



CITY PLANNING COMMISSION

July 25, 2012 / Calendar No. 12

C 100041 ZMK

IN THE MATTER OF an application submitted by Walton Realty Associates pursuant to Sections 197-c and 201 of the New York City Charter, for an amendment of the Zoning Map, Section No. 13b,

1. changing from an M1-2 District to an R6A District property bounded by Middleton Street, Union Avenue, Lorimer Street, and Marcy Avenue;
2. changing from an M3-1 District to an R7A District property bounded by Lorimer Street, Union Avenue, Wallabout Street, and Marcy Avenue;
3. and establishing within a proposed R7A District a C2-4 District bounded by Lorimer Street, a line 150 feet northeasterly of Marcy Avenue, Walton Street, and Marcy Avenue; Borough of Brooklyn, Community District 1,

as shown in a diagram (for illustrative purposes only) dated March 26, 2012 and subject to the conditions of CEQR Declaration E-282.

The application for a Zoning Map amendment was filed by Walton Realty Associates on July 28, 2009 to rezone three blocks from M1-2 and M3-1 to R6A and R7A Districts with a C2-4 overlay along Marcy Avenue on Block 2245 to facilitate the development of two seven-story residential buildings on Walton Street, in Community District 1, Brooklyn.

RELATED ACTIONS

In addition to the Zoning Map amendment that is the subject of this report, implementation of the following development also requires action by the City Planning Commission on the following application, which is being considered concurrently with this application:

N 100042 ZRK Zoning text amendment relating to the Inclusionary Housing Program

BACKGROUND

The applicant, Walton Realty Associates, requests a zoning map amendment for a three-block area from M1-2 and M3-1 to R6A and R7A districts, with a C2-4 overlay on a portion of Block

2245, in the Williamsburg section of Community District 1, Brooklyn. The applicant also requests a zoning text amendment to make the proposed R7A and R7A/C2-4 district on Block 2245 an Inclusionary Housing designated area.

The rezoning area encompasses three blocks; Block 2241 and portions of Blocks 2245 and 2249. It is generally bounded by Middleton Street to the north, Union Avenue to the east, Wallabout Street to the south and Marcy Avenue to the west.

The applicant's site, located at 59 Walton Street, comprises two lots, (55 and 58) on Block 2245, each 7,500 square feet in area. At present, the lots are developed with a one- to two-story storage and distribution facility. The existing buildings on these lots would be demolished to facilitate the construction of two, residential buildings with a total of 69 dwelling units, including 14 units of affordable housing, to be developed under the proposed R7A zoning district. The proposed residential building on Lot 55 would have 34 residential units, containing 33,839 square feet of floor area at an FAR of 4.57. The building would also provide seven dwelling units of affordable housing. Similarly, Lot 58 would be developed with a building containing 35 residential units, comprising 34,417 square feet of floor area at an FAR of 4.59. The building would also have 7 affordable housing units pursuant to Inclusionary Housing regulations. The proposed buildings on both lots would be 8-stories (80 feet) tall with a street-wall setback after 6-stories (40 feet to 65 feet), and would have a total average FAR of 4.58.

Under the proposed rezoning, residential uses could also be developed on the remaining six lots on that same block. If there other sites were fully developed, a total of approximately 257 additional residential units, including 51 affordable units, could be generated.

Under the existing M1-2 and M3-1 zoning districts, commercial, warehousing and manufacturing uses are allowed up to a 2.0 FAR. Residential or community facility uses are not permitted in these districts.

The proposed R6A district on Block 2241 would permit residential and community facility uses to an FAR of 3.0 and would allow buildings to rise to a height of 60 feet at the street, and 70

feet after a setback. The proposed R7A district on Blocks 2245 and 2249 would permit residential and community facility uses to an FAR of 4.0 and would allow buildings to rise to 65 feet at the street, and 80 feet after a setback. The proposed C2-4 overlay would allow an existing grocery store and a bakery to remain as conforming uses and provide for additional neighborhood retail space along Marcy Avenue. The C2-4 district has up to 2.0 FAR and parking requirements of 1space per 1,000 square feet of floor area for general retail uses.

The proposed rezoning would bring the two remaining blocks (2241 and 2249) in the rezoning area into conformance with zoning. These blocks are almost entirely developed with four- to seven-story residential buildings containing 241 dwelling units built pursuant to variances granted by the Board of Standards and Appeals (BSA) during the last decade.

The northern-most block in the rezoning area (2241) is zoned M1-2, however, this block is predominantly developed with four- to seven-story residential buildings containing 176 units which were approved through BSA variances. The only non-residential use on this block is a six-story office building on Lorimer Street occupied by a production studio company at an average Floor Area Ratio (FAR) of 2.38. The commercial building would remain as a non-conforming use under the proposed zoning. Two small vacant lots on Union Avenue are slated for the development of a private school pursuant to a BSA special permit. The average built residential FAR on the block is 2.38.

The middle block (2245) between Lorimer and Walton streets is zoned M3-1. This block is predominantly developed with underutilized industrial and commercial buildings and a single four-story residential building in the northeastern corner of the block at the corner of Lorimer Street and Union Avenue, which was built pursuant to a BSA variance granted in 2002. Other uses on the block contain one- to two-story warehouses, a car repair shop, a grocery store and a bakery. Storage and warehouse businesses occupying most of the block employ 9 people, a car repair business on Walton Street employs 4 people, and a small grocery store and bakery on Marcy Avenue employs 12 people.

