Project Description (LR Item 3)
Project ID No.: P2022K0171

39th Street & New Utrecht Avenue Rezoning

October 2023

1. Introduction

39th St Properties, LLC (the "Applicant") seeks a zoning map amendment and zoning text amendments to facilitate two new mixed-use buildings along New Utrecht Avenue at 39th Street in the Borough Park neighborhood of Brooklyn Community District 12. The proposed zoning map amendment would amend areas zoned M1-2 to a new M1-4/R7X Special Mixed-Use District zoning district ("MX"). The area to be rezoned (the "Rezoning Area") includes Block 5582, lots 2 (p/o), 62, 63, 64, 65, 66, 67 and 68 along with Block 5583, lots 46 (p/o), 47 (p/o), 48 (p/o), 49, 55 and 57 (p/o). The first text amendment would amend Appendix F of the Zoning Resolution ("ZR") to designate the Rezoning Area as a Mandatory Inclusionary Housing (MIH) area. The second text amendment would make the proposed M1-4/R7X district applicable to the MX-12 district in Brooklyn Community Board 12 through an amendment of ZR 123-63 (hereafter, the "Proposed Actions").

The Proposed Actions would facilitate two new mixed-use buildings (hereafter, the "Proposed Development")

- The first building (Block 5582, Lots 66, 67, and 68) at 923 39th Street would be a 9-story building with 53,960 zoning square feet (zsf) or 5.95 FAR. It would contain 6,965 square feet of commercial use at the ground floor (0.77 FAR),56 dwelling units (14 affordable), and 13 parking spaces.
- The second building (Block 5583, Lots 48, 49 and 55) at 3917 New Utrecht Avenue would be an 8-story building with 60,583 zsf or 6.0 FAR. It would contain 6,920 square feet of commercial use at the ground floor (0.69 FAR), 39 dwelling units (10 affordable), and 16 parking spaces.

The text amendment to make the MIH applicable to the Rezoning Area would map Options 1 and 2, with the Proposed Development complying through Option 1 and providing a total of 24 MIH dwelling units between the two buildings, which would be affordable to incomes averaging 60 percent of the Area Median Income ("AMI").

2. Background

When the 1961 Zoning Resolution (ZR) was enacted, the Rezoning Area was mapped as M1-2, which largely remains to the north of 39thth Street and to the south of Green-wood Cemetery. The area to the south of 39tth Street was mapped as R6 in 1961 with C2-3 commercial overlays lining New Utrecht Avenue, Fort Hamilton Parkway, and portions of 10th Avenue. This zoning largely remains today.

A small rezoning was approved in 1992 (C 900908 ZMK) which changed two blocks of the M1-2 district at Fort Hamilton Parkway between 37th and 39th Streets to R6 and R6/C2-3. The M1-2 district between 4th Avenue and Fort Hamilton Parkway to the south of Green-wood Cemetery largely remains unchanged.

In August of 2009, the City Council approved the Sunset Park Rezoning (C 090387 ZMK), which affected a large area to the west of 8th Avenue, two avenues west of the Rezoning Area. This area-wide rezoning amended a 128-block area, at the request of Community Board 7, to address recent out-of-character development in an area generally bounded by Third Avenue, 28th Street, 63rd Street, and 8th Avenue. The rezoning amended R6 and C4-3 districts to R4A, R4-1, R6B, R6A, R7A, and C4-3A districts. The goal of the rezoning was to preserve neighborhood character and scale by placing height limits throughout the area, allow for new development where appropriate (predominantly along the wider avenues) and create opportunities and incentives for affordable housing by mapping Voluntary Inclusionary Housing. In addition, districts were modified to support local retail corridors.

