



## Legislation Text

File #: Res 0403-2010, Version: \*

### THE COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 403

Resolution approving with modification the decision of the City Planning Commission on ULURP No. C 100187 ZSK (L.U. No. 132), for the grant of a special permit pursuant to Sections 74-743(a)(1), to allow the distribution of floor area within the general large scale development without regard for zoning lot lines; and 74-743(a)(2), to modify the requirements of Section 23-532 (Required rear yard equivalents), 23-711 (Standard minimum distance between buildings), 23-852 (Inner court recesses), 23-863 (Minimum distance between legally required windows and any wall in an inner court), 62-332 (Rear yards and waterfront yards) and 62-341 (Developments on land and platforms), Borough of Brooklyn.

By Council Members Comrie and Weprin

WHEREAS, the City Planning Commission filed with the Council on June 7, 2010 its decision dated June 7, 2010 (the "Decision"), on the application submitted by The Refinery LLC, pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to the following sections of the Zoning Resolution as modified:

1. Section 74-743(a)(1) - to allow the distribution of floor area within the general large scale development without regard for zoning lot lines; and
2. Section 74-743(a)(2) - to modify the requirements of Section 23-532 (Required rear yard equivalents), 23-711 (Standard minimum distance between buildings), 23-852 (Inner court recesses), 23-863 (Minimum distance between legally required windows and any wall in an inner court), 62-332 (Rear yards and waterfront yards) and 62-341 (Developments on land and platforms),

to facilitate a mixed use development on property bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3<sup>rd</sup> Street, a line 100 feet westerly of Wythe Avenue, South 4th Street, Kent Avenue, South 5<sup>th</sup> Street and its northwesterly prolongation, and the U.S. Pierhead Line (Block 2414, Lot 1 and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a General Large-Scale Development (ULURP No. C 100187 ZSK), Community District 1, Borough of Brooklyn (the "Application");

WHEREAS, the Application is related to ULURP Applications Numbers C 100185 ZMK (L.U. No. 130), a zoning map amendment to replace an M3-1 district with C6-2 districts and with R6 and R8 districts with C2-4 commercial overlays; N 100186 ZRK (L.U. No. 131), a zoning text amendment relating to the Inclusionary Housing Program and regulations for non-conforming advertising signs; and C 100188 ZSK (L.U. No. 133), a special permit pursuant to Zoning Resolution Section 74-744 to modify use regulations as part of a general large-scale development;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(3) of the City Charter;

WHEREAS, the City Planning Commission has made the findings required pursuant to Section 74-743 of the Zoning Resolution of the City of New York;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on June 21, 2010;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues and the Final Environmental Impact Statement (FEIS) for which a Notice of Completion was issued on May 28, 2010 (CEQR No. 07DCP094K), together with the Technical Memorandum, dated June 4, 2010;

RESOLVED:

Having considered the FEIS, together with the Technical Memorandum, with respect to the Application, the Council finds that:

- (1) The FEIS meets the requirements of 6 N.Y.C.R.R. Part 617;
- (2) From among the reasonable alternatives thereto, the action to be approved, with the modifications set forth and analyzed in the Technical Memorandum, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
- (3) The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration known as Exhibit A and incorporated by reference herein, those mitigation measures that were identified as practicable.
- (4) The Decision and the FEIS together with the Technical Memorandum constitute the written statement of facts, and of social, economic and other factors and standards that form the basis of the decision, pursuant to 6 N.Y.C.R.R. §617.11(d).

Pursuant to Sections 197-d and 201 of the City Charter and on the basis of the Decision and Application, the Technical Memorandum dated June 4, 2010, and based on the environmental determination and consideration described in this report, C 100187 ZSK, incorporated by reference herein, the Council approves the Decision with the following modifications that would reduce heights of the tallest segment on Zoning Lot A Site B and on Zoning Lot A Site C to 34 stories and shall restore the height of the segments in Zoning Lot A, Site A to their original heights.

Matter in [brackets] is old, to be deleted by the Council;  
Matter double-underlined is new, to be added by the Council.

