

**Brooklyn Borough President Recommendation**  
CITY PLANNING COMMISSION  
120 Broadway, 31<sup>st</sup> Floor, New York, NY 10271  
CalendarOffice@planning.nyc.gov



**INSTRUCTIONS**

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

**APPLICATION**

WEST 22<sup>ND</sup> – WEST 23<sup>RD</sup> STREET REZONING – 170458 ZMK, 170459 ZRK

Applications submitted by West 16-22 Properties LLC pursuant to Sections 197-c and 201 of the New York City Charter for zoning map and text amendments affecting 25 lots on a block bounded by West 22<sup>nd</sup> Street, West 23<sup>rd</sup> Street, Seaside Park, and Surf Avenue. The zoning map amendments would change portions of such property, currently zoned R5, to R6A and R7D districts, and establish C2-4 commercial overlays within those districts. The zoning text amendments would enlarge the Special Coney Island District (SCID) with a new parcel of the Coney Island West Subdistrict, comprised by the 25 lots in the project area, establish an MIH area coterminous with the project area, and extend the Transit Zone Map of Coney Island to cover the project area. Such actions would facilitate the development of a five- and 12-story commercial and residential building with 78 dwelling units in Brooklyn Community District 13 (CD 13). The project would provide approximately 20 units affordable to households at an average of 60 percent Area Median Income (AMI), pursuant to MIH Option 1.

BROOKLYN COMMUNITY DISTRICT NO. 13

BOROUGH OF BROOKLYN

**RECOMMENDATION**

APPROVE  
 APPROVE WITH  
MODIFICATIONS/CONDITIONS

DISAPPROVE  
 DISAPPROVE WITH  
MODIFICATIONS/CONDITIONS

SEE ATTACHED

\_\_\_\_\_  
BROOKLYN BOROUGH PRESIDENT

November 30, 2018

\_\_\_\_\_  
DATE

**RECOMMENDATION FOR: WEST 22<sup>ND</sup> – WEST 23<sup>RD</sup> STREET REZONING – 170458 ZMK, 170459 ZRK**

West 16-22 Properties LLC submitted two applications pursuant to Sections 197-c and 201 of the New York City Charter for zoning map and text amendments affecting 25 lots on a block bounded by West 22<sup>nd</sup> Street, West 23<sup>rd</sup> Street, Seaside Park, and Surf Avenue. The zoning map amendments would change portions of such property, currently zoned R5, to R6A and R7D districts, and establish C2-4 commercial overlays within those districts. The zoning text amendments would enlarge the Special Coney Island District (SCID) with a new parcel of the Coney Island West Subdistrict, comprised by the 25 lots in the project area, establish a Mandatory Inclusionary Housing (MIH) area coterminous with the project area, and extend the Transit Zone Map of Coney Island to cover the project area. Such actions would facilitate the development of a five- and 12-story commercial and residential building with 78 dwelling units in Brooklyn Community District 13 (CD 13). The project would provide approximately 20 units affordable to households at an average of 60 percent Area Median Income (AMI), pursuant to MIH Option 1.

On October 25, 2018, Brooklyn Borough President Eric L. Adams held a public hearing on the proposed zoning map and zoning text amendments. There was one speaker on the item, a representative of 32BJ Service Employees International Union (SEIU), who spoke in opposition, citing a lack of commitment to well-paying building service jobs at the proposed development.

In response to Borough President Adams' inquiry regarding more than 30 occupied rent-stabilized units located on the applicant's site and what actions the property owner would take to secure sound affordable housing for those who would be displaced to facilitate demolition, the applicant's representative confirmed that there are currently 32 apartments on the development site with both rent-regulated and non-regulated tenants. In accordance with existing New York State Division of Housing and Community Renewal (HCR) guidelines, rent-regulated tenants would be provided with notice and relocation options prior to demolition. Non-regulated tenants would be given at least 12 months' notice before construction and offered units in other applicant-owned buildings in the Coney Island community at their current rents. The applicant is prepared to make a commitment and a plan to effectuate relief for all tenants.

In response to Borough President Adams' inquiry as to whether one of the community's affordable housing administering agents would be used in the tenant selection process in order to ensure the highest level of participation from CD 13, and whether the applicant's marketing strategy would include a financial literacy campaign to assist local residents in becoming lottery-eligible, the representative stated that the applicant has not yet selected an administering agent, but has had preliminary discussions with several affordable housing nonprofits, and would welcome recommendations for organizations that might serve in such capacity in Coney Island.

