



## **CITY PLANNING COMMISSION**

April 24, 2013 / Calendar No. 6

C 130118 ZSK

**IN THE MATTER OF** an application submitted by 22 Lafayette LLC and NYC Economic Development Corporation pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 101-81 of the Zoning Resolution:

1. to permit the maximum community floor area requirements of Section 33-123 (Community facility buildings or buildings used for both community facility and commercial uses in all other Commercial Districts) to be increased from 6.5 to 7.0;
2. to modify the street wall location requirements of Section 101-41 (Special Street Wall Location Regulations);
3. to modify the height and setback regulations of 23-632 (Front setbacks in districts where front yards are not required) and;
4. to modify the sign regulations of Section 32-64 (Surface Area and Illumination Provisions), Section 32-65 (Permitted Projection or Height of Signs) and Section 32-68 (Permitted Signs on Residential or Mixed Buildings);

in connection with a proposed 32-story mixed use development, on property located at 113 Flatbush Avenue (Block 2110, Lots 3 and 103), in a C6-2 District, within the Special Downtown Brooklyn District, Borough of Brooklyn, Community District 2.

This application for a zoning special permit was filed by 22 Lafayette LLC and the New York City Economic Development Corporation on November 20, 2012. The proposed special permit, along with its related actions, would facilitate the development of a mixed-use development containing cultural uses and publicly accessible open space on the block bounded by Flatbush Avenue, Lafayette Avenue and Ashland Place in the Special Downtown Brooklyn District, in Brooklyn Community District 2.

### **RELATED ACTIONS**

In addition to the special permit (C 130118 ZSK), which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following, which are being considered concurrently with this application:

C 130116 ZMK      Zoning Map Amendment changing a C6-1 zoning district to a C6-2 zoning district within the Special Downtown Brooklyn District.

## **BACKGROUND**

A new mixed-use building with city-owned cultural facilities, residential use including affordable housing, retail and public open space, is proposed on a 49,830 square-foot triangular block, bounded by Flatbush and Lafayette avenues and Ashland Place in Downtown Brooklyn. Cultural spaces within the proposed building would include a new public library, movie theaters to expand the nearby BAM Cinemas, and studios for dance organizations. The proposed open space is designed to accommodate a wide range of public performances, movie screenings and other cultural events, to be programmed by nearby cultural organizations. The proposed development is a key component of the Brooklyn Academy of Music (BAM) Cultural District, which includes the development and renovation of a number of City-sponsored cultural spaces, located within a six-block area centered on the corner of Lafayette Avenue and Ashland Place. A special permit, zoning map and text amendments, are required to facilitate the new development located at this significant location.

The project site is located in the southeast corner of the Special Downtown Brooklyn District between the high-density commercial district of Downtown Brooklyn, which extends to the north and west, and the residential neighborhoods of Fort Greene to the east, Prospect Heights to the southeast, Park Slope to the south and Boerum Hill to the southwest. The Atlantic Yards project site, including the Barclays Arena, is one block southwest of the site. It is currently developed with a self-park public parking lot for 110 cars and a vacant one-story commercial structure.

Across Ashland Place to the east from the project site is the Brooklyn Academy of Music Historic District. Among the notable buildings within the historic district are the BAM Peter Jay Sharp Building (commonly called the BAM Opera House), a historic five-story theater, the new BAM Fisher theater and the Williamsburgh Savings Bank (One Hanson Place) a 37-story, 512-foot tall building converted from office to condominium use, each of which are located directly across Ashland Place from the project site. To the north, across Lafayette Avenue, are the Mark Morris Dance Center, a surface parking lot and a community garden. Across Hanson Place to the southeast is the Atlantic Terminal which houses the Long Island Railroad, nine subway lines,

a shopping center, and an office building. Across Atlantic Avenue to the south of the Atlantic Terminal is the new Barclay's Center arena. Across Flatbush Avenue to the west are surface parking lots and two- to four-story commercial and mixed-use buildings.

The project site is located in a C6-1 zoning district within the Special Downtown Brooklyn District. The C6-1 district extends to the east and northeast to cover two additional blocks and allows residential uses up to a Floor Area Ratio (FAR) of 3.44, commercial uses up to 6.0 FAR and community facility uses up to 6.5 FAR. Within C6-1 districts in the Special Downtown Brooklyn District, towers are permitted up to 495 feet. The blocks north and south of the site are zoned C6-4, which allows up to 10 FAR for residential, commercial and community facility uses with no height limit. To the west across Flatbush Avenue is a block zoned C6-2, which allows 6.02 FAR of residential uses, 6.0 FAR for commercial uses and 6.5 FAR for community facility uses with heights limited either by the sky exposure plane or by contextual height limits under the Quality Housing Program.

The project site, which includes two tax lots (Block 2110, Lots 3 and 103), is currently owned by the Economic Development Corporation (Lot 3) and the City (Lot 103). Disposition of these sites was approved in 2004 (C 040179 HDK) as part of the package of actions that made up the Downtown Brooklyn Plan. Lot 3 is to be acquired by the applicant under a purchase and sale agreement. Lot 103, which covers 2,500 square feet at the corner of Lafayette and Flatbush avenues, includes subsurface MTA structures and will continue to be owned by the City.

The project site has been the subject of multiple actions over the last fifty years in order to encourage the development of the site. In 1968, the Atlantic Terminal Urban Renewal Area was created and designated the project site for acquisition and redevelopment. The Urban Renewal plan was amended multiple times, most recently in 2004 (C 040175 HUK) when the plan was amended to designate the project site for commercial uses, which is defined in the plan to include residential, community facility and public parking uses.