Most recently, the 2018 3901 9th Avenue Rezoning application (C 180186 ZMK), rezoned an M1-2 district to a R7A/C2-4 district bounded by 39th Street, New Utrecht Avenue, a line midway between 39th Street and 40th Street, and 9th Avenue. This rezoning is directly across New Utrecht to the west of the Rezoning Area. The application was intended to facilitate a new six-story mixed-use building containing approximately 40 residential units, including 10 permanently affordable units, and ground floor retail. The construction of this development has not begun.

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 south of Green-wood Cemetery and 37th Street, in an area that is predominantly industrial/commercial in use, and quickly transitions into a more residential area moving south below 39th Street. Along New Utrecht Avenue, commercial uses are present, often

in the ground-floors of residential buildings. Wide corridors are 9th ,10th Avenues and New Utrecht Avenue (80 feet wide). Side streets are typically 60 feet in width (narrow) and include 39th, 40th and 41st Streets, which run east-west in a typical city grid pattern. Accordingly, the area to the north of 39th Street is zoned M1-2 and the area to the south is zoned R6 with C2-3 overlays along New Utrecht Avenue and portions of 10th Avenue. As noted above, a recently mapped R7A/C2-4 district is present between 9th and New Utrecht Avenues along 39th Street.

In terms of building types, the area above 39th Street in the M1-2 district is typically lower-rise with one- and two-story buildings containing commercial (wholesale, storage) and automotive service uses, as well as some older legally nonconforming three-story walk-up residences. In addition, some railyard and rail right-of-way areas are present. Some higher-density commercial buildings were recently developed one block west of the Rezoning Area, with an 8-story hotel at 825 39th Street (Holiday Inn Express) and a 5-story hotel at 820 39th Street (Knights Inn). To the south of 39th Street in the R6 district, the residential density increases with 7-story buildings constructed in the last 20 years (970 41st Street and 4002 10th Avenue), along with older 4- and 6- story buildings. Mid-block areas to the south of 39th Street contain walk-up apartment buildings and residences that range in height between 2 and 6stories.

In terms of open space, public spaces along New Utrecht Avenue include the Brizzi Playground at 42nd Street and New Utrecht Avenue, a 0.65-acre playground maintained by the Department of Parks and Recreation (DPR). To the north at 39th and 9th Avenue is Heffernan Triangle, a small plaza also controlled by DPR. To the north of 37th Street is Green-wood Cemetery, a 478-acre cemetery that is a National Historic Landmark and also separately designated as a New York City Landmarks Preservation Commission (LPC) landmark. This space is privately held.

In terms of zoning districts, the Rezoning Area is zoned M1-2, which extends east-west between Greenwood Cemetery and 39th Street. To the south are R7A/C2-4 districts and R6 districts with C2-3 overlays along New Utrecht Avenue. It should be noted the R7A/C2-4 district is mapped under MIH.

The M1-2 district permits light manufacturing and industrial uses, as well as some community facility uses (Use Groups 4-14, 16-17) with a maximum FAR of 2.0 for industrial/manufacturing uses and 4.8 FAR for limited community facility uses. The maximum height regulations in M1-2 districts are controlled by the sky exposure plane, with a maximum street wall height of 60 feet. Parking regulations vary by use.

R7A/C2-4 districts permit residential, commercial, and community facility uses at a maximum FAR of 4.0 (4.6 in MIH areas). Commercial use is permitted at a maximum of 2.0 FAR and in mixed-use buildings, typically results in ground-floor commercial use, with Use Groups 6-9 & 14

permitted, which include neighborhood retail and service establishments. The bulk regulations for these districts require a base height between 40 and 65 feet (75 feet with a Qualifying Ground Floor) sand a maximum building height of 80 feet (85 feet with a Qualifying Ground Floor). In MIH areas, the required base height is between 60 and 75 feet and the maximum building height is 90 feet (95 feet with a Qualifying Ground Floor). Parking is required for 50% of market-rate dwelling units and waived for income-restricted units as the area is located in the Transit Zone. Commercial parking requirements in C2-4 districts vary with most uses generally requiring one space per 1,000 square feet, though the requirement is typically waived for fewer than 40 spaces.

