98 Third Avenue

98 Third Avenue, Brooklyn NY

October 22, 2021

1. Introduction

This application is made on behalf of 98 Third Avenue Realty LLC, the owner of the above-referenced property ("the Applicant"), for a zoning map amendment and zoning text amendment (the "Proposed Actions"). The Proposed Actions would affect ten tax lots on a single block (Block 388, Lots 31, 34, 35, 36, 37, 38, 41, 42 and p/o Lots 19 and 43; hereafter the "Rezoning Area") in the Boerum Hill area of Brooklyn Community District #2.

The Proposed Actions include a zoning amendment portions of an M1-2 district to R7D/C2-4 and R6B. In addition, the Proposed Actions include a zoning text amendment to make the Rezoning Area applicable as a Mandatory Inclusionary Housing (MIH) area mapped as Option 1 and Option 2. At this time, the Proposed Actions would seek compliance with MIH through Option 2 of the program.

The Proposed Actions would facilitate the development of a 27,910 square foot (5.6 FAR) 8-story mixed use building at Block 388, Lot 31 (the "Development Site") to contain 24,387 square feet of residential space and 3,523 square feet of ground-floor commercial retail. This would include 24 dwelling units, 8 of which would be affordable pursuant to MIH (the "Proposed Development"). The building would rise to a maximum height of approximately 85 feet.

2. Background

The Rezoning Area was located in the Bergen Street Urban Renewal Area (URA), which was approved the City Planning in July of 1971 (CP21649) and expired in 2011. The Bergen Street URA designated Block 388 for industrial uses, per the predominant land uses in the surrounding area at that time.

The Development Site was the subject of a variance application with the Board of Standards and Appeals (BSA) and the application was withdrawn in May of 2019 (111-15-BZ).

The Boerum Hill Historic District Extension (N 190101 HKK), was approved in 2018 for the area immediately west of the Rezoning Area, bounded by Warren Street to the south, Nevins Street to the east, Bond Street to the West, and the centerline of Block 196 to the north.

The subject block was zoned R6 with the inception of the 1961 Zoning Resolution ("ZR") and was subsequently amended to M1-2 as part of an Urban Renewal Plan (ULURP No. 21667) noted above. The underlying M1-2 zoning district has remained since that time. Since that time period, the surrounding districts have been modified. Most significantly, the Boerum Hill Rezoning of 2011 (C 110252 ZMK) amended the area immediately surrounding the Rezoning Area with Atlantic Avenue to the north, 4th Avenue to the east, Warren and Wyckoff streets to the south, and Court Street to the west. The rezoning amended R6 and R7B districts to R6A, R6B, and R7A, and from C1-3 and C2-3 commercial overlays to C2-4, adding commercial overlays to some mixed-use corridors and removing them on side streets where commercial uses do not currently exist. Specifically, the rezoning mapped R7A/C2-4 districts along Third Avenue at a depth of 100 feet. However, based on the pre-existing industrial uses in the Rezoning Area, this area was not modified from M1-2 despite the overwhelming residential and mixed-use character of the surrounding area. R6B districts were mapped on interior portions of blocks to maintain pre-existing rowhouse character.

Prior to the Boerum Hill Rezoning in 2011, the area to the east was rezoned as part of the Park Slope Rezoning in 1993 (C 900580 ZMK). This rezoning amended a 54-block area generally bounded by 8th Avenue, Flatbush Avenue, Fourth Avenue and Union Street from R6, C1-3, C2-3, and M1-2 districts to R6A, R6B, R7A, R7B, R8A, C1-4 and C2-4 districts, and reduced the depth of the commercial overlays from 150 feet to 100 feet to prevent new commercial uses from encroaching onto predominantly residential side streets. The proposed rezoning was intended to help preserve the existing character of the neighborhood and encourage development that is contextual in bulk, height and setback.

The Fourth Avenue corridor (one block to the east) was subsequently amended in 2011 as part of the Special Fourth Avenue Enhanced Commercial District. This initiative affected portions of Fourth Avenue from Atlantic Avenue to 24th Street, where R8A/C2-4 and R8A districts were mapped as part of the Park Slope Rezoning discussed above. The special district intended to improve the pedestrian experience by imposing transparency requirements, limiting curb cuts and establishing special use provisions to require ground-floor neighborhood services and amenities, while limiting parking and residential uses on the ground floor facing Fourth Avenue to better serve the growing residential population.

