Brooklyn Borough President Recommendation
CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
CalendarOffice@planning.nyc.gov

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

APPLICATION
COMMUNITY BOARD 10 TEXT AMENDMENT, SPECIAL PERMIT 73-622 – 160377 ZRK

In the matter of the application submitted by Brooklyn Community Board 10 (CB 10), pursuant to Section 201 of the New York City Charter, for an amendment of the New York City Zoning Resolution (ZR), concerning Section 73-622 Enlargements of single- and two-family detached and semi-detached residences, in Brooklyn Community District 10 (CD 10). The text amendment proposes to remove CD 10 from the aforementioned Board of Standards and Appeals (BSA) special permit. The special permit currently applies to three full community districts in Brooklyn: CD 10, CD 11, and CD 15; and a specific R2 district in CD 14. Approval of such action would not facilitate a specific project, or include any new development. Approval of such action would no longer permit the filling for or approval of applications for the special permit for enlargements of single- and two-family homes within CD 10, instead requiring enlargements to adhere to the as-of-right residential zoning regulations, or rely on pre-established remedies, such as ZR 72-21 BSA variance or an alternative BSA special permit pursuant to ZR 73-621 Enlargement, extension, or conversion of building containing residential uses, limited to 10 percent increase of permitted floor area and lot coverage and/or 10 percent decrease of open space ratio.

COMMUNITY DISTRICT NO. 10
BOROUGH OF BROOKLYN

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

SEE ATTACHED

August 10, 2016

BROOKLYN BOROUGH PRESIDENT
DATE
RECOMMENDATION FOR: COMMUNITY BOARD 10 TEXT AMENDMENT, SPECIAL PERMIT 73-622 – 160377 ZRK

The applicant, Brooklyn Community Board 10 (CB 10), seeks an amendment of the New York City Zoning Resolution (ZR), concerning Section 73-622 Enlargements of single- and two-family detached and semi-detached residences, in Brooklyn Community District 10 (CD 10). The text amendment proposes to remove CD 10 from the aforementioned Board of Standards and Appeals’ (BSA) special permit. The special permit currently applies to three full community districts in Brooklyn: CD 10, CD 11, and CD 15; and a specific R2 district in CD 14. Approval of such action would not facilitate a specific project, or include any new development. Approval of such action would no longer permit the filling for or approval of applications for the special permit for enlargements of single- and two-family homes within CD 10. Instead, homeowners seeking enlargements will be required to adhere to the as-of-right residential zoning regulations, or rely on pre-established remedies, such as ZR 72-21, BSA variance, or an alternative BSA special permit pursuant to ZR 73-621 Enlargement, extension, or conversion of building containing residential uses, which is limited to 10 percent increase of permitted floor area and lot coverage and/or 10 percent decrease of open space ratio.

On July 28, 2016, Brooklyn Borough President Eric L. Adams held a public hearing on this application. There were 10 speakers for this item, with nine speakers in support and one speaker in opposition. The speakers represented Bay Ridge Conservancy, Brooklyn Housing Preservation Alliance, CB 10, Dyker Heights Civic Association, Sheldon Lobel PC, and homeowners in the community. Council Member Vincent Gentile was also present and stated his support for this application.

The speakers in support voiced their concern over:
- The devastating impacts this special permit has had on community character and residents’ quality of life
- The abuse of this special permit over the years for private financial gain by developers, instead of its intended use to help families expand their homes to remain in place
- The fact that BSA has repeatedly disregarded CB 10 recommendations and approved every special permit application

The speaker in opposition represented four individuals who are currently at various stages of the special permit application process. The speaker advocated for a vesting provision to allow these individuals to continue their applications in accordance with ZR 73-622.

One voiced concern regarding ongoing illegal conversions in CD 10 of the community’s predominantly one- and two-family residences into single room occupancies (SROs). It was believed that this has adversely impacted the neighborhood through school overcrowding, health hazards, and strains on sanitation services.

