

LAW OFFICES OF
HOWARD GOLDMAN, LLC

475 PARK AVENUE SOUTH
NEW YORK, NY 10016

(212) 935-1622
FAX (212) 935-2651
www.hogolaw.com

**TESTIMONY TO THE CITY COUNCIL ZONING AND FRANCHISES
COMMITTEE ON 2.23.09**

LU 0975-2009

THE SHOPS AT GATEWAY, BROOKLYN

Chair Avella and Members of the Zoning and Franchises Committee:

My name is Howard Goldman. I am a principal on the Law Offices of Howard Goldman, LLC. I have been a land use attorney in the City for almost 30 years. My firm represents the applicant in this matter, Morgan B. Realty. Morgan B. is a local Brooklyn commercial developer with a good track record.

The applicant is requesting a Special Permit pursuant to Section 74-922 of the Zoning Resolution to allow certain large retail stores over 10,000 SF in an M1-1 zoning district. The project is a retail center with a total of 230,000 square feet of floor area and 780 parking spaces in the Spring Creek section of Brooklyn. The center is relatively small -- the nearby Gateway Mall, at 640,000 square feet, is almost three times larger. Additional retail, called Gateway II, is currently in the public review process. By catering to more moderately priced stores, the proposed project will serve a need that will not be met by the more upscale facilities.

The site is currently vacant. It was formerly used as a satellite antenna farm, which closed in the early 2000's. The site is surrounded by industrial uses to the north, a yard waste composting facility and wastewater treatment facility to the east, an athletic field to the west, and vacant land that will become part of the Gateway residential development to the south.

The applicant seeks approval to construct two or three large retail establishments totaling not more than 130,000 square feet. The balance of the retail, approximately 100,000 square feet, would consist of approximately 23 small local retail stores of 2,000 to 5,000 square feet each. The larger stores are essential to the economic viability of the mall.

The parking consists of 450 spaces in an interior at-grade lot and 330 spaces on the roof. The parking is as-of-right. To eliminate any impacts on neighbors, the lighting poles on the roof would face down and be shielded. The interior lot meets City Planning's new design regulations for commercial parking lots, including extensive landscaping.

In order to approve the special permit, the findings set forth in Section 74-922 of the Zoning Resolution must be met. Most of the findings concern traffic and transit. In addition, finding (f) requires that "such use is located so as not to impair the essential character or future use or development of the surrounding area" and finding (g) requires that "such use will not produce any adverse effects which interfere with the appropriate use of land in the district or in any adjacent district."

The City Planning Commission found that each of the required findings was met and unanimously approved the project. The Commission's report is included in your package. Among other things, the Commission found that "the proposed development would provide a wider variety of products and services currently not found in the nearby community and thus offer greater shopping options for surrounding community residents."

Prior to City Planning, the application was approved by the Land Use Committee of the Community Board. The Committee stated:

"The Land Use Committee met several times with the applicant regarding this project. The committee is very impressed with the past work of the applicant and recommends that this project proceed forward."

Due to a lack of a quorum, the full Board did not take a vote. Nevertheless, at the Board's request, the applicant has been in discussions with City DOT about extending a bus line to the mall, to facilitate access by local residents.

The application was also approved by the Borough President with a recommendation that that a food store be included.

A concern has been expressed that the large retail stores could displace local businesses. Enclosed in your package is a list of potential big box tenants provided by the applicant, including clothing, pet supplies and variety stores. City Planning found that there would not be any adverse impacts on surrounding areas and businesses, and this issue was not even raised by the Community Board or Borough President. There is absolutely no evidence in the record to support this concern.

In the middle of the worst recession since the 1930's, the City should be doing everything in its power to encourage new businesses and jobs, especially in hard hit areas such as East New York. This project will create approximately 700 permanent jobs. The applicant intends that all or most of these jobs will go to local residents. The City Council should be encouraging entrepreneurs, such as Solly Bawabeh, who are willing to invest time and resources into helping our City prosper. This application should be approved.



CITY PLANNING COMMISSION
CITY OF NEW YORK

OFFICE OF THE CHAIR

CONDITIONAL NEGATIVE DECLARATION

November 25, 2008

Project Identification

CEQR No. 08DCP005K
ULURP No. 080051ZSK
SEQRA Classification: Unlisted

Lead Agency

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

Name, Description and Location of Proposal

830 Fountain Avenue

The applicant, Morgan B. Realty, LLC is seeking a special permit pursuant to Section 74-922 of the Zoning Resolution (ZR) to allow certain retail establishments with no limitation on floor area per establishment. The project site is located at 830 Fountain Avenue (Block 4452, Lot 425) and is bounded by Flatlands Avenue to the north, Vandalia Avenue to the south, Fountain Avenue to the east and Erskine Street to the west within the Spring Creek area of Brooklyn Community District 5. The project site is within an M1-1 zoning district.

The proposed action would facilitate a proposal by the applicant to construct a 230,000 square foot retail development consisting of three one-story buildings with multiple retail tenants and 780 parking spaces to be located at grade and on the roof of the easternmost building. As part of the application, the buildings would include the exclusive use of natural gas as a fuel for Heating Ventilation and Air Conditioning (HVAC) and individual HVAC stacks would be located at least 65 feet from the edge of any adjacent building on the project site. The project site is currently vacant. The analysis year is 2009.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated August 6, 2008, prepared in connection with the ULURP Application (No. 080051ZSK). The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

1. The applicant, Morgan B. Realty, LLC, agrees to the exclusive use of natural gas as a fuel and agrees to the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site.

Supporting Statement:

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

1. An Environmental Assessment Statement (EAS) was prepared August 6, 2008 in conjunction with a ULURP application and is available in the proposal's CEQR file. The proposed project incorporates the exclusive use of natural gas as a fuel and the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site as noted in the plans dated August 8th, 2008 and approved as part of the ULURP application (No. 080051ZSK).
2. No other significant adverse effects on the environment which would require an Environmental Impact Statement are foreseeable.

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

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

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

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

Saj D Bakh
Signature of Applicant or Authorized Representative

Date: 8/8/08

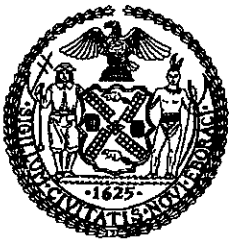
Soly D Bakh
Name of Applicant or Authorized Representative

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

Date: 8/8/08

Amanda M. Burden
Amanda M. Burden, FAICP, Chair
City Planning Commission

Date: 11/25/08



THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD NO. 3

59 East 4th Street - New York, NY 10003
Phone: (212) 533-5300 - Fax: (212) 533-3659
www.cb3manhattan.org - info@cb3manhattan.org

Dominic Pisciotta, Board Chair

Susan Stetzer, District Manager

City Council hearing February 23, 2009
Re: Horus Sidewalk Café, 93 Avenue B.

FOR THE RECORD

I am Susan Stetzer, District Manager for Community Board 3 Manhattan, and I am representing the Board today. The Community Board has recommended that the sidewalk café application be denied because of a history of non compliance with regulations. A licenses should be awarded to those who have demonstrated responsibility and compliance. This is especially true of an establishment service alcoholic beverages and one that is doing so across the street from an elementary school.

Community Board 3 urges the City Council to fully investigate violations issued by the NYPD, 311 complaints, and SLA investigations. Some of these complaints are old and some are not major. However, they are notable for not being corrected.

NYPD has provided the following information

Nov. 2005

Served underage

Jan 2006

Failure to post capacity sign, disorderly premise—unreasonably loud music

April 2006

Failure to produce/possess valid certificate of occupancy,

Failure to produce valid place of assembly permit with overcrowding of more than 94 people

Nov. 06

Servicing liquor without appropriate license

Unlicensed security guard

May 07

Cabaret without a license

Unlicensed security guard

2 health code violations

Nov. 07

Serving underage

Overcrowded and no PA permit (in excess of 94 people)

Unable to produce Certificate of Occupancy

Health code violations

Failure to post SLA signage

Feb 08

Unreasonable noise

Unlicensed security guard

Blocked fire exit

Failure to post SLA signage

Failure to produce open flame permit

There are 21 311 complaints from 1/2007 to 2/2008 for loud music and party. I have not checked 311 complaints since that time.

In July 2004, the Community Board recommended denial because the business was using the area as a sidewalk café without a license.

I have attached information from the State Liquor Authority regarding past investigations. I do not know how these were resolved. I urge the City Council to investigate violations with the State Liquor Authority and NYPD before voting on this license.

