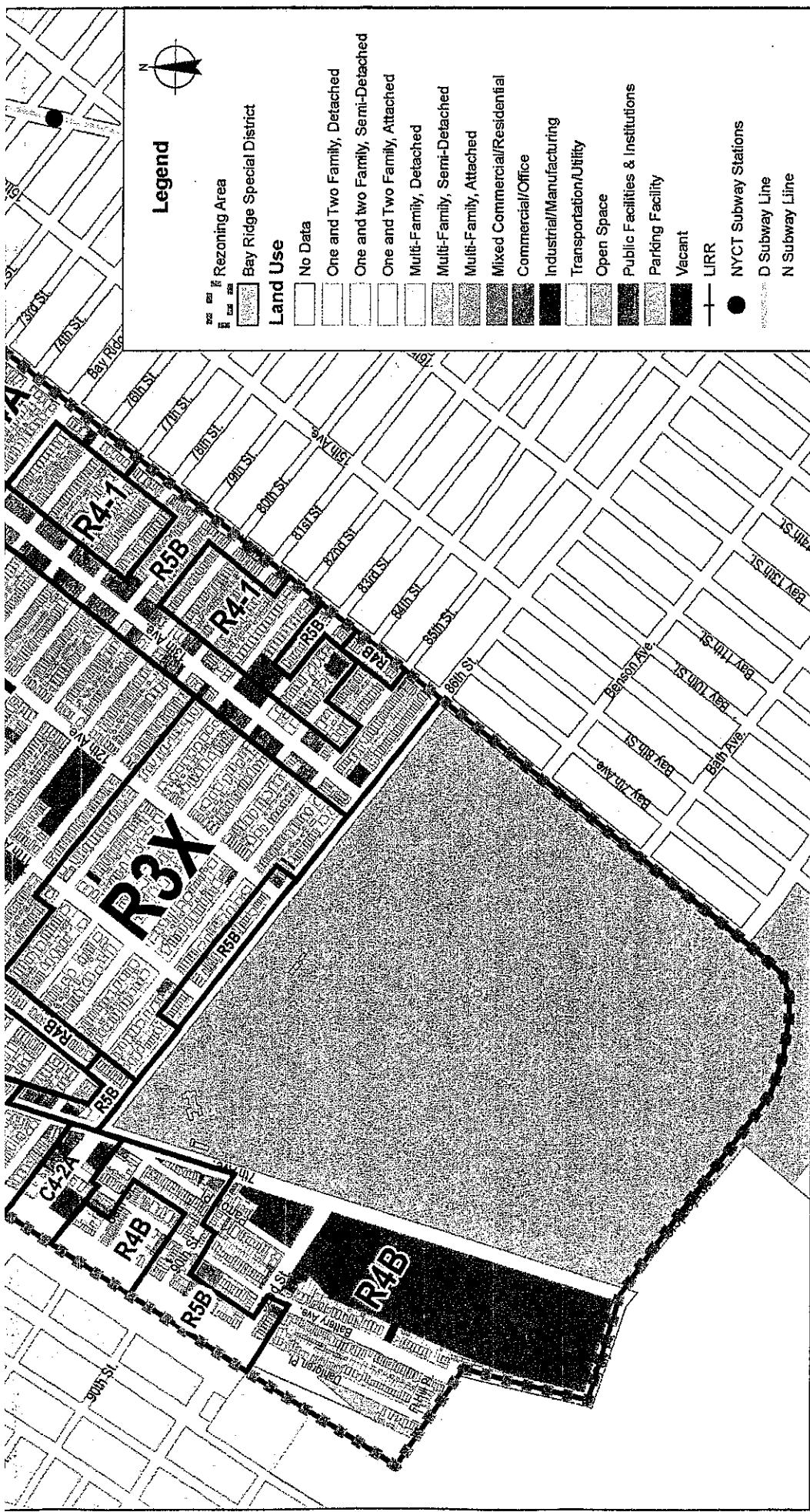
Dyker Heights/Ft. Hamilton Rezoning

PROPOSED ZONING/OVERLAY CHANGES



Dyker Heights/Ft. Hamilton Rezoning Proposed Zoning, Land Use and Building Type





Legend

- Rezoning Area
- Bay Ridge Special District
- Land Use**
- No Data
- One and Two Family, Detached
- One and two Family, Semi-Detached
- One and Two Family, Attached
- Multi-Family, Detached
- Multi-Family, Semi-Detached
- Multi-Family, Attached
- Mixed Commercial/Residential
- Commercial/Office
- Industrial/Manufacturing
- Transportation/Utility
- Open Space
- Public Facilities & Institutions
- Parking Facility
- Vacant
- LIRR
- NYCT Subway Stations
- D Subway Line
- N Subway Line



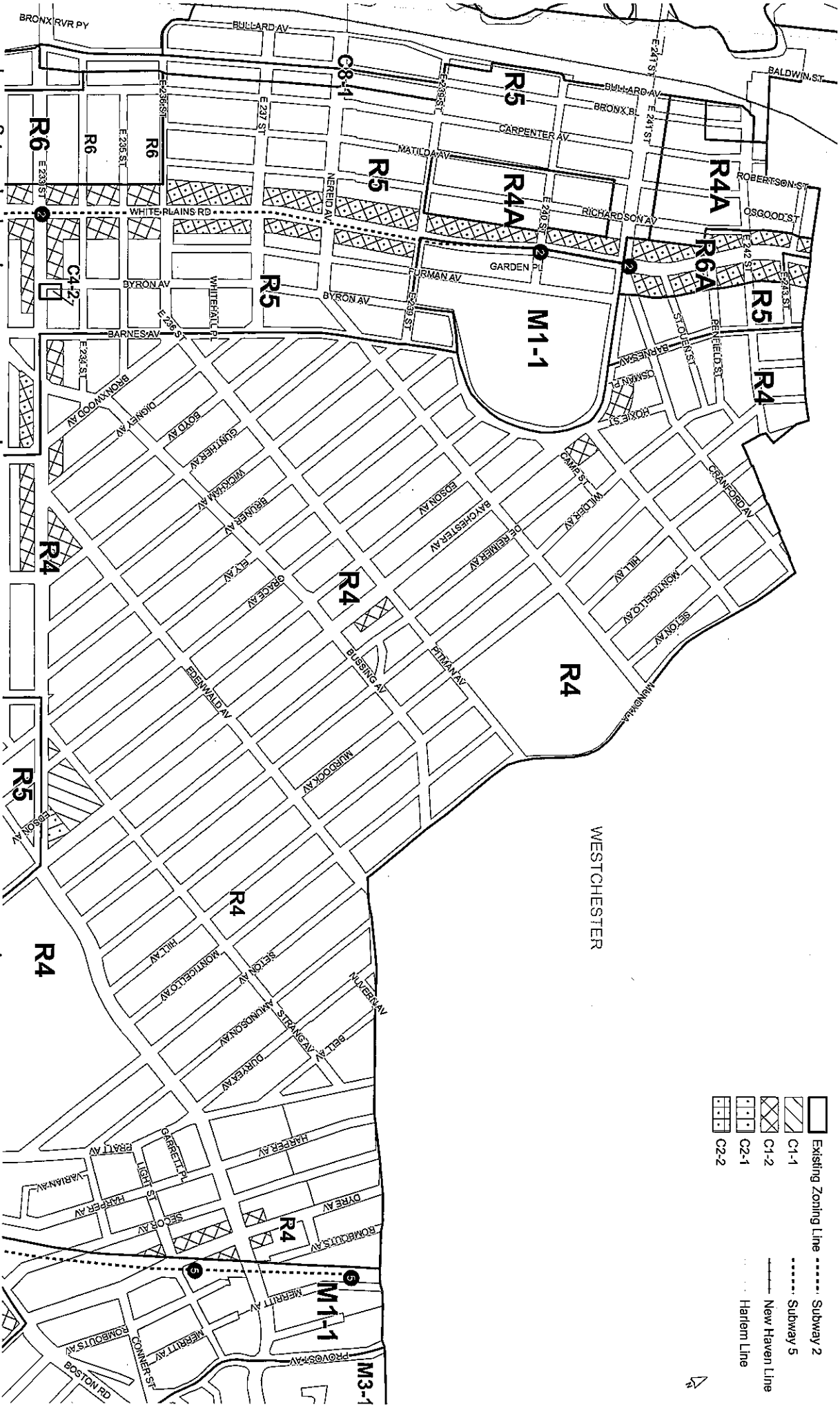
CITY OF NEW YORK

DEPARTMENT OF CITY PLANNING

March 2007

BROOKLYN OFFICE

wakefield / eastchester rezoning study
 existing zoning



| | | | |
|--------------------|----------------------|---------------|----------------|
| [Solid Line] | Existing Zoning Line | [Dashed Line] | Subway 2 |
| [Diagonal Lines /] | C1-1 | [Dotted Line] | Subway 5 |
| [Diagonal Lines \] | C1-2 | [Dashed Line] | New Haven Line |
| [Cross-hatch] | C2-1 | [Dotted Line] | Harlem Line |
| [Horizontal Lines] | C2-2 | | |

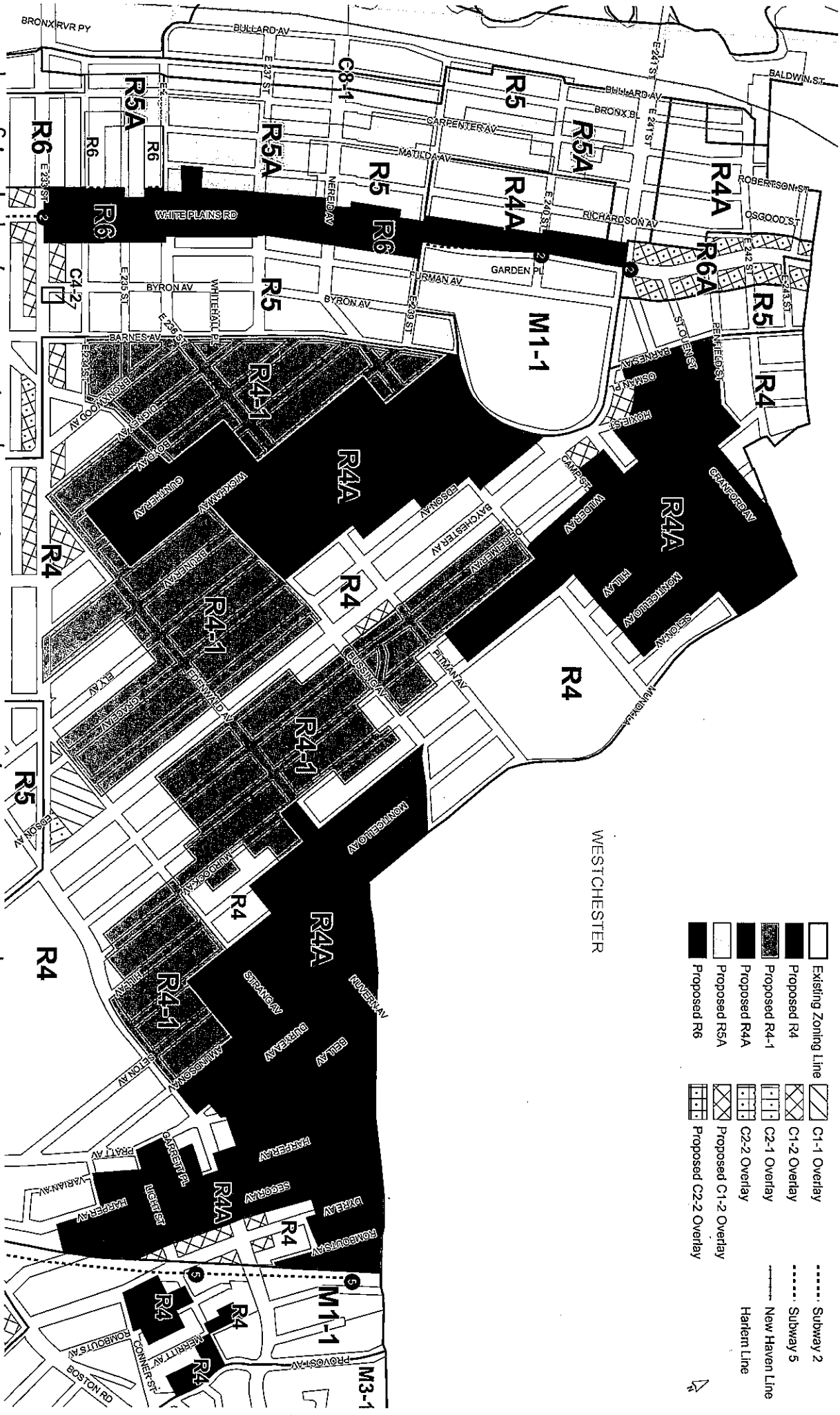


WESTCHESTER

- Detached Residential
- Semi-Detached Residential
- Attached Residential
- Multi-Family Residential
- Residential / Commercial
- Commercial / Office
- Industrial / Manufacturing
- Transportation Utility
- Public Facility / Institution
- Park / Open Space
- Parking Facility
- Vacant Land
- Existing Zoning Line
- C1-1 Overlay
- C1-2 Overlay
- C2-1 Overlay
- C2-2 Overlay
- Subway 2
- Subway 5
- New Haven Line
- Harlem Line

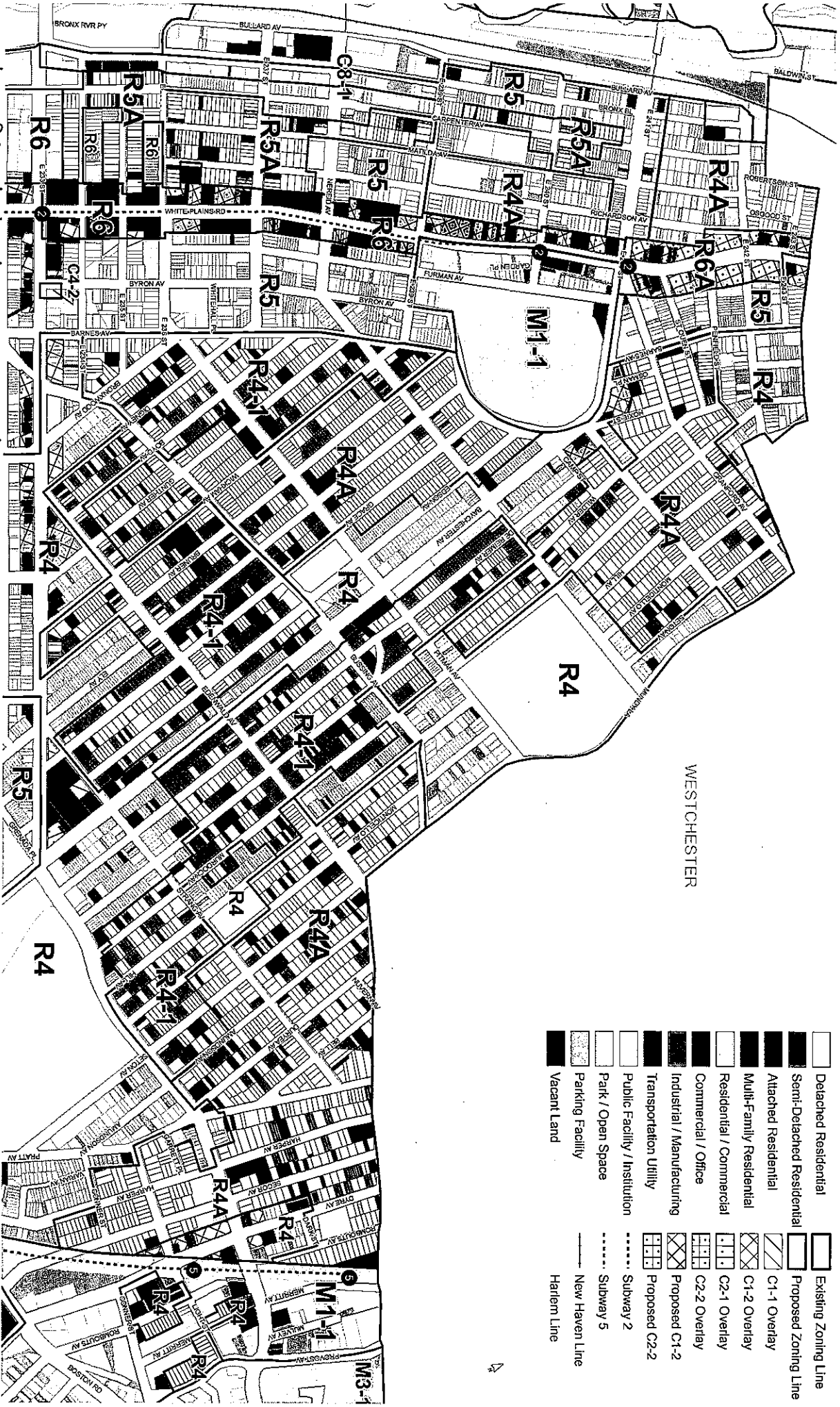
Wakefield / eastchester rezoning study
 existing zoning & land uses
 nyc . department of city planning . bronx office

