

## CITY PLANNING COMMISSION

---

August 22, 2011 / Calendar No. 1

C 110047 ZMK

---

**IN THE MATTER OF** an application submitted by Thor Shore Parkway Developers, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section Nos. 28a and 28c, changing from an M3-1 District to an M1-1 District property bounded by Leif Ericson Drive, a line 210 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, the U.S. Pierhead Line, and a line 525 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, Borough of Brooklyn, Community District 11, as shown on a diagram (for illustrative purposes only) dated March 14, 2011 and subject to the conditions of CEQR declaration E-280.

---

This application for a zoning map amendment was filed by Thor Shore Parkway Developers, LLC., on August 19, 2010 to facilitate the development of a 2-story large-scale retail complex, a 690-space public parking garage, and public waterfront access area to be located at 1752 Shore Parkway (Block 6491, Lots 207 and 292) bounded by Shore Parkway Service Road and Gravesend Bay, between 24th Avenue and Bay 37th Street, in Brooklyn Community District 11.

### **RELATED ACTIONS**

In addition to the proposed zoning map amendment (C 110047 ZMK), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

**C 110048 ZSK:** Special Permit pursuant to Section 74-922 to allow large retail establishments over 10,000 square feet within a Large-Scale General Development.

**C 110049 ZSK:** Special Permit pursuant to Section 62-836 to modify the maximum height

requirements of Section 62-341 within a Large-Scale General Development.

**C 110050 ZSK:** Special Permit pursuant to Section 74-744(c) to allow the modification of signage height requirements of Section 42-543 within a Large-Scale General Development.

**C 110051 ZSK:** Special Permit pursuant to Section 74-512 to allow for the operation of an unattended public parking garage with a maximum capacity of 690 spaces within a Large-Scale General Development.

**N 110052 ZAK:** Authorization pursuant to ZR 62-822(a) to modify the design and area requirements of Section 62-56 in order to reduce the number of required upland connections within a Large-Scale General Development.

**N 110053 ZCK:** Chair certification pursuant to Section 62-811 that a site plan has been submitted showing compliance with the provisions of Sections 62-50 and 62-60 for waterfront public access and visual corridors, as modified by the authorization N 110052 ZAK, within a Large-Scale General Development.

## **BACKGROUND**

This is an application by Thor Shore Parkway Developers, LLC seeking approval of a Zoning Map Amendment, Special Permits, and Authorizations to facilitate the development of large-scale retail use on a waterfront site on Gravesend Bay in Brooklyn Community District 11.

The project site (Block 6491, Lots 207 and 292) is a 1200-foot long parcel jutting into Gravesend Bay that is currently developed with two buildings operated as a bus parking facility. The area of the site is approximately 359,000 square feet and is bounded by the Shore Parkway Service Road to the east and Gravesend Bay to the west, 24th Avenue to the northwest and Bay 37th Street to the southeast.

The project site is on a corridor developed with industrial and commercial uses between Gravesend Bay and the Belt Parkway, the six-lane highway ringing Brooklyn's coastline. Directly adjacent to the project site is a commercial building containing a New York Sports Club fitness center, a restaurant, and a medical spa, with a Bayside Fuel facility on the other side. Other businesses in the area include a motel, a furniture store, a self-storage company, a Mercedes dealership, a marina, and Nelly Bly amusement park. There is also a Department of Sanitation facility nearby, the site of the planned Southwest Brooklyn Marine Transfer Station. In addition, Caesar's Bay Shopping Center at Bay Parkway is a short distance from the site, and includes a number of major retailers such as Modell's Sporting Goods, Best Buy, Kohl's, Strauss Discount Auto, Babies R Us, Toys R Us, and HSBC Bank.

North of the project, across the Belt Parkway, is the neighborhood of Bensonhurst which is a residential area characterized by row houses and multi-family buildings with local retail uses along commercial corridors.

The project site is in an area zoned M3-1. Immediately surrounding the site are areas with C3, M1-1 and R4 districts along Shore Parkway, and R6 and R5 zoning districts across the Belt Parkway in the residential area of Bensonhurst. Several of the retail establishments described above, including the Caesar's Bay Shopping Center, are operating pursuant to variances from the Board of Standards and Appeals.

The Shore Parkway Service Road is a one-way, 30-foot wide street that runs parallel to the Belt Parkway, a 6-lane arterial highway that loops around the Brooklyn coastline and offers connection to the Verrazano Bridge to Staten Island and other major regional roadways connecting to Manhattan and Queens. Bus service is provided to the site by the B6 bus along Shore Parkway Service Road, and connects to the D, M, N, F and Q subway lines. In addition, the B3 line provides service along Avenue U to 25<sup>th</sup> Avenue, across the Belt Parkway from the site, and the D subway line is located approximately five blocks away.

The subject property is oblong in shape, with the short side (approximately 320 feet long) facing the Shore Parkway Service Road. The site extends into Gravesend Bay as a small peninsula (approximately 1,200 feet long measured from Shore Parkway), with the seaward half of the property surrounded by shoreline. There are currently two vehicular entrances to the property: at the north-western edge of the project site from an unmapped street, and a gated entrance along Shore Parkway.

The proposed project would consist of a 2-story, approximately 60 foot-tall building with a three-level, approximately 30-foot high, 690-space public parking garage. It would include a large retail space occupying the entire first floor with up to three additional retail tenants on the second floor. The project would also create extensive public waterfront improvements that include an upland connection, a shore public walkway with benches, landscaping, and other amenities.

Vehicular access to the public parking garage and retail stores would be provided by an approximately 660 foot long two-way access drive at the north-western edge of the property, entered from Shore Parkway via a 30-foot wide curb cut. Vehicles bound for the site would approach either via the Belt Parkway, or by passing under the Belt at Bay Parkway, and proceeding east on Shore Parkway Service Road. Vehicles leaving the site would turn right at Shore Parkway Service Road, and either enters the Belt eastbound at Cropsey Avenue, or turn left at 26<sup>th</sup> Avenue and circle back on Cropsey Avenue to rejoin the Belt going west.

The proposed project is subject to Waterfront zoning and is subject to the waterfront public access requirements. A thirty-foot-wide upland connection, located between the face of the retail building and the access driveway, would provide the required access for pedestrians and bicyclists to the public waterfront area as well as the retail stores. The upland connection would include a paved walk lined with benches, lights, plantings, and trees.

The north-west wall of the retail building would be predominantly masonry, enhanced with lightbox vitrines. The off-street truck loading area is located along the Shore Parkway frontage,

and is accessed via a separate entrance and exit. The loading area would be screened from the street with a masonry wall, and the truck entrance and exit would be enclosed with metal gates. Signage facing the Shore Parkway Service Road and Belt Parkway would consist of both illuminated and non-illuminated signs, mounted to the wall of the building.

The ground-floor retail space, the largest of the retail spaces at approximately 131,000 square feet, would be accessible directly from the parking garage via a sky-lit atrium at ground level. An elevator lobby and secondary entrance would also be provided midway along the upland connection. The second-floor retail area would total approximately 60,000 square feet containing up to three additional retailers. Entrances to these spaces would be from the third level of the parking garage, which would extend partly over the roof of the ground-floor retail space.

The proposed public parking garage would contain a total of 690 parking spaces on three levels. An approximately 660 foot two-way access drive would serve as both entrance and exit for the parking garage.

At the entrance to the parking garage, the Upland Connection transitions to the Shore Public Walkway and the pavement becomes a path that winds around the site's shoreline. The facade of the garage at this point is clad in a vine wall trellis system that allows plants to grow up and onto the building wall. The walkway and Waterfront Public Access Area is designed to include a large sculptural element, moveable café tables and chairs near a food kiosk, and ample seating in the form of benches and fixed picnic tables.

A large sloped landform will be built at the seaward edge of the parking garage, facing the bay, with adjacent food kiosk and terrace seating. This would provide a grassy slope suitable for sunbathing or picnicking. The border between the walkway and the water is a gradual slope planted with grasses and stabilized with stone and riprap leading down to the water.

The design also includes a number of features designed to both manage stormwater runoff into

Gravesend Bay and enhance the character of the Waterfront Public Access Area. The walkway would be constructed of pervious pavement, which allows normal surface rainwater to penetrate into the site's subsurface rather than running off into Gravesend Bay. And at the base of the garage are a set of interconnected stormwater swales to detain runoff from the site. These areas will be planted with shrubs, trees and herbaceous wetland species whose primary characteristic is their demonstrated ability to biologically cleanse stormwater.

The proposed project is providing a total amount of publicly accessible open space in excess of what is required pursuant to waterfront zoning. The total area will be over 100,000 square feet, comprised of the upland connection (25,200 square feet), the shore public walkway (50,000 square feet) and additional open spaces (26,500 square feet).

