



June 25, 2018/Calendar No. 12

C 170380 ZMM

IN THE MATTER OF an application submitted by 33rd Street Acquisition LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No.8d, changing from an existing R8A District to a C1-9A District property bounded by a line midway between East 33rd Street and East Thirty-Fourth Street, a line 100 feet westerly of First Avenue, East 33rd Street, and a line 300 feet westerly of First Avenue, Borough of Manhattan, Community District 6, as shown on a diagram (for illustrative purposes only) dated January 16th, 2018, and subject to conditions of CEQR Declaration E-458.

This application for a zoning map amendment was filed by 33rd Street Acquisition LLC on April 26, 2017. The applicant proposes to change an existing R8A zoning district to a C1-9A district on property located in the Kips Bay neighborhood of Community District 6 in Manhattan. This application, along with the related action, would facilitate the development of a mixed-use building at 339-345 East 33rd Street.

RELATED ACTIONS

In addition to the zoning map amendment (C 170380 ZMM) that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following application, which is being considered concurrently with this application:

N 170381 ZRM Zoning text amendment to designate the rezoning area as a Mandatory Inclusionary Housing (MIH) area.

BACKGROUND

This application for a zoning map amendment, in conjunction with the related application, would facilitate the redevelopment a 23-story mixed-use building at 339-345 East 33rd Street, in the Kips Bay neighborhood of Manhattan.

The area to be rezoned is on the north side of East 33rd Street between First and Second avenues. It consists of nine privately-owned tax lots —approximately 2,469 square feet of Lot 28 and Lots 20 through 27 in their entirety, comprising approximately 19,751 square feet of Manhattan Block 939, with a total frontage of 200 feet. In the 1995 Eastside Rezoning (C 940304 ZMM), the rezoning area, along with two parcels immediately to its west (Lots 17 and 7501, formerly known as Lot 6) were rezoned from an R8 to an R8A district. This rezoning was intended to shift development from Lexington Avenue and most midblock locations to major avenues and wide crosstown streets, and to encourage buildings consistent with the neighborhood's existing character.

The rezoning area is located within the Kips Bay neighborhood, which supports a mix of land uses, including multi-family residences, mixed-use buildings, and public facilities and institutions. There have been many new developments since 1995. The area north and west of the rezoning area is generally characterized by mixed residential-commercial buildings with strong street walls and many of these buildings are underbuilt. East of the rezoning area, the New York University (NYU) Langone Medical Center occupies a superblock along the east side of First Avenue between East 34th and East 30th streets. It is currently undergoing extensive construction. The Kips Bay Towers are located across 33rd Street from the rezoning area. The two 21-story residential buildings are set back 150 feet from the street line to accommodate two surface parking lots. The distance between the proposed development site and the closest existing Kips Bay Tower would be about 195 feet.

Block 939 contains predominantly residential uses with some ground floor retail uses. The block's Second Avenue frontage includes a 36-story, primarily residential building built around 2010 with 355 dwelling units. The block's East 34th Street frontage contains eight five- to six-story buildings and a 16-story residential building with 200 dwelling units. The block's First Avenue frontage contains four four-story residential buildings and a 23-story mixed use building. A three-story chapel and a 12-story residential building built in 2009 with 129 dwelling units are located on East 33rd Street adjacent to the rezoning area.

Zoning districts in the surrounding area include a mix of residential and commercial districts, with some manufacturing districts mapped along the East River. The residential districts include R7B, R8, R8A, R8B, and R9 districts. A C2-5 commercial overlay is mapped in a portion of the R8 and R9 districts. The commercial districts include C1-8A, C1-9, C1-9A, and C4-6 districts. The manufacturing districts are M2-3 and M3-2. The rezoning area is adjacent and east of the Special Transit Land Use District, which is mapped along Second Avenue between East 33rd and East 35th streets.

The surrounding area is well served by public transportation. The M34, M34A, and M15 SBS bus routes have stops within a block of the rezoning area. The 33rd Street subway station, on Park Avenue, serving the number six line, is approximately three blocks west. The East 34th Street Ferry Terminal is between East 35th and East 36th streets, east of the FDR Drive, which provides service between the terminal and Pier 11/Wall Street, Brooklyn, and Queens. This portion of East 33rd Street, between First and Second avenues, is 80 feet wide and therefore considered a wide street under the Zoning Resolution. The remainder of 33rd Street (west of Second Avenue) is 60 feet wide.

The rezoning area is currently mapped with an R8A contextual zoning district. Commercial uses are not permitted and residential floor area ratio (FAR) is limited to 6.02. The minimum base height is 60 feet with a maximum of 85 feet, and the maximum building height is 120 feet. Lots 20, 21, and 22 contain three five-story residential buildings with a total of 47 units and are built to an average FAR of 3.7. Lot 28 is occupied by a 23-story residential building that includes 209 dwelling units, the NYU Child Study Center on the first and second floors, and a 45-space parking garage. Approximately 2,469 square feet of Lot 28, where the building is 12 stories, are within the rezoning area. The remainder of the lot is in a C1-9A zoning district.

The development site (Block 939 Lots 23, 24, 25, 26, and 27) would be merged into one zoning lot. It is improved with five four-story residential buildings built prior to or around the 1940s. The buildings are built to the street line and provide rear yards. There are no parking spaces or curb cuts. Four buildings (Lots 24, 25, 26, and 27) would be demolished to facilitate the new development. These buildings contain a total of 40 dwelling units and approximately 26,300

square feet of floor area, for a total FAR of approximately 2.96. The applicant currently owns three of these buildings (Lots 24, 25, and 26) containing 23 units, and is seeking to purchase the fourth building (Lot 27), containing 17 units. Of these 40 units, one is rent controlled (in the building on Lot 24), nine are rent stabilized (three units in the building on Lot 24 and two units each in those on Lots 25, 26, and 27), and 30 units are available at market rates. There are eight units in the properties that the applicant currently owns that are occupied and there are 15 occupied units in Lot 27, which the applicant intends to purchase. There is also a medical office space on the ground floor of Lot 26. The development site also includes a four-story residential building with 13 units (Lot 23), built to approximately 3.5 FAR. This building would remain unchanged, but would sell 16,000 square-feet of development rights to the proposed new building and allow for a cantilever over a portion of the existing building.

