



**CITY PLANNING COMMISSION**

May 21, 2014 / Calendar No. 7

C 100202 ZMK

**IN THE MATTER OF** an application submitted by 529 Empire Realty Corporation pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 17b:

1. eliminating from within an existing R5 District a C1-3 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue;
2. eliminating from within an existing R7-1 District a C1-3 District bounded by:
  - a. Empire Boulevard, a line 100 feet westerly of Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, and a line 150 feet westerly of Brooklyn Avenue; and
  - b. a line 100 feet southerly of Empire Boulevard, Lamont Court, a line 150 feet southerly of Empire Boulevard, and Brooklyn Avenue;
3. changing from an R5 District to an R7A District property bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue; and
4. establishing within a proposed R7A District a C2-4 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue;

Borough of Brooklyn, Community District 9, as shown on a diagram (for illustrative purposes only) dated December 16, 2013 and subject to the conditions of CEQR Declaration E-329.

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This application for amendment to the zoning map was filed by 526 Empire Realty Corporation on January 11, 2010 to rezone an R5/C1-3 district to an R7A/C2-4 district and to remove a small portion of C1-3 commercial overlay from an existing R7-1 district to facilitate the development of a seven-story mixed-use building and to better reflect the existing built density and land use

pattern of the rezoning area. The project area consists of four block corners that are generally located at the intersection of Empire Boulevard and Brooklyn Avenue in the Wingate section of Community District 9, Brooklyn.

## **BACKGROUND**

The proposed rezoning area is located along block frontages to the north and south of Empire Boulevard, a 100-foot wide thoroughfare that is improved with bicycle lanes, planted medians, protected pedestrian refuges and lined with six-story apartment buildings and two- and three-story homes and retail buildings. South of Empire Boulevard, the rezoning area is predominantly developed with large three- to six-story apartment buildings. North of Empire Boulevard, the rezoning area contains two-story homes, as well as a two-story commercial retail building and a parking lot owned by the applicant. The proposed zoning map amendment would change the existing R5/C1-3 and R7-1/C1-3 districts to R7A/C2-4 and R7-1 districts to better reflect the existing built form and density and to allow development of a mixed-use building with ground floor commercial space, second floor community facility space and 68 dwelling units on the applicant's property.

The area surrounding the proposed rezoning area is generally developed with six-story apartment buildings, low-rise retail buildings and public institutions, while the mid-blocks are typically developed with two-story detached and semi-detached homes. In general, the area north of Empire Boulevard is zoned R5, and the areas south are zoned R7-1. The rezoning area is accessible to public transportation via MTA's "2" and "5" subway lines located approximately two blocks to the west along Nostrand Avenue, and bus stops for the B12, B43 and B44 lines within close proximity.

The majority of the rezoning area is currently zoned R5/C1-3 and is predominantly developed with two- story homes and three- to six-story apartment buildings with ground-floor retail space. These apartment buildings are built to the density compatible with an R7 district and are

significantly over-built under the current R5 zoning regulations which permit up to four stories and 1.25 FAR.

The applicant owns the majority of the rezoning area to the north of Empire Boulevard which consists of four tax lots (Lots 66, 74, 75, and 76) on Block 1311 and which total 28,742 square feet in size. The applicant's site is currently developed with a two-story commercial building, an accessory surface parking lot and a small three-story commercial building. The two-story commercial building is currently occupied by a supermarket and local retail services. The small three-story building includes a ground floor retail store and its upper floors are currently vacant.

The applicant proposes to demolish the existing buildings on their property and to redevelop the site with a new, seven-story mixed-use building, with approximately 24,200 square feet of ground-floor retail space, approximately 21,500 square feet of second-floor community facility space, and approximately 68,700 square feet of residential floor area, or about 68 dwelling units, on the upper floors. About 66 accessory parking spaces would be provided on the cellar level, while the sub-cellar level would include storage, mechanical spaces and various amenities.

