



Queens Civic Congress

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Queens Civic Congress Testimony to City Planning Commission Community Facility Zoning Text Proposal [N 040202 ZRY]

Thank you for the opportunity to address you on the pressing issue of siting community facilities in New York City. My name is Sean M. Walsh. I am the President of the Queens Civic Congress (QCC) an umbrella organization of over one hundred civic and community associations from every section of Queens. As you well know, we have been the leading voice in the call for reform in the siting of community facilities in this city for the past ten years. In preparing today's testimony, we have consulted with eighteen community boards throughout the entire city and various civic organizations outside of Queens as well as our own membership. After a panel presentation on March 15, 2004, on the text amendments by Department of City Planning (DCP) at a QCC full membership meeting, the membership passed a motion *unanimously* calling on the Department of City Planning to recall this text amendment as regressive and as unsatisfactory. The Community Boards of Queens voted on this subject after a public hearing: two in favor, five against, and seven voted yes with the condition that DCP adopt their specific modifications. I will not review each of the conditional votes. You already have the Community Board resolutions in the record. Suffice to say, the conditions mirror the list of objections the QCC raised in their testimony during the EIS hearings (Copy following this testimony). Unfortunately, the DCP failed to heed our testimony at the EIS hearings and properly scope this zoning text study. As a result, DCP put itself in a position to bar any consideration of most of the conditions mandated by the community boards.

The message should be loud and clear that the two million people of Queens say no to these text amendments. We will not be covered by political threats to "take this or you will get nothing." We will

not be fooled into thinking that there is a “next stage.” We have been told by your staff and Councilman Avella that you will not consider the bulk bonus or the as of right. Despite protestations by elected officials that they will fix the text amendments when the City Council hears this matter, we know they can’t change the text that you send them. City Planning Commission itself can’t make significant changes we want because of the limited scope of the EIS. The residents of Queens and the entire city are now clearly aware that these proposed text amendments are cosmetic and present new legal challenges.

We are not opposed to these text amendments because we did not get everything we want. More than you, we understand the legal and political consequences of any change to the community facility text. *We opposed these text amendments because we will lose more than we gain and because the alleged reforms create more legal problems than the amendments solve.* It remains important that the essential questions underlying the societal value and legal basis for giving community facilities an exemption from the use and bulk rules of the Zoning Resolution be addressed. You have failed to do so. *Over one hundred and civic and community groups, twelve Queens Community Boards, and many others throughout this city say stop and recall these text amendment and address the real concerns of our city’s residential communities.*

Residential communities object to the automatic “as of right” community facilities have to appear on a purely residential block, change the use of the land, and essentially double the building space without *any regard to the impact upon the surrounding residential community.* This is wrong and you do not address this issue with some minor parking requirement amendments and, in fact, you expand community facilities rights in the text amendments further to the detriment of the residential communities.

I would like to explore several specific solutions. The present parking rules in the Zoning Resolution are unconstitutional because they impose a parking regulation on those houses of worship which used fixed seating which is mandated by the total public occupancy of the building. The proposed parking rules would impose parking requirements regardless of whether the seats would be fixed, but the occupancy rule would be based on the “single largest room.” Using the single largest room as the criteria will not regulate the larger multi use Houses of Worship and their ancillary uses. The rule should be the total “public assembly occupancy” of the building. This definition will solve multiple public assemblies in multiple rooms. There is no provision for the House of Worship to provide parking for its own vehicles on site or at another location. The Zoning Resolution should be amended for Houses of Worship to provide off street parking for its own vehicles or that of its employees. Many of the larger

Houses of Worship take up street parking with vans and buses.

The Zoning Resolution currently provides for a process by means of an application to the Board of Standards and Appeals (BSA) to obtain an exemption from the fixed seating requirement. This exemption process and would also apply to the proposed text amendments. We recommend that this be eliminated because it provides an enormous loophole which the larger facilities most certainly take advantage to avoid parking requirements. The Zoning Resolution does not provide the BSA criteria by which to evaluate any such application, thereby creating a constitutional question for any BSA denial of an exemption.