To facilitate the project described above, the applicant seeks approvals from the City Planning Commission for the following:

Zoning Map Amendment – C 110047 ZMK

A zoning map amendment from M3-1 to M1-1 is requested that would affect the project site (Block 6491, Lots 207,292, and 8900) and limited adjacent areas. The project site and surrounding area is currently zoned M3-1, which allows up to 2.0 FAR of warehouse, manufacturing and heavy industrial uses but limits the type and size of commercial retail uses. The proposed zoning map change to an M1-1 District would reduce the allowable floor area to 1.0 FAR and make the project site eligible to apply for a special permit that would allow retail establishments greater than 10,000 square feet in floor area.

Special Permit Pursuant to ZR Section 74-922 to Permit Large Retail Establishments in M1 Districts – C 110048 ZSK

The proposed project is currently anticipated to be comprised of retail use on the ground floor and up to three retail uses on the second floor, all of which would contain more than 10,000 square feet of zoning floor area. While certain large-retail users are not permitted as-of-right in the current M3 or the proposed M1 zoning district, in M1 zoning districts, the City Planning

Commission may permit retail establishments with no limitation on floor area pursuant Section 74-922 of the Zoning Resolution (ZR).

Special Permit pursuant to ZR 62-836 to modify the height and setback requirements of ZR Section 62-341- C 110049 ZSK

ZR Section 62-341 (b)(3) limits the height of a commercial building in the proposed M I district on a waterfront block to a maximum of 30 feet. The second floor of the proposed project exceeds the maximum permitted height, with an overall roof height of approximately 54 feet above the base plane, with a small front element with a roof height of approximately 60 feet above the base plane.

Special Permit pursuant to ZR Section 74-744 to permit modification of signage regulations in General Large-Scale Developments – C 110050 ZSK

Some signs for the proposed development exceed the maximum height of 40 feet that is permitted for illuminated signs, with two illuminated signs planned at to rise to approximately 58 feet.

Special permit pursuant to ZR Section 74-512 to permit a public parking garage outside a high-density central area – C 110051 ZSK

Accessory parking is not permitted to be located on a roof over a height of 23 feet on a waterfront development. This application seeks a special permit pursuant to ZR Section 74-512 to permit a public parking garage with rooftop parking outside a high-density central area. It should be noted that this special permit will not permit the development of a larger number of parking spaces on the site than could be developed as-of-right, but simply allow parking spaces to be located on the roof at a height of 30 feet.

Authorization pursuant to ZR Section 62-822(a)(2) for modification of waterfront public access and visual corridors- C 110052 ZAK

Waterfront zoning regulations require three upland connections to the shore public walkway for this site, due to the length of the shoreline. The applicant is requesting a reduction in the number

of required upland connections to one due to the unusually long shoreline of the site.

N 110053 ZCK - Certification pursuant to ZR 62-811 that a site plan has been submitted that complies with waterfront public access requirements of Article 6 Chapter 2 as modified by the related Authorization (N 110052 ZAK).

## **ENVIRONMENTAL REVIEW**

This application (C 110047 ZMK), in conjunction with the related applications, 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The CEQR number is 10DCP002K. The lead agency is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration and a Draft Scope of Work was issued on September 16, 2009 and distributed, published and filed. A Public Scoping Meeting was held on the Draft Scope of Work on October 29, 2009. A Final Scope of Work, reflecting the comments made during the scoping, was issued on March 11, 2011.

The applicant prepared a Draft Environmental Impact Statement (DEIS) and a Notice of Completion for the DEIS was issued March 11<sup>th</sup>, 2011. On July 13<sup>th</sup>, 2011, a joint public hearing was held on the DEIS pursuant to SEQRA regulations and CEQR procedures in conjunction with the Uniform Land Use Review Procedure (ULURP) applications. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on August 12, 2011.



The FEIS identified the following significant adverse impacts and proposed the following mitigation measures:

*Hazardous Materials*

The proposed actions would include certain measures to ensure there would be no significant adverse impacts related to hazardous materials. To ensure continued implementation of these measures, the project sponsor will enter into a New York City Department of Environmental Protection (NYCDEP) Restrictive Declaration, which the New York State Department of Environmental Conservation has also reviewed and approved as satisfying the State's requirements. As described in Chapter 7, "Hazardous Materials," an (E) designation will be placed on the project site to ensure that the Restrictive Declaration is executed and recorded.

Development on the project site shall be allowed only after that restrictive declaration, referenced to and attached to CPC report C 110047 ZMK as Exhibit A, with such administrative and technical changes as are acceptable to Counsel to the Departments of City Planning and Environmental Protection, has been executed and recorded in the Office of the Register, Kings County

*Traffic*

Traffic conditions were evaluated at 21 intersections for the weekday and Saturday conditions. The analysis indicates that in the future with the proposed project there would be the potential for significant adverse impacts at a total of 19 intersections during one or more of the peak hour periods analyzed, including: 5 intersections during the weekday midday peak hour, 6 intersections during the weekday PM peak hour, and 7 intersections during the Saturday midday peak hour.

Measures proposed to mitigate these significant adverse traffic impacts would encompass retiming/reconfiguring signal controls to increase green time for congested movements, lane restriping and changing parking regulations. With the proposed mitigation measures in place, unmitigated impacts would remain at one intersection, 20th Avenue and 86th Street, in 2013.

The proposed mitigation measures are described below:

*WEEKDAY MIDDAY PEAK HOUR*

*Bay Parkway and Bath Avenue*

A 13-second exclusive northbound/southbound left-turn phase is proposed to mitigate the significant adverse impact identified at this intersection for the Saturday PM peak hour. While only 17-2 the eastbound approach at this intersection would be significantly impacted during the weekday midday peak hour, the mitigation measures proposed would include shifting 13 seconds of green time from the northbound/southbound phase to the new exclusive left-turn phase and 1 second of green time from the northbound/southbound phase to the eastbound/westbound phase.

*Bay Parkway and Cropsey Avenue*

Various restriping of lanes at this intersection are proposed, including: (1) the eastbound approach restriped to shift the centerline 1 foot to the north with an 11-foot wide left-turn lane, a 11-foot wide through lane, and an 11-foot wide right-turn lane; (2) the westbound approach restriped to shift the centerline 2 feet to the south and the approach restriped with two 12-foot left-turn lanes and a 21-foot wide through-right lane; (3) the northbound approach restriped with a 10-foot wide left-turn lane, a 10-foot wide through lane, and a 10-foot wide through-right lane; and (4) the southbound approach restriped to shift the centerline 1 foot to the east and the approach restriped with a 10-foot wide left-turn lane, a 10-foot wide through lane, and a 19-foot wide through-right lane. In addition to the above, the significant adverse impacts at the eastbound right-turn movement could be mitigated by shifting 1 second of green time from the northbound/southbound phase to the exclusive northbound phase.

*Bay Parkway and Belt Parkway Eastbound Ramps*

The significant adverse impact at the southbound defacto left-turn movement could be mitigated with lane restriping and signal retiming. Specifically, the southbound approach would be restriped with a 12-foot wide left-turn lane, a 10-foot wide left-through lane, and a 10-foot wide through lane. In addition, 1 second of green time from the eastbound phase would be shifted to

the exclusive southbound phase.

*Cropsey Avenue and 26th Avenue*

The significant adverse impact at the northbound approach could be mitigated by approach daylighting and lane restriping. Specifically, parking would be prohibited on the east curb of the northbound approach for approximately 150 feet, and the approach would be restriped with a 12-foot wide left-turn lane and a 12-foot wide through-right lane.

*20th Avenue and 86th Street*

This intersection could not be mitigated due to the geometric constraints of the elevated subway line and the existence of metered parking spaces in front of active retail sites.

*WEEKDAY PM PEAK HOUR*

*Bay Parkway and Benson Avenue*

The significant adverse impact at the westbound approach could be mitigated by shifting 2 seconds of green time from the northbound/southbound phase to the eastbound/westbound phase.

*Bay Parkway and Bath Avenue*

A 13-second exclusive northbound/southbound left-turn phase is proposed to mitigate the significant adverse impact identified at this intersection for the Saturday PM peak hour. While only the eastbound and westbound approaches at this intersection would be significantly impacted during the weekday PM peak hour, the mitigation measures proposed would include shifting 13 seconds of green time from the northbound/southbound phase to the new exclusive left-turn phase and 2 seconds of green time from the northbound/southbound phase to the eastbound/westbound phase.

*Bay Parkway and Cropsey Avenue*

The significant adverse impacts at the eastbound right-turn and the northbound left-turn movements could be mitigated by imposing the same lane restriping described for the weekday midday peak hour and shifting 4 seconds of green time from the northbound/southbound phase to the exclusive northbound phase.

*Bay Parkway and Belt Parkway eastbound ramps*

The significant adverse impact at the southbound defacto left-turn movement could be mitigated by imposing the same restriping described for the weekday midday peak hour and shifting 2 seconds of green time from the eastbound phase to the exclusive southbound phase.