The applicant is proposing to develop a new 23-story plus cellar mixed-use building containing approximately 123,000 square feet (12.0 FAR), which would include the development rights from adjacent Lot 23. The new building would have a four feet eight inches cantilever, above the 11th story, over a portion of Lot 23. The new building would contain approximately 6,400 square feet of retail floor area on the ground floor, 4,000 square feet in the cellar, and 117,000 square feet of residential floor area from the second to the 23rd floors, with a ground floor lobby. As proposed, the building would have a street wall of approximately 150 feet (15 stories) and rise to 230 feet (23 stories) after a 10-foot setback. As the site is in the Manhattan Core, no accessory parking is required and none would be provided.

The proposed C1-9A zoning district would allow a higher residential FAR than the existing R8A district and permit local retail uses. C1-9A districts allow a maximum FAR of 2.0 for commercial uses, 10.0 for community facility uses, and 12.0 for residential uses with inclusionary housing. The proposed C1-9A district requires a minimum base height of 125 feet, a maximum base height of 150 feet, and a maximum building height of 210 feet on a wide street. The maximum base and building heights can be increased to 155 feet and 230 feet, respectively, if affordable housing is provided on-site.

The applicant is also requesting a zoning text amendment to designate the rezoning area as an MIH area mapped with Option 1. Option 1 requires that at least 25 percent of the residential floor area be provided as housing permanently affordable to households with incomes at an average of 60 percent of the area median income (AMI). Within that 25 percent, at least 10 percent of the square footage must be used for units affordable to residents with household incomes at an average of 40 percent of the AMI, with no unit targeted to households with incomes exceeding 130 percent of the AMI. The applicant also intends to seek tax benefits under Section 421-a of the New York State Real Property Tax Law. The replacement ratio requires that the project contains at least one affordable housing unit for each dwelling unit that existed on the property three years prior to the commencement of construction. Since there are 40 existing units, the new building would have to contain 40 affordable units (25.8 percent of the approximately 155 units proposed) and would exceed the MIH requirement (39 units in this case) by one unit.

ENVIRONMENTAL REVIEW

This application (C 170380 ZMM), in conjunction with the application for the related action (N 170381 ZRM), 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 17DCP203M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed actions in the Environmental Assessment Statement issued on December 22, 2017, a Negative Declaration was issued on January 2, 2018. The Negative Declaration included an (E) designation (E-458) related to hazardous materials, air quality, and noise to avoid the potential for significant adverse impacts.

The (E) designation requirements related to hazardous materials, air quality, and noise would apply to the following development sites:

Manhattan Block 939, Lots 24, 25, 26, and 27

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

Task 1: Sampling Protocol

Prior to construction, the applicant must submit to the New York City Mayor's Office of Environmental Remediation (OER), for review and approval, a Phase II Investigation protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. No sampling should begin until written approval of a protocol is received by 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 and 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 the sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2: Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated for the test results, a proposed remedial action plan (RAP) must be submitted by OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

An OER-approved construction-related health and safety plan (CHASP) 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 OER for review and approval prior to implementation.

The text for the (E) designation related to air quality is as follows:

Any new residential/commercial development on the above referenced property ensure that the HVAC stack is located at the highest tier or at least 233 feet above grade to avoid any potential significant adverse air quality impacts.

The text for the (E) designation related to noise is as follows:

To ensure an acceptable interior noise environment, future residential/commercial development must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all facades in order to maintain an interior noise level of 45 dBA. 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 implementation of the above (E) designation, no significant adverse impacts related to hazardous materials, air quality, and noise would occur.

UNIFORM LAND USE REVIEW

This application (C 170380 ZMM) was certified as complete by the Department of City Planning on January 16, 2018, and was duly referred to Manhattan Community Board 6 and the Manhattan Borough President in accordance with Title 62 of the rules of the City of New York, Section 2-02(b), along with the related application for a zoning text amendment (N 170381 ZRM), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Manhattan Community Board 6 held a public hearing on this application (C 170380 ZMM) on February 26, 2018, and on March 14, 2018, by a vote of 36 in favor, one opposed, and one abstention, adopted a resolution recommending disapproval of the application unless 40 percent of the residential square footage is dedicated to permanently affordable housing.

Borough President Recommendation

This application (C 170380 ZMM) was considered by the Manhattan Borough President, who issued a recommendation on April 26, 2018 to disapprove the application with the following conditions:

1. “Lot 27 is purchased by the applicant and incorporated into the Proposed Development as currently planned to avoid contextual issues;
2. City Council and the City Planning commission apply the “Deep Affordability Option” to “Option 1” under MIH. The surrounding uses, particularly the medical center, employ many people who earn lower incomes who would be eligible for this type of housing. There is a great opportunity to provide housing for those who contribute to this community as local employees;
3. The applicant increases the number of permanently affordable units from 40 to 50 units, creating 10 new permanently affordable units in order to replace the existing occupied rent-regulated units; and

4. Any existing tenants that are income eligible should be offered relocation into these additional permanently affordable units, including provisions for the applicant to cover moving expenses and any rent differential during the period in which the existing tenants are placed in temporary housing during construction of the Proposed Development.”

City Planning Commission Public Hearing

On May 9, 2018 (Calendar No. 3), the City Planning Commission scheduled May 23, 2018, for a public hearing on this application (C 170380 ZMM). The hearing was duly held on May 23, 2018 (Calendar No. 25) in conjunction with the public hearing on the application for another related action. Five speakers testified in favor of the application and two speakers testified in opposition.