In response to Borough President Adams' inquiry regarding the qualifying income range for prospective households based on household size, the anticipated rents based on the number of bedrooms, and the distribution of units by bedroom size, the applicant's representative stated that the applicant would select MIH Option 1, with 25 percent of floor area affordable to households at an average of 60 percent AMI. For units at 80 percent AMI, one and two-bedroom apartments would be offered at \$1,252 to \$1,504 dollars, in accordance with the 2018 maximum rent guidelines.

In response to Borough President Adams' inquiry regarding the incorporation of sustainable features such as blue, green, or white roof coverings, passive house design, permeable pavers, New York City Department of Environmental Protection (DEP) rain gardens, solar panels, and/or wind turbines, the representative noted that the architect is currently exploring sustainability measures, including a green roof, that may be integrated into the design.

In response to Borough President Adams' inquiry regarding the inclusion and participation of locally-owned business enterprises (LBEs) and minority- and women-owned business enterprises (MWBEs) in the construction process, the representative expressed intent to further discuss LBE and MWBE participation.

Subsequent to the hearing, Borough President Adams received a letter from the applicant, dated November 16, 2018, that clarified the number of rent-regulated and unregulated units on the applicant-owned sites, and outlined a relocation plan for all tenants.

### **Consideration**

CB 13 disapproved the application on October 24, 2018.

The proposed land use actions would affect 25 tax lots on a block located immediately outside the western boundary of the SCID. Together, the lots, which include both applicant-owned and non-applicant owned properties, comprise approximately 88,370 sq. ft. and are currently zoned R5. The requested rezoning would change 19 of the lots, including the development site to R7D. Six additional lots, all fronting West 23<sup>rd</sup> Street, and nearest to Seaside Park, are proposed to be rezoned to R6A.

The project site consists of five applicant-controlled lots, including one vacant lot and four lots improved with multi-family residential buildings: 3016 West 22<sup>nd</sup> Street, 3022 West 22<sup>nd</sup> Street, 3017 West 23<sup>rd</sup> Street, and 3023 West 23<sup>rd</sup> Street. According to additional information provided by the applicant, the buildings contain a total of 37 units, of which 15 are rent-regulated and 22 are unregulated. The majority of tenants assumed occupancy in the last five years. Regulated rents range from \$808 to \$1,091 per unit, while unregulated rents range from \$850 to \$1,500 per unit, though 19 of these units are rented for less than the highest rent for a regulated unit.

The requested zoning text amendment would extend the Coney Island West Subdistrict to the portion of the block covered by the rezoning area, to be mapped as Parcel H of the Special Coney Island District SCID. On this new parcel, the maximum height of a building within the R6A zone would be 85 feet, while the maximum height of a building within the R7D zone would be 150 feet, inclusive of MIH affordable housing. Such regulations would promote the development of up to eight (R6A) and 15-story (R7D) buildings on the block. Such height caps are intended to create a transition from the maximum permitted height on the east side of West 22<sup>nd</sup> Street, which is 220 feet.

The proposed project would be built to an FAR of 5.76, of which 4.91 would be residential floor area, and 0.85 would be commercial floor area. In all, the development will contain 100,583 sq. ft. including 85,680 sq. ft. of residential use and 14,903 sq. ft. of retail use. The five-story portion would rise to a height of 61 feet, and the 12-story portion would rise to just above 131 feet.

The surrounding context is defined by the SCID to the east, and residential areas to the north and west. Surf Avenue, which lacks a commercial overlay west of the amusement zone, is lined with a mix of residential and community facility uses. There are a number of high-rise apartment towers that provide affordable housing according to New York State programs such as Mitchell-Lama. The area also contains several New York City Housing Authority (NYCHA) complexes.

The amusement zone has seen significant investment in recent years, stemming from the 2009 Coney Island Comprehensive Rezoning Plan. The new Ford Amphitheater at Coney Island Boardwalk and Seaside Park, completed in 2016, occupy the southern portion of the development block. A number of new residential buildings, some 100 percent affordable, are planned for the surrounding blocks, including a 135-unit affordable and supportive housing development on the corner of Surf Avenue and West 21<sup>st</sup> Street.

With regard to the applicant's proposed 78-unit development, according to MIH Option 1, the development rights generated from the R7D section of the site would result in approximately 20 permanently affordable housing units comprising 25 percent of the total floor area. Development adhering to the MIH program is generally consistent with Borough President Adams' objectives, because it results in permanently affordable housing, and allows a wide range of households to qualify for income-restricted units through the City's affordable housing lottery.