CITY PLANNING COMMISSION
 DEPARTMENT OF CITY PLANNING
 22 READE STREET
 NEW YORK, NY 10007-1216
 Room 3N & 2E
 COMMUNITY/BOROUGH BOARD RECOMMENDATION

INSTRUCTIONS

- Return this completed form (within 45 days) to Mr. Michael Ben Asher, Department of Consumer Affairs, License Issuance @ 42 Broadway, 5th Floor, New York, NY 10004.
and a copy to Ms. Gai Benjamin, Director of Land Use, The City Council @ 240 Broadway, 16th Floor, New York, NY 10007.
- Send one copy of this completed form to the applicant.
one copy to the Borough President, one copy to Land Use Review, Room 2E @ the above Department of City Planning address, and one copy to the Borough Board when necessary.

DOCKET DESCRIPTION AND STATEMENT OF PROPOSAL

IN THE MATTER OF an application from the Elsayed I Corp., doing business as, Horus Cafe, for review, pursuant to Section 366-a(c) of the New York City Charter, of the grant of a revocable consent to construct and operate an enclosed sidewalk cafe with 11 tables and 22 seats at 93 Avenue B, on the north side of East 6th Street, in the Borough of Mahattan.

COMMUNITY BOARD #3
 AND/OR
 BOROUGH BOARD OF

BOROUGH: MANHATTAN

LOCATION, DATE AND TIME OF PUBLIC HEARING: PUBLIC SCHOOL 20, 166 ESSEX ST. NY. NY. 10002 - MARCH 25, 2008 - 6:30 P.M.
 LOCATION, DATE AND TIME OF VOTE ADOPTING RECOMMENDATION

PUBLIC SCHOOL 20, 166 ESSEX STREET
NEW YORK, N.Y. 10002 - MARCH 25, 2008 - 6:30 P.M.
 RECOMMENDATION (ATTACH ADDITIONAL SHEETS IF NECESSARY).

That Community Board #3 denies the ULURP application for Horus Café, 93 Avenue B, for all of the reasons set forth in its recent motion to deny the sidewalk café permit for said establishment, appended hereto with supporting documentation.

VOTING IN FAVOR 32 VOTING AGAINST 0 ABSTAINING 0

TOTAL MEMBERSHIP OF BOARD 50

IF A ROLL CALL WAS TAKEN ATTACH NAMES OF MEMBERS VOTING IN EACH CATEGORY.

SIGNATURE OF COMMUNITY/BOROUGH BOARD OFFICER DATE

Susan Hatcher, District Manager 3/27/08



MANHATTAN COMMUNITY BOARD NO. 3

59 EAST 4TH STREET - NEW YORK, N.Y. 10003

PHONE: (212) 533-5300 - FAX: (212) 533-3659

WWW.CB3MANHATTAN.ORG - INFO@CB3MANHATTAN.ORG

DAVID MCWATER, BOARD CHAIR

SUSAN STETZER, DISTRICT MANAGER

February 28, 2007

Hon. Jonathan Mintz, Commissioner
NYC Department of Consumer Affairs (DCA)
42 Broadway
New York, New York 10004

Re: El Sayed 1 Corp.
d/b/a Horus Kebab House
601 East 6th Street
a/k/a 93 Avenue B
New York, NY 10009
DCA License Number: 1171308

Dear Commissioner Mintz:

At its February 2007 monthly meeting, Community Board #3 passed the following motion:

To deny the renewal of a sidewalk café permit to Horus Kebab House, 601 East 6th Street, because the applicant did not appear before Community Board #3 for review of its application or to address the existing history of violations from 2004 through 2006 which include the serving of minors and the unlicensed sale of liquor, failure to present a certificate of occupancy and certificate of assembly permits, consistently exceeding the allowable occupancy without the appropriate permits and not having licensed security personnel, and because of numerous complaints from residents regarding excessive noise and an apparent complete disregard by the owner (who failed to appear before Community Board 3 to respond to these complaints or for his liquor license renewal) of these issues. (see attached)

If you have any questions, please do not hesitate to call.

Sincerely,

David McWater, Chair
Community Board #3

Alexandra Militano, Chair
SLA & Economic Development Committee

cc: Applicant
Andy Eiler, Legal Department/DCA
Mary Cooley, MBPO
CCM Mendez



59 EAST 4TH STREET - NEW YORK, N.Y. 10003
PHONE: (212) 533-5300 - FAX: (212) 533-3659
HTTP://WWW.CB3MANHATTAN.ORG - INFO@CB3MANHATTAN.ORG

DAVID McWATER, BOARD CHAIR

SUSAN STETZER, DISTRICT MANA

July 29, 2004

Hon. Gretchen Dykstra, Commissioner
NYC Department of Consumer Affairs (DCA)
42 Broadway
New York, New York 10004

Re: El Sayed 1 Corp.
601 East 6th Street
New York, NY 10009 (DCA License #1171308)

Dear Commissioner Dykstra:

At its July 2004 monthly meeting, Community Board #3 passed the following motion:

To deny the application by El Sayed 1 Corp. for a license (DCA License #1171308) for an unenclosed sidewalk cafe at 601 East 6th Street, due to applicant's non-appearance at Community Board #3 for public review of the application as well as because: 1) the business is already using the area as a sidewalk cafe without a license, in violation of city regulations; and 2) ongoing community complaints, including reports of a death threat to one local resident who addressed concerns about this establishment.

If you have any questions, please do not hesitate to call.

Sincerely,

David McWater/c.R.

David McWater
Chair, Community Board #3

cc: Applicant

| | | | | | |
|------|-----------|-------|--------------------|------------------|-----------------------------|
| NYPD | 4/9/2008 | 22:27 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/11/2008 | 1:43 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/11/2008 | 21:35 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/12/2008 | 21:39 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/15/2008 | 22:52 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/16/2008 | 22:06 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/17/2008 | 23:07 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/18/2008 | 22:32 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/19/2008 | 22:49 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/22/2008 | 23:16 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/24/2008 | 23:37 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/25/2008 | 20:27 | Noise - Commercial | Loud Music/Party | Unspecified |
| NYPD | 4/26/2008 | 21:24 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/29/2008 | 20:49 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 4/30/2008 | 22:03 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/1/2008 | 21:42 | Noise - Commercial | Loud Music/Party | 10-90X - Unfounded |
| NYPD | 5/2/2008 | 20:44 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/4/2008 | 4:09 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/4/2008 | 2:35 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/4/2008 | 3:22 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/5/2008 | 8:00 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 5/8/2008 | 21:08 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/10/2008 | 0:15 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |

93 Avenue B:

-HORAS

| Agency | Created Date | HH:MM 24 Hour Format | Complaint Type | Descriptor 1 | Resolution Action |
|--------|--------------|----------------------|--------------------|------------------|-----------------------------|
| NYPD | 1/12/2007 | 23:45 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 1/19/2007 | 0:09 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 1/19/2007 | 0:17 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 1/28/2007 | 21:11 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 2/22/2007 | 23:57 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 3/30/2007 | 2:14 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 4/7/2007 | 0:36 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 5/12/2007 | 0:32 | Noise - Commercial | Loud Music/Party | 10-90X - Unfounded |
| NYPD | 8/19/2007 | 23:16 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 9/4/2007 | 0:16 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 10/6/2007 | 0:45 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 10/27/2007 | 4:43 | Noise - Commercial | Loud Music/Party | 10-90U - Unable to Enter |
| NYPD | 11/17/2007 | 2:56 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 11/25/2007 | 4:41 | Noise - Commercial | Loud Music/Party | 10-90X - Unfounded |
| NYPD | 12/15/2007 | 23:50 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 12/20/2007 | 23:36 | Noise - Commercial | Loud Music/Party | 10-90U - Unable to Enter |
| NYPD | 1/3/2008 | 23:50 | Noise - Commercial | Loud Music/Party | 10-90X - Unfounded |
| NYPD | 1/5/2008 | 0:32 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 1/11/2008 | 23:03 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 1/13/2008 | 0:58 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 2/2/2008 | 0:15 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |

| Agency | Created Date | HH:MM 24 Hour Format | Complaint Type | Descriptor 1 | Resolution Action |
|--------|--------------|----------------------|--------------------|------------------|-----------------------------|
| NYPD | 12/9/2007 | 3:44 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |
| NYPD | 3/17/2008 | 23:53 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |
| NYPD | 3/17/2008 | 23:03 | Noise - Commercial | Loud Music/Party | 10-91 - Non-Crime Corrected |

| Agency | Created Date | HH:MM 24 Hour Format | Complaint Type | Descriptor 1 | Resolution Action |
|--------|--------------|----------------------|--------------------|------------------|-----------------------------|
| NYPD | 6/25/2006 | 1:15 | Noise - Commercial | N/A | 10-91 - Non-Crime Corrected |
| NYPD | 5/5/2007 | 23:04 | Noise - Commercial | Loud Music/Party | 10-90X - Unfounded |
| NYPD | 6/10/2007 | 0:48 | Noise - Commercial | Loud Music/Party | 10-90Y - Unnecessary |

dstarkes@cb3manhattan.org

From: Stetzer, Susan [SStetzer@cb.nyc.gov]
Sent: Wednesday, January 09, 2008 3:57 PM
To: dstarkes@cb3manhattan.org
Subject: FW: NOISE at Horus Bar 93 Ave B NYC 10009