Speakers testifying in favor of the application included two members from the project team. The applicant’s representative presented an overview of the proposed development program, requested actions, and the land use rationale. The representative stated that the proposed 23-story development would be in context with the neighborhood, because there are several buildings in the surrounding area that are at least 23 stories tall, and there is a 36-story building on the same block. The speaker also noted that this portion of the East 33rd Street is a wide street as defined by the Zoning Resolution. The representative stated that the 40 proposed permanently affordable units would be, on average, 45 percent less in rent and 50 percent larger in floor area than the existing 10 rent regulated units. In response to the Borough President’s recommendation letter, the representative presented a rendering showing a development that could be constructed on the three lots that the applicant currently owns without Lot 27. In terms of tenant relocation, the representative explained that the applicant is amenable to allowing the remaining tenants in the rent regulated units be relocated back into the proposed development at negotiated rents below the market rates for a period of five years, under a private agreement, and that those units would be in addition to the 40 permanently affordable units required by the MIH and 421-a programs. The applicant would also agree to pay the moving expenses and subsidize rent difference for tenants relocated during construction. The representative also provided information contained in a letter from the applicant’s landlord-tenant counsel addressing the history of the applicant’s relationship with the remaining tenants. The letter was later provided to the commissioners on June 5, 2018. In the letter, the landlord-tenant counsel stated that no finding of harassment has been made with respect to the period of the applicant’s ownership of the buildings. The landlord-tenant counsel

also mentioned that there were 11 regulated units in the three applicant-owned buildings (Lots 24, 25, and 26) when the applicant purchased the building in late 2015. Since then, three tenants, all represented by counsel, were bought out. The letter also claimed that the allegations by the two tenants mentioned in the Borough President's recommendation letter were untrue, with detailed disputations of each case. Another applicant's representative mentioned that the existing buildings in the proposed rezoning area are built to less than 50 percent of allowable FAR under the current R8A district, and could be redeveloped with larger buildings even without a rezoning. The speaker also mentioned that the applicant is expecting to reach a resolution with union members who had expressed concern about the project, as the developer would be required by the 421-a tax abatement to pay prevailing wages.

Three representatives from Open New York testified in favor of the application. One representative cited citywide housing needs and the appropriateness of the location as reasons to support the project. The representative argued that wealthy, central, transit-rich neighborhoods like this one are the ideal place to build more housing and help solve the citywide issues of high rent, gentrification and displacement. Another representative stated that the proposed building would be appropriate given the surrounding context as well as its location in New York City, where tall buildings coexist with short buildings and the built environment is constantly changing. One representative, who is also a current resident, said that the new development would help improve safe streets and provide great transit connectivity.

A member of the Manhattan Borough President's land use staff reiterated the Borough President's recommendation for disapproval with conditions. The representative stated that there is a growing need for housing throughout the city, but said that the applicant failed to demonstrate that it would be able to build the building as proposed if Lot 27 could not be purchased, asserting that this would create a serious non-contextual issue on this street, with a four-story building standing between two 20-plus-story buildings. The representative also expressed concerns that the proposed rezoning of lots outside of the development site would place current tenants and current rent-regulated units at risk. In addition, the speaker raised the tenant protection and displacement concerns based on the Borough President's outreach efforts.

A representative of service union 32BJ SEIU testified in opposition to the project, stating that the applicant should make an effort to hire locally for construction jobs and to provide workers with a living wage.

There were no other speakers and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application (C 170380 ZMM) was reviewed by the City Coastal Commission 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 17-099.

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

CONSIDERATION

The Commission believes that this zoning map amendment (C 170380 ZMM), in conjunction with the related application for a zoning text amendment (N 170381 ZRM), is appropriate.

The application, along with the related action, will facilitate the redevelopment a 23-story mixed-use building at 339-345 East 33rd Street, in the Kips Bay neighborhood of Manhattan. As currently planned, the proposed development will increase the affordable housing units on the development site from 10 to 40, as well as increase market rate units from 30 to 115. The proposed development will also include retail space on the ground floor and cellar. In addition, the proposed zoning text amendment will require any future redevelopments on the rest of the rezoning area to include permanently affordable units under the MIH regulations.

The Commission believes that this proposal is consistent with the City's policy objectives for promoting housing production and affordability across the City. The rezoning area is currently mapped with an R8A zoning district. Since the last rezoning in 1995, there have been many new

developments in the surrounding area. The proposed zoning map amendment to extend the adjacent C1-9A district is consistent with the surrounding zoning districts, uses, and built form. C1-9A districts are mapped directly to the east and north. Much of the surrounding area is developed with buildings taller than 20 stories, including the 23-story building adjacent to the rezoning area on Lot 28, the 36-story building on the northwest corner of the block, the 21-story Kips Bay Towers directly across East 33rd Street, and the NYU Langone Medical Center, which occupies a superblock along the east side of First Avenue.

In addition, this portion of 33rd Street between First and Second avenues is 80 feet wide. It serves as the primary point of entry into Kips Bay and functions as an avenue for vehicles traveling westward from the medical facilities on First Avenue. Following the Commission's questions at the public hearing, the applicant's representative submitted a letter to the Commission on June 5, 2018, confirming that East 33rd Street between First and Second avenues will be converted to a two-way street according to the information on the Community Board 6 website. In addition, the northern tower in the Kips Bay Towers complex is set back 150 feet from the street line to accommodate surface parking lots making the distance between the proposed development and the existing northern tower approximately 195 feet. This additional distance between buildings provides a significant amount of light and air at the street level. The proposed rezoning will also enliven the streetscape by enabling ground floor retail on East 33rd Street, which provides pedestrian access to the NYU Langone facility and the East 34th Street Ferry Terminal from the 33rd Street subway station on Park Avenue.

The proposed zoning text amendment (N 170381 ZRM) will designate an MIH area coterminous with the rezoning area, requiring any new residential development to provide permanent affordability for 25 percent of the residential floor area pursuant to Option 1. Designation of this MIH area is consistent with City objectives of promoting affordable housing.