*Cropsey Avenue and 26th Avenue*

The significant adverse impact at the northbound approach could be mitigated by imposing the same restriping described for the weekday midday peak hour.

*20th Avenue and 86th Street*

This intersection could not be mitigated due to the geometric constraints of the elevated subway line and the existence of metered parking spaces in front of active retail sites.

*SATURDAY PM PEAK HOUR*

*Bay Parkway and 86th Street:*

The significant adverse impact at the eastbound approach could be mitigated by shifting 4 seconds of green time from the northbound/southbound phase.

*Bay Parkway and Benson Avenue*

The significant adverse impact at the westbound approach could be mitigated by shifting 1 second of green time from the northbound/southbound phase to the eastbound/westbound phase.

*Bay Parkway and Bath Avenue*

The significant adverse impacts at the eastbound approach, the westbound approach, and the northbound defacto left-turn movement could be mitigated by approach daylighting and signal retiming/reconfiguration. Specifically, parking would be prohibited on the north curb of the westbound approach and on the south curb of the eastbound approach for approximately 150 feet each to create an additional travel lane in each direction. A 13-second exclusive northbound/southbound left-turn phase would be added to accommodate the high projected northbound left-turn volumes. Overall, there would be a shift of 12 seconds of green time from the northbound/southbound phase and 1 second of green time from the eastbound/westbound phase to the new exclusive left-turn phase.

*Bay Parkway and Cropsey Avenue*

The significant adverse impacts at the westbound and northbound left-turn movements, as well as, the southbound through-right movements could be mitigated by imposing the same lane restriping described for the weekday midday peak hour and shifting 2 seconds of green time from the eastbound/westbound phase to the exclusive northbound phase.

*Bay Parkway and Belt Parkway eastbound ramps*

The significant adverse impact at the southbound defacto left-turn movement could be mitigated by imposing the same restriping described for the weekday midday peak hour and shifting 3 seconds of green time from the eastbound phase and 3 seconds of green time from the northbound/southbound phase for a total of 6 seconds to the exclusive southbound phase.

*Cropsey Avenue and 26th Avenue*

The significant adverse impact at the northbound approach could be mitigated by imposing the same restriping described for the weekday midday peak hour.

*20th Avenue and 86th Street*

This intersection could not be mitigated due to the geometric constraints of the elevated subway line and the existence of metered parking spaces in front of active retail sites.

With the above mitigation measures in place, all the significantly impacted locations can be fully mitigated and would operate at the same or better service levels than the 2013 No Build condition, except for the intersection of 20th Avenue and 86th Street.

## **UNIFORM LAND USE REVIEW**

This application (C 110047 ZMK), in conjunction with the applications for the related ULURP actions, was certified as complete by the Department of City Planning on March 14th, 2011 and was duly referred to Community Board 11 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) on March 23rd, 2011.

### **Community Board Review**

Community Board 11 held a public hearing on this application (C 110047 ZMK) on May 16, 2011, and on May 19, 2011, by a vote of 26 in favor, 1 in opposition, adopted a resolution recommending approval of the application with the following conditions:

1. The applicant conducts a local hiring initiative for the residents of the community.
2. The applicant provides onsite parking for its employees.
3. The applicant works with the appropriate agencies to explore the feasibility of providing public access to the water and an Eco Dock.
4. The Department of Transportation works with the community to mitigate traffic issues.

### **Borough President Recommendation**

This application (C 110047 ZMK) was considered by the Borough President. On June 21st, 2011 the Borough President recommended approval of the proposal subject to the following conditions:

1. The applicant takes necessary steps to utilize local contractors and material supply firms for the project's construction and conduct a local hiring initiative for local residents;
2. on the issuance of the FEIS, the applicant shall work with CB 11 and local elected officials to identify feasible mitigation measures that DOT should implement prior to the site opening;
3. the applicant shall seek authorization of its tenants to correspond with New York Sports Club and Adventurer's amusement park to offer parking in the new garage as a means to offset any loss of on-street parking along the service road; and,
4. approximately one year after the opening of the primary tenant, the applicant shall conduct a traffic study in consultation with DOT, CB 11, and local elected officials and funds any improvements deemed necessary that are directly attributed to the operation of the retail center.

### **City Planning Commission Public Hearing**

On June 22, 2011 (Calendar No.1), the City Planning Commission scheduled July 13<sup>th</sup>, 2011, for a public hearing on this application (C 110047 ZMK). The hearing was duly held on July 13<sup>th</sup>, 2011 (Calendar No. 14), in conjunction with the public hearing on the applications for related actions. There were four speakers in favor of the application and no speakers opposed.

Speakers in favor included four representatives of the applicant. They summarized the proposed project, describing the design, open space, programming, and traffic flow to and from the site. They stated that the proposed actions would facilitate the development of a large retail facility of approximately 214,000 square feet with a 690 space public parking garage and new public waterfront space of over 100,000 square feet.

The applicant's representatives stated that the developer would work with the community, local elected officials, and DOT to address traffic concerns; and strive to maximize local hiring and materials sourcing during construction and eventual operation of the retail stores. The applicant's representatives also stated that the proposed public parking garage would be available to those visiting the waterfront public open space, and is anticipated to be free of charge.

There were no other speakers and the hearing was closed.

## **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY**

This application (C 110047 ZMK), in conjunction with the related actions, was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 09-053.

This action was determined to be consistent with the policies of the New York City Waterfront

Revitalization Program.

## **CONSIDERATION**

The Commission believes that this application for a zoning map amendment (C 110047 ZMK), in conjunction with the related applications (C 110048 ZSK, C 110049 ZSK, C 110050 ZSK, C 110051 ZSK, N 110052 ZAK) are appropriate.

The proposed project would include an approximately 214,000 square foot, two-story commercial building anticipated to be occupied by a large retail store and up to three other retail stores, as well as a 690-space public parking garage and approximately 103,000 square feet of publicly accessible waterfront open space. The Commission believes that this development program would revitalize an underutilized waterfront site with active use and provide the public with access to the waterfront where none exists today.

The requested applications would rezone the site from M3-1 to M1-1 and grant special permits to allow retail use over 10,000 square feet, for bulk modifications of waterfront bocks, modification to signage regulations in general large scale developments, operation of a public parking garage, and a zoning authorization for modification of waterfront design requirements to facilitate the proposed development. The Commission believes the proposed rezoning, special permits and authorization would facilitate an appropriate development that would be consistent with the site's surroundings and land use trends in the area. Approval of the requested actions would facilitate a development that would re-use an underutilized site in a manner consistent with the mixed-use context of the area and provide important and amenity-laden public waterfront access.

The Commission believes that the proposed project would be consistent with current land uses and land use trends in the Gravesend Bay , which is currently developed with a variety of large commercial uses, including the Caesar's Bay Shopping Center containing large retail stores such as Toys-R-Us and Best Buy; the long-standing Nelly Bly amusement park and a Mercedes dealership.



The Commission believes that the proposed zoning would permit uses that are consistent with the mixed-use character of the area and other waterfront developments, and would also provide public access along the site's 1,000 foot shoreline on Gravesend Bay.

With regard to the special permit sought by the applicant pursuant to Section 74-922 to allow large-scale retail use on the site, the Commission also notes that principal vehicular access to the proposed development would be located on Shore Parkway Service Road, which is the service road for the Belt Parkway, a 300-foot wide arterial highway and therefore the Commission believes that project-generated traffic would not be drawn through residential streets. The Commission believes that the proposed development site is within easy reach of entrances and exits to the Belt Parkway, minimizing the amount of traffic generated by the development that would travel on local streets.

The proposed development would be accessed via an approximately 30-foot wide access drive extending approximately 660 feet from Shore Parkway to the garage entrance. A total of three separate vehicular entrances and exits would be provided for the proposed development, at least 100 feet apart, reducing the potential for traffic conflicts. The Commission notes that the proposed development site is within easy reach of entrances and exits to the Belt Parkway, minimizing the amount of traffic generated by the development that would travel on local streets.

The Commission notes that the site is proximate to bus and rapid transit facilities. Local bus service is provided to the site by the B6 bus that runs along Shore Parkway, and connects to the D, M, N, F and Q subway lines. In addition, the B3 line provides service along Avenue U to 25<sup>th</sup> Avenue, across the Belt Parkway from the site, and the D subway line is located approximately five blocks away.

Regarding the special permit requested by the application pursuant to Section 62-836 for waiver of bulk regulations on waterfront blocks, the Commission notes that the design of the building locates the tallest portions of the building, with a height of 60-feet, adjacent to Shore Parkway,

while the lower, 30 foot parking garage is located closer to the public waterfront area and esplanade. The Commission believes that this configuration minimizes the impact of the proposed building height on light and air for the public waterfront area. The Commission notes that the vertical development of the proposed building allows a smaller building footprint, which not only allows for maximum public waterfront area, but minimizes the amount of impermeable surface on the site, aiding in management of stormwater runoff into Gravesend Bay.