The Zoning Resolution must in accordance with the First Amendment “accommodate” Houses of Worship. “Accommodate” has not been interpreted to mean “as of right” but has been interpreted to require reasonable siting access to a community. The existing text and the proposed text do not meet those criteria. The requirement that a religious group expend a substantial sum of money to seek an exemption under circumstances where there are no criteria for making that determination is subject to a legal attack. No consideration is given religious groups that do not drive to services on their Sabbath and do not use their House of Worship during the week for services or for ancillary uses. We have meet with these groups and believe there are mutual solutions to these issues.

First, increase the two existing exemptions from parking requirements for Houses of Worship for the R-1 through R-6 to 200 people across the board. This will accommodate almost all the small Houses of Worship which have little parking impact during public assembly with a maximum of 200 in the building.

Second, modify the Zoning Resolution to require 100% parking for all House of Worship full time employees and vehicles owned by them. The parking of buses and vans on city residential streets is a serious problem.

Third, simplify the proposed text change to permit the extension of providing parking from within the 600 foot radius to a maximum of 1,000 upon a request by way of a BSA permit to just say within 800 feet without any permit process.

Fourth, amend the Zoning Resolution to provide a simple but limited exemption to meet the Constitutional requirement of “accommodation.” Houses of Worship with no ancillary uses of their

building, i.e., other than worship, should be allowed to be exempt from parking requirements by filing with the Department of Buildings (DOB) for an approval of a Certification of Exemption issued by the DOB Commissioner. The DOB Commissioner may grant such a Certification provided that the head of the House of Worship certifies that on the congregation may not drive to services as part of their religious belief, that there are no other ancillary uses of the House of Worship which would engender people to drive to other events at such location. However, parking would still be required for employee and vehicle owned by the House of Worship.

Fifth, the proposed removal in the most congested locations zoning of existing parking requirements for Houses of Worship for R-6 & R-7 zones is absurd. Do not remove any existing requirements for parking.

Sixth, we take no position on allowing House of Worship in M-1 zones except to say it will not alleviate the problem in residential zones.

The ultimate question of allowing a House of Worship to site itself with a bulk bonus is wrong. Almost every other jurisdiction requires a special permit. Therefore, our Seventh recommendation requires a special permit for Houses of Worship (not for "Use" but for "a Bulk Bonus") whenever a House of Worship seeks to build greater than the zoning allows for a particular lot. The public's Fifth Amendment and the Equal Protection Clause rights mandate and merit protection of the Zoning Resolution.

The remaining issues on Health Care Facilities and various other community facilities are not subject to the same Constitutional scrutiny and should not benefit from any expansion of their existing rights. First, the DCP has done no market study to establish any industry need or health care reason to expand as of right Health Care Facilities. Once these facilities are built in the middle of a residential community, the structure is there forever and most likely will become a for profit business. Second, while it is helpful that Health Care Facilities (in which the doctor does not reside) can no longer site in R-1 & 2 zones, there is no reason to give a bonus for Health Care Facilities in C1 & 2 and R3 & 4 zones. The former borders on lower scale residential zones and the later is subject to the abuse of block busting to achieve the 10,000 square foot. We asked you to limit not increase community facilities. Third, the reason the community facilities go into residential zones is because the land is cheaper than in a commercial zone not as a service for the community. Health care is not community based but based

around large medical facilities. Fourth, you need to return to your our Campus Area Study and work with communities to establish long term health delivery needs. Fifth, while you limit rear yard intrusion by community facilities for a few types of community facilities, you still permit the most egregious community facilities to encroach into rear yards. You must change the text to require a Special Permit process before any community facility can encroach in a rear yard.

The most serious problem facing the city's residential communities is the as of right community facility bulk bonus. Yet, you fail to deal with the issue in the EIS or now in the proposed text changes. You must come to grips with this, because the problem and public outcry will not go away. We are willing to work through solutions with you. Recall this seriously flawed application for which there is no support.

Thank you.

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The Queens Civic Congress Platform may be viewed on the internet at <http://www.queensciviccongress.org/platform/platform-2002-2003.php>.