There are no other relevant approved land use actions in the last ten years within 1,000 feet of the proposed Rezoning Area.

3. Description of the Surrounding Area

The Rezoning Area is located along the Third Avenue corridor in Boerum Hill. Third Avenue is a two-way mixed-use corridor that travels from Downtown Brooklyn to Bay Ridge. Along this segment of Third Avenue the street is 70 feet wide in mapped width, classifying the street as 'narrow' under the Zoning Resolution. Third Avenue along this segment is predominantly mixed-use with residential uses, commercial buildings, institutional uses and some older warehouse, industrial and light manufacturing uses. An increasing amount of mixed-use buildings are being developed along the corridor with ground-floor retail and residences above, pursuant to the underlying R7A/C2-4 district created as a result of the 2011 Boerum Hill Rezoning, which mapped the district at a depth of 100 feet from Third Avenue.

In terms of building types in the surrounding area, residential uses vary between three and four-story rowhouses located along mid-block portions of streets, and higher-density apartment buildings rising between 6- and 21-stories. The block to the south of the Rezoning Area contains the NYCHA Wyckoff Gardens complex, which includes three, 21-story apartment buildings. More recent construction includes an 8-story apartment building directly to the east of the Development Site at 101 Third Avenue (Block 389, Lot 5).

Some older warehouse buildings are present in the surrounding area that range in height between 1- and 4-stories. Examples include the Ulano Corporation at 110 Third Avenue, a printing and graphic arts facility, a portion of which is within the proposed Rezoning Area and is described in greater detail below. Block 198 to the northeast of the Rezoning Area also contains several 3- and 4-story warehouse buildings.

Institutional uses in this area range between 1 and 4-stories. A cluster of such uses exists along Dean and Pacific Streets at Third Avenue. These include P.S. 38 and 47, the Temple of Resolution, Acorn High School for Social Justice, and Brooklyn High School for the Arts. A Kingdom Hall of Jehovah's Witnesses is located to the south of the Rezoning Area on Third Avenue at St. Mark's Place. A commercial warehouse building that houses various City services is located on the block to the north of the Rezoning Area at 88 Third Avenue. In terms of parkland, the only space located in the 1000-foot radius is a schoolyard to playground area adjacent P.S. 38 and 47, referenced above.

As noted above, the Boerum Hill Historic District (as extended) is located west of the Rezoning Area, bounded by Warren Street to the south, Nevins Street to the east, Bond Street to the West, and the centerline of Block 196 to the north.

Zoning districts in the surrounding area include the underlying M1-2 district, as well as R7A/C2-4 districts and R6, R6B, R6A, R7B and R8A/C2-4 districts. The underlying M1-2 district is present on a majority of the subject tax block except for a mid-block segment that is zoned R6B. The M1-2 district allows for a variety of light manufacturing uses such as repair shops, wholesale service and storage facilities, as well as heavier industrial uses subject to stringent performance standards. The bulk parameters of the district allow for buildings up to 2.0 FAR, built to the front and side lot lines, with a 20-foot rear yard. Building heights for M1-2 districts are governed by a sky exposure plane that begins at 60 feet or four-stories, whichever is less. The sky exposure plane is 2.7 to 1 on narrow streets. Off-street parking and loading facilities vary in M1-2 districts according to the type and size of the use on the property. Setbacks of 20 feet are required on narrow streets and 15 feet on wide streets.

The area along Third Avenue, from Warren Street in the south to Pacific Street in the north, is mapped with an R7A/C2-4 district at a depth of 100 feet. The R7A district is a contextual zoning district that permits residential, commercial and community facility uses. R7A districts allow for buildings up to 4.0 FAR and generally yield 6- to 7-story buildings. Maximum lot coverage is 65 percent for interior and through lots and 100 percent on corner lots. Above a base height of 40 to 65 feet, (75 feet with a Qualifying Ground Floor [QGF]) the building must set back to a depth of 10 feet on a wide street, before rising to a maximum of 80 feet (85 feet with a Qualifying Ground Floor [QGF]). Parking is required for 50 percent of all dwelling units. Off-street parking is permitted only within, or to the side or rear of a building, never between the street wall and the street line.