In 2001, the Special Downtown Brooklyn District was created (C 010199 ZMY, N 000244 ZRY). It provided additional flexibility under zoning for zoning districts in Downtown Brooklyn while requiring ground floor retail uses and restricting curb cuts along Flatbush Avenue.

In 2004, the Downtown Brooklyn Development Plan was adopted. It included a number of actions that affected the project site, including: amending the Special Downtown Brooklyn District regulations to require transparency and street wall continuity in specified locations (N 040172 ZRK); amending the Atlantic Terminal Urban Renewal Area provisions (C 040175 HUK); approving the disposition of the site (C 040179 HDK); selecting the project site for a new public library (C 040185 PSK); and granting of a special permit for a 466-space below-grade public parking garage (C 040183 ZSK).

The proposed actions would facilitate the development of a 32-story building containing up to 402 residential units; cultural uses including a public library, movie theaters and dance studios; retail space and restaurant uses; up to 225 public and accessory parking spaces for automobiles; and, up to 201 bicycle parking spaces. The proposed project is designed with three main components: 1) an approximately 16,000 square-foot publicly accessible open space (the “plaza”) at the north end of the site, fronting on Lafayette Avenue; 2) a two-story retail and community facility base rising to approximately 40 feet, and 3) a residential and community facility tower that rises to 382 feet. Within the proposed building would be 28,400 square feet (0.43 FAR) of ground floor retail and restaurant uses; approximately 47,000 square feet (0.93 FAR) of cultural space on the second, third and fourth floors of the building; and approximately 273,000 square feet (5.62 FAR) of residential uses on the fifth through thirty-second stories. The entire project would be approximately 382 feet tall and up to an FAR of 7.0. Upon completion of the project, the City would acquire approximately 50,000 square feet of cultural space planned to be occupied by the Brooklyn Public Library, BAM and 651 Arts, and 10,000 square feet of publicly-accessible open space.

The plaza would be located at the north end of the lot between the proposed building and Lafayette Avenue. The plaza has been designed to provide flexible space for performances and outdoor events in support of the cultural activities in the BAM Cultural District, while providing attractive seating and space for passive activities when the plaza is not programmed. The plaza would be at grade fronting on Lafayette Avenue and would rise in a series of stepped levels to meet the cultural lobby entry at the second story of the building at approximately eighteen feet above grade. The lowest level of the plaza, near Ashland Place would have seating and plantings, and an elevator and fire stair to the below-grade parking garage. Adjacent to Flatbush Avenue, at

two feet above grade, would be a large 85 foot by 42 foot elevated area that is designed to accommodate performances and other cultural events. South of the terrace would be a grand staircase containing stairs, seating steps, benches, trees and landscaped areas that would lead to the cultural uses on the second story of the building, and would provide greenery and seating for performances.

On the ground floor of the building approximately 28,400 square feet of retail and restaurant uses would be accessed off Flatbush Avenue, Ashland Place and the plaza, activating the surrounding streets. Other ground floor uses would include lobbies for the cultural uses and retail uses and parking access.

On the second, third and fourth floors, approximately 47,000 square feet of cultural space (0.93 FAR) would include a branch of the Brooklyn Public Library on the second floor, and movie theaters and dance studios on the third and fourth floors respectively. The cultural spaces would be accessed through a grand lobby off the plaza along a grand staircase extending from the plaza to the second-story cultural lobby and through an elevator lobby off of Ashland Place.

The first and second floors would extend from the corner of Flatbush and Ashland Place to the plaza at the north end of the block and would be approximately four hundred feet in length. The roof of the base would rise from twenty-seven feet at the northern end of the library to forty feet at the southern tip of the building. Along the Flatbush Avenue edge of the property, a glass streetwall would extend above the base to provide sound attenuation to the open spaces from Flatbush Avenue. This streetwall extends above the roof line and is approximately forty-four feet high.

The cultural uses on the third and fourth floors would occupy the lowest portions of the tower portion of the building. Approximately 273,000 square feet of residential space on the fifth through thirty-second floors of the tower would accommodate up to 402 units, 20% of which would be affordable under public programs. Residential access would be off of the plaza near Ashland Place.

The tower would be located on a 12,570 square-foot eastern portion of the site, set back approximately 50 feet from Lafayette Avenue and 175 feet from Flatbush Avenue parallel to

Ashland Place. The location of the tower is intended to preserve views of the BAM Opera House from Flatbush Avenue as well as of the Williamsburgh Savings Bank building from Flatbush Avenue and various other vantage points.

A number of measures would reduce the appearance of bulk of the tower: at the north end of the tower, the east and west facades would rise to a height of 364 feet from the plaza at the north while at the southern end of the tower, the facade would rise to a height of only 264 feet. The east and west facades of the tower would be composed of several facets that would extend outward from a central point at the level of the tenth floor and pull back to the edges of the tower. These facades would be offset and separated by a central spine and extend ten feet beyond the roof. A random glazing pattern would be used on most of the façade's facets, while two facets on each façade and the cultural and retail bases would be predominantly glazed.

Parking would be provided below-grade with access off of Ashland Place in a combination public and accessory garage pursuant to the Special Downtown Brooklyn District regulations with up to 225 public spaces, up to 64 required accessory spaces, and bicycle parking spaces for at least 50% of the units.

After completion, the proposed development would be divided into two condominium units. The City would own the majority of the open space and the cultural floors and the applicant would own the residential space, the commercial space and the parking garage.

In order to facilitate the proposed development, three actions are required: a zoning map amendment from C6-1 to C6-2 (C 130116 ZMK), a zoning text amendment to create a new special permit to facilitate the development of cultural uses in the Special Downtown Brooklyn District (N 130117 ZRK) and a special permit pursuant to the zoning text amendment (C 130118 ZSK).

