



IN THE MATTER OF an application submitted by 1247 M&F Management pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-86 of the Zoning Resolution to reduce the required distance from the edge of an accessory outdoor swimming pool to any zoning lot line, in connection with a proposed 10-story residential building on property located at 1247 Atlantic Avenue (Block 1867, Lot 88), in a C4-5D District, Borough of Brooklyn, Community District 3.

This application for a special permit was filed by 1247 M&F Management on April 12, 2019 to allow an outdoor swimming pool accessory to a multi-family residential building to be located less than 50 feet from any lot line, at 1247 Atlantic Avenue in the Bedford-Stuyvesant neighborhood of Brooklyn, Community District 3.

BACKGROUND

The applicant seeks a zoning special permit to allow an outdoor swimming pool accessory to a multi-family residential building at the development site, 1247 Atlantic Avenue (Block 1867, Lot 88). The development site is located on the northern side of Atlantic Avenue, approximately 70 feet east of Nostrand Avenue, in the southwestern part of Bedford-Stuyvesant, Community District 3, Brooklyn.

The development site is a 6,641-square-foot, irregularly-shaped lot with 50 feet of frontage along Atlantic Avenue and contains a recently-constructed 10-story mixed-use building with 39 dwelling units, a rear yard and approximately 1,200 square feet of space of commercial space on the ground floor. The northern portion of the site contains a yard with an in-ground swimming pool measuring approximately 13 feet wide and 35 feet long and an in-ground spa measuring approximately 11 feet wide and eight feet long. This portion of the site abuts a 60-foot, six-inch rear yard of a lot that fronts on Herkimer Street and has a four-story multi-family residential building, a 54-foot rear yard of a lot that fronts on Nostrand Avenue and has a one-story commercial building, and a 20-foot rear yard of a lot that fronts on Nostrand Avenue and has a four-story mixed-use commercial and residential building. The northern portion of the site also abuts two lots that front on Atlantic Avenue and have vacant one-story warehouse buildings.

The surrounding area includes a wide range of uses and building types. Nostrand Avenue is a local commercial corridor, generally characterized by one- to four-story commercial and mixed-use buildings. Three- to four-story rowhouses and four-story apartment buildings are developed along Herkimer Street, one block north of the development site, and on the blocks south of Atlantic Avenue.

Atlantic Avenue is a major 120-foot wide east-west, six-lane thoroughfare with the elevated Long Island Railroad (LIRR) running along the center. It is predominately developed with heavy commercial and light industrial uses, with many one- and two-story construction- and automotive-related uses, several three- to four-story warehouse buildings, four- to eight-story hotels, and two- to four-story buildings with non-conforming residential uses.

The development site is located within a C4-5D zoning district that is mapped along Nostrand Avenue, from Atlantic Avenue northward for three blocks, and along Fulton Street. C4-5D districts are contextual districts that allow residential, community facility, and a wide range of commercial uses. Commercial and community facility uses are allowed up to a maximum Floor Area Ratio (FAR) of 4.2, and residential uses are permitted up to a maximum FAR of 5.6 with Inclusionary Housing or 4.2 without Inclusionary Housing (R7D equivalent). Buildings in C4-5D zoning districts may have a maximum street wall height of 85 feet before a 10-foot setback (wide streets) or 15-foot setback (narrow streets) is required. The maximum building height is limited to 105 feet and 10 stories.

In December 2017, the applicant filed plans with the New York City Department of Buildings (DOB) that included the in-ground pool and spa. The plans were approved by DOB in March 2018 and the pool and spa were subsequently constructed on the northern portion of the rear yard, with a minimum distance of approximately six feet between the pool and the lot lines, and approximately two feet and 11 inches between the spa and the lot lines. However, an outdoor swimming pool is classified as an accessory use to Use Group 2 (except if such use is a single-family or two-family residence) only when the edge of the pool is located 100 feet or more from any lot line. The City Planning Commission may, by special permit pursuant to Zoning Resolution

(ZR) Section 74-86, reduce the minimum required distance between the pool and any lot line from 100 to 50 feet or more, if screening that acts as a suitable buffer is provided. The applicant team remained unaware of the need to obtain this special permit until receiving an objection from DOB in August 2018, after the pool was constructed.