The Commission is sympathetic to concerns about the direct displacement of the current tenants in buildings on the development site and strongly encourages the applicant to continue working with the existing rent regulated tenants to finalize agreements on lease buyouts or relocation options. According to the applicant, if the tenants in rent-regulated units prefer to relocate back to

the proposed development, each tenant could negotiate their rent with the property owner under a private agreement separate from the MIH and 421-a requirements; those units would be in addition to the 40 permanently affordable units required by the MIH and 421-a programs.

Regarding the Borough President's concern that Lot 27 may remain in its existing condition with a 5-story building if the applicant is not able to purchase the property, the Commission believes that the rezoning will result in predictable uses and mass, with densities and heights responsive to the width of the East 33rd Street and the built context of the surrounding area.

Regarding the Community Board's and Borough President's recommendation that this applicant provide permanently affordable housing in excess of the requirement under MIH, the Commission notes that such a requirement would be outside the scope of the proposed actions.

RESOLUTION

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

RESOLVED, 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 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. 8d:

changing from an existing R8A District to a C1-9A District property bounded by a line midway between East 33rd Street and East Thirty-Fourth Street, a line 100 feet westerly of First Avenue, East 33rd Street, and a line 300 feet westerly of First Avenue;

Borough of Manhattan, Community District 6, as shown on a diagram (for illustrative purposes only) dated January 16, 2018, and subject to conditions of CEQR Declaration E-458.

The above resolution (C 170380 ZMM), duly adopted by the City Planning Commission on June 25, 2018 (Calendar No. 12), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

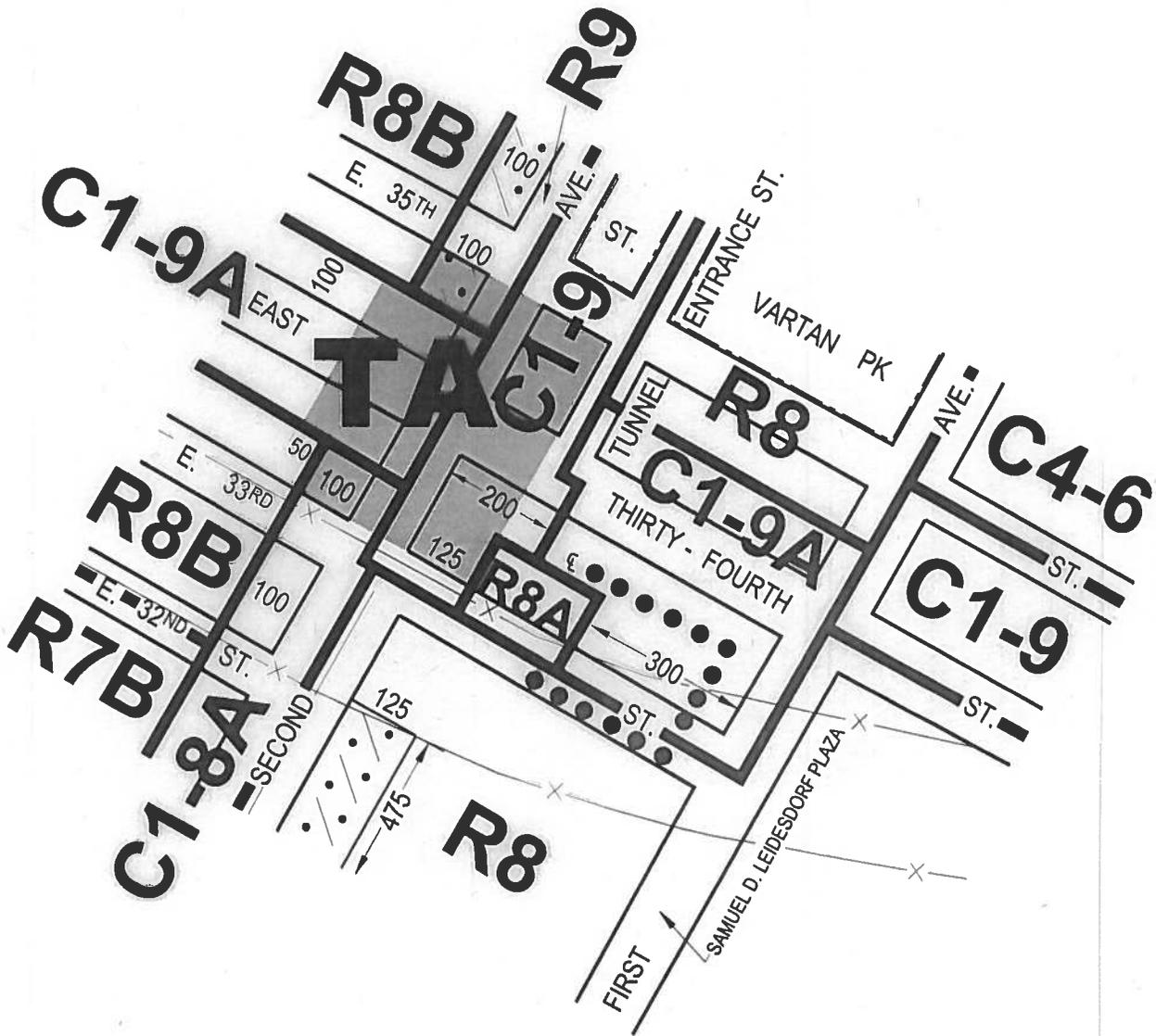
KENNETH J. KNUCKLES, ESQ., *Vice Chair*

ALLEN P. CAPPELLI, ALFRED CERULLO, III,

JOSEPH DOUEK, RICHARD W. EADDY, CHERYL COHEN EFFRON,

HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, *Commissioners*

MICHELLE DE LA UZ, *Commissioner Abstaining*



CITY PLANNING COMMISSION
 CITY OF NEW YORK
 DIAGRAM SHOWING PROPOSED
ZONING CHANGE
 ON SECTIONAL MAP
8d

BOROUGH OF
MANHATTAN

New York, Certification Date
 JANUARY 16, 2018

S. Lenard
 S. Lenard, Director
 Technical Review Division



NOTE:

-  Indicates Zoning District Boundary.
-  The area enclosed by the dotted line is proposed to be rezoned by changing an existing R8A District to a C1-9A District.
-  Indicates a C1-3 District.
-  Indicates a Special Transit Land Use District.