The southernmost block (2249) is also zoned M3-1, but is now entirely developed with two six- to seven-story residential buildings. These buildings, containing 65 dwelling units, were built pursuant to variances granted by the BSA in 2003 and 2004.

The applicant is also requests a zoning text amendment to expand an adjacent Inclusionary Housing designated area to cover Block 2245 only.

The Inclusionary Housing Program under the proposed R7A zoning district would have a base FAR of 3.45 that could be increased to 4.6 with the development of affordable housing pursuant to the Inclusionary Housing Program. This could facilitate the creation of 14 units of affordable housing on the applicant's site, and a projected 51 units on the remaining portion of the block 2245, when it is developed.

The nearest subway station is Flushing Avenue on G-Line, just a block south of the site. The B57 and B48 bus service connects this area to the Brooklyn Downtown, Bedford Stuyvesant and Greenpoint neighborhoods.

ENVIRONMENTAL REVIEW

This application (C 100041 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 designated CEQR number is 10DCP001K. The lead agency is the Department of City Planning.

After a study of the potential environmental impact of the proposed action, a Conditional Negative Declaration was issued. The lead agency has determined that the proposed actions will have no significant effect on the quality of the environment, once it is modified as follows:

The applicant agrees via a restrictive declaration to prepare a Phase II Environmental Assessment Statement (ESA), hazardous materials sampling protocol and health and safety plans, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant agrees to test and identify any potential hazardous material impact pursuant to the approved sampling protocols and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan

to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plans.

To avoid any potential significant adverse impacts, the applicant has entered into a Restrictive Declaration for hazardous materials for their properties at Block 2245, Lots 55 and 58. An (E) designation, (E-282), for hazardous materials, air quality and noise would also apply, as described below. The applicant's sites (Block 2245, Lots 55 and 58) would receive an (E) designation for air quality and noise. The non-applicant sites (Block 2245, Lots, 1, 5, 8, 62, 108, and 154) would receive an (E) designation for hazardous materials, air quality, and noise.

The (E) designation requirements related to hazardous materials would apply to the following non-applicant owned block and lots:

Block 2245, Lot 1

Block 2245, Lot 5

Block 2245, Lot 8

Block 2245, Lot 62

Block 2245, Lot 108

Block 2245, Lot 154

The text of the (E) designation for hazardous materials is as follows:

Task 1 – Sampling Protocol

The applicant must submit to the Mayor's Office of Environmental Remediation (OER) for review and approval, a Phase 1 of the site.

If site sampling is necessary, a soil and groundwater testing protocol including a description of methods and a site map with all sampling locations clearly and precisely represented must be submitted to OER. No sampling program should begin until written approval of a protocol is received from the OER. The number and location of sample sites should be selected to adequately characterize the site,

the specific source of suspected contamination (i.e., petroleum based contamination or non-petroleum based contamination) and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by the OER upon request.

Task 2 – Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to the OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such tests results, a determination will be made by the OER if the results indicate that remediation is necessary.

If the OER determines that no remediation is necessary, written notice shall be given by the OER.

If based on the test results, the OER concludes that remediation is required; a remediation plan must be prepared and submitted to the OER for review and approval. The applicant must complete such remediation when and as determined necessary by the OER. The applicant should then provide proper documentation, including an engineering certification, that the work has been satisfactorily completed.

An OER-approved construction-related health and safety plan would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This Plan would be submitted to the OER with the remediation plan for review and approval prior to implementation.

The (E) designation for air quality would preclude the potential for significant adverse air quality impacts related to heating and hot water systems (HVAC) emissions. The (E) designation for air quality would apply to the following properties:

Block 2245, Lot 1

Block 2245, Lot 5

Block 2245, Lot 8

Block 2245, Lot 55

Block 2245, Lot 58

Block 2245, Lot 62

Block 2245, Lot 108

Block 2245, Lot 154

The text for the (E) designations for air quality for the above properties is as follows:

Block 2245, Lot 1

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on a bulkhead that is at least 93 feet high and 23 feet, 2 inches from the lot line facing Marcy Avenue and 60 feet from the lot line facing Walton Street to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 5

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on a bulkhead that is at least 103 feet high and at least 25 feet, 2 inches from the lot line facing Marcy Avenue and 22 feet 6 inches from the lot line facing Lorimer Street to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 8

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on the highest tier bulkhead that is at least 103 feet high and at least 25 feet 6 inches from the lot line facing Lorimer Street to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 55

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on a bulkhead that is at least 103 feet high and 22 feet, 6 inches from the lot line facing Walton Street and 31 feet 3 inches from the lot line facing Marcy Avenue to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 58

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on a bulkhead that is at least 103 feet high and 22 feet, 6 inches from the lot line facing Walton Street and 31 feet 3 inches from the lot line facing Marcy Avenue to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 62

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on a bulkhead that is at least 103 feet high and 22 feet, 6 inches from the lot line facing Walton Street and 31 feet 3 inches from the lot line facing Marcy Avenue to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 108

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on the highest tier bulkhead that is at least

103 feet high and 22 feet, 6 inches from the lot line facing Lorimer Street to avoid any potential significant adverse air quality impacts.