The applicant proposes to enclose the entirety of the rear yard with an opaque, eight-foot-high wood fence to provide visual screening and reduce any potential impacts between of pool area on adjacent lots. Additionally, the applicant would construct a six-foot-high, wood slat fence with controlled access to separate the pool area from the rest of the rear yard.

To facilitate the legalization of the in-ground pool and spa that were constructed as an amenity for residents, and were intended to be an accessory use to a multiple-dwelling development, the applicant seeks a special permit pursuant to ZR Section 74-86. In order to grant the special permit, the Commission must find that the pool is so located as not to impair the essential character of the residential neighborhood. The Commission may require that the pool is appropriately screened, and may further reduce or waive the distance to the lot line if it finds that the design of such screening operates as a suitable buffer. The special permit pursuant to ZR Section 74-86 also allows the Commission to impose appropriate conditions and safeguards.

ENVIRONMENTAL REVIEW

This application (C 190379 ZSK) 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.

This application was determined to be a Type II action, which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 190379 ZSK) was certified as complete by the Department of City Planning on May 6, 2019 and was duly referred to Brooklyn Community Board 3 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

On June 24, 2019, by a vote of 20 in favor, nine opposed, and one abstaining, Brooklyn Community Board 3 adopted a resolution recommending approval of this application.

Borough President Recommendation

This application was considered by the Brooklyn Borough President, who issued a recommendation on July 2, 2019 to approve the application.

City Planning Commission Public Hearing

On August 14, 2019 (Calendar No. 1), the City Planning Commission scheduled August 28, 2019 for a public hearing on this application (C 190379 ZSK). The hearing was duly held on August 28, 2019 (Calendar No. 27). Three speakers testified in favor of the application, and one in opposition.

A three-person applicant team, comprised of two representatives of the applicant and the project architect, described the new development with which the subject pool is associated, and discussed the history of DOB plan approval of and subsequent objection to the pool. One of the applicants discussed the intended operating hours and expressed openness to the Borough President's suggestion that there be a modest extension of the proposed operating hours. The applicant's architect discussed the proposed design for the two different types of screening provided, and noted that the lower elevation north of the pool provides additional buffering for adjacent lots. He also provided details about the access gate to the pool area. The architect noted that the pool will be covered and inaccessible outside of the summer season (June through September).

A Queens resident spoke against the proposal.

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

CONSIDERATION

The Commission believes that this application for a special permit (C 190379 ZSK) is appropriate.

The Commission believes that the location of the pool and spa will not impair the essential character of the surrounding residential neighborhood. The pool is located in a rear yard that is not adjacent to any streets, and will be buffered from adjacent lots with an opaque, eight-foot wood fence.

The Commission notes that the surrounding area is characterized by mixed-use and contains industrial and commercial uses, particularly along Atlantic and Nostrand avenues. The development site abuts two lots with lower-density residential uses, however these uses are located at least 20 feet from the lot line of the development site. The Commission believes that the pool offers an amenity to a multi-family residential use, and is an appropriate use at this location.

The Commission is satisfied that the proposed opaque wooden fencing surrounding the rear yard will act as a suitable buffer between the pool and spa and surrounding lots. Furthermore, the semi-open wooden fence located between the northern portion of the development site and the rest of the rear yard will be a suitable buffer between the pool and spa and uses on the same lots. The proposed screening will obstruct views to the pool and spa from other lots at ground level. As such, the Commission believes that permitting the reduction in distance from the pool to the lot line is appropriate.