The R6 district to the south of 39th Street permits residential use and community facility uses such as hospitals, schools, churches, and medical offices. R6 is a non-contextual district with no height limits, and which permits tower construction on large lots. Building envelopes heights are regulated by the sky exposure plane. The maximum floor area ratio (FAR) in R6 districts is 2.43 for residential buildings and 4.8 for community facilities. The optional Quality Housing program permits an FAR of 2.2 on narrow streets and 3.0 on wide streets and limits building heights to 55 feet and 70 feet, respectively. Off-street parking is required for 70 percent of the dwelling units, or for 50 percent of the dwelling units when the Quality Housing program is utilized. When C2-3 overlays are mapped in R6 districts, 2.0 FAR is permitted and in mixed-use buildings, typically results in ground-floor commercial use, with Use Groups 6-9 & 14 permitted, which include neighborhood retail and service establishments. The parking requirement for commercial uses varies, with most uses requiring one space per 400 square feet.

The surrounding area is also located in a Food Retail Expansion to Support Health (FRESH) Zone, with discretionary tax incentives available for the provision of a qualifying FRESH food store.

In terms of public transportation, the area is well-served by transit as the sites are directly next to the MTA D train. In addition, an MTA rail yard is present along 39th Street to the north of the Development Sites. The MTA D-train subway stops at 9th Avenue, with a station entrance across the street from the Rezoning Area. The D train travels below grade for most of the surrounding area but rises above grade at 10th Avenue and travels above New Utrecht Avenue. The B35 bus runs along 39th Street and connects the neighborhood with the Sunset Park waterfront to the west and the Flatbush and Brownsville neighborhoods to the east. The B70 bus runs along 8th Avenue and connects the neighborhood to Bay Ridge, Dyker Heights, and Fort Hamilton to the south. As mentioned above, the Rezoning Area is located in the Transit Zone.

4. Description of the Proposed Rezoning Area

The proposed Rezoning Area includes Block 5582, Lots 2 (p/o), 62, 63, 64, 65, 66, 67 and 68 as well as Block 5583, Lots 46 (p/o), 47 (p/o), 48 (p/o), 49, 55 and 57 (p/o). In total, the Rezoning Area encompasses approximately 33,718 square feet with approximately 21,638 square feet on Block 5582 and approximately 12,080 square feet on Block 3383.

The Development Sites comprise 5582, Lots 66, 67, 68 and Block 5583, Lots 48, 49 and 55, which are discussed in greater detail below. The Rezoning Area is bound by 9th Avenue in the north (80 feet wide) and 40th Street in the south (60 feet wide) along New Utrecht Avenue (80 feet wide).

Block 5582, Lot 2 (3809 New Utrecht Avenue) is an irregular and narrow City-owned tax lot utilized as rail right-of-way area for the adjacent subway, with 4,825 square feet of area. Some parking is present in a surface lot along New Utrecht Avenue. A small portion of this property would be affected.

Block 5582, Lot 62 (941 39th Street) is a 1,903 square-foot interior lot 20 feet in width and approximately 95 feet in depth. The lot is improved with a two-family home containing approximately 2,736 gross square feet or approximately 1.43 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1901.

Block 5582, Lot 63 (939 39th Street) is a 1,903 square-foot interior lot 20 feet in width and approximately 95 feet in depth. The lot is improved with a two-family home containing approximately 2,880 gross square feet or approximately 1.51 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1901.

Block 5582, Lot 64 (935 39th Street) is a 1,903 square-foot interior lot 20 feet in width and approximately 95 feet in depth. The lot is improved with a two-family home containing approximately 2,760 gross square feet or approximately 1.45 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1901.

Block 5582, Lot 65 (933 39th Street) is a 1,903 square-foot interior lot 20 feet in width and approximately 95 feet in depth. The lot is improved with a three-floor walk-up apartment building containing approximately 3,000 gross square feet or approximately 1.57 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1901.