The General Large Scale Development special permit pursuant to Section 74-744 would allow the inclusion of illuminated signs visible to traffic travelling in both directions on the Belt Parkway at a height of approximately 54 feet. The Commission believes that locating the illuminated signs at this height would allow for maximum visibility for the retailers and clearly identifies the entrance to the development. Locating the signs on the wall of the building also eliminates the need for a freestanding pylon sign and provides for good integration with the overall site plan.

The Commission notes that the requested special permit for a public parking garage pursuant to Section 74-512 would not increase the number of parking spaces proposed for this development, but would allow them to be located on the roof of the building. A 4-foot parapet surrounding the rooftop parking area would screen the parking spaces from the view of surrounding development.

The principal vehicular access to the proposed development would be located on Shore Parkway Service Road, which is the service road for the Belt Parkway, a 300-foot wide arterial highway and therefore the Commission believes that project-generated traffic would not be drawn through residential streets. The Commission believes that the proposed development site is within easy reach of entrances and exits to the Belt Parkway, minimizing the amount of traffic generated by the development that would travel on local streets.

The proposed development would be accessed via an approximately 30-foot wide access drive extending approximately 660 feet from Shore Parkway to the garage entrance. The Commission

believes that this provides an adequate amount of reservoir space for the volume of traffic anticipated at the site. A total of three separate vehicular entrances and exits would be provided for the proposed development, at least 100 feet apart, reducing the potential for traffic conflicts. The Commission notes that the proposed development site is within easy reach of entrances and exits to the Belt Parkway, minimizing the amount of traffic generated by the development that would travel on local streets.

The roof of the parking structure would contain parking spaces at a height of 30 feet. The Commission notes that nearby land uses include a car dealership, and other large retail establishments that include large surface parking lots. The Commission also notes that by providing these parking spaces on the open roof, rather than in an enclosed building, potential impacts on the light and air of the adjacent public waterfront area would be minimized. The Commission believes that the presence of the parking spaces on the roof would not impair the essential character or future use or development of the area.

Regarding the authorization pursuant to Section 62-822(a) the applicant proposes to construct one upland connection providing access between Shore Parkway Service Road and the public waterfront area. The site is a uniquely-long, narrow peninsula extending into Gravesend Bay, with a long shoreline relative to the total area of the site. The shoreline length generates a requirement for upland connections that is relatively greater than would be required for similar-sized sites with a relatively shorter shoreline.

The Commission notes that the total amount of public waterfront area proposed exceeds the required minimum area, and meets or exceeds the requirements for waterfront public access areas in every regard other than the number of upland connections.

The Commission further notes that the design for the public waterfront area would allow for fishing and other water-based recreational activities at the site. The Commission notes that the proposed garage is of ample size to accommodate visitors to the waterfront area and customers to the retail stores, as well as employees of the stores.

The Commission acknowledges recommendations from the Borough President and Brooklyn Community Board 11 regarding the use of local contractors and the implementation of additional waterfront access measures and traffic mitigations. While the Commission recognizes that some of these measures are beyond its purview, the Commission is pleased nonetheless that, in a letter the Brooklyn Borough President dated June 16<sup>th</sup>, 2011, the applicant agreed to work with the local community board, elected officials and DOT to identify traffic mitigation measures that could be implemented prior to the completion of the project; to fund a traffic monitoring program for the area to be conducted once the proposed retail development is in operation; and to strive to maximize local sourcing of materials and labor during construction and operation retail stores. The applicant further stated that the proposed public parking garage is anticipated to be free of charge and open to the public.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on August 12, 2011, with respect to this application (CEQR No. 10DCP002K), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that, consistent with social, economic, and other essential considerations:

1. From among the reasonable alternatives thereto, the action to be approved, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. 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 those mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FEIS and 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 Section 617.11(d) of the SEQRA

regulations; and be it further

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

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section Nos. 28a and 28c, changing from an M3-1 District to an M1-1 District property bounded by Leif Ericson Drive, a line 210 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, the U.S. Pierhead Line, and a line 525 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, Borough of Brooklyn, Community District 11, as shown on a diagram (for illustrative purposes only) dated March 14, 2011 and subject to the conditions of CEQR declaration E-280.

The above resolution (C 110047 ZMK), duly adopted by the City Planning Commission August 22, 2011 (Calendar No. 1), 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**  
**KENNETH J. KNUCKLES, ESQ., Vice Chairman,**  
**ANGELA M. BATTAGLIA, RAYANN BESSER,**  
**ALFRED C. CERULLO, III, MARIA M. DEL TORO, RICHARD W. EADDY,**  
**NATHAN LEVENTHAL, ANNA HAYES LEVIN, SHIRLEY A. MCRAE,**  
**KAREN A. PHILLIPS Commissioners**

## **Exhibit A**

## DECLARATION

This DECLARATION made as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by Thor Shore Parkway Developers, LLC having an office located at 139 Fifth Avenue, New York, NY 10010(hereinafter referred to as "Declarant");

## WITNESSETH

WHEREAS, Declarant is the fee owner of certain real property located in the County of Kings, City and State of New York, designated for real property tax purposes as Lot(s) 207 and 292 of Tax Block 6491 commonly known by the street address as 1752 Shore Parkway (the "Subject Property") and is more particularly described in Exhibit A, annexed hereto and made part hereof; and

WHEREAS, Royal Abstract of New York, LLC has issued a Certification of Parties in Interest, annexed hereto as Exhibit B and made a part hereof, that as of the , 15<sup>th</sup> day of February, 2011, Declarant and Anglo Irish Bank Corporation Limited f/k/a Anglo Irish Bank Corporation PLC, herein after also referred to as a ("Party-in-Interest"), is(are) the only Party(ies)-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) in the Subject Property; and

WHEREAS, all Parties-in-Interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instrument annexed hereto as Exhibit B-1 and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant has proposed to rezone the Subject Property from M3-1 to M1-1; to seek a Special Permit pursuant to sections 74-922, 62-836, 74-744 of the Zoning Resolution; and to seek a Certification pursuant to sections 62-811 and 62-822 of the Zoning Resolution to permit the development of an approximately 214,000 square-foot (sf), 60-foot tall commercial building anticipated to be a BJ's Wholesale Club and up to three other retail stores on the second level; a three-level parking garage with approximately 690 parking spaces; and approximately 2 acres of publicly accessible waterfront open space on the Subject Property (the "Current Project") and has submitted applications numbered 110047ZMK, 110048ZSK, 110049ZSK, 110050ZSK, 110051ZSK, N110052ZAK and N110053ZCK(the "Applications") for review by the New York City Department of City Planning (the "DCP") under the Uniform Land Use Review Procedure (the "ULURP") as set forth in the New York City Charter, sections 197-c, 197-d, 200 and 201 and the procedures set forth in the paragraph immediately following; and

WHEREAS, an environmental assessment of the Subject Property pursuant to the State Environmental Quality Review Act (the "SEQRA") and the City Environmental Quality Review (the "CEQR") is under review in connection with the Application (CEQR # 10DCP002K) and, pursuant to the SEQRA and CEQR, the Department of Environmental Protection (the "DEP") has reviewed the environmental assessment, including the historic land use of the Subject Property; and

WHEREAS, the results of such review as documented in DEP's December 23, 2010 letter attached hereto as Exhibit C and made a part hereof, indicate the potential presence of hazardous materials; and

WHEREAS, Declarant completed an Initial Phase II Environmental Site Assessment in September 2005; a Phase I Environmental Site Assessment in August 2007; and additional Phase II Environmental Site Assessments in November 2007, January 2008 and November 2008; and

WHEREAS, Declarant has obtained from the New York State Department of Environmental Conservation (“DEC”) approval of: (i) a July 2009 Remedial Action Work Plan (“RAWP”) in connection with an open petroleum spill number on the eastern portion of the project site; (ii) an April 2008 Solid Waste Mitigation and Soil Management Plan (“SMP”); and (iii) a December 2009 Beneficial Use Determination Petition; all of which have identified the existence of hazardous materials (collectively the “DEC Approved Plans”); and

WHEREAS, the Draft Environmental Impact Statement (“DEIS”) for the project provides for the remediation of hazardous materials in accordance with the foregoing DEC Approved Plans; and

WHEREAS, DEP has found that with the implementation of the DEC Approved Plans including the measures identified in the DEIS, the proposed project would not result in significant adverse hazardous materials impacts; and

WHEREAS, Declarant agrees to implement the DEC Approved Plans and desires to restrict the manner in which the Subject Property may be developed or redeveloped by having implementation of the DEC Approved Plans, as evidenced by a writing as set forth herein, be a condition precedent to any change of use or soil disturbance for the Current Project; and

WHEREAS, Declarant further desires to identify the existence of any potential hazardous materials and remediate any such hazardous materials found in connection with the development or redevelopment of the Subject Property involving a change in use or soil disturbance subsequent to the Current Project (“Future Project”) and has agreed to submit to the Mayor’s Office of Environmental Remediation (the “OER”) for approval a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan, (the "Sampling Protocol"), specific to the Future Project and to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if any such hazardous materials are found, to submit to OER for approval a hazardous materials remediation plan, including a health and safety plan, (the “Remediation Plan”), based on the results of the OER approved Sampling Protocol and upon the approval of the Remediation Plan by OER, the Declarant shall provide for the remediation of such hazardous materials; and

WHEREAS, Declarant agrees to implement the Sampling Protocol and all hazardous material remediation required by the Remediation Plan, if any, for any Future Project and desires to restrict the manner in which the Subject Property may be developed or redeveloped by having the implementation of the Sampling Protocol and Remediation Plan, if any, for any Future Project performed to the satisfaction of OER, as evidenced by a writing as set forth herein, be a condition precedent to any change of use or soil disturbance for any Future Project; and

WHEREAS, Declarant intends this Declaration to be binding upon all successors and assigns; and



WHEREAS, Declarant intends this Declaration to benefit all land owners and tenants including the City of New York ("the City") and DEC without consenting to the enforcement of this Declaration by any party or entity other than the City and/or DEC.