Susan Stetzer
District Manager
Community Board 3, Manhattan
sstetzer@cb.nyc.gov
212-533-6015
www.cb3manhattan.org

From: [REDACTED]
Sent: Thu 1/17/2008 5:01 PM
To: Stetzer, Susan
Subject: NOISE at Horus Bar 93 Ave B NYC 10009

Dear Susan Stetzer,
I am writing to inform you of the continuing noise at night at the Horus Bar on East 6th Street and Ave. B. I have the unfortunate situation of living directly above them and over the past few years I have called 311 numerous times regarding the loud music, bass, yelling and fights which come from Horus bar and which prevents me from sleeping. I was told by another tenant in my building that you needed complaint numbers about Horus.

I am sending you just a few of the many complaint # I filed recently which are:

Aug.20th 2007 11:20PM C1-1-342187631
Sept.3rd 2007 11:15 PM C1-1-345279969 Oct 6th 2007 12:45AM C1-1352428623
Nov25,2007 4:40AM C1-1-362516959 Dec. 15,2007 12:am C1-1-366620089
Dec.20th 2007 C-1-1-367601409 Jan 3, 2008 C-1-1369793381 12:am
Jan. 6th 2008 1:am C-1-1368831887 Hope this helps I have more if needed.
We of course have complained to the police and landlord as well to no avail.
Our landlord is Gioia Brothers 252 Greene Street New York, NY 10003
Phone 212-420-1246

I was also wondering if you had any information on what the actual laws are concerning bars and hookah smoke.

Thank you very much for your help in this matter.

Sincerley,

[REDACTED]
93 Ave B [REDACTED]
New York, NY, 10009
[REDACTED]



Elliot Spitzer
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
STATE LIQUOR AUTHORITY
www.abc.state.ny.us

Alfred E. Smith Building
80 South Swan Street, Suite 900
Albany, New York 12210-8002

Chairman
Daniel B. Boyle

Commissioner
Noreen Healey

05/23/2007

EL SAYED I CORP
DBA: HORUS KEBAB HOUSE
93 AVENUE B
NEW YORK, NY 10009

RE: Serial # 1163482 071NEWRW1163482341

Dear Sirs:

The renewal application for the period 6/1/2007-5/31/2008 has been received by this office. You timely filed the renewal application, which is currently pending before the Authority.

We will not act on the application until a pending investigation/disciplinary action has been resolved.

Section 401.2. of the State Administrative Procedure Act provides as follows:

"When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license."

Based upon the foregoing you may continue to operate under the terms of your license pending a final decision by the Authority on the renewal application.

Respectfully,

Kerri J. O'Brien
Director of Licensing Operations

KJO

cc: Legal Bureau
File

STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1163482, NEW YORK RW 1163482

1695-2007/Case No. 41169

EL SAYED I CORP
HORUS KEBAB HOUSE
93 AVENUE B
NEW YORK, NY 10009

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **JULY 18, 2007 at 11:00 AM**, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 8/11-12/06, the licensee suffered or permitted disorder by allowing overcrowding in the premises in violation of subdivision 6 of section 106 of the Alcoholic Beverage Control Law.
2. That on 8/11-12/06, the licensee violated Rule 54.3 of the Rules of the Authority [9 NYCRR 48.3] in that the licensee did not conform with local governmental regulations regarding cabaret activity since persons were found to be dancing on the licensed premises without it being in possession of a valid cabaret license; all cause to warrant revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the Authority. [9 NYCRR 53.1(f)].
3. That on 8/11-12/06, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes, and/or fire, health, safety and governmental regulations, leading to police summonses issued then for no certificate of occupancy posted and no place of assembly permit; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority (9 NYCRR 53.1(f)).

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Date: 06/13/2007

Licensee's name and residence address

MOHAMED ELSAYED

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

Licensee's Landlord

JAMES D KINSEY

New York, New York 10027

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the

Tel: [212] 961-8329
Fax: [212] 961-8316

STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

license, the Authority may impose, as part of the penalty,
a two year prohibition against the issuance of any alcoholic
beverage license at these premises.

Certified Mail # 7003 3110 0004 6360 4985

CC: Carreras & McCallen, 11 Park Place, Suite 1210, New York, NY 10007-2801

STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

125 Main Street
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1163482, NEW YORK RW 1163482

2430-2006/Case No. 30374

EL SAYED I CORP
HORUS KEBAB HOUSE
93 AVENUE B
NEW YORK, NY 10009

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **09/27/2006**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That the licensee's conduct by its sole principal, Mohamed El Sayed, leading to his arrest on or about November 13, 2005 for the crime of Possession of a Forged Instrument in the Third Degree, a Class A Misdemeanor; was of such improper nature as to warrant revocation, cancellation or suspension of the license in accordance with Rules 36.1(n) and 36.2 of the Rules of the State Liquor Authority [9 NYCRR 53.1(n) & 53.2].

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Date: 08/22/2006

Licensee's name and residence address

MOHAMED EL SAYED

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney

Office of Counsel

by: SCOTT WEINER, ESQ.

317 Lenox Avenue

Licensee's Landlord

JAMES D KINSEY

New York, New York 10027

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Tel: [212] 961- 8329

Fax: [212] 961-8316

Certified Mail # 7004 2890 0000 5669 3151

CC: Issa Abdullah & Associates, 7006 3rd Avenue, Brooklyn, NY 11209

CITY PLANNING COMMISSION

January 7, 2009 / Calendar No. 10

C 080051 ZSK

IN THE MATTER OF an application submitted by Morgan B. Realty, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-922 of the Zoning Resolution to allow the development of large retail establishments (Use Group 6 and 10A uses) with no limitation on floor area on property located at 830 Fountain Avenue (Block 4452, Lot 425), in an M1-1 District, Community District 5, Borough of Brooklyn.

The application for the special permit was filed by Morgan B. Realty, LLC, on August 9, 2007, to facilitate the development of three one-story buildings with approximately 230,000 square feet of retail space on an approximately 10-acre site in East New York, Community District 5, Brooklyn.

BACKGROUND

Morgan B. Realty, LLC, submitted an application for a special permit pursuant to Section 74-922 of the Zoning Resolution to facilitate the development of certain retail establishments without limitation to floor area in a M1-1 District in the Spring Creek Section of Community District 5, Brooklyn.

The proposed development site is currently vacant and occupies 431,305 square feet (9.9 acres) of land bounded by Erskine Street to the west, Fountain Avenue to the east, Flatlands Avenue to the north and mapped, but un-built, Old Vandalia Street to the south. The applicant proposes to develop 230,000 square feet of commercial space in three buildings for approximately 25 tenants.

In 1967, the site became part of the Fresh Creek Urban Renewal Area when the Board of Estimate adopted the Fresh Creek Urban Renewal Plan on December 21, 1967 (CP 20013). On July 23, 1982, the Board of Estimate adopted the First Amendment to the Fresh Creek Urban Renewal Plan (C 820749 HUK) which removed the site from the plan to allow for the development of a Hughes

Communications, Inc., satellite communications facility. Related to this action were the rezoning of the site from R3-2 to M1-1 (C 820741 ZMK), the disposition of the site (C 820742 PPK), and the disposition of aerial easements to allow for the proper functioning of the communications facility (C 820797 HDK). The facility was built and operated at this location until its demolition in the early 2000s. The applicant for the subject special permit purchased the vacant site on October 24, 2004.

