CITY PLANNING COMMISSION

March 15, 2023 / Calendar No. 7

C 220470 ZMK
CORRECTED[1]
CORRECTED[2]

IN THE MATTER OF an application submitted by Stamford LLC and Capri Optics, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 22c:

1. changing from an M2-1 District to an R6B District property bounded by a line 90 feet northeasterly of 38th Street, a line 220 feet northwesterly of 15th Avenue, 38th Street, and a line 460 feet northwesterly of 15th Avenue;

2. changing from an R6 District to a C4-4A District property bounded by 37th Street, 15th Avenue, 38th Street, and a line 100 feet northwesterly of 15th Avenue;

3. changing from an M1-2 District to a C4-4A District property bounded by 37th Street, a line 100 feet northwesterly of 15th Avenue, 38th Street, and a line 200 feet northwesterly of 15th Avenue; and

4. changing from an M2-1 District to a C4-4A District property bounded by 37th Street, a line 200 feet northwesterly of 15th Avenue, 38th Street, a line 220 feet northwesterly of 15th Avenue, a line 90 feet northeasterly of 38th Street, and a line 270 feet northwesterly of 15th Avenue;

Borough of Brooklyn, Community District 12, as shown on a diagram (for illustrative purposes only) dated November 7, 2022, and subject to the conditions of City Environmental Quality Review (CEQR) Declaration E-692.

This application was filed by Stamford LLC and Capri Optics, Inc. on July 1, 2022. This application, in conjunction with the related zoning text amendment (N 220471 ZRK) and special permit (C 220472 ZSK), would facilitate the development of a 103,512-square-foot commercial building at 1459 38th Street (Block 5348, Lots 49, 54, 15 and 17) in the Borough Park neighborhood of Brooklyn, Community District 12.

[1] The report (C 220470 ZMK) has been administratively corrected on April 14, 2023. The original report inadvertently referenced incorrect Docket and Resolution sections.
[1] The report (C 220470 ZMK) has been administratively corrected on April 14, 2023. The original report inadvertently referenced incorrect Docket and Resolution sections.
[2] The report (C 220470 ZMK) has been administratively corrected on May 16, 2023. The original report inadvertently referenced an incorrect Related Actions section.

RELATED ACTIONS

In addition to the zoning map amendment (C 220470 ZMK) that is the subject of this report, the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

N 220471 ZRK Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area

C 220472 ZSK Special permit pursuant to Zoning Resolution (ZR) Section 74-681(a)(2) to allow development over portions of a railroad or transit right-of-way which has been permanently discontinued or terminated to be included in the lot area

BACKGROUND

The applicant seeks a zoning map amendment to change M1-2, M2-1, and R6 zoning districts to C4-4A and R6B zoning districts, as well as a zoning text amendment to establish an MIH area within a portion of the project area, and a special permit to allow development over a transit right-of-way.

The project area is located on the block bounded by 14th Avenue to the west, 38th Street to the south, 37th Street to the north, and 15th Avenue to the east, and includes the development site (Lots 15, 17, 49 and 54), as well as several lots that are not owned by the (Block 5347, Lots 41-42, 44-48, 15, 17, 49 and 54, 118-119 and 55-66) and are not expected to result in development. Fourteenth and 15th avenues are 80-foot-wide corridors, considered wide by zoning standards, and 38th and 37th streets are both 60 feet in width.

The development site contains approximately 25,900 square feet of lot area, with 120 feet of frontage on 38th Street and 100 feet of frontage on 37th Street and is improved with a one-story warehouse and supermarket that would be demolished upon approval of the proposed actions. Lot 49 is a 15,033-square-foot interior lot located on the northern side of 38th Street. It contains the one-story, 36-foot-tall, approximately 15,000-square-foot Paperific supermarket,

with a floor area ratio (FAR) of 1.0. Paperific supermarket that has been operating on the site since 1946. The supermarket is located within an M1-2 zoning district. Directly adjacent to the west, Lot 54 is a 5,863-square-foot lot with a one-story 5,700-square-foot (0.97 FAR) warehouse that is used as an office and storage space for the adjacent supermarket, zoned M2-1. Lot 17 is a 1,634-square-foot interior lot located on the southern side of 37th Street, currently used a parking lot for the supermarket and zoned M1-2 and M2-1. Lot 15 is a 3,370-square-foot interior lot on the southern side of 37th Street, used as a parking lot for the supermarket and zoned M2-1.