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the value and desirability of the Subject Property and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof:

1. (a) Declarant covenants and agrees that no application for grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance for the Current Project or any Future Project shall be submitted to or accepted from the Department of Buildings (the "DOB") by the Declarant until OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraph 2(a), a Notice to Proceed as set forth in Paragraph 2(b), a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d). Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Paragraph 1(a).

(b) Declarant further covenants and agrees that no application for a temporary or permanent Certificate of Occupancy that reflects a change in use group respecting the Subject Property for the Current Project or any Future Project shall be submitted to or accepted from DOB by the Declarant until OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraph 2(a), a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d). Declarant shall submit a copy of the Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Paragraph 1(b).

2. (a) Notice of No Objection - OER shall issue a Notice of No Objection for the Current Project or any Future Project after the Declarant has completed the work set forth in the project specific OER approved Sampling Protocol and OER has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project.

(b) Notice to Proceed – OER shall issue a Notice to Proceed for the Current Project or any Future Project after it determines that: (i) the project specific Remedial Action Plan or Remediation Plan and/or the DEC Approved Plans (with any modifications required by OER) have been accepted by OER and (ii) the permit(s) respecting the Subject Property that permit grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance or construction of the superstructure for the Current Project or any Future Project are necessary to further the implementation of the OER approved Remedial Action Plan or Remediation Plan and/or the DEC Approved Plans.

(c) Notice of Satisfaction - OER shall issue a Notice of Satisfaction for the Current Project or any Future Project after: (i) the project specific Remedial Action Plan or Remediation Plan has

been prepared and accepted by OER and OER has determined in writing that such Remedial Action Plan or Remediation Plan has been completed to the satisfaction of OER and DEC has documented in writing, to OER's satisfaction, that the DEC Approved Plans have been completed to DEC's satisfaction or (ii) DEC has informed OER that such DEC Approved Plans (with any modifications required by OER) have been completed to DEC's satisfaction and OER agrees with the DEC's determination.

(d) Final Notice of Satisfaction - OER shall issue a Final Notice of Satisfaction for the Current Project or any Future Project after: (i) the project specific Remedial Action Plan or Remediation Plan has been prepared and accepted by OER, and OER has set forth in writing, that such Remedial Action Plan or Remediation Plan has been completed to the satisfaction of OER and all potential hazardous materials have been removed or remediated and no further hazardous remediation is required on the Subject Property as determined by OER and DEC has documented in writing, to OER's satisfaction, that the DEC Approved Plans have been completed to DEC's satisfaction and no further remediation is required except that there may be continuing obligations under the SMP; or (ii) DEC has informed OER that such DEC Approved Plans (with any modifications required by OER) have been completed and no further remediation is required on the Subject Property except that there may be continuing obligations under the SMP and OER agrees with DEC's determination.

3. Declarant represents and warrants with respect to the Subject Property, that no restrictions of record, nor any present or presently existing estate or interest in the Subject Property nor any lien, encumbrance, obligation, covenant of any kind preclude, presently or potentially, the imposition of the obligations and agreements of this Declaration.

4. Declarant acknowledges that the City and DEC are interested parties to this Declaration and consents to the enforcement of this Declaration solely by the City or DEC, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.

5. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant shall be deemed to include such successors and assigns as well as successors to their interest in the Subject Property. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof. References in this Declaration to DEC shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof.

6. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, subject to the following provisions:

The City and any other party relying on this Declaration will look solely to the fee estate interest of the Declarant in the Subject Property for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration. The Declarant, including its officers, managers and members, shall have no personal liability under this Declaration.

7. The obligations, restrictions and agreements herein shall be binding on the Declarant or other parties in interest only for the period during which the Declarant and any such Party-in-Interest holds an interest in the Subject Property; provided, however, that the obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure.

8. Declarant shall indemnify the City, its respective officers, employees and agents from all claims, actions, or judgments for loss, damage or injury, including death or property damage of whatsoever kind or nature, arising from Declarant's obligations under this Declaration, including without limitation, the negligence or carelessness of the Declarant, its agents, servants or employees in undertaking such obligations; provided, however, that should such a claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City and no such claim or action shall be settled without the written consent of the City.

9. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant, including but not limited to the cost of undertaking the Remediation Plan, if any.

10. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) to all or a portion of the Subject Property to waive its right to execute this Declaration and subordinate its interest in the Subject Property to this Declaration. Any mortgage or other lien encumbering the Subject Property in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as Exhibits and recorded in the Office of the County or City Register.

11. This Declaration and the provisions hereof shall become effective as of the date of this Declaration. Within five (5) business days of the date hereof, Declarant shall submit this Declaration for recording or shall cause this Declaration to be submitted for recording in the Office of the County or City Register, where it will be indexed against the Subject Property. Declarant shall promptly deliver to the DEP, the Department of City Planning and DEC proof of recording in the form of an affidavit of recording attaching the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to DEP, DCP and DEC as soon as a certified copy is available.

12. This Declaration may be amended or modified by Declarant only with the approval of DEP or the agency succeeding to its jurisdiction and no other approval or consent shall be required from any other public body, private person or legal entity of any kind. A statement signed by the

Deputy Commissioner of the Bureau of Environmental Planning and Analysis of DEP, or such person as authorized by the Deputy Commissioner, certifying approval of an amendment or modification of this Declaration shall be annexed to any instrument embodying such amendment or modification.

13. Notwithstanding anything to the contrary herein, no DEC approved workplan may be modified without the prior written consent of DEC.

14. Any submittals necessary under this Declaration from Declarant to DEP shall be addressed to the Deputy Commissioner of the Bureau of Environmental Planning and Analysis of DEP, or such person as authorized by the Deputy Commissioner. As of the date of this Declaration DEP's address is:

New York City Department of Environmental Protection  
59-17 Junction Blvd  
Flushing, New York 11373

Any submittals necessary under this Declaration from Declarant to OER shall be addressed to the Bureau Chief, E - Designation Program. As of the date of this Declaration, OER's address is:

Office of Environmental Remediation  
  
253 Broadway, 14th Floor  
New York, New York 10007

Any submittals necessary under this Declaration from Declarant to DEC shall be addressed to Kenneth B. Brezner, P.E.. As of the date of this Declaration, DEC's address is:

New York State Department of Environmental Conservation  
Region 2  
1 Hunter's Point Plaza  
47-40 21st Street  
Long Island City, NY 11101-5407

15. Declarant expressly acknowledges that this Declaration is an essential element of the SEQRA review conducted in connection with the Application and as such the filing and recordation of this Declaration may be a precondition to the determination of significance pursuant to the SEQRA Regulations, Title 6 New York Code of Rules and Regulations ("NYCRR") Part 617.7.

16. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Local laws.

17. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

18. Wherever in this Declaration, the certification, consent, approval, notice or other action of Declarants, DEC, DEP or the City is required or permitted, such certification, consent, approval, notice or other action shall not be unreasonably withheld or delayed.

19. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

20. This Declaration and its obligations and agreements are in contemplation of Declarant receiving approvals or modified approvals of the Application. In the event that the Declarant withdraws the Application before a final determination or the Application is not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and this Declaration shall be cancelled.

