



June 21, 2017/Calendar No. 16

C 170158 ZSM

IN THE MATTER OF an application submitted by the NYC Department of Small Business Services and the NYC Economic Development Corporation pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-66 of the Zoning Resolution to allow a heliport on property generally located between the U.S. Pierhead Line of the East River and the north-bound service road of the Franklin D. Roosevelt Drive, south of East 34th Street, (Block 962, part of Lot 50) in an M2-3 District, Borough of Manhattan, Community District 6.

This application for a special permit was filed by the NYC Department of Small Business Services (SBS) and the NYC Economic Development Corporation (EDC) on November 28, 2016. The special permit would allow for the continued operation of a heliport at 499 East 34th Street for a term of 10 years.

BACKGROUND

The East 34th Street Heliport is a City-owned facility located at 499 East 34th Street west of the U.S. Pierhead Line of the East River, east of the northbound service road of the elevated Franklin D. Roosevelt Drive (FDR) and just south of East 34th Street (Block 962, part of Lot 50) within the M2-3 zoning district. Access to the site is primarily from East 34th Street and the FDR Service Road. The total lot area, exclusive of underwater leasehold property, comprises approximately 40,000 square feet, of which 26,442 square feet is used for helicopter operations.

It is one of three heliports in New York City. The Downtown Manhattan Heliport is located at Pier Six on the East River, just north of the Battery Maritime Building, and serves courier and corporate users. The West 30th Street Heliport primarily serves sightseeing tour operators, and corporate and government users.

The heliport on East 34th Street comprises five parking spaces, two construction-type trailers that serve as north and south passenger terminals, an underground fuel tank and five helicopter landing

pads. The five pads are identified, from south to north, as 1, 2, 3, T and 4. The pad identified as T will remain open and shall be used for emergency landings only.

It was established in 1971. On March 17, 1971 (Calendar No. 11), the City Planning Commission (CPC) approved an application (CP-21490) by the Department of Marine and Aviation for a special permit allowing a heliport use for a term of five years. The special permit expired in 1976, and the heliport use continued to operate from 1976 to 1996 without an approved special use permit.

On January 9, 1996 (Calendar No. 1), the CPC approved an application for a special permit (C 950632 ZSM) by the Department of Business Services (DBS) and EDC for a term of 10 years with the following conditions:

1. the hours of operation shall be limited to 8 AM to 8 PM;
2. the hours of operation on Saturday and Sunday shall be limited, for tourist operations, to 10 AM to 6 PM;
3. there shall be a minimum 47 percent reduction overall in operations;
4. tourist flights shall be prohibited from flying over Second Avenue, and all north-south sightseeing traffic will be restricted to the East and Hudson rivers. East-west corridors will be restricted to those agreed upon by the Federal Aviation Administration (FAA), the United States civil aviation authority, and the heliport operator.

Subsequently, on March 6, 1996, the City Council (Resolution No. 1558) modified the CPC approval of the special permit with the following conditions:

1. the special permit, and the terms and conditions thereof, shall take effect on or before August 1, 1996;
2. the terms of the special permit shall be limited to a term to expire on August 1, 2001;
3. the EDC shall issue a Request for Proposals (“RFP”) for an operator to manage the heliport within 30 days of the date of the resolution;
4. the hours of operation on Saturday and Sunday shall be limited, for all operations, to 10 AM to 6 PM;

5. there shall be no operations on Sunday, commencing on January 1, 1997;
6. there shall be no operations on Saturday, commencing on August 1, 1997;
7. all sightseeing helicopters using this facility shall be clearly marked with numbers on their underside so that they can be identified easily and individually by the community in its efforts to monitor operations;
8. the Sikorsky S-58T 14-seat helicopter or helicopters of a similar or larger size, which are used for sightseeing operations, may not utilize this facility;
9. the operator selected to manage the heliport shall maintain the area adjacent to the heliport (part of the future East River Esplanade);
10. the EDC shall provide the Speaker of the Council, the council member and the Director or the Land Use Division with copies of the management contract for the operation of the heliport at least two weeks in advance of the execution of such contract;
11. the EDC shall establish a Heliport Monitoring Task Force (the "Task Force"), which shall include local officials and interested members of the surrounding community; the Task Force shall meet on a regular basis to determine compliance with the terms and conditions of the special permit and the management contract and provide further input and guidance on future heliport issues; and the Task Force shall be provided with the monthly records of flight operations, which are maintained by the operator selected to manage the heliport;
12. the terms and conditions of the special permit, including the terms and conditions set forth in this resolution, shall be incorporated into the terms and conditions of this management contract; and failure to comply with such terms and conditions may constitute the basis for termination of the management contract and/or revocation of the special permit (pursuant to Section 11-62 of the Zoning Resolution); and
13. any changes to the terms and conditions set forth in this resolution shall require approval in advance by the Council.