Beyond the development site, additional lots include a house of worship, a warehouse, and parking lots or open storage. Lots 55-66 are located along the northern side of 38th Street, immediately west of the development site, and each contain two-story rowhomes built in 1901 that predate the M2-1 zoning designation and are thus legally non-conforming uses.

The project area is located in the Borough Park neighborhood and is largely residential in character, with a mix of industrial, commercial, and some community facility uses. Residential uses consist mostly of lower scale single-family homes, with some two-story semi-detached homes and row homes. There are also some medium-density apartment buildings, mostly along the avenues.

Several low-rise industrial and commercial uses are interspersed amid the residential uses along both 38th and 37th streets including warehouses and a gas station, as well as smaller commercial uses including a bakery, a printing supplies manufacturer, and a building material supplier. A six-story, approximately 442,000-square-foot office complex spans much of the block immediately north of the project area on 14th Avenue and 37th Street. Other notable commercial uses in the immediate surrounding area include ice cream manufacturers, and local ambulance services. The most active retail corridors within the surrounding area are located along 14th and 13th avenues to the west of the project area, with uses including supermarkets, clothing stores, pharmacies and bakeries. The surrounding area also contains several community facility uses, most of which are houses of worship and educational facilities.

The area is well served by public transit. The Ditmas Avenue Station, which provides service to the F train, is located approximately 0.3 miles southeast of the project area and Church Avenue

station, which provides service to the F and G train lines, is located approximately 0.4 miles northeast of the project area. The B16 and B35 buses run along 14th Avenue, with a stop on 14th Avenue between 38th and 39th streets, one block west of the project area. The B16 provides service between Bay Ridge and Lefferts Gardens and the B35 provides service between Brownsville and Sunset Park. The project area is also located within the Transit Zone.

Dome Playground, operated by the NYC Department of Parks and Recreation, is located approximately one block east of the project area along 38th Street near Dahill Road and contains landscaped fields, ball courts, fitness equipment, showers, and a playground. The historic Greenwood Cemetery is located four blocks northwest of the project area and is open to the public.

The project area is located within R6, M1-2 and M2-1 zoning districts. An R6 zoning district is mapped to the east, south and west of the project area spanning from approximately 40th Street to the north, 16th Avenue to the east, 57th Street to the south and Eighth Avenue to the west. R6 zoning districts are medium-density residential districts that allow a maximum FAR of 3.0. Under Quality Housing regulations, contextual street wall and maximum heights are regulated, while under height factor regulations, the sky exposure plane controls the maximum height with a maximum street wall height of six stories or 60 feet. Community facility uses are permitted at a maximum FAR of 4.8

M1-2 zoning districts are mapped over portions of the project area as well as to the immediate north and south. M1-2 districts permit light industrial uses as well as offices, most retail uses, and hotel uses with a special permit, at a maximum FAR of 2.0. Community facility uses are permitted at a maximum FAR of 4.8.

An M2-1 zoning district is mapped over portions of the project area and extends west to 14th Avenue between 38th and 37th streets. M2-1 zoning districts permit the same manufacturing uses as M1 districts; however, the permitted retail uses are limited, and community facility and hotel uses are not permitted. Commercial and industrial uses are permitted up to an FAR of 2.0. Both M1-2 and M2-1 zoning districts require one accessory parking space per 300 square feet.

The applicant proposes to develop a five-story, 103,512-square-foot (4.0 FAR) commercial building with a supermarket on the ground floor and office space above. The development would replace the existing supermarket, which has not been renovated or expanded since it opened in 1946. Entrances to the supermarket and office space would be located on 38th Street, while two curb cuts on 37th Street would access 63 cellar level parking spaces. The building would set back starting at the third and fourth floors along 38th Street before rising to a height of 63 feet.

To facilitate the proposed development, the applicant requests a zoning map amendment to change M1-2, M2-1, and R6 zoning districts to C4-4A and R6B zoning districts.

