



IN THE MATTER OF an application submitted by RP Inlet, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 74-743 of the Zoning Resolution to modify the height and setback requirements of Section 43-43 (Special provisions for bulk modifications), in connection with a proposed mixed-use development, within a large scale general development, on property bounded by Meserole Avenue, Banker Street, Wythe Avenue, North 15th Street and Gem Street (Block 2615, Lot 1, 6, 19, 21, 25, 50 & 125), in an M1-5 District, Borough of Brooklyn, Community District 1.

This application for a special permit pursuant to Section 74-743 of the Zoning Resolution (ZR) was filed by RP Inlet, LLC on October 21, 2020. This special permit, in conjunction with the related application for a zoning map amendment (C 210138 ZMK), would facilitate the development of a new nine-story, approximately 583,700-square-foot mixed-use commercial and industrial building with 95,299 square feet of manufacturing space for the Acme Smoked Fish Company at 30 Gem Street (Block 215, Lots 1, 6, 19, 21, 25, 50, and 125) in the Greenpoint neighborhood of Brooklyn, Community District 1.

RELATED ACTIONS

In addition to the application for a special permit that is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission (CPC) on the following application, which is being considered concurrently with this application:

C 210138 ZMK Zoning map amendment to change an M3-1 zoning district to an M1-5 zoning district.

BACKGROUND

The applicant requests a special permit that would facilitate the development of a new nine-story, approximately 583,700-square-foot mixed-use commercial and industrial building with 95,299 square feet of manufacturing space for the Acme Smoked Fish Company.

The project area comprises Block 2615 (Lots 1, 6, 19, 21, 25, 50, and 125), and is bounded by Meserole Avenue, Banker Street, Wythe Avenue, North 15th Street, and Gem Street. The project

area is an irregularly-shaped block containing 116,756 square feet of lot area and is coterminous with the development site.

In 2005, the surrounding area was rezoned from an M3-1 zoning district, which allows heavy, unenclosed industrial uses, to an M1-2 zoning district, which allows light industrial and commercial uses, as part of the Greenpoint-Williamsburg Rezoning (N 050110(A) ZRK, C 040415 MMK, C 040416 MMK, C 040417 MMK, C 040418 MMK, C 050111(A) ZMK). The rezoning was intended to better reflect the types of existing industrial and commercial uses that characterized the area and ensure that any new industrial uses would be fully enclosed and compatible with nearby residential and mixed-use neighborhoods. The development site abutted the rezoning area but was not included within it. At that time, at the request of the Acme Smoked Fish Company, the CPC maintained the heavy M3-1 zoning district on the block.

The project area was also included within the Greenpoint-Williamsburg Industrial Business Zone (IBZ), established in 2006, intended to signal a commitment to land use and public policies that encourage the retention and growth of industrial businesses. In addition to providing direct business assistance to existing manufacturing firms and relocation tax credits for businesses that relocate within the IBZ, the City of New York committed to preclude any zoning actions within the IBZ that would result in residential development.

In 2016, the City Council approved a zoning text amendment that designated a full city block (Block 2282, Lot 1) in Williamsburg as an Industrial Business Incentive Area (IBIA) and created two special permits available to developments or enlargements within this area (N 160126 ZRK). The goal of the zoning text amendment was to stabilize the loss of industrial space and jobs, and to promote a beneficial mix of office and light industrial space in designated IBIA areas. The text amendment facilitated the development of 25 Kent Avenue (C 160124 ZSK, C 160125 ZSK, N 160126 ZRK), the first new speculative commercial office and light industrial building in the Greenpoint-Williamsburg IBZ in decades, located three blocks south of the project area.

In 2019, the City Council approved two applications to expand the IBIA to facilitate a proposed seven-story industrial and commercial building at 12 Franklin Street (N 180388 ZRK, C 180387 ZSK and C 180389 ZSK), located directly across from the project area, and a seven-story mixed

industrial and commercial development at 103 North 13th Street (N 190083 ZRK, C 190084 ZSK and C 190085 ZSK), located two blocks south of the project area.

The surrounding area is characterized by a wide variety of industrial, commercial, and residential land uses and building types. Historically, the Greenpoint-Williamsburg IBZ has comprised one- to two-story industrial and warehouse buildings, many of which have been converted to a mix of commercial uses. New development in the surrounding area has included 25 Kent Avenue, an eight-story mixed commercial and industrial building three blocks south of the project area, 103 North 13th Street (C 190084 ZSK, C 190083 ZRK, C 190085 ZSK), a seven-story mixed commercial and industrial building two blocks south of the project area, and the William Vale Hotel, a 22-story building three blocks south of the project area.

The project area is also adjacent to the Greenpoint neighborhood, which is primarily residential in nature. Three- to four-story multi-family walkup buildings are found to the north and northeast of the project area, along Meserole Avenue, Norman Avenue, Cayler Street, Guernsey Street, and Clifford Place. To the northwest of the project area, along West Street, 30- to 40-story residential buildings with ground floor commercial uses and waterfront public access areas are under construction.

The project area is located within an M3-1 zoning district. M3-1 zoning districts are low-density zoning districts that permit heavy industrial and certain commercial uses up to a floor area ratio (FAR) of 2.0. Residential and community facility uses are not permitted in M3-1 zoning districts. Parking requirements vary by use.

The blocks to the south of the project area are located in an M1-2 zoning district, which allows a maximum FAR of 2.0 for most commercial and light industrial uses and a maximum community facility FAR of 4.8. The block to the north of the project area is located in an M1-1 zoning district, which allows a maximum commercial and industrial FAR of 1.0 and a maximum community facility FAR of 2.4. These areas are primarily developed with low-scale buildings that contain a mix of light industrial, automotive, and manufacturing uses, as well as office, hotel, retail, and restaurant uses in predominantly converted buildings.

The areas north and northeast of the project area are located in medium-density residential and mixed-use zoning districts, some of which allow light industrial uses (in M1-2/R6A and M1-2/R6B zoning districts). The character of these mixed-use zoning districts includes some light industrial uses in low-scale buildings and some medium-density walk-up residential buildings with ground floor commercial uses.

The area is well-served by open space. Properties adjacent to the East River are included in the Greenpoint-Williamsburg Waterfront Access Plan, and areas to the west and southwest of the project area are planned to be part of the future Bushwick Inlet Park, part of which has been completed. When fully built out, Bushwick Inlet Park will span 28 acres between North Ninth Street and Quay Street. East River State Park is directly south of Bushwick Inlet Park, and McCarren Park, an approximately 36.5-acre public park, is located one block to the east of the project area.

The project area is well-served by transit. The MTA Nassau Avenue station, providing service to the G train, is located four blocks to the east of the project area and the MTA Bedford Avenue station, providing service to the L train, is located nine blocks to the south. Additionally, the B32, B62, B43, and B24 bus lines connect the project area to major transit hubs, including Long Island City, Williamsburg Bridge Plaza, Queens Plaza, and Downtown Brooklyn. The East River Ferry has stops at North Sixth Street in Williamsburg (approximately nine blocks south of the project area) and at India Street in Greenpoint (approximately nine blocks north of the project area). There are two Citibike stations in the surrounding area, one at the northwest corner of Banker Street and Meserole Avenue and one at the northwest corner of Wythe Avenue and North 15th Street.

The project area is the entirety of Block 2165 with frontage on Meserole Avenue, Banker Street, Wythe Avenue, North 15th Street, and Gem Street. The project area comprises approximately 116,700 square feet of lot area and contains one- and two-story industrial buildings and an open industrial yard.

The Acme Smoked Fish facility currently occupies the majority of the project area, including Lots 1, 21, 25, and 50, with frontage on the southside of Meserole Avenue, east side of Gem Street, and the west side of Banker Street. The facility comprises four interconnected one- and

two-story buildings with a total of approximately 72,800 square feet of built floor area. Lot 1 is developed with a one-story factory building and approximately 21,200 square feet of floor area (1.09 FAR), Lot 21 is developed with a one-story factory building and approximately 15,950 square feet of floor area (1.04 FAR), Lot 25 is developed with a two-story factory building and approximately 20,250 square feet of floor area (1.12 FAR), and Lot 50 is developed with a one-story factory building and approximately 19,400 square feet of floor area (1.70 FAR).

The other lots in the project area are vacant or currently occupied by businesses other than Acme Smoked Fish, all of which have plans to relocate either within the area or city. Lot 6 is a 27,075 square foot lot developed with a two-story warehouse building with approximately 21,500 square feet of floor area (0.79 FAR) and occupied by a stone supplier company, Lot 19 is 3,800 square foot lot developed with a one-story warehouse building with approximately 3,800 square feet of floor area (1.0 FAR) and is vacant, and Lot 125 is a 21,730 square foot lot developed with one-story field office shed and open storage and contains a utility construction firm.

Acme Smoked Fish first opened its original location at 30 Gem Street (Lot 50) in 1954 and has since grown on Block 2615 from an approximately 10,000-square-foot facility to its current size of approximately 72,855 square feet. In 1975, Acme Smoked Fish expanded to an adjacent building at 14 Meserole Avenue (Lot 1), previously occupied by Williamsburg Steel. In 1994, Acme Smoked Fish expanded to an adjacent building at 192 Banker Street (Lot 21), formerly occupied by Deven Lithographers, a commercial printer, and further expanded to 190 Banker Street (Lot 25) in 2003. The existing facility currently contains fish processing and production, product distribution, and administrative offices.

To increase its capacity and respond to a changed regulatory environment, which requires a modern processing facility, the applicant proposes a new nine-story, approximately 583,778-square-foot (5.0 FAR) industrial, commercial, and retail development with 95,299 square feet of industrial space, 454,661 of office space, 33,818 square feet of ground floor commercial space, approximately 150 parking spaces, and 21,403 square feet of Public Access Area (PAA).

The proposed building would contain an industrial component, located at the northeastern corner of the site in the footprint of Lot 6, and a commercial component, located on the remainder of the development site.

The industrial component of the building would contain approximately 95,299 square feet of floor area and would be three- to four-stories with an overall maximum height of 104 feet. A 25-foot-high mechanical louver screen would be located on the roof. The entrance to the building would be located on Banker Street, and the facility would include one loading Berth on Banker Street and two loading berths on Meserole Avenue. The ground floor of the facility would be used for receiving, processing, and storing the products; the second and third floors would be used for further processing, storing, and food production; and the fourth floor would be used for administrative offices and employee services.

The commercial component of the building would contain approximately 487,479 square feet of commercial uses and would range in heights from two- to nine-stories, with an overall maximum height of 178 feet. The ground floor would contain 33,818 square feet of retail and the upper floors would contain 454,661 square feet of office space. There would be two pedestrian pathways through the ground floor, a north-south connection between Wythe Avenue and mid-block of the development site, and an east-west connection between Gem and Banker streets. These corridors would be activated with retail uses. There would be 150 off-street parking spaces provided on the ground floor with access from a curb cut on Gem Street, and 65 bike parking spaces would be provided. The commercial component of the development would also include three loading berths that would be accessed from curb cuts located on Banker Street.

The commercial portion of the building would rise to a maximum of nine stories in the center of the building and would decrease to five stories fronting on Gem Street and Meserole Avenue, and between two and six stories fronting on Banker Street and Wythe Avenue. A 25-foot-high mechanical bulkhead would be located on the roof. A portion of the commercial component of the building would cantilever over a portion of industrial component.

The applicant proposes to provide approximately 21,403 square feet of PAA, 12,880 square feet of which approximately would be open to the sky and 8,523 square feet of which would be partially covered. Additionally, there would be 5,775 square feet of open area adjacent to the

ground floor retail space. The PAA would occupy four frontages on Banker Street, Wythe Avenue, North 15th Street, and Gem Street, as well as the covered pedestrian pathways. There would be a variety of landscaping, seating options, furnishings, and art throughout the PAA.

The applicant proposes to construct the industrial component of the project, a modern processing facility for Acme Smoked Fish, prior to the commercial component and the PAA, allowing Acme Smoked Fish to transition from the old facility to the new facility with minimal interruption to its operations.

The proposed development is located in Flood Zone AE and has a Base Flood Elevation of 11 feet. All new construction within this designation is subject to Appendix G of the NYC Building Code, which ensures that the proposed development would meet or exceed Federal Emergency Management Agency regulations for resiliency. All entrances to the building, parking garage, and loading docks would be wet flood proofed; the ground floor of the building would be raised one foot above the existing floodplain; and elevator and mechanical equipment would be located in several locations.

To facilitate the proposed development, the applicant proposes a zoning special permit as part of a Large-Scale General Development (LSGD) plan and a zoning map amendment.

Zoning Special Permit (C 210139 ZSK)

The applicant proposes a zoning special permit pursuant to ZR Section 74-743(a)(2) to modify certain bulk regulations within an LSGD. The applicant proposes a waiver of the height and setback regulations applicable to M1-5 zoning districts.

In an M1-5 zoning district, ZR Section 43-43 requires that the front wall of a development in an M1-5 zoning district be set back 20 feet from a narrow street above a height of 85 feet or six stories, whichever is less. The commercial component of the proposed development along Gem Street and Meserole Avenue would rise on the lot line to a height of approximately 104 feet before a 40 foot setback. The applicant therefore requests a waiver of the maximum base height and setback requirements. ZR Section 43-43 also requires that a development in an M1-5 zoning zoning district stay within a sky exposure plane of 2.7 vertical feet to one horizontal foot

extending from the maximum front wall height of 85 feet. The commercial component of the proposed development would penetrate the required sky exposure plane on the Gem Street and Meserole Avenue sides of the building. The applicant therefore requests a waiver of the sky exposure plane requirements.

Zoning Map Amendment (C 210138 ZMK)

The proposed zoning map amendment would change the zoning of the project area from an M3-1 zoning district to an M1-5 zoning district.