In order to facilitate the proposed development, the applicant is requesting a Zoning Map amendment to rezone from R5/C1-3 and R7-1/C1-3 districts to R7A/C2-4 and R7-1 districts. The R7A/C2-4 district would be mapped to a depth of about 120 feet along the north side of Empire Boulevard, and approximately 100 feet deep along the south side of the Boulevard. Along the south side of the Boulevard, the existing zoning would be changed from R5/C1-3 to R7A/C2-4 to better reflect the existing land use patterns and to allow for a wider variety of locally-oriented commercial uses.

The existing R5 district is a low-density residential district with a maximum Floor Area Ratio (FAR) of 1.25 for residential uses and 2.0 for community facility uses. R5 districts allow a maximum street wall height of 30 feet, and after a 15-foot setback, a maximum building height of 40 feet. Typically R5 districts result in 3-story attached houses and smaller apartment buildings. The existing C1-3 district permits commercial uses up to a maximum FAR of 1.0 and

is typically mapped in residential neighborhoods along major avenues to accommodate local retail and personal services such as supermarkets, restaurants and beauty salons.

The proposed R7A district is a medium-density contextual zoning district with a maximum FAR of 4.0 and a maximum building height of 80 feet after setback at 65 feet. The zoning district is typically mapped along major thoroughfares and requires the Quality Housing Program and results in buildings that are similar and compatible with existing buildings in an area. The proposed C2-4 district permits up to 2.0 FAR for commercial uses and, in addition to all the Use Groups currently allowed within the existing C1-3 district, allows a slightly broader range of local services and retail establishments intended to serve a larger area.

## **ENVIRONMENTAL REVIEW**

The subject application (C 100202 ZMK) was reviewed pursuant to the Rules of Procedure for City Environmental Quality Review (CEQR) Executive Order No. 91 of 1977, and the State Environmental Quality Review Act (SEQRA) set forth in Volume 6 of the New York Code of Rules and Regulations (NYCRR), Section 617.00. The designated CEQR number is 10DCP020K. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on December 16, 2013, subject to the conditions of CEQR Declaration E-329.

## **UNIFORM LAND USE REVIEW**

This application (C 100202 ZMK) was certified as complete by the Department of City Planning on December 16, 2013, and was duly referred to Brooklyn Community Board 9 and to the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York,

Section 2-02(b).

### **Community Board Public Hearing**

Community Board 9 held a public hearing on this application (C 100202 ZMK) on February 11, 2014, and on February 25, 2014, by a vote of 29 in favor, 3 against and 4 abstaining, adopted a resolution recommending approval of the application with the following condition:

That the applicant, 529 Empire Realty Corporation be required to provide affordable housing when developing the property.

### **Borough President Recommendation**

This application (C 100202 ZMK) was considered by the Borough President, who issued a recommendation on March 28, 2014, approving the application with the following conditions:

1. That prior to City Council review, the applicant provides its intended stipulation to the Council indicating that the development would be pursued according to:
  - a. establishing a mechanism to provide that the property would be redeveloped with retail space where not less than 12,000 sf and preferable 20,000 sf be reserved for FRESH supermarket use and at least 20,000 sf be set-aside for community facility use such as medical use; and,
  - b. developing according to the FRESH zoning floor area regulations and providing not less than twenty percent of the housing units set aside to AMI household incomes consistent with the filing for 421-a benefits or the City's Inclusionary Housing Program, and that the City Council have such stipulations implemented prior to granting its approval.
2. That the applicant:
  - a. coordinates with supermarket operator that would carry product lines that significantly expand upon the more focused offering of the existing operation; and,
  - b. retains Brooklyn-based contractors and subcontractors, especially those that are designated MWBE establishments as a means to meet or exceed standards per Local Law 1 (not less than 20 percent participation) and coordinates with commercial and community facility tenants to pursue the

hiring of Crown Heights, Prospect-Lefferts Garden and Wingate residents as well as prioritizing staffing outreach to returning military veterans and coordinates with an appropriate monitoring agency.

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

On March 19, 2014 (Calendar No. 1) the City Planning Commission scheduled April 2, 2014 for a public hearing on this application (C 100202 ZMK). The hearing was duly held on April 2, 2014, (Calendar No. 17). There was one speaker appearing in favor of the application and none in opposition.