Block 2245, Lot 154

Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems and ensure that the boiler stack(s) are located on a bulkhead that is at least 103 feet high and 72 feet 10 inches from the lot line facing Walton Street and 4 feet 5 inches from the lot line facing Marcy Avenue to avoid any potential significant adverse air quality impacts.

With the placement of the (E) designations on the above blocks and lots, no significant air quality impacts related to HVAC emissions would be expected as the result of the proposed action.

The (E) designation for noise would preclude the potential for significant adverse impacts related to high levels of ambient noise. The text of the (E) designation for certain noise attenuation requirements for the properties identified follows below.

The following properties require 28 dBA of noise attenuation in order to avoid the potential for significant adverse impacts related to noise:

Block 2245, Lot 1

Block 2245, Lot 5

Block 2245, Lot 8

Block 2245, Lot 62

The text for the (E) designation for noise for the above properties is as follows:

In order to ensure an acceptable interior noise environment, future residential uses must provide a closed-window condition with a minimum of 28 dBA window-wall attenuation in all façades in order to maintain an interior noise level of 45 dBA. In

order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but not limited to, central air conditioning.

The following properties require 31 dBA of noise attenuation in order to avoid the potential for significant adverse impacts related to noise:

Block 2245, Lot 55

Block 2245, Lot 58

Block 2245, Lot 108

Block 2245, Lot 154

The text of the (E) designation for noise for the above properties is as follows:

In order to ensure an acceptable interior noise environment, future residential uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

With the attenuation measure specified above, the proposed action would not result in any significant adverse noise impacts, and would meet CEQR guidelines.

With the implementation of the above referenced restrictive declaration and (E) designations, no Significant adverse impacts related to hazardous materials, air quality or noise would occur.

The applicant signed the Conditional Negative Declaration on March 19, 2012. The Conditional Negative Declaration was published in the City Record on May 21, 2012 and in the New York State Environmental Notice Bulletin on May 23, 2012. Pursuant to the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations,

Section 617.00 et seq., a 30-day comment period followed.

No comments were received and the Conditional Negative Declaration was issued on July 25, 2012.

Uniform Land Use Review

This application (C 100041 ZMK) was certified as complete by the Department of City Planning on March 26, 2012, and was duly referred to Community Board 1 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 1 held a public hearing on this application on April 17, 2012, and on May 8, 2012, by a vote of 16 in favor, 11 opposed and 4 abstaining, adopted a resolution recommending approval of the application with the following conditions:

1. The applicant provides a guarantee in writing that the project will be developed under the City's Inclusionary Zoning Provisions.
2. The applicant includes a mapped commercial overlay at all three blocks along Union Avenue.
3. The development includes sustainable components where possible.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on June 8, 2012 subject to the following conditions:

- That prior to City Council review, the applicant provides adequate documentation to indicate either development would be pursued according to the filing of an affordable housing plan approved by the Department of Housing Preservation and Development; or that the developer commits to establishing rents at 130 percent of Area median Income to accommodate

middle income as a means households without the need to pay rent in excess of 30 percent of household income; and,

- That for the rezoning of Block 2245:
 - a) In lieu of R7A, the frontage along Lorimer Street and for a distance of 175 feet from Marcy Street along the Walton Street frontage, the section of the block be rezoned from the existing M3-1 district to R6B; and,
 - b) The proposed C2-4 overlay be reduced from 150 feet to 100 feet.

City Planning Commission Public Hearing

On June 6, 2012 (Calendar No. 2), the City Planning Commission scheduled June 20, 2012, for a public hearing on this application (C 100041 ZMK). The hearing was duly held on June 20, 2012 (Calendar No. 23). There was one speaker in favor of the application.

The applicant's representative spoke about the appropriateness of the proposed zoning map change for the site and also reiterated that the owner's intent to develop the site pursuant to inclusionary housing provisions.

CONSIDERATION

The Commission believes that this application (C 100041 ZMK) for an amendment to the Zoning Map, and the concurrent application for an amendment to the Zoning Resolution (N 100042 ZRK), are appropriate.

The City Planning Commission notes that the proposed rezoning would facilitate the construction of two residential buildings with 69 dwelling units on the applicant's site. The Commission believes that proposed R6A and R7A districts are consistent with adjacent zoning districts and would result in new development that is in character with the current built form of the residential developments that currently exist in the area. The three-block rezoning area, while zoned for manufacturing is predominantly built with residential uses; two of three blocks in the rezoning area are almost completely developed with four- to seven-story

residential buildings containing 241 dwelling units, built pursuant to zoning variances granted by the Board of Standards and Appeals. The Commission notes that the proposed rezoning would bring these residential uses into conformance with zoning.

The application of the Inclusionary Housing Program to Block 2245 would also facilitate the creation of up to 65 affordable units and the proposed C2-4 overlay would allow an existing grocery store and a bakery to remain as conforming uses and provide for additional neighborhood retail space along Marcy Avenue.