There were two legal challenges to the terms and conditions of the 1996 special permit imposed by the City Council. On January 7, 1997, the U.S. District Court, in *National Helicopter Corp. v. City of New York*, 952 F. Supp. 1011 (S.D.N.Y. 1997), held that the City Council had overreached

its authority with the terms of this special permit, including but not limited to the term that stipulated the routes that helicopters must follow when taking off from or approaching the heliport.

On February 17, 1998, the City of New York appealed to the U.S. Court of Appeals for the Second Circuit, which in part granted and in part denied permanent injunctive relief for the City. The Court ruled that the City may impose weekday and weekend curfews, eliminate weekend operations and reduce operations by 47 percent. However, the Court of Appeals upheld the District Court's enjoining the City from enforcing routes, requiring markings on helicopters or prohibiting specific types of helicopters, such as the Sikorsky S-58-T

Since this decision, the East 34th Street heliport has been restricted to no weekend operations, no tour (sightseeing) operations, a maximum limit of 28,800 flight operations annually (a 47 percent reduction from the 1996 operating levels), and all terms and conditions set forth by the City Council Resolution No. 1558 and upheld by the U.S. Courts of Appeals incorporated in the management contract and special permit.

On December 19, 2001 (Calendar No. 24), the CPC conditionally approved an application (C 020032 ZSM) by the DBS and EDC for a special permit to allow the heliport for another term of 10 years, subject to the following terms and conditions:

1. The property shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by the NYC Economic Development Corporation (Site Plan Drawing No A-1, Date Revised June 25, 1995).
2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in the resolution and shown on the plans listed above that had been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations to its construction, operation and maintenance.

4. The applicants shall incorporate certain terms and conditions of the special permit into the management contract. Such terms and conditions may constitute the basis for termination of the management contract and revocation of the special permit pursuant to Section 11-62 of the Zoning Resolution include:
 - a. The hours of weekday operations shall be limited to 8 AM to 8 PM;
 - b. There shall be no weekend operations;
 - c. There shall be a maximum limit of 28,800 annual flight operations;
 - d. There shall be no tour (sightseeing) operations; and
 - e. The operator selected to manage the heliport shall provide good maintenance and require substantial improvement to the terminal buildings and environment under control of the City.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of the special permit to the lessee, sublessee or occupant.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

On February, 27, 2002, the City Council approved a modification (Resolution No. 89-2002) to the Commission's approval which stated:

“The Special Permit is approved for a term of 10 years. Notwithstanding the foregoing, operation of the heliport pursuant to an operating permit(s) shall continue for a period of no more than 5 years unless, prior to the expiration of such 5 year period, the Economic Development Corporation conducts a performance review of the heliport operator and, following such review, EDC elects at its discretion to continue operation of the heliport pursuant to such operating permit. Operation of the heliport may be continued for no more than an additional 5 years. Such performance review shall include, without limitation, a review of the operator's record regarding noise, cleanliness, and response to complaints and compliance with all applicable laws and regulations. The review shall be in writing and shall be submitted to the local Community Board, Council Member, Borough President and City Planning Commission prior to any election to continue operation of the heliport pursuant to an operating permit beyond 5 years.”

The applicant has stated that the 2007 review was performed as required. However, the final documentation that was to be submitted to the local Community Board, Council Member, Borough President and City Planning Commission is unable to be located and is not in the possession of EDC nor any of the agencies listed above. EDC has, however, provided a signed compliance review, indicating that the heliport was in compliance with the terms of its permit with regard to number of flights and restriction of tourist flights, as part of this application.

SBS and EDC are now seeking approval of a special permit pursuant to Zoning Resolution Section 74-66 (Heliports) to allow the continued operation of the heliport for another term of 10 years, subject to the terms and conditions of the previously approved special permit (C 020032 ZSM), with the exception of the following previously approved City Council Resolution and CPC condition listed below, which the applicants are seeking to eliminate:

1. City Council's February 2002 Resolution No. 89-2002 that established the modification to the Commission's approval application (C 020032 ZSM) requiring a 5-year performance review of the heliport operator that shall include, without limitation, a review of the

operator's record regarding noise, cleanliness, and response to complaints and compliance with all applicable laws and regulations; that was to be submitted to the local Community Board, Council Member, Borough President and City Planning Commission prior to any election to continue operation of the heliport pursuant to an operating permit beyond 5 years.

2. Because the applicant has indicated that the New York State Department of Transportation will not allow construction to occur because no permanent buildings are allowed beneath the FDR Highway, the applicant is proposing to exclude the Condition #1 from the 2001 Approval (C 020032 ZSM) that requires the construction of a permanent waiting area established below:
 - a. The property that is subject of the application (C 020032 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by the NYC Economic Development Corporation (Site Plan Drawing No A-1, Date Revised June 25, 1995).

There are no proposed plans to physically modify the heliport under this application. The applicant has indicated that the New York State Department of Transportation will not allow construction to occur because no permanent buildings are allowed beneath the FDR. Therefore, the applicant is proposing to exclude the condition from the previous special permit approval (C 020032 ZSM) relating to the construction of a permanent waiting area.