MOLLY HOLLISTER
CHAIR

CLAUDE L. WINFIELD, FIRST VICE-CHAIR
AHSIA BADI, SECOND VICE CHAIR



JESÚS PÉREZ
DISTRICT MANAGER

BRIAN VAN NIEUWENHOVEN, TREASURER
BEATRICE DISMAN, ASST. TREASURER
KATHY THOMPSON, SECRETARY
DAVID COLBY REED, ASST. SECRETARY

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

VIA E-MAIL

March 26, 2018

Marisa Lago
Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Resolution regarding a proposed East 33rd Street Rezoning, application nos. C 170380 ZMM and N 170381 ZRM

Dear Chair Lago:

At the March 14, 2018 Full Board meeting of Manhattan Community Board Six, the Board adopted the following resolution:

WHEREAS, the applicant, 33rd Street Acquisition LLC, seeks a zoning map amendment and a zoning text amendment from the New York City Planning Commission (CPC) to facilitate the development of a mixed use building at 339-345 East 33rd Street;

WHEREAS, the zoning map amendment would rezone Manhattan Block 939, Lots 20, 21, 22, 23, 24, 25, 26, 27 and a portion of Lot 28 (the "proposed rezoning area") from an R8A to C1-9A;

WHEREAS, a text amendment to the New York City Zoning Resolution (ZR) Appendix F is also being requested to map the proposed rezoning area as a Mandatory Inclusionary Housing (MIH) area;

WHEREAS, collectively, the zoning map amendment and the zoning text amendment are the proposed action for the purposes of the environmental analysis;

WHEREAS, the proposed C1-9A district allows a commercial FAR of 2.0, a community facility FAR of 10.0, and a residential FAR of 12.0 with the provision of the requisite amount of affordable housing;

WHEREAS, the proposed rezoning will increase the maximum residential FAR of these lots from 6.0 FAR to 12.0 FAR and will trigger the Mandatory Inclusionary Housing (MIH) provision and allow commercial uses, which are currently prohibited;

WHEREAS, the proposed development site comprises approximately 10,822 sf over five lots (Block 939, Lots 23, 24, 25 and 27) bounded by East 33rd Street to the south, Second Ave to the west, East 34th Street to the north and First Avenue to the east;

WHEREAS, the zoning change for this development would occur mid-block on a portion of an usually wide side street;

WHEREAS, city streets are measured from property line to property line and include sidewalks, the street width measurement for 33rd Street between 1st and 2nd Avenues is considered “wide” at 80 feet;

WHEREAS, upzoning traditionally occurs on avenues, because the wide width of this one block section of East 33rd Street is an aberration, and does not set a precedent for mid-block upzoning and should be noted, and the street width may suggest it is appropriate for higher density, but it is not the sole determining factor;

WHEREAS, shadows or the absence of direct sun as demonstrated by the Environmental Assessment Statement will not be cast on Kips Bay Towers open space located on the southwest corner of 33rd Street and First Avenue, and there are very minimal shadow impacts on any shadow-sensitive resources in the surrounding area;

WHEREAS, light and air on the street depends on how much sky the development will block; the proposed building will block more light and air to 33rd Street than the existing zoning would allow;

WHEREAS, the applicant intends to seek tax benefits under Section 421-a of the New York State Real Property Tax Law (the Affordable New York Housing Program);

WHEREAS, the replacement ratio provisions of the Affordable New York Housing Program require that the project must contain at least one affordable housing unit for each dwelling unit that existed on the property prior to the commencement of construction;

WHEREAS, upon approval of the proposed action, the buildings on Lots 24-27 would be fully vacated and demolished in order to facilitate the construction of the proposed new building and as there are currently 40 rent regulated dwelling units, the proposed building will contain 40 affordable units, which is 25% of the planned 155 units and would satisfy the 25% minimum required affordable residential floor area under MIH, resulting in 115 market rate units;

WHEREAS, the proposed development would be 23-stories in height (230 feet) and the proposed 142,550 gsf building also includes incorporation of 16,453 sf of development rights from an adjacent tax lot (Block, 939, Lot 23);

WHEREAS, lot 23, which is not owned by the applicant, would be merged into the development site’s zoning lot as a result of the proposed action, and will remain under separate ownership and will not be demolished;

WHEREAS, the proposed development would also include 25.8% of affordable housing floor area, consistent with the MIH requirements, or approximately 40 affordable dwelling units;

WHEREAS, CB6 has a long-standing policy of encouraging affordable housing options within the district and members of the public testified at the public hearing about the urgent need for more affordable housing options within the district;

WHEREAS, the developer seeks to meet option 1 of MIH, which requires 25% of the residential floor area be designated as affordable housing units for residents with incomes averaging 60 percent or Area Median Income (AMI) with no unit targeted at a level exceeding 130 percent of AMI, with 10 percent provided as affordable to households at an average of 40 percent AMI;

WHEREAS, unlike other Manhattan Core community districts, there are few opportunities in Community District 6 for upzoning that would trigger Mandatory Inclusionary Housing;

WHEREAS, existing R10 districts and their commercial equivalents cannot be rezoned to trigger MIH, and mid-block districts facing narrow streets are already appropriately zoned;

WHEREAS, the requested actions would permit the applicant to construct a 23-story mixed use building that would contain approximately 131,807 gsf of residential use (115 market rate dwelling units and 40 affordable dwelling units) and approximately 10,743 gsf of retail use for a total of 142,550 gsf on Block 939, Lots 24,25,26 and 27 in the Kips Bay neighborhood of Manhattan Community District Six;

WHEREAS, the developer will dually benefit from participating in both the 421-a Affordable Housing New York Program and the benefits of the Mandatory Inclusionary Housing program;

THEREFORE, BE IT RESOLVED, Manhattan Community Board Six objects to the rezoning proposal as presented unless 40% of the residential square footage be dedicated to permanently affordable housing.