C4-4A zoning districts are commercial districts with an R7A residential equivalent that permit medium density contextual buildings with residential, commercial and/or community facility uses. C4-4A zoning districts permit residential uses with a maximum FAR of 4.6 (with MIH) and 4.0 for commercial and/or community facility uses. MIH buildings may rise to a base height between 40 and 75 feet with a maximum building height of 90 feet or 95 feet (nine stories) with a qualifying ground floor. Above the maximum base height, a 15-foot setback is required along narrow streets and a 10-foot setback is required along wide streets. Parking is required for 50 percent of dwelling units and no parking is required for income-restricted units located within the Transit Zone. For commercial buildings with a qualifying ground floor, the building may rise to a maximum building height of 85 feet (eight stories) or 80 feet without a qualifying ground floor. No parking is required for commercial uses in C4-4A zoning districts.

R6B zoning districts are contextual residential districts where Quality Housing regulations are required, and typically producing buildings three to five stories in height. They permit a maximum FAR of 2.0 for residential and community facility uses and 2.2 with MIH. A minimum base height of 30 and a maximum of 45 feet is required with a maximum building height of 50 feet, or 55 feet with a qualifying ground floor. Parking is required for 50 percent of dwelling units and no parking is required for income-restricted units located within the Transit Zone.

The applicant also requests a zoning text amendment to Appendix F of the Zoning Resolution to designate an MIH area coterminous with the project area. The proposed text amendment would map MIH Options 1 and 2. Option 1 requires that at least 25 percent of the residential

floor area be provided as housing permanently income-restricted 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 income-restricted to residents with household incomes at an average of 40 percent of the AMI, with no units targeted to households with incomes exceeding 130 percent of the AMI. Option 2 requires that at least 30 percent of the residential floor area be provided as housing permanently income-restricted to households with incomes at an average of 80 percent of the AMI. While no housing is being proposed as part of this application, any future residential developments would need to provide income-restricted housing under MIH.

Pursuant to ZR Section 74-681, the applicant requests a special permit to facilitate the proposed commercial development. This action is required in order to permit development on portions of the right-of-way of the former elevated BMT Culver Shuttle transit line and the ground-level South Brooklyn Railroad, both of which ran south of 37th Street between Fort Hamilton Parkway and McDonald Avenue. Service was terminated on the elevated transit line in 1975 and on the ground-level railroad in the early 1980's. The elevated structure was demolished in 1985 and, at that time, the New York City Transit Authority surrendered the right-of-way, a seven-block, 50-foot-wide strip of land to New York City.

ENVIRONMENTAL REVIEW

This application (C 220470 ZMK), in conjunction with the application for the related actions (N 220471 ZRK and C 220472 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. The lead agency is the City Planning Commission. The designated CEQR number is 22DCP045K.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on November 7, 2022. The Negative Declaration included an (E) designation to avoid the potential for significant adverse impacts related to hazardous materials, air quality, and noise (E-692). The requirements of the (E) designation are described in the Environmental Assessment Statement and Negative Declaration.

UNIFORM LAND USE REVIEW

This application (C 220470 ZMK) and the related special permit action (C 220472 ZSK) were certified as complete by the Department of City Planning on November 7, 2022 and duly referred to Brooklyn Community Board 12 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 application for a zoning text amendment (N 220471 ZRK), which was referred in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 12 held a public hearing on this application (C 220470 ZMK) and the related actions (N 220471 ZRK and C 220472 ZSK) on December 13, 2022 and, on that date, by a vote of 27in favor, none opposed, and two abstaining, adopted a resolution recommending approval of the application.

Borough President Recommendation

The Brooklyn Borough President held a public hearing on this application (C 220470 ZMK) and the related actions (N 220471 ZRK and C 220472 ZSK) on January 12, 2023, and on February 8, 2023, recommended approval of the application with the following conditions:

> "a. Construct a fully commercial five-story development as represented to the community and elected officials
> b. Utilize newly available FRESH incentives to guarantee the proposed 20,000 sf ground-floor supermarket
> c. Incorporate resiliency and sustainability measures, such as blue/green roofs, passive house design, and/or onsite energy generation
> d. Install rain gardens onsite or in the public right of way as part of a Builders Pavement Plan (BPP) in consultation with city agencies, CB 12, and the local Council Member
> e. Retain Brooklyn-based contractors/suppliers that pay prevailing wage, and provide employment opportunities to area residents
> f. Reserve a portion of the upper-story commercial space at for small maker uses, at below-market rents"

The recommendation also advised the Administration provide the local Council Member a scope and budget for the reconstruction of 37th Street.