Additional testimony was received via email from one of the four individuals currently in the process of the special permit application, respectfully urging the decision makers to consider providing vesting language so that she is able to apply small modifications to her home in order to make it more functional for her growing family.

In response to Borough President Adams’ inquiry as to whether CB 10 would be open to amending their application in order to allow the four pending special permit applicants to go before BSA, the district manager stated that there is no resistance with regard to these applications. Council Member Gentile stated that he would support such a provision and consider amending the application if there is a consensual date and vesting language.
Consideration
CB 10 has not taken a position on this application, although it is the longstanding policy of the Board to seek this amendment to the Zoning Resolution.

CD 10 is located in the southwestern portion of the borough and includes the neighborhoods of Bay Ridge, Dyker Heights, and Fort Hamilton. It is generally bounded by the Long Island Rail Road (LIRR)/Bay Ridge railroad to the north, 14th Avenue to the east, Lower New York Bay to the south, and the Narrows and Upper New York Bay to the west. CD 10 has a broad range of lower density and contextual zoning districts mapped throughout the community district, as well as multifamily and mid-density districts.

In 1998, the New York City Council adopted an application creating a new BSA special permit, ZR 73-622 Enlargement of single- and two-family detached and semi-detached residences. Originally intended as a citywide initiative, due to the negative recommendations of numerous community boards and the four affected borough presidents, the special permit applicability was restricted to a few community districts in Brooklyn. Its applicability is restricted to CDs 10, 11, and 15 and a section in CD 14.

The overall land use rationale for approving the special permit reflected the large numbers of residential buildings that do not fully comply with floor area, yard, lot coverage, and perimeter wall height requirements. It was intended to create an equitable process in which homeowners, who wished to enlarge their homes in order to accommodate their growing families, could do so in a manner consistent with the surrounding neighborhood. The special permit was expected to be an alternative method for allowing the upgrading of an aging housing stock, including fulfilling the desire to achieve additional bathrooms, bedrooms, family rooms, and upgraded kitchens that necessitate enlargement to existing homes.

The special permit allows floor area to exceed the underlying zoning district as well as up to a 10-foot encroachment into a required 30-foot rear yard. Encroachments are permitted into required side yards, but only in order to allow for a straight-line extension. No encroachments are permitted into a required front yard. Perimeter walls in R2X, R3, R4, R4A, and R4-1 districts are allowed to be increased in height only in order to match the height of a neighboring house with a taller perimeter wall. The BSA must find that the enlarged building will not alter the essential character of the neighborhood, or district in which the building is located, or impair the future use or development of the surrounding area.

This application seeks to remove CD 10 from ZR 73-622 Enlargements of single- and two-family detached and semi-detached residences. CB 10 believes that the original intent of ZR 73-622, allowing existing residents relief from non-compliances, to facilitate limited enlargement, has been applied more liberally by the BSA. Since the establishment of this special permit in 1998, 24 applications have been made within the CD 10 district. Of these applications, approximately half were disapproved by CB 10. Of those that were disapproved – all were approved by the BSA. CB 10 members believe that, in practice, applications in CD 10 have been predominantly used to legalize existing illegal conditions, or to produce luxury housing for speculative development. In addition, the lower density and contextual districts mapped extensively in the 2005 and 2007 area rezonings (approximately 400 blocks) more than adequately provide the fine-grained zoning controls to enlarge residences in keeping with the built form and character of most blocks.
CB 10 members voted four times over the last 13 years to remove CD 10 from ZR 73-622. These votes were adopted by the General Board at meetings held on December 13, 2003; December 18, 2006; November 18, 2010, and September 18, 2015. CB 10 believes that those seeking enlargements contrary to the Zoning Resolution should proceed with the established relief offered by way of BSA variance, or pursue a special permit according to ZR 73-621 *Enlargement, extension, or conversion of building containing residential uses*, which provides an additional 10 percent beyond the otherwise maximum permitted floor area. Such change would be consistent with the regulations pertaining to 55 CDs in the administration of citywide residential land use policy.