The heliport is proposed to be operated Monday through Friday from 8 a.m. to 8 p.m. and will continue to serve the business community, police operations, medical evacuations and the print and electronic media. Sightseeing operations are not allowed from this heliport. EDC's contract with Maquarie Aviation North America expires on August 31, 2017 with an optional six-month extension through February 2018. Prior to the conclusion of the extension period, EDC plans to issue a competitive Request for Proposals (RFP) for an operator to manage the heliport until the end of the term approved by the special permit.

The surrounding land uses are characterized by a mix of public facilities, institutions, high-density mixed-use residential and commercial uses. The NYU Langone Medical Center is west of the heliport and separated by the elevated FDR Drive. The Bellevue Hospital Campus is southwest of the site. The area west of NYU Langone and northwest of the heliport is predominantly residential and includes the Kips Bay Towers, Rivergate, 626 First Avenue (currently under construction), and Manhattan Place. PS 281, The River School, is located adjacent to the 626 First Avenue residential towers and the Chinese Mission to the United Nations.

Waterside Plaza, another residential development, is south of the site. The 34th Street-Midtown ferry terminal is two blocks north of the heliport. Also to the north is a public parking lot with 200 spaces. The nearest park, St. Vartan Park, is located at the intersection of First Avenue and East 35th Street. The heliport is flanked to the south by the East River Esplanade. This area is separated from the heliport by the elevated FDR Drive.

The project site is served by the M34 and M34A bus lines along East 34th Street. The surrounding area is served by the No. 6 subway line, which is accessible via the 33rd Street station at the corner of East 33rd Street and Park Avenue.

ENVIRONMENTAL REVIEW

The application (C 170158 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules Procedure of 1991 and Executive Order No. 91 of 1997. The designated CEQR number is 17SBS003M. The lead agency is the NYC Department of Small Business Services.

This application was determined to be a Type II action which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 170158 ZSM) was certified as complete by the City Planning Commission on February 21, 2017, and was duly referred to Community Board 6 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Recommendation

Community Board 6 held a public hearing on this application on April 12, 2017, and on that date, by a vote of 32 in favor, 11 opposed, and with no abstentions, adopted a resolution recommending approval of the application with the following conditions:

- That this extension is subject to the same terms and conditions for the operation of the heliport as currently exist, including but not limited to:
 - There shall be no weekend operations,
 - Flight operations are limited to a maximum of 28,800 a year,
 - There are no tour (sightseeing) operations,
 - The operator of the heliport shall provide good maintenance to the terminal buildings and the environment under the control of the City,
 - Noise and other environmental impacts will continue to be observed,
 - Any other use that may be considered must address public safety considerations,
 - Operations are limited (with the exception for emergency medical, public safety, fire, police and print and electronic news media) to 8 a.m. to 8 p.m., Monday through Friday; and
- That while the application is for a 10 year renewal, Community Board Six asks that at the end of the fifth year (consistent with the 2002 City council resolution) the operation, terms and conditions of the agreement be brought to the Board for its review and oversight as to compliance and community impact; and
- That the heliport operator shall be required to maintain adequate lighting, visibility and safe access for pedestrians, vehicles and bicycles in cooperation and coordination with EDC, New York City Department of Transportation and New York City Police Department outside the perimeter fence in areas covered by the operator's lease.

Borough President Recommendation

This application was considered by the Manhattan Borough President, who issued a recommendation on May 22, 2017, approving the application if the following conditions are satisfied:

- The conditions outlined by Manhattan Community Board 6 be integrated into an operating agreement, and
- A quarterly report be provided to the affected Community Board, Council Person and Borough President regarding:
 - Noise, cleanliness, and response to complaints (through 311 or otherwise) and compliance with all applicable laws and regulations;
 - The number of flights per month broken down by, but not limited to, heliport operational statistics (i.e. air taxi, general aviation and military);
 - The number of variances granted for flights before or after set hours of operations (monthly and cumulative); and
 - During the sixth month of each contract year, an update on any planned maintenance and improvement plans for the site.

City Planning Commission Public Hearing

On May 10, 2017 (Calendar No. 13), the City Planning Commission scheduled May 24, 2017, for a public hearing on this application (C 170158 ZSM). The hearing was duly held on May 24, 2017 (Calendar No. 31). There were two speakers in favor of the application and no speakers in opposition. A vice president of EDC and a representative from the Manhattan Borough President's office spoke in favor of the application.

The EDC representative indicated that they oversee the heliport on behalf of SBS. EDC has an operator agreement that will expire in August, but there is a six-month extension on the current agreement. He explained that EDC will issue an RFP this summer. The new agreement, for a new user, will reflect the provisions of the special permit.

A representative for the Manhattan Borough President's office spoke in favor of the application. He said that the applicant has given a comprehensive argument for continuing the existing use and that the current location is ideally located for access to midtown Manhattan.