City Planning Commission Public Hearing

On February 1, 2023 (Calendar No. 3), the Commission scheduled February 15, 2023 for a public hearing on this application (C 220470 ZMK) and the related application for a zoning text amendment (N 220471 ZRK) and special permit (C 220472 ZSK). The hearing was duly held on February 15, 2023 (Calendar No. 10). Two speakers appeared in favor of the application and none in opposition.

The applicant's representative described the proposed development, including the history of the site, existing context, and the impetus of the project, including the rationale for an expanded and improved supermarket and demand for local office space. The representative then outlined the proposed development including the programming, height and setbacks, supermarket and office entrances, and contextual design. They also explained that the client is the owner of the supermarket, which has existed on the site for 40 years. Furthermore, the applicant noted that the underlying zoning district does not allow for the expansion of the supermarket and that the proposed district allows for additional supermarket floor area and the inclusion of office space, addressing current needs of the community.

There were no speakers, and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a zoning map amendment (C 220470 ZMK), in conjunction with the related applications for a zoning text amendment (N 220471 ZRK) and special permit (C 220472 ZSK), is appropriate.

The proposed zoning map amendment will rezone the existing M1-2, M2-1, and R6 zoning districts to C4-4A and R6B zoning districts. The Commission believes that the proposed density, height, and mix of uses permitted by the requested C4-4A district are appropriate at this location and present an opportunity to expand and improve uses on underutilized land. While the existing R6 zoning district permits housing, M1-2 and M2-1 districts mapped over portions of the block do not, despite its predominantly residential character. The C4-4A district will expand the range of permitted uses and densities and add potential for affordable housing development. Moreover, the New York City Transit F train Ditmas Avenue Station is located approximately 0.3 miles southeast of the project area and 0.4 miles from the Church Avenue station of the F and G subway lines, making it a prime location for increased density and flexibility of uses. While the Commission encourages the applicant's stated intent to continue and expand the long-standing supermarket operation on this site, they note the project area's mixed-use character and the importance of allowing a range of uses responsive to future community needs. The Paperific supermarket has been a longstanding neighborhood resource and is unable to expand under the current zoning. The C4-4A district provides flexible uses that accommodate the expansion of the supermarket, while permitting office space and residential uses that are consistent with the surrounding area.

The Commission recognizes the existence of non-conforming residential uses that cover much of the surrounding area and represent its mixed-use character. The proposed R6B zoning district will bring a row of homes in the project area into conformance, correcting the M2-1 zoning district that was mapped in 1961 despite the existence of these homes on the block since 1901. The R6B district will better reflect the existing conditions along the north side of 38th Street between 14th and 15th avenues, including use, character, and form while allowing future expansion and improvement.

The text amendment to Appendix F will create a new MIH area coterminous with the project area, permanently requiring income-restricted housing at 30 percent of the residential floor area for future developments, which would support much needed income-restricted housing development in Borough Park and greater Community District 12. The MIH text amendment is also aligned with citywide objectives outlined in *Housing New York* and *Where We Live*, New

York City's housing reports that define goals and strategies to affirmatively further the development of fair housing. The Commission asserts that the proposed text amendment, along with the proposed zoning map amendment and zoning special permit, could help increase housing capacity in a transit-accessible neighborhood with a pressing need to accommodate growth, while providing income-restricted housing opportunities.

The Commission appreciates the attention to 37th Street through the zoning special permit, which will allow development over a former railroad right of way that has been neglected since the railroad was discontinued and later demolished in 1985. This former transit right-of-way has been almost entirely developed, making future transit use impossible. Not only does the special permit facilitate the inclusion of these lots in the proposed development, creating a more successful site plan and shifting parking and loading away from the more residential 38th Street, but it allows for the improvement of conditions on 37th Street. The largely unpaved stretch of this corridor between 14th and 15th avenues has seen limited improvements and continues to reflect the former elevated and freight line that occupied the right-of-way.

Lastly, the Commission recognizes the borough president's condition for retention of Brooklyn-based contractors, to incorporate sustainability measures, to commit to a fully commercial development, and implement a traffic management plan, but notes that this is beyond the scope of this application. As for the recommendation to utilize FRESH incentives, the proposed district provides sufficient floor area for the proposed development but the applicant is encouraged to explore FRESH tax incentives.