The November 16, 2018 letter to Borough President Adams expressed intent to take the following strategies, as part of a tenant relocation plan for the 37 applicant-controlled units: tenant notification 12 months prior to any demolition, payment of moving expenses for tenants who relocate within Brooklyn, a first right of refusal, based on length of tenancy, for those wishing to reside in the proposed development, relocation to comparable units in other applicant-owned buildings within Coney Island under current rents for the terms of their lease, and the provision of a final Tenant Relocation Report summarizing the outcome of such efforts to Borough President Adams and CB 13.

It should be noted that a tenant relocation plan presented is not legally binding, and provides no guarantees that the displaced tenants would be able to remain in the area, or secure affordable housing elsewhere, and is absent of assurances that rent-regulated tenants would be secured in rent-stabilized apartments based on relocation. As for the unregulated tenants, the fact that many pay rents on par with the regulated tenants in this apartment building raises an additional concern regarding the expressed strategies, as it would merely retain rent for the duration of the lease. Should the offered relocation building command higher rent, it would be likely that a relocated tenant would have limited ability to pay a market-rate rent when the lease expires. Moreover, such guiding principles have not been developed in consultation with the existing tenants.

Additionally, even with local preference for CD 13 and MIH Option 1, it is unlikely that the 20 envisioned MIH units in the proposed development would be a realistic relocation resource for the current tenants. Furthermore, the extent of the proposed rezoning would lead to a substantial risk of displacement on properties beyond the applicant's influence, specifically 3008 and 3046 West 22<sup>nd</sup> Street. Borough President Adams does not believe that potential displacement on non-applicant lots would be abated by any zoning in excess of possibly R6A/MIH and certainly R6B/MIH.

While not all of the non-applicant owned residential buildings are at risk of demolition, a number of these properties are substantially underbuilt. Of particular concern are two residential buildings, located at 3008 and 3046 West 22<sup>nd</sup> Street, with a total of 33 rent-regulated units. While the project's Environmental Assessment Statement (EAS) identified seven projected development sites, in addition to the applicant's assemblage, the analysis did not deem that the requested rezoning would place these two sites at risk of demolition — the rationale being that the rent-regulated tenants would be protected by HCR regulations. In his past responses to draft scopes for preparing environmental impact statements, Borough President Adams noted situations where rent-stabilized buildings subject to rent protection had been demolished after the property had benefitted from an upzoning, despite not being classified as a probable or potential development site. In his scope comments, he has consistently expressed concern that such analysis neglects the realistic probability that, despite rent-stabilized status, significantly upzoned properties might be deemed attractive as development sites based on the extent of zoning floor area built in comparison to zoning floor area permitted. The failure to disclose 3008 and 3046 West 22<sup>nd</sup> Street as development sites with resulting residential displacement is a result of questionable methodology.

At present, both 3008 and 3046 West 22<sup>nd</sup> Street are built over the maximum allowable R5 residential floor area ratio (FAR) of 1.25. However, rezoning to R7D/MIH would unlock an FAR of 5.6, which would allow the development of buildings of up to 150 feet tall on the block. As for 3008 West 22<sup>nd</sup> Street, it is developed with a FAR of 1.47, well below half of the 4.2 market-rate floor area ratio that would result

from the proposed rezoning. If rezoned, its 18 tenant households would be at risk for displacement. With regard to 3046 West 22<sup>nd</sup> Street, as it is held in common ownership with the adjacent vacant lot, it should be assumed as an assemblage with combined post-rezoning R7D development rights of 36,640 sq. ft. As a merged zoning lot, it is constructed to 1.38 FAR, thus well below half of the 4.2 market-rate floor area ratio that would result from the proposed rezoning. If rezoned, its 15 tenant households would be at risk for displacement.

Contrary to the assumptions of the applicant's EAS, rent-regulated status does not preclude tenant displacement, as rent stabilization is not a legal deterrent to lawful demolition. According to Section 9 NYCRR 2524.5 of the Rent Stabilization Code, a property owner of a rent stabilized building is allowed to not renew the lease of a rent-stabilized tenant on the grounds that the property owner intends to demolish the building. HCR permission is subject to approved plans for future development as well as proof of financial ability to complete the project with agreement to pay the tenants' relocation expenses and provide a stipend according to established formulas.