21. Notice of Cancellation - Declarant may request that DEP issue a Notice of Cancellation upon the occurrence of the following steps: (i) Declarant has withdrawn the Application in writing before a final determination on the Application; (ii) the Application was not approved by the DCP; or (iii) OER has issued a Final Notice of Satisfaction in accordance with paragraph 2 herein and DEC has concurred in writing with the same. Upon such request, DEP shall issue a Notice of Cancellation after it has determined to DEP's own satisfaction that the above referenced steps, as applicable, have occurred. Upon receipt of a Notice of Cancellation from DEP, Declarant shall cause such Notice to be recorded in the same manner as the Declaration herein, thus rendering this Restrictive Declaration null and void. Declarant shall promptly deliver to DEP and the DCP a certified copy of such Notice of Cancellation as recorded.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF NEW YORK   )  
  ) .ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
**Notary Public**

**EXHIBIT A**

LEGAL DESCRIPTION OF SUBJECT PROPERTY

[Follows this page]

**EXHIBIT B**

Certification of “Parties in Interest”

[Follows this page]



**EXHIBIT B-1**

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by ANGLO IRISH BANK CORPORATION LIMITED f/k/a ANGLO IRISH BANK CORPORATION plc, a private limited company organized under the laws of the Republic of Ireland (the "Mortgagee"), having its principal place of business at Stephen Court, 18/21 St. Stephen's Greed, Dublin 2, Ireland and an address at 222 East 41<sup>st</sup> Street, 24<sup>th</sup> Floor, New York, New York.

**W I T N E S S E T H :**

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated March 31, 2006 (the "Mortgage") made by Thor Shore Parkway Developers, LLC, a Delaware limited liability company (the "Mortgagor"), in favor of the Mortgagee, in the original principal amount of \$13,500,000.00, recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on April 26, 2006 as City Register File Number 2006000231800; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 6491, Lot(s) 207 and 292 on the Tax Map of the City of New York, County of Kings, and more particularly described in **Schedule A** attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the "Subject Property"), which Subject Property is the subject of a restrictive declaration dated \_\_\_\_\_, (the "Declaration"), made by Thor Shore Parkway Developers, LLC; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and

consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

By:

\_\_\_\_\_  
Name:  
Title:

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF NEW YORK    )  
  ) .ss.:  
COUNTY OF \_\_\_\_\_ )

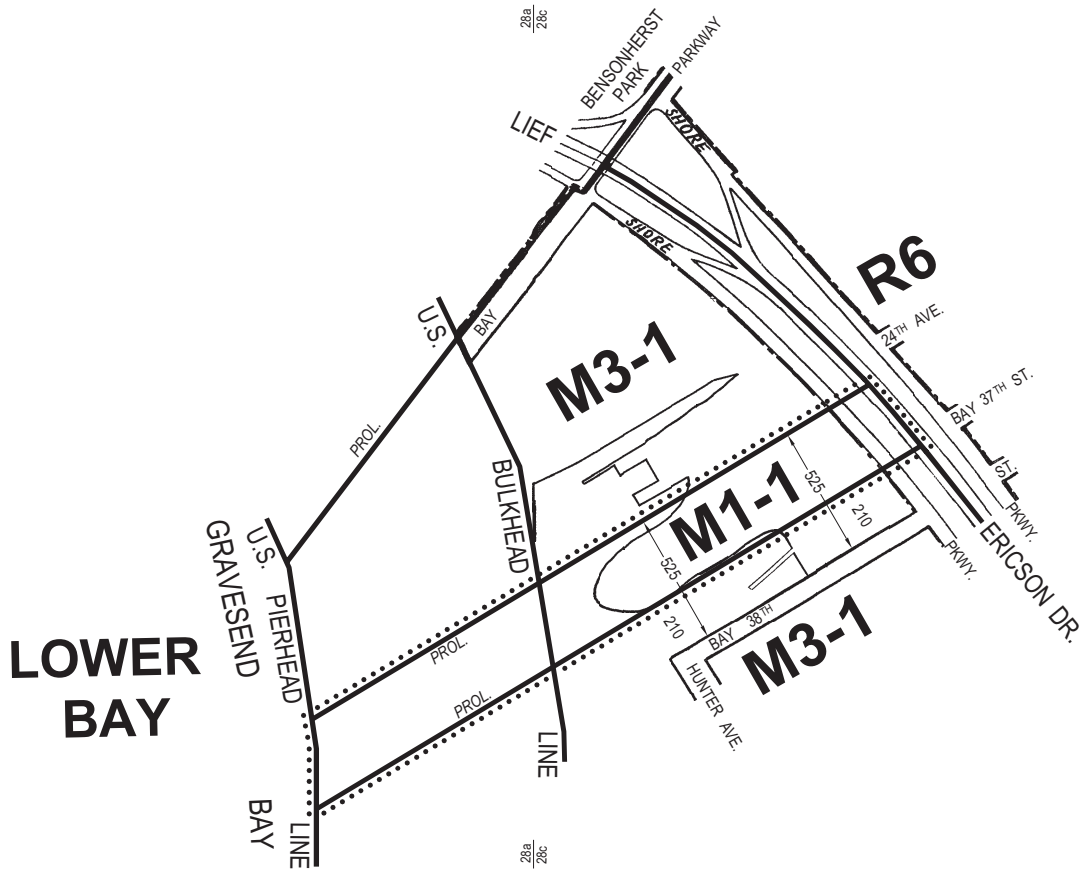
On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public



**EXHIBIT C**

DEP letter dated December 23, 2010 to follow



**LOWER BAY**



CITY PLANNING COMMISSION  
 CITY OF NEW YORK  
 DIAGRAM SHOWING PROPOSED  
**ZONING CHANGE**  
 ON SECTIONAL MAPS  
**28a & 28c**

BOROUGH OF  
**BROOKLYN**

S. Voyages, R.A. Director  
 Technical Review Division

New York, Certification Date  
 MARCH 14, 2011



- NOTE:**
- Indicates Zoning District Boundary.
  - The area enclosed by the dotted line is proposed to be rezoned by changing from an M3-1 District to an M1-1 District.

Application #: **C 110047 ZMK**

Project Name: **Brooklyn Bay Center**

CEQR Number: **10DCP002K**

Borough(s): **Brooklyn**  
Community District Number(s) **11**

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

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description:*

**IN THE MATTER OF** an application submitted by Thor Shore Parkway Developers, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section Nos. 28a and 28c, changing from an M3-1 District to an M1-1 District property bounded by Leif Ericson Drive, a line 210 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, the U.S. Pierhead Line, and a line 525 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, Borough of Brooklyn, Community District 11, as shown on a diagram (for illustrative purposes only) dated March 14, 2011.

<b><u>Applicant(s):</u></b> Thor Shore Parkway Developers, LLC 25 West 39th Street New York, N.Y. 10018		<b><u>Applicant's Representative:</u></b> Jesse Masyr Wachtel & Masyr, LLP 110 East 59th Street New York, N.Y. 10022	
<b><u>Recommendation submitted by:</u></b> Brooklyn Community Board 11			
Date of public hearing: <b>May 16, 2011</b>		Location: St Finbar's Confraternity Center, <b><u>1825 Bath Avenue, Brooklyn, NY 11214</u></b>	
Was a quorum present? <b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>		<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
Date of Vote: May 18, 2011		Location: Holy Family Home, 1740 84th Street, Brooklyn, NY 11214	
<b><u>RECOMMENDATION</u></b>			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
<b><u>Please attach any further explanation of the recommendation on additional sheets, as necessary.</u></b>			
<b>Voting</b>			
# In Favor: <b>26</b> # Against: <b>1</b> # Abstaining: <b>0</b> Total members appointed to the board: <b>48</b>			
Name <b>Marnee Elias-Pavia</b>		Title <i>District Manager</i>	
Date <i>May 19, 2011</i>			

Community Board 11 approved the application with the following conditions:

1. The applicant conducts a local hiring initiative for the residents of the community.
2. The applicant provides onsite parking for its employees.
3. The applicant works with the appropriate agencies to explore the feasibility of providing public access to the water and an Eco Dock.
4. The Department of Transportation works with the community to mitigate traffic issues.



Application #: **C 110048 ZSK**

Project Name: **Brooklyn Bay Center**

CEQR Number: **10DCP002K**

Borough(s): **Brooklyn**  
Community District Number(s) **11**

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

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description:*

**IN THE MATTER OF** an application submitted by Thor Shore Parkway Developers, 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 large retail establishments (Use Group 6 and/or 10A uses) with no limitation on floor area per establishment within a proposed 2-story commercial development on property located at 1752 Shore Parkway (Block 6491, Lots 207, 292, and 8900), in an M1-1\* District, within a Large-Scale General Development, Borough of Brooklyn, Community District 11.