Wakefield / eastchester rezoning study
 proposed zoning areas



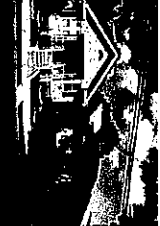





- Existing Zoning Line
- Proposed R4
- Proposed R4-1
- Proposed R4A
- Proposed RSA
- Proposed R6
- C1-1 Overlay
- C1-2 Overlay
- C2-1 Overlay
- C2-2 Overlay
- Proposed C1-2 Overlay
- Proposed C2-2 Overlay
- Subway 2
- Subway 5
- New Haven Line
- Harlem Line

Wakefield / eastchester rezoning study
 proposed zoning areas & land uses



- Detached Residential
- Semi-Detached Residential
- Attached Residential
- Multi-Family Residential
- Residential / Commercial
- Commercial / Office
- Industrial / Manufacturing
- Transportation Utility
- Public Facility / Institution
- Park / Open Space
- Parking Facility
- Vacant Land
- Existing Zoning Line
- Proposed Zoning Line
- C1-1 Overlay
- C1-2 Overlay
- C2-1 Overlay
- C2-2 Overlay
- Proposed C1-2
- Proposed C2-2
- Subway 2
- Subway 5
- New Haven Line
- Harlem Line

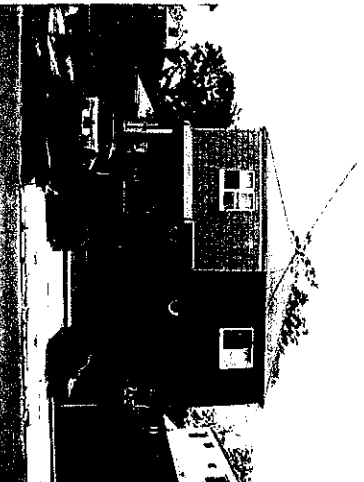
| Zoning District | R4 | R4-1 | R4A | R5 | R5A | R6 |
|----------------------|---|---|--|---|---|---|
| Housing Type | Low Density All Housing Types | Low Density Detached / Semi-Detached | Low Density Detached | Mid Density All Housing Types | Mid Density Detached | Mid Density All Housing Types |
| Residential Units | One-, Two- and Multi-Family | One-, Two-Family | One-, Two-Family | One-, Two- and Multi-Family | One-, Two-Family | Multi-Family |
| Residential Max. FAR | 0.75 + 0.15 = 0.90 (Attic) | 0.75 + 0.15 = 0.90 (Attic) | 0.75 + 0.15 = 0.90 (Attic) | 1.25 | 1.10 + 300 sf (for garage in backyard) | 2.43 (3.0 under Quality Housing) |
| Minimum Lot Width | Detached: 40 ft Other: 18 ft | Detached: 25 ft Other: 18 ft | 30 ft | Detached: 40 ft Other: 18 ft | 30 ft | Detached : 40 ft Other: 18 ft |
| Maximum Height | 35 ft | 35 ft | 35 ft | 40 ft | 35 ft | Governed by Sky Exposure Plane |
| Perimeter Wall | 25 ft | 25 ft | 21 ft | 30 ft | 25 ft | Governed by Sky Exposure Plane |
| Side Yard | Detached: 13 ft Other: 8 ft | Detached: 8 ft Semi-Detached: 4 ft | 10 ft | Detached: 13 ft Other: 8 ft | 10 ft | 13 ft |
| Front Yard | 10 ft | 10 ft | 10 ft | 10 ft | 10 ft | N/A |
| Residential Parking | 100% per DU | 100% per DU | 100% per DU | 85% per DU | 100% per DU | 70% per DU |
| Typical Example |  |  |  |  |  |  |

Wakefield / eastchester rezoning study
zoning comparison

TYPICAL DEVELOPMENTS



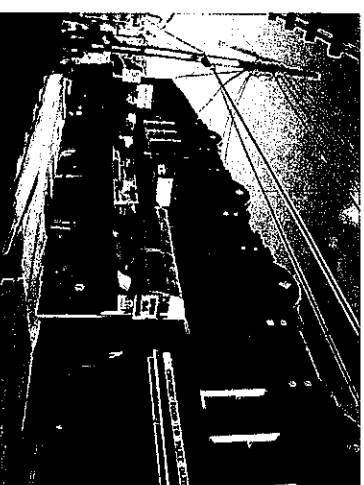
Typical detached houses in the proposed R4A zoning district.



Typical semi-detached houses in the proposed R4-1 zoning district.



Typical detached houses in the proposed R5A zoning district.



Typical commercial uses along White Plains Road in the proposed R6/C2-2 zoning district.

OUT-OF-CHARACTER DEVELOPMENTS



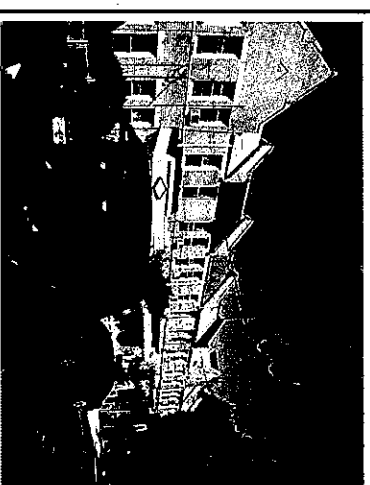
New row-house development in the R4 zoning district.



New Row-houses in a portion of the R5 district which is proposed to be rezoned to R5A.



New semi-detached house in the R4 zoning district.



Row-houses in a portion of the M1-1 district which is proposed to be rezoned to R4.

RESIDENTIAL IN M

wakefield / eastchester rezoning study
existing developments

City Planning Hearing
May 23, 2007

Ad Hoc Committee Report

Since October, 1999, the Hollis 11423 Block Association has been fighting the siting of waste transfer station in M-1 zones. Letters of complaint have been sent to city agencies and elected officials on the city, state and federal level. It has been eight years since our first letter was sent, and today the waste transfer station at 187-40 Hollis Avenue is still operating in an M-1 zone and within 400 feet of a residence, park and school. Tons of paper are dumped into an open lot.

In 1990 the New York City Council enacted Local Law 40 directing DOS to establish requirements for the siting of private transfer stations near residences. In 1998 additional regulations for nonputrecible waste transfer stations were enacted. These regulations prohibit new facilities and expansion of existing facilities in M-1 zones or within 400 feet of a residence, public park or school. Why was a new transfer station, at 187-40 Hollis Avenue, allowed to open in the year 2000? It is in an M-1 zone and within 400 feet of a residence, park and school.

Waste transfer stations are listed under Use Group 18, facilities that are hazardous to health, and Jamaica has serious health problems. The health concerns were also established by the National Environmental Justice report, The Siting of Waste Transfer Stations in Low-income Communities and Communities of Color.

Local Law 40 prohibits the siting of waste transfer stations with 400 feet of a residence, park or school; however, the zoning regulations do not conform with this law. Please remove the loopholes and make it very clear that waste transfer stations cannot operate in M-1 zones or within 400 feet of a residence, park or school.

Thank you.


Sandra Atwell

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| Matter of Jamaica Recycling Corp. v City of New York |
| 2006 NY SlipOp 26007 |
| January 11, 2006 |
| Richter, J. |
| Supreme Court, New York County |
| Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431. |
| As corrected through Wednesday, June 14, 2006 |

[*1]

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| In the Matter of Jamaica Recycling Corp. et al., Petitioners, v City of New York et al., Respondents. |
|--|

Supreme Court, New York County, January 11, 2006

APPEARANCES OF COUNSEL

Cozen O'Connor, New York City (*Michael C. Schmidt* of counsel), for Jamaica Recycling Corp., petitioner. *Lawrence B. Goldberg*, New York City, for Allocco Recycling, Ltd. and others, petitioners. *Michael A. Cardozo*, *Corporation Counsel*, New York City (*Christopher G. King* of counsel), for respondents.

OPINION OF THE COURT

Rosalyn Richter, J.

In this consolidated CPLR article 78 proceeding, ^[FN1] petitioners are five companies seeking to operate solid waste transfer stations in the Bronx, Brooklyn and Queens. In November 2004, respondent New York City Department of Sanitation (DOS) promulgated new rules governing the issuance of permits for solid waste transfer stations. After these rules went into effect, DOS denied the permit applications of some of the petitioners and told the others that their proposed facilities would be subject to the new rules. In this proceeding, petitioners challenge the validity of the new regulations. Alternatively, petitioners contend that if the new rules are upheld, they should not be applied to petitioners'

proposed transfer stations. For the reasons discussed herein, the article 78 petitions are denied.

A solid waste transfer station is any structure, building or land where solid waste is received for the purpose of subsequent transfer to another location. There are two types of solid waste transfer stations: putrescible and nonputrescible. Putrescible transfer stations receive [*2]organic materials susceptible to decay whereas nonputrescible transfer stations receive inorganic wastes that do not decay. A putrescible transfer station is typically an enclosed facility where putrescible waste is received, sorted and transferred to vehicles for transport to a final disposal site. Nonputrescible transfer stations are usually unenclosed facilities that sort and separate the waste for recycling purposes. Nonputrescible transfer stations can be either construction and demolition (C & D) transfer stations, which process debris such as concrete, asphalt, plaster, wood, sheetrock, metal, glass and electrical wires and cables, or fill material transfer stations, which receive clean usable material consisting of earth, soil, rock, gravel, sand and stone.

In 1990, the New York City Council enacted Local Law No. 40 (1990) of the City of New York which gave DOS increased regulatory authority over private transfer stations. One of the provisions of this law directed DOS to adopt rules establishing requirements for the siting of transfer stations in relation to other transfer stations, residences and other premises for which such requirements may be appropriate. DOS subsequently promulgated rules in 1991 and 1994 that purportedly complied with Local Law 40. However, a coalition of community groups disagreed and in 1997, they brought a proceeding to compel DOS to promulgate rules in compliance with the law's directives. The trial court found that DOS's existing regulations were inadequate because they did not sufficiently address transfer stations' proximity to other such stations, residences, schools and parks. The court directed DOS to commence without delay steps leading to the adoption of such rules. (*Neighbors Against Garbage v Doherty*, Sup Ct, NY County, Mar. 10, 1997, Index No. 109023-1996.) The Appellate Division, First Department, affirmed and held that the existing rules did not address the problem of clustering of transfer stations in particular neighborhoods and their proximity to residences, schools and parks. (*Matter of Neighbors Against Garbage v Doherty*, 245 AD2d 81 [1st Dept 1997].)

In October 1998, DOS promulgated additional regulations in compliance with the

court's order (the 1998 siting rules). For nonputrescible stations, these rules prohibited such new facilities in, and the expansion of existing such facilities into, a zoned M1 district, or within 400 feet of a residential district, public park, school, or other nonputrescible transfer station. Facilities already lawfully operating within 400 feet of such locations were allowed to remain but could not expand any closer to those locations. Facilities already operating within an M1 district were permitted to expand within such district, subject to the above 400-foot buffer requirements. In addition, fully enclosed nonputrescible transfer stations located in a zoned M2 or M3 district that exported their solid waste by rail or barge were exempted from the buffer requirement.

For putrescible transfer stations, the 1998 siting rules set forth identical restrictions and exemptions, except that: (i) there was no requirement for a buffer distance between a putrescible transfer station and any other transfer station, and (ii) the method of computing distance between a transfer station and a residential district, school or public park was measured from the structure enclosing the waste processing operations, rather than from the transfer station site boundary. The 1998 siting rules also authorized DOS to grant variances from the siting restrictions for both putrescible and nonputrescible stations where an applicant could show that unique conditions or mitigating measures substantially addressed any potential significant adverse environmental impacts.

After the 1998 siting rules went into effect, another group of community organizations filed a lawsuit challenging the rules as insufficient. In an October 18, 2001 decision, the trial [*3]court in that proceeding identified several infirmities in the 1998 siting rules. In particular, the court noted that the rules (i) allowed nonconforming transfer stations to continue to operate indefinitely; (ii) lacked appropriate buffer distances between putrescible transfer stations and other transfer stations; and (iii) failed to address the inordinate clustering of transfer stations in areas near residences, schools and parks. (*Organization of Waterfront Neighborhoods v Carpinello*, Sup Ct, NY County, Oct. 18, 2001, Index No. 103661-1999.) The court's decision noted that DOS had agreed that the 1998 siting rules were inadequate and had pledged to promulgate new and more restrictive regulations concerning clustering of transfer stations and buffer distances. In light of DOS's representations, the court dismissed the proceeding as moot, without prejudice to renewal should DOS fail to follow through on the implementation of new siting regulations.

In or about late 2002, DOS sent letters to several of the petitioners advising them that DOS would not be issuing any new permits to nonoperating transfer stations. DOS stated that based on findings of a preliminary waste management study, it had determined that the City currently had sufficient private transfer station capacity and thus DOS was terminating review of petitioners' applications. This moratorium on new transfer stations was subsequently the subject of two article 78 proceedings brought by petitioners Jamaica and Fontana. In March 2003, Jamaica brought a proceeding against DOS, which was dismissed in January 2004 by Justice Sherry Klein Heitler. (*Jamaica Recycling Corp. v City of New York*, Sup Ct, NY County, Jan. 8, 2004, Index No. 104115-2003.) Meanwhile, in May 2003, Fontana brought its own proceeding against DOS. In August 2003, Justice Diane Lebedeff granted the petition in part and held that DOS's 2002 moratorium and denial of Fontana's permit application constituted improper rulemaking. (*Fontana Transfer Sta. v Doherty*, Sup Ct, NY County, Aug. 6, 2003, Index No. 106775-2003.) In November 2004, Justice Heitler, on reargument, reversed her decision and granted Jamaica's petition. Justice Heitler adopted the reasoning of Justice Lebedeff and found that the moratorium amounted to illegal rulemaking by DOS. (*Jamaica Recycling Corp. v City of New York*, Sup Ct, NY County, Nov. 23, 2004, Index No. 104115-2003.) In their decisions, both judges directed DOS to continue to process Jamaica's and Fontana's permit applications.