The Commission is concerned that DOB issued building permits for a building and accessory uses that did not comply with zoning, making this legalization application necessary. Nevertheless, the Commission believes that the proposed zoning special permit is appropriate.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-86 of the Zoning Resolution:

1. That the proposed pool will not impair the essential character of the residential

neighborhood;

2. That the proposed design operates as a suitable buffer.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein will have no significant adverse 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 1247 M&F Management pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of special permit pursuant to Section 74-86 of the Zoning Resolution to reduce the required distance from the edge of an accessory outdoor swimming pool to any zoning lot line, in connection with a proposed 10-story residential building on property located at 1247 Atlantic Avenue (Block 1867, Lot 88), in a C4-5D District, Borough of Brooklyn, Community District 3, is approved, subject to the following conditions:

1. The property that is the subject of this application (C 190379 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plan, prepared by AB Architekten P.C., filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z 100.00	Zoning Lot Site Plan	09/13/2019
Z 200.00	Outdoor Swimming Pool Site Plan	09/13/2019
Z 300.00	Pool Sections	04/11/2019

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 its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
5. Upon failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution 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.
6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 190379 ZSK), duly adopted by the City Planning Commission on September 25, 2019 (Calendar No. 13), is filed with the Office of the Speaker, City Council, and the Brooklyn 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-Chairman*

DAVID BURNEY, ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III,

**MICHELLE R. de la UZ, JOSEPH I. DOUEK, HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners***



Email/Fax Transmittal

TO: Brooklyn Community District 3 Distribution	FROM: Brooklyn Borough President Eric L. Adams
DATE: August 15, 2019	CONTACT: Inna Guzenfeld – Land Use Coordinator Phone: (718) 802-3754 Email: inna.guzenfeld@brooklynbp.nyc.gov
ULURP Recommendation: 1247 ATLANTIC AVENUE – 190379 ZSK	NO. Pages, Including Cover: 4

Attached is the recommendation report for ULURP application 190379 ZSK. If you have any questions, please contact Inna Guzenfeld at (718) 802-3754.

Distribution

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Brooklyn Borough President Recommendation
CITY PLANNING COMMISSION
120 Broadway, 31st Floor, New York, NY 10271
calendaroffice@planning.nyc.gov



INSTRUCTIONS

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

APPLICATION #: 1247 ATLANTIC AVENUE – 190379 ZSK

An application submitted by 1247 M&F Management pursuant to Sections 197-c and 200 of the New York City Charter for the grant of a special permit, pursuant to Section 74-86 of the New York City Zoning Resolution (ZR) ("Accessory Outdoor Swimming Pools for Residences") to reduce the required distance from the edge of an accessory outdoor swimming pool to any zoning lot line, in connection with a 10-story mixed-use residential building at 1247 Atlantic Avenue in Brooklyn Community District 3 (CD 3). Such action would legalize an outdoor swimming pool and spa constructed as an accessory use to the residences of 1247 Atlantic Avenue.

COMMUNITY DISTRICT NO. 3

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

SEE ATTACHED

BROOKLYN BOROUGH PRESIDENT

August 15, 2019

DATE

RECOMMENDATION FOR: 1247 ATLANTIC AVENUE – 190379 ZSK

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On July 2, 2019, Brooklyn Borough President Eric L. Adams held a public hearing on this special permit request. There were no speakers on the item.

In response to Borough President Adams’ inquiry as to what findings the City Planning Commission (CPC) would have to make to allow the reduction below 50 feet (of the lot line), the applicant’s representative stated that CPC would have to deem the pool sufficiently buffered, visually and acoustically, to prevent disruption to the neighborhood’s character.

Consideration

Brooklyn Community Board 3 (CB 3) approved this application on June 24, 2019.

1247 Atlantic Avenue is a 27,800 square-foot (sq. ft.) mixed-use residential building occupying the southern portion of an irregular lot consisting of approximately 6,642 sq. ft. The development is built to a height of 10 stories and contains 39 residential units, with 1,200 sq. ft. of ground-floor commercial space. The aforementioned in-ground pool and spa are located in the northern portion of the building’s rear yard, which is approximately 25 feet wide and 68 feet deep. The rectangular pool is 13 feet wide and 35 feet long, while the spa is oval-shaped, and approximately 11 feet by eight feet. The two facilities are situated 12 feet apart.