Beyond 100 feet of Third Avenue are R6A, R6B and R7B districts. The R6A zoning district is a contextual district with a maximum residential FAR of 3.0. Quality Housing regulations are mandatory in these districts. Above a maximum base height of 60 feet, (65 feet with a Qualifying Ground Floor [QGF]) the building must set back by at least 10 feet on a wide street and 15 feet on a narrow street before rising to its maximum height of 70 feet (75 feet with a Qualifying Ground Floor [QGF]). Off-street parking is required for 50 percent of a building's dwelling units or can be waived if 5 or fewer spaces are required.

R6B is a contextual residential zoning district that predominantly produces four- and five-story buildings. Many of these are brownstone buildings that are set back from the street and have small front yards. The R6B zoning district allows for a maximum FAR of 2.0. The maximum height is 50 feet (55 feet with a Qualifying Ground Floor [QGF]). Off Street parking is required for 50 percent of all dwelling units. R7B districts are similar to R6B districts but allow a larger FAR of 3.0. R7B districts typically produce six- to seven-story buildings and require a base height between 40 and 65 feet before rising to a maximum height of 75 feet.

The block to the south of the Rezoning Area, west of Third Avenue, is mapped R6 and includes the NYCHA Wyckoff Gardens complex. R6 is a general medium-density residential zoning

district. The R6 district allows buildings under both Height Factor and Quality Housing regulations. Under Height Factor regulations, a maximum FAR from 0.78 to 2.43 for residential use is permitted; with a required open space ratio (OSR) ranging from 27.5 to 37.5 percent. Under Quality Housing regulations, 2.2 FAR is permitted along narrow streets, a higher 3.0 FAR is permitted for buildings on or within 100 feet of a wide street. For height factor buildings, 70 percent of dwelling units require parking, while for Quality Housing buildings, 50 percent of dwelling units require parking.

The Fourth Avenue corridor is one block to the east. This corridor is zoned R8A/C2-4. The R8A district primarily produces contextual 10- to 12-story apartment buildings at a maximum FAR of 6.02 and permits Use Groups 1-4. Within R8A districts, Quality Housing regulations are also mandatory. The maximum height for buildings in R8A districts is 120 feet (125 feet with a Qualifying Ground Floor [QGF]) with a base height of 60-85 feet (95 feet with a Qualifying Ground Floor [QGF]). Setbacks of 10 or 15 feet are required depending on street width. On a wide street, the street wall must extend along the entire width of the zoning lot and at least 70 percent of the street wall must be within eight feet of the street line. Parking is required for 40 percent of dwelling units, 20 percent for zoning lots between 10,001 and 15,000 square feet and waived for zoning lots 10,000 square feet and below, or if 15 spaces or fewer are required. This area is also in the Special Fourth Avenue Enhanced Commercial District, which includes additional transparency requirements, limited curb cuts and special use provisions that require ground-floor neighborhood services and amenities, while limiting parking and residential uses on the ground floor facing Fourth Avenue.

The C2-4 commercial overlay portion of the R7A and R8A districts is commonly mapped in dense areas close to transit. The C2-4 districts allow for a wide variety of commercial uses (Use Groups 5-9 and 14) such as local retail, funeral homes and repair services. Within medium- density residential zoning districts (R7A and R8A) a maximum FAR of 2.0 is permitted for commercial uses. Parking requirements vary by use, with general retail typically requiring one space per 1,000 square feet of floor area and the requirement is waived up to 40 spaces.

The Rezoning Area is in close proximity to numerous transit options and is located in a Transit Zone. The New York City Transit (NYCT) offers subway service two blocks to the northeast at 4th Avenue and Bergen Street with 2, 3, 4, 5, B, D, N, Q, R and W train service. In addition, this station is connected to the Atlantic Terminal, which offers MTA Long Island Railroad access. In terms of bus service, the B37 provides service along Third Avenue between Downtown Brooklyn and Bay Ridge. Furthermore, the B65 provides service along Dean and Bergen streets between Downtown Brooklyn and Crown Heights.