In December 2003, DOS adopted interim siting restrictions (the interim siting rules) which remained in effect until October 20, 2004 pending promulgation of the final siting rules. These interim rules contained further restrictions on the permitting of transfer stations. Under the rules, DOS was prohibited from issuing permits for new or expanded fill material and C & D debris transfer stations. Expansion of putrescible transfer stations was generally allowed, except that in communities with the highest concentration of existing transfer stations, expansion was only permitted if the applicant obtained offsets in the form of corresponding reductions of existing transfer station capacity in the same community district. In addition, the interim siting rules allowed DOS to permit new intermodal facilities, which receive C & D or putrescible waste in closed leakproof containers for transfer to rail cars or vessels for further transport.

On November 8, 2004, following a public notice period and a public hearing, DOS adopted the final siting rules for solid waste transfer stations (the 2004 siting rules). Under these rules, the siting of nonputrescible and putrescible transfer stations are now treated in

the same manner. Community districts are divided into five categories based on a percentage [*4] obtained by dividing the number of transfer stations in a given community district by the total number of transfer stations citywide. Each category requires a specific buffer distance, ranging from 400 feet to 700 feet depending on the category, between the transfer facility and a residential district, hospital, public park, school or other transfer station. Unlike previous versions of the rules, no variances from the buffer requirements are permitted for new transfer stations.

In addition, the 2004 siting rules prohibit new transfer stations in zoned M1 districts if the community district in which the facility is proposed already has three or more lawfully operating transfer stations already situated in M1 districts. The new rules also provide that in community districts with 12% or more of the City's transfer stations, a new transfer station can be permitted only if the facility obtains a corresponding reduction or offset in the daily permitted capacity of an existing transfer station located in the same community district. Based on the restrictions contained in the new rules, the transfer stations sought to be operated by each of the petitioners would be barred.

In this proceeding, petitioners challenge the legality of the 2004 siting rules on the grounds that they exceed the scope of DOS's regulatory authority under the New York City Administrative Code. It is well settled that an administrative agency cannot create rules that were not contemplated or authorized by the Legislature. (*See, e.g., Matter of Tze Chun Liao v New York State Banking Dept.*, 74 NY2d 505 [1989].) "[T]he jurisdiction of an administrative board or agency consists of the powers granted it by statute, [and thus] a determination is void . . . where it is made either without statutory power or in excess thereof." (*Abiele Contr. v New York City School Constr. Auth.*, 91 NY2d 1, 10 [1997], quoting *Matter of Foy v Schechter*, 1 NY2d 604, 612 [1956].)

Petitioners maintain that the Administrative Code does not authorize DOS to adopt rules which would allow it to deny transfer station permits based on the number or capacity of transfer stations already in existence throughout the city. Petitioners contend that since the 2004 siting rules impermissibly provide for such geographic and siting restrictions, DOS unlawfully exceeded its authority in promulgating those rules and thus any decisions made by DOS under those rules must be annulled. Petitioners' claims are without merit. Section 16-131 (b) (1) of the Administrative Code, added in 1990 by Local Law 40, provides that

the Commissioner of DOS shall adopt rules

"establishing . . . requirements appropriate for protection of public health and the environment concerning siting of dumps, non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and/or fill material operations in relation to other such facilities, residential premises and/or other premises for which such requirements may be appropriate."

Thus, contrary to petitioners' claims, this section explicitly gives DOS the authority to adopt rules governing the location of transfer stations in relation to other transfer stations, residences and schools.

Nevertheless, petitioners argue that Administrative Code § 16-131.1, which sets forth when DOS may deny a transfer station permit, does not allow DOS to deny a permit based [*5] on the number or capacity of transfer stations already in existence. Again, petitioners' claim is meritless. Section 16-131.1 (b) (4) specifically provides that the Commissioner of DOS may refuse to issue a permit where the applicant has "failed to comply with any of the conditions for issuance of such permits as provided in this chapter *or any of the rules promulgated hereunder*" (emphasis added). Since DOS lawfully promulgated rules containing geographic and siting restrictions, this section allows DOS to deny a permit for failing to comply with those rules. Thus, petitioners' claims that DOS unlawfully exceeded its authority in promulgating the 2004 siting rules are without merit and provide no basis for the court to annul the decisions made by DOS under those rules.

Next, petitioners maintain that the 2004 siting rules enacted by DOS are arbitrary and capricious. The applicable standard of review for an administrative determination is whether the challenged agency action has a rational basis. (*Matter of Sullivan County Harness Racing Assn. v Glasser*, 30 NY2d 269 [1972].) Courts should not overturn administrative determinations unless they are made without sound basis in reason and without regard to the facts. (*Matter of County of Monroe v Kaladjian*, 83 NY2d 185 [1994].) Where the court finds any reasonable basis in fact for the administrative action, the court's function is exhausted. (*Hughes v Doherty*, 5 NY3d 100 [2005].) Petitioners bear the ultimate burden of proving that there is no rational basis for the determination challenged and that the agency action was arbitrary or capricious. (*Matter of Mosher v Ward*, 218 AD2d 626 [1st Dept 1995].) Moreover, "[a]n administrative agency's exercise of its rule-making powers is accorded a high degree of judicial deference, especially when the agency acts in the area of

its particular expertise." (*Matter of Consolation Nursing Home v Commissioner of N.Y. State Dept. of Health*, 85 NY2d 326, 331 [1995].)

Applying these principles, the court concludes that petitioners have failed to meet their burden of establishing that DOS's promulgation of the 2004 siting rules was arbitrary or capricious. The court's review of the new siting rules cannot ignore the legislative and judicial backdrop that preceded their enactment. Pursuant to the New York City Administrative Code, DOS is entrusted with the broad authority to oversee and manage the City's solid waste system. When it enacted Local Law 40, the City Council increased that authority and explicitly mandated that DOS adopt rules establishing requirements for the siting of transfer stations in relation to other transfer stations, residences and other sensitive premises, such as schools, public parks and hospitals. In passing that legislation, the City Council expressly acknowledged that the purpose of the new law was to address "problems associated with transfer stations" such as "the high volume of waste, odors, noise and increased truck traffic and their location near residential communities." (*See Supplemental Rep of the Comm on Governmental Operations, Int. 464-A, June 27, 1990, at 1372.*)

Indeed, after Local Law 40 was enacted, a number of courts issued decisions requiring DOS to address the problem of "clustering" of transfer stations in certain neighborhoods. When DOS was first taken to court, the Appellate Division, First Department, concluded that the 1991 and 1994 siting rules did not meet the legislative mandate since they did not address the problem of clustering of transfer stations in particular neighborhoods and their proximity to residences, schools and parks. (*Neighbors Against Garbage v Doherty*, 245 AD2d at 81.) After DOS enacted more restrictive siting rules in 1998, another court found that those rules were still not restrictive enough because, inter alia, they failed to address the inordinate clustering of transfer stations in [*6] areas near residences, schools and parks. (*Organization of Waterfront Neighborhoods v Carpinello*, Sup Ct, NY County, 1999, Index No. 103661-1999.)

In light of the clear directives from the City Council and the subsequent court decisions finding DOS's less restrictive siting regulations inadequate, this court concludes that the restrictions and prohibitions contained in the 2004 siting rules constitute a reasonable exercise of DOS's rule-making authority and are neither arbitrary nor capricious.

"Local governments have long been authorized to enact laws relating to the

'safety, health and well-being of persons or property' (NY Const, art IX, § 2 [c] [ii] [10]) and it is well settled that the regulation of solid waste collection and disposal . . . is fundamentally related to the public health and welfare." (*Town of Clarkstown v C&A Carbone*, 182 AD2d 213, 220-221 [2d Dept 1992], *revd on other grounds* 511 US 383 [1994].)

"It is beyond question that garbage, with its noxious odors, its decay, and the vermin it attracts, is a 'deleterious substance' which is 'unhealthy' and an 'actual or potential nuisance' with 'obvious hazards'. Even . . . 'nonputrescible' rubbish . . . can be unsightly, toxic, and space consuming. It is a menace to public health, and waste collection and disposal have long been subject to regulation under the police powers." (*New York Coalition of Recycling Enters. v City of New York*, 158 Misc 2d 1, 11 [Sup Ct, NY County 1992] [citations omitted].)

Thus, courts have routinely upheld laws and administrative rules regulating waste facilities and their locations. For example, in *Town of LaGrange v Giovenetti Enters.* (123 AD2d 688 [2d Dept 1986]), the Court upheld a town's complete prohibition on commercial solid waste transfer stations. The Court found that the defendants had failed to show that the ban was arbitrary and unreasonable or that it had no substantial relation to the public health, safety, morals, or general welfare. The Court held: "To the extent that this ordinance prohibits transfer stations, it is sufficiently related to the town's concerns with the effect that garbage, rubbish and refuse kept, even temporarily, on private lands within the town would have on the public health, safety and welfare." (123 AD2d at 689.)

Here, the 2004 siting rules are far less restrictive than the total ban on transfer stations upheld in *LaGrange*. It is important to emphasize that the new rules do not prohibit new transfer stations. They merely provide strict buffering limits for sensitive land uses, such as schools, public parks and hospitals, and also provide relief to certain neighborhoods that have an inordinate percentage of transfer stations in the city. Furthermore, under the new rules, buffer distances do not apply to facilities that use more environmentally sound methods of transporting waste, such as barge or rail. Finally, even in community districts with high percentages of transfer stations, permits can still be obtained if the applicant obtains offsets in the capacity of an existing transfer station located in the same area. Thus, there is no doubt that the restrictions contained in the 2004 siting rules are far less onerous than the total prohibition upheld in *LaGrange*. (*See Town of Islip v Zalak*, 165 AD2d 83, 88 [2d Dept 1991] [in light of court's holding in *LaGrange*, it is "beyond any reasonable dispute that the Town of Islip may regulate the 'transfer station/recycling center' at issue"]; *Matter of*

Jamaica Recycling v New York State Dept. of Envtl. Conservation, 308 AD2d 538 [2d Dept 2003] [where administrative agency has been granted broad power to regulate in the public interest, courts do not hesitate to uphold reasonable acts on its part designed to further the regulatory scheme.]

Petitioners' contention that solid waste transfer stations do not cause adverse impacts to [*7]residential communities, schools, public parks and hospitals is neither persuasive nor established as a matter of law by petitioners' submissions. There can be no doubt that transfer stations can create odors, dust and noise and thus are a potential nuisance to neighboring communities. As noted in DOS's response, putrescible stations, if not operated properly, can attract vermin and be a source of odors in a community. Furthermore, if the waste piles at nonputrescible transfer stations are not properly treated with dust suppression measures, under windy conditions they can blow dust onto neighboring properties creating adverse air quality impacts and a potential public health hazard. In addition, DOS's affidavits in opposition state that the location of petitioners' proposed facilities can only be reached by vehicular traffic which creates additional concerns associated with the air pollution, noise and traffic created by the diesel trucks servicing these facilities. Moreover, there is no dispute that certain communities in the city are already burdened with a disproportionate percentage of transfer facilities. Indeed, more than half of the city's 56 transfer stations are located in three community districts. In light of these factors, it cannot be said that the 2004 siting rules are not rationally based.

This court's conclusion is consistent with a long line of cases which hold that, in the exercise of their police powers, municipalities may regulate the disposal of solid waste. (See, e.g., *Matter of Amstel Recycling & Concrete Corp. v City of New York*, 287 AD2d 385, 386 [1st Dept 2001] [recognizing New York City's interest in "heavily regulat[ing]" waste transfer stations because of their impact on local communities]; *Monroe-Livingston Sanitary Landfill v Town of Caledonia*, 51 NY2d 679 [1980] [upholding law limiting acceptance of refuse generated outside of the town]; *Wiggins v Town of Somers*, 4 NY2d 215 [1958] [upholding complete prohibition on dumping of garbage which originated outside municipality's borders]; *Moran v Village of Philmont*, 147 AD2d 230, 234 [3d Dept 1989] [prohibition of private landfills within town's borders was a valid exercise of town's police power in light of "obvious" potential hazards of disposal of solid waste near residential communities]; *Town of Plattekill v Dutchess Sanitation*, 56 AD2d 150, 151 [3d Dept 1977]

["garbage dumps, no matter how carefully controlled, present some hazard to a community"].)

Likewise, courts have repeatedly upheld the use of buffer zones based on the geographic location of a proposed land use to protect other neighboring uses. (See, e.g., *Stringfellow's of N.Y. v City of New York*, 91 NY2d 382 [1998] [upholding 500-foot buffer between "adult establishments" and schools, daycare centers and houses of worship]; *Matter of Big Apple Food Vendors' Assn. v Street Vendor Review Panel*, 90 NY2d 402 [1997] [upholding rule restricting vending on 26 new streets not previously regulated]; *Matter of Laidlaw Waste Sys. v Planning Bd. of Town of Islip*, 305 AD2d 413 [2d Dept 2003] [upholding denial of transfer station permit under statute requiring that such facility be located a distance of at least 200 feet from property zoned for residential use].)

There is no merit to petitioners' contention that the 2004 siting rules should be struck down because they are contrary to the findings contained in the 2004 Commercial Waste Management Study (CWMS). Although petitioners place much emphasis on this study, the court concludes that it does not establish that the new siting rules are arbitrary or capricious. The 2004 siting rules challenged here involve DOS's criteria for issuing new transfer station permits. However, the CWMS emphasizes, over and over again, that it only studied the cumulative impacts of *existing* transfer stations in certain neighborhoods. At the outset, the [*8]CWMS states that its purpose is "[t]o assess the effectiveness of the existing framework of rules and regulations . . . governing operation of Transfer Stations ." (CWMS Executive Summary § 1.0, at 2.) In the section on the transfer station study, the CWMS states that it studied the combined environmental effects of the existing stations, "but did not consider new siting actions." (CWMS Executive Summary § 3.1.1.2, at 12.) Indeed, the study expressly acknowledges "the potential for adverse impacts from a future siting action." (CWMS Executive Summary § 3.1.1.2, at 12.) Although the study speculated that the then-existing rules would "tend to mitigate" the potential for such adverse effects, it by no means concluded that the existing regulations would be adequate to deal with additional transfer stations in a given area (*id.*).

In sum, the court concludes that the 2004 siting rules enacted by DOS are rationally based and are neither arbitrary nor capricious. DOS has properly exercised its discretion and has fulfilled its statutory and court-ordered obligations to promulgate rules to protect

residential neighborhoods, parks and schools throughout the city. Likewise, DOS has met its statutory mandate to ensure that additional transfer stations are not clustered in communities already burdened with a high percentage of these facilities. The 2004 siting rules should therefore be upheld and petitioners' article 78 claims to the contrary should be denied.^[FN2]

Next, petitioners maintain that, regardless of the validity of the 2004 siting rules, they are entitled to permits for their transfer stations under the "special facts" exception. Before discussing the applicability of the special facts exception, it is necessary to provide some background on the permitting process. In order to operate a solid waste transfer station, an applicant must first obtain a permit from both DOS and the New York State Department of Environmental Conservation (DEC). The two agencies together conduct an environmental review of each permit application under the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR) laws.^[FN3] Although DEC plays an important role in this process, DOS is primarily responsible for conducting the review.

In order to commence the review process, the applicant is required to submit an environmental assessment statement (EAS) which serves as the means by which the agencies evaluate the potential impact the transfer station would have on the environment. Potential impacts considered include traffic and transportation, waterfront issues, air quality, noise, hazardous materials, land use, zoning, public health, solid waste, and neighborhood character. Upon receipt of the EAS, DOS forwards the document to DEC and other involved city agencies so that each agency can assess the potential impacts that fall within that agency's expertise. [*9]Based on its review, each agency can either "sign off" on the EAS or request additional information from the applicant.