VOTE: 36 in Favor 1 Opposed 1 Abstention 0 Not Entitled

Best regards,



Jesús Pérez
District Manager

Cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Carlina Rivera, Council Member
Sandro Sherrod, Chair, CB6 Land Use and Waterfront Committee
Applicant



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

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

Gale A. Brewer, Borough President

April 26, 2018

**Recommendation on
ULURP Application Nos. 170380 ZMM and N170381 ZRM
East 33rd Street Rezoning
By 33rd Street Acquisition LLC**

PROPOSED ACTIONS

33rd Street Acquisition LLC (“the applicant”) is seeking the following actions:

- (1) Zoning map amendment to Zoning Sectional Map 8d to rezone Block 939, Lots 20, 21, 22, 23, 24, 25, 26, 27 and a portion of lot 28 (Project Area) from R8A to C1-9A;
- (2) Zoning text amendment to designate the Project Area as a Mandatory Inclusionary Housing Area

These actions will facilitate the development of a 23-story mixed-use building on lots 24, 25, 26 and 27 (Proposed Development) that will contain a total of 155 rental units and a superintendent’s unit and 6,400 square feet of retail floor area on the ground floor and 4,000 square feet in the cellar. The Proposed Development is located mid-block on East 33rd Street between First Avenue and Second Avenue in the Kips Bay neighborhood of Manhattan Community District 6.

In evaluating the text amendment, this office must consider whether the proposed language meets the underlying premise of the Zoning Resolution of promoting the general health, safety and welfare of the city and whether the developments it will facilitate would be appropriate to the neighborhood. Any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, for appropriate growth, improvement and development of the neighborhood and borough.

PROJECT DESCRIPTION

The Project Area consists of Block 939, Lots 20, 21, 22, 23, 24, 25, 26, 27, and a portion of Lot 28. It encompasses both the Proposed Development Site on lots 24, 25, 26, and 27 and additional existing buildings on lots 20, 21, 22, 23, and a portion of Lot 28. The Project Area has a total area of approximately 17,281 square feet. Lot 20 is a 2,469 square foot privately owned lot that is currently occupied by a 5-story residential building with 22 dwelling units. Lots 21 and 22 each have a lot area of approximately 1,975 square feet and are privately owned. Lot 21 is occupied by a 5-story residential building that includes 13 dwelling units. Lot 22 is occupied by

a 5-story residential building that includes 12 dwelling units. Lot 23 is a 1,975 square foot privately owned lot currently occupied by a 4-story residential building with 13 dwelling units. Approximately 16,000 square feet of development rights from Lot 23 will be transferred to the Proposed Development. The existing building on Lot 23 will remain.

Lot 24 is a 1,975 square foot privately owned lot currently occupied by a 4-story residential building with 7 dwelling units. Lot 25 is a 1,975 square foot privately owned lot currently occupied by a 4-story residential building with 7 dwelling units. Lot 26 is a 2,469 square foot privately owned lot currently occupied by a 4-story residential building with 9 dwelling units and medical office space on the ground floor. Lot 27 is a 2,469 square foot privately owned lot currently occupied by a 4-story residential building with 17 dwelling units. Lot 28 is 13,770 square foot privately owned lot that is currently occupied by a 23-story residential building with 209 dwelling units, an NYU Child Study Center, and subsurface parking. This lot is mostly zoned C1-9A, with approximately 2,469 square feet that is zoned R8A, which is included in the Project Area.

33rd Street Acquisition LLC is seeking a zoning map amendment of the existing R8A zoning to C1-9A in order to facilitate the construction of the Proposed Development, and a zoning text amendment to designate the Project Area as a Mandatory Inclusionary Housing Area.

Background

In 1995, the City Planning Commission (“CPC”) approved a rezoning involving 28 new zoning designations and 44 locations between East 14th and East 34th Street (C 940304 ZMM). The Project Area was included in this rezoning, which was rezoned from R8 to R8A.

In 2007, CPC approved a modification to a special permit and restrictive declaration (M 990544B ZSM, N 070205 ZCM) to facilitate a large new residential development west of the Project Area, located in a C1-9 district, along the block’s Second Avenue frontage (300-312 East 34th Street a/k/a 201 East 33rd Street). This approval, coupled with prior actions and the acquisition of additional property, facilitated the construction of a 36-story building with 355 dwelling units with ground floor retail and medical office space.

Proposed Development

The Proposed Development would be a 23-story mixed-use building on lots 24, 25, 26 and 27 that will contain a total of 155 rental units and a superintendent’s unit and 6,400 square feet of retail floor area on the ground floor. There will be 115 market rate units. The remaining 40 units, or 25.8% of the total residential floor area, would be developed under “Option 1” of the Mandatory Inclusionary Housing (MIH) Program. As the applicant also intends to seek tax benefits under Section 421-a of the New York State real Property Tax Law, these 40 units also satisfy the replacement ratio provision of subsection (i) which requires at least one affordable housing unit for each dwelling unit that existing on the property on the date that is three years

prior to the commencement of construction. The proposed zoning map amendment would allow for residential (Use Groups 1 and 2), community facility (Use Groups 3 and 4, which include uses such as libraries, schools, and houses of worship), and commercial uses (Use Groups 5 and 6, which includes local retail and services uses such as grocery stores, dry cleaners, drug stores, and restaurants) to be as-of-right.