The area to the south and west of the development site is within the Fresh Creek Urban Renewal Area and is zoned R6 and R3-2. The vacant land within the Urban Renewal Area is planned for future residential development with up to 2,385 units of affordable housing and a proposed 620,000 square foot shopping center with regional and local retail as part of the Gateway Estates, Phase II project, a joint venture by the New York City Department of Housing Preservation and Development and the Related Companies. The Gateway Estates II project requires several ULURP actions that will be the subject of a Commission public hearing on January 7, 2009. Also to the south is the New York State Office of Mental Retardation and Developmental Disabilities' Brooklyn Developmental Center, and, immediately north of Shore Parkway, is the existing Gateway regional shopping center in a C4-2 zoning district. Immediately to the west of the site, across Erskine Street, is the Thomas Jefferson High School athletic field. Further to the west, between Elton and Essex Streets, 378 dwelling units, built by the Nehemiah Housing Development Fund, are in various stages of completion as part of the first two phases of the residential portion of the Gateway Estates II development. The area to the east is occupied by Spring Creek Park, a 99-acre public park, consisting of undeveloped land and wetlands. The area immediately to the north across Flatlands Avenue is part of the Flatlands Fairfield Industrial Business Zone and is dominated by light industrial uses including warehousing, truck and bus parking in a M1-1 zoning district. To the

northwest, west of Elton Street, are low and medium density residential uses in a R5 district. To the northeast, east of Fountain Avenue, is a mix of light industrial and low density residential uses in a R4 district and the MTA Bus Spring Creek Depot in a M1-1 district.

The subject site is served by the B13 and Q8 bus lines from the north and east, respectively, and the B83 bus which terminates one block to the south of the site. The closest subway station is the 3-Train New Lots Avenue Station, approximately one mile to the northwest.

Project Description

The applicant proposes to develop three one-story buildings to be called "The Shops at Gateway" containing up to 230,000 square foot commercial retail floor area with 780 accessory parking spaces located at grade and on the roof of the largest, easternmost building. The retail floor area would be used by approximately 25 commercial tenants, with the majority of these stores ranging in size from 2,000 to 5,000 square feet. The Shops at Gateway would also include two or three large retail establishments with a combined floor area of 134,000 square feet. Proposed retail uses could include discount department stores, restaurants, a bank, a pharmacy, book, furniture, electronic goods, beauty aid and clothing stores.

The easternmost building located at the corner of Fountain and Flatlands Avenues is planned to be 105,000 square feet in size, with approximately 80,000 square feet devoted to one or two large retail establishments and the remaining 25,000 square feet occupied by six small local retail stores. The center building, located along Flatlands Avenue, would consist of eleven small (2,000-5,000 square feet) local retail stores, with an overall building size of approximately 48,000 square feet. The

77,000 square foot rectangular-shaped building located in the northwestern portion of the development along the intersection of Flatlands Avenue and Erskine Street would be designed for one 55,000 square foot store and six smaller local retail stores. All three retail buildings would be approximately 25 feet high and would feature a red brick façade, similar in design to the existing Gateway Shopping Center further south on the Belt Parkway and Erskine Street.

The Shops at Gateway would have three vehicular two-way access points, located on Flatlands Avenue, Fountain Avenue and Erskine Street. The Fountain Avenue access would be located approximately 200 feet south of the intersection of Fountain and Flatlands Avenues and would be 22 feet wide. Fountain Avenue is a 100 feet wide arterial road with two travel lanes and one parking lane in each direction. The Flatlands Avenue entrance would be located approximately 200 feet east of the intersection of Flatlands Avenue and Erskine Street and would be 30 feet wide. Flatlands Avenue is 120 feet wide and has two travel lanes and a parking lane in each direction and a median. A left turn lane on Flatlands Avenue would be provided to for vehicles entering the site from the east. The Erskine Street entrance would mainly serve local residents and would be located approximately 380 feet south of the intersection of Flatlands Avenue and Erskine Street, a narrow street, and would be 22 feet wide. . Off-street truck loading facilities would be located on Fountain Avenue, a DOT designated local truck route, 70 feet from the intersection with Flatlands Avenue, with four loading berths, and on Erskine Street, 50 feet from the intersection with Flatlands Avenue, with three loading berths. The loadings berths on Erskine and Fountain Avenues would be served by one curb cut each.

The three buildings would cluster around a 450-space interior at-grade parking lot that would

provide customers with access to all of the retail stores. A 330-space roof-top parking area would be placed on top of the largest building at the corner of Flatlands and Fountain Avenues, and would be connected via stairs and elevators to the retail below. This parking would be accessible from a 21 feet wide ramp on the site, 72 feet from the Fountain Avenue entrance. The provided total of 780 parking spaces would exceed the parking required by zoning (767 spaces). To minimize impact on neighboring lots the lighting poles on the roof top parking would be shielded. Bicycle parking for 28 bicycles would be provided near the southwest corner of the eastern building and the southwest corner of the western building, close to the store entrances.

The at-grade lot is designed to comply with the newly adopted Design Regulations for Commercial and Community Facility Parking Lots, and would be improved with street, perimeter and interior trees, planted buffer areas, bioswales in every other row, shrubs and other required green space.

According to Section 42-12 (USES PERMITTED AS-OF-RIGHT) of the Zoning Resolution, certain retail uses in M1-1 districts are limited to 10,000 square feet of floor area. The applicant is requesting a special permit pursuant to Section 74-922 of the Zoning Resolution to permit retail and service establishments without limitation on floor area from use groups 6 and 10A, such as department stores, floor covering stores, clothing stores, fabric stores, household appliance stores or variety stores.

In order to grant a special permit for such large retail establishments, the Commission shall find that the principal vehicular access for such use is not located on a local narrow street, that such use is so located to draw a minimum of vehicular traffic to and through local streets, that adequate reservoir

space at the vehicular entrance and sufficient vehicular entrances and exits are provided to prevent congestion, that vehicular entrances and exits are provided for such uses and are located not less than 100 feet apart, that in selecting the site due consideration has been given to the proximity and adequacy of bus and rapid transit facilities, that such use is so located as not to impair the essential character or the future use of or development of the surrounding area, and that such use will not produce any adverse effects which interfere with the appropriate use of land in the district or in any adjacent district.

ENVIRONMENTAL REVIEW

This application (C 080051 ZSK) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 08DCP005K. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed action (C 080051 ZSK), a Conditional Negative Declaration was issued. The lead agency has determined that the proposed action will have no significant effect on the quality of the environment, once it is modified as follows:

That the proposed project incorporate the exclusive use of natural gas as a fuel and the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site as noted in the plans dated August 8th, 2008 and approved as part of the ULURP application (C 080051 ZSK).

With the implementation of the condition described above, no significant adverse impact related to air quality is expected.

The applicant signed the conditional negative declaration on August 8, 2008. The conditional negative declaration was published in the New York State Environmental Notice Bulletin on August 20, 2008. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq., a 30-day comment period followed.

No comments were received and the conditional negative declaration was issued on November 25, 2008.

UNIFORM LAND USE REVIEW

This application (C 080051 ZSK) was certified as complete by the Department of City Planning on August 11, 2008, and was duly referred to Community Board 5 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 5 held a public hearing on this application on October 20, 2008. In a communication dated October 20, 2008, the Community Board stated:

The Land Use Committee met several times with the applicants regarding this project. The committee is very impressed with the past work of the applicant and recommends that this project proceeds forward.

Since no vote was taken and a quorum was not present the Community Board was non-complying.

Borough President Recommendation

This application (C 080051 ZSK) was considered by the Borough President, who issued a

recommendation approving the application on November 19, 2008 subject to the following conditions:

that 8,000 square feet shall be set aside for the inclusion of a food store establishment and that the Department of City Planning should undertake an investigation of zoning modifications that might enhance the siting of supermarkets.

City Planning Commission Public Hearing

On November 19, 2008 (Calendar No. 1), the City Planning Commission scheduled December 3, 2008, for a public hearing on this application (C 080051 ZSK). The hearing was duly held on December 3, 2008 (Calendar No. 10). There were two speakers in favor of the application and one speaker in opposition.

The speakers in favor of the project were the applicant and the applicant's counsel. The speakers pointed out that the project would create long-term employment opportunities for the community and a greater variety of shopping options for residents. They stressed their willingness to cooperate with the community with regard to job placement and choice of tenants for the site, including a food store as requested by the Borough President.

The speaker opposing the application was a local resident who stated that the subject site was illegally converted from parkland, that the environmental review was flawed and that the scholarships for local students that were given by the previous owners of the parcel would be discontinued. The speaker added that the project would be inconsistent with the City's waterfront revitalization program and that it would create adverse traffic impacts on local residents and business owners on Pitkin Avenue.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 080051 ZSK) is appropriate.