4. Description of the Proposed Rezoning Area

The Proposed Rezoning Area affects ten (10) tax lots on a single block (Block 388, Lots 31, 34, 35, 36, 37, 38, 41, 42 and p/o Lots 19 and 43) in the Boerum Hill neighborhood of Brooklyn, Community District 2. The Rezoning Area consists of parcels centered around the northwest intersection of Wyckoff and Third Avenue with frontage along both, as well as Bergen Street. As noted above, Third Avenue is classified as a 'narrow' street in the Zoning Resolution with 70 feet in mapped width. Bergen and Wyckoff Streets are also classified as 'narrow' streets with 60 feet in mapped width.

Block 388, Lot 19 (268 Bergen Street) is improved with a two-story industrial use rising to 32 feet (the Ulano Corporation) in approximately 49,293 square feet on a 46,692 square foot lot (1.05 FAR). Only a portion of the lot would be rezoned to R7D/C2-4 (50'x100') or less than 11 percent of the lot area.

Block 388, Lot 31 (98 Third Avenue) consists of the Development Site and is described in greater detail below.

Block 388, Lots 34, 35, 36, 37 and 41 are under the control of NYC Housing Preservation Development (HPD). Lots 34, 35, 36 and 37 (110-114 Third Avenue) are utilized as accessory surface parking, while Lot 41 (289 Wyckoff Street) is improved with a single-story 1,340 square foot commercial office building on a 2,000 square foot lot (0.67 FAR) that rises to approximately 16 feet. The surface parking is utilized by the Ulano Corporation, per a lease agreement with HPD, while Lot 41 is also utilized by the Ulano Corporation as office space.

Lot 38 (118 Third Avenue) is improved with a two-story commercial building containing 4,620 square feet (approximately 1.77 FAR) that rises to 25 feet.

Lot 42 (287 Wyckoff Street) is improved with a single-story commercial building containing 2,000 square feet (1.0 FAR) that rises to approximately 16 feet. This building is also utilized as part of the Ulano Corporation.

Lot 43 (285 Wyckoff Street) is improved with three-story walk-up apartment building containing 2,400 square feet (1.2 FAR) that rises to approximately 36 feet. The building contains 4 dwelling units and was constructed around 1931. Only a small portion of this property (two feet along the eastern lot line) would be affected.

As noted above, the Rezoning Area is zoned M1-2. The M1-2 district allows for a variety of light manufacturing, and commercial uses at 2.0 FAR along with limited community facility uses at 4.8 FAR.

5. Description of Proposed Development Sites

The Proposed Development Site (the "Development Site") is within the Rezoning Area but is limited to a single property, 98 Third Avenue (Block 388, Lot 31). The Development Site is an approximately 4,984 square foot lot, improved with an automotive service use (a Shell Gas Station) constructed in 1986. The building contains 156 square feet of floor area (0.03 FAR) and has three pumps associated with the fueling area, with the 156 square foot structure serving as a payment area with some accessory retail/convenience space housed within. The parcel has approximately 50 feet of frontage along Bergen Street and 100 feet of frontage along Third Avenue. The Third Avenue frontage contains two open curb cuts, each approximately 18 feet in width, while Bergen Street contains one open curb cut with approximately 20 feet in width. As noted above, the Development Site is in an M1-2 zoning district.

6. Description of Proposed Development

The Proposed Development would entail the demolition of the existing automotive use on the property and the development of a 27,910 square foot (5.6 FAR) 8-story mixed use building at Block 388, Lot 31 (the "Development Site"). The proposed development would contain 24,387 square feet of residential space and 3,523 square feet of ground-floor commercial retail. This would include 24 dwelling units, 8 of which would be affordable pursuant to MIH (Option 2 or 30 percent). The building would rise to a maximum height of approximately 85 feet, after a street wall of 65 feet and 15-foot setback.