Block 5583, Lot 46 (3923 New Utrecht Avenue) is an irregular 1,379 square-foot lot with 20 feet in width along New Utrecht Avenue and a depth of approximately 72 feet. The lot is split between R6/C2-3 and M1-2 districts and is currently improved with a single-story manufacturing/industrial use in 1,180 gross square feet or approximately 0.85 FAR. Only the M1- 2 zoned portion is in the Rezoning Area.

Block 5583, Lot 47 (3921 New Utrecht Avenue) is an irregular 1,239 square-foot lot with 20 feet in width along New Utrecht Avenue and a depth of approximately 65 feet. The lot is split between R6/C2-3 and M1-2 districts and is currently improved with two-family home with 1,280 gross square feet or approximately 1.0 FAR. Only the M1-2 portion is in the Rezoning Area.

Block 5583, Lot 57 (954 39th Street) is an irregular 1,379 square-foot lot with 20 feet of width along 39th Street and a depth of approximately 72 feet. The lot is zoned M1-2 and is currently improved with single-family home with 1,380 gross square feet or approximately 1.0 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1930.

5. Description of Proposed Development Site

The Development Sites consist of Block 5582, Lots 66, 67, 68 (923 39th Street) and Block 5583, Lots 48, 49 and 55 (3917 New Utrecht Avenue).

Block 5582, lots 66, 67 and 68 (923 39th Street) comprise a single site with approximately 85 feet of frontage along 39th Street and 46 feet of frontage along New Utrecht Avenue. The total lot area is approximately 9,072 square feet. The property contains a single curb cut along 39th Street approximately 15 feet in width and a large curb cut along New Utrecht Avenue, approximately 30 feet in width.

- Block 5582, Lot 66 (929 39th Street) is an approximately 1,903 square-foot interior lot 20 feet in width and approximately 95 feet in depth. The lot is improved with a two-family residence containing approximately 2,150 gross square feet or approximately 1.12 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1930.

- Block 5582, Lot 67 (927 39th Street) is an approximately 1,903 square-foot interior lot 20 feet in width and approximately 95 feet in depth. The lot is improved with a three- family walk-up residence containing 2,820 gross square feet or approximately 1.48 FAR. This property is legally nonconforming in the M1-2 district, as it has existed since 1930.

- Block 5582, Lot 68 (923 39th Street) is an approximately 5,394 square-foot irregular corner lot with frontage on both 39th Street (approximately 45 feet) and New Utrecht Avenue (approximately 46 feet). The lot is improved with a single-story automotive service use containing approximately 4,590 gross square feet or approximately 0.85 FAR. This building was constructed in in 1930.

Block 5583, Lots 48, 49 and 55 (3917 New Utrecht Avenue) comprise a single site with approximately 173 feet of frontage along 39th Street and 153 feet of frontage along New Utrecht Avenue. The total lot area is approximately 10,099 square feet. There is a large curb cut along 39th Street and two curb cuts along New Utrecht Avenue.

- Block 5583, Lot 48 (3919 New Utrecht Avenue) is an approximately 1,078 square-foot interior lot, 20 feet in width and approximately 50 feet in depth. The lot is used as surface parking. This property is split between M1-2 and R6 districts with the majority of the parcel zoned M1-2.

- Block 5583, Lot 49 (3917 New Utrecht Avenue) is an approximately 6,710 square-foot corner lot with frontage on both 39th Street (approximately 133 feet) and New Utrecht Avenue (approximately 133 feet). The lot is improved with a two-story mixed-use building containing ground-floor commercial use (a laundromat) and a legally nonconforming residential unit above. The lot area is approximately 10,626 gross square feet and the building is approximately 1.58 FAR. The building was constructed in 1930.