The speaker in favor of the application was a representative of the applicant who described the intended mixed-use development on the applicant's property and the proposed rezoning action that facilitates the development. The representative stated, in response to questions from the Commission, that the applicant intends to incorporate 20 percent of affordable housing units as well as a FRESH supermarket pursuant to the Zoning Resolution Article VI, Chapter 3 when developing the property.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that this application (C 100202 ZMK) for an amendment to the Zoning Map is appropriate.

The action would facilitate the development of a seven-story, mixed-use building with ground-floor commercial retail, second-floor community facility uses and residential use above, and would bring existing, dense apartment buildings and homes into compliance with zoning to better reflect the existing land use patterns and density within the rezoning area.

The proposed rezoning area is located along Empire Boulevard, a 100-foot wide thoroughfare that is improved with bicycle lanes, planted medians, protected pedestrian refuges and lined with six-story apartment buildings and two- and three-story homes and retail buildings. The rezoning area south of Empire Boulevard is predominantly developed with larger three- to six-story apartment buildings. To the north of Empire Boulevard, the rezoning area contains two-story homes, as well as a two-story commercial retail building and a parking lot owned by the applicant. The proposed zoning map amendment would change the existing R5/C1-3 and R7-1/C1-3 districts to R7A/C2-4 and R7-1 districts to better reflect the existing built form and density and to allow development of a mixed-use building on the applicant's property.

In response to the Borough Presidents recommendation to utilize FRESH program per Zoning Resolution Article VI, Chapter 3, the applicant's representative, in a letter dated March 26, 2014, stated that the applicant was committed to providing a FRESH-program supermarket and would apply for the required certification pursuant to the program to provide a supermarket of up to 20,000 square feet in compliance with the program.

In response to the Community Board's and Borough President's recommendations regarding the inclusion of affordable housing, the applicant's representative, in a letter dated March 26, 2014, further stated that the applicant was committed to providing affordable housing through programs available at the time that the project moved forward. Such programs could include the City's Inclusionary Housing program and 421-a tax abatement which requires that up to 20 percent of the total residential floor area of the building be set aside for permanent affordable housing or that 20 percent of residential units be set aside for affordable housing during the term of the abatement, respectively.

The Commission notes that the applicant's property within the rezoning area is within the 421-a Geographic Exclusion Area, which provides substantial incentives for the creation of affordable housing. In order to receive a tax exemption pursuant to 421-a for a new residential building, the developer would be required to set aside 20 percent of all housing units as affordable to low-income households for the 25-year term of the abatement.

The Commission also notes that, as described in Housing New York, the Mayor's recently released plan for affordable housing, the Department of City Planning is currently initiating a study intended to establish a framework for the creation of a mandatory Inclusionary Housing program, which would be applied to land use actions that substantially increase the potential for new housing. Following this study, and consideration of relevant legal and policy issues, the Department will consider whether follow-up actions may be warranted to apply an Inclusionary Housing requirement to areas such as that of the proposed action, which were rezoned as part of actions already in the ULURP process at the time Housing New York was released.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant 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 described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and subsequently amended, is further amended by changing the Zoning Map, Section No. 17b:

1. eliminating from within an existing R5 District a C1-3 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue;
2. eliminating from within an existing R7-1 District a C1-3 District bounded by:
  - a. Empire Boulevard, a line 100 feet westerly of Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, and a line 150 feet westerly of Brooklyn Avenue; and