M3-1 zoning districts are low-density heavy industrial districts that allow for all industrial uses and certain commercial uses with a maximum FAR of 2.0. Community facility and residential uses are not permitted in M3-1 zoning districts. The building height is regulated by a sky exposure plane envelope, limiting the base height to a maximum of 60 feet, or four stories, whichever is less. M3-1 districts require between one parking space per 300 to 2,000 square feet of floor area, depending on the use.

The proposed M1-5 district is a medium-density zoning district that allows a wide range of light industrial and commercial uses at a maximum FAR of 5.0. Certain community facility uses are allowed at a maximum FAR of 6.5, and no residential uses are allowed. The building height is regulated by a sky exposure plane envelope, limiting the base height to a maximum of 85 feet or six stories, whichever is less. No parking is required.

ENVIRONMENTAL REVIEW

This application (C 210139 ZSK), in conjunction with the application for the related zoning map amendment (C 210138 ZMK), 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 of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 20DCP009K.

It was determined that this application, in conjunction with the applications for related actions, may have a significant effect on the environment, and that an Environmental Impact Statement (EIS) would be required. A Positive Declaration was issued on July 26, 2019, and subsequently distributed, published, and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on July 26, 2019. A public scoping meeting was held on August 27, 2019 and the Final Scope of Work was issued on October 30, 2020.

A DEIS was prepared and a Notice of Completion for the DEIS was issued on October 30, 2020. Pursuant to SEQRA regulations and the CEQR procedure, a joint public hearing was held on November 2, 2020, in conjunction with the public hearing on the related Uniform Land Use Review Procedure (ULURP) items (C 210138 ZMK, C 210139 ZSK). A Final Environmental Impact Statement (FEIS) reflecting comments made during the public review process was completed, and a Notice of Completion for the FEIS was issued on March 26, 2021.

Significant adverse impacts related to hazardous materials, noise, and air quality would be avoided through the placement of (E) designations (E-585) on the project sites as specified in Chapters 8, 11, and 13 of the FEIS.

The application, as analyzed in the FEIS, contained Project Components Related to the Environment (PCREs), which are set forth in Chapter 19, "Construction." To ensure the implementation of the PCREs, the applicant will enter into the Restrictive Declaration at the time of approval of land use-related actions and prior to issuance of any permits.

The proposed project as analyzed in the FEIS identified significant adverse impacts with respect to construction (vehicular traffic) and transportation (vehicular traffic). The identified significant adverse impacts and proposed mitigation measures under the proposed actions are summarized in Chapter 17 "Mitigation" of the FEIS. To ensure the implementation of the mitigation measures identified in the FEIS, the mitigation measures are included in the Restrictive Declaration.

UNIFORM LAND USE REVIEW

This application (C 210139 ZSK), along with the related application for a zoning map amendment (C 210138 ZMK), was certified as complete by the Department of City Planning on November 2, 2020 and duly referred to Brooklyn Community Board 1 and 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

On December 7, 2020, Brooklyn Community Board 1 held a public hearing on this application (C 210139 ZSK) and on that date, by a vote of 23 in favor, 10 opposed, and one abstaining, adopted a resolution recommending approval of the application with the following conditions:

- “-1- A restriction will be placed on the deed that use of the 4-story Acme Fish building remains zoned for manufacturing use, or the applicant applies for IDA, to keep the space zoned for manufacturing for 25 years;
- 2-The Acme Fish portion of the development will have a state-of-the-art emission control system;
- 3- There will be language in the special permit precluding subsequent filing for hotel use;
- 4- There will be no bars or amplified music on the roofs.
- 5- The applicant will commit to partnering with the Parks Department to contribute to maintenance of the Bushwick Inlet Park after the certificate of occupation to the ancillary building issues;
- 6- The applicant will communicate with the community during construction through a community liaison regarding construction conditions, such as truck staging, pile driving and air monitoring;
- 7- The applicant will comply with local law 97, the Climate Mobilization Act;

-8-The applicant's storm water and waste management will net zero into the city's system;
and

-9-The applicant will comply with the local law 15 requirements for bird-friendly construction.”

Borough President Recommendation

The Brooklyn Borough president held a public hearing on December 21st, 2020 on the application (C 210138 ZMK), and issued a recommendation on February 22, 2021 to approve the application with the following conditions.

“That prior to considering the application, the City Council obtain written commitments from the applicant, RP Inlet, LLC, for both the commercial and residential development sites, clarifying how it would:

1. Establish a legally enforceable mechanism, such as a deed restriction, contract with a non-profit business service provider, and/or government financing agreement to ensure innovation and/or maker use, monitor use floor area compliance, restrict to innovation and maker uses, establishes clear access to the street, and limit accessory retail floor area as per the following:
 - a. That compliance and recordation shall be according to New York City Zoning Resolution (ZR) 74-962(d)
 - b. That periodic notification by the owner shall be according to ZR 74-962(e)
 - c. That annual reporting by a qualified third party shall be according to ZR 74-962(f)
 - d. That floor area managed by a not-for-profit agency shall remain part of the zoning lot and be required to comply with annual reporting and periodic notification requirements
 - e. That Innovation and Maker Uses restricted to Use Groups (UGs) 9A, limited to blueprinting or photostatting establishments, dental or medical laboratories, musical instrument repair shops, studios, trade schools for adults, 10A, limited to studios, 11A, 16A except for automobile showrooms, 16B, 16D except for truck

terminals, warehouses, and wholesale establishments, 17B, 17C limited to agriculture, and 18A

- f. That such innovation and/or maker uses be provided with clear access to common service corridors, freight elevators, and loading docks on streets 24 hours a day, seven days a week to ensure active industrial spaces
 - g. That accessory retail floor area that would otherwise meet the definition of (UGs 6A, 6C, 7B, 7D, 8B, 8C, 10A, and 12, not exceed the greater of 100 square feet or 10 percent of an establishment's floor area (limited to 1,000 square feet) in order to be deemed accessory
2. That for 210139 ZSK ZR 74-743 Large-Scale Development Special Permit by the City Planning Commission (CPC)] to allow such development to exceed applicable height and setback requirements, the application documents be modified in consultation with Brooklyn Community Board 1 (CB 1), North Brooklyn Residents, and local elected officials through any combination of the below actions:
- a. That Z-002 LSGD Site Plan be modified as follows:
 - 1) As a means of providing more floor area:
 - i. Along Banker Street, the six-story height of 125 feet with a depth of 20 feet, shall be enlarged to the street line for floors two through six, and along the street line toward Wythe Avenue for a length of 221 feet, resulting in 17,680 square feet (sq. ft.)
 - ii. Along Gem Street, the five-story height of 104 feet with a depth of 20 feet shall be enlarged along the street line toward Wythe Avenue for a length of 178 feet, resulting in 14,240 sq. ft. with a recessed ground floor
 - 2) As a means of providing less floor area:
 - i. Along Meserole Avenue, the-five story height of 104 feet with a depth of 40 feet, shall be reduced to a four-story height along the street line away from Meserole Street for a depth of 40 feet for its length of 95 feet along Meserole Avenue, resulting in a reduction of 3,800 sq. ft., and/or

- ii. Along Meserole Avenue, the nine-story height of 178.5 feet, the setback of 45 feet for its length of 120 feet along Meserole Street shall be limited for floors six through nine through any combination of reducing the floor area by not less than 26,000 sq. ft. (for example, by setting back the ninth floor an additional 216.67 feet or setting back floors six through nine an additional 54.17 feet) and up to 31,920 sq. ft. and/or (for example, by setting back the ninth floor an additional 266 feet or setting back floors six through nine an additional 66.5 feet)
 - iii. Along Wythe Avenue, the six-story height of 125.5 feet with a building line distanced 555.72 feet, shall be reduced to a five-story height starting at the building line of 140 feet along Wythe Avenue for a depth of 15 feet, resulting in a reduction of 2,100 sq. ft.
 - b. That consistent with modifications to Z-002 LSGD Site Plan:
 - 1) Z-011.00 Illustrative Ground Floor Plan be modified to depict dashed lines along Banker and Gem streets consistent with the above
 - 2) Z-020.00 Zoning Diagram Waivers be modified as follows:
 - i. Remove the requested waiver depiction along Meserole Avenue and/or
 - ii. Add a requested waiver depiction along Banker Street
 - iii. Elongate the requested waiver depiction along Gem Street
 - 3) Z-030.00 and Z-031.00 Zoning Sections, Z-040.00 and Z-041-00 Zoning Elevations, Z-050.00 and Z-051.00 Neighborhood Character Diagrams, be modified to depict removed and added bulk envelope
- 3. That the City Council obtain written commitments from RP Inlet, LLC to:
 - a. Memorialize incorporation of resiliency and sustainability measures, such as blue and/or green roofs, grid-connected rooftop batteries, passive house design, solar panels and/or facades, and/or wind turbines
 - b. Coordinate with the New York City Department of Environmental Protection (DEP), New York City Department of Transportation (DOT), and the New York City Department of Parks and Recreation (NYC Parks) to install DEP rain

gardens as part of a Builders Pavement Plan on the block bounded by Meserole and Wythe avenues, and Banker, Gem, and North 15th streets in consultation with Brooklyn Community Board 1 (CB 1) and local elected officials

- c. Coordinate Connecting Residents on Safer Streets (CROSS) Brooklyn implementation with DEP and DOT to install a curb extension at the intersections of Meserole Avenue with Banker and Gem streets, and the intersections of Wythe with Banker and North 15th streets, either as part of a Builders Pavement Plan or as a treated roadbed sidewalk extension
- d. Enter into a standard DOT maintenance agreement for those intersections and coordination with DEP and DOT following agency implementation of protected painted areas at the intersections of Meserole Avenue with Banker and Gem streets, and the intersections of Wythe Avenue with Banker and North 15th streets with such improvements to proceed only after consultation with CB 1 and local elected officials
- e. Engage with car-sharing companies, in consultation with CB 1 and local officials, to lease multiple spaces within the development's garage
- f. Retain Brooklyn-based contractors and subcontractors, especially those that are designated local business enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and minority- and women-owned business enterprises (MWBEs) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency."

City Planning Commission Public Hearing

On February 2, 2021 (Calendar No. 4), the City Planning Commission scheduled February 17, 2021 for a public hearing on this application (C 210139 ZSK) and the related application for a zoning map amendment (C 210138 ZMK). The hearing was duly held on February 17, 2021 (Calendar No. 25). Six speakers testified in favor of the application, and none in opposition.

Speakers in favor included three representatives of the applicant. They summarized the proposed project, describing the architecture, design, open space, and programming. The applicant

provided a brief history of the business in Brooklyn. They emphasized how the proposed project would ensure the growth and retention of Acme Smoked Fish headquarters in Brooklyn. The proposed site plan is intended to ensure the construction of their new facility while still maintaining an ability to continue daily operations in their current facility. The speakers explained that only when the new facility was completed would the commercial building be developed. The requested waivers facilitated by the LSGD special permit would facilitate the construction of the stand-alone four-story Acme Smoked Fish manufacturing building, as well as the commercial building with office floor plates aligned with market expectations, so as to foster the proposed development's financial viability. The speakers also explained the proposed improved pedestrian experience with new retail spaces, which would serve both the community and tenants of the building, as well as the new public space. The speakers also referred to the applicant's success in North Brooklyn and the surrounding region, and its intention to maintain its business' main headquarters in Brooklyn.

The applicant's representative noted Community Board 1's recommendation to maintain the industrial uses on site, stating that the applicant is considering applying to the NYC Industrial Development Agency Industrial Program in order to secure the presence of Acme Smoked Fish on site for the next 25 years. Regarding the Community Board's recommendations about clean jobs and practice, the speakers noted that they would adopt several responsible environmental practices, such as compliance with several local laws. The applicant also stated that it is finalizing an agreement with Saint Nicks Alliance to provide training and job placement services for the construction and operation of the building, including services for the leasing of the commercial spaces within the building. The applicant also shared that they are working with Friends of Bushwick Inlet Park and North Brooklyn Parks Alliance to support their efforts to maintain the good quality open spaces in the area.

Other speakers in favor of the application included representatives of the Service Employees International Union 32 BJ Chapter, North Brooklyn Chamber of Commerce and the North Brooklyn Development Corporation. These speakers expressed support for the project's overall plan, including the proposed mix of uses, open space, and on-site bike parking, and the applicant's established record in North Brooklyn. One of the speakers also cited the applicant's commitment to create prevailing-wages jobs for working families in the proposed development.

There were no other speakers, and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM

This application (C 210139 ZSK) was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016 pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 18-047.

This action was determined to be consistent with the policies of the WRP.

CONSIDERATION

The Commission believes that this application for a zoning special permit (C 210139 ZSK), in conjunction with the related application for a zoning map amendment (C 210138 ZMK), is appropriate.

Together, these actions will facilitate the development of a new nine-story, mixed industrial and commercial building with approximately 95,299 square feet of manufacturing floor area and 487,479 square feet of commercial floor area. Additionally, approximately 21,403 square feet of PAA, 150 accessory parking spaces, and 65 bike parking spaces will be provided.

The Commission is pleased that these actions will support the growth and retention of Acme Smoked Fish, a long-time Brooklyn company founded in Greenpoint. The Commission notes that Acme Smoked Fish first located on the site in 1954, and, since then, has continued to expand on the block as the business and its operations grew. The Commission is pleased that the actions will allow Acme Smoked Fish to modernize its current facility and remain in Brooklyn.

Additionally, the actions will support the creation of thousands of new jobs in this well-situated area located near public transit, open space, and a growing residential population within an existing industrial and commercial jobs center, and consistent with the goals of the Greenpoint-Williamsburg IBZ.