While Borough President Adams is generally supportive of rezonings that result in the creation of permanently affordable housing, pursuant to MIH, he does not support a change to the zoning map. In this case, Borough President Adams is concerned that the resulting displacement of 37 rent-regulated and unregulated units on the applicant's site, absent of a satisfactory legally-binding relocation plan, would far exceed the public benefit derived from development according to MIH. In addition, Borough President Adams is concerned about the undisclosed risk of residential displacement associated with the non-applicant controlled sites.

Given the number of units that would be directly and indirectly displaced by the proposed development and in absence of a legally-binding satisfactory tenant relocation plan, Borough President Adams believes that the requested zoning results in too much displacement and uncertainty relative to the public benefit of affordable housing achieved through MIH and therefore, the application should be denied.

**Recommendation**

Be it resolved that the Brooklyn borough president, pursuant to sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council disapprove this application.



## **Sheldon Lobel &**

**ATTORNEYS AT LAW**

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November 16, 2018

### **VIA EMAIL**

Honorable Eric Adams  
Brooklyn Borough President  
Borough Hall  
209 Joralemon Street  
Brooklyn, NY 11201

**Re: ULURP Nos. C170458ZMK & N170459ZRK  
West 22<sup>nd</sup> Street Rezoning  
Brooklyn, New York (the “Premises”)**

Dear Borough President Adams,

West 16-22 St. Properties, LLC (the “Applicant”) has applied to the Department of City Planning for the rezoning of the Applicant’s property (ULURP Nos. C170458ZMK & N170459ZRK) to enable the construction of 78 quality housing units, of which 20 would be permanently affordable. The Applicant understands that the construction of this housing, while providing significant benefits for the community as well as much needed affordable housing, will require the temporary relocation of the occupants of 37 units in the Applicant’s existing buildings. The Applicant is committed to minimizing the impacts of construction on its current tenants, and has committed to a thorough tenant relocation plan to ensure minimal disruption during construction. In conversation with Brooklyn Community Board 13 and the Brooklyn Borough President’s office, we understand that there are serious community concerns about construction-related displacement. We are therefore providing this more detailed plan to address those concerns.

### **TENANT RELOCATION PLAN**

Our tenant relocation plan is guided by certain key principles: (i) Tenants must be given adequate time to consider their full range of options and make plans accordingly; (ii) Tenants should be able to remain within the Coney Island community; (iii) Tenants should have accommodations equal or superior to their current units; (iv) Rent-stabilized tenants should preserve their current rent protections; (v) Unregulated tenants should not have their rents increased during the life of their lease; (vi) Tenants should be given assistance in relocating,



regardless of their destination; and (vii) Relocated tenants should be given the right of first refusal to units in the new development (the “Proposed Buildings”).

In furtherance of these principles, the Relocation Plan below includes elements for (a) tenant notification, (b) Applicant commitments to assistance in identifying sites for potential relocation, (c) fixed rents for tenants relocated to Applicant-owned buildings, and (d) Applicant commitments to tenant assistance in relocation and return.

### **Tenant Notification**

The Applicant commits to providing tenants with at least twelve months’ notice before any demolition begins.

### **Moving Expenses**

The Applicant will assist any tenant relocating within Brooklyn with the moving process. If the tenant elects to move into the Proposed Buildings after construction, the Applicant will make arrangements for that move.

### **First Right of Refusal**

Tenants will be offered the right of first refusal, based on their length of tenancy, to the new units if they desire to return to the Proposed Building once construction is completed. The new building will offer a better living environment at rates comparable to the market in the area. To make this option more realistic for tenants, the Applicant will pay for moving expenses in the same manner that is being offered when tenants move out of the development site.

### **Alternate Accommodation Assistance**

The Applicant will offer the current tenants’ comparable units in other Applicant-owned buildings within the Coney Island area. Tenants who are relocated to Applicant-owned buildings will pay rents on the same schedule as their current rents regardless of the unit to which they are relocated. Units will be offered to tenants based on the length of their tenancy.

If a suitable unit cannot be located in an Applicant-owned site, the Applicant will assist tenants in finding other similar accommodations in the Coney Island area.

### **Final Tenant Relocation Report**

A final Tenant Relocation Report summarizing the outcome of tenant relocation efforts will be provided to the Borough President’s office and Community Board 13 before demolition begins.



**Conclusion**

West 16-22 St Properties LLC, is committed to ensuring that its tenants are properly cared for during the construction of the Proposed Buildings. We believe that the measures described above adequately address the concerns of the community and the Borough President's office. We are happy to discuss these measures further.

Sincerely,

Richard Lobel