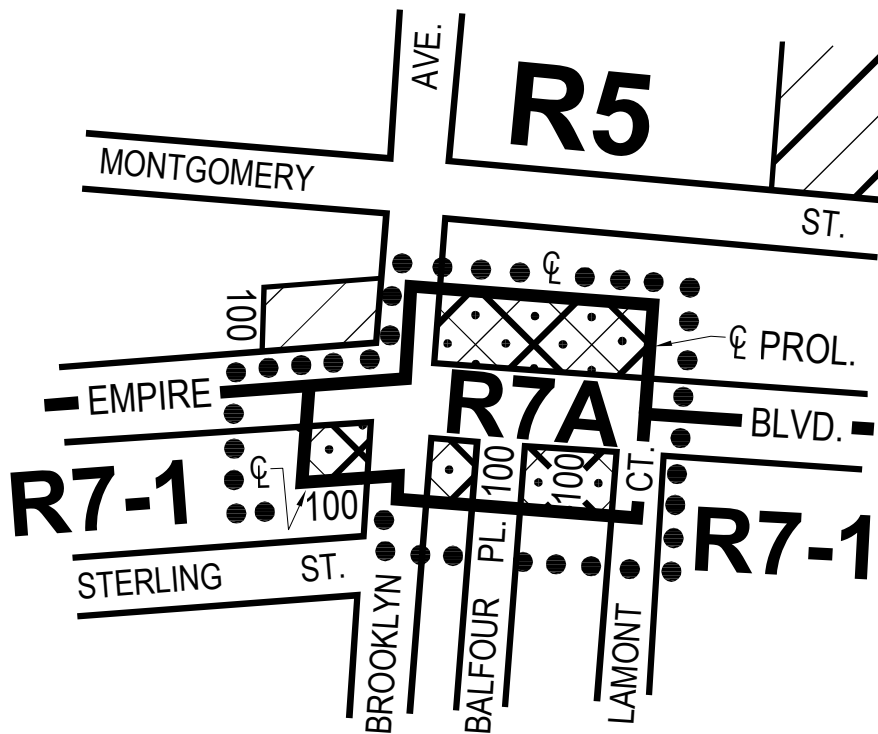
- b. a line 100 feet southerly of Empire Boulevard, Lamont Court, a line 150 feet southerly of Empire Boulevard, and Brooklyn Avenue;
3. changing from an R5 District to an R7A District property bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue; and
4. establishing within a proposed R7A District a C2-4 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue;

Borough of Brooklyn, Community District 9, as shown on a diagram (for illustrative purposes only) dated December 16, 2013 and subject to the conditions of CEQR Declaration E-329.

The above resolution (C 100202 ZMK), duly adopted by the City Planning Commission on May 21, 2014 (Calendar No. 7), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD**, Chairman  
**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**MICHELLE R. De La UZ, MARIA M. DEL TORO, ANNA HAYES LEVIN,**  
**ORLANDO MARÍN**, Commissioners

**JOSEPH I. DOUEK**, Commissioner, Recused

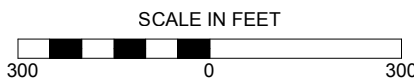







CITY PLANNING COMMISSION  
 CITY OF NEW YORK  
 DIAGRAM SHOWING PROPOSED  
**ZONING CHANGE**  
 ON SECTIONAL MAP  
**17b**

New York, Certification Date  
 DECEMBER 16, 2013

BOROUGH OF  
**BROOKLYN**

J. Miraglia, Director  
 Technical Review Division



- NOTE:**
-  Indicates Zoning District Boundary.
  -  The area enclosed by the dotted line is proposed to be rezoned by eliminating C1-3 Districts from within existing R5 and R7-1 Districts, by changing an R5 District to an R7A District, and by establishing a C2-4 District within the proposed R7A District.
  -  Indicates a C1-1 District.
  -  Indicates a C1-3 District.
  -  Indicates a C2-4 District.

THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.



# Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #: **100202 ZMK**

Project Name: **Empire Boulevard Rezoning**

CEQR Number: 10DCP020K

Borough(s): Brooklyn

Community District Number(s): 9

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 #C100000ZSQ"
  - 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:

**SEE ATTACHED**

<b>Applicant(s):</b> 529 Empire Realty Corporation 298 Fifth Avenue New York, NY 10001	<b>Applicant's Representative:</b> Jesse Masyr, Esq Fox Rothschild LLP 100 Park Avenue, Suite 1500 New York, NY 10017
<b>Recommendation submitted by:</b> Community Board 9	
<b>Date of public hearing:</b> FEBRUARY 25, 2014 <b>Location:</b> M.S. 61 - 400 EMPIRE BLVD., BKLYN. NY, 11225	
<b>Was a quorum present?</b> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> <small>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</small>	
<b>Date of Vote:</b> FEBRUARY 25, 2014 <b>Location:</b> M.S. 61 - 400 EMPIRE BLVD. BKLYN, NY 11225	
<b>RECOMMENDATION</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>Please attach any further explanation of the recommendation on additional sheets, as necessary.</b> (See attached)	
<b>Voting</b> # In Favor: 29 # Against: 03 # Abstaining: 04 Total members appointed to the board: 45	
<b>Name of CB/BB officer completing this form</b> PEARL R. MILES	<b>Title</b> DISTRICT MANAGER
	<b>Date</b> FEBRUARY 26, 2014