CONSIDERATION

The Commission believes that the grant of this special permit (C 170158 ZSM) is appropriate.

The East 34th Street Heliport is uniquely located adjacent to the East River on a site bounded by a 200-space public parking lot to the north, the Water Club restaurant's parking lot and the East River Esplanade to the south, and the heavily trafficked and elevated FDR Drive to the west. Helicopters arrive and depart over the East River. This facility is appropriately located in an M2-3 zoning district. It provides direct access to the midtown core of New York City without unduly interfering with surrounding uses. The FAA regulates flight paths to and from the heliport as part of the National Plan of Integrated Airports and the New York City Aviation Plan, which protect nearby uses from undue risk.

The Commission notes that the heliport has been operating for more than 45 years, and currently serves only the business community, police operations, medical evacuations from outlying hospitals, the print and electronic news media, state and federal official business, and the United Nations. The Commission acknowledges that this heliport provides an essential public service and an economic benefit for the City, and that EDC has maintained its obligation to not exceed a maximum of 28,800 operations annually.

The Commission notes that the heliport limits its hours of operation from 8 a.m. to 8 p.m., Monday through Friday, and does not allow tourist flights. The Commission recognizes that other heliports in the area can manage normal early morning operations since the heliport on West 30th Street is open 24 hours a day and the Downtown Heliport opens at 7:00 a.m.

The Commission is pleased that, in a letter to the Borough President dated May 22, 2017, EDC agreed to a reporting framework that includes: (1) a quarterly report on the East 34th Street

Heliport's number of flights and variances granted, (2) a semi-annual update on planned maintenance and improvements, and (3) monthly reports regarding helicopter complaints submitted to 311. The Commission notes that EDC has also agreed to upgrade lighting and fencing around the heliport and to work with the Department of Transportation if it implements proposed bike lane plans adjacent to the heliport.

The Commission notes that it has the ability to revoke or cancel the subject special permit at any time, upon the failure of the applicant to observe conditions of the approval including any alteration, violation or redevelopment to the subject premises that departs from such an approval.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-66 (Heliport) of the Zoning Resolution:

- a) that the heliport is an appropriate use of the land and will not unduly interfere with surrounding land uses; and
- b) that due consideration has been given to the selection of a site situated near or adjacent to large parks or other open areas, or bodies of water.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant adverse impact on the environment; 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 application submitted by the NYC Department of Small Business Services and the NYC Economic Development Corporation for the grant of a special permit, for a term of ten years, pursuant to Section 74-66 of the Zoning Resolution to allow a heliport on property generally located between the U.S. Pierhead Line of the East River and the north-bound service road of the Franklin D. Roosevelt Drive, south of East 34th Street, (Block

962, part of Lot 50) in an M2-3 District, Borough of Manhattan, Community District 6, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 170158 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Stantec Consulting Services Inc., filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-01	Site Plan	December 13, 2016

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. The applicants shall incorporate certain terms and conditions of the special permit into the management contract. Such terms and conditions may constitute the basis for termination of the management contract and revocation of the special permit pursuant to Section 11-62 of the Zoning Resolution include:
 - a. The hours of weekday operations shall be limited to 8 AM to 8 PM;
 - b. There shall be no weekend operations;
 - c. There shall be a maximum limit of 28,800 annual flight operations;
 - d. There shall be no tour (sightseeing) operations; and
 - e. The operator selected to manage the heliport shall provide good maintenance to the terminal buildings and the environment under control of the City.

5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms of conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted; and
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 170158 ZSM), duly adopted by the City Planning Commission on June 21, 2017 (Calendar No. 16), 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.

MARISA LAGO, *Chair*

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

RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED CERULLO, III,

MICHELLE DE LA UZ, JOSEPH DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, *Commissioners*

RICHARD EGGERS
CHAIR

CLAUDE L WINFIELD, FIRST VICE CHAIR
MOLLY HOLLISTER, SECOND VICE CHAIR



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DISTRICT MANAGER

BEATRICE DISMAN, TREASURER
BRIAN VAN NIEUWENHOVEN, ASST. TREASURER
KATHY THOMPSON, SECRETARY
AARON HUMPHREY, ASST. SECRETARY

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
P.O. Box 1672
NEW YORK, NY 10159-1672

April 2017

Re: Application for a ten (10) year renewal for the operation of the 34th Street Heliport (499 East 34th Street) by the Department of City Planning (DCP 170158ZSM).