Area Context

The project area is located in the Kips Bay neighborhood of Manhattan. The surrounding area supports a mix of land uses, including multi-family residences, mixed-use buildings, and public facilities and institutional uses. NYU Langone Medical Center is a predominant land use in the area and occupies a large block to the east of the rezoning area along the east side of First Avenue between East 34th and East 30th Streets. They are currently undergoing an extensive renovation project.

Kips Bay Towers is located between Second and First Avenues and East 33rd and 30th Streets and consists of two freestanding, narrow, rectangular 21-story concrete apartment buildings with large footprints that are well set back from the street. These buildings contain a total of 1,118 dwelling units with on-site parking. There are several other large residential developments located within the vicinity of the project site. Within a 600 square foot radius, there are several large residential developments ranging from 20-35 stories.

The sections of the Project Area block (Block 939) that are not located within the rezoning area contain residential uses, with some buildings containing ground floor retail uses as well. The block's Second Avenue frontage, which is zoned C1-9, includes a 36-story primarily residential building with 355 dwelling units and ground floor retail and medical office uses. The block's First Avenue frontage, which contains part of the Project Area (the portion of Lot 28 to be rezoned through the proposed action), is occupied by a 23-story residential building with 209 dwelling units and the NYU Child Study Center on the first and second floors. Directly to the west of the rezoning area, along East 33rd Street, Lot 17 contains a 14,816 square foot community facility building – the Chapel of the Sacred Hearts of Mary and Joseph. Also to the west of the rezoning area is a 136,099 square foot, 12-story recently constructed residential building that includes 129 dwelling units.

First Avenue and Second Avenue serve as major north-south thoroughfares in the vicinity of the project area. The side streets carry one-way, cross-town traffic, with the exception of 34th Street, which is a two-way thoroughfare. Between First and Third Avenues, the regular street grid is interspersed with the Queens-Midtown Tunnel ramp network; the access and egress ramps are located between East 36th and East 37th Streets with dedicated north-south side streets providing one-way access to the tunnel.

There are limited transit services in the immediate vicinity of the proposed rezoning area. The M34 Select Bus Service (SBS), the M34A SBS, and M15 SBS are located within the vicinity of the rezoning area. The M34 SBS runs river-to-river along 34th Street from the 34th Street Ferry Terminal on the East River to the Jacob Javits Convention Center on 12th Avenue. The M34A

SBS runs from Waterside Plaza to the Port Authority Bus Terminal via 34th Street, Second Avenue, Eighth Avenue and Ninth Avenue. The First and Second Avenue - 125th Street SBS Corridor extends between 125th Street in Harlem and South Ferry in Lower Manhattan. The 33rd Street subway station, serving the number 6 Lexington Avenue line, is located approximately 0.3 miles west of the proposed rezoning area. The East 34th Street Ferry Terminal for the East River Ferry is located between East 35th and East 36th Streets, east of the FDR Drive. The East River Ferry provides service between the East 34th Street Ferry Terminal and Pier 11/Wall Street, Brooklyn, and Queens. Vehicles en route to Kips Bay from other parts of the city and Tri-State Area can access the neighborhood via the FDR Drive at East 34th Street.

COMMUNITY BOARD RECOMMENDATION

33rd Street Acquisition LLC presented their formal ULURP presentation of the proposed development at the February 26, 2018 CB6 Land Use Committee Meeting. Several concerns were raised, primarily the issues around the current tenants, who are rent controlled or rent stabilized, as well as the type of retail that would be attracted to the development. The community indicated their desire to have a market establishment specializing in healthy food and/or local retail. There were also concerns about shadows the development may cast on the neighborhood, and the impact the retail space would have on traffic in the area.

There were speakers present at the meeting in favor of the development, citing the affordable housing units and the creation of new housing units in general in the community. Several of these speakers were not from CB6.

At its Full Board meeting on March 14, 2018, Manhattan Community Board 6 (CB6) disapproved the project with conditions. With 36 in favor, 1 opposed, and 1 abstention, CB6 voted to disapprove the project as presented unless 40% of the residential floor area be dedicated to permanently affordable housing.

BOROUGH PRESIDENT'S COMMENTS

The residents of Community Board 6, like other communities, have a need for additional housing stock. But there are few opportunities within CB6 to develop Mandatory Inclusionary Housing projects that can provide significant amounts of affordable housing. Existing R10 districts cannot be rezoned to trigger MIH. East 33rd Street has the unique characteristic of being a wide street, and the Proposed Development would abut a large development immediately to the east, and would not be out of context if built as proposed. Including the remaining low-rise residential buildings on the north side of the street may provide another opportunity for future development. However, the means by which the Proposed Development would be realized need to be carefully examined, especially given its potential to set a precedent for future large scale development elsewhere on the block.

While the Proposed Development will provide new, permanently affordable housing pursuant to MIH, it is important to consider the nature of the units that are being replaced, and the circumstances of that replacement. Even without accounting for rent control and stabilization, the existing units – studios and one-bedrooms in older, walk-up buildings – provide affordable options in a neighborhood where they are in short supply. The proposed construction of 40 new units of affordable housing will replace those that are being demolished. But the rent regulated tenants will be displaced, while 115 units of market rate housing will be added.

As stated in the applicant's project description, the buildings in the Proposed Development site are largely vacant. When the Borough President's office met with the applicant on March 28, 2018, the applicant indicated that the buildings in the Proposed Development would be mostly vacant, save for the 10 rent regulated tenants currently in occupancy. Thus the developer's proposal will cause a net loss of 30 affordable apartments in the neighborhood.

Representatives from the Borough President's office also visited the Proposed Development site. They entered three of the four buildings slated to be demolished in order to speak directly with the residents to see if they were aware of the Proposed Development, as well as to gauge their current housing status. The report from this site visit raised several issues.

One of the buildings in the Proposed Development not yet acquired by the applicant, 345 East 33rd Street, is in the process of being renovated. Borough President staff observed construction dust covering the hallways and active construction taking place on upper floor units. This renovation is happening piecemeal, with newly renovated units dispersed among older units on all floors. There is a new video intercom system at the building entrance and all hallway floors and stair treads are new. It perplexes us why an owner who is in negotiations to sell and demolish their building would be renovating units in order to attract new tenants at market rates. A rent stabilized tenant in a non-renovated unit confirmed that new residents were moving into the renovated units.