*Empire Boulevard Rezoning*

CD 9

N 100202 ZMK

**IN THE MATTER OF** an application submitted by 529 Empire Realty Corporation pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 17b:

1. eliminating from within an existing R5 District a C1-3 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue;
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  - a. Empire Boulevard, a line 100 feet westerly of Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, and a line 150 feet westerly of Brooklyn Avenue; and
  - b. a line 100 feet southerly of Empire Boulevard, Lamont Court, a line 150 feet southerly of Empire Boulevard, and Brooklyn Avenue;
3. changing from an R5 District to an R7A District property bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue; and
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Borough of Brooklyn, Community District 9, as shown on a diagram (for illustrative purposes only) dated December 16, 2013 and subject to the conditions of CEQR Declaration E-329.

Community Board 9  
890 Nostrand Avenue  
Brooklyn, NY 11225

**Community Board Recommendations – Application #100202 ZMK**

Approve with modifications/conditions

**Condition**

That the applicant, 529 Empire Realty Corporation be required to provide affordable housing when developing the property.

Community Board 9, Brooklyn  
Date of vote: February 25, 2014

**Brooklyn Borough President Recommendation**

**CITY PLANNING COMMISSION**

22 Reade Street, New York, NY 10007

CalendarOffice@planning.nyc.gov



**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 #: 100202 ZMK**

**Empire Boulevard Rezoning**

In the matter of an application submitted by 529 Empire Realty Corporation, pursuant to Sections 197-c and 201 of the New York City Charter, for amendment of the Zoning Map, Section 17b:

1. Eliminating from an existing R5 District a C1-3 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard and Brooklyn Avenue;
2. Eliminating from within an existing R7-1 District a C1-3 District bounded by:
  - a. Empire Boulevard, a line 100 feet westerly of Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, and a line 150 feet westerly of Brooklyn Avenue; and
  - b. A line 100 feet southerly of Empire Boulevard, Lamont Court, a line 150 feet southerly of Empire Boulevard and Brooklyn Avenue;
3. Changing from an R5D District to an R7A District property bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, Empire Boulevard, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue; and
4. Establishing within a proposed R7A District a C2-4 District bounded by a line midway between Montgomery Street and Empire Boulevard, Lamont Court and its northerly centerline prolongation, a line 100 feet southerly of Empire Boulevard, Brooklyn Avenue, a line midway between Empire Boulevard and Sterling Street, a line 100 feet westerly of Brooklyn Avenue, Empire Boulevard, and Brooklyn Avenue;

To facilitate the development of a 7-floor mixed use building with 68 dwelling units, with more than 24,000 square feet for retail approximately 21,600 sf for community facility space and 66 enclosed parking spaces at 529 Empire Boulevard.

COMMUNITY DISTRICT NO. 9

BOROUGH OF BROOKLYN

**RECOMMENDATION – 100202 ZMK**

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

BOROUGH PRESIDENT

March 28, 2014

DATE

## **RECOMMENDATION FOR THE PROPOSED EMPIRE BOULEVARD REZONING 100202 ZMK**

The applicant seeks to construct a seven-story (114,600 square feet) mixed-use residential, commercial (approximately 24,000 square feet) and community facility (approximately 21,500 sf) building with approximately 68 dwelling units and 66 below-grade parking spaces.

On March 19, 2014, the Borough President held a public hearing on the proposed rezoning. The representative for the applicant noted that the requested rezoning would provide additional floor area, broaden the range of retail/commercial uses, decrease the degree of non-compliance for several buildings and remove commercial zoning from properties not containing commercial use and where the introduction of such uses would conflict with established residential character. The expectation is that the existing supermarket tenant would reestablish the supermarket in the new building and that the applicant would pursue certification from the Department of City Planning according to the FRESH zoning regulations. The environment assessment for the rezoning studied this possibility. In response to the Deputy Borough President's questioning regarding consideration by the applicant of the interest of Community Board 9 to provide affordable housing when developing the property, the representative expressed a willingness to look at funding assistance programs and was willing to memorialize in a letter. The Deputy Borough President expressed that the development should be a model that best fits the needs of the community as a true partnership.