The applicant’s lot is located at the edge of a C4-5D zoning district, which has a residential height and bulk equivalent to an R7D district. Adjacent zoning districts include C8-2, M1-1, R6A, and R6B. The surrounding context is primarily residential, with a mix of apartment buildings and single family homes. In addition to Atlantic Avenue, local commercial corridors include Fulton Street and Nostrand Avenue. There are two clusters of industrial properties east and west of the site. The pool portion abuts the rear yards of three lots: 1269 Atlantic Avenue, a two-story warehouse; 126 Herkimer Street, a four-story residential building; 535 Nostrand Avenue, a three-story mixed commercial and residential building, and 537 Nostrand Avenue, a one-story commercial building.

The applicant started construction on 1247 Atlantic Avenue in 2015. The pool and spa were added via an amendment to the original New York City Department of Buildings (DOB) filing in 2017. DOB and the New York City Department of Health and Mental Hygiene (DOHMH) granted the necessary approvals in 2018. However, the applicant was unaware that the project did not comply with ZR Section 12-10 (5)(ii) until DOB issued an objection after the pool was built. This section requires accessory swimming pools for multi-family buildings (Use Group 2) to be at least 100 feet from any lot line. In order for DOB to permit the pool as constructed, CPC must first grant a special permit pursuant to ZR Section 74-86.

ZR Section 74-86 stipulates that CPC may permit an accessory “outdoor swimming pool to be located not less than 50 feet from any lot line, provided that such pool is so located as not to impair the essential character of the residential neighborhood” and “in special circumstances where the Commission finds that the design operates as a suitable buffer...the minimum distance

of 50 feet may be reduced or waived.” The primary consideration for this finding is the potential effect of the pool on adjacent residential properties and the overall street, where the main structure is located.

As the 1247 Atlantic Avenue pool and spa do not comply with the as-of-right requirement for setbacks from its side and rear lot lines, the applicant is seeking the grant of a special permit to waive 48 feet, five inches of the required 50-foot distance from the pool and spa to the lot lines.

Consistent with the special permit requirements, the pool and spa are already entirely enclosed by an eight-foot-high, solid wood fence around the rear yard that provides visual screening and minimizes potential impacts on the adjacent lots. Between the pool and the rear of the building, the perimeter fence transitions to a height of six feet to provide supplementary screening for residences located along the lot line. As represented by the applicant, the pool area would be separated from the rest of the rear yard by a six-foot high semi-open fence with controlled access facilitated by a self-latching gate. The pool would be accessible to residents via stairs that connect to amenity spaces in the building’s cellar. Use is intended be limited to the building’s residents, with daily hours of 11:00 AM to 7:00 PM from late June to early September.

Borough President Adams supports the applicant’s quest to have the yard setbacks of the swimming pool and spa accepted based on the screening treatments. He believes that resident access to the swimming pool promotes a healthy lifestyle by providing opportunities for exercise and relaxation. To further such benefits, Borough President Adams would encourage the applicant and CPC to authorize extended hours of operation that would better accommodate residents’ schedules.

Furthermore, Borough President Adams believes that for multifamily developments of a certain scale, the ZR requirements impede the provision of accessory swimming pools in otherwise as-of-right developments for zoning lots less than one quarter acre in size (the majority of zoning lots). Therefore, in order to facilitate the construction of outdoor accessory swimming pools for developments of three or more residences, he believes that the New York City Department of City Planning (DCP) should consider whether existing yard setback standards for accessory swimming pools according to ZR 12-10 (5)(ii) warrant modification, and advance a zoning text amendment, as appropriate.

Recommendation

Be it resolved that the Brooklyn borough president, pursuant to Section 201 of the New York City Charter, recommends that the City Planning Commission (CPC) and City Council approve this application.

Be it Further Resolved:

1. That the New York City Department of City Planning (DCP) should consider whether existing yard setback standards for accessory swimming pools according to ZR 12-10 (5)(ii) warrant modification, and advance a zoning text amendment, as appropriate.