#### *Zoning Map Change (C 130116 ZMK)*

The proposed zoning map change would extend an existing C6-2 zoning district across Flatbush Avenue to the project site. The existing and proposed zoning districts are very similar. The maximum permitted FAR (6.5) and the FARs permitted for commercial (6.02) and community facility (6.5) uses are the same in the C6-1 and C6-2 zoning districts. However, rezoning from

C6-1 to C6-2 would increase the permitted residential FAR from 3.44 to 6.02. In addition, under the existing C6-1 zoning district in the Special Downtown Brooklyn District, there are special tower height rules that would not apply in the C6-2 district. Instead, heights would be regulated either by contextual height limits or the sky exposure plane.

#### *Zoning Text Amendment (N 130117 ZRK)*

The proposed zoning text amendment would create a new special permit for use and bulk modifications for buildings with cultural uses in certain C6-2 zoning districts in the Special Downtown Brooklyn District (new Section 101-81 of the Zoning Resolution). For buildings that include a cultural use, the proposed text amendment would create a City Planning Commission special permit that could allow an increase in the community facility floor area ratio from 6.5 to 7.0, modification of the street wall location regulations of Section 101-41, modification of the residential height and setback regulations of Section 23-632, and modification of signage regulations for cultural uses. “Cultural uses” would include public or non-profit libraries, theaters, museums, visual or performing arts spaces, or art, music, dance, theatrical studios or other comparable uses.

In order to grant a special permit, certain conditions would need to be met related to a commitment to building and maintaining the cultural space and certain findings would need to be met related to the specific waivers being sought. Prior to occupancy, a deed would need to be recorded that would ensure the completion of the cultural space.

#### *Zoning Special Permit (C 130118 ZSK)*

The proposed zoning special permit pursuant to Section 101-81 would allow for an increase of the floor area of the proposed development for cultural uses, would permit a waiver of the special streetwall requirements in the Special Downtown Brooklyn District, would allow for other height and setback waivers, and would allow for waivers of the signage regulations to allow greater signage for the cultural uses.

The proposed special permit would permit an increase in the floor area permitted for cultural uses, as defined in the new zoning text amendment. The total floor area for the project would be increased to 7.0 FAR (348,810 square feet), including 47,055 square feet of cultural use (0.94 FAR).

The Special Downtown Brooklyn District requires a streetwall of at least sixty feet along Flatbush Avenue pursuant to Section 101-41. The proposed development, with a two-story base, would provide an approximately forty-four foot base along most of the site, with angled sections of the building at the southern tip of the building, and along the northern section of the base along the public staircase.

Height and setback regulations that apply to residential uses in C6-2 zoning districts (Section 23-632) allow a building to rise without setback up to eighty-five feet, and then require a fifteen-foot setback from narrow streets (including Flatbush and Lafayette avenues) and a twenty-foot setback from narrow streets (including Ashland Place.) Above the required setback, the sky exposure plane regulates the height and setback of a building. Because of the triangular shape of the block and the placement of the tower close to Ashland Place in order to provide light and air to the open space on the site, the building intrudes into the required setback area and the required sky exposure plane.

Signage regulations for C6-2 zoning districts (Sections 32-642 and 32-644) allow illuminated and non-illuminated signage up to five times the street frontage or 500 square feet per street frontage, whichever is smaller, for each ground floor establishment. Signage is limited to 40 feet in height, pursuant to Section 32-655. The proposed project would have a number of cultural uses that will share a single ground floor entrance. In order to increase the visibility of the cultural uses in the building, additional signage for the cultural uses, some of which would be above forty feet, is requested.

## **ENVIRONMENTAL REVIEW**

Aspects of the application (C 130118 ZSK), in conjunction with the related applications (C 130116 ZMK and N 130117 ZRK), were first reviewed in an FEIS issued in 2004 related to the Downtown Brooklyn Plan (03DME016K) 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. This FEIS (03DME016K) is discussed in the City Planning Commission report for C 040171 ZMK. The lead is the Deputy Mayor for Economic Development.



Following the issuance of the Notice of Completion of the FEIS, there were changes to the project which did not require CPC actions. These changes were analyzed under four separate Technical Memoranda prepared by the lead agency in 2007, 2008 and 2009.

The changes that are the subject of this report were analyzed in a Technical Memorandum issued by the lead agency on November 19, 2012, and in a revised Technical Memorandum issued on April 15, 2013. The Technical Memorandum dated November 19, 2012 concluded that the changes to the proposed program for development on the site would not result in significant adverse environmental impacts that had not been previously identified in either the 2004 FEIS or the 2009 Technical Memorandum. The revised Technical Memorandum dated April 15, 2013, addressed changes to hazardous materials remediation requirements in connection with the proposed project. In lieu of including requirements for further investigative and/or remedial activities related to Hazardous Materials in the contract of sale as previously indicated, the project has been revised to include an E-designation (E-305) on Block 2110, Lot 3, which covers the entirety of the site. Pursuant to Section 11-15 of the Zoning Resolution, the E-designation would require, prior to the New York City Department of Buildings (DOB) issuing permits associated with redevelopment. The text for the hazardous materials (E) designation is as follows:

#### **Task 1-Sampling Protocol**

**The applicant submits to OER, for review and approval, a Phase 1A of the site along with a soil and ground water testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of sample sites should be selected to adequately characterize the site, the specific source of 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 sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.**

## **Task 2-Sampling 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 will be provided 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 from the test results, a proposed remediation plan must be submitted to 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 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 ground water. This Plan would be submitted to OER for review and approval prior to implementation. All demolition or rehabilitation would be conducted in accordance with applicable requirements for disturbance, handling and disposal of suspect lead-paint and asbestos-containing materials. For all sites where no E-designation is recommended, in addition to the requirements for lead-based paint and asbestos, requirements should petroleum tanks and/or spills be identified and for off-site disposal of soil/fill would need to be followed.**

The revised Technical Memorandum concludes that with this change the proposed program for development on the site would not result in significant adverse environmental impacts that had not been previously identified in either the 2004 FEIS or the 2009 Technical Memorandum.