RESOLUTION

RESOLVED, that having considered the Environmental Assessment Statement, for which Negative Declaration was issued on November 7, 2022 with respect to this application (CEQR No. 22DCP045K), the City Planning Commission finds that the actions 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 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. 22c,

1. changing from an M2-1 District to an R6B District property bounded by a line 90 feet northeasterly of 38th Street, a line 220 feet northwesterly of 15th Avenue, 38th Street, and a line 460 feet northwesterly of 15th Avenue;

2. changing from an R6 District to a C4-4A District property bounded by 37th Street, 15th Avenue, 38th Street, and a line 100 feet northwesterly of 15th Avenue;

3. changing from an M1-2 District to a C4-4A District property bounded by 37th Street, a line 100 feet northwesterly of 15th Avenue, 38th Street, and a line 200 feet northwesterly of 15th Avenue; and

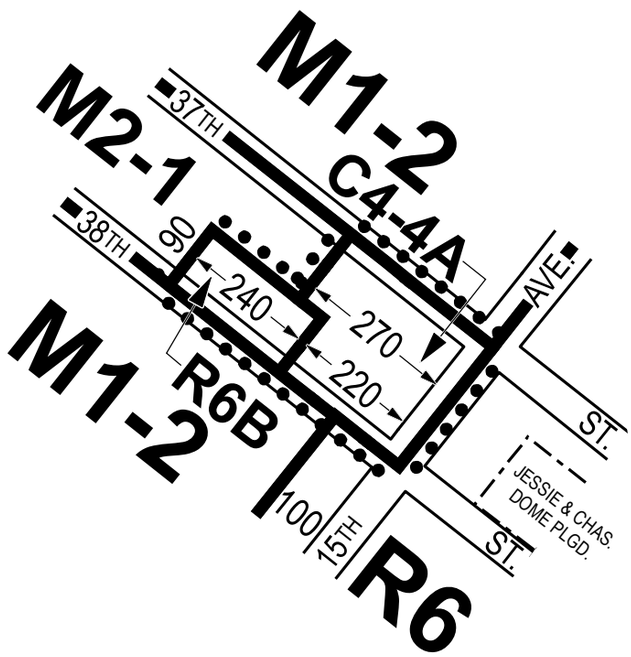
4. changing from an M2-1 District to a C4-4A District property bounded by 37th Street, a line 200 feet northwesterly of 15th Avenue, 38th Street, a line 220 feet northwesterly of 15th Avenue, a line 90 feet northeasterly of 38th Street, and a line 270 feet northwesterly of 15th Avenue;

Borough of Brooklyn, Community District 12, as shown on a diagram (for illustrative purposes only) dated November 7, 2022, and subject to the conditions of City Environmental Quality Review (CEQR) Declaration E-692.

The above resolution (C 220470 ZMK), duly adopted by the City Planning Commission on March 15, 2023 (Calendar No. 7), 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.

DANIEL R. GARODNICK, Esq., *Chair,*
KENNETH J. KNUCKLES, Esq., *Vice-Chair,*
GAIL BENJAMIN, LEILA BOZORG, ALFRED C. CERULLO, III,

ANTHONY CROWELL, JOSEPH DOUEK, DAVID GOLD, Esq.,
RASMIA KIRMANI-FRYE, ORLANDO MARÍN,
JUAN CAMILO OSORIO, RAJ RAMPERSHAD, *Commissioners*



CITY PLANNING COMMISSION
CITY OF NEW YORK
DIAGRAM SHOWING PROPOSED
ZONING CHANGE
ON SECTIONAL MAP
22c
BOROUGH OF
BROOKLYN

New York, Certification Date:
November 07, 2022

S. Lenard, Director
Technical Review Division

SCALE IN FEET
0 150 300 450 600

NOTE:

Indicates Zoning District Boundary

● ● ● ● ● The area enclosed by the dotted line is proposed to be rezoned by changing from an R6, M1-2, and M2-1 Districts to a C4-4A District and from an M2-1 District to an R6B District.

NOTE: THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.

COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Paperific Rezoning			
Applicant:	Paperific Supermarket	**Applicant's Primary Contact**:	Eli Gewirtz
Application #	220470ZMK	**Borough**:	
CEQR Number:	22DCP045K	**Validated Community Districts**:	K12

Docket Description:
IN THE MATTER OF an application submitted by Stamford LLC and Capri Optics, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 22c:
1. changing from an M2-1 District to an R6B District property bounded by a line 90 feet northeasterly of 38th Street, a line 220 feet northwesterly of 15th Avenue, 38th Street, and a line 460 feet northwesterly of 15th Avenue;
2. changing from an R6 District to a C4-4A District property bounded by 37th Street, 15th Avenue, 38th Street, and a line 100 feet northwesterly of 15th Avenue;
3. changing from an M1-2 District to a C4-4A District property bounded by 37th Street a line 100 feet northwesterly of 15th Avenue, 38th Street, and a line 200 feet northwesterly of 15th Avenue; and
4. changing from an M2-1 District to a C4-4A District property bounded by 37th Street, a line 200 feet northwesterly of 15th Avenue, 38th Street, a line 220 feet northwesterly of 15th Avenue, a line 90 feet northeasterly of 38th Street, and a line 270 feet northwesterly of 15th Avenue;
Borough of Brooklyn, Community District 12, as shown on a diagram (for illustrative purposes only) dated November 7, 2022, and subject to the conditions of CEQR Declaration E-692.

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 27	**# Against:** 0	**# Abstaining:** 2	**Total members appointed to the board:** 29
Date of Vote: 12/27/2022 5:00 AM		**Vote Location**: Amico Senior Center & Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 12/13/2022 11:30 PM	
Was a quorum present? Yes	*A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members*
Public Hearing Location:	Amico Senior Center, 5901 13th Avenue, Brooklyn, NY 11219 & on Zoom https://us06web.zoom.us/j/82606454481

CONSIDERATION:

Recommendation submitted by	BK CB12	Date: 1/9/2023 7:44 PM

Brooklyn Borough President Antonio Reynoso
Brooklyn Borough Hall
209 Joralemon Street, Brooklyn, NY 11201

City Planning Commission
120 Broadway, 31st Floor, New York, NY 10271
calendaroffice@planning.nyc.gov

Uniform Land Use Review Procedure (ULURP) Application
PAPERIFIC REZONING – 220470 ZMK, 220471 ZRK, 220472 ZSK

An application by Paperific Supermarket pursuant to sections 197-c and 201 of the New York City Charter affecting 25 tax lots (of which four are applicant-owned) fronting the west side of 15th Avenue, as well as 37th and 38th streets. The applicant seeks a zoning map amendment to change the project area from M1-2, M2-1, and R6 to C4-4A and R6B districts, a zoning text amendment to establish a coterminous Mandatory Inclusionary Housing (MIH) area, and a special permit pursuant to ZR Section 74-681 to allow development over a right-of-way where elevated transit service has been discontinued. These actions would enable a five-story, 103,512 square-foot building with a 19,985 square-foot ground-floor supermarket and commercial office uses above at 1459 38th Street in Brooklyn Community District 12 (CD 12). The building's cellar would contain 63 vehicular parking spaces accessible via 37th Street.

BROOKLYN COMMUNITY DISTRICT 12

RECOMMENDATION

☐ APPROVE
☒ APPROVE WITH MODIFICATIONS/CONDITIONS
☐ DISAPPROVE
☐ DISAPPROVE WITH MODIFICATIONS/CONDITIONS

BROOKLYN BOROUGH PRESIDENT

February 8, 2023
DATE

RECOMMENDATION FOR: PAPERIFIC REZONING – 220470 ZMK, 220471 ZRK, 220472 ZSK

An application by Paperific Supermarket pursuant to sections 197-c and 201 of the New York City Charter affecting 25 tax lots (of which four are applicant-owned) fronting the west side of 15th Avenue, as well as 37th and 38th streets. The applicant seeks a zoning map amendment to change the project area from M1-2, M2-1, and R6 to C4-4A and R6B districts, a zoning text amendment to establish a coterminous Mandatory Inclusionary Housing (MIH) area, and a special permit pursuant to ZR Section 74-681 to allow development over a right-of-way where elevated transit service has been discontinued. These actions would enable a five-story, 103,512 square-foot building with a 19,985 square-foot ground-floor supermarket and commercial office uses above at 1459 38th Street in Brooklyn Community District 12 (CD 12). The building's cellar would contain 63 vehicular parking spaces accessible via 37th Street.