The Commission believes that the zoning map amendment to change an M3-1 zoning district to an M1-5 zoning district is appropriate. The existing M3-1 zoning district is a heavy industrial district originally mapped in 1961 and is no longer appropriate for this location. The M3-1 district allows up to 2.0 FAR for industrial uses and some limited commercial uses, allows a maximum base height of 65 feet or four stories, whichever is less, has relatively low performance standards for noxious uses, and requires a significant number of off-street parking spaces. As the number and type of jobs in the Greenpoint-Williamsburg IBZ continue to grow, modernize, and densify, the M3-1 zoning district's suburban-style development regulations are no longer relevant and hinder the expansion of tertiary job clusters in walk-to-work neighborhoods like Greenpoint and Williamsburg.

The Commission notes that the density and height allowed under the M1-5 zoning district is appropriate due to the project area's proximity to transit and a growing residential population, existing and planned open spaces, and location within a strong neighborhood jobs hub. The immediate area is a mix of one- and two-story commercial and industrial buildings, three- to six-story industrial loft buildings developed prior to the 1961-zoning, and a mix of new commercial office, retail, and hotel developments rising between eight- and 22-stories in height. The area is also a transition between the three- to six-story residential buildings in the upland portion of the neighborhood along Manhattan Avenue and the 30- and 40-story residential towers and open spaces between Kent Avenue, West Street, and the East River waterfront. The project area also sits at a narrow point between Bushwick Inlet and McCarren Park, with a prominent frontage at the intersection of N 15th Street and Wythe Avenue.

The Commission also believes that the greater variety of uses allowed, and the reduced off-street parking and loading under, the M1-5 zoning district are appropriate due to the existing and future uses within the surrounding area. The area historically evolved as a mixed residential, commercial, and industrial neighborhood, with workers often living within walking distance of the piers, warehouses, shops, and factories. Though changes in shipping and global trade have reduced the scale and nature of many of the local firms since the mid-20th century, the citywide demand for food, furniture, and fashion, combined with advancements in design, media, information, and retail, have transformed the area. In part, due to the continued growth of the local population, there is an opportunity to further increase job densities and allow for a greater

variety of uses, fostering a walk-to-work neighborhood again. The M1-5 zoning district will remove the onerous off-street parking requirements that can prevent new job spaces from being developed and that encourage people to drive to the area from outside of the neighborhood. The M1-5 zoning will also allow for more commercial and industrial uses at greater densities, which will provide an alternative to what often occurs in more restrictive districts, where retail and commercial may only convert an existing industrial building or redevelop with one or two stories, limiting the potential number of jobs.

While the surrounding area is mapped with low-density M1-1 and M1-2 districts, which allow light industrial and commercial uses, the IBIA mapped widely in the Greenpoint-Williamsburg IBZ, allows, pursuant to a special permit, up to 4.8 FAR of a certain mix of light industrial and commercial uses, and a maximum height of 115 feet, or 135 feet with the provision of a public plaza.

The Commission notes that the applicant did not propose to apply the IBIA program at this location due to the project's unique programming in providing a purpose-built and standalone industrial building instead of a mixed commercial and industrial building. The physical space needs of Acme Smoked Fish do not meet the specifications of the IBIA special permit, including total FAR, ratio of industrial and commercial uses, and overall height. However, the project is aligned with the overarching goals of the IBIA program, which encourages the development of new industrial space in the Greenpoint-Williamsburg IBZ, which the actions facilitate.

The Commission believes that the zoning special permit pursuant to ZR Section 74-743(a)(2) for modifications to the underlying bulk regulations is appropriate. The requested waivers will allow for a more flexible building envelope resulting in a superior site plan that accommodates a purpose-built industrial building, a modern commercial building, and a new public open space that provides improved connections in the neighborhood.

The applicant is proposing a complex phased development that allows uninterrupted factory production during site clearance, construction, and relocation. To achieve this phasing, they are proposing to develop a brand-new, standalone factory on a portion of the block adjacent to the existing 55-year old factory. Once it is completed and fully fit-out, Acme Smoked Fish will swing its production into the new, modern facility, allowing the remainder of the site to be

cleared and redeveloped with a commercial building and ground floor public open space. Because the factory will remain a separate building with large 25-foot floor-to-ceiling heights, unique HVAC and refrigeration needs, and large column spacing, the new commercial building will be built around, and partially cantilevered over, the new factory. To support efficient, modern office floorplates with adequate daylight and 16-foot floor-to-ceiling heights, and a 21,403 square foot new public open space at the prominent intersection of N 15th Street and Wythe Avenue, the applicant is requesting waivers to allow portions of the building to penetrate the proposed M1-5 zoning district's sky exposure plane. Penetrating portions of the sky exposure plane helps maintain optimal office floor plates of 45 to 65 feet depth, which are more efficient than the floor plates that could be provided absent the waivers. The Commission also notes that the waivers result in a building with a slightly more squat, industrial loft-like massing, which is in keeping with the neighborhood's character.

The Commission is pleased that the applicant is providing a new 21,403 square foot public open space located at the prominent confluence of N 15th Street and Wythe Avenue, at the southern portion of the project site. To create this open space, which is an integral aspect of the site plan, additional floor area is shifted up into the commercial portion of the building, further necessitating bulk waivers through the special permit.

The proposed PAA will create a significant new open space resource in the Greenpoint-Williamsburg IBZ, which continues to grow as more businesses and employees are attracted to the area. The PAA will be located at the prominent intersection of N 15th Street, Wythe Avenue, Gem Street, and Banker Street, where the Williamsburg street grid merges with the Greenpoint street grid, creating irregularly sized- and shaped city blocks, including the project site. N 15th Street is a short but important connector between McCarren Park and the future Bushwick Inlet Park, and Wythe Avenue runs through the spine of the IBZ and connects to the Greenpoint's Manhattan Avenue shopping corridor via Norman Avenue. Of the 21,403 square foot PAA, 12,880 square feet will be open to the sky and 8,523 square feet will be partially covered, and will include pedestrian pathways that help increase porosity through the site given the irregular size and shape of the block and the importance of the street intersection. Seating, planters, lighting, and other visual elements will be provided in both covered and uncovered areas to ensure a safe and attractive pedestrian experience. Ground floor retail and lobby spaces with

appropriate glazing and transparency will also activate the space, including portions of the PAA that are covered. Portions of the PAA that are covered will maintain a minimum height clearance of at least 43 feet. The PAA will be accessible to the public and maintained by the property owner, as per the specifications in a Restrictive Declaration. The Commission notes that approximately 5,775 square feet of open area will be provided immediately adjacent to the ground floor entrances, but that these areas are not part of the PAA.

The Commission is pleased that the buildings and the PAA are designed to be flood resilient, consistent with the City's goals of creating flood-resilient development. The entrances to the building, parking garage, and loading docks will be wet floodproofed, the ground floor of the building will be raised one foot above the existing floodplain, and mechanical equipment will be located in several levels and locations.

The Commission understands that the building design is responsive to the needs of Acme Smoked Fish and the requirements for its new facility. The Commission believes that the project will provide a better public realm experience with active ground-floor uses and the provision of publicly-accessible open space. The Commission is pleased that the waivers, as part of the LSGD, will ensure the provision of retail uses and open space open to the sky on the ground floor towards Banker and Gem streets, and Wythe Avenue, to serve both the future tenants of the building and the community. This design will ensure that the proposed development will serve as a connector to other community resources of the area, such as Bushwick Inlet Park and McCarren Park, while also responding to the evolving character of Wythe Avenue.

The Commission notes that these unique aspects of the project necessitate the bulk waivers.

Regarding the Borough's President recommendations to modify the bulk requirements in order to decrease the building height on Meserole Avenue by moving floor area from the upper to the lower floors of the building, the Commission notes that these recommendations are beyond the scope of the requested actions. Furthermore, the proposed changes would result in an inferior building massing that would cover publicly accessible open space from the sky and would result in inefficient office floor plates that would adversely impact the economics of the project and the goal of maintaining Acme Smoked Fish in Brooklyn.

FINDINGS

The Commission hereby makes the following findings pursuant to Section 74-743(a)(2) of the Zoning Resolution:

- (1) the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding developments, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the large-scale general development, the neighborhood, and the City as a whole;
- (2) of buildings in any one block or unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;
- (3) Not applicable
- (4) considering the size of the proposed large-scale general development, the streets providing access to such large-scale general development will be adequate to handle traffic resulting therefrom;
- (5) Not applicable
- (6) Not applicable
- (7) Not applicable
- (8) Not applicable
- (9) Not applicable
- (10) a declaration with regard to ownership requirements in paragraph (b) of the large-scale general development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission; and
- (11) Not applicable

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on March 26th, 2021 with respect to this application (CEQR No. 20DCP009K), the City Planning Commission finds that the New York State Environmental Quality Review Act and Regulations have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating, as conditions to the approval, pursuant to the restrictive declaration attached as Exhibit A to City Planning Commission report for C 210139 ZSK, those project components related to environment and mitigation measures that were identified as practicable.

The report of the City Planning Commission, together with the FEIS constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, that the City Planning Commission, in its capacity as the City Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and consideration and findings described in this report, the application submitted by RP Inlet, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 74-743 of the Zoning Resolution to modify the height and setback requirements of Section 43-43 (Special provisions for bulk modifications), in connection with a proposed mixed-use development, within a large scale general development, on property bounded by Meserole Avenue, Banker Street, Wythe Avenue, North 15th Street and Gem Street (Block 2615, Lot 1, 6, 19, 21, 25, 50 & 125), in an M1-5 District, Borough of Brooklyn, Community District 1, is approved, pursuant to Section 74-743(a)(2) of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 210139 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specification and zoning computation indicated on the following approved plans, prepared by Gensler and MPFP, filed with this application and incorporated into this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001.00	Zoning Analysis	10/21/2020
Z-002.00	LSGD Site Plan	10/21/2020
Z-020.00	Zoning Diagram Waiver	10/21/2020
Z-030.00	Zoning Sections	10/21/2020
Z-031.00	Zoning Sections	10/21/2020
Z-070.00	Flood Elevation Plan	10/21/2020
Z-01.00	Zoning Lot Site Plan Plaza Level	10/30/2020
L-100.00	Public Accessible Area Plan	12/07/2020
L-200.00	Furnishing Plan	12/07/2020
L-300.00	Grading and Paving Plan	12/07/2020
L-400.00	Planting and Lighting Plan	12/07/2020
L-401.00	Photometric Plan	12/07/2020
L-500.00	Circulation Plan	12/07/2020
L-600.00	Section	10/21/2020
L-601.00	Section	10/21/2020
L-602.00	Section	10/21/2020
L-603.00	Section	10/21/2020
L-700.00	Paving, Wall, and Step Details	10/21/2020
L-701.00	Precast Plaza Bench Details	10/21/2020
L-702.00	Sculptural Plaza Bench Details	10/21/2020
L-703.00	Planting and Lighting Details	10/30/2020
L-704.00	Details	10/30/2020

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 regulation relating to its construction, operation, and maintenance.
4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the City Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition to this resolution.
5. The development shall include those mitigation measures listed in the Final Impact Statement (CEQR No. 19DCP220K) issued on March 26th, 2021 and identified as practicable.
6. 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.
7. Upon 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, agreement, terms or conditions of this resolution whose provisions shall be 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.

8. 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 210139 ZSK), duly adopted by the City Planning Commission on April 7, 2021 (Calendar No. 12), 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.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, ESQ., *Vice Chairman*

**DAVID J. BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III,
JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD**, *Commissioners*

See attached report.

NYC PLANNING DEPARTMENT OF CITY PLANNING CITY OF NEW YORK		Community/Borough Board Recommendation Pursuant to the Uniform Land Use Review Procedure	
Application #: C 210043 ZMK		Project Name: ACME Smoked Fish/Gem St. Rezoning	
CEQR Number: 20DCP009K		Borough(s): Brooklyn Community District Number(s): 1	
<i>Please use the above application number on all correspondence concerning this application</i>			

<u>SUBMISSION INSTRUCTIONS</u>	
1. Complete this form and return to the Department of City Planning by one of the following options: <ul style="list-style-type: none">• EMAIL (recommended): Send email to CalendarOffice@planning.nyc.gov and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"• MAIL: Calendar Information Office, City Planning Commission, 120 Broadway, 31st Floor, New York, NY 10271• FAX: to (212) 720-3488 and note "Attention of the Calendar Office"	
2. Send one copy of the completed form with any attachments to the <u>applicant's representative</u> at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.	

Docket Description:

IN THE MATTER OF an application submitted by RP Inlet, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 12c and 13a, changing from an M3-1 District to an M1-5 District property bounded by Meserole Avenue, Banker Street, Wythe Avenue, North 15th Street, and Gem Street, Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only) dated November 2, 2020, and subject to the conditions of CEQR Declaration E-585.

Applicant(s): RP Inlet, LLC 2929 Arch Street, 28th Floor Philadelphia, PA 19104		Applicant's Representative: Ray Levin, Esq. Herrick, Feinstein LLP 2 Park Avenue, 14th Floor New York, NY 10016	
Recommendation submitted by: Brooklyn Community Board 1			
Date of public hearing: December 7, 2020		Location: Via WEBEX (virtually held, 6PM)	
Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
Date of Vote: December 8, 2020		Location: Via WEBEX (virtually held board meeting (6PM)	
RECOMMENDATION			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
Please attach any further explanation of the recommendation on additional sheets, as necessary.			
Voting			
# In Favor: 23		# Against: 10	
# Abstaining: 1		Total members appointed to the board: 49	
Name of CB/BB officer completing this form Dealice Fuller, Chairperson		Title Chairperson	Date 12/11/2020



COMMUNITY BOARD No. 1

435 GRAHAM AVENUE - BROOKLYN, NY 11211- 8813

PHONE: (718) 389-0009

FAX: (718) 389-0098

Email: bk01@cb.nyc.gov

Website: www.nyc.gov/brooklyncb1

HON. ERIC L. ADAMS
BROOKLYN BOROUGH PRESIDENT



SIMON WEISER
FIRST VICE-CHAIRMAN

DEL TEAGUE
SECOND VICE-CHAIRPERSON

STEPHEN J. WEIDBERG
THIRD VICE-CHAIRMAN

MARIA VIERA
FINANCIAL SECRETARY

SONIA IGLESIAS
RECORDING SECRETARY

PHILIP A. CAPONEGRO
MEMBER-AT-LARGE

DEALICE FULLER
CHAIRPERSON

GERALD A. ESPOSITO
DISTRICT MANAGER

HON. STEPHEN T. LEVIN
COUNCILMEMBER, 33rd CD

HON. ANTONIO REYNOSO
COUNCILMEMBER, 34th CD

December 8, 2020

COMMITTEE REPORT

Land Use, ULURP & Landmarks (subcommittee) Committee

TO: Chairperson Dealice Fuller
and CB#1 Board Members

FROM: Del Teague, Committee Chair

RE: Committee Report

The Land Use, ULURP & Landmarks (subcommittee) Committee met on Monday, December 7, 2020 at 6:00PM via WEBEX.