Regarding the Community Board's condition that a commercial overlay be added to the Union Avenue frontages within the rezoning area, the Commission notes that these frontages are predominantly residential and that there are no existing commercial uses along the Union Avenue frontages today. Regarding the Community Board's and the Borough President's recommendations that the new residential development takes advantage of Inclusionary Housing Program, the Commission further notes that the applicant, in a letter addressed to Borough President and in their testimony to the Commission at its public hearing, reiterated their desire to build development that will make use of Inclusionary Housing bonuses and would be affordable to middle income households.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 13b,

1. changing from an M1-2 District to an R6A District property bounded by Middleton Street, Union Avenue, Lorimer Street, and Marcy Avenue and;
2. changing from an M3-1 District to an R7A District property bounded by Lorimer Street, Union Avenue, Wallabout Street, and Marcy Avenue and;
3. establishing within a proposed R7A District a C4-2 District bounded by Lorimer Street, a line 150 feet northeasterly of Marcy Avenue, Walton Street, and Marcy Avenue; Borough of Brooklyn, Community District 1,

as shown in a diagram (for illustrative purposes only) dated March 26, 2012 and subject to the conditions of CEQR Declaration E-282.

The above resolution (C 100041 ZMK), duly adopted by the City Planning Commission on July 25, 2012 (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.

AMANDA M. BURDEN, FAICP, Chair

KENNETH J. KNUCKLES, ESQ., Vice Chairman

ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,

ALFRED C. CERULLO, III, BETTY Y. CHEN, MICHELLE R. DE LA UZ,

MARIA M. DEL TORO, RICHARD W. EADDY, ANNA HAYES LEVIN,

ORLANDO MARIN, SHIRLEY A. MCRAE, Commissioners

the application, but the developer states they intend to sell the units at moderate income level, with applicant income up to 125% AMI. The unit distribution will be 30% 4 bedrooms, 20% 3 bedrooms, 30% 2 bedrooms and 20% 1 bedrooms.

Whereas, the adjacent zoning districts to the north and east are R7-1, and

Whereas, the proposed building would match the height/size of residential buildings in the immediate area, and

Whereas, the proposal both legalizes the Yeshiva and allows it to expand, and

Whereas, the committee generally agreed that the development does not hinder industrial development in the M1-1 districts to the west and south,

the committee therefore **APPROVES** the application with the following stipulations:

1. The applicant provides a guarantee in writing that the building will comply with Quality Housing regulations of the Zoning Resolution.
2. The applicant provides a guarantee in writing that the residential units be sold as moderate income units (125% AMI) as defined under the City's Inclusionary Zoning Provisions.
3. The applicant provides a guarantee in writing that the 17,640 sf of Community Facility space will be sold to the adjacent Yeshiva.
4. The development include sustainable building components where possible.

11 in favor, 0 against, 0 abstentions.

2. CITY PLANNING APPLICATION #C100041: 59 WALTON STREET

An application submitted to DCP pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section 13b:

1. **Changing from an M1-2 District to an R6A District, the property bounded by Middleton Street, Union Avenue, Lorimer Street and Marcy Avenue;**
2. **Changing from an M3-1 District to an R7A District, the property bounded by Lorimer Street, Union Avenue, Wallabout Street and Marcy Avenue;**
3. **Establishing within the proposed R7A District a C2-4 District bounded by Lorimer Street, a line 250 feet northeasterly of Marcy Avenue, Walton Street and Marcy Avenue.**

Mr. Eldad Gothelf of Herrick, Feinstein LLP presented an overview of the proposed project. The site consists of three blocks within the streets described above. The block to the north is currently occupied by residential buildings approved under previous variance applications. The applicant's lot is the eastern portion of the middle block (proposed R7A) with the remainder of the block occupied by a grocery store. The rezoning includes Inclusionary Zoning (IZ).

The Zoning map indicates an R6 district to the north, and R6A district to the northeast, and R7A district to the southeast and R7-1 district to the west. The zoning district immediately to the south is M3-1, the former Pfizer site.

The proposed development is 2 residential buildings, each 7 stories in height, with no commercial use and no parking. The development will yield approximately 36 units in one building and 37 in the other. The R7A district with IZ allows a base FAR of 3.45, and a maximum FAR, utilizing the IZ, of 4.6. The proposed FAR for the applicant's site is 4.6 and both buildings will include Affordable Housing, will be developed under Quality Housing regulations and will contain a mix of 1, 2, 3 and 4 bedroom units.

The committee's main concern regarding this rezoning is the lack of commercial overlay along Union Avenue. Currently, the entire east side of Union Avenue is mapped with a C2-4 overlay between Broadway and Flushing with the exception of the Pfizer site which remains an M3-1 district but allows commercial uses. The blocks to the north of the applicant's site on the west side of Union Avenue are mapped C8-2 along Broadway and various portions of Flushing Avenue are mapped with commercial overlays. In order to ensure continuity in the future, the committee strongly recommends that this rezoning also include a C2-4 overlay along Union Avenue, matching the commercial overlay across the street.

Whereas, the site is generally bounded by residential development, and

Whereas, the committee generally agreed that the site was inappropriate for an industrial development,

Whereas, the proposed zoning districts match the surrounding R6, R6A, R7-1 and R7A zoning districts to the north, east and west, and

Whereas, the proposed rezoning allows for the development of affordable housing, and

Whereas, the proposed unit mix satisfies multiple residential needs,

the committee therefore **APPROVES** the application with the following stipulations:

1. The applicant provides a guarantee in writing that the project will be developed under the City's Inclusionary Zoning Provisions.
2. The applicant includes a mapped commercial overlay at all three blocks along Union Avenue.
3. The development include sustainable building components where possible.