Brooklyn Borough President Antonio Reynoso held a public hearing on this ULURP application on January 12, 2023. No members of the public testified on this item.

Community Board Position

Community Board 12 (CB 12) approved this application on December 27, 2022.

Approval Rationale

The proposed actions would facilitate a five-story commercial office and retail building in a semi-industrial section of Borough Park, just below the intersection of 14th, Church, and McDonald avenues, which carry both local and through truck traffic. The Project Area is mapped with R6, M1-2, and M2-1 districts, and contains primarily commercial and manufacturing uses, with some community facilities and nonconforming rowhomes.

The development site consists of four applicant-owned lots, zoned M1-2, and M2-1, with a total area of 25,900 sf. The 15,000 sf Paperific Supermarket has been operating at 1465 38th Street with unenclosed parking and loading. The applicant seeks to upgrade the business with a larger, modern facility.

The proposed building would provide 20,000 sf of ground-floor retail with space for a bakery, coffee stand, and takeout counter. The second floor would have dedicated office space for the supermarket's ecommerce operation. Floors three through five would have a combination of co-working spaces and individual offices for local companies.

Two separate 18' curb cuts would allow access via 37th Street. One would be utilized as a parking ramp to the cellar, and the other as a loading berth. A pedestrian entrance and 35 bicycle spaces would be co-located along this frontage. The 38th Street façade would contain the office lobby and additional entrances.

While Borough President Reynoso generally supports this application, he seeks guarantees that the building will be developed as proposed. He also feels it's important to maximize the project's public purpose, via resilient and sustainable design, a robust local hiring campaign, and affordable space for small manufacturers. Beyond this application, he calls on the Administration and City Council to address long-standing infrastructure conditions along 37th Street.

Ensuring a Fully Commercial Development

The Borough President believes that a new Paperific Supermarket with office space for other tenants is appropriate and beneficial to the community. There is a high density of small businesses in the area and growing demand for office space, as evidenced by the success of Brooklyn Square, a converted six-story industrial building.

However, he is concerned that the requested C4-4A district, with its R7A equivalent is highly conducive to residential development. According to the project's Environmental Assessment Statement (EAS) a full buildout would yield a nine-story building with 121 units, and 16,835 sf of ground-floor commercial space. Though contrary to the developer's stated aims, this scenario would be considerably more lucrative than the proposed project. Though the applicant is seeking C4-4A zoning to permit multi-story office use, it's important to address – and curtail the potential for housing construction on this site.

As stated in his transition report, Borough President Reynoso intends to "maintain manufacturing capacity in Brooklyn to protect good jobs with low barriers to entry… ensure availability of emergency supplies when supply chains are disrupted and prevent scarcity of the building materials and technologies…as we adapt to climate change." Where manufacturing zoning cannot be preserved, he seeks to promote retail employment, and in cases where M districts would be modified to permit market-rate residential use (even in theory), he sets a higher standard for approval.

Beyond the development site, the Borough President is concerned about the loss of industrial land on non-applicant properties. In 2007, the 15th Avenue facing portion of project area was rezoned from M1-2 to R6 [Kings Material Rezoning (C 040161 ZMK)] to facilitate a 6-story, 35-unit development that was never built. While the pre-existing non-residential uses, including a contractor's warehouse and active parking lots remain, an upzoning to C4-4A would likely result in medium density residential development with non-industrial commercial uses. Moreover, if this application is approved, such construction would be permitted as-of-right, without public input. Such externalities are not mitigated by the benefit of future MIH development.

Borough President Reynoso seeks assurances that the Paperific Supermarket will be developed as a fully commercial, five-story building with an enlarged supermarket. Therefore, prior to City Council consideration, the developer should furnish written commitments that if this rezoning is approved, plans filed with the Department of Buildings (DOB) will reflect the design presented to the community board and elected officials.

Guaranteeing a FRESH Supermarket

Borough Park is one of the most densely populated neighborhoods in southern Brooklyn. However, its residents lack access to large supermarkets and rely instead on small grocery stores. In 2021, the Department of City Planning (DCP) updated its Food Retail Expansion to Support Health (FRESH) program to include CD 12. Paperific Supermarket has not indicated intent to pursue FRESH designation, as the application was filed prior to the program's expansion. The Borough President believes that this proposal would benefit greatly from newly available discretionary incentives. He calls on the applicant to pursue ZR Fresh designation and appropriate tax advantages to support this project.