The earlier January 14, 2004 Testimony by Mr. Walsh (and a Queens Civic Congress One-Pager Critique) on the Proposed Zoning Resolution Text follow:

QUEENS CIVIC CONGRESS TESTIMONY RE:
COMMUNITY FACILITY ZONING TEXT PROPOSAL

N 040202 ZRY & EIS 04DCP025Y

January 14, 2004

Thank you for the opportunity to address you on the pressing issue of siting community facilities in New York City. My name is Sean M. Walsh, I am the President of the Queens Civic Congress (QCC), an umbrella organization of over 100 civic and community associations from every section of the Borough of Queens. For the past ten years, we have been advocating for the total reform of the

Community Facilities provisions of the New York City Zoning Resolution. We recognize from our relationships with civic groups in other boroughs that this is a citywide problem.

While we applaud your initiation of reform in this matter, we believe the proposed zoning text changes and the criteria in the City Environmental Quality Review (CEQR) do not adequately address the problem or measure the impact of community facilities. Let us begin by acknowledging that community facilities provide essential services for all our citizens, but let us also clearly understand the impact these facilities have on the quality of life and the economic impact on surrounding residents.

I

The scoping document fails to address the underlying linchpin of community facilities in New York City which is their special “as of right” treatment as to Use and Bulk requirements in residential zones under the Zoning Resolution. The scoping document does not address the crucial issue of the legal basis for the special treatment of community facilities or assess the need to give community facilities blanket exceptions to the Use and Bulk requirements under the Zoning resolution or the need by any of the defined community facilities for these exceptions. The present and proposed text changes violate the First Amendment, Establishment Clause, and the Fifth Amendment, private property taken for public use.

No where else in the State of New York, or for that matter in most of this country, does a community facility receive an automatic as of right use and bulk exemption to site itself in a residential zone. Most jurisdictions use the special permit process to review the propriety of any use or bulk variances given to community facilities.

II

The scoping purports to address “community facilities” in the city of New York. There are, however, no criteria in the scoping document to review on a citywide basis any of these concerns. The Zoning Resolution is a citywide document, and therefore must first assess the needs and impacts of community facilities in all zoning maps - high and low density - before one can modify any one group. In fact the Department of City Planning (DCP) in its July 21, 2003, synopsis of the proposed texts said, “The Department will continue to study the land use conflicts arising from the interaction between community facilities and residences, and may recommend additional changes in the future.” Therefore, it is imperative that the DCP include scoping criteria now for all zones throughout the city to provide a

uniform, logical, and fair evaluation of the Use Group and Bulk exemptions.

In none of the EIS criteria is the impact of a community facility on the adjoining property owner, whose property rights and value is the most affected, required. The EIS must assess the impact of any Use or Bulk exceptions on the adjoining property owners. Otherwise it will fail to pass both the state and federal constitutional muster. In each and every one of the “Tasks” in the CEQR review, the analysis is not mandated for any of the criteria but is permissive, *i.e.*, “Would have potential to” This is far too subjective a standard to serve as any guide or to withstand any legal challenge.

It is ironic that while most of the propose text changes are allegedly directed at lower residential zones where the structures are around 30 to 35 feet in height, the EIS will only “possibly” review [Task 6] community facility structures greater than 50 feet in height for impact. This only serves to illustrate the point that this “Draft Scope of Work” is not tailored to address the concerns of the residents of Queens not to mention the citizens of our sister boroughs.

III

The proposed text amendment to permit Ambulatory Health Care Facilities (AHCF) to seek by special permit [via BSA] increased bulk up to 10,000 square feet in R-3 & 4 zones underscores the failure of a City Planning Commission (CPC) to measure the needs of the public and the health care facilities in this city. While on the one hand the CPC removes some of the burden of AHCFs in the R-1 & 2, it devastates the R-3 & 4 communities unnecessarily with the increase bulk variance. Today, health care providers do not need or will they necessarily site themselves in a local neighborhood in order to provide health care to the neighborhood. This example is illustrative of the failure to address on a city wide basis the needs of different community facilities in 2004, and the concomitant impact of a 2004 community facility on its adjoining property owners and surrounding community.