The grant of this special permit would facilitate the development of three one-story buildings, to be called "The Shops at Gateway", containing up to 230,000 square feet of commercial retail floor area with 780 accessory parking spaces located at-grade and on the roof of the largest, easternmost building. The development would have approximately 25 commercial tenants, with the majority of these stores ranging in size from 2,000 to 5,000 square feet. The special permit would permit large retail establishments exceeding 10,000 square feet.

The Commission believes that the proposed development would provide a wider variety of products and services typically currently not found in the nearby community and thus offer greater shopping options for surrounding community residents.

The proposed retail development would be an appropriate transition in land use between the light manufacturing industrial area to the north and the residential area being developed through HPD to the south, and would not interfere with the land uses in the adjacent areas. The site plan is so configured as to minimize any conflicts with the residential area by acting as a buffer to the industrial park to the north, providing a landscaped planting area to the south, allowing pedestrian and bicycle access to the development from the residential area while concentrating vehicular access points on adjacent large streets away from residential uses.

The Commission notes that the two primary vehicular access points to the proposed development are from Flatlands and Fountain Avenues, which are 120 and 100 feet wide, respectively and connect to the Belt Parkway to the south and Linden Boulevard to the north, two major arterials. The third vehicular access point on Erskine Street would allow local traffic from the adjacent residential area to enter the site. The access points are more than 100 feet apart and the self parking areas provide ample reservoir space. The location and configuration of the access points along major streets would prevent any project-bound traffic from traveling along local residential streets and minimize traffic impact on other adjacent residential streets. Loading facilities would be provided on Fountain Avenue, a local truck route, and Erskine Street, away from residential uses, thus avoiding the impact of truck traffic on residents. Further, the proposed development would exceed the off-street parking requirements established by zoning so that there would be no parking impacts on neighboring streets or the operations of nearby businesses.

The Commission notes that two bus lines, the B13 and the Q8 buses, immediately serve the project site on Fountain Avenue, and that one bus line, the B83 bus, terminates one block to the south on Fountain Avenue. The B13 and Q 8 buses connect to the A and C subway trains at the Euclid Avenue Station and that the B83 bus connects to the 3 subway train at the Pennsylvania Avenue Station, providing transit access to the subject site.

Regarding the recommendation of the Borough President, the Commission notes that the applicant stated at the Commission's public hearing he would be seeking a tenant for a food store in the retail center.

The Commission notes that the subject site was never mapped as park and was never proposed to be used as park or open space. This site is not within an area subject to the Waterfront Revitalization

Program (WRP) and thus is not subject to WRP review.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-922

(Certain large retail establishments) of the Zoning Resolution:

- (a) that the principal vehicular access for such use is not located on a local *narrow street*; and
- (b) that such *use* is so located to draw a minimum of vehicular traffic to and through local *streets*; and
- (c) that adequate reservoir space at the vehicular entrance and sufficient vehicular entrances and exits are provided to prevent congestion; and
- (d) that vehicular entrances and exits are provided for such uses and are located not less than 100 feet apart; and
- (e) that in selecting the site due consideration has been given to the proximity and adequacy of bus and rapid transit facilities; and
- (f) that such *use* is so located as not to impair the essential character or the future use of or development of the surrounding area; and
- (g) that such *use* will not produce any adverse effects which interfere with the appropriate *use* of land in the district or in any adjacent district; and
- (h) not applicable; and
- (i) not applicable.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment, subject to the following condition:

The applicant, Morgan B. Realty, LLC, agrees to the exclusive use of natural gas as a fuel and agrees to the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site.

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of Morgan B. Realty, LLC, for the grant of a special permit to allow the development of large retail establishments (Use Group 6 and 10A uses) with no

limitation on floor area on property located at 830 Fountain Avenue (Block 4452, Lot 425), in an M1-1 District, Community District 5, Borough of Brooklyn, is approved, pursuant to the findings of Section 74-922 (Certain large retail establishments) of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 080051 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by the architecture firm of Felix Pustynnik, filed with this application and incorporated in this resolution:

| <u>Drawing No.</u> | <u>Title</u> | <u>Last Date Revised</u> |
|--------------------|----------------------|--------------------------|
| A-1 | Project Plan | 7/28/2008 |
| P-1 | Roof Parking | 5/1/2008 |
| P-2 | Street Level Parking | 5/1/2008 |
| Z | Zoning Analysis | 5/1/2008 |

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. The development shall conform to all conditions, modifications and alterations set forth in the conditional negative declaration (CEQR No. 08DCP005K), dated August 11, 2008, issued pursuant to the New York State and New York City Environmental Quality Review. These conditions, modifications and alterations are as follows:

The applicant, Morgan B. Realty, LLC, agrees to the exclusive use of natural gas as a fuel and agrees to the placement of individual HVAC stacks at least 65 feet from the edge of any adjacent building on the project site.

5. All leases, subleases, or agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.

6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

The above resolution (C 080051 ZSK), duly adopted by the City Planning Commission on January 7, 2009 (Calendar No. 10), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
IRWIN G. CANTOR, P.E.,

**ANGELA R. CAVALUZZI, AIA, BETTY Y. CHEN,
MARIA M. DEL TORO, RICHARD W. EADDY,
NATHAN LEVENTHAL, SHIRLEY A. MCRAE,
KAREN A. PHILLIPS, Commissioners**

CITY PLANNING COMMISSION DISPOSITION SHEET

**PUBLIC MEETING:
WEDNESDAY, JANUARY 7, 2009
10:00 A.M. SPECTOR HALL
22 READE STREET, NEW YORK 10007**

**Yvette V. Gruel, Calendar Officer
22 Reade Street, Room 2E
New York, New York 10007-1216
(212) 720-3370**

| CAL NO. | ULURP NO. | CD NO. | PROJECT NAME | C.P.C. ACTION |
|---------|---------------|--------|--|--------------------------------|
| 1 | C 090153 PPX | 4 | YANKEE STADIUM PARKING | Scheduled to be Heard 1/21/09 |
| 2 | C 080014 MMX | 8 | BROADWAY PLAZA | " " |
| 3 | C 090146 ZMX | 8 | " " | " " |
| 4 | C 090147 PPX | 8 | " " | " " |
| 5 | C 090071 HAM | 12 | 567 WEST 183 RD STREET | " " |
| 6 | C 070305 ZSM | 4 | 405-427 WEST 53 RD STREET GARAGE | " " |
| 7 | C 070486 ZSM | 2 | 372 BROOME STREET | " " |
| 8 | C 090112 ZMQ | 3 | NORTH CORONA 2 REZONING | " " |
| 9 | N 070230 ZAX | 9 | VISTAMAR I | Authorization Approved |
| 10 | C 080051 ZSK | 5 | SHOPS AT GATEWAY | Favorable Report Adopted |
| 11 | N 090218 HKK | 6 | RED HOOK PLAY CENTER LANDMARK | Forward Report to City Council |
| 12 | C 070137 ZMM | 6 | PHIPPS PLAZA SOUTH ZONING AND TEXT CHANGE | Favorable Report Adopted |
| 13 | N 090105 ZRM | 6 | " " | " " |
| 14 | N 090212 HKM | 6 | MORRIS B. SANDERS STUDIO AND APARTMENT LANDMARK | Forward Report to City Council |
| 15 | N 090213 HKM | 4 | (FORMER) FIRE ENGINE COMPANY No. 54 LANDMARK | " " |
| 16 | N 090214 HKM | 5 | GUARDIAN LIFE INSURANCE COMPANY OF AMERICA ANNEX | " " |
| 17 | N 090215 HKM | 2 | BAUMANN BROTHERS STORE LANDMARK | " " |
| 18 | N 090216 HKM | 2 | 144 WEST 14 TH STREET LANDMARK | " " |
| 19 | N 090217 HKM | 2 | UNIVERSITY VILLAGE LANDMARK | " " |
| 20 | C 060021 ZMQ | 3 | ASTORIA BOULEVARD REZONING | Favorable Report Adopted |
| 21 | C 090064 PPQ | 14 | BEACH 84 TH STREET PIER | " " |
| 22 | N 090032 ZAR | 2 | 100 NEVADA AVENUE | Authorization Approved |
| 23 | C 090073 HAX | 3 | 1157 FULTON AVENUE | Hearing Closed |
| 24 | C 090120 ZMM | 1 | BATTERY MARITIME BUILDING | " " |
| 25 | C 090121 PPM | 1 | " " | " " |
| 26 | C 090111 PCQ | 7 | GRACE ASPHALT | " " |
| 27 | N 090245 P XK | 2 | STATE SUPREME COURT OFFICES | " " |
| 28 | N 090246 P XK | 18 | NYPD OFFICE SPACE | " " |
| 29 | C 090135 P CK | 1 | BROOKLYN NORTH SALT SHED | " " |
| 30 | C 090053 Z SK | 1 | 155 WEST STREET | " " |
| 31 | C 090078 H UK | 5 | GATEWAY ESTATES II | " " |
| 32 | C 090079 Z MK | 5 | " " | " " |