The property that is the subject of this application (C 100187 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 Rafael Vinoly Architects PC, filed with this application and incorporated in this resolution:

<u>Number</u>	<u>Title</u>	<u>Last Date Revised</u>
T-1	Title Sheet	06-07-10
Z00-2	Zoning Lot Calculations, Actions, and Design Guidelines	[06-07-10] <u>06-29-10</u>
Z00-3	Upland/Seaward Lot Calculations	12-24-09
<a href="#">Z00-4</a>	<a href="#">Sub-Division Plan</a>	<a href="#">12-24-09</a>
Z01-1	Site Plan	[06-07-10] <u>06-29-10</u>
<a href="#">Z02-B1</a>	<a href="#">Illustrative Basement Plan</a>	<a href="#">06-07-10</a>
<a href="#">Z02-1</a>	<a href="#">Illustrative Ground Floor Plan</a>	<a href="#">12-24-09</a>
Z05-A	Zoning Lot A Site A - Adjusted Base Plane Calculation	12-24-09
Z05-B	Zoning Lot A Site A - Site Plan	[06-07-10] <u>06-29-10</u>
Z05-C	Zoning Lot A Site A - Height and Setback Diagrams	[06-07-10] <u>06-29-10</u>
Z06-A	Zoning Lot A Site B - Adjusted Base Plane Calculations	12-24-09
Z06-B	Zoning Lot A Site B - Site Plan	[12-24-09] <u>06-29-10</u>
Z06-C	Zoning Lot A Site B - Height and Setback Diagrams	[12-24-09] <u>06-29-10</u>
Z07-A	Zoning Lot A Site C - Adjusted Base Plane Calculations	12-24-09
Z07-B	Zoning Lot A Site C - Site Plan	[12-24-09] <u>06-29-10</u>
Z07-C	Zoning Lot A Site C - Height and Setback Diagrams	[12-24-09] <u>06-29-10</u>
Z08-A	Zoning Lot A Site D - Adjusted Base Plane Calculations	12-24-09
Z08-B	Zoning Lot A Site D - Site Plan	[12-24-09] <u>06-29-10</u>
Z08-C	Zoning Lot A Site D - Height and Setback Diagrams	[12-24-09] <u>06-29-10</u>
Z09-A	Zoning Lot C Site A - Adjusted Base Plane Calculations	12-24-09
Z09-B	Zoning Lot C Site A - Site Plan	[12-24-09] <u>06-29-10</u>
Z09-C	Zoning Lot C Site A - Height and Setback Diagrams	[12-24-09] <u>06-29-10</u>
Z10-A	Zoning Lot B Site A - Adjusted Base Plane Calculations	12-24-09
Z10-B	Zoning Lot B Site A - Site Plan	12-24-09
Z10-C	Zoning Lot B Site A - Height and Setback Diagrams	12-24-09
Z11-1	Special Permit Drawing - Site A	[06-07-10] <u>06-29-10</u>

**The Restrictive Declaration (Exhibit A) is amended to read:**

Matter ~~struck~~ is old, to be deleted by the City Council;  
Matter double-underlined is new, to be added by the City Council.

\*\*\* Indicates unchanged text

## ARTICLE I

### CERTAIN DEFINITIONS

For purposes of this Declaration, the following terms shall have the following meanings.

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“**Applicable Exhaust Stack Plane**” shall mean (i) with respect to Site A, a horizontal plane located ~~275~~ 309 feet above the Brooklyn Datum, (ii) with respect to Site B, a horizontal plane located ~~407~~ 350 feet above the Brooklyn Datum, (iii) with respect to Site C, a horizontal plane located ~~400~~ 342 feet above the Brooklyn Datum, (iv) with respect to Site D, a horizontal plane located 331 feet above the Brooklyn Datum, and (v) with respect to Site E, a horizontal plane located 157 feet above the Brooklyn Datum.

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“**Development Plans**” shall mean the following plans and drawings, ~~each dated December 24, 2009,~~ prepared by Rafael Viñoly Architects, each of which is annexed hereto as **Exhibit B**:

Number	Title	Date
T-1	Title Sheet	06-07-10
Z00-2	Zoning Lot Calculations, Actions, and Design Guidelines	<del>06-07-10</del> <u>06-29-10</u>
Z00-3	Upland/Seaward Lot Calculations	12-24-09
<u>Z00-4</u>	<u>Sub-Division Plan</u>	<u>12-24-09</u>
Z01-1	Site Plan	<del>06-07-10</del> <u>06-29-10</u>
<u>Z02-B1</u>	<u>Illustrative Basement Plan</u>	<u>06-07-10</u>
<u>Z02-1</u>	<u>Illustrative Ground Floor Plan</u>	<u>12-24-09</u>
Z05-A	Zoning Lot A Site A - Adjusted Base Plane Calculations	12-24-09
Z05-B	Zoning Lot A Site A - Site Plan	<del>06-07-10</del> <u>06-29-10</u>
Z05-C	Zoning Lot A Site A - Height and Setback Diagrams	<del>06-07-10</del> <u>06-29-10</u>
Z06-A	Zoning Lot A Site B - Adjusted Base Plane Calculations	12-24-09
Z06-B	Zoning Lot A Site B - Site Plan	<del>12-24-09</del> <u>06-29-10</u>
Z06-C	Zoning Lot A Site B - Height and Setback Diagrams	<del>12-24-09</del> <u>06-29-10</u>
Z07-A	Zoning Lot A Site C - Adjusted Base Plane Calculations	12-24-09
Z07-B	Zoning Lot A Site C - Site Plan	<del>12-24-09</del> <u>06-29-10</u>
Z07-C	Zoning Lot A Site C - Height and Setback Diagrams	<del>12-24-09</del> <u>06-29-10</u>

Z08-A	Zoning Lot A Site D - Adjusted Base Plane Calculations	12-24-09
Z08-B	Zoning Lot A Site D - Site Plan	<del>12-24-09</del> <u>06-29-10</u>
Z08-C	Zoning Lot A Site D - Height and Setback Diagrams	<del>12-24-09</del> <u>06-29-10</u>
Z09-A	Zoning Lot C Site A - Adjusted Base Plane Calculations	12-24-09
Z09-B	Zoning Lot C Site A - Site Plan	<del>12-24-09</del> <u>06-29-10</u>
Z09-C	Zoning Lot C Site A - Height and Setback Diagrams	<del>12-24-09</del> <u>06-29-10</u>
Z10-A	Zoning Lot B Site A - Adjusted Base Plane Calculations	12-24-09
Z10-B	Zoning Lot B Site A - Site Plan	12-24-09
Z10-C	Zoning Lot B Site A - Height and Setback Diagrams	12-24-09
Z11-1	Special Permit Drawing - Site A	<del>06-07-10</del> <u>06-29-10</u>

## **ARTICLE II**

### **DEVELOPMENT AND USE OF THE SUBJECT PROPERTY**

#### **2.01 Development of the Subject Property**

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(d) Inclusionary Housing

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(ii) Height Limitation

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(B) The maximum heights provided for Towers set forth the height of the tallest Module permitted in each Tower. The heights of adjacent Modules within such Tower ~~(with exception of those Modules on Site A)~~ must be reduced so as to maintain the height differentials among adjacent Modules, as is shown in Site Plan Z01-1 of the Development Plans. ~~On Site A, only the tallest Module permitted in each tower must be reduced; the heights of adjacent Modules within such Tower can still be built to the heights shown on Site Plan Z1.~~

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## **ARTICLE III**

### **PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES**

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#### **3.02 Project Components Related to the Environment Relating to Design and Operation of New Buildings.**

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(d) Shuttle Bus. Declarant shall implement a peak hour shuttle bus service for occupants of any New Building between the project site and the Marcy Avenue subway station (the “Shuttle Service”) upon full occupancy of the New Building constructed on Site E.

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### 3.04 Environmental Mitigation.

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#### (f) Transit and Pedestrians

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(iii) Notwithstanding anything to the contrary set forth in this Section, Declarant may be relieved from compliance with the mitigation measures set forth in Section 3.04(f)(i) above, provided that prior to issuance of a Building Permit for said New Building, Declarant demonstrates, to the satisfaction of the Chair, that the Shuttle Service eliminates the transit impact (as set forth in the FEIS). Upon such demonstration, Declarant shall be permitted to apply for or accept a Building Permit for such New Building without having to comply with the provisions set forth in Section 3.04(f). In the event that Declarant shall fail to demonstrate that the Shuttle Service eliminates the transit impact, or the absence of other circumstances which eliminate the transit impact or diminish the transit impact such that less mitigation is required than specified in the FEIS, then Declarant shall be required to implement the mitigation measures set forth in Section 3.04(f).