At the completion of the review, DEC and DOS jointly determine, based on a full analysis of the potential impacts, whether the proposed facility would have a significant adverse impact on the environment. If the agencies conclude that there are no significant adverse impacts, a negative declaration is issued and the review process ends. If, on the other hand, the agencies determine that the proposed facility may have a significant adverse impact, a more detailed environmental review will be required. In either case, a completed environmental review is a prerequisite to the issuance of any permit.

It is well settled that

"when a zoning law has been amended after the submission of an application seeking [a project's] approval, but before a decision is rendered thereon by the reviewing agency, the courts are bound to apply the law as amended unless 'special facts' indicate that the [agency] 'acted in bad faith and unduly delayed acting upon [the] application while the zoning law was changed'." (Matter of Cleary v Bibbo, 241 AD2d 887, 888 [3d Dept 1997], quoting Matter of Bibeau v Village Clerk of Vil. of Tuxedo Park, 145 AD2d 478, 479 [2d Dept 1988].)

The special facts exception is not applicable unless the petitioner demonstrates that it was "entitled to the permit as a matter of right by full compliance with the requirements at the time of the application." (*Matter of Pokoik v Silsdorf*, 40 NY2d 769, 773 [1976].) Thus, a party seeking to rely on this exception must show that the permit sought "would have been granted under the law as it existed at the time the application for the [permit] should have been passed upon." (*Matter of Our Lady of Good Counsel R.C. Church & School v Ball*, 45 AD2d 66, 72 [2d Dept 1974].)

Applying these principles, the court concludes that petitioners' permit applications do not fall within the special facts exception. To begin, none of the petitioners has established that it was entitled to a permit prior to the promulgation of the new siting rules because none had completed the joint DOS-DEC environmental review process. At the time DOS instituted its 2002 moratorium and stopped processing the permit applications, the DOS SEQRA/CEQR process was still ongoing for Jamaica, Fontana and USA Recycling. Although East Bay had received a negative declaration from DOS, it had yet to receive approval from DEC. Allocco had not even filed an application for the new permit to which it now claims to be entitled. Furthermore, petitioners have failed to show that their proposed facilities would have no significant adverse environmental impacts and that DOS would have issued a negative declaration and approved the permits. Thus, since none of the petitioners was entitled as of right to the permits sought, the special facts exception is inapplicable. (*See, e.g., Matter of Anstu Farm v Town Bd. of Town of Wash.*, 285 AD2d 503 [2d Dept 2001] [case not within special facts exception since the petitioner was not entitled to a permit for a private heliport as a matter of right prior to the enactment of the new ordinance]; *Morgan v Town of W. Bloomfield*, 295 AD2d 902 [4th Dept 2002] [special facts doctrine not applicable because entitlement to special use permit was not a matter of right].)

Nevertheless, Jamaica argues that it was entitled to a permit since it had received all of the necessary approvals by the time DOS instituted the 2002 moratorium. In particular, Jamaica states that by November 2002, it had obtained 24 written environmental approvals from various agencies and a verbal approval from the New York City Department of Environmental Protection (DEP). However, Jamaica does not submit an affidavit from anyone with personal knowledge [*10] providing any details of this alleged verbal sign off. In any event, there is no dispute that no written approval had been obtained from DEP and that DOS never issued a negative declaration under SEQRA/CEQR. Thus, Jamaica's arguments are without merit.

In addition to failing to establish as of right entitlement to the permits at issue, petitioners have neglected to show that DOS engaged in bad faith dilatory conduct or that DOS willfully or unreasonably delayed the permitting process. Where the delay in processing an application is "attributable to legitimate circumstances, rather than due to 'malice, oppression, manipulation or corruption,'" the special facts exception does not apply. (*Matter of Home Depot U.S.A. v Village of Rockville Ctr.*, 295 AD2d 426, 429 [2d Dept 2002].) Most of the delay alleged by Jamaica, Fontana and USA Recycling focuses on the environmental review of their applications prior to the 2002 moratorium.^[FN4] However, the environmental review contemplated by SEQRA and CEQR is labor-intensive and time-consuming. As noted above, the review encompasses a broad range of areas, including traffic and transportation, waterfront issues, air quality, noise, hazardous materials, land use, zoning, public health, solid waste, and neighborhood character. In addition, dozens of city agencies, as well as DEC, are involved in the process.

Furthermore, during the time the review process was taking place, DOS was in the process of complying with two court orders directing DOS to enact new siting regulations. (*See Matter of Jahn v Division of Hous. & Community Renewal of Off. of Rent Admin. of State of N.Y.*, 140 AD2d 193 [1st Dept 1988] [refusing to apply special facts exception where delay due in part to fact that agency was undertaking new responsibilities and had an unusually heavy caseload].) In light of the complexity of the review process, the fact that DOS was busy drafting new siting rules, and in the absence of any specific allegation of bad faith, the court concludes that petitioners have failed to show that any delay in processing the applications was willful. Accordingly, the special facts exception does not apply.^[FN5]

The fact that DOS's 2002 moratorium was subsequently declared improper does not establish that DOS acted in bad faith. To begin, DOS continues to maintain in this proceeding that the moratorium was in all respects proper and no appellate court has ruled on the issue. Furthermore, before reversing herself, Justice Heitler had rejected Jamaica's arguments on the unlawfulness of the moratorium and had dismissed Jamaica's article 78 petition. Thus, for a [*11] period of time following the moratorium, DOS had two contrary opinions on the legality of its actions from courts of concurrent jurisdiction. Furthermore, during the time the moratorium was in effect, Justice Heitler's initial decision was the subject of both a reargument motion and an appeal. In light of these factors, the court cannot conclude that any delay in processing the permit applications following the moratorium was in bad faith. Finally, petitioners' unsupported claim that DOS knowingly enacted an illegal moratorium in an intentional effort to delay processing the permit applications is entirely speculative and provides no basis for the court to find bad faith. (*See Matter of Ronsvale v Totman*, 303 AD2d 897 [3d Dept 2003] [refusing to apply special facts exception since imposition of moratorium, even if unlawful, was not shown to be motivated by malice, corruption or bad faith].)

There is no merit to petitioners' argument that the special facts exception should apply because DOS intentionally disobeyed prior court orders. Petitioners are correct that, in August 2003, Justice Lebedeff directed DOS to complete an environmental review of Fontana's proposed transfer station within 90 days. However, in March 2004, after further motion practice, Justice Lebedeff revisited the issue and granted DOS an additional 60 days from that date to complete the review. Petitioners have failed to show that DOS's failure to complete the review within that time period was willful. It was not until June 2004 that Fontana submitted a revised EAS for the facility. Upon review of the EAS, DOS identified numerous deficiencies and requested additional information from Fontana. Indeed, DOS maintains that Fontana's EAS is still incomplete to this day. Thus, it cannot be said that DOS intentionally disobeyed Justice Lebedeff's orders.

Nor did DOS fail to abide by Justice Heitler's order in Jamaica's earlier article 78 petition. On November 23, 2004, Justice Heitler directed DOS to continue to review Jamaica's permit application under CEQR and New York City Administrative Code § 16-131.1. However, by the time that order was issued, the 2004 siting rules had already been enacted. Thus, applying those new rules, DOS complied with Justice Heitler's order and

denied Jamaica's permit application. Contrary to Jamaica's contention, Justice Heitler did not explicitly order that the review be conducted pursuant to the old siting rules. Notably, neither Justice Heitler nor Justice Lebedeff ever held that DOS was proceeding in bad faith. Nor did they find DOS in contempt or issue any other sanction. Thus, the prior court orders provide no basis for this court to find that DOS acted in bad faith or that the special facts exception should be applied.

Next, petitioners claim that the vested rights doctrine requires DOS to process the permit applications under the old siting rules. Under that doctrine, "where a more restrictive zoning ordinance is enacted, an owner will be permitted to complete a structure or a development which an amendment has rendered nonconforming only where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of the amendment." (*Matter of Ellington Constr. Corp. v Zoning Bd. of Appeals of Inc. Vil. of New Hempstead*, 77 NY2d 114, 122 [1990].) At the outset, it is by no means clear that the vested rights doctrine, which typically involves building permits under the zoning laws, is even applicable to the transfer station permits at issue here. Notably, petitioners are not entitled as of right to operate transfer stations; rather, such permits are temporary in nature and granted on an annual basis. (*See, e.g., Matter of Allied Grocers Coop. v Tax Appeals Trib.*, 162 AD2d 791, 792 [3d Dept 1990] ["(p)etitioner's license to act as a wholesaler and stamping agent created no [*12]vested right, but is merely a privilege extended by the State subject to alteration by the imposition of reasonable restrictions"]; *Matter of Tao v Axelrod*, 95 AD2d 457 [3d Dept 1983] [a right to hold a license is not a vested right since the State may change such right or the conditions under which the license may be held].)

Even if the vested rights doctrine is applicable to the transfer station permits at issue, petitioners have failed to show that the doctrine applies. It is well settled that a right vests only where a property owner has a legally issued permit and has "demonstrate[d] a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development." (*Town of Orangetown v Magee*, 88 NY2d 41, 47 [1996]; *see also Matter of Lombardi v Habicht*, 293 AD2d 474 [2d Dept 2002] [vested rights acquired where petitioners made substantial expenditures and completed 80% of construction of home pursuant to validly issued permit].)

Here, as noted above, none of the petitioners had been issued a permit to operate their proposed transfer stations at the time the new siting rules went into effect. Likewise, none of the petitioners has established by competent proof that they have made substantial expenditures. Indeed, petitioners USA Recycling, East Bay and Alloro seek permits for completely new facilities that have never operated before. Although Jamaica and Pontana had previously operated transfer stations at the proposed sites, neither facility was in operation under a lawful permit at the time they applied for the permits at issue. Finally, the fact that petitioners may have spent money on the permit application process in anticipation that the permits would issue does not create vested rights. (See *Matter of Rudolf Steiner Fellowship Found. v De Luccia*, 90 NY2d 453 [1997] [expenditures made in applying for use variance were not made in reliance upon a validly issued permit and thus did not create vested rights].)

Petitioners also argue that DOS should be equitably estopped from applying the 2004 siting rules to the permit applications. However, equitable estoppel generally "may not be invoked against a governmental agency to prevent it from discharging its statutory duties." (*Matter of E.F.S. Ventures Corp. v Foster*, 71 NY2d 359, 369 [1988]; see also *LoCicero v Metropolitan Transp. Auth.*, 288 AD2d 353, 355 [2d Dept 2001] [estoppel is to be invoked against government agencies "sparingly" and only in "exceptional circumstances"].) Furthermore, to establish equitable estoppel, petitioners must show "fraud, misrepresentation, deception or similar affirmative misconduct." (*Matter of Concerned Port Residents Comm. v Incorporated Vil. of Sands Point*, 291 AD2d 494, 495 [2d Dept 2002].) As discussed above, petitioners have failed to show that DOS engaged in any affirmative fraud or misrepresentation, or any other bad faith activity. Thus, there is no basis for this court to invoke equitable estoppel.

Finally, there is no merit to petitioners' claim that DOS's application of the 2004 siting rules to the proposed transfer stations constitutes an unlawful regulatory taking. A statute regulating the use of property effects a taking only if it does not substantially advance legitimate state interests or denies an owner the economically viable use of his land. (*Seawall Assoc. v City of New York*, 74 NY2d 92 [1989].) A property owner asserting a takings claim bears the "heavy burden of overcoming the presumption of constitutionality that attaches to the regulation and of proving every element of his claim beyond a reasonable doubt." (*de St. Aubin v Flacke*, 68 NY2d 66, 76 [1986].) As discussed above, the regulation

of transfer stations in city neighborhoods substantially advances legitimate governmental interests. (See *New York [*13]Coalition of Recycling Enters. v City of New York*, 158 Misc 2d at 1 [finding that Local Law 40, which directed DOS to adopt rules establishing requirements for the siting of transfer stations, is rationally related to a legitimate governmental purpose].)

Furthermore, petitioners provide no proof, other than conclusory assertions, that there is no other economically viable use for their land. (See *Briarcliff Assoc. v Town of Cortlandt*, 272 AD2d 488 [2d Dept 2000] [a plaintiff asserting a takings claim must come forward with " 'dollars and cents evidence" . . . that under no permissible use would the parcel as a whole be capable of producing a reasonable return'].) Simply put, "petitioners do not have immunity against the exercise of the [City's] police power [merely] because their businesses were originally established in full compliance with then existing laws." (*New York Coalition of Recycling Enters. v City of New York*, 158 Misc 2d at 13.) Thus, the court rejects petitioners' claim that DOS's actions constitute an unlawful regulatory taking.

Accordingly, it is ordered and adjudged that petitioners' article 78 petitions are denied and this consolidated proceeding is dismissed in its entirety.

Footnotes

Footnote 1: Petitioners Jamaica Recycling Corp., Allocco-Recycling, Ltd., East Bay Recycling, Inc., Fontana Transfer Station, Inc. and Fontana Waste Transfer, Inc. (collectively Fontana), and USA Recycling, Inc. each brought separate article 78 petitions. By order dated May 16, 2005, this court granted respondents' motion to consolidate the five petitions into one proceeding.

Footnote 2: USA Recycling also challenges DOS's denial of its permit application on the grounds that there are no actual residences in the residential district located within 400 feet of its transfer station. USA Recycling also contends that such mandatory buffer distances are arbitrary and capricious because residential districts do not always contain residences. The court, however, finds this buffer requirement to be entirely rational because residential districts permit residences and thus have the potential to contain residences. Since it is undisputed that USA Recycling's facility is within 400 feet of a residential district, DOS's denial of a permit was proper.

Footnote 3: This joint review procedure, in which both DOS and DEC are designated as co-lead agencies, came about as a result of a March 1993 so-ordered stipulation in another case.

Footnote 4: East Bay does not contend that DOS improperly delayed consideration of its application. Rather, East Bay maintains that after DOS issued a negative declaration, DEC failed to issue its own negative declaration as part of the joint SEQRA/CEQR review. However, since the decision by DEC is not within the control of DOS, any delay by DEC cannot be attributable to DOS. Allocco does not contend that DOS engaged in improper delay because Allocco never submitted a permit application.

Footnote 5: Moreover, the special facts doctrine is not implicated where the applicant's own actions, such as neglect of the application or its decision to change the type of project involved during the review period caused the delay. (*Matter of Nichol v Planning Bd. of Vil. of Manlius*, 28 AD2d 1077 [4th Dept 1967]; *Matter of Gramatan Hills Manor v Manganiello*, 30 Misc 2d 117 [Sup Ct, Westchester County 1961].) DOS has submitted convincing evidence showing that Jamaica, USA Recycling and Fontana each contributed substantially to the length of the environmental review process.

Atwell

ZONING RESOLUTION Web Version/Text Only
THE CITY OF NEW YORK



THE CITY OF NEW YORK
Michael R. Bloomberg, Mayor

CITY PLANNING COMMISSION
Amanda M. Burden, Director

Article IV - Manufacturing District Regulations

Effective date of most recently amended section of Article IV : 12/11/01



Date of file creation: Web version of Article IV: 2/1/02

CITY PLANNING COMMISSION
nyc.gov/planning

DEPARTMENT OF CITY PLANNING
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in the Index at the end of this Resolution, for the convenience of those using the Resolution. Whenever there is any difference in the meaning or implication between the text of these Use Groups and the text of the Index, the text of these Use Groups shall prevail.

Special regulations applying in the #waterfront area# are set forth in Article VI, Chapter 2.