10 in favor, 0 against, 0 abstentions.

3. NYC BOARD OF STANDARDS AND APPEALS – SPECIAL PERMIT – APPLICATION #55-12-BZ: 762 WYTHE AVENUE (BLOCK 2216 LOT 19)

An application to legalize the existing Use Group 3 religious based not for profit school located in an M1-2 Zoning District which is contrary to ZR Section 42-00 and therefore requires a Special Permit. Applicant – Eric Palatnik PC

The applicant was not present, but the committee reviewed the proposed project as presented at the Brooklyn Community Board #1 meeting of April 17, 2012.

The Yeshiva opened at this location September 2008 and serves approximately 3,000 students. It occupies a formally industrial building located within an M1-2 Zoning District and across the street from an R7-1 District. The building is 119,997 sf with an FAR of 4.8.

A Special Permit to allow the Yeshiva to be located in an M1-2 Zoning District may be granted by the Board of Standards and Appeals per section 73-19 of the zoning Resolution as follows:

73-00 (from the Zoning Resolution of the City of New York)

SPECIAL PERMIT USES AND MODIFICATIONS

73-19 SCHOOLS

In C8 or M1 Districts, the Board of Standards and Appeals may permit #schools# which have no #residential# accommodations except #accessory# accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed #school# there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such #school# is located not more than 400 feet from the boundary of a district wherein such #school# is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding non-#Residential Districts# is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along #lot lines# of the #zoning lot#; and
- (d) that the movement of traffic through the #street# on which the #school# is located can be controlled so as to protect children going to and from the #school#. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

Whereas, the applicant meets the findings as described above, and

Whereas, the Yeshiva has operated at this location for 6 years without any issues or problems, and

Whereas, the need for educational facilities in this area is expanding and spaces of this size are scarce,

the committee therefore **APPROVES** the application.

7 in favor, 0 against, 0 abstentions.

4. NYC BOARD OF STANDARDS AND APPEALS - VARIANCE - APPLICATION #69-12-BZ: 1 MASPETH AVENUE (BLOCK 2892 LOT 1)

An application to permit the proposed five story mixed-use development, including cellar and first floor ambulatory diagnostic health care treatment facility (Use Group 4), local retail (Use Group 6) at the remainder of the first floor and residential use (Use Group 2) at floors 2-5. The proposed Uses are contrary to ZR Section 32-00 which does not permit the proposed uses in the underlying C8-2 zoning district. Applicant – Eric Palatnik PC.

The applicant was not present, but the committee reviewed the proposed project as presented at the Brooklyn Community Board #1 meeting of April 17, 2012.

The site is located at the intersection of Maspeth Avenue, Bushwick Avenue and Metropolitan Avenues. It is an irregularly shaped lot located within a C8-2 Zoning District. The proposed development is a five story mixed-use development, including cellar and first floor ambulatory diagnostic health care treatment facility, some local retail at the remainder of the first floor and residential use at floors 2-5.

The committee briefly discussed the comments made by board members at the full board meeting and agreed that the project is inappropriate at this location. The committee finds the project to be far too dense for an area which is already congested, and is further concerned by the lack of ground floor retail uses, lack of parking and lack of affordable housing.

A use variance may be granted by the Board of Standards and Appeals per Section 72-21 of the Zoning Resolution as follows:

72-21 (from the Zoning Resolution of the City of New York)

Findings Required for Variances

When in the course of enforcement of this Resolution, any officer from whom an appeal may be taken under the provisions of Section 72-11 (General Provisions) has applied or interpreted a provision of this Resolution, and there are practical difficulties or unnecessary hardship in the way of carrying out the strict

letter of such provision, the Board of Standards and Appeals may, in accordance with the requirements set forth in this Section, vary or modify the provision so that the spirit of the law shall be observed, public safety secured and substantial justice done. Where it is alleged that there are practical difficulties or unnecessary hardship, the Board may grant a variance in the application of the provisions of this Resolution in the specific case, provided that as a condition to the grant of any such variance, the Board shall make each and every one of the following findings:

- (a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular #zoning lot#; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the #use# or #bulk# provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the #zoning lot# is located;
- (b) that because of such physical conditions there is no reasonable possibility that a #development#, #enlargement#, extension, alteration or change of #use# on the #zoning lot# in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such #zoning lot#; this finding shall not be required for the granting of a variance to a non-profit organization;
- (c) that the variance, if granted, will not alter the essential character of the neighborhood or district in which the #zoning lot# is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;
- (d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a #zoning lot# subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and
- (e) (e) that within the intent and purposes of this Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

It shall be a further requirement that the decision or determination of the Board shall set forth each required finding in each specific grant of a variance, and in each denial thereof which of the required findings have not been satisfied. In any such case, each finding shall be supported by substantial evidence or other data considered by the Board in reaching its decision, including the personal knowledge of, or inspection by, the members of the Board. Reports of other City agencies made as a result of inquiry by the Board shall not be considered hearsay, but may be considered by the Board as if the data therein contained were secured by personal inspection.