Attendance: Present – Teague; McKeever; Barros; Chesler; Miceli; Rabbi Niederman; Nieves; Vega; Weidberg; Weiser; Berger; Li.

Absent – Viera; Drinkwater; Indig; Kaminski; Katz; Lebovits; Sofer; Solano.
(A quorum was present)

Land Use Report for December 7, 2020 Public Hearing/Committee Meeting

1. **NYC DCP - C 210043 ZMK 135-137 Bedford Avenue Rezoning - IN THE MATTER OF** an application submitted by Dawn Kiernan and NRL URF, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 13a: 1. establishing within an existing R6A District a C1-4 District bounded by Bedford Avenue, North 10th Street, a line 100 feet southeasterly of Bedford Avenue, and a line midway between North 10th Street and North 9th Street; and 2. establishing within an existing R6B District a C1-4 District bounded by Bedford Avenue, a line midway between North 10th Street and North 9th Street, a line 100 feet southeasterly of Bedford Avenue, and North 9th Street; Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only) dated November 2, 2020, and subject to the conditions of 3 CEQR Declaration E-587. (Applicant:

Richard Lobel). DCP Via drop box:

<https://nycdcp.box.com/s/nkykdul7s5nd5o7knhcxlac3pu1by5j>

This is an application seeking a commercial overlay of ten lots in this R6A district. Five of the ten lots have non-conforming commercial uses. This rezoning would make the current uses conforming. The committee noted that the application does not increase allowable FAR and the majority felt that adding commercial uses would be in character with the immediate area. However, the committee also noted that the community has voiced strong opposition to the use by restaurants of open back yard spaces, because of the noise generated by such usage.

Recommendation: A quorum was present. The committee voted to approve the application with a suggestion that the applicants stipulate by letter to the Borough President to commercial use Group 6, i.e. that backyard spaces of any eating establishments on these premises will be used only as enclosed spaces.

10 members voted in favor

1 member voted against. (Miceli)

2. **NYC DCP - C 210139 ZSK - Acme Smoked Fish - IN THE MATTER OF** an application submitted by RP Inlet, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 74-743 of the Zoning Resolution to modify the height and setback requirements of Section 43-43 (Special provisions for bulk modifications), in connection with a proposed mixed-use development, within a large scale general development, on property bounded by Meserole Avenue, Banker Street, Wythe Avenue, North 15th Street and Gem Street (Block 2615, Lot 1, 6, 19, 21, 25, 50 & 125), in an M1-5* District, Borough of Brooklyn, Community District 1. * Note: This site is proposed to be rezoned by changing an existing M3-1 District to an M1-5 District under a concurrent related application for a Zoning Map change (C 210138 ZMK). Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31st Floor, New York, N.Y. 10271-0001. DCP via Drop box: <https://nycdcp.box.com/s/206uqohjsoex68ddopxqaxoce7k>

This is a ULURP application by Rubenstein Partners and Acme Smoked Fish to construct a new manufacturing facility and commercial/office space at 18 Wythe Avenue with a zoning change from M 3-1 to M 1-5. The zoning change would allow five times the floor area ratio than is allowed now as-of-right.

The briefing was presented by Ray Levin, Jeff Fronek, and Adam Kaslow. The proposed project will occur in two phases.

Phase one: involves building a new stand-alone 4 story, 95,000 sq. foot facility for Acme Fish. Phase two: entails demolition of the current building being used by the business and construction of a 9- story 580,000 sq. foot ancillary building which would house retail on the first floor and office space on the upper eight floors. The project also includes open space with plantings and seating for the public.

The applicants expect that the project could generate approximately 2,000 jobs.

Numerous residents spoke in favor of the application citing the importance of retaining manufacturing and other business in the area in order to provide much needed jobs, to attract other job generating employers, and to stimulate our economy. They also spoke of Acme as an excellent employer that pays prevailing wages and is working with St. Nicks Alliance to provide jobs to local construction workers.

Several residents voiced opposition because of the size of the ancillary building, urging us to deny the application unless it is downsized.

Recommendation: In view of the loss of a quorum, with 10 members present, the majority of the members present approved my presenting the following recommendation to the full board.

The Board strongly suggests that the developer consider downsizing the ancillary building. In addition, the Board does not want this tool to extend to the rest of the surrounding area. The Board asks that until DCP comes back to re-discuss a cohesive plan for zoning in manufacturing areas (including the re-zoning tools that are scheduled to be certified for the Gowanus area), M1-5 rezoning should not be entertained unless paired with other discretionary actions, such as a large-scale plan.

The Board approves the application contingent on:

- 1- A restriction will be placed on the deed that use of the 4-story Acme Fish building remains zoned for manufacturing use, or the applicant applies for IDA, to keep the space zoned for manufacturing for 25 years;
- 2- The Acme Fish portion of the development will have a state-of-the-art emission control system;
- 3- There will be language in the special permit precluding subsequent filing for hotel use;
- 4- There will be no bars or amplified music on the roofs.
- 5- The applicant will commit to partnering with the Parks Department to contribute to maintenance of the Bushwick Inlet Park after the certificate of occupation to the ancillary building issues;
- 6- The applicant will communicate with the community during construction through a community liaison regarding construction conditions, such as truck staging, pile driving and air monitoring;
- 7- The applicant will comply with local law 97, the Climate Mobilization Act;
- 8- The applicant's storm water and waste management will net zero into the city's system; and
- 9- The applicant will comply with the local law 15 requirements for bird-friendly construction.

3. "Zoning For Coastal Flood Resiliency"

Comments on the presentation made by DCP at the November 10, 2020 Board meeting.

The majority of the committee members present approved my presenting the following recommendation to the full board.

The Board joins with the other Community Boards, which have a significant number of small homes affected by the regulations, in asking the city to partner with small homeowners to help them manage the costs of renovating.



Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION
120 Broadway, 31st Floor, New York, NY 10271
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

ACME SMOKED FISH/GEM STREET REZONING – 210138 ZMK, 210139 ZSK

Applications submitted by RP Inlet, LLC pursuant to Sections 197-c and 201 of the New York City Charter for a zoning map amendment to change a block bounded by Meserole and Wythe avenues, and Banker, Gem, and North 15th streets from M3-1 to M1-5, as well as a Large-Scale Development Special Permit by the City Planning Commission (CPC) to permit such development to exceed applicable height and setback requirements. These actions are requested to facilitate a mixed-use building with approximately 488,480 square feet (sq. ft.) of commercial space, including office and retail, as well as 95,300 sq. ft. of industrial space, to accommodate the relocation of the existing Acme Smoked Fish processing facility into the first phase of the intended construction, at 30 Gem Street in Brooklyn Community District 1 (CD 1).

BROOKLYN COMMUNITY DISTRICT NO. 1

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

SEE ATTACHED

Eric L. Adams

February 22, 2021

BROOKLYN BOROUGH PRESIDENT

DATE

RECOMMENDATION FOR: ACME SMOKED FISH/GEM STREET REZONING – 210138 ZMK, 210139 ZSK

RP Inlet, LLC submitted applications pursuant to Sections 197-c and 201 of the New York City Charter for a zoning map amendment to change a block bounded by Meserole and Wythe avenues, and Banker, Gem, and North 15th streets from M3-1 to M1-5, as well as a Large-Scale Development Special Permit by the City Planning Commission (CPC) to permit such development to exceed applicable height and setback requirements. These actions are requested to facilitate a mixed-use building with approximately 488,480 square feet (sq. ft.) of commercial space, including office and retail, as well as 95,300 sq. ft. of industrial space, to accommodate the relocation of the existing Acme Smoked Fish processing facility into the first phase of the intended construction, at 30 Gem Street in Brooklyn Community District 1 (CD 1).

On December 21, 2020, Brooklyn Borough President Eric Adams held a remote public hearing on these zoning map and text amendments and special permit. There were three speakers on the item: a board member of North Brooklyn Neighbors who expressed opposition to the development's height and size, a representative of Service Employees International Union Local 32BJ (SEIU 32BJ) who commended the developer's intent to provide prevailing wage jobs, and the executive director of Evergreen, who expressed support for the proposal as a way to retain and grow manufacturing in New York City.

In response to Borough President Adams' inquiry regarding the project's lack of a zoning special permit that links new multi-story office development to the provision of beneficial industrial space, and what mechanism would ensure that the new Acme Smoked Fish facility is maintained as maker space, the applicant's representative disclosed that the project would enter the City's Industrial Development Agency (IDA) program, which would require the Acme Smoked Fish building to be preserved as manufacturing space for a defined term.

In response to Borough President Adams' inquiry regarding the feasibility of incorporating open and/or enclosed rooftop agriculture to provide beneficial use through non-zoning floor area, the representative noted that green roofs would be created on areas resulting from the building's setbacks, which would be intended primarily for tenant use.

In response to Borough President Adams' inquiry regarding concerns about the proposed height, and what factors preclude a more horizontal massing of the intended bulk, the representative clarified that the building's zoning envelope is limited by several considerations. Ventilation requirements for Acme Smoked Fish preclude any construction directly about the building — the planned open space on North 15th Street and Wythe Avenue pushes the building back from the street; the commercial floorplates must be of sufficient depth to create rentable space, while maximizing light penetration. The resulting massing concentrates the building's bulk in the center of the block, which, in turn, yields the represented height of 178 feet.

In response to Borough President Adams' inquiry as to what consideration has been given to setting aside a portion of the building for local arts and/or cultural uses, as well as neighborhood retail and small businesses, the representative noted that the applicant is engaged in discussions with community groups but is not able to guarantee availability or set aside such space at this time.

In response to Borough President Adams' inquiry regarding the incorporation of sustainable features such as passive house design, New York City Department of Environmental (DEP) rain gardens, and wind turbines, the representative noted that onsite cogeneration has been considered but was deemed infeasible as part of the project. The representative expressed intent to work with the New York State Energy Research and Development Authority (NYSERDA) to meet the City's energy goals and with DEP to capture all rainwater onsite.

In response to Borough President Adams' inquiry regarding the inclusion and participation of locally-owned business enterprises (LBEs) and minority and women-owned business enterprises (MWBEs) in the construction process, the representative referenced 25 Kent Avenue, a nearby mixed commercial/industrial development that participates in the City's Industrial & Commercial Abatement Program (ICAP). The applicant would seek to utilize these incentives and conduct outreach to MWBE firms through the New York City Department of Small Business Services (SBS).

Subsequent to the hearing, Borough President Adams received letters in support of the project from several organizations, including the Brooklyn Chamber of Commerce, Evergreen, the New York City Council of the United Brotherhood of Carpenters and Joiners of America, and St. Nicks Alliance. Borough President Adams also received testimony from a longtime local resident on the importance of keeping Acme Smoked Fish in the community.

Subsequent to the hearing, Borough President Adams received 364 form letters expressing support for the proposed development.

Subsequent to the hearing, Borough President Adams received a letter from a group called North Brooklyn Residents advocating a minimum three-story reduction in the building's height, and a guarantee that the manufacturing space would be maintained for at least 25 years, as conditions of approval.

Consideration

On December 8, 2020, Brooklyn Community Board 1 (CB 1) voted to approve this application with the following conditions:

- That there would be a deed restriction guaranteeing that the Acme Fish building remains zoned for manufacturing use for 25 years
- That the Acme Smoked Fish portion of the development would have a state-of-the-art emissions control system
- That the special permit would contain language precluding subsequent filing for hotel use
- That there would be no bars or amplified music on any of the development's rooftops

That the applicant would:

- Commit to partnering with the New York City Department of Parks and Recreation (NYC Parks) to help fund the maintenance of Bushwick Inlet Park upon receipt of a Certificate of Occupancy (C of O) for the ancillary building
- Keep the community apprised, via a liaison about construction conditions including air monitoring, pile driving, and truck staging
- Comply with Local Law 97, the Climate Mobilization Act
- Ensure that the development has a net zero effect on the City's stormwater and waste management systems
- Comply with Local Law 15 requirements for bird-friendly construction

The board further recommended that the developer consider downsizing the ancillary building, and that M1-5 zoning should not be permitted unless paired with other discretionary actions, such as a large-scale plan until the New York City Department of City Planning (DCP) returns to discuss a cohesive zoning plan for New York City's manufacturing areas. In sum, the board seeks to restrict the application of zoning tools requested by the developer to the unique situation at 30 Gem Street.

These proposed land-use actions would facilitate the full redevelopment of a block bounded by Banker Street, Gem Street, Meserole Avenue, North 15th Street, and Wythe Avenue. The project site consists of seven tax lots with a total area of approximately 116,756 sq. ft. In addition to its original

facility at 30 Gem Street, Acme Fish occupies 14 Meserole Avenue, as well as 190 and 192 Banker Street.