The following chart sets forth the Use Groups permitted in the various #Manufacturing Districts#:

**USE GROUPS PERMITTED
IN MANUFACTURING DISTRICTS**

| Districts | Use Groups | | | | | | | | |
|-------------------------|--------------------|---|---|---------------------|---|---|---|----|----|
| | Community Facility | | | Retail & Commercial | | | | | |
| | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| Light Manufacturing M1 | | x | x | x | x | x | x | x | x |
| Medium Manufacturing M2 | | | | x | x | x | x | x | x |
| Heavy Manufacturing M3 | | | | x | x | x | x | x | x |

| Districts | Use Groups | | | | | | |
|-------------------------|------------|----|----|----|---------------|---------------|----|
| | Recreation | | | | Gen. Ser-vice | Manufacturing | |
| | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| Light Manufacturing M1 | x | x | x | | x | | x |
| Medium Manufacturing M2 | x | x | x | | x | | x |
| Heavy Manufacturing M3 | x | x | x | | x | | x |

10/31/01

42-01

Special Provisions for Adult Establishments

Use Group 18 consists primarily of industrial #uses# which:

- (1) either involve considerable danger of fire, explosion or other hazards to public health or safety, or cannot be designed without appreciable expense to conform to high performance standards with respect to the emission of objectionable influences; and
- (2) normally generate a great deal of traffic, both pedestrian and freight.

A. Manufacturing establishments

Asphalt or asphalt products

Beverages, alcoholic, or breweries

Brick, tile, or clay

Cement

Charcoal, lampblack, or fuel briquettes

Chemicals, including acetylene, aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black or bone black, cleaning or polishing preparations, creosote, exterminating agents, hydrogen or oxygen, industrial alcohol, potash, plastic materials or synthetic resins, rayon yarns, or hydrochloric, picric, or sulphuric acids or derivatives

Coal, coke, or tar products

Excelsior or packing materials

Fertilizers

Foundries, ferrous or non-ferrous

Gelatin, glue, or size

Glass or large glass products, including structural or plate glass or similar products

Grain, milling or processing

Graphite, or graphite products

Gypsum

Hair, felt, or feathers, bulk processing, washing, curing, or dyeing

Incineration or reduction of garbage, offal, or dead animals

Insecticides, fungicides, disinfectants, or related industrial or household chemical compounds

Leather or fur tanning, curing, finishing, or dyeing

Linoleum or oil cloth

Machinery, heavy, including electrical, construction, mining, or agricultural, including repairs

Matches

Meat or fish products, including slaughtering of meat or preparation of fish for packing

Metal or metal ores, reduction, refining, smelting, or alloying

Metal alloys or foil, miscellaneous, including solder, pewter, brass, bronze, or tin, lead or gold foil, or similar products

Metal or metal products, treatment or processing, including enameling, japanning, lacquering, galvanizing, or similar processes

Metal casting or foundry products, heavy, including ornamental iron work, or similar products

Monument works, with no limitation on processing

Paint, varnishes, or turpentine

Petroleum or petroleum products, refining

Plastic, raw

Porcelain products, including bathroom or kitchen equipment, or similar products

Radioactive waste disposal services involving the handling or storage of radioactive waste

Railroad equipment, including railroad cars or locomotives

A REGULATORY STRATEGY FOR SITING AND OPERATING WASTE TRANSFER STATIONS

**A Response to a Recurring Environmental Justice Circumstance:
The Siting of Waste Transfer Stations in Low-Income Communities and
Communities of Color**

Prepared by the

***National Environmental Justice Advisory Council
Waste and Facility Siting Subcommittee
Waste Transfer Station Working Group***

Traffic:

- Residents report that truck routing does not appear to be controlled or monitored by regulators to restrict trucks to designated truck routes.
- Trucks reportedly use residential streets for other than pickup purposes.
- Truck traffic is particularly a concern where there is only one access route.

Local Economy:

- Residents are concerned that the poor appearance of WTSs depresses nearby property values and has contributed to the exodus of local businesses.
- Residents are concerned that WTSs drive out prospective new businesses that could bring new jobs and services into the neighborhood.
- The presence of WTSs may contribute to employee absenteeism.

Cumulative Impacts:

- The communities believe that the cumulative impact on traffic, health, and the environment of having several WTSs in a community should be evaluated as should the cumulative impact of WTSs combined with other sources of similar concern (e.g., sewage facilities, hazardous waste transporters and treatment facilities, scrap yards, auto shops, and sludge plants).

Permitting:

- Residents claim that permitting procedures lack early notification and public participation by residents and neighbors.
- According to representatives of community groups and non-governmental organizations, permits appear to be "grandfathered" without public review, and requests to increase permitted solid waste capacity are granted as a matter of course without public review.
- Spanish translations are desired.
- Residents feel that the New York State Department of Environmental Conservation (the state's regulatory agency) does not respond adequately to their requests for permit information.
- The residents would like to see a zoning review performed during the permitting process. The proximity of industrial properties to residential areas should be reviewed, as should conflicting land uses and impacts to residents living in areas zoned industrial.

Enforcement:

- Although New York City has passed "fair share" legislation that should ensure that the WTSs are equitably distributed throughout the boroughs, residents feel this has not occurred.

Comedy
Seaborough
Smith

day-to-day life in these communities. Concerns ranged from impacts on health and safety to nuisance and quality of life, traffic, and the local economy. Residents raised further concern about the cumulative impact of WTSs together with many other industrial facilities in the communities. They also voiced concerns about how the city is managing the regulation of WTSs, such as the permitting of facilities and the enforcement of local ordinances and regulations.

The following sections summarize the concerns raised by the community at the public meeting held in Brooklyn. The types of issues listed below are very familiar to those who have worked with environmental justice concerned communities nationwide, especially as they relate to the siting and operation of facilities located in neighborhoods where people live and work. However, it is important to point out that although the residents' concerns are real, no data have been collected to support their claims.

Health and Safety:

- The communities believe they experience unusually high asthma rates, as well as high numbers of fibroid tumors, miscarriages, respiratory problems, and nose bleeds.
- The communities see the large volume of truck traffic as a potential danger to pedestrians.
- Emissions from the large volume of trucks idling as they wait on residential streets to unload are a health concern to communities.
- Residents feel the potential impacts from air emissions are exacerbated by inadequate access to health care facilities and the high cost of health care in these areas.
- The proximity of the waste handling facilities to meat and produce handlers is a concern.

Nuisance/Quality of Life:

- Dust and odor from WTSs are deemed intolerable by nearby residents.
- WTSs reportedly contribute to rat and other vermin problems, particularly because facility doors are often open.
- Noise levels of WTSs operating at night are said to deprive nearby residents of sleep.
- Facilities reportedly lack green buffer zones to enhance neighborhood aesthetics and to mitigate potential air emissions problems.
- Residents feel the exteriors of the facilities are poorly maintained. In the worst cases, trash falls from open doors and windows onto public streets.
- Residents of some communities are worried that the recommended marine transport facilities may cut off their access to the waterfront and mar their views.
- Dust-laden, unsightly "recycling" activities reportedly take place in open air. Piles of trash collect under bridges.

HOLLIS 11423

99-20 191 Street
Hollis, N.Y. 11423

October 10, 1999

Mayor Rudolph W. Guilliani
City Hall
New York, New York 10007

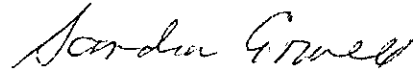
The residents of the Hollis community are horrified by the unsightly accumulation of tires stored in an empty lot on 187th Street and Hollis Avenue. We hope that these tires can be removed immediately because tires of this magnitude pose a serious health threat to the community.

The tires hold water and debris that can result in serious illnesses, such as the recent outbreak of encephalitis. In fact, in a recent news program on the spread of encephalitis a man from Whitestone said that they were getting rid of their tires by sending them out to be cut up. If they are not wanted in Whitestone, why would the people in Hollis want them? They should not be stored in a heavily populated area.

Besides the diseases, if there is a fire, such as the fires in Cincinnati and California, toxic fumes will spread throughout the area. This will create other serious health problems.

Since these tires are a threat to the community, I hope that we can come to an amiable agreement on the solution of this problem. Also, we are not requesting that they be sent to another heavily populated community.

Very truly yours,



Sandra Atwell
Interim Acting President

bcc Borough President, Shulman
Councilman, Archie Spigner
Congressman Gregory Meeks
State Senator Alton Walton
Assemblywoman Barbara Clark
CBIZ District Manager Yvonne Reddick

HOLLIS 11423
99-20 191 Street
Hollis, 11423

April 27, 2000

Claire Shulman, Queens Borough President
120-55 Queens Boulevard
Kew Gardens, New York 11415

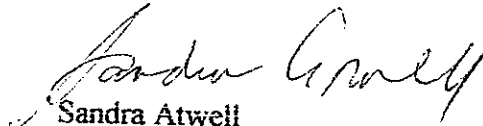
Dear Mrs. Shulman:

Thank you for your letter of October 14, 1999. We have received a reply from Sanitation, a copy is attached, and we have been communicating with Yvonne Reddick, District Manager of Planning Board 12, copy attached. Ms. Reddick has been very slow in her responses, and seems not to be fully aware of the exact nature of the business coming to this site. There are no signs on the lot or building that is being constructed; however, Ms. Reddick told us that the lot belongs to a carting company that wants to use it as a recycling plant. This is a heavily populated residential area; there are houses on both sides of the lot. A recycling plant would create the same problems that are being experienced on Brinkerhoff Street and 108th Avenue.

We are well aware of the serious health problems associated with this type of business, and we do not want to wait until we experience these problems before asking for help. We are also aware that a business of this type is usually owned by and approved by people living outside of the area. Residents do not want garbage dumped in their area. We asked if any residents of Hollis 11423 are members of Planning Board 12, but the response was vague.

Please let us know exactly what type of business is planned for this area. Although it is a registered M-1, light manufacturing area, it is an area surrounded by private homes. We do not want a business that will pollute the air and water. Your help in this matter will be appreciated.

Very truly yours,


Sandra Atwell
Interim Acting President

BCC: Congressman Gregory Meeks
Assemblywoman Barbara Clark
State Senator Malcolm Smith
Councilman Archie Spigner
Yvonne Reddick, Dist. Mgr.
Planning Bd 12

CLAIRE SHULMAN
PRESIDENT



(718) 286-3000
TDD (718) 286-2656
TELECOPIER (718) 286-2885

CITY OF NEW YORK
OFFICE OF THE
PRESIDENT OF THE BOROUGH OF QUEENS
120-55 QUEENS BOULEVARD
KEW GARDENS, NEW YORK 11424-1015

August 28, 2000

Sandra Atwell
99-20 191st Street
Hollis, NY 11423

Dear Ms. Atwell:

I received your letter regarding 187th Street and Hollis Avenue. The Department of Sanitation was contacted to find out if any permit applications for a recycling facility had been filed for that area. As of this date there are no permit applications on file with the Department of Sanitation. Should such an application come to my attention I would recommend denial of that application.

I share your concerns and agree that waste handling facilities should not be sited in areas that abut residential or retail neighborhoods. Over the years, I have strongly urged the Department of City Planning to amend the Zoning Resolution to prevent such uses from locating in M-1 districts next to residential and retail areas.

Please contact my office if you have any new information about a recycling facility at 187th Street and Hollis Avenue.

Sincerely,

A handwritten signature in cursive script that reads "Claire Shulman".

CLAIRE SHULMAN
President
Borough of Queens

CS:ip
BP Tracking #87652

HOLLIS 11423
99-20 191 Street
Hollis, New York 11423

November 4, 2003

Mayor Mike Bloomberg
City Hall
New York, New York 10007

Dear Mayor Bloomberg:

We are again writing to protest the siting of waste facilities in residential areas, and the number of waste sites in the residential areas of Southeast Queens. Since our letter dated February 12, 2002, conditions have declined.

Although the local laws prohibit waste sites from operating within 400 feet of a residential area, park or school (according to, Gail Suchman, Esq., New York Lawyers for the Public Interest) a notice of intent to allow a 600 ton per day increase of putrescible waste was approved for the site located at 172-02 Douglas Avenue, Jamaica, New York.

Attached is a copy of a letter to Commissioner Crotty, New York State Department of Environmental Conservation, protesting the expansion of hours to a twenty-four hour a day facility. This site is located in the Springfield Gardens section of Southeast Queens, another residential area.

We have noticed an increase in activity at the waste site at 187-40 Hollis Avenue. We were told that this is a paper recycling plant, but there are no signs indicating the nature of the business or the hours of operation. When I spoke to Ms. Lindo, Department of Buildings, I was told that the owners do not have to post signs designating the type of business being conducted. We also noticed other types of waste going into the facility. Regular sanitation trucks are making deliveries. We have also seen trucks carrying demolition and construction waste going into this waste site.

We have received numerous complaints about this site. One is the terrible stench. Attached is a copy of a complaint to the Department of Environmental Protection. In addition to this, I reported a malodorous condition to 311. A policeman responded and said that there are waste sites along Jamaica Avenue, and there is a stench each time the

garbage is delivered. He also stated that he receives many complaints, but there is nothing that they can do.

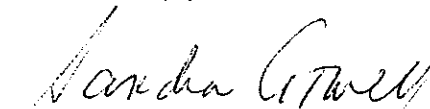
We are also attaching copies of complaints sent to the Department of Transportation regarding the truck traffic. Truck traffic brings in diesel fuel that contaminates the environment. They also create a lot of noise.

However, the major concern is the health problems that they create. People living close to waste sites experience high rates of asthma and cancer as outlined in *A Regulatory Strategy For Siting and Operating Waste Transfer Stations*. The Fresh Kills Landfill was closed because people building homes too close to the site experienced a high rate of cancer. Knowing this, why are waste stations allowed to operate in M-1 zones that abut residential areas. According to the zoning laws, they should be in M-3 zones.

New York City puts emphasis on the quality of life. It has passed legislation to prohibit consenting adults from smoking in designated areas, but it has a problem enforcing laws that could protect children from asthma and other serious illnesses. Children living near the waste sites experience a high rate of asthma.

Waste sites create a malodorous atmosphere. The truck traffic creates an unbearable decibel level and dust. There is no way to avoid this. They present a poor quality of life and should not be allowed to operate near residential areas. We are asking for your help in enforcing the law.

Very truly yours,



Sandra Atwell
President

CC: Borough President Helen Marshall
Governor Pataki
U.S. Senator, Hillary Clinton
U.S. Senator Charles Schumer

HOLLIS 11423
99-20 191 Street
Hollis, New York 11423

May 5, 2003

Hon. Patricia Lancaster, Commissioner
Department of Buildings
280 Broadway
New, York, NY 10013

Dear Commissioner Lancaster:

Southeast Queens has more than its share of waste sites; therefore, the Honorable Tony Avella, City Council member, wrote a letter to you on our behalf. We do not have a response from this letter; however, our search for answers leads us to the Buildings Department. I'm particularly interested in the waste site at 187-40 Hollis Avenue. According to the zoning regulations, this facility should be in an M-3 zone, but it is in an M-1 zone that abuts a one family residential area. We were told that it is a paper recycling facility, and we have seen tons of paper dumped into the large lot. However, there are no signs posted and we don't know if other activities take place at this site. Please advise.

Sanitation informed us that the Department of Environmental Conservation issues permits for paper- recycling plants. When I called D.E.C., I was told that paper -recycling facilities do not need permits; they get permission from the Buildings Department. I would like to know if the Building Department has given permission for this facility to operate in a M-1 zone.

I would also like to know if 187-72 Hollis Avenue is part of this facility. A store that sold cement and other building supplies was formerly

Lancaster

-2-

May 3, 2003

located at this address. It has been vacant for a while, and there is a "for sale" sign posted; however, I see trucks unloading packages into the building. Please advise.