## **UNIFORM LAND USE REVIEW**

The application (C 130118 ZSK) in conjunction with the related action (C 130116 ZMK), was certified as complete by the Department of City Planning on November 26, 2012, and was duly referred to Brooklyn Community Board 2 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-

ULURP application (N 130117 ZRK), which was referred for review and comment in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Community Board 2 held a public hearing on the application (C 130118 ZSK) on December 19, 2012. On January 9, 2013, the Community Board met, but was unable to reach a consensus on the application. In a letter to the City Planning Commission dated February 7, 2013, the Board stated:

“...Community Board 2 was not able to make a determination on the BAM South land use applications...”

### **Borough President Recommendation**

The application (C 130118 ZSK) was considered by the President of the Borough of Brooklyn, who recommended approval of the application on March 4, 2013, subject to the following conditions:

“that the City Planning Commission consider investigating certain pedestrian sight lines to determine if the configuration of the proposed tower warrants a modification that will not decrease the overall floor area, but might ensure that specific views of the Williamsburg Bank Building’s iconic tower would remain prominent in the skyline.”

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

On March 6, 2013 (Calendar No. 3), the City Planning Commission scheduled March 20, 2013 for a public hearing on the application (C 130118 ZMK) and the related applications (C 130116 ZMK and N 130117 ZRK). The hearing was duly held on March 20, 2013 (Calendar No. 17). There were nineteen speakers in favor of the application and one speaker in opposition.

Three of the speakers in favor of the application were representatives of the applicant who described the proposed project. The first speaker was a principal of the developer, who described the public benefits that would be facilitated by the approval of the applications, including: a large public open space, City-owned cultural space, affordable housing and great architecture. He described how the developer would build the entire building and transfer the

core and shell of the cultural spaces and part of the plaza to the City, which would fit out the cultural spaces. The speaker also stated that affordable housing units would be made available to the local community and discussed the massing and design of the building and stated that the overall design of the building would be respectful of the relationship with the Williamsburgh Savings Bank and views to and from the Williamsburgh Savings Bank building.

The second speaker was the project architect who described the relationship between the proposed massing of the building and the adjacent Williamsburgh Savings Bank and BAM Opera House buildings and how the siting and design of the tower would keep large portions of the site open and maintain views open to those buildings. The speaker described how the plaza would provide a gateway to the Cultural District and that the predominantly glass ground floor commercial space would provide space for a range of commercial tenants. The speaker further noted that the signage for the proposed building would help to advertise and identify the cultural character and tenants of the District. The land use counsel to the project also appeared in favor and described the actions and stated that the Community Board was not able to make a recommendation on the proposal.

A Senior Policy Advisor for the Deputy Mayor for Economic Development described the benefits of creating affordable space for cultural uses in Downtown Brooklyn and plans for managing the cultural space in the building. The speaker explained that the City would own a condominium that would contain the cultural spaces and parts of the plaza and described the current status of City funding for the project and plans for maintenance of the public spaces.

The Executive Director for Planning for the Downtown Brooklyn Partnership and the President and CEO of the Brooklyn Chamber of Commerce testified that the proposed project would help to further goals for the economic development of Brooklyn and cited the public benefits of the project, including affordable housing, public open space, new space for cultural groups, and a commitment to local and MWBE hiring.

The CFO and Vice President for Finance and Administration at BAM, the Vice President for Government and Community Relations at the Brooklyn Public Library and the Executive Director of 651 Arts, representing the future cultural tenants in the building, all testified that their organizations are excited about the opportunities that the project provides. According to the

representative of BAM, the movie theaters within the building will allow BAM to expand its film offerings and will improve the area. According to the representative of the Brooklyn Public Library, the new library will allow for a larger, modern facility that is ADA compliant and better designed to meet current needs. The representative of 651 Arts stated that they would manage the dance studios within the facility. She explained that the dance facilities would allow them to expand and broaden their work to present and produce performances by artists of color, particularly contemporary artists of African descent.

Representatives of local arts organizations, including BRIC, Renegade Performance Group, Dancewave, Mark Morris Dance Center and ActNow Foundation described how the proposed cultural spaces will support their efforts to present dance, film and other cultural events. They described how the plaza will provide a new outdoor venue for the arts and will help to provide a gateway to the cultural district and the venues within the district.

Two residents of the Williamsburgh Savings Bank building voiced their support for the application but requested modifications to the design. They proposed further stepping down the building at the south end of the building and eliminating the balconies that are proposed for the north and south ends of the building.

There were three speakers, including the Councilmember for the 33rd District, and a number of letters, including from the Park Slope Civic Council and the Boerum Hill Association, that, while voicing support for the project, expressed their concern that the new library proposed for the BAM South project would necessitate the closing of the existing Pacific Library of the Brooklyn Public Library and make this new branch difficult to reach for the older and younger residents of the neighborhoods currently living near the Pacific Branch. The one speaker opposed to the project voiced similar concerns.

There were no other speakers on the application and the hearing was closed.

## **CONSIDERATION**

The Commission believes that this application for a special permit (C 130118 ZSK) in conjunction with the related applications for a zoning map amendment and a text amendment (C 130116 ZMK and N 130117 ZRK) is appropriate.