- Block 5583, Lot 55 (950 39th Street) is an approximately 2,306 square-foot interior lot with 40 feet of frontage along 39th Street and an irregular depth of approximately 50 feet. The parcel is improved with a 1,310 square-foot single-story commercial building currently occupied by an automotive service use (approximately 0.56 FAR).

6. Description of Proposed Development

The Proposed Actions would facilitate two new mixed-use buildings. The first building (Block 5582, Lots 66, 67, and 68) at 923 39th Street that would rise to 9 stories with 53,960 zoning square feet (zsf) or 5.95 FAR. The building would contain 6,965 square feet of commercial use at the ground floor (0.77 FAR), 56 dwelling units (14 affordable), and 13 required parking spaces. The building would rise to maximum height of 95 feet without a setback, where a max base height of 105 feet is permitted. The ground floor would contain a commercial use along both frontages, oriented around automotive service use, with a lobby/entrance area along 39th Street. In the rear of the property along the eastern lot line, would be a curb cut and ramp access to the building's parking in the cellar level. The cellar level would contain mechanical areas. The upper floors of the building would contain the proposed 56 dwelling units, with a preliminary mix of one- and two-bedroom apartments.

The second building (Block 5583, Lots 48, 49 and 55) at 3917 New Utrecht Avenue would rise to 8 stories with 60,583 zsf or 6.0 FAR. The building would contain 6,920 square feet of commercial use at the ground floor (0.69 FAR) and 39 dwelling units (10 affordable) and 16 parking spaces (15 required). The building would have a base height of 75 feet and a set back 10 feet along both New Utrecht Avenue and 39th Street before rising to a max height of 85 feet. The ground-floor commercial space would be occupied by an automotive service use. The lobby space would be oriented toward 39th Street and along the eastern end of the building. The cellar area would contain mechanical areas. The upper floors of the building would contain the proposed 39 dwelling units, which preliminarily comprise a mix of one-, two-, three and four-bedroom units.

7. Actions Necessary to Facilitate the Rezoning

The Proposed Actions consist of:

- A zoning map amendment to rezone the following properties from M1-2 to M1-4/R7X (MX-12) district:
    - Block 5582, Lots 2 (p/o), 62, 63, 64, 65, 66, 67 and 68
    - Block 5583, Lots 46 (p/o), 47 (p/o), 48 (p/o), 49, 55 and 57 (p/o)
- A zoning text amendment to amend Appendix F (Inclusionary Housing Designated Areas) of the Zoning Resolution of the City of New York) to establish the Rezoning Area as a Mandatory Inclusionary Housing (MIH) area under options 1 and 2.

- A zoning text amendment to ZR 123-63 would make the proposed M1-4/R7X applicable to Brooklyn Community District 12 (MX-12).

The proposed M1-4/R7X Special Mixed-Use District (MX) would alter the permitted uses pursuant to the current M1-2 zoning within the Rezoning Area from Use Groups 4-14 & 16 to Use Groups 1-14, 16 and 17 and would increase the maximum total FAR from 2.0 to 5.0 (6.0 with MIH). For commercial and light industrial uses, the maximum permitted FAR would remain unchanged at 2.0 FAR. The M1-4/R7X districts permit a base height of 60-85 feet (95 feet with a Qualifying Ground floor) and a maximum height of 120 feet (125 feet with a Qualifying Ground Floor). Under MIH, that height may be increased to a base height of 60-105 feet and a maximum height of 140 feet (145 feet with a Qualifying Ground Floor). Parking is required for 50% of dwelling units and a requirement of up to 15 spaces are waived. No parking is required for commercial retail, office, or light industrial uses in M1-4 districts. This would reduce the parking requirement from the M1-2 district, which generally requires off-street parking for most uses. This is appropriate for this area, given immediate access to mass transit.