Thank you for your cooperation. I look forward to your reply.

Sincerely yours,

A handwritten signature in cursive script that reads "Sandra Atwell".

Sandra Atwell
President

HOLLIS 11423
99-20 191 Street
Hollis, New York 11423

“Injustice anywhere, is a threat to justice everywhere”
Rev. Dr. Martin Luther King

October 15, 2003

Assemblyman William Scarborough
114-52 Merrick Boulevard
St. Albans, New York 11434

Dear Assemblyman Scarborough:

We are enclosing a history of our complaints regarding the waste site at 187-40 Hollis Avenue. Our correspondence started in October, 1999, when other areas in the city were disposing of their tires because they cause health threats and Hollis was receiving a multitude of tires. Our fight still continues today because the waste site operates on a larger scale. This waste site does not post a name, license or hours of operation. However, we are experiencing the same conditions that are outlined in the National Environmental Justice Advisory Council report issued in 2000. We have a malodorous atmosphere and truck traffic that creates dust, noise and noxious fumes. This violates the administrative code of New York City.

A Regulatory Strategy For Siting and Operating Waste Transfer Stations: A Response to a Recurring Environmental Justice Circumstance: The Siting of Waste Transfer Stations in Low-income Communities and Communities of Color, prepared by the National Environmental Justice Advisory Council, reveals the health complaints, the economic depression on neighborhoods and the poor quality of life for people living near the sites

The residents complain about the high asthma rate, also experienced in Southeast Queens, respiratory problems, fibroid tumors, and miscarriages. The trucks use residential streets; this creates dust

and noxious odors. Residents complain about rats and other vermin as well as the noise level. In addition to this, waste stations have an economic impact on the community. It depresses property value and contributes to the exodus of local businesses. This produces a poor quality of life for people living near waste sites.

Most disturbing of all, these waste sites operate in violation of the zoning laws and local laws. According to E. Gail Suchman, New York Lawyers for Public Interest and Organization of Waterfront Neighborhoods, these waste sites should not be within 400 feet of a residential area, public park or school. Although we have met with you, Councilman Comrie and State Senator Malcolm Smith, the waste sites are operating at a greater capacity and there is no indication that things will improve. We need your help in enforcing the laws.

I am also enclosing copies of our reports and complaints about the 187-40 Hollis Avenue waste site, a waste site that does not post a name or hours of operation. The health of the residents should be the main factor in determining where waste sites should be located, instead of using the number of complaints received. This is tantamount to saying that the fire department cannot respond because only one call was received. Both are life-threatening situations and should be treated as such. Allowing waste facilities to violate the law and operate in poor areas and areas of color is a terrible injustice.

Very truly yours,



Sandra Atwell

CC: State Senator Malcom Smith
Councilman Leroy Comrie
Congressman Gregory Meeks
Assemblywoman Barbara Clark
Commissioner Crotty, NYS Dept. of
Environmental Conservation

CITY COUNCIL TESTIMONY-ZONING

Good morning, I am Larry Bernstein, vice president of Jonas Equities, the owner of property fronting on Archer Avenue between Sutphin Boulevard and 147th Place. We are a family operation and have owned and managed our Jamaica property for over 40 years. We have remained in Jamaica through thick and thin and would welcome being a part of Jamaica's revitalization. We wish to redevelop our property in an appropriate manner and to continue in business in Jamaica. However, the proposed rezoning unfairly affects our property, a substantial portion of which the City proposes to condemn.

Our property comprises two contiguous lots – lots 31 and 38 of block 9994. In a matter directly related to the rezoning, the City proposes to condemn our lot 38 for street widening and retail development purposes. I will be testifying at the City Council's Planning, Disposition and Concession Sub-Committee's hearing in opposition to the

breadth of the condemnation. If the City condemns our lot 38 our remaining lot 31 will be irregularly shaped and improved with an obsolete, 40 year old, ~~15~~⁶-story vacant office building formerly occupied by the City's Human Resources Administration. The vacant office building is functionally obsolete and needs to be replaced. The building was constructed specifically for the City and cannot be feasibly renovated to modern standards. It has become unrentable at a reasonable economic return.

The proposed downtown Jamaica rezoning, which includes our property, will substantially increase the value and use of neighboring properties being upzoned to C6-4 or C6-3 districts, while preventing any additional value to our property by rezoning it to a C6-2 district. Our remaining vacant office building will be rezoned to an FAR of 6 while its immediate neighbors will be rezoned to either C6-4 (an FAR of 10) or C6-3 (an FAR of 8). We have been meeting with the Department of City Planning in a good faith attempt to resolve our differences. Although a Memorandum of Understanding regarding development

rights has been presented for discussion, there remains differences between us which must be resolved. We will, of course, continue to negotiate in good faith.

We support the overall goals and much of the specifics of the rezoning as they are good for both Jamaica and the City. However, we are concerned with the rezoning's effect on our property, which is located at a significant and highly visible site and which, due to its location, should be a major contributor to the Jamaica redevelopment. A basic tenet of zoning, as practiced in New York City and specifically endorsed by Mayor Bloomberg in his recent Earth Day speech and Plan NYC Proposal, is to locate increased density in proximity to mass transit. While this zoning plan recognizes this principle for properties surrounding our site, it fails to recognize this principle regarding our property. Our property is diagonally across the Sutphin Boulevard / Archer Avenue intersection from the Long Island Railroad and Air Train Stations. Also adjacent to our property is a subway station and multiple bus routes. Yet with all these advantages of proximity to mass transit, the zoning plan

neglects to accord our property the same floor area as properties on Archer Avenue many blocks further away from this mass transit nexus. At the very least, our property should be rezoned like its immediate neighbor to C6-3.

I respectfully ask that the rezoning accord our property the same status as the surrounding properties; thereby assuring our ability to redevelop our property in an economically viable fashion similar to our immediate neighbors. ^{we believe this is a suitable candidate for} Let me conclude by again stating that we do support the overall idea of improving downtown Jamaica. ^{follow up - corrective action} We just don't want to be negatively affected by actions that together radically reduce the potential redevelopment value of our property.

Thank you

July 23, 2007
Testimony of Vice President Kyle Bragg, Before the New York City Council
and sub-committee on zoning
Chairman Tony Avella

Good Morning my name is Kyle Bragg and I am the Vice President of Local 32BJ SEIU. I would first like to thank the New York City Council, Chairman Tony Avella for allowing me the opportunity to speak today.

Our union represents 85,000 building service workers in commercial office buildings, residential buildings, and stadiums throughout New York, New Jersey, Connecticut, Pennsylvania, Delaware, Maryland and the District of Columbia. Our members are cleaners, handymen, porters, doormen, superintendents, window cleaners, and security officers. They work hard and get paid decent wages and benefits.

Our members live in the communities in which they work. Our members come from every part of this City and live in every neighborhood.

The Jamaica project being presented here today will potentially rezone 368 blocks of downtown Jamaica plan will allow for a higher density of commercial and residential development around the transit hub. It will create 1.8 Million square feet of office space, 1.1 million square feet of retail space, a 200,000 square foot hotel and 3,400 units of housing. The project will potentially provide 150 building service jobs for the surrounding areas of Jamaica Queens.

Unfortunately the current plan does not have a provision to ensure that building service and hotel workers will be paid a decent wage. As the administration continues to create these projects as part of their economic development plan for New York City, they need to address the issue of good jobs. With New Yorkers finding it harder and harder to make ends meet, it is vital that new development not only provide jobs for the community but ensure that they are good jobs that pay good wages.

During the entire ULURP process and before this proposal went to City planning for a vote at no time did the administration discuss how this issue. Local 32BJ cannot support a project that does not address good jobs.

We therefore ask the New York City Council to oppose the Jamaica rezoning in its current form until it ensures that there is adequate plan to address wage standards.

All service workers do an honorable job and provide an important service. It is important that their hard work and dedication be recognized by providing a living wage that benefits them and their families. We hope that any plan for Jamaica reflects this vision.

**Jamaica Estates Association
Testimony Presentation
To The
City Council
Hearing on
Greater Jamaica
Development Rezoning**

**Monday
July 23, 2007**

**Martha Taylor, Zoning Chair
Dr. Arthur Flug, Board Chair**

The Jamaica Estates Association is opposed to the Jamaica Redevelopment Plan as it relates to the re-zoning that is proposed for Hillside Avenue. Our concern is based on the plan to permit a canyon of 8 story buildings east of Midland Parkway and 12 story buildings west of Midland Parkway. We agree with DCP that this will change the character of Hillside Avenue and by extension our neighborhood but we disagree with DCP in its assessment of the magnitude of that change and its impact on the environment.

Our opposition is based on the Final Environmental Impact Study for this project which is based on several assumptions that are fallacious.

Fallacious Assumption Number 1:

The FEIS projects 2,186 new apartments along Hillside Avenue (less than 20% of Maximum).

Is this really a “Reasonable Worst Case Scenario”?

We visited a recently rezoned neighborhood, 4th Avenue in Brooklyn. This is a street very similar to Hillside Avenue in that it is a 6 lane thoroughfare, has a subway line (RR), presently it is populated with low-rise, non-descript retail and automotive buildings, and it borders on diverse communities. We found that between President Street and 5th Street there are 7 new projects with many buildings 8-12 stories high. This is much denser development than the 20% assumed in the FEIS. In fact, we have seen real estate values rise dramatically on Hillside Avenue because of the intense interest of developers anticipating a building frenzy along this street. In our opinion, the FEIS projection is not based on reality and ignores the experience in similar neighborhoods. In fact, we examined the FEIS that was published in 2002. In November 2002, the DCP published the Environmental Assessment Statement for the Park Slope Rezoning Proposal. They identified 16 sites on or near 4th Avenue as potential development sites. “A full build-out of all these sites was considered, but rejected as being highly unlikely, as it would generate over four times the number of new housing units produced locally in the past ten years. Further, the 1993 rezoning from R6 to R8A of a section of Fourth Avenue north of the study area has not resulted in any new apartment building construction in the last nine years. A full build-out is therefore unreasonably large and would not serve as an appropriate basis for the impact analysis.” *Park Slope EIS, Page 16.*

As a result of this analysis, the DCP identified only five development sites that they considered likely to be developed within ten years in the 23 blocks on Fourth Avenue from Warren to 15th Street. In reality, today, only 4 ½ years later, there are seven new large buildings going up in the seven blocks from President to 5th Street. As a result, DCP correctly predicted only 22% of the new development that is occurring on Fourth Avenue!

DCP has used the same reasoning in making its predictions in the RWCDS for the Jamaica FEIS. As a result, it is reasonable to expect the same poor results.

Fallacious Assumption Number 2:

The DEIS projects a population increase of only 3.8%.

This conclusion is based on fallacious Assumption Number 1. If in fact population increases are calculated using a reasonable worst case scenario that assumes a more realistic build-out along Hillside Avenue, then over **38,000 new people** will move onto Hillside Avenue because of the proposed re-zoning.

Fallacious Assumption Number 3:

The DEIS assumes that existing infrastructure is sufficient to meet the needs of a potential maximum build out under existing zoning rules.

The DEIS only measures the environmental impact due to the difference in potential growth possible under the current zoning and the maximum growth possible under the proposed zoning. This assumes that existing infrastructure is sufficient for maximum build-out under present zoning regulations...an assumption that every citizen in Jamaica knows is simply not true. A reasonable worst case scenario should assess the infrastructure improvements that will be needed to address the difference in demand between what actually exists today and the maximum build-out possible under the proposed new rules. This would provide a much more accurate assessment of the environmental impact on Hillside Avenue and infrastructure shortfalls that need to be addressed.

These assumptions form the basis for DEIS conclusions that we find alarming:

- Public safety:
 - ***“No Significant Adverse Impacts on Police or Fire Services”***
- Education:
 - ***DOE 2005-2009 Five Year Capital Plan will “Ameliorate Any Projected Overcrowding”***
- Traffic and Pedestrian Congestion:
 - ***DCP projects significant adverse impacts which they propose to mitigate by making “signal timing adjustments” and rush hour parking prohibitions***
- Mass Transit:
 - ***“New Subway Demand would NOT result in Any Significant Line Haul Impact to Any Subway Line”***
- Water Supply:
 - ***“The incremental demands...would not adversely impact the local water supply system or water pressure”***
- Noise:
 - ***“As a result of additional traffic...would not be perceptible”***
- Sanitation Services:

- *“The proposed actions would not adversely affect the delivery of these services, or place a significant burden on the City’s solid waste management system”*
- Parking:
 - *“The proposed actions would result in an overall shortfall of 2,082 off-street public parking spaces...No mitigation is available for this impact”*

We agree with Community Board 12 when they wrote:

“One of our greatest concerns-it may be our greatest concern-is to ensure that adequate infrastructure exists in place to sustain the growth projected in the studied areas and the impact of this growth beyond the study area. Therefore, the assumptions in the DEIS under the Reasonable Worst Case Development Scenario must anticipate maximum growth potential”

Our community demands an Environmental Impact Statement that is based in reality and not biased assumptions. In our opinion rational city planning requires the city to commit the resources necessary to mitigate the impacts of this proposal before re-zoning is approved.

Thank you.

Testimony of Eugenia Rudmann, 88-74 195 Street, Hollis Park Gardens, NY 11423;
Geniemar@aol.com; Phone/Fax 718 464 1024

July 23, 2007, Zoning and Franchises Hearing, Council Chambers - City Hall,
Chairperson Tony Avella

I am the co chair of the Ad hoc Committee for Community Board 12 which has been meeting with the Queens Department of City Planning since December 2005.

We were called to participate in learning and engaging in a working relationship with DCP so that a plan could be presented ultimately to City Council and the Mayor for consideration to become a reality.

We met with DCP over 38 times in sessions that lasted from two to three hours. We invited Pratt Center to join us in discussion and brainstorming as well as other authorities in urban planning. Residents were interviewed and elected officials. Ultimately we felt compelled to write an Alternative Plan which we urge you to read.

I am also the President of Hollis Park Gardens Association and we are very concerned about the impact that the proposed density along Hillside Avenue will have on our community and our quality of life. I have not spoken of this until today because I have felt compelled to address the entire Jamaica Plan as co-chair of the Ad hoc Committee; however, it is now essential that I address my community's immediate concern.

We share the sentiments expressed by Community Board 8, Councilmember David Weprin and Senator Frank Padavan about Hillside Avenue. We urge you to remove Hillside Avenue from the Jamaica Plan until a more serious study can be made. The proposed R7X, R7A and R6A zoning is not acceptable for all the many reason that are mentioned in the Ad hoc Alternative Plan and voiced by others.

Thank you

The Queens Community Board 12 Ad hoc Alternative Plan in a nut shell.

The Ad hoc Committee is asking Department of City Planning to fine tune the zoning of neighborhoods and not paint with such a broad brush.

Our zoning changes

1. allow for development that increases the amount of available housing along the corridors that compliment adjacent one and two family neighborhoods and available transportation.
2. recommend contextual zoning for neighborhoods which will limit the height and bulk of the houses.

The Manufacturing Strip

3. east of Jamaica Center must not be doubled.
4. east of Jamaica Center is currently used for the most noxious uses which are 75 to 100 feet from private homes and greenspace. These uses must be eliminated.

Affordable and low income housing

5. must be developed on site as is the case with the proposed development for the former Family Court House, on Parsons Boulevard. (40/40/20)
6. in a mixed development makes for a stronger society. Ex: The Ad hoc Committee is recommending on site 50/30/20 for developers on the corridors as an incentive to bulk out their buildings.
7. must be granted incentives in the R6 designations, as is the case in Brooklyn.