The Commission believes that approval of these applications would strongly support the further development of the BAM Cultural District, providing new public open spaces and facilitating the growth of cultural activities important to the City and the borough, and would enliven a block that has for many years been vacant and underutilized. The Commission notes the testimony from local arts organizations that there is a strong need for affordable cultural space in the Borough and believes that siting needed cultural facilities at the heart of the Cultural District and a block away from a major transit facility will help to support and foster the further development of Brooklyn's cultural institutions. The Commission believes that this project will support the growing residential community within Downtown Brooklyn through the inclusion of both market rate and affordable housing units. The Commission further believes that proposed massing and siting of the proposed building would allow for a visually open and inviting public space that would be a gateway to the Cultural District and to the Fort Greene neighborhood and would respect the historic features of the buildings across the street, including the BAM Opera House and the Williamsburgh Savings Bank.

Regarding the testimony by the Council Member from the 33<sup>rd</sup> District and residents of the nearby area regarding the proposed closing of the Pacific branch of the Brooklyn Public Library, the Commission notes that approval was granted in 2004 to site a library at the BAM South location (C 040185 PSK), and that future plans of the Brooklyn Public Library for the Pacific branch are not part of the actions currently under consideration by the Commission. The Commission also acknowledges that any future plans to dispose of the Pacific Library would require land use discretionary approval and public review.

### **Zoning Map Amendment**

The Commission believes that the proposed zoning map amendment (C 130116 ZMK) to change a C6-1 district to a C6-2 district within the Special Downtown Brooklyn District is appropriate. Both C6-1 and C6-2 districts allow the same maximum floor area for community facility uses (6.5 FAR) and for commercial uses (6.0 FAR). The key difference between the districts is that with a maximum 6.02 FAR for residential uses, C6-2 districts allow more residential floor area than C6-1 districts (3.44 FAR). The Commission believes that the proposed C6-2 district, in conjunction with the zoning text amendment and the special permit, would allow for an appropriate density and mix of uses immediately adjacent to Flatbush Avenue, a major

thoroughfare, and the Atlantic Center transit node where numerous subways, busses and a commuter rail line converge. The Commission also believes that the proposed density, bulk and mix of uses would provide an appropriate transition between the residential neighborhood of Fort Greene and the more commercial core of Downtown Brooklyn.

### **Zoning Text Amendment**

The Commission believes that the proposed zoning text amendment (N 130117 ZRK) to create a new special permit to allow use and bulk modifications for buildings with cultural uses in certain C6-2 zoning districts in the Special Downtown Brooklyn District (new Section 101-81 of the Zoning Resolution) is appropriate. The proposed text would allow an increase in community facility floor area, modification of height, setback and street wall locations, and modification of signage regulations for projects with certain cultural uses. The Commission believes that allowing for modification of these regulations is appropriate to support the development of mixed-use projects that would enhance the Cultural District, such as the proposed project.

### **Zoning Special Permit**

The Commission believes that the proposed special permit (C 130118 ZSK) pursuant to Section 101-81 of the Zoning Resolution is appropriate. The Commission acknowledges the many public benefits that would accrue from the development of this project. The Commission believes that the proposed building form, which would not be permitted by the underlying zoning, would provide a highly visible public open space that would serve as an entranceway to the BAM Cultural District, providing visibility to the cultural uses in the building and maintaining the views of the two key landmark structures that sit across the street from the proposed project. The Commission further believes that the applicant's treatment of the building façade would reduce the appearance of bulk of the building. The Commission notes that the special permit would increase the maximum floor area permitted for cultural uses in order to accommodate additional cultural space within the building, allowing an additional 0.5 FAR of cultural space. The Commission further notes that a restrictive declaration is required to be filed before development pursuant to the special permit can begin that will require space within the building to be permanently maintained for cultural uses. Those cultural spaces are proposed to be made visible by a glass-enclosed lobby that would be visible from three surrounding streets, by a series of

boxes jutting from the side of the building along Ashland Place and by signage that would increase the visibility of the cultural uses within the building to pedestrians coming from Downtown Brooklyn and from Atlantic Center. The permit would also modify height and setback regulations, modify the sky exposure plane regulations that would not otherwise be able to accommodate the proposed tower-style development that is more common to Downtown Brooklyn, and allow the bulk of the building to be located between and not obstruct the ornamented facades of the landmarked Williamsburgh Savings Bank and Brooklyn Academy of Music Opera House across Ashland Place. The special permit would also modify the height and setback regulations to allow the tower to be located within approximately ten feet of Ashland Place, providing additional light and air to the open space.

Regarding the recommendation by the Borough President and testimony at the public hearing regarding sight lines and views to the Williamsburgh Savings Bank, in a letter to the Commission dated April 1, 2013, the applicant stated that “Two Trees, working together with our architect, TEN Arquitectos, took great care through the conceptual design of this project to accommodate views to and from the Williamsburg Savings building along Ashland Place and the BAM Opera House along Lafayette Avenue... we believe that it is a design that appropriately balances various public benefits (including, but not limited to views), with the requirements and stipulations of our contract with the City to purchase and develop the property as a residential apartment building that contains affordable housing, a 50,000 square foot City-owned cultural facility and a public plaza... The massing of the building was designed recognizing the importance of the Williamsburg Savings Bank on the Brooklyn skyline.” The Commission believes that the massing and location of the proposed building on the block would optimize light, air and visibility to the proposed public open space, provide visibility to the cultural spaces, and maintain views of the Williamsburgh Savings Bank and the BAM Opera House buildings, both iconic Brooklyn landmarks. Additionally, the proposed design of the building would reduce the appearance of bulk by varying building heights, by folding and cutting the building façade, by utilizing a random window pattern, by providing different amounts of fenestration in different parts of the building and by locating balconies on the north and south ends of the tower.