These interconnected buildings provide approximately 72,855 of manufacturing floor area. The three non-Acme properties are 234 Banker Street, a 21,500 sq. ft. soon-to-be-vacant warehouse; 200 Banker Street, a 3,800 sq. ft. vacant building, and 168 Banker Street, a 21,730 sq. ft. irregular lot fronting four of the block's cross streets, used primarily for open storage.

The new Acme Smoked Fish facility would occupy the northwest corner of Banker Street and Meserole Avenue. The building would rise to four stories with a maximum height of 104 feet. A 25-foot high mechanical louver screen would be installed on the roof to comply with venting requirements. The redevelopment would achieve approximately 95,299 sq. ft. of production space, served by one loading berth on Banker Street and two on Meserole Avenue. To avoid interruption, the current Acme Fish operation would be maintained during the initial development phase. Upon completion of the new facility, the company would relocate entirely to this space, and construction would begin on the commercial building, slated to occupy the remainder of the block.

The new office/retail development would rise to nine stories with a maximum height of 178.5 feet, surmounted by a 25-foot tall mechanical bulkhead. Office uses would occupy approximately 454,661 sq. ft. of the total floor area, with the remaining 33,818 sq. ft. reserved for ground-floor retail. The building would have a 150-car parking facility accessible via Gem Street, and separately, 65 bicycle parking spots. The project's site plan provides approximately 21,403 sq. ft. of open and partially covered Public Access Area (PAA), concentrated on the south end of the block. The PAA would have a variety of plantings and seating options. The design also includes approximately 5,775 sq. ft. of green space in front of the building's retail stores.

The project area is zoned M3-1, a heavy manufacturing district with a permitted Floor Area Ratio (FAR) of 2.0 for commercial and industrial buildings, and a parking requirement of one space per 300 sq. ft. of floor area for certain uses. Uses with potential nuisance effects in M3 zones are required to meet minimum performance standards set forth in the New York City Zoning Resolution (ZR). It is also located in the Greenpoint-Williamsburg Industrial Business Zone (IBZ), which is zoned primarily for light manufacturing. In the IBZ's M1-2 zones, several property owners have taken advantage of a special permit created in 2016 that allows the maximum 4.8 community facility FAR for commercial development with the provision of least 0.8 FAR of required industrial use area. So far, three projects have been approved pursuant to this special permit: 25 Kent Avenue, 12 Franklin Street, and 103 North 13th Street. Acme Smoked Fish is seeking the greater FAR permitted by M1-5 zoning to advance a similar concept, whereby otherwise prohibitively expensive industrial space is financed through Class A and office and retail development. To maximize such revenues, the applicant also seeks relief from M1-5 height and setback requirements via a special permit that would facilitate a more flexible and optimal building envelope.

One quirk of manufacturing districts is that office and retail uses have been allowed to proliferate to such an extent that they are now primarily commercial in character. This phenomenon appears contrary to the expectations of the 1961 ZR. Because commercial uses tend to be higher value than industrial ones, without regulation, the private market would not provide land or space for maker uses. Changing the commercial zoning from M3-1 to the proposed M1-5 with the requested bulk modification permit, provides an opportunity to leverage certainty for manufacturing and other uses deemed beneficial to the community by restricting office and retail occupancy. Establishing effective legal means to ensure maker space and uses would help maximize the project's public purpose, including a new facility for Acme Smoked Fish that would secure its operations in Brooklyn.

Borough President Adams supports land use actions that broaden economic opportunity by providing employment for varied skill sets. This project would leverage the higher FAR permitted by an M1-5 zoning district to facilitate new commercial office development, which would, in turn, underwrite long-term upgrades to vital manufacturing space. promote commercial development, and upgrade vital manufacturing space. Such a proposal aligns with the City's industrial and workforce goals, which include the creation of quality jobs for those without college degrees. Borough President Adams supports the preservation and expansion of manufacturing floor area to sustain and grow the City's industrial sector.

Borough President Adams supports the creation of new manufacturing space through commercial office and retail development in sections of Brooklyn with thriving innovation and maker economies. He further supports actions that establish reasonable height limits, advance more need-based car parking and truck loading requirements, and incorporate desired neighborhood amenities.

Borough President Adams believes that it is appropriate to zone for increased commercial density in proximity to public transportation. The site's location is equidistant from the Brooklyn-Queens Crosstown Local G train Nassau Avenue and Greenpoint Avenue stations. It is also accessible via the B32 bus, which makes stops along Franklin Avenue and North 14th Street. Finally, the area is well-served by Citi Bike, with a docking station located directly on the block, at the intersection of North 15th Street and Wythe Avenue, and another across the street on Meserole Avenue.

The surrounding area contains a variety of commercial, industrial, and residential land uses. Major open space resources include Bushwick Inlet Park and McCarren Park, located several blocks west and south of the site.

Borough President Adams acknowledges the large jump in density from what is otherwise permitted by the existing zoning. Without the rezoning, there would be no means to compel the applicant to retain and modernize Acme Smoked Fish — placing more than 100 union jobs and a legacy business at risk. The proposed rezoning would enable any combination of office use and most forms of retail at substantially greater density and height. Borough President Adams acknowledges community concerns about large-scale commercial development at this site but recognizes that such occupancy is necessary to underwrite a state-of-the-art facility for Acme Smoked Fish. The resulting bulk, while an aberration to the surrounding context, is generally justified to achieve this important policy objective.

Borough President Adams generally supports the proposed rezoning to facilitate the represented mixed-use development at 30 Gem Street. However, he seeks assurances of dedicated commercial space for maker businesses, a mechanism to ensure user compliance, a restricted range of permitted use groups, limitations on accessory retail floor area, consideration of bulk redistribution and reduction, integration of resilient and sustainable features including rain gardens, advancement of Vision Zero policies, the implementation of car-share, and a high level of local and MWBE hiring for the project.

Ensuring the Provision and Retention of Space for Innovation and Maker Jobs

To ensure that maker use floor area at 30 Gem Street is retained in the proposed expansion, it is necessary to establish compliance standards. ZR Section 74-962 provides a template for required compliance and recordation, including periodic notification by the owner, and annual reporting by a qualified third party. Under the rules of that Special Permit (established as part of the 25 Kent Avenue application), the property owner must file a Notice of Restrictions to receive a building permit from the New York City Department of Buildings (DOB). ZR Section 74-962 also states that "no temporary certificate of occupancy for any portion of the building to be occupied by incentive uses shall be issued until a temporary certificate of occupancy for the core and shell is issued for all portions of the building required to be occupied by required industrial uses." Such regulation was

designed to ensure that the Required Industrial Use area is developed before any Incentive Use area contingent on the provision of such manufacturing floor area is occupied.

Furthermore, each new lease executed for any part of the Required Industrial Use space requires public notification, via electronic resource, of certain information about each new tenant and use, including the total floor area of Required Industrial Uses in the development, a digital copy of all approved Special Permit drawings pursuant to ZR Section 74-962 (a)(1) through (a)(4), and the names of all establishments occupying floor area reserved for Required Industrial Uses. Additionally, for each establishment, public notification must specify the amount of Required Industrial Use floor area, the UG, the subgroup, and the specific use as listed in the ZR.

The property owner is also required to retain a qualified third party, approved by SBS to produce an annual report and conduct an inspection to ensure that the Required Industrial Use area is compliant with the provisions of ZR Section 74-962. Such report must include a description of each establishment with the North American Industry Classification System (NAICS) code and number of employees, the total amount of vacant Required Industrial Use floor area, as applicable; the average annual rent for the combined total of the portions of the building reserved for occupancy by Required Industrial Uses, and the number of new leases executed during the calendar year, categorized by lease duration, in five-year increments. Such report must be submitted to DCP, as well as the Brooklyn borough president, the local City Council member, and the community board. Such report must be prepared by an organization under contract with the City to provide inspection services, an SBS-certified firm that provides such inspection services, or an entity that the commissioner of SBS determines to be qualified to produce such report, provided that any qualified third party selected by the owner to prepare such a report shall have a professional engineer or a registered architect licensed under the laws of the State of New York to certify the report.

Borough President Adams believes that to ensure compliance and the desired ratio of uses, the standards established in ZR 74-962 should be incorporated into the proposed zoning text amendment. In addition, one of the area's non-profit industrial business solutions providers, such as Evergreen, would warrant consideration as a potential administering agent for the industrial building at 30 Gem Street. Borough President Adams believes that any floor area managed by a not-for-profit agency should comply with periodic notification and annual reporting requirements.

Therefore, prior to considering the application, the City Council should obtain written commitments from the applicant, RP Inlet, LLC, to establish a legally enforceable mechanism, such as a deed restriction, a contract with an industrial non-profit, and/or a government financing agreement that would ensure industrial floor area compliance, and establish ongoing monitoring.

Use Group Compliance with Innovation and Maker Jobs

According to the applicant, the redevelopment of 30 Gem Street would expand the Acme Smoked Fish manufacturing space by 40 percent. The new, modernized floor area would be better utilized to optimize operations and production. Acme Smoked Fish expects that this purpose-built facility will secure its long-term presence in Brooklyn. However, such occupancy is not guaranteed, and IDA incentive programs would require the building to be maintained as manufacturing space for 25 years.

Borough President Adams seeks to ensure floor area for innovation and maker uses in perpetuity. He believes that such managed manufacturing space should reflect any combination of agricultural, heavy service, manufacturing establishments, as well as studios for art, dancing, motion picture production, music, photographic, radio/television, or theatrical, semi-industrial facilities, and trade schools for adults. It should also include service use categories from Use Group 9A such as blueprinting or photostating establishments, dental or medical laboratories, musical instrument

repair shops, studios, and trade schools for adults, which he deems consistent with maker uses. Studios are also included in Use Group 10A.

Borough President Adams believes that certain uses, such as depositories and automobile showrooms, as well as truck terminals, warehouses, and wholesale establishments should be excepted from the range of otherwise considered innovation and maker uses.

Borough President Adams further believes that the effectiveness of innovation and maker uses are dependent on being provided with clear access 24 hours a day, seven days a week to common service corridors, freight elevators, and loading docks on streets to ensure active industrial spaces. He believes this should be a requirement of meeting maker floor area as defined above by certain UG 9, 10, 11, 16, 17, and 18 uses noted above.

Borough President Adams believes that, prior to considering the application, the City Council obtain commitments, in writing, from the applicant, RP Inlet, LLC, clarifying how it would establish a legally enforceable mechanism, such as a deed restriction, contract with a non-profit business service provider, and/or government financing agreement to ensure occupancy would be restricted to innovation and maker uses with clear access to the street.

Restricting Accessory Retail Floor Area

Though not expressed as an intention, Borough President Adams believes that the recommended binding agreement address the possibility of retail use under the guise as being accessory to a primary use tenant. Such floor area utilization would undermine the intent of securing dedicated space for innovation and/or maker uses.

There has been a trend for certain uses listed within UGs 11A, 16, 17, and 18 — specifically alcoholic beverages or breweries — in which a small accessory section of floor area is set-aside for retail and/or eating and drinking establishments. For example, such a development might have an interior retail street where one can purchase baked goods from a small store off the main production area. With the ongoing trend of artisanal food and beverage production, an accessory sales component often provides important synergy and financial viability. However, other manufacturing uses, such as metal fabrication and woodworking, do not lend themselves to accessory retail. This puts such makers at a disadvantage because they lack the benefit of such operations and cannot afford to pay higher rents for manufacturing space. Additionally, excessive floor area occupancy by accessory retail and/or eating and drinking establishments undermines the purpose of establishing dedicated floor area for manufacturing uses. The ZR is silent regarding restricting accessory operations.

As Borough President Adams noted in his 2016 recommendations for 25 Kent Avenue, and his recent recommendations for 12 Franklin Street, 103 North 13th Street, Industry City, and Suydam Street, public benefit would be diminished if the accessory retail and/or eating and drinking establishment uses consumed more than a nominal amount of floor area.

As has been Borough President Adams' recommendation for those prior ULURP applications, he seeks to clearly define the extent of the floor area that would be allotted for supporting accessory retail as well as eating and drinking operations at 30 Gem Street. He believes that it is appropriate to limit accessory retail operations, specifically for UGs 6A, 6C, 7B, 7D, 8B, 8C, 10A, and 12 by permitting up to 100 sq. ft. without regard to the size of the industrial/maker establishment, though not more than 1,000 sq. ft. or not exceeding 10 percent of floor area per establishment.

Borough President Adams believes that to maintain the integrity of floor area for maker businesses, 100 sq. ft. — without regard to the size of the establishment or not exceeding 10 percent of floor

area per establishment, though not more than 1,000 sq. ft. — would be an appropriate extent of classifying floor area as an accessory use.

Borough President Adams believes that prior to considering the application, the City Council obtain commitments, in writing, from the applicant, RP Inlet, LLC clarifying how it would establish a legally enforceable mechanism, such as a deed restriction, contract with a non-profit business service provider, and/or government financing agreement limit accessory retail floor area.

Appropriate Bulk

Borough President Adams acknowledges concerns expressed during the ULURP process, starting with initial meetings held by CB 1, regarding appropriate bulk for proposed development. While community members have called for a three-story reduction to the commercial building, the board recognized that the resulting floor area would be insufficient to finance the new Acme Smoked Fish facility.

Borough President Adams understands that the proposed bulk and height would contrast sharply with the project's low-rise residential context. The letter from North Brooklyn Residents included those living nearby on Meserole Avenue and Lorimer, Milton, Noble, and Oak streets. Meserole Avenue, at Banker Street, marks the start of a four-story residential context, which extends away diagonally from the development site. Further north along Banker Street, the block transitions again to residential use at Calyer Street, where buildings range from two to four stories (though the view corridor north along Banker Street leads to the Greenpoint, a residential tower on the waterfront). Along Norman Avenue, four-story residential buildings are found mid-block east of Dobbin Street, with three stories being more characteristic of residential buildings further away from the site.