For the commercial retail uses proposed under the C2-4 zoning district, one space is required per 1,000 square feet of floor area and the requirement is waived when under 40 spaces are required. Therefore, the Proposed Development is not required to provide accessory parking for the proposed commercial retail uses. In addition, since the Development Site is located in the Transit Zone, no accessory parking spaces are required for the proposed residential use. The off-street accessory parking requirement for the proposed R7D district is 50 percent of dwelling units, with income-restricted dwelling units below 80 percent AMI waived. When the requirement is under 15 spaces, the entire residential accessory requirement is waived for R7D districts. Therefore, no off-street accessory parking spaces are required for the Proposed Development.

7. Actions Necessary to Facilitate the Project

The Proposed Actions consist of a zoning map amendment from M1-2 to R7D/C2-4 and R6B. In addition, a zoning text amendment to Appendix F of the Zoning Resolution (*Inclusionary Housing Designated Areas*) is required to establish a Mandatory Inclusionary Housing (MIH) area coterminous with the Rezoning Area (the "Proposed Actions"). The MIH area would be mapped

as both Option 1 and Option 2. Option 1 requires that 25 percent of the new residential floor be reserved for incomes averaging 60 percent AMI and below, while Option 2 requires that 30 percent of the new residential floor area be reserved for incomes averaging 80 percent AMI and below. The Proposed Development would comply with MIH under Option 2, with 8 of the proposed 24 dwelling units reserved for incomes averaging 80 percent AMI and below.

The proposed R7D/C2-4 district would be mapped at a depth of 100 feet from Third Avenue on the eastern end of Block 388. This would rezone Lots 31, 34, 35, 36, 37, 38, 41 and p/o Lot 19 from M1-2 to R7D/C2-4. The eastern end of Lot 19 would be partially rezoned with a 50' by 100' portion of the property rezoned or approximately 11 percent of the lot. In addition. A small portion of Lot 43, approximately 2 feet along the eastern lot line, would be amended from M1-2 to R6B. The remaining lot to be rezoned, Lot 42, would be rezoned R6B by extending the pre-existing R6B district to the east by 20 feet to encompass that property and align with the proposed R7D/C2-4 district.

The proposed R7D (MIH) district permits a max of 5.6 FAR under MIH and generally yields 8- to 11-story buildings. Maximum lot coverage is 65 percent for interior and through lots and 100 percent on corner lots. Above a base height of 60 to 85 feet, the building must set back to a depth of 15 feet on a narrow street, before rising to a maximum height of 110 feet (115 feet with a QGF) or 11-stories under MIH. Parking is required for 50 percent of all dwelling units, with affordable units waived inside the Transit Zone. The C2-4 commercial overlay permits a wide range of neighborhood commercial retail uses (Use Groups 5-9 and 14) on the first floor (with residential units overhead) at a maximum FAR of 2.0 within R7D districts. Parking requirements vary by use but most retail uses require one space per 1,000 square feet of floor area. The proposed R7D/C2-4 (MIH) district would alter the permitted uses within the first 100 feet from (Use Group 4-14, 16-17 to Use Groups 1-9 and 14) and would allow a maximum total FAR of 5.6 compared to a maximum FAR of 2.0 for commercial uses and 4.8 for community facility uses in the underlying M1-2 district. For commercial uses, the proposed maximum FAR would remain the same at 2.0 FAR.

The proposed R6B district under MIH would permit a maximum of 2.2 FAR and a maximum base height of 30-40 feet (45 feet with a QGF) and a maximum height of 50 feet (55 feet with a QGF). This district would alter the permitted uses from Use Group 4-14, 16-17 to Use Groups 1-4. Commercial uses would no longer be allowed on this parcel.

The R7D/C2-4 medium-density mixed use zoning district under MIH would be appropriate for this area, which is located along a mixed-use corridor, adjacent to similar medium-density mixed use zoning districts. Immediately to the north, the area within 100 feet of Third Avenue is zoned R7A/C2-4. Similarly, the Fourth Avenue corridor is zoned R8A/C2-4 with a depth of 100. These districts permit the same uses and similar densities under contextual quality housing regulations, with the R7A district permitting up to 9-stories under MIH and the R8A district permitting up to 14-stories under MIH.