Finally, the Deputy Borough President noted the Borough President's policy to maximize job opportunities for Brooklynites on local construction projects and was seeking for the applicant to incorporate Brooklyn based contractors, including participation by MWBEs and Brooklyn material supply firms in the construction process. The representative noted that the owners are local community members and are committed to these same interests.

### **CONSIDERATION**

Community Board 9 approved the application with a condition seeking the inclusion of affordable housing.

The primary building to be demolished to facilitate the intended development has 12,000 square feet of retail space that is occupied by a supermarket and 6,000 sf of vacant space that had been occupied by Kingsbrook Jewish Medical Center on the ground floor as well as 17,000 sf of storage space and approximately 6,800 sf used for accessory parking for retail uses.

As the development site is in Community District 9, the project is eligible to be developed according to the Zoning Resolution's FRESH supermarket provision – which permits up to 20,000 square feet of additional residential development for each square foot of supermarket use floor area when certain conditions are met. If the development were to proceed according to the FRESH initiative, the number of anticipated residential would increase from the 68 stated to 80 or more units.

The goal of developing FRESH food stores is to promote healthy lifestyles by developing food stores that sell a healthy selection of food products in locations that are easily accessible to nearby residents. A FRESH store is required to have at least 50 percent (minimum of 3,000 sf) of the store area utilized for the sale of a general line of food products intended for home preparation,

consumption, and utilization. Also, at least thirty percent (minimum of 2,000 sf) of space for the sale of perishable goods, such as dairy, fresh produce (at least 500 sf), frozen foods and fresh meats.

For the applicant's site, the proposed zoning requires the planting of ten street trees and onsite landscaping and recreational space that would be on the lower and upper roof sections. A portion of the retail space is being considered for the supermarket that currently resides on site. The envisioned retail and community facility spaces are projected to employ approximately 85 persons per each use, a significant increase over the number of jobs that are now being provided.

It is the Borough President's policy to support land use actions that are compatible with surrounding land uses and would benefit the neighborhood while providing a supermarket, community facility services and a substantial number of new employment opportunities.

The proposed rezoning would create opportunities for new residential uses on underutilized sites in an area where there is demand for affordable and market-rate housing. The proposed development would complement existing residential and commercial uses in the neighborhood. This would reinforce and enhance the emerging character of the area. The zoning restricts development to maximum heights that is in scale with many existing buildings in the area, particularly those fronting the south side of Empire Boulevard. It would bring a number of properties that exceed the allowable floor area ratio of the existing R5 zoning district to be closer to or into compliance of the R7A district, particularly 440 and 441 Brooklyn Avenue and 7 Balfour Place. The removal of the commercial overlay from properties that are solely residential would better reflect the use of these lots and thus protect the neighbors from commercial intrusion into the residential portions of these blocks. There are five properties along Brooklyn Avenue at Empire Boulevard and five properties fronting Empire Boulevard at Lamont Court that would gain development rights that one day might lead to such properties to be redeveloped individually or assembled in time as a result of this rezoning. Such redevelopment would be appropriate as it would be in context to the existing apartment buildings and the applicant's proposal.

The Borough President is generally supportive of the developer's intent to dedicate approximately 40 percent of the zoning floor area to community facility and supermarket uses that do not maximize the potential for profit. He believes that these are important uses that would greatly benefit the community.

Though the Borough President is generally supportive of the rezoning, he has concerns regarding the lack of guarantees that supermarket and community medical space would be part of the actual development on the applicant's properties. In addition, he believes that the applicant should develop the up to 20,000 sf of floor area for supermarket use according to the FRESH zoning incentive, as this, in concert with 421-a benefits and standard government financing programs, would allow the overall development to provide additional public benefits in the form of affordable housing.