Whereas, the applicant meets some but not all of the finding as described above, and

Whereas, residential use is completely inappropriate for this location, and

Whereas, the proposed residential use provides no affordable housing, and

Whereas, the proposed development at an FAR of 4.8 is too dense, and

Whereas, the adjacent intersection is currently extremely congested, and

Whereas, the proposed development does not provide ground floor retail desired for continuity along Metropolitan Avenue and Maspeth Avenue, and

Whereas, the proposed development provides no parking, and

Whereas, the site is appropriate for a complying use,

the committee therefore **DISAPPROVES** the application.

7 in favor, 0 against, 0 abstentions.

5. REVIEW OF HPD'S RESPONSE REGARDING THE LPC WAREHOUSE RFP

On February 2, 2012, Brooklyn Community Board #1 sent a letter to NYC Department of Housing Preservation and Development Commissioner Mathew Wambua regarding a Request For Proposals the agency intends to issue for development of the city owned property at Block 2443 Lots 6, 37 and 41 (337-339 Berry Street and 101 South 5th Street). The letter outlines CB#1's recommendations for the RFP as requested by HPD at CB#1's January Board meeting.

On April 4, 2012, HPD responded with a letter stating their intent to include all but three of the recommendations submitted by CB#1.

While we are pleased that HPD came to us prior to the issuance of the RFP and has indeed responded favorably to our concerns, the committee feels it prudent to address the lack of inclusion of the remaining three recommendations, which are as follows (taken from CB#1's letter of February 2, 2012):

2. The RFP be presented to Brooklyn Community Board #1 in its entirety for review prior to its release.
3. A representative from Brooklyn Community Board #1 be seated on the panel selected to review the proposals.
4. A presentation of the proposals received is made by HPD to Brooklyn Community Board #1 for review and comment.

The committee therefore **RECOMMENDS** that Brooklyn Community Board #1 respond to HPD with another letter containing the following points:

1. Brooklyn Community Board #1 thanks HPD for addressing our concerns in the writing of the RFP and for providing an open and transparent process thus far.
2. The three recommendations not adopted by HPD, all regarding CB#1's role in the review and selection of the developer, are equally important to maintaining an open and transparent process and we respectfully request their inclusion.

7 in favor, 0 against, 0 abstentions.

6. PRESENTATION – NEW YORK CITY DEPARTMENT OF CITY PLANNING – THE WATERFRONT REVITALIZATION PROGRAM 2012 REVISIONS

By Jessica Fain, Waterfront & Open Space/City Planning.

The Waterfront Revitalization Program (WRP) is a regulatory tool requiring all projects within New York City's Coastal Zone which require a federal, state or city discretionary action to also be subject to WRP review. The Department of City Planning has submitted proposed revisions to the New York City WRP for consideration under the rules for the processing of plans pursuant to Charter Section 197-a.

As the presentation is quite involved and rather lengthy, the committee requests that DCP returns to present to the full board. This will likely occur at the June meeting. If anyone is interested in reviewing the program or the proposed revisions before then, information can be found on the DCP website.

7. PRESENTATION – NEW YORK CITY ENVIRONMENTAL JUSTICE ALLIANCE – THE WATERFRONT REVITALIZATION PROGRAM 2012 REVISIONS

The NYC Environmental Justice Alliance has analyzed the WRP and provided recommendations to DCP. Of specific concern is a lack of key protections for communities designated as Significant Maritime & Industrial Areas, which includes large portions of Greenpoint and Williamsburg. They presented these same findings to the committee, but due to the late hour, attendance had dwindled and we invited them to return to present to the full board at the June meeting.



Brooklyn Borough President Recommendation

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

INSTRUCTIONS

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

APPLICATION #: 100041 ZMK – 100042 ZRY

59 Walton Street Rezoning

In the matter of applications submitted by the Walton Realty Associates pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 13b, changing from an M1-2 District to an R6A District property bounded by Middleton Street, Union Avenue, Lorimer Street, and Marcy Avenue; changing from an M3-1 District to an R7A District property bounded by Lorimer Street, Union Avenue, Wallabout Street, and Marcy Avenue; and, establishing within a proposed R7A District a C2-4 District bounded by Lorimer Street, a line 150 feet northeasterly of Marcy Avenue, Walton Street, and Marcy Avenue. These actions would facilitate the development of 69 units in two adjacent buildings and reflect the existing land use and density on the adjacent blocks.

COMMUNITY DISTRICT NO.

1

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS


BOROUGH PRESIDENT

June 12, 2012

DATE

**RECOMMENDATION FOR THE PROPOSED
AMENDMENT OF THE ZONING MAP & TEXT
100041 ZMK – 100042 ZRY**

Public Hearing

On May 21, 2012 Brooklyn Borough President Marty Markowitz held a public hearing on applications by Walton Realty Associates for amendments to the Zoning Map and Zoning Text. Approval of these actions are being sought in order to facilitate residential development with a total of 69 units – provided that 14 affordable units would be required to be either on-site or for off-site locations; as new construction or permanently preserved existing housing within Community District 1 (CD 1) or within one-half mile of the site if outside of CD 1. A representative for the applicant has stated that there is a serious intent to pursue the affordable housing density bonus and has provided a letter to the community board and the Borough President expressing such commitment.