\*Note: The site is proposed to be rezoned by changing an M3-1 District to an M1-1 District under a concurrent related application C 110047 ZMK.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

<b><u>Applicant(s):</u></b> Thor Shore Parkway Developers, LLC 25 West 39th Street New York, N.Y. 10018		<b><u>Applicant's Representative:</u></b> Jesse Masyr Wachtel & Masyr, LLP 110 East 59th Street New York, N.Y. 10022	
<b><u>Recommendation submitted by:</u></b> Brooklyn Community Board 11			
Date of public hearing: <b>May 16, 2011</b>		Location: <b><u>St Finbar's Confraternity Center, 1825 Bath Avenue, Brooklyn, NY 11214</u></b>	
Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.	
Date of Vote:		Location: Holy Family Home, 1740 84th Street, Brooklyn, NY 11214	
<b><u>RECOMMENDATION</u></b>			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
<b><u>Please attach any further explanation of the recommendation on additional sheets, as necessary.</u></b>			
<b>Voting</b>			
# In Favor: 26		# Against: 1	
# Abstaining:		Total members appointed to the board: 48	
Name <b>Marnee Elias-Pavia</b>		Title <i>District Manager</i>	
Date May 19, 2011			

Community Board 11 approved the application with the following conditions:

1. The applicant conducts a local hiring initiative for the residents of the community.
2. The applicant provides onsite parking for its employees.
3. The applicant works with the appropriate agencies to explore the feasibility of providing public access to the water and an Eco Dock.
4. The Department of Transportation works with the community to mitigate traffic issues.

Application #: **C 110049 ZSK**

Project Name: **Brooklyn Bay Center**

CEQR Number: **10DCP002K**

Borough(s): **Brooklyn**  
Community District Number(s) **11**

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

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description:*

**IN THE MATTER OF** an application submitted by Thor Shore Parkway Developers, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-836 of the Zoning Resolution to modify the height and setback requirements of Section 62-341 (Developments on land and platforms), in connection with a proposed 2-story commercial development on property located at 1752 Shore Parkway (Block 6491, Lots 207, 292, and 8900), in an M1-1\* District, within a Large-Scale General Development, Borough of Brooklyn, Community District 11.

\*Note: The site is proposed to be rezoned by changing an M3-1 District to an M1-1 District under a concurrent related application C 110047 ZMK.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

<b><u>Applicant(s):</u></b> Thor Shore Parkway Developers, LLC 25 West 39th Street New York, N.Y. 10018		<b><u>Applicant's Representative:</u></b> Jesse Masyr Wachtel & Masyr, LLP 110 East 59th Street New York, N.Y. 10022	
<b><u>Recommendation submitted by:</u></b> Brooklyn Community Board 11			
Date of public hearing: <b>May 16, 2011</b>		Location: <b><u>St. Finbar's Confraternity Center, 1825 Bath Avenue, Brooklyn, New York 11214</u></b>	
Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.	
Date of Vote: May 18, 2011		Location: <b><u>Holy Family Home, 1740 84<sup>th</sup> Street, Brooklyn, NY 11214</u></b>	
<b><u>RECOMMENDATION</u></b>			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
<b><u>Please attach any further explanation of the recommendation on additional sheets, as necessary.</u></b>			
<b>Voting</b>			
# In Favor: <b>26</b>		# Against: <b>1</b>	
# Abstaining: <b>1</b>		Total members appointed to the board: <b>48</b>	
Name Marnee Elias-Pavia		Title District Manager	
Date <i>May 19, 2011</i>			

Community Board 11 approved the application with the following conditions:

1. The applicant conducts a local hiring initiative for the residents of the community.
2. The applicant provides onsite parking for its employees.
3. The applicant works with the appropriate agencies to explore the feasibility of providing public access to the water and an Eco Dock.
4. The Department of Transportation works with the community to mitigate traffic issues.

Application #: **C 110050 ZSK**

Project Name: **Brooklyn Bay Center**

CEQR Number: **10DCP002K**

Borough(s): **Brooklyn**  
Community District Number(s) **11**

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

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description:*

**IN THE MATTER OF** an application submitted by Thor Shore Parkway Developers, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(c) of the Zoning Resolution to modify the height requirements of Section 42-543 (Height of signs), in connection with a proposed commercial development on property located at 1752 Shore Parkway (Block 6491, Lots 207, 292, and 8900), in an M1-1\* District, within a Large-Scale General Development, Borough of Brooklyn, Community District 11.

\*Note: The site is proposed to be rezoned by changing an M3-1 District to an M1-1 District under a concurrent related application C 110047 ZMK.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

<b><u>Applicant(s):</u></b> Thor Shore Parkway Developers, LLC 25 West 39th Street New York, N.Y. 10018		<b><u>Applicant's Representative:</u></b> Jesse Masyr Wachtel & Masyr, LLP 110 East 59th Street New York, N.Y. 10022	
<b><u>Recommendation submitted by:</u></b> Brooklyn Community Board 11			
Date of public hearing: <b>May 16, 2011</b>		Location: <b><u>St. Finbar's Confraternity Center, 1825 Bath Avenue, Brooklyn, NY 11214</u></b>	
Was a quorum present? <b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>		<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
Date of Vote: May 18, 2011		Location: Holy Family Home, 1740 84th Street, Brooklyn, NY 11214	
<b><u>RECOMMENDATION</u></b>			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
<b><u>Please attach any further explanation of the recommendation on additional sheets, as necessary.</u></b>			
<b>Voting</b>			
<b># In Favor: 26</b>		<b># Against: 1</b>	
<b># Abstaining:</b>		<b>Total members appointed to the board: 48</b>	
<b>Name</b> Marnee Elias-Pavia		<b>Title</b> District Manager	
<b>Date</b> May 18, 2011			

Community Board 11 approved the application with the following conditions:

1. The applicant conducts a local hiring initiative for the residents of the community.
2. The applicant provides onsite parking for its employees.
3. The applicant works with the appropriate agencies to explore the feasibility of providing public access to the water and an Eco Dock.
4. The Department of Transportation works with the community to mitigate traffic issues.

Application #: **C 110051 ZSK**

Project Name: **Brooklyn Bay Center**

CEQR Number: **10DCP002K**

Borough(s): **Brooklyn**  
Community District Number(s) **11**

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

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description:*

**IN THE MATTER OF** an application submitted by Thor Shore Parkway Developers, LLC. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-512 of the Zoning Resolution to allow an unattended public parking garage with a maximum capacity of 690 spaces within a proposed 3-story parking garage and to permit some of such spaces to be located on the roof of such public parking garage, in connection with a proposed 2-story commercial development on property located at 1752 Shore Parkway (Block 6491, Lots 207, 292, and 8900), in an M1-1\* District, within a Large-Scale General Development, Borough of Brooklyn, Community District 11.

\*Note: The property is proposed to be rezoned by changing an M3-1 District to an M1-1 District under a concurrent related application C 110047 ZMK.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

<b><u>Applicant(s):</u></b> Thor Shore Parkway Developers, LLC 25 West 39th Street New York, N.Y. 10018		<b><u>Applicant's Representative:</u></b> Jesse Masyr Wachtel & Masyr, LLP 110 East 59th Street New York, N.Y. 10022	
<b><u>Recommendation submitted by:</u></b> Brooklyn Community Board 11			
Date of public hearing:	May 16, 2011	Location:	<b><u>St. Finbar's Confraternity Center, 1825 Bath Avenue, Brooklyn, NY 11214</u></b>
Was a quorum present?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
Date of Vote:	May 18, 2011	Location:	Holy Family Home, 1740 84th Street, Brooklyn, NY 11214
<b><u>RECOMMENDATION</u></b>			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
<b><u>Please attach any further explanation of the recommendation on additional sheets, as necessary.</u></b>			
<b>Voting</b>			
# In Favor:	26	# Against:	1
# Abstaining:		Total members appointed to the board:	48
Name	Marnee Elias-Pavia		
Date	May 19, 2011		
	Title District Manager		

Community Board 11 approved the application with the following conditions:

1. The applicant conducts a local hiring initiative for the residents of the community.
2. The applicant provides onsite parking for its employees.
3. The applicant works with the appropriate agencies to explore the feasibility of providing public access to the water and an Eco Dock.
4. The Department of Transportation works with the community to mitigate traffic issues.



# Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION  
22 Reade Street, New York, NY 10007  
FAX # (212) 720-3356

## INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representatives as indicated on the Notice of Certification.

APPLICATION #: 110047 ZMK-110048 ZSK-110049 ZSK-110050 ZSK-110051 ZSK-110052 ZAK-110053 ZCK  
Brooklyn Bay Center

In the matter of an application submitted by Thor Shore Parkway Developers, LLC pursuant to Sections 197-c and 201 of the New York City Charter for:

- a) the amendment of the Zoning Map changing from an M3-1 District to an M1-1 District property bounded by Leif Ericson Drive, a line 210 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation, the U.S. Pierhead Line, and a line 525 feet northwesterly of Bay 38<sup>th</sup> Street and its southwesterly prolongation;
- b) the grant of Special Permits pursuant to Sections 74-922, 62-836, 74-744(c), and 74-512 of the Zoning Resolution

in connection with a proposed 214,000 square foot retail development, publicly accessible waterfront open space, and 690 parking spaces on property located at 1752 Shore Parkway.