#### Supermarket

The Borough President is concerned with the limited access to affordable fresh food stores in many neighborhoods. It is a top priority of the Borough President to create and/or maintain access to healthy food options. In order for all of Brooklyn to flourish, it is imperative that the Borough's residents have an adequate supply of supermarkets and grocery stores in their neighborhoods to



access fresh and affordable foods. He understands that supermarkets receive no incentives to open and that rental prices continue to hamper their existence. In light of this, the Borough President has been seeking to establish more supermarkets throughout Brooklyn as well as to ensure that existing locations are afforded the opportunities to remain in operation.

This proposal provides the opportunity for supermarket use to be reestablished and increased in size as part of the redevelopment of this site. While the Borough President appreciates the developer's intent to provide space for a supermarket, such commitment is lacking a guarantee. This building's construction should proceed only according to the filing of a legal instrument that assures that a specific minimum amount of the floor area would be set aside for supermarket use and that such use be consistent with the Zoning Resolution's FRESH requirements for the type and proportion of food products made available, whether or not the building plans are filed according to the floor area incentive applicable to FRESH qualifying food stores. Furthermore, given that the intended supermarket spaces would be nearly double the size of the existing store, he encourages the developer to coordinate with the supermarket operator to carry product lines that significantly expand upon the more limited kosher offers of the existing operation.

It is the Borough President's policy to obtain a written commitment or explanation that conveys a suitable assurance that the represented community benefits are actually produced. In a letter sent to the Borough President dated March 26, 2014 (attached), the applicant has expressed a commitment to provide a supermarket use to this site.

#### Community Medical Use

The Borough President is concerned that not all Brooklyn neighborhoods have adequate access to health care services. Among his priorities is to have accessible, affordable and state-of-the-art medical services available in all neighborhoods of Brooklyn. In the proposed R7A zoning district, there is no additional floor area for community facility use above and beyond what is available for residential development. Thus, provision of community facility space is subject to the willingness of individual developers to forgo more lucrative residential development. The Borough President seeks certainty that such community-oriented medical space is actually part of the development.

In a letter sent to the Borough President dated March 26, 2014 (attached), the applicant has expressed a commitment to provide for community facility uses on the second floor which may include a medical facility and/or other community facility uses.

#### Affordable Housing

The Borough President is committed to providing opportunities for Brooklyn's working families to have access to affordable housing. When applicable, it is the Borough President's policy for new residential developments, subject to ULURP, to provide a minimum of 20 percent affordable units. Though, if the project is developed as represented, the developer would be providing substantial public benefit with approximately 40 percent of the intended zoning floor area, the Borough President believes that there is room to expand on this public benefit if the project were developed pursuant to the Zoning Resolution's FRESH floor area provision. This would allow for an additional up to 20,000 sf that can be used for housing development, increasing the potential for residential development from, approximately 70,000 sf to approximately 90,000 sf. Under this scenario, the Borough President believes it to be reasonable for the development to provide at least twenty percent of the residential floor area consistent with not exceeding the income limits for Area Median Income according to the City's 421-a real estate tax abatement program or Inclusionary

Housing Program, where such affordable units would be subject to at least a 50 percent Community District 9 preference for income-eligible households.

In a letter sent to the Borough President dated March 26, 2014 (attached), the applicant has expressed a commitment to provide affordable housing within the residential portion of the new building.

#### Jobs

The Borough President is concerned that too many residents of Brooklyn are unemployed or underemployed. It is his policy to promote economic development as a means of creating more employment opportunities as well as promoting Brooklyn-based businesses, including those that qualify as MWBE. As new construction, this development provides an opportunity for the developer to retain Brooklyn-based contractors and subcontractors, especially those that are designated MWBE establishments as a means to meet or exceed standards per Local Law 1 (not less than 20 percent participation). With the intended supermarket and community medical space, there is expected to be approximately 170 jobs created (though the number of net jobs is less due to the closure of the existing supermarket and other existing tenants. The Borough President believes that the developer should coordinate with the eventual commercial and community facility tenants to pursue the hiring of Crown Heights, Prospect-Lefferts Garden and Wingate residents as well as prioritizing staffing outreach to returning military veterans and coordinates with an appropriate monitoring agency.