The proposed MIH zoning text amendment would map Options 1 and 2 coterminous with the Rezoning Area. All residential developments, enlargements, and conversions within the MIH area that meet the criteria set forth in the MIH program must comply with the requirements of either Option 1 or Option 2. At this time, the Applicant intends to comply with Option 1, which requires at least 25% of residential floor area to be affordable to residents with incomes averaging 60% AMI. Under Option 1, the Applicant will provide at least at least 25% of the residential floor area (24 of the proposed total 95 dwelling units) as permanently affordable pursuant to MIH.

The proposed zoning text amendment to ZR 123-63 would make the proposed new M1-4/R7X (MIH) district applicable to Brooklyn Community District 12, where an existing MX district is located (MX-12).

The Proposed Actions would allow a higher density of residential use, provide needed commercial/light industrial neighborhood services, and create affordable dwelling units, a demonstrated need in the surrounding area all while providing opportunity for light/manufacturing uses. Given the history of automotive service uses in this area, the proposed MX district would continue to permit automotive service uses in tandem with residential use, which is only permissible in MX districts.

The Development Sites are appropriate for increased density given their location along a wide arterial corridor (New Utrecht Avenue is 80 feet wide) and their immediate proximity to transit. As mentioned above, the Rezoning Area is proximate to a subway station, with the D train accessible at 39th Street and New Utrecht Avenue, and bus transit located nearby. In terms of permitted bulk, the proposed M1-4/R7X bulk would be consistent with ongoing mid-rise development in the existing R6 district, which has resulted in 7- and 8-story commercial and residential buildings.

Additionally, the Proposed Actions would legalize the existing non-conforming uses on Block 5582, Lot 62-65 and Block 5538, Lots 47 & 57, all of which contain residential uses that have existed since at least the 1930s. Therefore, the Proposed Actions would bring the existing uses in the Rezoning Area into greater conformance and recognize the mix of uses present in this area.

Accordingly, the proposed Special MX district is appropriate for this area, as the surrounding area contains a mix of residential, commercial, and light industrial/manufacturing uses. As noted above, the building types and uses in the surrounding area reflect residential apartment buildings, as well as lower-rise industrial/commercial warehouse structures and automotive service uses. Moreover, the surrounding zoning districts support this mix of uses, with R6/C2-3. R7A/C2-4 and M1-2 zoning districts blending together around 39th Street and New Utrecht Avenue. As such, an MX district would complement the range of uses and districts in the surrounding area, as well as serving to resolve the nonconforming status of properties located in the Rezoning Area.

In terms of permitted density, the proposed M1-4/R7X district would be consistent with the pre-existing R6/C2-3 and the R7A/C2-4 zoning district that was created in 2018, as a result of the 3901 9th Avenue Rezoning. The proposed M1-4/R7X zoning would be similar, as it would require contextual height limits, improving the urban design of these corners, when compared to the M1- 2 or R6 districts that have no height limits under the sky exposure plane and/or height factor regulations.

The proposed M1-4/R7X zoning district would facilitate two new mixed-use buildings on the Development Sites and would encourage additional mixed-use development within the Rezoning Area along 39th Street. Given the proximity to transit, the Applicant believes this new density is appropriate as it would facilitate the creation of new housing units (including income-restricted units) and promote neighborhood commercial retail in this strategic location.as the MX district would continue to permit industrial/industrial, and service uses.

8. Conclusion

The Proposed Actions would rezone an existing M1-2 district to an M1-4/R7X district (MX- 12). The proposed higher density district would complement the R7A/C2-4 and R6/C2-3 districts immediately adjacent to the Rezoning Area and would legalize several existing non-conforming residential uses in the project area. In addition, this new MX district would continue to preserve and promote light industrial/manufacturing and service-oriented commercial uses in tandem with residential uses, as permitted by MX zoning district regulations for mixed-use buildings. This mixed-use district, with newly unlocked housing capacity, is also appropriately located adjacent to transit, along a wide and busy avenue and ongoing medium density development. Furthermore, the proposed project would provide new affordable housing units, a demonstrated need in the community.