Borough President Adams believes the requested M1-5 district and FAR support the applicant's objective of financing a state-of-the-art production facility for Acme Smoked Fish. However, he believes that it is possible to redesign the proposed commercial building and that consideration should be given to modifying its envelope. The requested LSDS special permit would allow the intended development to exceed applicable height and setback requirements. The application drawings pursuant to that permit are subject to consideration by the City Planning Commission (CPC), and provide an opportunity to refine the proposed bulk.

Borough President Adams believes that specific modifications could be considered in consultation with CB 1, North Brooklyn Residents, and local elected officials. However, to realize bulk reductions on certain frontages, it would be necessary to permit enlargements along others, which would require community consensus. Consideration for enlargement without compromising the intended Acme Smoke Fish structure includes extending the commercial building's rear out to the street line for its intended office floors along both Bank and Gem streets. This provides an opportunity to remove nearly 32,000 sq. ft. of bulk elsewhere, based on community prioritization.

Consideration for floor area removal should target upper floor setbacks along Meserole and/or Wythe avenues as to reduce the visual impact on the nearby four-story residential buildings. Both setbacks would decrease the development's bulk by nearly 6,000 sq. ft, leaving at least 26,000 sq. ft. to be removed from the building's tower, which could be reduced through any combination of a uniform setback from Meserole Avenue to a maximum setback of the ninth floor. If upper floor setbacks of the base along Meserole and Wythe avenues are not deemed a priority by the community, the tower segment could be set back much further from Meserole Avenue.

Borough President Adams understands that commercial office floors are imperfect as a rentable commodity. However, a request for the community to accept an increase in FAR from 2.0 to 5.0 and a resulting height of over 175 feet, warrants some reassessment of the proposed massing. Therefore, Borough President Adams believes that prior to considering the application, the CPC and/or the City

Council should seek modifications to the special permit plans to achieve a combination of greater floor area along Banker and Gem streets, a reduction in the building's base height and tower segment along Meserole Avenue, and the base bulk on Wythe Avenue, in consultation with CB 1, North Brooklyn Residents, and local elected officials.

Advancing Resilient and Sustainable Energy and Stormwater Management Policies

It is Borough President Adams' policy to advocate for promoting environmentally sustainable development that integrates blue/green/white roofs, solar panels, and/or wind turbines, as well as passive house construction. Such measures tend to increase energy efficiency and reduce a building's carbon footprint.

In the fall of 2019, the City Council passed Local Laws 92 and 94, which require that newly constructed roofs, as well as existing roofs undergoing renovation (with some exceptions), incorporate a green roof and/or a solar installation. The laws further stipulate 100 percent roof coverage for such systems and expand the City's highly reflective (white) roof mandate. Borough President Adams believes that developers should seek to exceed this mandate by integrating blue roofs with green roof systems. Regarding solar panels, there are now options beyond traditional roof installation. Multiple companies are manufacturing solar cladding from tempered glass that resembles traditional building materials, with energy output approximating that of mass-market photovoltaic systems. For taller buildings, and those in proximity to the waterfront, micro wind turbines can provide effective sustainable energy generation. Finally, passive house construction achieves energy efficiency while promoting locally based construction and procurement.

In Borough President Adams' letter to President Joseph R. Biden Jr., dated January 21, 2021, he outlined an urban agenda based on funding policies that will rebuild America as a more equitable and just society, including initiatives consistent with the Green New Deal. Specifically, Borough President Adams advocated for renewable energy and battery storage to move beyond reliance upon natural gas and dirty "peaker plants," disproportionately sited in communities of color. He believes that grid-connected rooftop batteries should be a standard consideration for commercial buildings. Between existing flat roofs upgrades and newly developed projects, there should be sufficient demand to manufacture such units locally and create industrial jobs.

Borough President Adams recognizes that the applicant has expressed intent to achieve an energy-efficient building envelope at 30 Gem Street and seek LEED certification. He believes it is appropriate for RP Inlet, LLC to engage the Mayor's Office of Sustainability, NYSERDA, and/or the New York Power Authority (NYPA), to give consideration to government grants and programs that might offset costs associated with enhancing the resiliency and sustainability of this development site. One such program is the City's Green Roof Tax Abatement (GRTA), which provides a reduction of City property taxes by \$4.50 per sq. ft. of green roof, up to \$100,000. The DEP Office of Green Infrastructure advises property owners and their design professionals through the GRTA application process. Borough President Adams encourages the developer to reach out to his office for any help in opening dialogue with these agencies and further coordination on this matter.

As part of his flood resiliency policy, Borough President Adams encourages developers to introduce best practices to manage stormwater runoff, such as incorporating permeable pavers and/or establishing rain gardens that advance DEP's green infrastructure strategy. He believes that sidewalks with nominal landscaping and/or adjacent roadway surfaces could be transformed through the incorporation of rain gardens, which provide tangible environmental benefits through rainwater collection, improved air quality, and streetscape beautification. Tree plantings can be consolidated with rain gardens as part of a more comprehensive green infrastructure strategy. Where it is not advisable to remove existing street trees, there would be an opportunity to integrate stormwater retention measures into existing tree pits, with additional plantings, which would increase infiltration and make the site more pleasant for its users. In

addition, blue/green roofs, permeable pavers, and rain gardens (including street tree pit enhancements) would help divert stormwater from the Newtown Creek Wastewater Treatment Plant.

The required Builders Pavement Plan provides an opportunity to install DEP rain gardens along the proposed development's frontages on Meserole and Wythe avenues, and Banker, Gem, and North 15th streets. The ZR requirement to plant street trees provides shade on excessively hot days, helps combat the urban heat island effect, and provides other aesthetic, air quality, and enhanced stormwater retention benefits. It should be noted that a rain garden would require a maintenance commitment and attention from the landlord. Maintenance includes cleaning out debris and litter that can clog the inlet/outlet and prevent proper water collection, regular inspection to prevent soil erosion, watering during dry and hot periods, and weeding to keep the plants healthy and uncongested for proper water absorption.

Borough President Adams believes that RP Inlet, LLC should consult with DEP, the New York City Department of Transportation (DOT), and NYC Parks regarding the inclusion of rain gardens integrated with street trees as part of a Builders Pavement Plan. Where the agencies have interest in implementing an enhancement, advance consultation should be initiated with CB 1 and local elected officials.

Therefore, prior to considering the application, the City Council should obtain written commitments from the applicant, RP Inlet, LLC, clarifying how it would memorialize integrating resiliency and sustainability features across 30 Gem Street.

Advancing Vision Zero Policies

Borough President Adams supports Vision Zero policies, including practices that extend sidewalks into the roadway to shorten the path where pedestrians cross in front of traffic lanes. These sidewalk extensions, also known as bulbouts or neckdowns, make drivers more aware of pedestrians and encourage them to slow down at crossings.

In 2015, Borough President Adams launched his initiative Connecting Residents on Safer Streets (CROSS) Brooklyn. This program supports the creation of bulbouts or curb extensions at dangerous intersections in Brooklyn. During the program's first year, \$1 million was allocated to fund five dangerous intersections in Brooklyn. With more curb extensions, seniors will benefit because more of their commutes will be spent on sidewalks, especially near dangerous intersections. At the same time, all users of the roadways will benefit from safer streets.

As stated earlier, this block is located within an IBZ, where conflicts often arise between vehicles and pedestrians, particularly near loading zones. As the proposed development would bring additional employees and visitors to area, it is essential to enhance pedestrian crossings at the block's five intersections, especially those intended as public space.

Per his CROSS Brooklyn initiative, Borough President Adams believes there is an opportunity to enhance pedestrian safety by providing curb extensions and/or painted protected sidewalks at any of the development's five intersections, and especially at Banker Street, North 15th Street, and Wythe Avenue, which would be designed as publicly accessible open space.

Borough President Adams recognizes that the costs associated with the construction of sidewalk extensions can be exacerbated by the need to modify infrastructure and/or utilities. Therefore, where such consideration might compromise feasibility, Borough President Adams would urge DOT to explore the implementation of either protected painted sidewalk extensions defined by a roadbed surface treatment or sidewalk extensions as part of a Builders Pavement Plan. If the implementation meets DOT's criteria, the agency should enable RP Inlet, LLC to undertake such improvements as part of its Builders Pavement Plan, after consultation with CB 1 and local elected officials. The implementation of a sidewalk

extension through roadbed treatment requires a maintenance agreement that indemnifies the City from liability, contains a requirement for insurance, and details the responsibilities of the maintenance partner.

Borough President Adams would expect RP Inlet, LLC to commit to such maintenance as an ongoing obligation for each of its development sites. Borough President Adams believes that prior to considering the application, the City Council should obtain written commitments from RP Inlet, LLC to coordinate CROSS Brooklyn implementation with DEP and DOT for curb extensions at one or more of the development's intersections, particularly those intended for pedestrian circulation, either as part of a Builders Pavement Plan or as treated roadbed sidewalk extensions. The City Council should further seek demonstration of RP Inlet, LLC's commitment to enter into a standard DOT maintenance agreement for those intersections. Finally, DOT should confirm that implementation of such improvements would only proceed following consultation with CB 1 and local elected officials.

Promoting Access to Car-Share Vehicles

Borough President Adams supports the establishment of Transit Zones in the ZR to enable affordable housing development without the requirement to provide parking for such permanently affordable housing floor area. Another way to address parking capacity is by accommodating the growing number of users who rely on car-share for their driving needs. A rental car can provide mobility in certain use cases, though it is not as flexible as having direct access to a car for a set amount of time and can be expensive for longer trips. Car rental requires, at minimum, a full day reservation as well as time and effort to access such facilities. However, there can be times when affordable access to automobiles would be considered a quality-of-life enhancement, even for households with higher discretionary income. Furthermore, research suggests that car-share availability reduces automobile use for individuals who already own cars, creating environmental benefits and reducing congestion. Borough President Adams believes that facilitating car-share at this location would benefit building occupants as well as nearby Greenwood Heights residents and those of surrounding communities.

According to ZR Section 36-46(a)(1), a car-sharing entity is permitted to occupy up to five parking spaces, though no more than 20 percent of all spaces in group parking facilities. As stated earlier, M1-5 districts do not mandate the provision of accessory parking. However, the developer intends to provide 150 ground-level vehicle spaces, which would be accessed via Gem Street. Though the garage would be used primarily by the development's employees and patrons, Borough President Adams believes that 30 Gem Street could accommodate car-share rentals based on reasonable pricing. Therefore, a portion of the commercial building's garage should be set aside for a limited number of rental vehicles through dialogue with car-sharing companies.

The incorporation of car-sharing vehicles within the building's garage would require the developer to provide visible signage, per ZR Section 36-523, and to state the total number of parking spaces, as well as the maximum number of car-sharing vehicles. Therefore, prior to considering this application, the City Council should obtain written commitments from the developer, RP Inlet, LLC, clarifying how it would engage car-sharing companies to lease multiple spaces within the garage.

Jobs

Borough President Adams is concerned that too many Brooklyn residents are currently unemployed or underemployed. It is his policy to promote economic development that creates more employment opportunities. According to the Furman Center's "State of New York City's Housing and Neighborhoods in 2017," double-digit unemployment remains a pervasive reality for several of Brooklyn's neighborhoods, with more than half of the borough's community districts experiencing poverty rates of nearly 20 percent or greater. The ongoing COVID-19 pandemic has only exacerbated widespread job insecurity. Prioritizing local hiring would assist in addressing this employment crisis. Additionally, promoting Brooklyn-based businesses, including those that qualify as LBEs and MWBEs, is central to Borough President Adams'

economic development agenda. This site provides opportunities for the developer to retain a Brooklyn-based contractor and subcontractor, especially those that are designated LBEs consistent with Section 6-108.1 of the City's Administrative Code, and MWBEs that meet or exceed standards per Local Law 1 (no less than 20 percent participation).

The applicant has expressed intent to partner with St. Nicks Alliance, a social service organization with experience in workforce development, to maximize local and MWBE hiring. Given the project's purpose, scope, and size, it is important to maximize its economic benefit to the community.

Borough President Adams believes that prior to considering the application, the City Council should obtain written commitments from the applicant, RP Inlet, LLC, to memorialize retention of Brooklyn-based contractors and subcontractors, especially those that are designated LBEs, for both the pending and subsequent development sites, consistent with Section 6-108.1 of the City's Administrative Code and MWBE as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency.