CITY PLANNING COMMISSION DISPOSITION SHEET

**PUBLIC MEETING:
WEDNESDAY, JANUARY 7, 2009
10:00 A.M. SPECTOR HALL
22 READE STREET, NEW YORK 10007**

**Yvette V. Gruel, Calendar Officer
22 Reade Street, Room 2E
New York, New York 10007-1216
(212) 720-3370**

| CAL NO. | ULURP NO. | CD NO. | PROJECT NAME | C.P.C. ACTION |
|---------|-------------------|--------|-------------------------------|-------------------------------|
| 33 | C 090081 ZSK | 5 | GATEWAY ESTATES II | Hearing Closed |
| 34 | C 090082 HAK | 5 | " " | " " |
| 35 | C 080089 MMK | 5 | " " | " " |
| 36 | C 090047 ZMK | 6 | 363-365 BOND STREET | " " |
| 37 | C 090048 ZSK | 6 | " " | " " |
| 38 | N 090049 ZRK | 6 | " " | " " |
| | Supplemental Cal. | | | |
| 1 | C 090197 ZMK | 7 | EAST WINDSOR TERRACE REZONING | Scheduled to be Heard 1/21/09 |
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| COMMISSION ATTENDANCE: | Present (P) Absent (A) | COMMISSION VOTING RECORD: | | | | | | | | | | | | | |
|--|---------------------------|---|----|----|----|----|----|----|----|----|----|----|----|----|----|
| | | In Favor - Y Oppose - N Abstain - AB Recuse - R | | | | | | | | | | | | | |
| Calendar Numbers: | | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| Amanda M. Burden, FAICP, Chair | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Kenneth J. Knuckles, Esq., Vice Chairman | A | | | | | | | | | | | | | | |
| Angela M. Battaglia | A | | | | | | | | | | | | | | |
| Irwin Cantor, P.E. | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Angela R. Cavaluzzi, AIA | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Alfred C. Cerullo, III | A | | | | | | | | | | | | | | |
| Betty Chen | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Maria M. Del Toro | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Richard W. Eaddy | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Nathan Leventhal | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Shirley A. McRae | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| John Merolo | A | | | | | | | | | | | | | | |
| Karen A. Phillips, Commissioners | P | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |

MEETING ADJOURNED AT: 1:29 P.M.

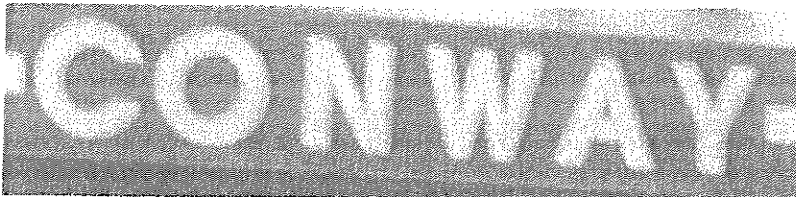
Morgan B Realty
15 Ocean Ave
Brooklyn NY 11225
P 718 703 8441
F 718 703 8465

Dear Councilmember Charles Barron:

The following is a list of potential big box user for 830 fountain Ave.

ROSS
DRESS FOR LESS

At Ross expect to find designer and brand name fashions for women, men, kids and home at everyday savings of 20-60% compared to department and specialty stores. Ross operates out of 900 stores and occupies approx 50-60,000 sq ft.



Conway is a discount dept store for the whole family. They operate 40 stores along the east coast and occupy approximately 25-30,000 sq ft.



DOLLAR TREE.
EVERYTHING'S \$1

They're stocked with a wide array of gift bags, party supplies, house wares, seasonal decor, candy and food, toys, health and beauty care, gifts, stationery, books, and a variety of consumer items. And everything at Dollar Tree is priced at \$1!. We recently opened the first Dollar Tree store in Brooklyn at 198 east 98th street. They currently operate out of 3,500 stores and prototypically take 15,000 sq ft



At Burlington Coat Factory, you'll find a large assortment of current, designer and name-brand merchandise at up to 60% less than other department stores. Choose from a large selection of coats, clothing, and shoes for the entire family. They operate out of 450 stores and prototypically take 60-70,000 sq ft.



Sports Authority - the nation's preeminent full-line sporting goods chain. The Sports Authority, Inc. ("Sports Authority") is headquartered in Englewood, Colorado. It operates over 450 stores in 45 U.S. states under The Sports Authority. The company occupies 30-40,000 sq ft.



We believe real fashion should be available to everyone who wants to express their individual style. That's why we offer authentic brand name apparel and footwear for the entire family, as well as home essentials and giftware, at up to 70% off of discount and chain store prices. Every single day. A.J. Wright means quality at an extreme value that you can always count on. AJ Wright currently operates out of 129 stores and prototypically take 25-30,000 sq ft



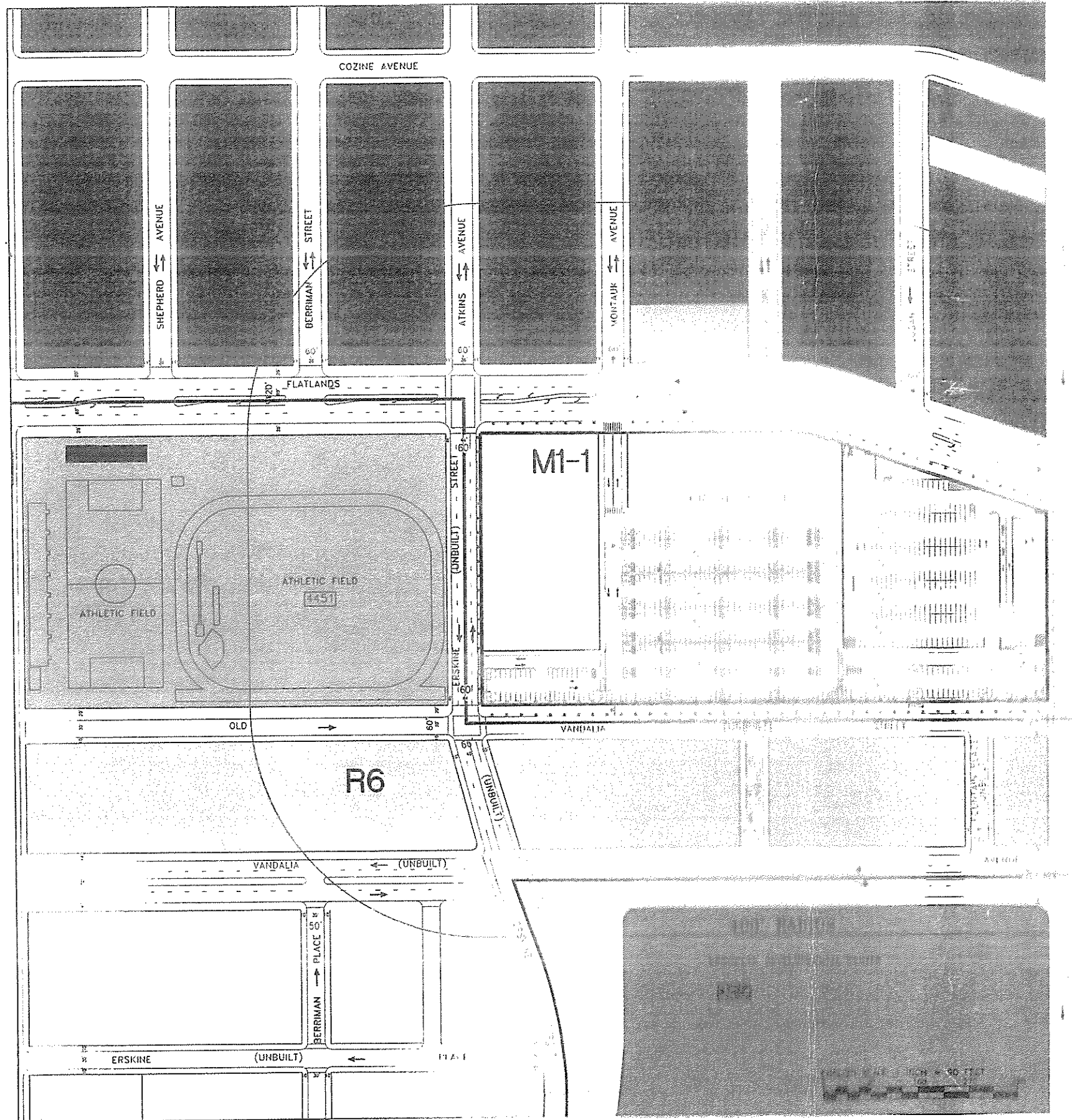
PETCO is a leading specialty retailer of premium pet food, supplies and services. We operate over 900 stores. PETCO stores offer more than 10,000 high-quality pet-related products. Petco generally operates out of 15-20,000 sq ft.