CONSIDERATION

Community Board 1 (CB 1) voted to approve these applications with conditions that included a written guarantee that development will be under the City's Inclusionary Housing Program (IHP); mapping of a commercial overlay zone on all three blocks along Union Avenue; and, sustainable building components are used where possible.

The rezoning encompasses three blocks zoned for industrial use in an area of Brooklyn that is experiencing a transition from a manufacturing base to residential. If approvals are granted to the applicant, the other property owners on Block 2245 would have the choice of redeveloping their lots for residential use, similar to the other blocks in this rezoning. Residential development for lots on Blocks 2241 and 2249 were redeveloped according to several approvals granted by the Board of Standards and Appeals, therefore, these actions will bring them into conformance with the zoning.

It is the Borough President's policy to support land use changes that reflect the built character of the area proposed to be rezoned and provide appropriate opportunities to provide for residential growth. He supports such rezonings that may facilitate an increase in the supply of housing for Brooklyn residents, especially when such projects result in affordable housing. Furthermore, it is the policy of the Borough President to utilize the process of rezoning privately-owned land for residential development in order to provide opportunities for more affordable housing for neighborhood residents.

The Borough President is concerned that too many of the borough's resident's leave because they can no longer afford to live in Brooklyn. When applicable, it is the Borough President's policy for new residential developments subject to ULURP to provide a minimum of 20 percent affordable units. Where developers seek to accommodate affordable housing for middle-income families, it is the borough president's policy to seek for the entire development to then be affordable to such households.

The Borough President supports the applicant's formal request that makes the Zoning Resolution's IHP applicable to the requested zoning map change. The IHP's affordable housing set aside is consistent with the Borough President's "Affordable Forever" initiative as floor area would remain affordable for the life of the development. According to the IHP, the affordable housing units would accommodate families earning up to 80 percent of area median income (AMI). If the developer seeks real estate tax abatement according to the City's 421-a tax program, the affordable units would be restricted to be developed on site.

The Borough President is committed to providing opportunities for Brooklyn's working families. He believes it is appropriate for development to target the affordability of the units to middle-income families whose income does not exceed 165 percent of Area Median Income (AMI). Whether the development results in 20 percent of its floor area as permanently affordable on or off-site, or the entire development becomes affordable for middle income families, it would go a long way towards helping households to obtain quality-affordable apartments while raising families.

Where possible, the Borough President seeks to obtain a written commitment or explanation that conveys a suitable assurance that the affordable housing will be built.

Affordable Housing

Pursuant to the proposed rezoning, there would be no obligation to provide any affordable housing. With the increasing demand by Brooklyn residents for affordable housing, he believes every reasonable attempt should be made to provide such housing as a condition of rezoning.

In a letter submitted to CB 1, the applicant expressed an interest in building pursuant to the IHP. However, the affordable units proposed are not guaranteed as the applicant is not obligated to use the requested IHP bonus. The applicant has no residential development history and though there have been discussions with the Department of Housing Preservation and Development (HPD) regarding establishing an IHP approved plan there is no indication that such conversations have advanced far enough to expect the development would proceed according to an IHP. It would be unfortunate if circumstances prevented the applicant from honoring this commitment, especially given that the community's need for affordable housing is only increasing. Prior to seeking approvals at the City Council, the Borough President urges the developer to demonstrate significant progress in the consultation with HPD.

As such, the Borough President sought a guarantee from the developer to ensure that the proposed affordable units will be facilitated by the final project that gets built. Subsequent to the hearing, the Borough President received a letter (attached) dated, June 5, 2012, from the applicant expressing intent to develop affordable units as part of this project pursuant to the IHP. If there is a lack of sufficient funding to proceed with an IHP, the applicant would then proceed with a development affordable to middle income families earning between 130 percent to 165 percent AMI. The letter, however, does not provide the provision of a legal instrument to guarantee that the affordable housing will be built.

Rents permitted under the City's affordable housing program serving families earning 130 percent AMI are as follows: one bedroom units (2 person household) would be approximately \$2,160; two bedroom units (3 to 4 person household) would range from about \$2,425 to \$2,700; three bedroom units (4 to 6 person) would range from \$2,700 to \$3,130; and, four bedroom units (5 to 8 person household) would range from \$2,970 to \$3,560. Such rents would allow middle-income families earning just above moderate income standards to not pay more than 30 percent of their household income towards monthly rent. This would go a long way towards helping households to obtain quality affordable apartments while raising families.

Since an expressed commitment is not binding, it would be ideal to have more certainty that affordable residential construction would be built. As such, construction should preferably proceed according to either a building permit that includes the floor area bonus, approved by the commissioner of HPD, which would assure that, as proposed, 20 percent of the units would be affordable or alternately a satisfactory commitment for rents not to exceed 130 percent AMI for all of the units. The Borough President would be more confident that these affordable units will be realized if such a commitment was more adequately documented to indicate either the filing of an IHP or the commitment to 130 percent AMI prior to review by the City Planning Commission (CPC) and City Council.

Rezoning

According to the environmental assessment statement (EAS), all of Block 2245 was assumed for potential redevelopment of 257 dwelling units in addition to the applicant's property, under the proposed rezoning. Pursuant to the proposal, there would be no obligation to provide any affordable housing. With the increasing demand by Brooklyn residents for such housing, he believes every attempt should be made to provide for these opportunities.