Recommendation

Be it resolved that the Brooklyn borough president, pursuant to Section 197-c of the New York City Charter, recommends that the City Planning Commission and City Council approve this application with the following conditions:

That prior to considering the application, the City Council obtain written commitments from the applicant, RP Inlet, LLC, for both the commercial and residential development sites, clarifying how it would:

1. Establish a legally enforceable mechanism, such as a deed restriction, contract with a non-profit business service provider, and/or government financing agreement to ensure innovation and/or maker use, monitor use floor area compliance, restrict to innovation and maker uses, establishes clear access to the street, and limit accessory retail floor area as per the following:
 - a. That compliance and recordation shall be according to New York City Zoning Resolution (ZR) 74-962(d)
 - b. That periodic notification by the owner shall be according to ZR 74-962(e)
 - c. That annual reporting by a qualified third party shall be according to ZR 74-962(f)
 - d. That floor area managed by a not-for-profit agency shall remain part of the zoning lot and be required to comply with annual reporting and periodic notification requirements
 - e. That Innovation and Maker Uses restricted to Use Groups (UGs) 9A, limited to blueprinting or photostating establishments, dental or medical laboratories, musical instrument repair shops, studios, trade schools for adults, 10A, limited to studios, 11A, 16A except for automobile showrooms, 16B, 16D except for truck terminals, warehouses, and wholesale establishments, 17B, 17C limited to agriculture, and 18A
 - f. That such innovation and/or maker uses be provided with clear access to common service corridors, freight elevators, and loading docks on streets 24 hours a day, seven days a week to ensure active industrial spaces

- g. That accessory retail floor area that would otherwise meet the definition of (UGs 6A, 6C, 7B, 7D, 8B, 8C, 10A, and 12, not exceed the greater of 100 square feet or 10 percent of an establishment's floor area (limited to 1,000 square feet) in order to be deemed accessory
2. That for 210139 ZSK ZR 74-743 Large-Scale Development Special Permit by the City Planning Commission (CPC)] to allow such development to exceed applicable height and setback requirements, the application documents be modified in consultation with Brooklyn Community Board 1 (CB 1), North Brooklyn Residents, and local elected officials through any combination of the below actions:
- a. That Z-002 LSGD Site Plan be modified as follows:
- 1) As a means of providing more floor area:
 - i. Along Banker Street, the six-story height of 125 feet with a depth of 20 feet, shall be enlarged to the street line for floors two through six, and along the street line toward Wythe Avenue for a length of 221 feet, resulting in 17,680 square feet (sq. ft.)
 - ii. Along Gem Street, the five-story height of 104 feet with a depth of 20 feet shall be enlarged along the street line toward Wythe Avenue for a length of 178 feet, resulting in 14,240 sq. ft. with a recessed ground floor
 - 2) As a means of providing less floor area:
 - i. Along Meserole Avenue, the-five story height of 104 feet with a depth of 40 feet, shall be reduced to a four-story height along the street line away from Meserole Street for a depth of 40 feet for its length of 95 feet along Meserole Avenue, resulting in a reduction of 3,800 sq. ft., and/or
 - ii. Along Meserole Avenue, the nine-story height of 178.5 feet, the setback of 45 feet for its length of 120 feet along Meserole Street shall be limited for floors six through nine through any combination of reducing the floor area by not less than 26,000 sq. ft. (for example, by setting back the ninth floor an additional 216.67 feet or setting back floors six through nine an additional 54.17 feet) and up to 31,920 sq. ft. and/or (for example, by setting back the ninth floor an additional 266 feet or setting back floors six through nine an additional 66.5 feet)
 - iii. Along Wythe Avenue, the six-story height of 125.5 feet with a building line distanced 555.72 feet, shall be reduced to a five-story height starting at the building line of 140 feet along Wythe Avenue for a depth of 15 feet, resulting in a reduction of 2,100 sq. ft.
- b. That consistent with modifications to Z-002 LSGD Site Plan:
- 1) Z-011.00 Illustrative Ground Floor Plan be modified to depict dashed lines along Banker and Gem streets consistent with the above

2) Z-020.00 Zoning Diagram Waivers be modified as follows:

- i. Remove the requested waiver depiction along Meserole Avenue and/or
- ii. Add a requested waiver depiction along Banker Street
- iii. Elongate the requested waiver depiction along Gem Street

3) Z-030.00 and Z-031.00 Zoning Sections, Z-040.00 and Z-041-00 Zoning Elevations, Z-050.00 and Z-051.00 Neighborhood Character Diagrams, be modified to depict removed and added bulk envelope

3. That the City Council obtain written commitments from RP Inlet, LLC to:

- a. Memorialize incorporation of resiliency and sustainability measures, such as blue and/or green roofs, grid-connected rooftop batteries, passive house design, solar panels and/or facades, and/or wind turbines
- b. Coordinate with the New York City Department of Environmental Protection (DEP), New York City Department of Transportation (DOT), and the New York City Department of Parks and Recreation (NYC Parks) to install DEP rain gardens as part of a Builders Pavement Plan on the block bounded by Meserole and Wythe avenues, and Banker, Gem, and North 15th streets in consultation with Brooklyn Community Board 1 (CB 1) and local elected officials
- c. Coordinate Connecting Residents on Safer Streets (CROSS) Brooklyn implementation with DEP and DOT to install a curb extension at the intersections of Meserole Avenue with Banker and Gem streets, and the intersections of Wythe with Banker and North 15th streets, either as part of a Builders Pavement Plan or as a treated roadbed sidewalk extension
- d. Enter into a standard DOT maintenance agreement for those intersections and coordination with DEP and DOT following agency implementation of protected painted areas at the intersections of Meserole Avenue with Banker and Gem streets, and the intersections of Wythe Avenue with Banker and North 15th streets with such improvements to proceed only after consultation with CB 1 and local elected officials
- e. Engage with car-sharing companies, in consultation with CB 1 and local officials, to lease multiple spaces within the development's garage
- f. Retain Brooklyn-based contractors and subcontractors, especially those that are designated local business enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and minority- and women-owned business enterprises (MWBES) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency.

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT (this "Declaration"), is made as of this ____ day of ____ 202__ by RP INLET, LLC, a Delaware corporation, having an address at 2929 Arch Street, 28th Floor, Philadelphia, PA 19104 (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the fee owner and/or contract vendee of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, known as and by the street address 30 Gem Street and designated for real property tax purposes as Block 2615, Lots 1, 6, 19, 21, 25, 50, and 125, which real property is more particularly described in **Exhibit A** annexed hereto and made a part hereof (the "Subject Property"); and

WHEREAS, Declarant desires to improve the Subject Property as a "large-scale general development" meeting the requirements of a "large-scale general development" as such term is defined in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended (such proposed improvement of the Subject Property hereinafter referred to as the "Large-Scale Development Project"); and

WHEREAS, in connection with the Large-Scale Development Project, Declarant has filed an application with the New York City Department of City Planning ("City Planning") for approval by the New York City Planning Commission (the "Commission" or "CPC") of: (1) a Map Amendment to Zoning Maps 12c and 13a to change the Subject Property from an M3-1 zoning district to an M1-5 zoning district, under Application No. _____ (the "Map Amendment"); and (2) a Special Permit, pursuant to Zoning Resolution Section 74-743(a)(2), to waive certain height and setback regulations, under Application No. _____ (the "Large-Scale Special Permit") (collectively, the "Land Use Applications");

WHEREAS, the site plan for the Large-Scale Development Project, attached hereto as **Exhibit B**, designates publicly accessible areas that are to be constructed and maintained by Declarant and accessible to the public as set forth in this Declaration (referred to herein as the "Publicly Accessible Area");

WHEREAS, Section 74-743(b)(10) of the Zoning Resolution requires that a declaration with regard to ownership requirements in paragraph (b) of the "large-scale general development" definition in Zoning Resolution Section 12-10 be filed with the Commission;

WHEREAS, to ensure that the development of the Subject Property is consistent with the analysis in the Final Environmental Impact Statement ("FEIS") issued pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. ("CEQR") and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 ("SEQRA") and incorporates certain (a) requirements for mitigation of significant adverse environmental impacts ("Mitigation Measures"); and (b) certain project components related to the environment which were material to the analysis of the environmental impacts in the FEIS ("PCREs"), Declarant has committed to restrict the development, operation,

use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration;

WHEREAS, _____ (the “Title Company”) has certified in the certification (the “Certification”) attached hereto as **Exhibit C** and made a part hereof, that as of _____, Declarant is a party-in-interest (“Party-in-Interest”) in the Subject Property, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution;

WHEREAS, All Parties-in-Interest to the Subject Property have executed or waived the right to execute this Declaration; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

NOW, THEREFORE, Declarant does hereby declare that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained, subject to the following restrictions, covenants, obligations and agreements, which shall run with such real property binding Declarants, as the case may be, and their respective successors and assigns as herein set forth:

ARTICLE I

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

1.1 Designation of Large-Scale General Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in Section 5.4), the Subject Property, if developed pursuant to the Large-Scale Special Permit, shall be treated as a large-scale general development site and shall be developed and enlarged as a single unit.

1.2 Development of Large-Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large-Scale Special Permit, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by (a) Gensler, 1700 Broadway Suite 400, New York, NY 10019, approved as part of the Large-Scale Special Permit and annexed hereto in **Exhibit D** and made a part hereof:

Drawing No.	Title	Date
Z-001.00	Zoning Analysis	10/21/2020
Z-002.00	LSGD Site Plan	10/21/2020
Z-020.00	Zoning Diagram Waiver	10/21/2020
Z-030.00	Zoning Sections	10/21/2020
Z-031.00	Zoning Sections	10/21/2020
Z-070.00	Flood Elevation Plan	10/21/2020

(b) plans prepared by MPFP, 120 Broadway, 20th Floor, New York, NY 10271, approved as part of the Large-Scale Special Permit and annexed hereto in **Exhibit E** and made part hereof:

Drawing No.	Title	Date
Z-01.00	Zoning Lot Site Plan Plaza Level	10/30/2020
L-100.00	Public Accessible Area Plan	12/07/2020
L-200.00	Furnishing Plan	12/07/2020
L-300.00	Grading and Paving Plan	12/07/2020
L-400.00	Planting and Lighting Plan	12/07/2020
L-401.00	Photometric Plan	12/07/20
L-500.00	Circulation Plan	12/07/2020
L-600.00	Section	10/21/2020
L-601.00	Section	10/21/2020
L-602.00	Section	10/21/2020
L-603.00	Section	10/21/2020
L-700.00	Paving, Wall, and Step Details	10/21/2020
L-701.00	Precast Plaza Bench Details	10/21/2020
L-702.00	Sculptural Plaza Bench Details	10/21/2020
L-703.00	Planting and Lighting Details	10/30/2020
L-704.00	Details	10/30/2020

If the Declarants seek to develop the Subject Property other than pursuant to the Large Scale Special Permits, the Large Scale Special Permits shall be deemed surrendered and Declarants may not develop the Subject Property except as permitted by the zoning district regulations and any other applicable restrictions.

ARTICLE II

PUBLICLY ACCESSIBLE AREA

2.1 Construction of the Publicly Accessible Area.

(a) Declarant shall construct the Publicly Accessible Area substantially in accordance with the plans annexed hereto in **Exhibit E**.

(b) Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State, and Federal permits and approvals to fully construct the Publicly Accessible Area.

(c) Declarant shall not accept a Temporary or Permanent Certificate of Occupancy from the New York City Department of Buildings (“**DOB**”) for any of the commercial space on the Subject Property, excluding the Acme Smoked Fish facility which will be constructed substantially in accordance with the plans attached as **Exhibit D**, until the Chairperson of the CPC (the “**Chair**”) certifies to Declarant and DOB that the Publicly Accessible Area is Substantially Complete (defined herein), in accordance with the following provisions:

(i) *Notification.* Declarant shall notify the Chair at such time as it believes that the Publicly Accessible Area is Substantially Complete and shall request that the Chair issue

a certification to Declarant and DOB certifying the Substantial Completion of the Publicly Accessible Area.

(ii) *Initial Review.* No later than twenty (20) days after the receipt of the notification set forth in Section 2.1(c)(i) herein, the Chair shall either: (A) issue a Notice of Substantial Completion; or (B) deliver to Declarant written notice setting forth the reasons why the Publicly Accessible Area is not Substantially Complete and the items that need to be completed in order to determine that the Publicly Accessible Area is Substantially Complete.

(iii) *Subsequent Review.* Upon completing the outstanding work specified by the Chair to achieve Substantial Completion, Declarant shall notify the Chair of such completion. No later than ten (10) calendar days of the receipt of such notice, the Chair shall either: (A) issue a Notice of Substantial Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Substantial Completion.

(iv) “Substantial Completion” or “Substantially Complete” shall mean that the Publicly Accessible Area has been constructed substantially in accordance with the Plans and has been completed to such an extent that all portions of the Publicly Accessible Area may be operated and made available for public use.

(d) Declarant shall not accept a Permanent Certificate of Occupancy from DOB for any of the commercial space on the Subject Property, excluding the Acme Smoked Fish facility which will be constructed substantially in accordance with the plans attached as **Exhibit D**, until the Chair certifies to Declarant and DOB that the Publicly Accessible Area is Finally Complete (defined herein), in accordance with the following provisions:

(i) *Notification.* Declarant shall notify the Chair at such time as it believes that the Publicly Accessible Area is Finally Complete and shall request that the Chair issue a certification to Declarant and DOB certifying the Final Completion of the Publicly Accessible Area.

(ii) *Initial Review.* No later than twenty (20) days after the receipt of the notification set forth in Section 2.1(d)(i) herein, the Chair shall either: (A) issue a Notice of Final Completion; or (B) deliver to Declarant written notice setting forth the reasons why the Publicly Accessible Area is not Finally Complete and the items that need to be completed in order to determine that the Publicly Accessible Area is Finally Complete.

(iii) *Subsequent Review.* Upon completing the outstanding work specified by the Chair to achieve Final Completion, Declarant shall notify the Chair of such completion. No later than ten (10) calendar days of receipt of such notice, the Chair shall either: (A) issue a Notice of Final Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Final Completion.

(iv) “Final Completion” or “Finally Complete” shall mean the constructed Publicly Accessible Area fully complies with all aspects of the Plans and that all items specified by the Chair, as incomplete, during the Substantial Completion review process were completed.

(e) Declarant shall be permitted to accept a Temporary or Permanent Certificate of Occupancy from DOB for the Acme Smoked Fish facility, which will be constructed substantially in accordance with the plans attached as **Exhibit D**, before the Chair certifies to Declarant and DOB that the Publicly Accessible Area is Substantially Complete or Finally Complete (defined herein).

2.2 Public Access Easement.

(a) Immediately upon the certification of Substantial Completion, Declarant grants the City of New York and the general public a permanent, perpetual access easement over the entirety of the Publicly Accessible Area, unobstructed from the surface of the Publicly Accessible Area to the sky, except for those areas where the Publicly Accessible Area is not open to sky as per the plans attached as **Exhibit D** and **Exhibit E**, for the purposes of (i) passive recreational use by the general public and (ii) pedestrian access (the “Public Access Easement”).