Whereas, the New York City Department of Small Business Services (SBS) and the Economic Development Corporation (EDC), jointly, have requested a Special Permit pursuant to ZR74-66 (heliports) for ten (10) years extension so as continue operations of the existing heliport (heliport) at 499 East 34th Street (block 961, part of lot 50), (DCP 170158ZSM) in Community Board Six, Manhattan; and

Whereas, the current contract with the operator runs until August 1, 2017 (with an extension until February, 2018); and

Whereas, EDC plans to issue a Request For Proposal (RFP) for an operator of the facility to run for the duration of the special permit; and

Whereas, the current aviation operations are limited to Monday through Friday 8 a.m. to 8 p.m.; and

Whereas, the operations at the heliport are restricted to business uses (including police and public safety agencies, fire, medical evacuation, print and electronic news media); and

Whereas, the number of operations is limited to a maximum of 28,800 flight operations annually and sightseeing flights have been and are prohibited;

Therefore be it

Resolved, that Manhattan Community Board Six, (CB6) offers no objection to the New York City Department of Small Business Services (SBS) and the Economic Development Corporation (EDC), jointly, for the renewal of a requested a Special Permit (170158ZSM) to ZR74-66 (heliports) for a ten (10) year extension so as to continue operations of the existing heliport at 499 East 34th Street (block 961, part of lot 50); and

be it further

Resolved, that this extension is subject to the same terms and conditions for the operation of the heliport as currently exist, including but not limited to:

- There shall be no weekend operations,
- Flight operations are limited to a maximum of 28,800 a year,
- There are no tour (sightseeing) operations,
- The operator of heliport shall provide good maintenance to the terminal buildings and the environment under the control of the City,

- Noise and other environmental impacts will continue to be observed,
- Any other use that may be considered must address public safety considerations,
- Operations are limited (with exception for emergency medical, public safety, fire, police; and print and electronic news media) to 8 a.m. to 8 p.m., Monday through Friday; and

be it further

Resolved, that while the application is for a ten (10) year renewal, Community Board Six asks that at the end of fifth (5) year (consistent with the 2002 City council resolution) the operation, terms and conditions of the agreement be brought to the Board for its review and oversight as to compliance and community impact; and

be it further

Resolved, that the heliport operator shall be required to maintain adequate lighting, visibility and safe access for pedestrians, vehicles and bicycles in cooperation and coordination with the New York City Economic Development Corporation, New York City Department of Transportation and New York City Police Department outside the perimeter fence in areas covered by the operator's lease.

VOTE: 32 in Favor 11 Opposed 0 Abstention 0 Not Entitled



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

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

Gale A. Brewer, Borough President

May 22, 2017

**Recommendation on ULURP Application No. C 170158 ZSM - 34th Street Heliport
By The New York City Department of Small Business Services (SBS) and the New York
Economic Development Corporation (EDC)**

PROPOSED ACTION

The New York City Department of Small Business Services (SBS) and the New York Economic Development Corporation (EDC) (“the applicant”) seek a special permit pursuant to Section 74-66 of the Zoning Resolution to allow a heliport (or “project site”) on property located between the U.S. Pierhead Line of the East River and the northbound service road of the Franklin D. Roosevelt Drive, south of East 34th Street, (Block 962, part of Lot 50) in an M2-3 District, Borough of Manhattan, Community District 6. The special permit would be for a 10-year term.

PROJECT DESCRIPTION

Background

Part of the impetus for the construction of this heliport was to serve as a replacement for the landing pad atop the 59-story Pan Am Building at 200 Park Avenue, now Met-life Building, in the Grand Central Terminal area. The helipad closed in 1968 except for a short 3-month stint in 1977 leaving Manhattan with very few options for local helicopter traffic.¹ In March 1971, the City Planning Commission (CPC) approved an application submitted by NYC Department of Marine and Aviation (DMA) for a special permit (CP-21490) to allow for heliport use at the East 34th Street site for a period of five years. The facility, one of four public heliports in Manhattan, opened in 1972. In 1973, National Helicopter Corporation of America (NHCA) became the first operator at the heliport, under the name Island Helicopters, and entered into a lease for an initial term of 10 years. Subsequent leases were renewed and NHCA remained the operator until they were legally evicted in August 1997.

Although the special permit ended in 1976, the heliport continued to operate from 1976 to 1996 without the appropriate permissions in place. In June 1995, the applicants applied for a special permit to allow for the continued operation of the heliport under the same special permit. During the referral period for the application, both Manhattan Community Board 6 (CB6) and the Office

¹ Burks, Edwards C. (1971, March 18). Plan commission Approves 34th Street Heliport .*The New York Times*. Retrieved from <http://www.nytimes.com/1971/03/18/archives/plan-commission-approves-34th-street-heliport-permit-for-new.html>

of the Manhattan Borough President (MBPO) recommended disapproval of the application unless various conditions were included. The conditions ranged from a curfew on all operations to a prohibition of sightseeing services on weekends.² In March 1996, the New York City Council (NYCC) modified the CPC approval with conditions (C950635ZSM), pursuant to Resolution No. 1558. EDC, which had taken over management of this city-owned site, incorporated these terms into the request for proposals (RFP) issued in May 1996. The conditions³ included:

1. the restriction of weekday operations to between 8 a.m. and 8 p.m.;
2. the restriction of weekend operations to between 10 a.m. and 6 p.m.;
3. the phasing out of weekend operations entirely;
4. the reduction of operations by a minimum of 47 percent overall;
5. the barring of Sikorsky S-58Ts, or helicopters of a similar size, from use of the heliport for sightseeing operations;
6. the prohibition of sightseeing flights over Second Avenue and the requirement that such flights heading north and south fly only over the East and Hudson Rivers; and
7. the requirement that helicopters using the heliport be marked for identification from the ground.