With the proposed zoning change from M3-1 to R7A, the Borough President believes that a commitment to obtain 20 percent affordable housing is warranted. Much of Block 2245 has no direct connection to the applicant, therefore, there are no parties engaged in the rezoning process that can express intent to develop according to the IHP with its 20 percent affordability requirement. Without a commitment from these property owners for the provision of affordable housing, the Borough President believes that it is not in the public interest to rezone this block entirely to R7A. However, he believes that residential zoning is warranted given the residential development across of both Walton and Lorimer Streets.

Without sufficient commitment towards developing affordable housing, the Borough President recommends that the majority of this block be rezoned R6B. An R6B zone would be more respectful of the built residential context along Lorimer Street. The Borough President would welcome the opportunity to consider additional density on Block 2245 should property owners be willing to come forth for a subsequent rezoning along with a commitment to affordable housing.

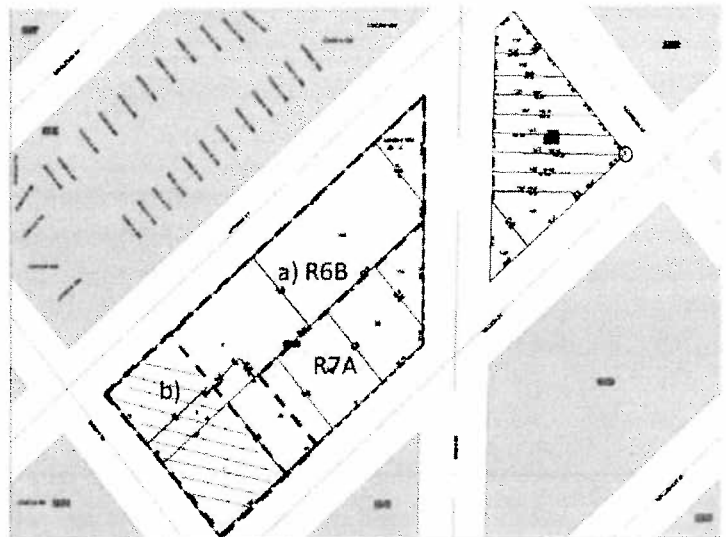
The proposed commercial overlay along Marcy Avenue would be mapped at a depth consistent with an existing retail use. According to the EAS, such property is anticipated to be redeveloped due to the substantial increase in floor area. Therefore

the justification of establishing a commercial overlay to a depth of 150 feet does not appear to be valid. In addition, mapping to such depth might result in the establishment of retail fronting directly opposite of residential development along both Lorimer and Walton Streets. Commercial overlays should be placed to better reflect commercial activity along a corridor with other commercial properties, rather than intruding into the residential side streets. In order to not permit a retail use at these locations, the Borough President believes that the commercial zoning be limited to a depth that is not likely to adversely impact the quality-of-life for residents of Lorimer and Walton Streets.

RECOMMENDATION

Be it resolved that the Borough President of Brooklyn, pursuant to section 197-c of the New York City Charter, recommends that the City Planning Commission and City Council **approve** the zoning map and text amendment proposal subject to the following **conditions**:

- That prior to City Council review, the applicant provides adequate documentation to indicate either development would be pursued according to the filing of an affordable housing plan approved by the Department of Housing Preservation and Development; or that the developer commits to establishing rents at 130 percent of Area Median Income to accommodate middle income as a means s households without the need to pay rent in excess of 30 percent of household income; and,
- That for the rezoning of Block 2245:
a) in lieu of R7A, the frontage along Lorimer Street and for a distance of 175 feet from Marcy Street along the Walton Street frontage, the section of the block be rezoned from the existing M3-1 district to R6B; and,
b) the proposed C2-4 overlay be reduced from 150 feet to 100 feet.



Walton Realty Associates
59 Walton St.
Brooklyn, NY 11206

June 5, 2012

Honorable Marty Markowitz
Brooklyn Borough President
209 Joralemon St.
Brooklyn, NY 11201

Re: 59 Walton St. Rezoning - Inclusionary Housing Program

Dear Borough President Markowitz:

I share your commitment to housing Brooklyn's working families. To that end, I would like to make my investment in my Walton St. property a long-term one.

Regarding my development site, I will build pursuant to the Inclusionary Housing Program, as provided for in the New York City Zoning Resolution. I will work with all relevant City agencies in this regard.

To that end, we have already reached out to and begun a dialogue with HPD on utilizing the III Program here. We have spoken with Jack Hammer, HPD's Director of Brooklyn Planning, and are next reaching out to Alicia Ozeri, HPD's Director of Inclusionary Housing. Additionally, we have reached out to Dunn Development to discuss the possible purchase of Inclusionary Housing Certificates.

If, due to a lack of sufficient funding, I am unable to utilize the IH bonus, I intend to develop housing, **100%** of which will be affordable to middle-income families.

Specifically, I expect rents for the 1, 2, 3, and 4 bedroom units to be affordable to families earning approximately 130% of the Area Median Income. We expect that the vast majority of families that would occupy the apartments will have incomes that will not exceed 165% of the Area Median Income.

As this project progresses, I look forward to working with you to ensure a successful development.

Thank You.



Heyme Bleier
Walton Realty Associates