(b) All liens, including but not limited to judgment liens, mortgage liens, mechanics’ liens and vendees’ liens, and all burdens, covenants, encumbrances, leases, licensees, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and easements, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Easement as herein defined in Article 2.2(a).

2.3 Hours of Access.

(a) The Publicly Accessible Open Space shall be open and accessible to the public each day during the hours of 6AM to 12AM. all year.

(b) Declarant may only close the Publicly Accessible Area, in a manner that reduces the area closed to the utmost extent, in order to: (a) perform required maintenance, repairs, or replacements of the Publicly Accessible Area, or portions thereof, and shall notify the Chair of such closure no less than seven (7) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Publicly Accessible Area; or (b) perform required repair, restoration, rehabilitation, renovation, or replacement of pipes, utility lines or conduits or other equipment on or under a the Publicly Accessible Area and shall notify the Chair of such closure no less than ten (10) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Publicly Accessible Area; or (c) to make emergency repairs to mitigate hazardous site conditions or address other emergency conditions as specified in Article 2.3(c).

(c) In the event that the closure of the Publicly Accessible Area is required due to an emergency condition specified herein, Declarant shall notify the Chair of such closing and its expected duration as soon as practicable but in no event more than two (2) business days after such closure. The notice to the Chair shall further specify which portion has been closed and describe the nature of the emergency or hazardous condition causing the closure. Emergency conditions for which the Publicly Accessible Area may be closed, pursuant to Article 2.3(b),

shall be limited to actual or imminent emergency situations, including security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than forty-eight (48) consecutive hours without Declarant having consulted with DOB or other agency and such agency confirming the continued closure of the Publicly Accessible Area is required.

(d) In the event of a closure pursuant to Article 2.3(b), Declarant will close only those portions of such areas which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or remediation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform the needed work in such a manner that the public will continue to have access to the Publicly Accessible Area.

2.4 Maintenance and Repair. Declarant shall be responsible for the maintenance and repair of the Publicly Accessible Area in accordance with the standards set forth herein (the “Maintenance and Repair Obligations”). All such maintenance shall be performed in a good and worker-like manner.

(a) Cleaning.

(i) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the Publicly Accessible Area in clean, neat, and good condition.

(ii) All walkways, lighting and all other improvements and facilities installed in the Publicly Accessible Area shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat, and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.

(iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(v) Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed.

(vi) Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

(b) Landscape Maintenance. A maintenance program for the planted portions of the Publicly Accessible Area shall be established, consisting of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season.”

(i) Spring Start-Up Period: The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the second week of April of each calendar year.

The following work shall be undertaken and carried out annually during the Spring Start-up Period:

- (a) Remove any winter protectives from trees, shrubs and other planting materials;
- (b) Remove all landscaping debris including leaves and dead branches;
- (c) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;
- (d) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;
- (e) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;
- (f) Remove any sand deposited as a result of winter sandings;
- (g) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;
- (h) Reseed grassed areas as needed.

(ii) Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

- (a) Rake and collect leaves;
- (b) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;
- (c) Apply commercially available nitrogen rich fertilizer to all lawn areas;
- (d) Reseed grassed areas as needed.

(iii) Growing Season: The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

- (a) Inspect trees on a regular basis and spray when necessary;
- (b) Water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition. In extended periods of drought (i.e., little precipitation/high temperatures for more than one week) ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to City or State regulations governing water usage.

(c) Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed.

(d) Weed as needed, no less than on a bi-weekly basis.

(c) Repairs and Replacements. Declarant shall perform repairs and replacements as needed to maintain the Publicly Accessible Area in state of good repair and in compliance with the specifications set forth in the Drawings. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the specifications set forth in the Drawings and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following:

(i) Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;

(ii) Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;

(iii) Paving: All paved surfaces shall be maintained so as to be safe and attractive;

(iv) Signage: All signs and graphics shall be maintained in good condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;

(v) Painting: All items with painted surfaces shall be painted on an “as needed” basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;

(vi) Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size; and

(vii) Construction Defects and Hazardous Conditions: Declarant shall periodically inspect the Publicly Accessible Area for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

2.5 Signage. Declarant shall comply with any signage regulations hereinafter promulgated by the Department of City Planning to identify public access areas.

ARTICLE III

FEIS OBLIGATIONS

Declarant shall implement the following FEIS Obligations as part of the Large-Scale Development Project, in accordance with the FEIS and as further set forth in this Article III for any development of the Subject Property.

3.1 **PCREs Relating to Construction**. Declarant shall implement and incorporate, as part of its construction of the Large-Scale Development Project, the following PCREs:

(a) **Emission Control Measures**.

(i) Measures will be taken to reduce pollutant emissions during construction in accordance with all applicable laws, regulations, and building codes. These include the use of clean fuel, diesel equipment reduction, dust suppression measures, and idling restrictions:

(a) *Clean Fuel*. Ultra-low-sulfur diesel (ULSD) fuel would be used exclusively for all diesel engines throughout the Development site.

(b) *Diesel Equipment Reduction*. As early in the construction period as logistics would allow, diesel- or gas-powered equipment would be replaced with electrical-powered equipment such as welders, water pumps, and table saws (i.e., early electrification) to the extent feasible and practicable.

(c) *Dust Control Measures*. To minimize dust emissions from construction activities, a dust control plan, including a watering program, would be required as part of contract specifications. For example, all trucks hauling loose material would be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Development Site; and water sprays would be used for all demolition, excavation, and transfer of soils to ensure that materials would be dampened as necessary to avoid the suspension of dust into the air. All measures required by the portion of DEP's Construction Dust Rules regulating construction-related dust emissions would be implemented.

(d) *Idling Restriction*. As required by local law, all stationary vehicles on roadways adjacent to the Development Site would be prohibited from idling for more than three minutes. In addition, all trucks would be required to shut off their engines when in the loading dock. The idling restriction excludes vehicles that are using their engines to operate a loading, unloading, or processing device (e.g., concrete-mixing trucks) or otherwise required for the proper operation of the engine.

(ii) The following measures would be implemented to further reduce air pollutant emissions during construction:

(a) *Best Available Tailpipe Reduction Technologies*. Non-road diesel engines with a power rating of 50 horsepower (hp) or greater and controlled truck fleets (i.e., truck fleets under long-term contract for the Proposed Development), including but not limited to, concrete mixing and pumping trucks would utilize the best available technology (BAT) (currently diesel particulate filters) for reducing diesel particulate matter emissions.

(b) *Utilization of Newer Equipment.* EPA’s Tier 1 through 4 standards for non-road engines regulate the emission of criteria pollutants from new engines, including PM, CO, NOx, and hydrocarbons (HC). To the extent practicable, all diesel-powered non-road construction equipment with a power rating of 50 hp or greater would meet at least the Tier 3 emissions standard. All diesel-powered engines in the project rated less than 50 hp would meet at least the Tier 2 emissions standard.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.1(a) with respect to the applicable work at the Subject Property.

(b) **Noise Reduction Measures.**

(i) Construction of the Large-Scale Development Project would be required to follow the requirements of the *NYC Noise Control Code* for construction noise control measures. Specific noise control measures would be incorporated in noise mitigation plan(s) required under the *NYC Noise Code*. These measures could include a variety of source and path controls. In terms of source controls (i.e., reducing noise levels at the source or during the most sensitive time periods), the following measures would be implemented in accordance with the *NYC Noise Code*:

(a) Equipment that meets the sound level standards specific in Subchapter 5 of the NYC Noise Control Code would be utilized from the start of construction. Table 16-10 shows the noise levels for typical construction equipment and the mandated noise levels for the equipment that would be used for construction under the Land Use Applications.

**TABLE 16-10
Typical Construction Equipment Noise Emission Levels (dBA)**

Equipment List	NYCDEP Typical Noise Level at 50 feet¹
All Other Equipment > 5 HP	85
Auger Drill Rig	85
Bar Bender	80
Compressor	80
Concrete Mixer Truck	85
Concrete Pump	82
Concrete Trowel	67 ²
Crane	85
Dozer	85
Dump Truck	84
Excavator	85
Forklift	64 ³
Front End Loader	80
Generator	82
Hoist	75 ⁴
Hydraulic Break Ram	90

Jackhammer / Chipping Gun	73
Rock Hammer / Impact Pile Driver	95
Scissor Lift	63
Welder	73
Sources:	
¹ “Rules for Citywide Construction Noise Mitigation,” Chapter 28, DEP, 2007, except where noted.	
² Columbia Manhattanville Noise Certification.	
³ <i>East New York Rezoning FEIS</i> , 2016.	
⁴ “Noise Control for Construction Equipment...” Report for Hydro Quebec, 1985.	

(b) As early in the construction period as logistics would allow, diesel- or gas-powered equipment would be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practicable.

(c) Where feasible and practicable, construction sites would be configured to minimize back-up alarm noise. In addition, all trucks would not be allowed to idle more than three minutes at the construction site based upon Title 24, Chapter 1, Subchapter 7, Section 24-163 of the *NYC Administrative Code*.

(d) Contractors and subcontractors would be required to properly maintain their equipment and mufflers.

(ii) In terms of path controls (e.g., placement of equipment, implementation of barriers or enclosures between equipment and sensitive receptors), the following measures for construction would be implemented:

(a) Where logistics allow, noise equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located as far from and shielded from sensitive receptor locations;

(b) Noise barriers constructed from plywood or other materials would be erected to provide shielding; and

(c) Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents, where feasible) for certain dominant noise equipment would be employed to the extent feasible and practical based on the results of the construction noise calculations. The details to construct portable noise barriers, enclosures, tents, etc. are shown in DEP’s “Rules for Citywide Construction Noise Mitigation.”

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.1(b) with respect to the applicable work at the Subject Property.

3.2 **Environmental Mitigation.** Declarant shall, in accordance with the FEIS, undertake the Mitigation Measures set forth therein, as follows:

(a) **Traffic Mitigation.**

(i) Implementation of the traffic engineering improvements specified below would fully mitigate the significant adverse impacts to two lane groups at two intersections in the AM peak hour and three lane groups at three intersections during the weekday PM peak hour.

(a) Submit a signal warrant study to the New York City Department of Transportation (“DOT”) for their review and approval, at the demolition construction-phase of the Large-Scale Development Project’s office building, for the intersection of Franklin Street and Meserole Avenue. If approved, the signal will be installed at the start of the excavation/foundation construction-phase of the office building. If signal installation is not approved during construction of the office building, a signal warrant study will be submitted to DOT for their review and approval at the time a Temporary Certificate of Occupancy is requested from the DOB.

(b) Modification of traffic timing at the intersections of Calyer Street and Manhattan Avenue, and Quay and Franklin Streets.

Implementations of the recommended traffic engineering improvements is subject to review and approval by the DOT.

ARTICLE IV

DEFAULTS AND REMEDIES

4.1 Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant’s obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant’s or any other Party in Interest’s right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City’s rights of enforcement shall be subject to the cure provisions and periods set forth in Section 4.3. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large-Scale Development Project on the Subject Property subject to the Large-Scale Special Permits; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

4.2 Notwithstanding any provision of this Declaration, only Declarant, and Declarant's successors and assigns and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications.

4.3 Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give Declarant, every mortgagee of all or any portion of the Property (a "Mortgagee") and every Party in Interest thirty (30) business days written notice of such alleged violation, during which period Declarant, any Party in Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party in Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party in Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant, any Party in Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom City has received notice in accordance with Section 4, and the right to cure shall apply equally to all Declarants.

4.4 If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party in Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 4 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

ARTICLE V

MISCELLANEOUS

5.1 Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a large-scale general development as set forth herein.

5.2 Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such

Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

5.3 Recordation. Declarant shall file and record this Declaration in the Office of the City Register of the City of New York (the "Register's Office"), indexing it against the Subject Property on or after the date within five (5) business days of the New York City Council's approval of the Land Use Applications by an affirmative vote or by operation of law as set forth in New York City Charter Section 197-d (such date, the "Recording Date"). Declarant shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarant fails to so record this Declaration by the Recording Date, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by CPC, shall be borne by Declarant.

5.4 Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 5.3 above.

5.5 Notice.

(a) All notices, demands, requests, consents, approvals, and other communications (each, a "Notice") which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

(i) if to Declarant:

to the address at the commencement of this Declaration

with a copy to:

Herrick, Feinstein LLP
Attn: Raymond Levin
2 Park Avenue, 14th Floor
New York, NY 10016

(ii) if to CPC:

New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271
Attention: Chairperson

with a copy to:

the General Counsel of CPC at the same address

(iii) if to a Party in Interest other than Declarant: at the address provided in writing to CPC in accordance with this Section 5

(iv) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section 5

5.6 Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 5, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarant shall also be sent to every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

5.7 Applications.

(a) Declarant shall include a copy of this Declaration with any application made to the New York City Department of Buildings for a foundation, new building, alteration, or other permit (a "Permit") for any portion of the Large-Scale Development Project subject to the Large-Scale Special Permits. Nothing in this Declaration including but not limited to the declaration and covenant made in Section 1 hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing, any permit for all or any portion of the Large-Scale Development Project, in such phase or order as Declarant sees fit in Declarant's sole discretion.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 5.7(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

5.8 Severability. In the event that any of the provisions of the Declaration shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent jurisdiction,

such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

5.9 Applicable Law. This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

ARTICLE VI

AMENDMENT, MODIFICATION AND CANCELLATION

6.1 This Declaration may be amended, cancelled, or modified only upon application by Declarant with the express written consent of CPC or an agency succeeding to CPC's jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

6.2 Notwithstanding anything to the contrary contained in Article 5.1 hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this _____, 202__.

RP INLET, LLC

By:

Name:

Title:

ACKNOWLEDGEMENT

State of New York)
) ss:
County of _____)

On ___ day of _____, 202__ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

Notary Public