After a RFP was issued, National sued to challenge the terms imposed as conditions of the special permit. In January 1997, Federal District Judge Sonia Sotomayor for the U.S. District Court for the Southern District of New York ruled that the City overstepped in its authority and certain regulations were preempted by federal regulation.⁴ In February 1998 the City appealed to the U.S. Court of Appeals for the Second Circuit which took a slightly different position. The Court ruled to restore the City's right to reduce the number of flights and regulate curfew and days of operations but also enforced the lower court's decision to strike down the City's authority to enforce routes, require markings on helicopters or prohibit the use of specific helicopter types.⁵

In 2001, the CPC approved a new special permit application by the applicant for a special permit, allowing them to operate for a period of 10-years. The operating agreement included similar conditions as those included by the NYCC in 1996 except those that were struck down by the court. One of the conditions unique to this application was the requirement that EDC to conduct a performance review at the 5-year point. The performance review includes an analysis of the operator's cleanliness, noise levels, and response to complaints and compliance with all applicable laws and regulations. EDC would then be responsible for using this information to determine whether to continue operating the heliport.

In March 2003 Macquarie Aviation North America, part of the Macquarie Infrastructure

² National Helicopter Corp. of America, v. the City of New York et al, 952 F.Supp 11 (SDNY 1997). Retrieved from <http://caselaw.findlaw.com/us-2nd-circuit/1306579.html>

³ National Helicopter Corp. of America, 952 F.Supp 11.

⁴ National Helicopter Corp. of America, 952 F.Supp 11.

⁵ National Helicopter Corp. of America, v. the City of New York et al, 137 F.3d 81 (2d Cir. 1998) Retrieved from <http://law.justia.com/cases/federal/appellate-courts/F3/137/81/606037/>

Corporation, was chosen as the new fixed-base operator. After further negotiation an agreement was signed in September 2005 for a 12 year term and a minimum investment by the lessee of \$2.2 Million. The heliport is operated under the Macquarie subsidiary, Atlantic Aviation. The current contracts expires on August 31, 2017 with an option for a 6-month extension that would allow the lessee to continue to operate until February 2018. According to our discussions with EDC, the extension available under the current contract will be activated and during that time a competitive RFP for an operator to manage the heliport will be issued and awarded for the entirety of the special permit if approved.

In February 2017, the Department of City Planning (DCP) certified an application by the applicant for an extension of the special permit. This special permit is pursuant to Zoning Resolution Section 74-66, which allows the heliport to continue operating for another 10 years. The conditions for this application reflect the conditions as modified by the court included in the previous permit approved back in 2001, including the prohibiting of weekend flight operations with exceptions made for emergency situations.

Currently the heliport only operates on weekdays from Monday to Friday from 8AM to 8PM. There is a maximum limitation of 28,800 annual flight operations and no touring or sightseeing services are permitted.

In Spring 2016, EDC came before CB6 to seek input for the replacement of the perimeter fence that surrounds the East 34th Street Heliport. In an effort to respond to previous public safety concerns flagged by the community, EDC proposed new lighting and closed-circuit security cameras positioned around the exterior of the heliport. EDC's proposal would replace the current chain link fence with "Type A" non-opaque fencing anchored two feet below grade and rising to eight feet above grade. CB6 issued out a favorable resolution in May 2016 with several requested modifications that were later incorporated into a design presented to the Public Design Commission (PDC). In June 2016 the PDC gave unanimous preliminary approval subject to final review and approval before June 27, 2018.⁶

Area context

The heliport is located at 499 East 34th Street (Block 962, part of Lot 50) between the U.S. Pierhead Line of the East River to the east, the northbound service road of the Franklin D. Roosevelt Drive to the west, a city-owned lot managed by SBS to the north and East 34th Street Ferry to the south, Surrounding the project site are institutional and residential buildings. Institutional uses include NYU Langone Medical Center to the northwest and Bellevue Hospital to the southwest. Residential buildings in close proximity to the project site include Kips Bay Towers to the southwest, 626 First Avenue to the northwest and Rivergate to the west. The buildings in this area range in height from 100 to 300 feet.

There are a number of transportation options accessible to the project site. The closest subway access is the 6 train located at East 33rd Street, which is approximately .57 miles away from the project site. The M15 bus provides northbound service via First Avenue and southbound service

⁶ NYC Public Design Commission. Certificate #25258 (June 27, 2015). Retrieved from <http://www1.nyc.gov/assets/designcommission/downloads/pdf/meeting-minutes-6-27-16-2.pdf>

via Second Avenue within a quarter mile of the project site. The M34 and M34A Select Bus Service provide crosstown service from the East River to Twelfth Avenue with a stop located approximately .06 miles away at the East 34th Street Ferry. The East 34th Street-Midtown ferry terminal is two blocks north of the project site and serves as one of the nodes of the recently launched City-wide Ferry Service.