"Boulevard construction"

8. does not relieve over development in the inner low density neighborhoods. Enforcement of building codes by the Buildings Department would do that.
9. at the proposed densities would sandwich in the low density, one and two family neighborhoods.
10. does not encourage home ownership. Not just rental possibilities/initiatives must be available for those who can't afford market rate co-ops and condos.

Infrastructure, schools, health services, parking mitigation, traffic must be addressed before development may occur.

We are asking you, as members of City Council:

1. The Council must reject the pieces of the Plan that the committee objects to and order the Commission to correct the problems.
2. The plan must be changed now to include R-6 in the affordable housing formula.
3. The plan must be changed now to create ownership opportunities for residents of affordable housing developments.
4. The community must see funding in this year's budget for infrastructure remediation...not plans or promises for the future.
5. An immediate follow-up contextual rezoning for residential neighborhoods not in scope.
6. A firm date for the removal of waste transfer stations.
7. Removal of Hillside Avenue as part of the Jamaica Plan until a serious study can be undertaken.

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| Matter of Jamaica Recycling Corp. v City of New York |
| 2007 NYSlipOp 02491 |
| March 22, 2007 |
| Appellate Division, First Department |
| Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431. |
| As corrected through Wednesday, May 9, 2007 |

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| In the Matter of Jamaica Recycling Corp. et al., Appellants, v City of New York et al., Respondents. |
|---|

—[*1] Cozen O'Connor, New York (Michael C. Schmidt of counsel), for Jamaica Recycling Corp., appellant.

Lawrence B. Goldberg, New York, for Allocco Recycling, Ltd., East Bay Recycling, Inc., Fontana Transfer Station, Inc., Fontana Waste Transfer, Inc. and USA Recycling, Inc., appellants.

Michael A. Cardozo, Corporation Counsel, New York (Karen M. Griffin of counsel), for respondents.

Judgment, Supreme Court, New York County (Rosalyn Richter, J.), entered February 15, 2006, denying the petitions and dismissing the consolidated proceedings brought pursuant to CPLR article 78 to challenge transfer station permit denials by respondent New York City Department of Sanitation (DOS) and the rules upon which such denials were premised issued by DOS in 2004, and bringing up for review an order, same court and Justice, entered on or about May 16, 2005, which granted respondents' motion to consolidate the proceedings; and order, same court and Justice, entered July 24, 2006, which granted the motion by some petitioners for renewal but, on renewal, adhered to the prior judgment, unanimously affirmed, without costs. Appeal from the May 16, 2005 order unanimously dismissed, without costs, as subsumed in the appeal from the ensuing judgment.

Petitioners Allocco Recycling, Inc., East Bay Recycling, Inc., Fontana Transfer Station,

Inc., Fontana Waste Transfer, Inc., and USA Recycling, Inc. contend that "the Zoning Law is the controlling authority as to what uses . . . owners may make of their property in a given district" (*Matter of Goelet v Moss*, 248 App Div 499, 500 [1936], *aff'd* 273 NY 503 [1937]). However, in Local Law No. 40 (1990) of the City of New York, the New York City Council specifically directed respondent DOS to adopt siting rules for transfer stations.

Next, the above-named petitioners contend that the rules on transfer stations promulgated by DOS in November 2004 are irrational because they are contrary to a comprehensive waste management study completed in March 2004. However, "[a]lthough documented studies often provide support for an agency's rule making, such studies are not the *sine qua non* of a rational determination. . . . 'the commissioner . . . is not confined to factual data alone but also may apply broader judgmental considerations based upon the expertise and experience of the agency he [*2]heads' " (*Matter of Consolation Nursing Home v Commissioner of N.Y. State Dept. of Health*, 85 NY2d 326, 332 [1995], quoting *Matter of Catholic Med. Ctr. of Brooklyn & Queens v Department of Health of State of N.Y.*, 48 NY2d 967, 968-969 [1979]). The 2004 rules were not based solely on the study; they were also based on comments received from elected officials, community groups, industry groups, and the public.

USA Recycling contends that the requirement of a buffer zone from a residential district is irrational as applied to it because the "residential" district in question will never have residents: it consists of a river, a parkway, a park, and railroad tracks. However, the 400-foot buffer zone requirement applies to parks as well as residential districts, and USA's facility would be located within 400 feet of a park. It would also be located within 150 feet of a residence, albeit one located in Westchester County rather than New York City.

Allocco's contention that the 2004 rules are arbitrary and capricious because they give preference to putrescible facilities with waterfront barging capabilities but not to nonputrescible facilities with such capabilities is not properly raised for the first time on appeal.

To the extent Allocco, East Bay, Fontana, and USA contend that the 2004 rules constitute reverse spot zoning, the argument is unavailing (*see Peck Slip Assoc. LLC v City Council of City of N.Y.*, 26 AD3d 209, 210 [2006], *lv denied* 7 NY3d 703 [2006]).

All of the petitioners contend that they come within the "special facts exception," and thus that DOS should review their applications according to the rules that existed when they filed their applications. To claim the benefit of the relied-upon exception, however, a petitioner must have been entitled to a permit as a matter of right before the law changed (see *Matter of Anstu Farm v Town Bd. of Town of Wash.*, 285 AD2d 503, 504 [2001]; see also *Matter of Pokoik v Silsdorf*, 40 NY2d 769, 773 [1976]), and none of the petitioners was entitled to a permit to operate a transfer station before the 2004 rules came into effect; none had obtained a negative declaration from both DOS and the New York State Department of Environmental Conservation (DEC). While East Bay had obtained a negative declaration from DOS, it had not obtained one from DEC and respondents could not force DEC (a state agency) to issue a negative declaration.

There are further reasons why the special facts exception does not apply to Allocco and USA. Allocco has never filed an application for a construction and demolition debris transfer station; hence, respondents have not delayed action on such an application by Allocco. The delays in processing USA's application between 1999 and August 2002 appear to have been caused by "legitimate circumstances" (*Matter of Home Depot U.S.A. v Village of Rockville Ctr.*, 295 AD2d 426, 429 [2002]).

All petitioners contend that DOS's 2002 moratorium on processing applications for nonputrescible transfer stations was improper. It is true that two trial-level courts found that DOS should have followed the procedures for rulemaking instead of sending letters to individual applicants. However, even if the procedure by which the moratorium was instituted was defective, this "would not oblige a court to apply a law which has been superseded" (*Matter of Alscot Inv. Corp. v Incorporated Vil. of Rockville Ctr.*, 64 NY2d 921, 923 [1985]).

Assuming, arguendo, that equitable estoppel applies to respondents under the circumstances of this case (but see *Matter of Hamptons Hosp. & Med. Ctr. v Moore*, 52 NY2d 88, 93-94 n 1 [1981]), Allocco's, East Bay's, Fontana's, and USA's argument that respondents are equitably estopped from benefiting from the 2002 moratorium is unavailing because they fail to show how they detrimentally changed their position as a result of the moratorium. Allocco's and USA's claim, based on an affirmation of a DOS attorney, that respondents are equitably [*3]estopped from arguing that a DEC permit exempts only city-

owned transfer stations—not privately-owned transfer stations—from the 2004 rules, is unavailing because these petitioners could not have detrimentally relied on an affirmation that they did not discover until shortly before their motion to renew.

Jamaica contends that the vested rights doctrine entitles it to have its application reviewed according to the rules in effect at the time the application was made. This argument is unavailing since Jamaica did not have a valid permit (*see Town of Orangetown v Magee*, 88 NY2d 41, 47 [1996]); by January 1997 (the time of its application), Jamaica's permit from the Department of Health had long since been superseded by the annual permits issued by DOS between 1991 and 1994. Furthermore, expenditures made to apply for a discretionary permit, such as a permit to operate a transfer station, are not made in reliance on a validly issued permit (*see Matter of Rudolf Steiner Fellowship Found. v De Luccia*, 90 NY2d 453, 460-461 [1997]).

The IAS court properly exercised its discretion in granting consolidation.

We have considered petitioners' remaining arguments and find them unavailing.
Concur—Friedman, J.P., Nardelli, Sweeny, McGuire and Malone, JJ.

HOLLIS 11423
99-20 191 Street
Hollis, New York 11423

February 12, 2004

Hon. Amanda Burden, Chair
Department of City Planning
22 Reade Street
New York, New York 10007

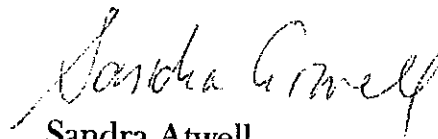
Dear Commissioner Burden:

We have written several letters to elected officials and city agencies because waste stations are operating in M-1 zones. Although the regulations for manufacturing districts list all waste facilities under use group 18, the zone set aside for heavy manufacturing districts, they are operating next to single family homes. We were informed that this is permitted because there is a loophole in the zoning laws. What is this loophole, and why does it take precedence over the health and welfare of the residents? The zoning regulations clearly state that the general purpose of the regulations is to "protect public health, safety, and general welfare."

We would also like to know if the new zoning laws will contain a clear and concise statement prohibiting heavy manufacturing facilities that create noxious matter, offensive noise and odors, vibration, dust and other particulate matter from operating next to residential areas.

Your help in this matter will be appreciated.

Very truly yours,



Sandra Atwell
President

CC: Debra Carney, Deputy Director, Queens Office
Hon. Tony Avella, Chair, N.Y City Council Zoning

HOLLIS 11423
99-20 191 Street
Hollis, New York 11423

December 22, 2003

Honorable Erin Crotty, Commissioner
NYS Department of Environmental Conservation
One Hunter's Point Plaza
47-40 21st Street
Long Island City, New York 11101

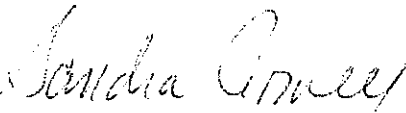
Dear Commissioner Crotty:

Attached is a copy of our History of Complaints. Hollis 11423 is a quiet, R2, single-family zone. The waste station at 187-40 Hollis Avenue is operating in an M-1 zone that abuts homes on both sides. There are private homes in back of the facility and homes across the street from the facility. The letter, dated March 6, 2000, from Yvonne Reddick, District Manager of Planning Board 12 confirms this. Waste stations create dust, truck traffic and a terrible stench. This creates a poor quality of life for the people living in the area, especially an area like Hollis 11423 that has well water.

According to the zoning laws, this facility should be in an M-3 zone; however, in Southeast Queens, the area that still has well water, they operate in M-1 zones and the community is not made aware of how they should function. However, the residents are told to take pictures to prove that they are not operating correctly. This creates a confrontational situation, and residents should not have to take on the responsibility of enforcing something that goes against the zoning laws. If these facilities were operating in the proper zone, the residents would not have to bear the burden of truck traffic, dust, stench and conflicts with businesses. We are not against the business owners; we want to know why they are allowed to bypass the zoning laws and operate between two rows of houses.

Your help in this matter will be appreciated.

Very truly yours,



Sandra Atwell
President

Testimony of Linda S. Mitchell, 88-81 195 Street, Hollis Park Gardens, NY 11423;
Prinlsm@aol.com; Phone and fax 718 468 1136

July 23, 2007, Zoning and Franchises Hearing, Council Chambers - City Hall,
Chairperson Tony Avella

As the Area #6 Chair for Community Board 12, I have been working with the Queens Department of City Planning on the Jamaica Plan since the inception of the Ad hoc Committee in December 2005. My area of responsibility for the Community Board is bordered by Hillside Avenue, in the north, and Archer and Jamaica Avenues in the south, and from the Van Wyck, on the west, to Francis Lewis Boulevard, on the east .

I am very aware of the current problems that exist with infrastructure, services, the lack of health facilities, the threatened closure of Mary Immaculate Hospital, the absence of green space, traffic congestion, inadequate parking, over crowded schools and the very serious dearth of north south access routes. Also, unacceptable is the fact that York College with its need to pump water from its facility 24/7 is our evacuation site.

The Ad hoc Committee after hours of consultation with DCP, Pratt Center, interviews with residents and conversations with elected officials wrote an Alternative Plan. We urge you to read this plan. The Queens Department of City Planning acknowledged the plan as the most comprehensive plan ever presented to them.

We are grateful for DCP having lowered the density of parts of Jamaica Avenue, Merrick Boulevard and Liberty Avenue. Hillside Avenue should be removed from the plan until a more comprehensive study can be made. The proposed density is not sustainable from a practical point of view. We foresee the potential for over 35,000 new residents to Hillside Avenue.

Our Alternative Plan calls for a fine tuning of the one and two family neighborhoods into more appropriate contextual zoning. John Young has promised this, but not in writing.

We ask that the manufacturing districts not have their density increased and that protections be guaranteed against their being used for noxious uses and as waste transfer stations so close to our residential neighborhoods and schools.

Lastly, we are trying to protect and improve a quality of life for residents that allows for both private home ownership, market rate rentals and affordable housing. We feel this mix is essential for a healthy society.

Thank you.

Summary

The Jamaica Plan:

Testimony Presented by Crystal Ervin

July 23, 2007

There is only 5 blocks east of the Merrick Blvd. Liberty Ave. intersection which is zoned residential. I recognize Jamaica is long overdue for a plan promoting improvement but, the only portion of "The Jamaica Plan" that was planned was Downtown. The zoning of the M1-1 Districts of "The Plan" area closest to Residential Districts must be more carefully addressed before this plan can be accepted.

The Jamaica Plan:

Good morning Mr. (Ms) Chair and members of the committee. My name is Crystal Ervin, resident living within a neighborhood of the rezoning area of The Jamaica Plan, and member of the former CB12 Ad Hoc Committee. At this time, my immediate concerns and opposition to "this plan" relates directly to the proposal as it applies to the rezoning of the M1 Zone nearest my residential area, which is proposed to change from M1-1 to M1-2. Such a change would allow increase in bulk. Might I remind The Council of DCP's stated overall objective regarding "The Plan" as it applies to the surrounding communities?

1. Respect and enhance Jamaica's unique character
2. Protect the low scale, neighborhood feel of residential areas outside of downtown
3. Encourage the provision of affordable housing

Liberty Ave. east of the Van Wyck Expressway for approximately two and one half miles, on both the north and south side of this roadway is currently occupied by either commercial or industrial use. There are only 5 blocks east of the Merrick Blvd. Liberty Ave. intersection which is zoned residential. Initially, this segment of the Liberty Ave Industrial Use was not included in the plan. It was not until the area identified as the "core", "Downtown", "Gateway" area, did DCP planners recognize that much of what was needed to achieve the desired goal for the Air Train /LIRR area they would also have to address the M1-1 Zones of that area. The answer would be to now include the M1-1 Zone due east of that area. This area is the only area which has a Residential District directly opposite the Industrial Zone, whose buffer area is less than 400 feet, and is also home to the most offensive use; diesel truck repair, live poultry market (in which slaughtering takes place) and land based "Fill Material", "C&D", and Putresible waste transfer stations. These businesses operate within 3 blocks of one another. Between 2 transfer stations operating in the questioned M1-1 Zone,

1550 (Regal's expansion from 178 to 600 tons, American Mgt. from 500 to 900 tons putresible and 250 tons C&D) of combined C&D and Putresible waste passes through the neighborhood daily. These businesses are permitted operating hours of 24 hour a day, six days a week.