## **FINDINGS**

The Commission notes that the conditions set forth in Section 101-81(a) of the Zoning Resolution have been satisfied, and hereby makes the following findings pursuant to Section 101-81 of the Zoning Resolution:

- (1) the #building# including such cultural uses is designed and arranged on the #zoning lot# in a manner that results in ample visibility of and access to the cultural uses from surrounding #streets#;
- (2) the proposed #street wall# modifications will facilitate access to #open space# on the lot and result in a #development# that activates the pedestrian environment;
- (3) the proposed #bulk# modifications will result in a better distribution of #bulk# on the #zoning lot# by providing for increased light and air to #open space# on the #zoning lot#;
- (4) the appearance of #bulk# is minimized through an enhanced articulation of the base and tower elements of the #building#, an enhanced relationship between the #building# and the #open space# on the #zoning lot#, and an enhanced amount and arrangement of the fenestration of the #building#; and
- (5) the proposed modifications to #sign# regulations will result in greater visibility for the cultural uses provided on the #zoning lot#.

## **RESOLUTION**

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

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the application submitted by 22 Lafayette LLC and NYC Economic Development Corporation pursuant for the grant of a special permit pursuant to Section 101-81 of the Zoning Resolution:

1. to permit the maximum community floor area requirements of Section 33-123 (Community facility buildings or buildings used for both community facility and commercial uses in all other Commercial Districts) to be increased from 6.5 to 7.0;
2. to modify the street wall location requirements of Section 101-41 (Special Street Wall Location Regulations);
3. to modify the height and setback regulations of 23-632 (Front setbacks in districts where front yards are not required) and;
4. to modify the sign regulations of Section 32-64 (Surface Area and Illumination Provisions), Section 32-65 (Permitted Projection or Height of Signs) and Section 32-68 (Permitted Signs on Residential or Mixed Buildings);

in connection with a proposed 32-story mixed use development, on property located at 113 Flatbush Avenue (Block 2110, Lots 3 and 103), in a C6-2 District, within the Special Downtown Brooklyn District, Borough of Brooklyn, Community District 2 is approved subject to the following terms and conditions:

1. The development that is the subject of this application (C 130118 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by TEN Arquitectos, filed with this application and incorporated in this resolution, and in accordance with the provisions and procedures set forth in the Restrictive Declaration:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-03	Zoning Analysis	11.19.12
Z-04	Lot Coverage Diagram	11.19.12
Z-05	Site/Roof Plan	11.19.12
Z-06	Ground Floor Plan	11.19.12
Z-07a	Zoning Envelope I	11.19.12
Z-07b	Zoning Envelope II	11.19.12
Z-08	Encroachment Diagram Sky Exposure Plane	11.19.12

Z-10	Initial Setback Encroachment Diagram	11.19.12
Z-11	Encroachment Diagram Signage	11.19.12
Z-13	Floor Plans – 2 thru 4	11.19.12
Z-15	Zoning Elevations I	11.19.12
Z-16	Zoning Elevations II	11.19.12

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to their construction, operation and maintenance.
4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
6. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, Kings County.

7. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms, or conditions of this resolution and the restrictive declarations whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation, or amendment of the special permit hereby granted or of the restrictive declarations.
8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city or such employees or agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 130118 ZSK), duly adopted by the City Planning Commission on April 24, 2013 (Calendar No. 6), 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 Chair**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MICHELLE DE LA UZ,**  
**MARIA M. DEL TORO, RICHARD W. EADDY,**  
**ANNA HAYES LEVIN, ORLANDO MARÍN, Commissioners**



**CITY OF NEW YORK**  
**Community Board No. 2**

**350 JAY STREET - 8TH FL.**

**BROOKLYN, N.Y. 11201**

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**MARTY MARKOWITZ**  
*Borough President*

**JOHN DEW**  
*Chairperson*  
**ROBERT PERRIS**  
*District Manager*

February 7, 2013

Ms. Amanda M. Burden, FAICP  
Chair, City Planning Commission  
22 Reade Street  
New York, New York 10007

Dear Chair Burden:

I am writing to regrettably inform you that Community Board 2 was not able to reach a determination on the BAM South land use applications; for a zoning map change (130116 ZMK), a text amendment (130117 ZRK) and a special permit (130118 ZSK).

The community board's land use committee voted to recommend approval of the applications with the requirements that the developer remove the balconies from the design and provide plans to mitigate the impacts of the traffic, noise and sign illumination associated with the project. A motion at the community board's January 9, 2013 general meeting to adopt the committee's recommendation failed to pass, however, with a vote of 17 in favor, ten opposed, eight abstentions (17-10-8).

Further, a subsequent motion to recommend disapproval of the applications also failed to pass, with the board voting 15 in favor, ten opposed, seven abstentions (15-10-7). Most recently, the executive committee of Community Board 2 was not able to reach consensus on a resolution written with the goal of reconciling the various opinions of the board members.

I am grateful for the opportunity to comment, even if Community Board 2 was not able to take advantage of it.

Sincerely,

John Dew

cc: see following page



## 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 #: 130116 ZMK - 130117 ZRK - 130118 ZSK

BAM South

In the matter of applications submitted by 22 Lafayette LLC and NYC Economic Development Corporation pursuant to Sections 197-c and 201 of the New York City Charter for the following land use actions: (a) an amendment to the Zoning Map to rezone the development site from a C6-1 District to a C6-2 District; (b) an amendment of the Zoning Resolution to create a new section (Section 101-81) to establish a special permit request; and, (c) a special permit to increase the permitted floor area ratio from 6.5 to 7.0 through providing Cultural Use and to allow for modifications of: height and setback; minimum street wall height; and, signage regulations.