Additionally Citi Bike has two bike stations installed near the project site, all approximately within a quarter mile radius of the site. Those bike stations are located at the East 34th Street Ferry and the intersections of East 33rd Street and First Avenue. Bike lanes near the site include a northbound lane along First Avenue and southbound lane along Second Avenue. The site is also adjacent to the East River Greenway which runs along the East Side from The Battery and past South Street Seaport to East Harlem with a 2.5 mile gap from East 34th to East 83rd streets in Midtown. A recent announcement by the City to invest \$100 Million will fill in the gap in the greenway from East 53rd to East 61st streets. Construction on this project is expected to begin in 2019 and take at least three years.⁷

A number of educational institutions surround the Project Site. It sits in Manhattan Community Education Council 2. To the north is PS 281 – The River School serving Pre-Kindergarten through third grade. To the west is PS 116 serving kindergarten through fifth grade. To the south is Churchill School, an independent K-12 school. The closest open spaces are St. Vartian Park located at the First Avenue and East 35th Street as well as the East River Esplanade, which have segments north, and south of the project site.

The project site is served by New York Police Department's (NYPD) 13th Precinct, located at 230 East 21st Street. The Fire Department of New York's (FDNY) Engine 21, 16 and Ladder 7 Firehouse is located approximately .4 and .55 miles away. The NYPD and FDNY also have separate marine operations that can respond to emergencies in water.

The heliport is located in an M2-3 District with an as-of-right maximum floor area of 2.0. Parking is not required in this district. According to DCP's website, M2-3 districts are unique to Manhattan. Other nearby zoning districts include C1-9A, C1-9, C2-7, C4-6, C6-2, R8A, and R8. The zoning district has remained unchanged since the special permit was first issued in 1971.

Project Area and Project Site

The site (Block 966, Lot 50) has a total lot area above water of 40,000 square feet, of which 26,442 square feet is used for heliport operations. On the lot are two modular trailers, one north and south of the site, an underground fuel tank, six accessory parking spaces and four helicopter landing pads. Pedestrian and vehicle access is from the FDR service road via East 34th Street. All the remaining areas are open and paved. There are no changes currently planned for the site.

Proposed Actions

Pursuant to Section 74-66 (Heliports) of the Zoning Resolution in C3, C4, C5, C6, C7 or C8 Districts or in any Manufacturing District, the City Planning Commission may permit the

⁷Nir, Sarah M. (2017, April 25). City Commits \$100 Million to Narrowing a Gap in Manhattan Greenway. *The New York Times*. Retrieved from <https://www.nytimes.com/2017/04/25/nyregion/city-commits-100-million-to-narrowing-a-gap-in-manhattan-greenway.html>

construction, reconstruction, or enlargement of heliports and their facilities where the applicant has submitted a site plan showing the location of landing areas, in addition to all other information required in Section 74-20 (REQUIREMENTS FOR APPLICATIONS), provided that the following findings are made:

- a) that the heliport is an appropriate use of the land and will not unduly interfere with surrounding land uses; and
- b) that due consideration has been given to the selection of a site situated near or adjacent to large parks or other open areas, or bodies of water.

The Commission shall refer the application to the Federal Aeronautics Administration (FAA) for the report of such agency as to whether the heliport is either an integral part of, or will not interfere with, the general plan of airports for New York City and the surrounding metropolitan region.

The Commission may prescribe appropriate additional conditions and safeguards to minimize adverse effects on the character of the surrounding area. The City Planning Commission shall require the provision of adequate accessory off-street parking spaces necessary to prevent the creation of traffic congestion caused by the curb parking of vehicles generated by such #uses# and shall determine the required spaces in accordance with the purposes established in the Resolution with respect to the other major traffic-generating facilities.

With regards to the aforementioned Section 74-20 of the Zoning Resolution, an application to the City Planning Commission for the grant of a special permit respecting any of the uses specified in this Chapter shall include:

- a) a site plan showing the location and proposed #use# of all #buildings or other structures# on the site,
- b) the location of all vehicular entrances and exits and off-street parking spaces,
- c) and such other information as may be required by the Commission.