In a letter sent to the Borough President dated March 26, 2014 (attached), the applicant has expressed a commitment to use MWBE providers and local work force in the build out of the new building and would hope to use a minimum of 20 percent MWBEs. The applicant welcomes guidance in the monitoring of such efforts.

#### **RECOMMENDATION**

Be it resolved that the Borough President of Brooklyn, pursuant to sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve the land use action requested according to the following conditions:

1. That prior to City Council review, the applicant provides its intended stipulation to the Council indicating that the development would be pursued according to:
  - a) establishing a mechanism to provide that the property would be redeveloped with retail space where not less than 12,000 sf and preferable 20,000 sf be reserved for FRESH supermarket use and at least 20,000 sf be set-aside for community facility use such as medical use; and,
  - b) developing according to the FRESH zoning floor area regulations and providing not less than twenty percent of the housing units set aside to AMI household incomes consistent with the filing for 421-a benefits or the City's Inclusionary Housing Program,

and that the City Council have such stipulations implemented prior to granting its approval.

2. That the applicant:

- a) coordinates with supermarket operator that would carry product lines that significantly expand upon the more focused offering of the existing operation; and,
- b) retains Brooklyn-based contractors and subcontractors, especially those that are designated MWBE establishments as a means to meet or exceed standards per Local Law 1 (not less than 20 percent participation) and coordinates with commercial and community facility tenants to pursue the hiring of Crown Heights, Prospect-Lefferts Garden and Wingate residents as well as prioritizing staffing outreach to returning military veterans and coordinates with an appropriate monitoring agency.



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March 26, 2014

By Hand

Honorable Eric Adams  
President of the Borough of Brooklyn  
209 Joralemon Street  
Brooklyn, NY 11201

Re: ULURP No. 100202 ZMK  
Empire Boulevard Zoning Map Amendment

Honorable Borough President Adams,

Thank you and Deputy Borough President Reyna and your staff for providing me the opportunity to discuss the Empire Boulevard Rezoning application. The application will facilitate the development of a new mixed-use building that will benefit the surrounding community and enhance the local economy. Community Board No. 9 voted overwhelmingly in favor of the application with the condition that the applicant, 529 Empire Realty Corporation, provide affordable housing when developing the property.

As currently planned, the development will include a supermarket and other commercial uses on the first floor, community facility uses on the second floor and residential uses above. As you know, there is currently a supermarket on site with an existing lease who the applicant is currently in negotiations with as a tenant in the new building. While this is still a work in progress, the application before you did study the possibility of locating a supermarket on site that could avail itself to the FRESH program as described in the New York City Zoning Resolution. Therefore, should this proceed favorably, the applicant is committed to bringing a supermarket use to the site and can readily apply to the

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Department of City Planning for the certification under the FRESH program to provide up to a 20,000 square foot supermarket. In addition to the retail on the first floor the applicant is proposing and committed to providing for community facility uses on the second floor which may include a medical facility and/or other community facility uses.

The proposed new building will contain residential uses above the ground and second floors. As the Deputy Borough President so aptly explained during the hearing, the Borough President's office is looking for an affordable model that could fit both the applicant and community needs and we strongly support such a model. While the rezoning application before you seeks no bonus for affordable housing, the applicant will commit to provide affordable housing within the residential portion of the new building through programs available at the time the project moves forward similar to the inclusionary models and 421-a programs which provide for 20% affordable units. In addition, there may be additional programs that become available when the development begins, and the applicant will explore the possibility of such additional affordable programs.

Finally, the Deputy Borough President highlighted the importance of opportunities to maximize local employment in Brooklyn and job opportunities for MWBEs. The applicant strongly endorses such opportunities and agrees that the creation of these opportunities provides a positive ripple effect in the local economy. The applicant will endeavor to use MWBE providers and local work force in the build out of the new building and would hope to use at a minimum 20% MWBEs. The applicant further would welcome the guidance and participation of the Borough President's office in the monitoring of such efforts and to learn more about the programs and opportunities that are available.

In closing, I thank you for the time you and your staff have taken in reviewing this rezoning application and look forward to working together to make this a model development for the community and Brooklyn.

Yours truly,

Jerald Johnson  
Director  
New York Zoning & Land Use