COMMUNITY DISTRICT NO. 2

BOROUGH OF BROOKLYN

### RECOMMENDATION

☐ APPROVE

☒ APPROVE WITH

MODIFICATIONS/CONDITIONS

☐ DISAPPROVE

☐ DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

  
BOROUGH PRESIDENT

March 4, 2013

DATE

## **RECOMMENDATION FOR A PROPOSED MIXED USE DEVELOPMENT**

### **BAM SOUTH**

130116 ZMK - 130117 ZRK - 130118 ZSK

These applications by Lafayette LLC and the Economic Development Corporation seek amendments to the zoning map and text in order to facilitate the development of a 32-story mixed use building. As a result of these actions, approximately 300 residential units will be made available as well as cultural and publicly accessible open space.

### **PUBLIC HEARING**

On January 16, 2013, the Borough President held a public hearing on the proposed land use actions. Representatives for the developer, architect, and the Mayor's office briefly explained the proposal. Emphasis was made to point out the similarity of the as-of-right building massing on the site according to the existing zoning as compared to what is being requested according to the requested zoning and special permit. The proposal places an emphasis on respecting the existing urban context as best possible while understanding that that context is in a process of change.

Presentations made at the Borough President's public hearing from community members highlighted a concern with the synergy between the proposed development and the Williamsburg Savings Bank building iconic tower in the skyline. Though the proposal was praised, the community members believed an alternative design is required to keep intact many of the present street views of the Williamsburg Savings Bank building. Viewpoints from a few major view corridors generally to the east and west of the Williamsburg Bank building were shown. These images suggest concern that the tower, as proposed, might infringe on the view of the Williamsburg Bank Building tower as an iconic aspect of the skyline. As an alternative suggestion, it was proposed that the BAM South tower should be modified to shift the setback to the 20<sup>th</sup> floor of the Williamsburg Bank building rather than at the 26<sup>th</sup> floor. It is believed that this setback would allow both buildings to exist together, while still maintaining visually independent towers when viewed by pedestrians from the east and the west along certain streets.

### **CONSIDERATION**

Community Board 2 was unable to submit a recommendation during its review period. Although no submittal was entered, the Land Use Committee for the Board voted to support for the project while noting some concerns dealing with possible noise level increases due to the public plaza, whether the illuminated signage will have adverse affects after implementation and whether terraces are truly needed in the project as no other developments in the area have them.

#### BAM Cultural District

Following a 2004 ULURP action, this site was formally considered as part of the BAM Cultural District with an intended purpose of facilitating a Visual and Performing Arts Library, cultural space for the Theatre for a New Audience, a public plaza and a public parking garage for 466 vehicles. Subsequent to that action, the Theatre for a New Audience was advanced on a site north of Lafayette Avenue and this site was reprogrammed to accommodate retail and



residential development including affordable housing. The amount of public parking being proposed was reduced to reflect the actuality of residential development and hotel development in lieu of office development on sites rezoned as part of the Downtown Brooklyn Plan.

The BAM Cultural District extends along the Lafayette Avenue/Schermerhorn Street spine, starting at the Issue Project Room facility at Boerum Place, with the Brooklyn Ballet running along Schermerhorn Street, and going to the Irondale Theatre within the landmarked Lafayette Avenue Presbyterian Church. At its core is the Brooklyn Academy of Music, with its new BAM Fisher theatre, Strand Theatre, Mark Morris Dance Studio and the under construction Theatre for a New Audience. It is the intent to incorporate more cultural facilities as part of this site and the BAM North and East sites.

### Use

It is the Borough President's policy to promote the continued development of Downtown Brooklyn as a center for employment, learning, tourism and as a vibrant 24/7 residential community. The Borough President also believes that key to the further development of Downtown Brooklyn is the strengthening of the cultural ambiance that remains one of Brooklyn's more vibrant attractions.

The proposed development would house the new location for the Brooklyn Library's Pacific Branch, rehearsal studios and movie theaters that would complement the BAM Rose Cinema as Brooklyn remains lacking in screens. In addition, the publicly accessible open space along Lafayette Avenue will complement the cultural facilities in the development as well as the surrounding BAM and Mark Morris Dance Studio. The Borough President believes the growth of such cultural amenities can lead it to become an important venue that can attract such events such as Fashion Week to Brooklyn. The Borough President supports the additional 50,000 square feet of cultural space of this project as being consistent with the BAM Cultural District.

In addition to cultural facilities, the BAM Cultural District seeks to include affordable housing which can serve as a resource for those performing artists not yet established. The Borough President considers the proposed development to be consistent with such pursuits as affordable housing would be prioritized for income-eligible area residents, as an important resource for this neighborhood which has experienced rising housing cost.

Finally, the retail space, with its area set aside for a restaurant and café, will enliven the stretch of Flatbush Avenue to better integrate Downtown Brooklyn with Atlantic Center and the Barclay's Center. Given the Borough President's vision for the BAM Cultural District, he supports the uses proposed for this site.

### Bulk

According to the existing C6-1 zoning district within the Special Downtown Brooklyn District, buildings may be constructed pursuant to Tower Regulations. Buildings containing residential floor area would be permitted to be constructed along the street line to a height of 85 feet, then setback at least ten feet from wide streets such as Flatbush Avenue and fifteen feet from narrow streets such as Ashland Place. After such setbacks, buildings may rise to a height of 495 feet. The flexibility of this zoning district allows the proposed building bulk to be configured in a manner that shifts the tower as far



as possible from the Williamsburg Savings Bank, with its iconic clock tower, while creating quality depth for a publicly accessible open space along Lafayette Avenue in proximity to BAM.