COMMUNITY BOARD'S RECOMMENDATION

At its full board meeting on April 12, 2017, CB 6 passed a favorable resolution, with conditions, to support the granting of a special permit pursuant to Section 74-66 of the Zoning Resolution to renew heliport operations at 499 East 34th Street (Block 961, part of lot 50). The Board conditioned its support of an extension on the following conditions:

- No weekend operations be permitted;
- Flight operations are limited to a maximum of 28,800 flights a year;
- No tour (sightseeing) operations be permitted;
- The operator of the heliport shall provide good maintenance to the terminal buildings and the environment under the control of the City;
- Noise and other environmental impacts will continue to be observed as well as any other public safety considerations;
- Operations be limited (with exception for emergency medical, public safety, fire, police;

- and print and electronic news media) to 8am to 8 p.m., Monday through Friday;
- At the end of the fifth year of the operations under the new lease terms or conditions of the agreement be brought to the Board for its review to provide oversight and ensure compliance with terms and an avenue for community impact;
- The heliport operations be required to maintain adequate lighting, visibility and safe access for pedestrians, vehicles and bicycles in the immediate area outside the perimeter fence in cooperation and coordination with EDC, NYC Department of Transportation and the New York City Police Department.

At the full board meeting 32 voted in favor, 11 opposed, and no abstentions.

BOROUGH PRESIDENT'S COMMENTS

After reviewing the application, it is my opinion that the applicant has laid out a comprehensive argument for continuing heliport operations at the city-owned site. The information provided by the applicant suggests that this use has continued with minimal disturbance to the surrounding community and established a set of parameters which allows this to be an appropriate use at this location. The parameters include controls on noise levels, hours of operations, helicopter uses, and weekend restrictions.

The applicant has met all the conditions of the special permit and provided the required documentation. The M2-3 zoning district supports this as an appropriate location for the heliport given its accommodation of transportation and municipal facilities in other areas where it is mapped. Physical barriers such as the elevated FDR Drive create a buffer between this use and the adjacent mixed-use neighborhood. The location of the heliport is ideally located in close proximity to Midtown Manhattan, still a major destination for potential users of this service.

Additionally, the applicant has provided to DCP information about their Year 5 review required as part of the 2001 special permit. The analysis completed in 2007 concluded that the operator had not exceeded the stipulations of the prior agreement with strengthens the applicants argument for continuing this use.

In our conversations with EDC, I have made clear the need for regular updates to the affected board, councilperson and borough president on the performance of the fixed-base operator regarding compliance with regulations and mitigation against adverse effects resulting from this siting of this use. In response to that, EDC has provided in writing a list of commitments, dated May 22, 2017, attached to my recommendations outlining the agency's commitment to a quarterly reporting framework so that the community is better informed.

The applicants have been specifically responsive to concerns about public safety around the parameter of the site. EDC has committed to constructing a new exterior fence with design and program changes provided by CB6. According to our conversations with the applicant, construction of the new fence will be finished by end of June 2017. Completion of this project and the engagement strategy that was used to reach a consensus on design, point to a credible example of the applicant's longer term commitment to collaborating with the community moving forward.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. 170158 ZSM on the conditions that:

- 1. The conditions outlined by Manhattan Community Board 6 be integrated into an operating agreement, and**
- 2. a quarterly report be provided to the affected board, council person and borough president regarding:**
 - a. noise, cleanliness, and response to complaints (through 311 or otherwise) and compliance with all applicable laws and regulations;**
 - b. the number of flights per month broken down by, but not limited to, heliport operational statistics (i.e. airtaxi, general aviation and military)⁸;**
 - c. the number of variances granted for flights before or after set hours of operations (monthly and cumulative); and**
 - d. during the sixth month of each contract year, an update on any planned maintenance and improvement plans for the site**



Gale A. Brewer
Manhattan Borough President

⁸ Data points supplied by AirNav.com, a supplemental resource for pilots and aviation enthusiasts. Retrieved from <http://www.airnav.com/airport/6N5>

NYCEDC

May 22, 2017

The Honorable Gale A. Brewer
Office of the President of the Borough of Manhattan
1 Centre Street, 19th Floor
New York, New York 10007

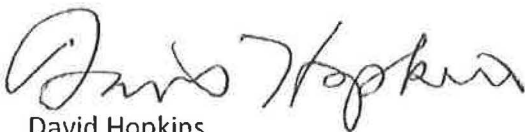
Dear Manhattan Borough President Brewer,

In response to your recommendation to the Department of City Planning's review of the East 34th Street Heliport Special Permit Renewal (ULURP Application No. 170158 ZSM), the New York City Economic Development Corporation hereby agrees to the following proposed reporting framework:

- 1.) Quarterly data on the East 34th Street Heliport submitted to the affected Community Board and Manhattan Borough President that will include:
 - a. The number of flights per month operating out of the East 34th Street Heliport, and
 - b. The number of variances granted for flights before or after set hours of operation per month
- 2.) Update(s) on any planned maintenance and improvement plans for the East 34th Street Heliport site every 6 months.
- 3.) Inclusion of the affected Community Board and Manhattan Borough President on a monthly report currently submitted to the New York City Council that includes a summary of 311 helicopter complaints across the City

We appreciate your ongoing feedback for this vital piece of New York City's transportation infrastructure. Please let me know if you have any additional questions or concerns.

Sincerely,



David Hopkins
Senior Director of Aviation