Advancing Sustainability and Resiliency

Borough President Reynoso believes that energy-efficient and environmentally sustainable buildings help mitigate climate change. Local Laws 92 and 94 of 2019 require most new construction to incorporate a green roof and/or a solar installation. Developers are increasingly pursuing impactful strategies such as passive house design and onsite energy generation.

Accordingly, Paperific Supermarket should seek City and State incentives to offset costs associated with the provision of green and solar roofs. The New York State Energy Research and Development Authority (NYSERDA) manages various programs to promote building efficiency. New York City offers the Green Roof Tax Abatement and the Green Infrastructure Grant Program, administered by DEP.

Borough President Reynoso advocates green infrastructure practices that reduce burdens on Department of Environmental Protection (DEP) wastewater treatment plants. Given persistent flooding and ponding conditions along 37th Street, it's essential that the applicant offset the proposed increase in density with a plan to manage stormwater onsite. With multiple frontages, the proposed development could accommodate rain gardens onsite and/or in the public right of way. Therefore, prior to City Council review, Paperific Supermarket should coordinate with DEP and other relevant agencies to install rain gardens as part of the project's Builders Pavement Plan (BPP), with input from CB 12 and the local Council Member.

Maximizing Local and Quality Jobs

According to the NYU Furman Center, double-digit unemployment remains a pervasive reality across Brooklyn, with more than half the community districts reporting poverty rates of 20 percent or higher. The ongoing COVID-19 pandemic has only exacerbated widespread job insecurity. One way to address the borough's economic crisis is to promote local hiring, Brooklyn-based businesses, and prevailing wages. Therefore, Paperific Supermarket should commit to retain area contractors and suppliers to provide employment opportunities to CB 12 residents.

Accommodating Industrial Businesses at Risk of Displacement

In the last eight months, the Borough President has seen multiple requests to rezone from manufacturing to residential use. As stated in his transition report, Borough President Reynoso intends to "maintain manufacturing capacity in Brooklyn to protect good jobs with low barriers to entry… ensure availability of emergency supplies when supply chains are disrupted and prevent scarcity of the building materials and technologies…as we adapt to climate change." The Borough President's Office remains committed to retaining manufacturing land for job-creating uses. He therefore calls on Paperific Supermarket to reserve a portion of the upper-story commercial space at 1459 39th Street for small maker uses, at rents affordable to such businesses.

Upgrading and Rationalizing 37th Street

CB 12 has repeatedly called attention to broken sidewalks, poor drainage, and pedestrian safety conditions along 37th Street between 14th and 15th avenues. The pervasive lack of paving has also encouraged illegal encroachments into the right of way, creating a dangerous street. To date, no funding has been advanced for reconstruction, a prohibitively expensive undertaking for any one agency. Borough President Reynoso believes that this application presents a vital opportunity to address longstanding issues and fulfill promises made to the community. With increased potential for residential development, it's essential to create a street that supports safe crossing, loading, and parking. He therefore calls on the Administration to develop a capital plan in partnership with the Council Member for the reconstruction of 37th Street. Additionally, DEP and the Department of Transportation (DOT) should provide the necessary data to facilitate cost estimates for the project.

Recommendation

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

1. That prior to consideration by City Council, SLG Assets Inc commit to:

    a. Construct a fully commercial five-story development as represented to the community and elected officials

    b. Utilize newly available FRESH incentives to guarantee the proposed 20,000 sf ground-floor supermarket

c. Incorporate resiliency and sustainability measures, such as blue/green roofs, passive house design, and/or onsite energy generation

d. Install rain gardens onsite or in the public right of way as part of a Builders Pavement Plan (BPP) in consultation with city agencies, CB 12, and the local Council Member

e. Retain Brooklyn-based contractors/suppliers that pay prevailing wage, and provide employment opportunities to area residents

f. Reserve a portion of the upper-story commercial space at for small maker uses, at below-market rents

Be It Further Resolved:

1. That the Administration provide the local Council Member a scope and budget for the reconstruction of 37th Street, determined using DEP and DOT data.