Unfortunately, the C6-1 zone restricts residential use to barely more than fifty percent of the overall development, greatly diminishing the opportunity to feasibly accommodate a desirable amount of affordable housing. In order to provide a greater percentage of residential use, the development is being proposed to be rezoned to a C6-2 district. However, the C6-2 does not permit the same flexibility for distributing bulk as the existing C6-1 district, therefore the applicant is proposing to establish a special bulk permit that, among other benefits, allows the tower to be configured near the corner of Lafayette Avenue and Ashland Place. This will allow the new building to be placed away from the Williamsburg Bank Building while providing the publicly accessible plaza along Lafayette Avenue.

The special permit would also increase the permitted floor area by approximately 7.5 percent from 6.5 FAR to 7.0 FAR. The additional requested floor area is consistent with the Borough President's 2009 recommendation to the City's revision of the Inclusionary Housing Program (IHP) in which he called for further study to have this be one of the blocks rezoned and eligible for the IHP. As recent as 2012, the Borough President reiterated this as part of his recommendations concerning parking requirement revisions for the Special Downtown Brooklyn District. According to the IHP, the zoning district would have a 7.2 FAR, therefore, the requested 7.0 FAR is consistent with his recommendation for this block if changed to a C6-2 district. Therefore, the Borough President supports the requested increase in floor area and basic tower configuration.

#### Affordable Housing

The BAM South project proposes to set aside 20 percent of its approximate 300 units for affordable housing, similar to existing and projected developments in the area. According to the representative of the developer, the affordable units would likely retain affordability requirements for at least 35 years. It is expected that when a tenant subsequently vacates a unit no longer subject to affordability requirements, that unit would be available for rent at the current market rate. The Borough President understands that government financing programs would need to be available when affordability obligations would otherwise be expiring in order to entice the developer to extend the affordability obligation. He hopes that future City Administrations will see the importance in such programs as a means to retain affordable units, as is the case with financing programs provided by this Administration. Thus, there would be an opportunity for such units to remain as affordable options for future generations of city residents.

#### Senior Living 55+

The Borough President believes that too many mature, active individuals age 55 and over do not have sufficient local options for living in a development designed and marketed to such populations. BAM South can serve as a suitable location to design and market to active and mature individuals who already have an affinity for the arts and would prefer to mature in place with great access to transportation and a number of amenities within walking distance, supportive of an active lifestyle. Being able to live within close distance to the cultural amenities offered here, as well as its proximate location to one of the borough's main transportation hubs, would be a draw to those who seek such convenience while maturing in

place. The Borough President feels strongly that marketing to the active 55 years and older community would be a model for success.

### Iconic Respect

The Borough President commends the efforts of the developer to produce a building layout that keeps intact the presence of one of the borough's most iconic structures, the Williamsburg Savings Bank tower. He understands that one of the signatures of Brooklyn's downtown skyline is the tower, but that it does not preclude other structures from sharing that space, including what appears to the Borough President to be an iconic architectural design proposed for the BAM South Tower.

The Borough President agrees with the nearby residents who presented testimony that the tower of the Williamsburg Savings Bank building is indeed iconic and is a prominent feature in Brooklyn's skyline as represented by the attached diagram submitted to his office. He believes that there is merit in wanting to retain the tower as an iconic skyline feature.

However, the Borough President acknowledges that it is impractical to preserve all pedestrian views of the iconic tower from all directions. Some street views of the Williamsburg Bank Building would be blocked by the proposed building and some views would have the images blended together. The question is whether certain views from the east, such as along Lafayette Avenue and sections of Fulton Street and Kosciuszko Avenue and west, such as along Schermerhorn Street and sections of Atlantic Avenue and State Street should be preserved. Given the technical limitations of what was presented by a community member to the Borough President, it remains a question of whether the Williamsburg Bank Building's iconic tower would remain prominent enough in the skyline.

The Borough President believes the City Planning Commission (CPC) is best suited to consider whether or not the proposed building is adequately separated in the skyline from the Williamsburg Bank building or whether there should be more separation as was suggested in testimony to the Borough President. He concurs with the testimony which also called for a redistribution of the buildings' envelope that does not reduce the proposed floor area. Therefore, he calls on CPC to extend every courtesy to what community residents have shared by considering an investigation of pedestrian sight lines to determine the adequacy of specific public views of the Williamsburg Bank Building's iconic tower in terms of remaining prominent in the skyline. If CPC were to determine that the proposed tower warrants modification to achieve such an objective, it should ensure that such modification do so feasibly by not decreasing the overall floor area.

### Trees

Substructure issues have precluded the developer from planting trees along Flatbush Avenue. Pursuant to the Zoning Resolution, the Parks Department determines the location of required street tree plantings when it would be infeasible to plant adjacent to the zoning lot. Each such required tree shall be planted in an alternative location selected by the Parks Department, such as in empty tree pits or planting strips, or in unpaved areas owned by the City of New York - so long as such location is within Community District 2 (CD 2) or within one-half mile from the development site. The Borough President believes that CD 2 should be consulted in this siting selection process.

The Borough President is further concerned that this section of Flatbush Avenue would be devoid of greenery. He recommends that the developer devise some strategy to incorporate greenery along this stretch of Flatbush Avenue. He believes it is feasible to include raised planting beds that could contain flowering plants and shrubbery. The Borough President seeks such a landscape proposal be implemented by the developer.

**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 requested land use actions with the condition that the City Planning Commission consider investigating certain pedestrian sight lines to determine if the configuration of the proposed tower warrants a modification that will not decrease the overall floor area, but might ensure that specific views of the Williamsburg Bank Building's iconic tower would remain prominent in the skyline.



1/11/13