Kohl's is considered discount dept store. The stores are stocked with everything the family needs - apparel, shoes & accessories for women, children and men, plus home products like small electrics, bedding, luggage and more. Kohl's generally occupies 70-85,000 sq ft of space.

If you have any questions I will be more than happy to discuss them with you.

Best Regards
Soly D Bawabeh



830 Fountain Avenue
RETAIL DEVELOPMENT

BROOKLYN, NEW YORK

APPLICANT
Bermuda Realty, LLC
830 Fountain Avenue
Brooklyn, NY 11208
Tel: 718-769-8161
Fax: 718-762-8183

ENGINEER
Philip Habib & Associates
226 West 26th Street
New York, NY 10001
Tel: 212-625-1523
Fax: 212-625-5223

LEGEND

M1-1 ZONING

4452 BLOCK NUMBER

ZONING DISTRICT BOUNDARY

PROJECT SITE

RESIDENTIAL - 1 & 2 FAMILY

OPEN SPACE AND RECREATION

SCHOOL PLAYGROUND

PUBLIC FACILITIES AND INSTITUTIONS

VACANT LAND

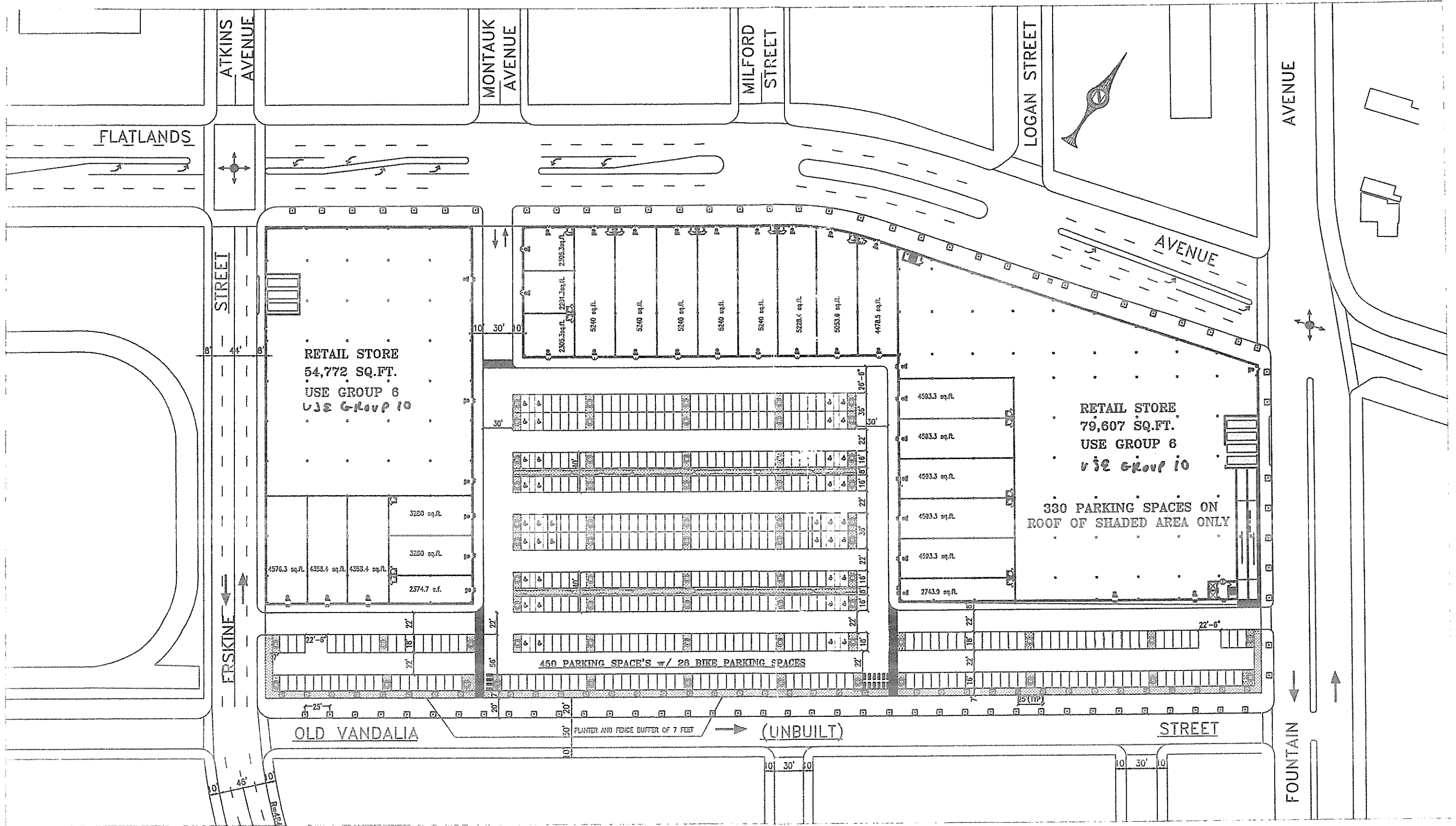
← VEHICULAR FLOW

1 ONE STORY

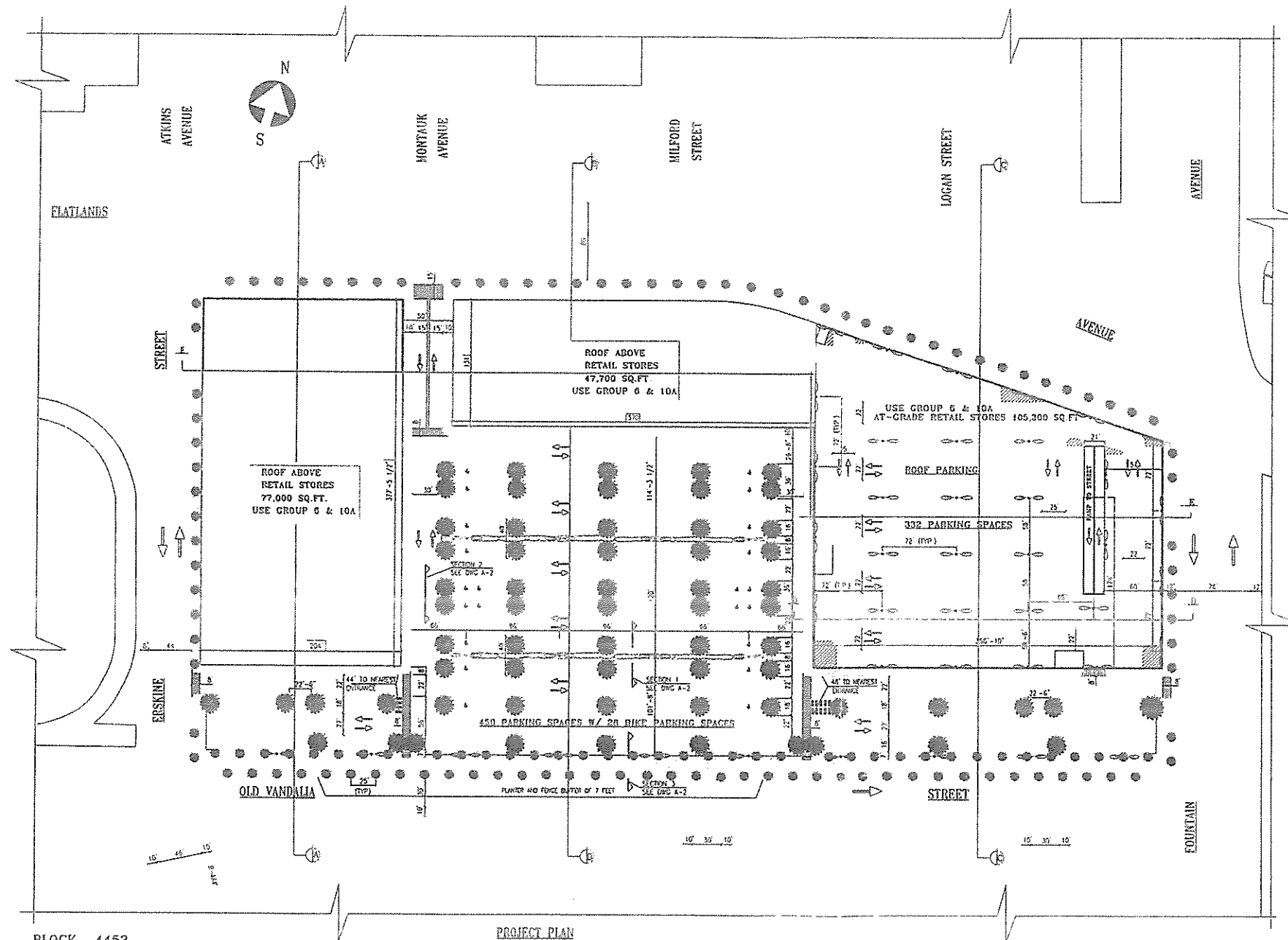
| NO. | DATE | DCP COMMENTS | REVISION |
|-----|----------|--------------|----------|
| 1 | 01/14/00 | DCP COMMENTS | |