Furthermore, the existing density in the surrounding area is similar to that of the Proposed Development, which would rise to 85 feet. To the south are three, 21-story apartment buildings (the NYCHA Wyckoff Gardens complex) and a recently constructed apartment building rising to 8-stories is located immediately to the east from the Development Site. Therefore, the proposed R7D/C2-4 district would serve as a buffer between the higher-density NYCHA towers to the south and the R7A/C2-4 district located immediately to the north and east.

The proposed extension of the R6B zoning district would serve to reinforce the rowhouse character of the mid-block portion of the subject block. This would be consistent with the pre-existing character of this block, as well as adjacent blocks to the north, east and west, which are mapped with R6B and similar R7B districts on interior portions beyond 100 feet of Third and Fourth Avenues.

When compared with the existing use on the Development Site, which consists of an automotive service use and open curb cuts on each frontage, the Proposed Actions would result in a more compatible development compared to the existing condition, with mid- to high-density contextual residential zoning districts present in a transit rich environment. Therefore, the underlying M1-2 zoning district is less compatible with surrounding uses and densities than the Proposed Actions and resulting development.

The Proposed Actions would result in a contextual mid-rise mixed-use building with an active use on the ground floor and no curb cuts. When compared to the existing condition, an underutilized gas station with open curb cuts, the Proposed Actions would result in a more desirable building with required contextual street wall heights and setback, which would blend harmoniously with new and existing development that has resulted in the surrounding area, as described above. In addition to providing a mid-rise building more consistent with the surrounding area, it would serve to improve the pedestrian experience over the existing condition, where three open curb cuts create potential conflicts between pedestrian sidewalk traffic and automobile traffic. The Proposed Development would provide no curb cuts, which would serve to overall improve the pedestrian experience at this location with less potential conflicts.

While the Proposed Actions would result in greater density along Third Avenue than currently permitted, the corridor is already vibrant with pedestrian activity and automotive traffic and is located in close proximity to a number of transit options as well as Downtown Brooklyn, the City's third largest central business district. Given the arterial nature of Third Avenue, which connects Downtown Brooklyn with points south, and close proximity to transit, this corridor is able to accommodate additional density. In addition, ground-floor local retail would be provided that would support nearby residents, as well as the surrounding community. This would also serve to increase the vibrancy of the corridor, including an enhanced pedestrian experience. Lastly, the required zoning text amendment to make the Rezoning Area applicable to MIH would result in new permanently affordable dwelling units, a recognized need in all areas of the city.

In summary, the proposed medium-density zoning district would serve to permit an appropriate level of increased density along a vibrant corridor, would improve the built-form of the intersection compared to existing conditions, would provide much needed new dwelling units for various income levels, and would promote active uses at the ground-floor level. These changes would be in line with the increasingly dense mixed-use character of the area and would be consistent with adjacent zoning districts.

8. Conclusion

The Proposed Actions would serve to facilitate the development of a medium-density mixed use building on an otherwise underutilized parcel. Based on surrounding development trends, the underlying M1-2 district constrains new development, where increasingly dense mixed-use buildings are under development in close proximity. The Proposed Actions would be consistent with this trend by mapping a district similar to adjacent pre-existing medium-density zoning districts along a vibrant commercial corridor. In addition, an existing R6B district would be extended to reinforce the mid-block rowhouse character of the subject block.

When compared to the existing condition, which consists of an automotive service use with open curb cuts along both frontages, the Proposed Actions and any resulting new development would require a more uniform street wall under contextual bulk regulations, thereby improving the urban design and pedestrian experience at this intersection, similar to adjacent blocks. Furthermore, the Proposed Development would provide an active use at the intersection of Third Avenue and Bergen Street, with commercial retail proposed. Based on the above, the Proposed Actions would serve to improve the pedestrian experience and activate Third Avenue with a compatible medium-density mixed use development.

Lastly, The Proposed Actions and resulting development would permit residential use in this location, where is currently not permitted. This would serve to provide much needed new housing, while the proposed text amendment to make the area applicable as an MIH area would result in the creation of new permanently affordable dwelling units, a demonstrated need for all areas of the city.