COMMUNITY DISTRICT NO. 11

BOROUGH OF BROOKLYN

## RECOMMENDATION

APPROVE  
 APPROVE WITH  
MODIFICATIONS/CONDITIONS

DISAPPROVE  
 DISAPPROVE WITH  
MODIFICATIONS/CONDITIONS

## **CONSIDERATION**

Community Board 11 (CB 11) voted to conditionally approve these applications. CB 11 called on the developer to: conduct local hiring initiatives for residents of the community; provide onsite parking for employees; work with appropriate agencies for feasibility of providing public access to the water and an Eco Dock. CB 11 further called for the Department of Transportation (DOT) to work with the community to mitigate traffic issues.

### UTILIZATION OF THE PUBLICLY ACCESSIBLE WATERFRONT

The Borough President notes that while Brooklyn is surrounded on three sides by water, access of its waterfront needs to be improved. This project would provide 2.4 acres of publicly accessible open space along the perimeter of the site where it extends out of the harbor. This is a welcomed addition. The Borough President believes that being able to sit and stroll by this waterfront space, while a wonderful opportunity, will not be extensively utilized due to the limited street access along Bay Parkway and Bay 26<sup>th</sup> Street from the nearby residential community north of Shore Parkway.

In the attached letter dated June 9, 2011, the Borough President highlighted that one of his goals towards strengthening the allure of the waterfront is to attract destination restaurants to the borough. The availability of locations to site such a restaurant along the waterfront are scarce, however this proposal serves as an appropriate opportunity to meet

that end. The Borough President strongly encourages the applicant to include such a destination restaurant as part of the project and locate the restaurant adjacent to the outermost publicly accessible waterfront.

#### JOBS

The applicant has publicly stated that a tentative lease with BJ's Wholesalers is in place for this project. Given other Brooklyn locations served by BJ's, the Borough President anticipates that it would make respectable efforts to hire willing residents within the local community. In terms of the construction phase of this project, it is the Borough President's policy that applicants develop a strategy to include Brooklyn based contractors and material supply firms in the construction of the project. He calls on the applicant to utilize such locally based firms as a means to provide the maximum number of jobs for Brooklyn residents.

In the attached letter dated June 16, 2011, the applicant provided a commitment to: purchasing building supplies for the development from Brooklyn suppliers, given equivalent availability and pricing; use local contractors for the construction of the store while working with the structure of all applicable labor agreements; and, working with its retail tenants to maximize its hiring from the local community.

#### TRAFFIC MITIGATION

The traffic disclosure in the Draft EIS (DEIS) for this proposal was based on 20 intersections. In the Final EIS (FEIS), traffic recommendations for mitigation will likely include some combination of signal installation and other measures including: standard traffic engineering measures such as signal timing adjustments, lane re-striping and parking prohibition (to create turning lanes at intersections and in front of the development). It is possible that residents and business entrepreneurs might not want measures that require the loss of nearby parking spaces implemented, despite anticipated benefits associated with reduced congestion for the neighborhood at large.

In order for the community to weigh in on these recommended mitigation measures, the Borough President believes that it is appropriate, soon after the issuance of the FEIS, for the applicant to engage CB 11, along with the area's affected local elected officials, in a proactive role in formulating a community position in terms of what mitigation should be pursued prior to the opening of the retail complex. The applicant should then advise DOT, in writing, of its consultation with CB 11 of which measures the board would like to be implemented in advance of construction, where feasible. The applicant should then be of assistance to DOT as the agency reviews the analysis and develops an implementation plan.

In the attached letter dated June 16, 2011, the applicant provided a commitment to working with CB 11 and elected officials to identify the EIS traffic mitigation measures that should be implemented prior to the project's completion and encourage DOT to implement all identified measures.

The Borough President has a concern regarding certain proposed traffic mitigation measures that would eliminate parking along the service road. He believes that the loss of such parking would be a burden to patrons of such businesses like the New York Sports Club and Adventurer's amusement park. In anticipation of DOT implementing such a plan, the borough president believes that the applicant should seek the authorization of its tenants to reach out to these businesses in regards to supplementing some of the parking that will be lost to their respective patrons.

It should be noted that traffic studies developed as part of the required environmental assessment are more theoretical than exact. Environmental assessments serve as predictive tools, whereas actual conditions will demonstrate a more valid view on the impacts that development have on a community. The Borough President has concerns with the assumptions made in the DEIS that detail traffic patterns flowing in ways he believes will not be replicated post-construction. The Borough President believes that the projected routing of traffic modeled in the traffic analysis is questionable in how it suggests borough residents will go to and from the store. For example, the assumption that residents will choose to travel first to Cropsey Avenue, then go around to access the westbound ramp onto the Belt Parkway seems inconsistent with human nature to take the shortest route available (i.e. – taking 26<sup>th</sup> Avenue to head to the Bay Parkway entrance). Similarly, the Borough President does not believe that motorists will turn off of 26<sup>th</sup> Avenue at Cropsey Avenue to head along Bay Parkway to travel north, when it is more direct to continue onto Stillwill Avenue which angles to Bay Parkway. He believes that the only way to be sure is to have a post-opening traffic analysis performed. This should determine traffic impacts at various intersections and what, if any, additional mitigation should be implemented by DOT based on analysis of actual travel patterns.

Therefore, the Borough President calls upon the developer to perform a traffic analysis in conjunction with DOT, CB 11 and its local elected officials to determine the actual impacts on the Bath Beach and Gravesend community approximately one year after the opening of the primary tenant. If the study reveals that this project contributes to traffic impact, the applicant should provide funds for any traffic improvements deemed necessary.

In the attached letter dated June 16, 2011, the applicant provided a commitment to fund and implement a traffic monitoring program one year after the opening of the primary retailer.

#### TRAFFIC CONCERNS – BELT PARKWAY ACCESS

The Borough President acknowledges that the traffic conditions leading to Caesar's Bay and the proposed site are already strained. These conditions pose an adverse effect on customers and retailers in the area as access becomes limited. With the construction of this proposed development, the already burdened traffic intersection will continue to operate in a manner that affects the quality-of-life for both area residents and customers of the retailers. Even with the recommended mitigation and possible mitigation that might be proposed based on a post-opening traffic analysis, one of the prime challenges is the constraints of entering and exiting the Belt Parkway and the concentration of vehicles doing so. That is why it is important to implement appropriate mitigation measures, where possible. Given the commercial and retail development both in this proposal and over time, gaining improved access to this area will become a necessity.

Therefore, in order to best maximize the area's capacity to handle traffic, especially in light of the expected increasing of traffic with more commercial development, the Borough President believes that in addition to the implementation of the proposed mitigation and any mitigation that might be disclosed in a post-opening traffic analysis, a study should be conducted concerning modifications to the entrances and exits of the Belt Parkway at Bay Parkway.

Specifically, he believes that the Bay Parkway westbound entrance ramp should be re-aligned and perhaps widened in order to permit those travelling north along Bay Parkway to more easily enter the parkway without navigating the often already congested

residential neighboring streets to be able to head southbound on Bay Parkway. Such a measure will cut down on unnecessary traffic around these neighboring blocks.

As for eastbound traffic, he recommends analyzing the potential to supplement the existing exit ramp to Bay Parkway with a second exit ramp east of Bay Parkway. Such an exit would serve residents living near the 26<sup>th</sup> Avenue parkway under path, existing uses such as the amusement park, activities at Drier-Offerman Park and the proposed Brooklyn Bay Center, while diverting traffic away from Bay Parkway. To accommodate such a ramp, the Borough President acknowledges that the existing eastbound on-ramp change would need to be relocated further east while necessitating the widening of the 26<sup>th</sup> Avenue overpass to allow cars to merge safely and perhaps shift the eastbound Cropsey Avenue exit further east.

In the attached letter to the Commissioner of DOT, dated June 20, 2011, the Borough President requested such an analysis. The already congested conditions at the Bay Parkway and Shore Parkway intersection can be minimized or eliminated by better accommodating those seeking destinations other than Caesar’s Bay and the residential areas to its north, should these changes go into effect.

**RECOMMENDATION**

Be it resolved that the Brooklyn Borough President, pursuant to section 197-c of the New York City Charter, recommends that the City Planning Commission and the City Council approve of the Zoning Map Amendment, and Special Bulk and Use Permit applications on the condition that:

- 1) the applicant takes necessary steps to utilize local contractors and material supply firms for the project’s construction and conduct a local hiring initiative for local residents;
- 2) on the issuance of the FEIS, the applicant shall work with CB 11 and local elected officials to identify feasible mitigation measures that DOT should implement prior to the site opening;
- 3) the applicant shall seek authorization of its tenants to correspond with New York Sports Club and Adventurer’s amusement park to offer parking in the new garage as a means to offset any loss of on-street parking along the service road; and,
- 4) approximately one year after the opening of the primary tenant, the applicant shall conduct a traffic study in consultation with DOT, CB 11, and local elected officials and funds any improvements deemed necessary that are directly attributed to the operation of the retail center.

Be it further resolved that the DOT review and respond to the Borough President’s ramp recommendations for the Shore Parkway at Bay Parkway.




---

BOROUGH PRESIDENT

June 21, 2011

---

DATE