For DCP to propose a change to M1-2 that would increase bulk area for the now M1-1 District on Liberty Ave. east of Merrick Blvd. allows for the possibility of displaced M1 businesses currently operating in the downtown area to relocate in the only M1 area that operates opposite a residential district offends the neighborhood. Although DSNY declares these existing waste transfer sites cannot expand their foot print, what prevents them from increasing bulk area within that foot print per this zoning? The business sited in the existing M1-1 wrecks havoc on the traffic within the area. This proposed change, I believe will put area residents at greater health and safety risk. Why were such operations allowed to establish themselves within the M1-1, in such close proximity to the Residential District, with virtually no oversight then and now? It is obvious, DCP lacks concern for environmental, safety and health issues and good judgment which happens to be contrary of the of the Legislative Intent of Article IV, Manufacturing District Regulations Chapter 1 dated 12/21/89, item 41-00 General Purpose of Manufacturing Districts which states in part, "The Manufacturing Districts established in this Resolution are designed to promote and protect public health, safety, and general welfare." It is evident this plan failed to draw upon this intent. It has been forty six years since Jamaica has seen a rezoning, and now that the time is here, one would hope DCP would take the opportunity to correct conditions of the old zoning and offer up a zoning which would indeed reflect the aforementioned intent. Instead, they have chosen to continue on the road of disregard of agency Resolutions and the people who live within the area. I recognize Jamaica is long overdue for a plan promoting improvement but, the only portion of "The Jamaica Plan" that was planned was Downtown. The surrounding neighborhoods were not afforded the same attention. The accomplishment towards this goal by DCP should not be at the sacrifice of health, environment safety, and general well being to the Jamaica residents, homeowners and voters. There is little confidence in the DCP that established the Resolutions 46 years ago that provided the "grandfather" clause for as of right use of land for businesses that weren't in existence at the time, use groups not meant for operations in the M1, allowed to expand under the same clause, and no other agency thought to or was willing to enforce the Performance Standards for this same use group 18. Is it by design that waste transfer stations were allowed to establish in M1-1 Zones so close to the Residential District, public parks and schools in Southeastern Queens, and nowhere else in Queens? Can we attribute this misfortune to "good planning" or an act of "designed racism" Answer: good planning would follow Legislative Intent, to protect. This is not and issue for our neighbors to the north? (Fresh Meadows, Forest Hills, Bayside, Douglaston) How did Jamaica neighborhoods get to be so lucky to become home to its many M1 Zones with waste transfer stations and junk

yards in them, so close to their homes? Why, after so many years to truly plan for Jamaica, DCP not give the same thoughtfulness it applied to our northern neighbors? The proposal to change the M1-1 District closest to a Residential Districts to M1-2, must be denied.

Toxic Tour of Southeast Queens - August 19, 2004
Federation of Civic Associations/Organization of Waterfront Neighborhoods

Southeast Queens (Community District 12) is home to 223,602 residents:

- 72% are African American,
- 14% are Hispanic or Latino;
- 5% are Asian;
- 2% are White.

Southeast Queens is also home to much more than its fair share of the city's **environmental burdens**. These burdens include:

- **Five waste transfer stations.** Collectively, these facilities:
 - Generate 97,000 truck trips per year in Southeast Queens
 - Handle 1500 tons per day of Putrescible Solid Waste (waste, such as food, that gives off bad odors as it decomposes).
 - Handle 1,391 tons per day of Construction and Demolition Material
 - Handle 1,000 tons per day of fill material

Environmental burdens from these facilities include:

- Putrescible solid waste gives off a terrible stench that attracts vermin, rodents, gulls, insects and other pests
 - Toxic dust such as ground glass and improperly contained asbestos that gets in to the air and to people's respiratory systems.
 - Toxic leachate (liquid run off from the garbage) that can trigger asthma attacks, attract rodents, birds and insects, and create a general nuisance. It also smells very bad.
 - The burning of diesel fuel by trucks and equipment releases harmful particulate matter in to the air. Particulate matter can cause premature death, aggravates respiratory and cardiovascular disease, and causes lung disease, asthma attacks and other cardiovascular problems.
 - Significant disruption of traffic on truck and non-truck routes.
 - Negative impacts on nearby businesses, including a number of food processing facilities in Southeast Queens.
- **Several facilities for handling recycled waste.**
 - These facilities operate similarly to waste transfer stations and generate a significant amount of truck traffic.
 - **Five concrete, sand, and gravel plants.**
 - Concrete, sand and dust in these facilities piles up above facility walls and is blown up into the air and carried throughout the neighborhood.
 - Trucks leaving these facilities also carry these pollutants into the neighborhood.
 - **At least 28 auto body and paint shops, and 56 auto repair shops.**
 - Many of these shops are located in a residentially zoned (R-4) area and near houses.

- Paint fumes are a problem for nearby residents. Shops are supposed to have a ventilation system that neutralizes paint fumes, but as far as we can tell, many of them don't have them or if they do they don't work well.
 - These facilities also add to traffic problems: most of them don't have parking space for customers and there is constant double parking outside them.
- **One MTA bus depot and one private school bus company**
 - These facilities generate a significant amount of diesel exhaust and contribute to traffic congestion and noise pollution on truck and non-truck routes in the neighborhood.

POLICY SOLUTIONS

In order to relieve these problems for Southeast Queens, and for other overburdened low-income neighborhoods and neighborhoods of color, the Federation of Civic Associations and the Organization of Waterfront Neighborhoods support:

- **The equitable retrofitting of Marine Transfer Stations (MTSs) combined with the closure of land-based stations** as capacity becomes unnecessary.

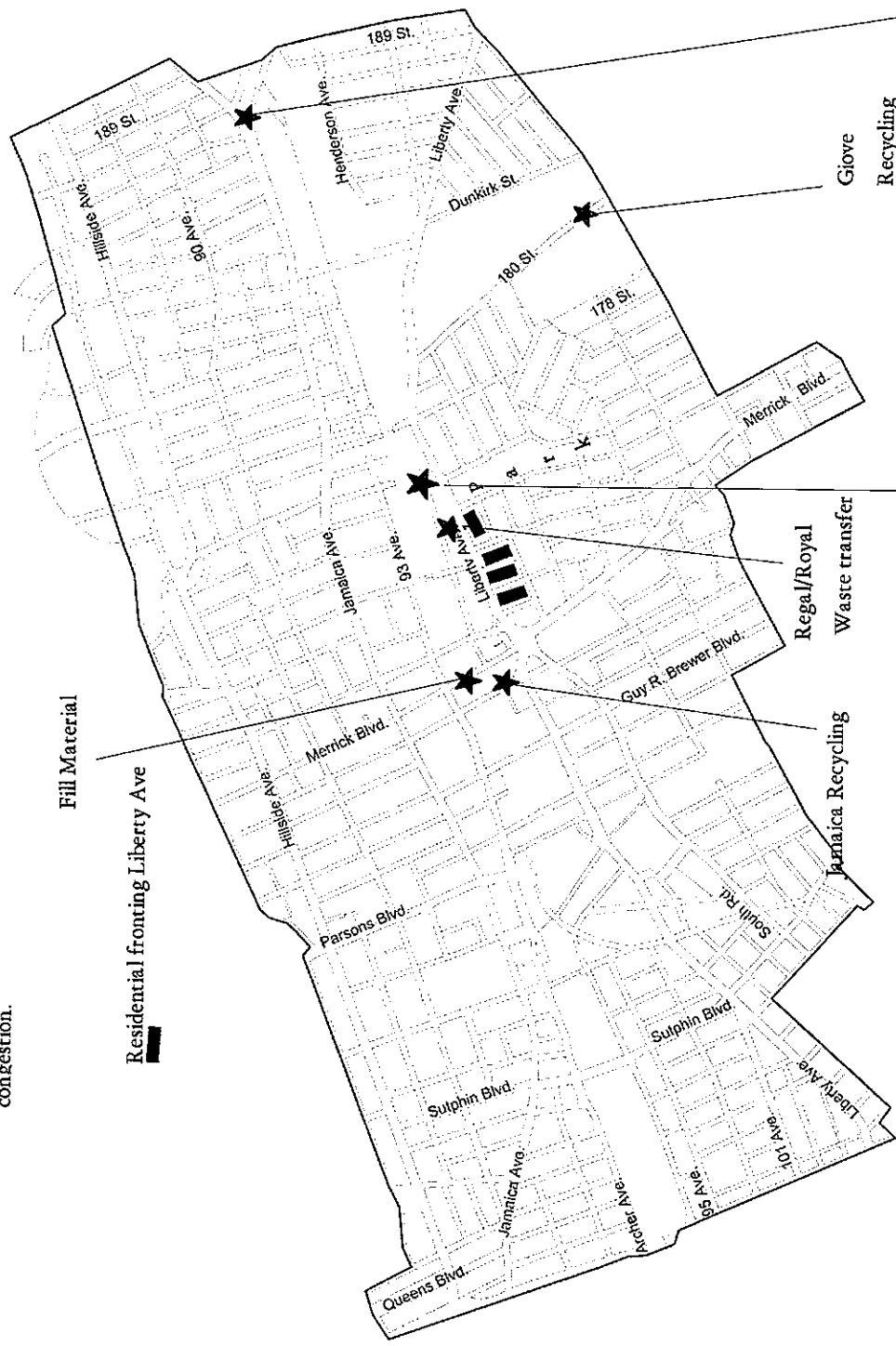
OWN and the Federation support the MTS retrofits because they will:

 - Reduce truck traffic by taking garbage out of the city on barges.
 - Reduce operational impacts by using state of the art waste handling technologies.
 - Equitably distribute the way in which the city handles its garbage.

As part of this plan, however, the City must:

 - Ensure that all MTSs are opened and that additional MTS sites, particularly in Manhattan, are considered.
 - Move commercial garbage through the MTSs.
 - Close land-based transfer stations as they become unnecessary.
- **Stringent transfer station siting and operational regulations** that, among other things:
 - Do not allow the continued clustering of stations.
 - Require that all trucks queue on-site at transfer stations.
 - Do not allow the expansion of transfer stations in neighborhoods that already handle more than their fair share of garbage.
- **A state level policy on environmentally just permitting** that:
 - Does not allow the continued clustering of environmentally harmful uses in low-income neighborhoods and neighborhoods of color.
 - Assesses the impact of permitting decisions in the context of existing environmental burdens.
 - Considers the vulnerability of different populations when assessing these impacts (based on things such as current health problems, and access to adequate health care).
 - Has *meaningful* community involvement throughout the permitting process.
 - Resolves uncertainty around potential harms in a manner that protects already burdened communities.

Liberty Ave. east of Merrick Blvd is currently zoned M1-1 and home to the more offensive Use Grp 18 Waste Transfer Stations, Live Poultry Market, Diesel Truck Repair, Auto Repair, and Cell Site. There are four blocks south of this M1-1 Zone on Liberty which is residential and fronts the street. It is unacceptable that DCP would add to the neighborhood burden by proposing M1-2 for this stretch of Liberty Ave. The nature of the businesses currently in the zone adds to traffic congestion.



- ▬ Liberty Ave. east of Merrick Blvd
- ▬ American Mgt Waste Transfer DSNY tips here
- ★ Regal/Royal Waste transfer
- ★ Grove Recycling
- ★ Jamaica Recycling
- ★ Royal Recycling
- ★ Either Putrescible, C&D, Fill or Paper Transfer Station



REAL ESTATE BOARD OF NEW YORK

TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK INC. BEFORE THE NEW YORK CITY COUNCIL SUBCOMMITTEE ON ZONING & FRANCHISES IN SUPPORT OF THE PROPOSED JAMAICA PLAN

July 23, 2007

The Real Estate Board of New York, Inc. is a broadly based trade association of 12,000 owners, developers, brokers and real estate professionals active throughout New York City. REBNY supports this plan because it values our existing low-rise residential neighborhoods while correcting the mismatch of the current zoning with the existing and planned infrastructure around the transit hub.

New York City has added significant population over the last 10 years and is projected to add hundreds of thousands of more people in the coming decades. This is a testament to the popularity of New York City as a place to live and work and raise a family. The borough of Queens is projected grow by a total 15% between 2000 and 2030 to reach a new population peak in 2030. The issue is that our land area is not increasing. The best way to ensure adequate housing and jobs for existing and new residents is to make the most of the assets we already have. We simply can't afford to underutilize land and leave people without enough housing options and businesses without adequate location choices.

Jamaica, unlike some other sections of Queens, has access to four subway lines, the Long Island Railroad and the JFK AirTrain connection. It is a superb location for businesses to locate and for people to find homes. In this plan, 130 blocks will be rezoned to protect 1 and 2 family homes and 50 blocks will be rezoned to match the low-rise building character. The plan, very reasonably, concentrates the needed increases in density along wide streets and near the transportation access. This reflects longstanding and well-accepted planning principles that have been applied in many other neighborhoods here and in other cities around the country.

Furthermore, the plan envisions a vibrant mixed-use environment in Downtown Jamaica that expands the retail, entertainment and commercial character, requires public amenities to be included in new development and addresses pedestrian congestion. We support the proposed

use and density changes that will facilitate new mixed used development in Downtown Jamaica especially around the AirTrain terminal. However, we recommend an additional text change to the high-density bulk regulations to allow a waiver of yard requirements and an increase in the height to allow full use of the FAR on this area's key sites. This text amendment should be done as soon as possible to avoid the uncertainty that can delay development.

The proposal estimates a net increase of around 3400 dwelling units by 2015, about a 2.5% increase over the total housing units now in Community Districts 8 and 12. REBNY has been recommending for several years that major rezonings across the city provide a balanced approach that results in a substantial net increase in the amount of new housing for our growing population while addressing other planning concerns. We believe that this neighborhood works with the proposed densities but really could handle additional denser development. Given the overwhelming need for housing in our communities, the density and numbers of units proposed are really the minimum that should be considered for a large, transit-accessible area like Jamaica. We believe it would be detrimental to the economic growth and social well-being of our city to reduce the total number of units any further.

The Jamaica rezoning will contribute to the important goals of providing new housing and commercial space, increasing economic activity and making the most of our existing transportation centers and downtowns. Under the Inclusionary Housing provisions, affordable units can be built or preserved and remain affordable. The Jamaica rezoning coordinates with other investments being made in the area such as a new performing arts venue and upgrades to the environment around the AirTrain station. We urge you to keep the same floor area ratios approved by the Planning Commission and to vote in favor of the Jamaica rezoning.

Thank you.

CT
NJ NY
Regional Plan Association

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CO-CHAIRMAN, NEW JERSEY
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July 23, 2007

The Honorable Tony Avella
Chair, Zoning and Franchises Committee
New York City Council
City Hall
New York, NY 10007

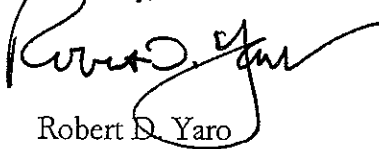
RE: Jamaica Plan

Dear Chairman Avella:

Regional Plan Association wants to give its unconditional support to the Jamaica Plan and recommends its approval with no modifications. This proposal strikes the right balance by (1) Encouraging higher-density commercial development in Downtown Jamaica, (2) Expanding opportunities for residential and mixed use development near transit and along major thoroughfares with a mix of scales appropriate to surrounding building patterns, (3) Shifting development away from and preserving lower density communities and (4) Reinforcing certain industrial areas for growth within the industrial core.

These four goals change the outdated and unduly restrictive zoning, and unlock the potential of the area for a 21st Century Jamaica. The contextual and detailed zoning districts proposed in this action reflect a site specific approach to zoning that contrasts to the "blanket zoning" that currently regulates most of the area. This "micro-zoning" approach insures that vibrant land uses are strengthened by defining its boundaries more clearly, and that currently intrusive and potential non-conforming uses are aligned to a growth oriented and balanced land use policy. Regional Plan Association believes that the Jamaica Plan will enable Jamaica to fulfill its potential as a leading business and residential district in the City.

Sincerely,



Robert D. Yaro
President