If the applicant is unable to obtain ownership of this site, the Proposed Development would create a serious non-contextual issue on this street, with a four-story building sandwiched between two twenty-plus story buildings. This would not be appropriate for any neighborhood and would create significant inconsistencies on this block with respect to streetscape and building type. The developer's application should be dependent on his full acquisition of the site. This application should not be approved at this time because the full development site is not under the applicant's control; the renovation and occupancy of the property he does not control strongly indicates that he will not be able to complete acquisition.

The Borough President's staff also visited two of the three buildings that are a part of the Proposed Development and are owned by the applicant. Some of the units in these buildings are currently occupied by contractors, using apartments and the medical office space on the ground level as a field office. There is one other tenant living in a unit who does not have a rent

stabilized lease and appears to have a month-to-month lease arrangement with the applicant. The other occupied units appear to be inhabited by residents with rent regulated leases.

One of the rent stabilized tenants in occupancy at the site the staff spoke with had spent the winter of 2016-2017 without heat and got through the cold weather with an electric heater provided by the management company. The tenant also communicated to our staff that they were dealing with a roach infestation. The tenant has called 311 in the past and there are HPD violations on this tenant's unit that were logged into the system in March 2018. This tenant indicated they have been brought to court by building management many times in an apparent attempt to evict him. The tenant has been withholding rent due to lack of repairs, lack of heat, and roach infestation.

The staff spoke with another rent stabilized tenant who was aware of the Proposed Development. Their living conditions appeared to be better, but they indicated they had difficulty obtaining their lease renewal, which under the Rent Stabilization Law is required within 90-150 days prior to lease expiration. The tenant was finally able to renew their lease, but then faced a further challenge in obtaining a countersigned copy for their own records, a critical item when dealing with potential legal proceedings and negotiations.

None of the tenants the staff spoke with indicated any desire to leave this community and are aware that the Proposed Development will result in their displacement.

In reviewing this application we must, in light of these reports, consider the circumstances by which the formerly regulated units in these buildings became vacant. It appears likely that neglect and other forms of harassment resulted in the emptying of these units. This history is relevant given the potential for future developments similar to the Proposed Development, in lots 20, 21, 22, and 23, which are part of the Project Area of this application. The buildings on these lots contain 60 units, all or most of which may be rent regulated at present. The Borough President is concerned about what will happen to these units if this rezoning is approved, and especially the impact of reducing the availability of affordable units in the surrounding community.

Rezoning the remaining low-rise buildings would permit the construction of large buildings with mandatory amounts of permanently affordable housing in the future, but it is almost certain to place current tenants and current units at risk. Experience shows that units will be warehoused to prepare buildings for demolition and development, further decreasing affordable housing stock in the neighborhood and possibly increasing rents as regulated units become less available to. Many rent regulated tenants facing similar redevelopments have been displaced or obtained buyouts, but there is nothing in place in such situations to ensure that tenants are being treated fairly or are provided adequate legal representation.

The Proposed Development would replace 40 units that at one point were all subject to rent regulation with 40 units that would be permanently affordable to various incomes averaging to 60 percent of the Area Median Income. While MIH allows for the development of permanently affordable housing, and 421-a preserves affordable units by requiring them to be replaced in full

in redevelopment, one can argue that in this case there will be no overall net increase in the number of affordable units. There is dearth of appropriate MIH sites in the neighborhood, and CB6 has called for a higher percentage of affordable housing in this development. Therefore the Borough President also believes that this Proposed Development should provide for more affordable housing than is required by MIH.

According to the Project Description provided by the applicant, the current tenants would have the option to relocate into the Proposed Development once completed. Their units would be in addition to the approximately 39 units (25% of the residential floor area) required by MIH. If allowed by the Department of Housing Preservation and Development (HPD), one tenant could be relocated into the one additional affordable housing unit required by the 421-a program's replacement ratio. The applicant has communicated to this office that if any existing tenants were relocated into the new building, their rents would not be subject to rent regulation or permanently affordable but would be negotiated with the owner and subject to a private contractual agreement. If the tenant is low income, the rent could be below market. In such a case, the unit would be affordable for the duration of the tenancy, but not the life of the building.

The Borough President believes that the applicant should provide permanently affordable housing units that are equal to the 10 existing rent controlled or rent stabilized units, in addition to the approximately 39 units required by MIH. Thus, the affordability of the existing rent regulated units would be preserved in perpetuity, and MIH would create new affordable units. If income eligible, the existing tenants would have the option to relocate into the 10 new affordable units that are replacing the existing rent regulated units. This would increase the total number of permanently affordable units to 50 (including the 1 additional unit required by 421-a), and allow the rehousing of the existing tenants in regulated units and prevent their permanent displacement.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **disapproval** of ULURP Application Nos. 170380 ZMM, and Zoning Text Amendment N170381 ZRM unless the following conditions are met:

- Lot 27 is purchased by the applicant and incorporated into the Proposed Development as currently planned to avoid contextual issues;
- City Council and the City Planning commission apply the "Deep Affordability Option" to "Option 1" under MIH. The surrounding uses, particularly the medical center, employ many people who earn lower incomes who would be eligible for this type of housing. There is a great opportunity to provide housing for those who contribute to this community as local employees;

- The applicant increases the number of permanently affordable units from 40 to 50 units., creating 10 new permanently affordable units in order to replace the existing occupied rent-regulated units; and
- Any existing tenants that are income eligible should be offered relocation into these additional permanently affordable units, including provisions for the applicant to cover moving expenses and any rent differential during the period in which the existing tenants are placed in temporary housing during construction of the Proposed Development.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, slightly stylized font.

Gale A. Brewer

Manhattan Borough President