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## ARTICLE IV

### PUBLIC ACCESS AREAS

#### 4.01 Construction of Public Access Areas.

(a) If Declarant develops the Subject Property, the Public Access Areas shall be constructed substantially in accordance with the Public Access Area Plans and the Final Public Access Area Plans. Any development of the Public Access Areas shall occur only if it is in substantial conformity with the Public Access Area Plans and the Final Public Access Area Plans and otherwise in compliance with this Declaration.

(b) The “Public Access Area Plans” shall mean the following plans and drawings, by Quennell Rothschild and Partners, annexed hereto in Exhibit C and made a part hereof:

<u>Number</u>	<u>Title</u>	<u>Date</u>
Z00-4 L0-0	<del>Subdivision Plan</del> Title Sheet	12-22-09
L1-1-1	Open Space Zoning Calculations	12-22-09
L2-1-2-1	Waterfront Public Access Plan	12-22-09
L3-1-3-1	Open Space Phasing Plans - Phase 2	06-07-10
L3-2-3-2	Open Space Phasing Plans - Phase 3	06-07-10

<a href="#">L3.33-3</a>	Open Space Phasing Plans - Phase 4	06-07-10
<a href="#">L3.3a3-3A</a>	Alternate Open Space Phasing Plans -Phase 4	06-07-10
<a href="#">L3.43-4</a>	Open Space Phasing Plans - Phase 5	06-07-10
<del>L3.4a</del>	<del>Alternate Open Space Phasing Plans -Phase 6</del>	<del>06-07-10</del>
<a href="#">L3.53-5</a>	Open Space Phasing Plans - Phase 6	06-07-10
<a href="#">L5.14-1</a>	<del>Layout</del> <a href="#">Topographical Plan</a> <a href="#">Survey</a>	12-22-09
<a href="#">L5.25-1</a>	Layout Plan	12-22-09
<a href="#">L6.15-2</a>	<del>Materials</del> <a href="#">Layout</a> Plan	12-22-09
<a href="#">L6.26-1</a>	Materials Plan	12-22-09
<a href="#">L7.16-2</a>	<del>Grading</del> <a href="#">Materials</a> Plan	12-22-09
<a href="#">L7.27-1</a>	Grading Plan	12-22-09
<a href="#">L8.17-2</a>	<del>Planting</del> <a href="#">Grading</a> Plan	12-22-09
<a href="#">L8.18-1</a>	Planting Plan	12-22-09
<a href="#">L8-2</a>	<a href="#">Planting Plan</a>	<a href="#">12-22-09</a>
<a href="#">L8.38-3</a>	Planting Schedule and Details	12-22-09
<del>L9.1</del>	<del>Furnishing &amp; Lighting Plan</del>	<del>12-22-09</del>
<a href="#">L9.29-1</a>	Furnishing & Lighting Plan	12-22-09
<a href="#">L9-2</a>	<a href="#">Furnishing &amp; Lighting Plan</a>	<a href="#">12-22-09</a>
<a href="#">L9.39-3</a>	Site Furnishing Schedule & Lighting Details	12-22-09
<del>L10.1</del>	<del>Lighting Foot Candle Diagram</del>	<del>12-22-09</del>
<del>L10.2</del> <a href="#">10-1</a>	Lighting Foot Candle Diagram	12-22-09
<a href="#">L10-2</a>	<a href="#">Lighting Foot Candle Diagram</a>	<a href="#">12-22-09</a>
<del>L11.1</del> <a href="#">11-1</a>	Material & Signage Details	12-22-09

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**ARTICLE XIII****MISCELLANEOUS**

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**13.07 Modifications.**

(c) This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval of the Commission, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation; provided that a modification or amendment to this Declaration that would permit a change in use of those portions of the Proposed Development currently designated for community facility use to any other kind of use shall require in addition the approval of the City Council. Declarant shall not modify this Declaration so as to make any Affordable Housing Unit subject to the Funding Obligation or the Maintenance Obligation or to assessment for either of the foregoing during the term of any

“Lower Income Housing Plan Written Agreement,” entered into between Declarant and the City, acting through the New York City Department of Housing Preservation and Development.

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**13.17 Community Advisory Council.** Declarant hereby agrees to send for review, but not for approval, to a Community Advisory Council should one be established pursuant to the ULURP approvals, any major modifications of the Development Plans, as well as any traffic studies submitted by the Declarant to DOT.

Adopted.

Office of the City Clerk, }  
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on July 29, 2010, on file in this office.

City Clerk, Clerk of The Council