In 1961, the word “community” in the term Community Facility meant for the most part service to the surrounding neighbors. It was exactly for that reason in 1961 that community facilities were given use and bulk exceptions to provide *necessary* local services. In 2004, the word “community” in the term Community Facility has *de facto* come to mean service to the metropolitan area. Even the traditional local houses of worship no longer cater solely to people in their neighborhood. This is not a value judgment on the propriety or benefit to society at large of this change in the dynamic of a community facility. It is, however, a recognition of a significant change and a potentially substantial impact on a

community which is not addressed in the proposed text changes or the evaluative process of the CEQA scoping criteria.

Ancillary and commercial uses of community facilities are not addressed in the proposed text changes and the evaluative process of the CEQA scoping criteria, thereby ignoring their impact. The present zoning text permits institutions such as houses of worship, universities, medical facilities, and other community facilities to take advantage of their Use and Bulk exception to use part of their property for profitable or income producing enterprises unrelated to their not for profit mission.

IV

In conclusion, we strongly urge you to withdraw this proposal and reexamine this issue. See: *infra*. Appendix for specific proposed text critique.

Respectfully submitted,

SEAN M. WALSH

President Queens Civic Congress

APPENDIX A (ONE PAGER) Queens Civic Congress Critique Proposed Zoning Resolution Text

These are some of the problems with the DCP's proposed text changes:

- Parking in low-density areas, formula is 1 spot for 10 under the "persons rated capacity" seems too high. It should be around the 1 for 6-8 number. (Town of Hempstead has a 1 to 6 ratio) It should be calculated the same way it is for other facilities otherwise there may be a legal challenge.
- Parking at a rate of 1 space per 400 sq ft of floor area and cellar space in R-1 to R-3 districts should include the word "basement" too. Since both spaces are within the facility it is not clear that a cellar should be counted and a basement not counted. They are both occupyable spaces even though their definition is different under the current code. This difference is a silly notion anyway.
- We have no idea why the provisions of "adult" establishments would be changed under this text. They should be kept the same. This proposal does not deal with them per se
- Persons rated capacity of the largest room of assembly in a house of worship is subject to abuse. It should be rated under the same scrutiny as other buildings that have assemblies of people. It should be for the entire building, since many of the rooms may be heavily occupied.
- The relaxation in the parking requirement being extended from 600 feet from the facility lot to 1000 feet will vitiate any parking relief.
- It is stated that parking spaces must conform to "applicable district regulations". This should be more specific to include parking of 1-vehicle per parking spot so that vehicles are not valet parked and produce over-crowded lots.
- In addition, parking should also be required for all accessory vehicles, e.g. vans. No on-street parking should be allowed for accessory vehicles.
- Special permits [or continued existing exception] from for relief from the proposed parking requirements will undermine the intent of the proposed text. The text gives no criteria for BSA to use in evaluating such a request.
- The proposed removal of existing parking for houses of worship in R-6, R-7-1 & R-7B and in C1 & 2 when mapped in R-6 through R-10 is a regression not a solution.
- The proposed text does not allow for small houses of worship who avail themselves of the Use exception but do not exceed Bulk requirements or those faiths who walk to services. They should receive a blanket exemption from existing Community Facility requirements (except for accessory vehicles, e.g. vans) up to total occupancy of 200 people.
- The granting of up to 10,000 square feet of additional bulk for Ambulatory Health Care Facilities (AHCF) in R-3 & 4 districts, which is the predominate zone in the Borough of Queens, is an outrage. There is no need in today's practice of medicine for such enormous AHCF to be sited in primary residential zones. Furthermore, the text provides no criteria for BSA to decide these applications.
- The proposed text purports to solve the rear yard construction in zones R-3 through R-10 but does so by only prohibiting rear yard construction for some but not all Use groups. Schools, Day Care centers, Group Homes, Houses of Worship will still be able to destroy open rear yards. The proposed text does not correct present zoning text which permits institutions such as houses of worship, universities, medical facilities, and other community facilities to take advantage of their Use and Bulk exception to use part of their property for profitable or income producing enterprises unrelated to their not for profit mission.
- The DCP proposal does not deal with the bulk bonus concept. The ability for all types of community facilities to double the bulk on residential property as of right without any special permit review to ascertain if there is any negative impact on the immediate neighbors or the community at-large, is an abuse of the public. This Bulk as of right exception must be eliminated.