AREA MAP

| | | | |
|----------|----------|-------------|------|
| DATE | 04/24/00 | PROJECT NO. | 0643 |
| DRAWN BY | D.K. | CHECKED BY | P.H. |
| SHEET | | | |
| 1 of 1 | | | |



PROPOSED NEW BUILDING
 830 FOUNTAIN AVENUE
 BROOKLYN, N.Y.



BLOCK 4452
 LOTS 410, 415, 425, 445
 ZONE M1-1
 MAP 17d & 18d

PROJECT PLAN
 SCALE 1/8"=1'

- LEGEND
- - REGULAR PARKING SPACE FOR CARS
 -
 - H.C. PARKING SPACE
 -
 - PARKING SPACE
 -
 - PARKING SPACE FOR BICYCLES
 -
 - STREET TREE & SHRUBS ZONE
1 PER 25' STREET FRONTAGE
 -
 - PERIMETER SCREENING WITH ONE SMALL TREE PER 25' LINEAR FT. OF PROPERTY FRONTAGE
 -
 - INTERIOR LANDSCAPING - TREES, SHRUBS, GRASSES, GROUND COVER PLANTING
 -
 - ELEVATORS & STAIR
 -
 - LIGHT POLE 30'H FOR STREET LEVEL PARKING & 18'H FOR ROOF PARKING
 -
 - STRIPED CROSSWALK

| | | | |
|----------|----------|----------|----------|
| 02/27/23 | 02/27/23 | 02/27/23 | 02/27/23 |
| 1 | 1 | 1 | 1 |
| DESIGNED | DRAWN | CHECKED | DATE |

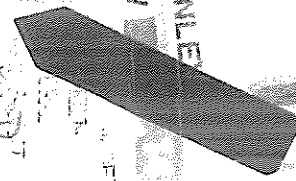
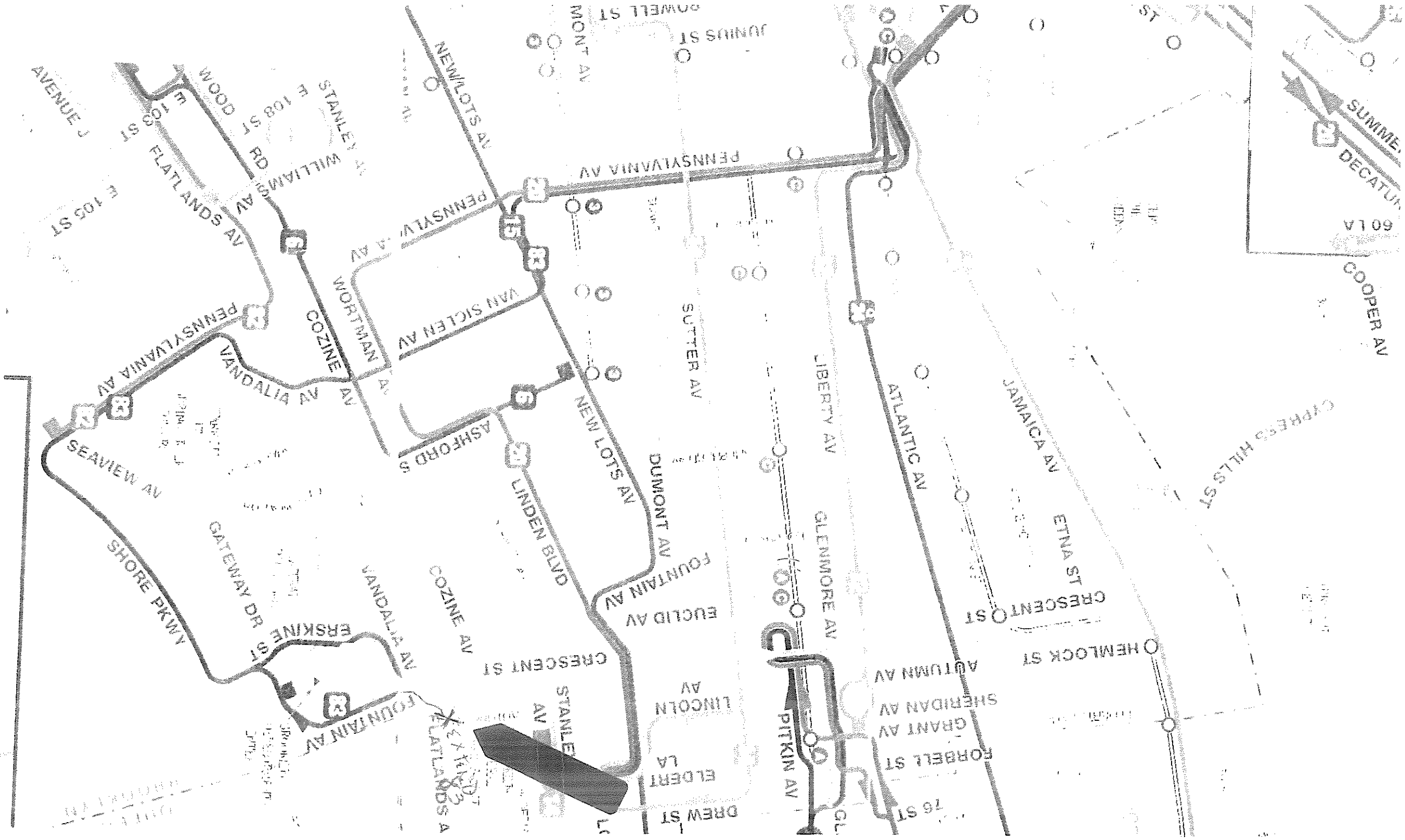
415 AVENUE P
 BROOKLYN, N.Y. 11223
 (718) 376-1989

OFFICE OF
 FELIX PUSTYLNIK P.E.
 ARCHITECTS/ENGINEERS

PROPOSED NEW BUILDING
 @ 830 FOUNTAIN AVENUE
 BROOKLYN, N.Y.

| | |
|------|----------|
| 28 | 22-01-25 |
| DATE | 02/27/23 |
| BY | DWG |

A-1



SUMMER
DECATUR
6709

COOPER AV

CYPRESS HILLS ST

JAMAICA AV
ETNA ST

CRESCENT ST

HEMLOCK ST

AUTUMN AV
SHERIDAN AV
GRANT AV
FORBELL ST

76 ST

PITKIN AV

GLENMORE AV

LIBERTY AV

ATLANTIC AV

SUTTER AV

DUMONT AV

EUCLID AV
FOUNTAIN AV

LINCOLN AV

ELBERT LA

DREW ST

NEW LOTS AV

LINDEN BLVD

ASHFORD S

COZINE AV

WANTON AV

FOUNTAIN AV

WANDALIA AV

ERSKINE ST

GATEWAY DR

SHORE PKWY

SEAVIEW AV

VANDALIA AV

PENNSYLVANIA AV

WOOD ST
FLATLANDS AV

WILLIAM ST
AV

STANLEY AV

NEW LOTS AV

MONT AV

JUNIUS ST

PENNSYLVANIA AV

VAN SICLEN AV

COZINE AV
WORTMAN AV

AVENUE J
105 ST