Borough President Adams acknowledges that there are currently three special permit applications at various stages of the review process, as well as another possible application that had not yet been determined if it would apply to this special permit. One application was already approved by the BSA and CB 10; another application was filed with BSA in April but was disapproved by CB 10, and the last application was filed with BSA in June but has not yet reached CB 10 for a vote. These are within the R2 zoning district of CD 10.

There are several sections of the Zoning Resolution that establish precedent for vesting when adoption of zoning text and/or map changes would otherwise preclude the completion of construction pursuant to a lawfully issued building permit. These sections should be taken into consideration should it be deemed appropriate to include a vesting provision as part of the CB 10 requested text amendment.

Though ZR 11-331 provides the right to complete construction, this provision is not even likely to help the property owner with the BSA approval. This vesting standard requires for the foundation to be completed as long as a building permit has been lawfully issued prior to the effective date of an applicable amendment, and all work on foundations being completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit automatically lapses on the effective date and the right to continue construction terminates. An application to renew the building permit may be made to BSA not more than 30 days after the lapse of such building permit. BSA may renew the building permit and authorize an extension of time limited to one term of no more than six months to permit the completion of the required foundations, provided that BSA finds that, on the date the building permit lapsed, excavation had been completed and substantial progress had been made on foundations.

ZR 11-332 provides an extension of the time period to complete construction where a certificate of occupancy or a temporary certificate of occupancy had not been issued within two years after the effective date of any applicable amendment. It also provides an opportunity to complete construction that has not been completed on the effective date of any applicable amendment. BSA may renew such a building permit for two terms of not more than two years each for a minor development. In granting such an extension, BSA shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.

ZR 11-333 provides residential developments with building permits issued on or before the effective date of an amendment, provided the foundation has been completed though a certificate of occupancy had not been issued within two years. This vesting allows construction to continue up to four years for a minor development, provided the commissioner of the New York City Department of Buildings (DOB) determines that 30 percent of the floor area of the minor development was roofed and enclosed by walls within two years of the effective date.
ZR 11-335, provides for lawfully-issued building permits for other construction in R1-2A and R2A districts, to permit construction to continue, provided that the DOB determines that all of the requisite structural framing to perform the work authorized under the permit was completed on or before the date establishing the district. If the DOB commissioner determined that such framing was not completed on such date, the provisions of paragraph (a) of Section 11-332 were applied.

Borough President Adams supports CB 10 for taking the initiative for self-determination of whether ZR 73-622 Enlargements of single- and two-family detached and semi-detached residences, should remain applicable within CD 10. As for the four property owners in various states of seeking enlargements pursuant to the special permit, he understands that consideration will be given by Council Member Gentile in consultation with CD 10 to determine to what extent, if any, vesting language might be incorporated in the determination made by the City Council. He believes that should vesting language be incorporated, established standards contained in these vesting sections should be given consideration to ensure that the right to construct is not open-ended and that there are mechanisms for relief if certain milestones are not met.

Borough President Adams also acknowledges the concerns stated at his public hearing regarding the ongoing illegal conversions of one- and two-family homes into SROs. This has been an ongoing issue elsewhere in Brooklyn. Borough President Adams, with support of Council Member Gentile, Council Member Jumaane D. Williams, chair of the Committee on Housing and Buildings, and Council Member Barry S. Grodenchik, introduced a bill on July 14, 2016 to increase the penalties for aggravated illegal conversions to three or more illegal dwelling units being created within one structure. The bill was developed in response to conditions that threaten the safety of occupants and neighbors, such as a November 2014 fire in an illegal unit above a Flatbush church, which killed an individual and injured 16 others while destroying the building. To prevent such incidents in the future, the proposed measure would establish a fine of at least $45,000 for aggravated illegal conversions — $15,000 for each unit — and expand the authority of the DOB and the New York City Environmental Control Board (ECB) to inspect properties and impose fines and other penalties. The bill is expected to make the City Council hearing agenda early this fall.

**Recommendation**

Be it resolved that the Borough President of Brooklyn, pursuant to section 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve this application.