Queens Civic Congress Members

Assoc. of Old Forest Hills Bayside Hills Civic Assoc. Bayswater Civic Assoc. Bay Terrace Community Alliance Beachside Bungalow Preservation Assoc. Bellaire/Belvill Civic Assoc. Belle Harbor Property Owners Bellerose-Commonwealth Civic Assoc. Bellerose-Hillside Civic Assoc. Bell Park Manor-Terrace Community Council Bowne Park Civic Assoc. Briarwood Community Assoc. Cambria Heights Civic Assoc. College Point Civic Taxpayers Assoc. COMET Concerned Citizens of Laurelton Creedmoor Civic Assoc. Doug-Bay Manor Civic Assoc. Douglaston Civic Assoc. Douglas Manor Assoc East Flushing Civic Assoc. Federation of Laurelton Block Associations Floral Park Community Council Flushing on the Hill Civic Assoc. Flushing Heights Civic Assoc. Flushing Suburban Civic Assoc. Forest Hills Chamber of Commerce Forest Hills Community & Civic Assoc. Forest Hills Crescents Assoc. Forest Hills-Van Court Assoc. Fresh Meadows Homeowners Assoc. Georgetown Mews Glen Oaks Village Owners Greater Whitestone Taxpayers Civic Association Harding Heights Civic Assoc. Harrison Place/Sunnyside Gardens Hillcrest Estates Civic Assoc. Hilltop Village Co-op #4 Hollis Hills Civic Assoc. Holliswood Civic Assoc. Hollis Park Gardens Assoc. Holly Civic Assoc. Howard Beach Civic Forum Hunters Point Community Coalition Hyde Park Gardens Jackson Heights Beautification Group Jamaica Estates Assoc. Jamaica Hill Assoc. Kew Gardens Civic Assoc. Kew Gardens Hills Civic Assoc. Kissena Park Civic Assoc. Little Neck Bay Civic Assoc. Little Neck Community Assoc. Little Neck Pines Assoc. Locust Manor Neighborhood Civic Assoc. Lost Community Civic Assoc. Malba Civic Association Middle Village Property Owners Mitchell-Linden Civic Assoc. 97 Place Block Assoc. Newtown Civic Assoc. North Bellerose Civic Assoc. North Flushing Civic Assoc North Hills Estates Civic Assoc. North Queens Homeowners Civic Assoc. North Star Civic Assoc. Norwood Neighborhood Association Oakland Terrace/Gardens Council Off Broadway Homeowners Ozone Tudor Civic Assoc. Queensboro Hills Neighborhood Assoc. Queens Colony Civic Assoc. Queens Community Civic Corp. Queens Village Civic Assoc. Ramblersville-Hawtree Civic Assoc. Richmond Hill Historic Assoc. Ridgewood Property Owners Assoc. Robinwood Property Owners Rockaway Action Committee Rockaway Beach Civic Assoc. Rocky Hill Civic Assoc. Rosedale Civic Assoc. Royal Ranch Assoc. Sagamore Douglaston Civic Assoc. Southeast Queens Coalition of Concerned Neighbors South Ozone Park Coalition of Block Associations South Ozone Park West Civic Assoc. Springfield/Rosedale Community Assoc. Sunnyside Gardens Harrison Place Surrey Estates Civic Assoc. The Federation of Civic Associations of Southeast Queens The Property Civic Assoc. Union Turnpike Merchants Assoc. United Forties Civic Assoc. United Neighbors Civic Assoc. of Jamaica Utopia Estates Civic Assoc. Utopia Improvement Assoc. Village Mall at Hillcrest Waldheim Neighborhood Assoc. Wayanda Civic Assoc. West Cunningham Park Civic Assoc. Westmoreland Assoc. Woodside Community Council