

Brooklyn Borough President Recommendation
CITY PLANNING COMMISSION
120 Broadway, 31st Floor, New York, NY 10271
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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 #: 29 JAY STREET REZONING – 180344 ZMK, 180345 ZRK

In the matter of an application submitted by Forman Ferry, LLC pursuant to Sections 197-c and 201 of the New York City Charter, for a zoning map amendment to change the western portion of a block bounded by Bridge Street, Jay Street, John Street, and Plymouth Street in Brooklyn Community District 2 (CD 2) from an M1-4/R8A district to M1-6/R8X, and zoning text amendments to modify Sections 123-63 and 123-66 of the New York City Zoning Resolution (ZR) to add R8X to the list of residential districts mapped in the MX-2 Special Mixed Use District, and allow the base street wall height of developments in the rezoning area to be increased based on the street wall heights of adjacent buildings. Such actions would facilitate the development of an approximately 189,500 square-foot building with a commercial Floor Area Ratio (FAR) of 10.0 and a total height of 148 feet, according to the maximum FAR permitted under the M1-6//R8X (MX-2) zoning district, without the inclusion of permissible residential development rights. The envisioned building would contain ground-floor retail and office uses.

COMMUNITY DISTRICT NO. 2

BOROUGH OF BROOKLYN

RECOMMENDATION

180344 ZMK

- APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

- DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

180345 ZRK

- APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

- DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

SEE ATTACHED

October 5, 2018

BROOKLYN BOROUGH PRESIDENT

DATE

RECOMMENDATION FOR: 29 JAY STREET REZONING – 180344 ZMK, 180345 ZRK

Forman Ferry, LLC submitted an application pursuant to Sections 197-c and 201 of the New York City Charter, for a zoning map amendment to change the western portion of a block bounded by Bridge Street, Jay Street, John Street, and Plymouth Street in Brooklyn Community District 2 (CD 2) from an M1-4/R8A district to M1-6/R8X, and zoning text amendments to modify Sections 123-63 and 123-66 of the New York City Zoning Resolution (ZR) to add R8X to the list of residential districts mapped in the MX-2 Special Mixed Use District, and allow the base street wall height of developments in the rezoning area to be increased based on the street wall heights of adjacent buildings. Such actions would facilitate the development of an approximately 189,500 square-foot building with a commercial Floor Area Ratio (FAR) of 10.0 and a total height of 148 feet, according to the maximum FAR permitted under the M1-6/R8X (MX-2) zoning district, without the inclusion of permissible residential development rights. The envisioned building would contain ground-floor retail and office uses.

On August 23, 2018, Brooklyn Borough President Eric L. Adams held a public hearing on these zoning map and text amendments. There were four speakers on the item, with two in favor and two in opposition. Those in favor included a representative from the DUMBO Neighborhood Alliance, who cited other new buildings in the area and the appropriateness of the building at this site, and a representative of the DUMBO Improvement District (DUMBO BID), who expressed support for the commercial upzoning, the building's design, and the opportunity to enhance Jay Street as a gateway to Brooklyn Bridge Park. Those opposed included a representative of 32BJ Service Employees International Union (SEIU), who cited a lack of commitment to well-paying building service jobs at 29 Jay Street, and a local resident who expressed concern about the building's proximity to other homes along Plymouth Street, the views of which would be compromised by its bulk and height.

In response to Borough President Adams' inquiry as to whether there would be any mechanism to guarantee that the proposed development is constructed and occupied as a commercial office building, rather than developed according to building plans inclusive of residential use, the applicant's representative noted that while the current zoning allows a residential FAR of 7.2, the applicant is committed to constructing a fully commercial building. In addition, the applicant is requesting a Certificate of Appropriateness (C of A) from the New York City Landmarks Preservation Commission (LPC). The representative emphasized that 29 Jay Street, as proposed, cannot legally be used for residential use.

Borough President Adams noted that the Brooklyn Public Library (BPL) is seeking a satellite location for its Brooklyn Heights branch, and that local community and cultural non-profit uses would benefit from being able to secure affordable rents in the area. In response to Borough President Adams' inquiry as to what consideration would be given to incorporating such uses in the ground-floor and other lower-floor commercial space, the representative stated that the applicant would be willing to consider occupancy by cultural organizations, provided that such occupancy is economically feasible for the development.

In response to Borough President Adams' inquiry regarding the incorporation of sustainable features such as blue, green, or white roof coverings, passive house design, rain gardens, solar panels, and/or wind turbines, the representative stated intent to provide a white roof, which could be upgraded to a blue or green roof. While the current design for 29 Jay Street does not incorporate active solar or wind generation, consideration has been given to sustainable measures that will reduce energy consumption, such as daylighting.

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 that the applicant would work to develop relationships with LBEs and MWBEs to achieve hiring goals.

Subsequent to the hearing, Borough President Adams received written testimony in opposition from half a dozen local residents expressing concerns about 29 Jay Street's proposed height and scale, which would reduce air and light to adjacent, shorter buildings, the building's potential impacts on the historic district and neighborhood character, compounded with other new development coming to DUMBO; the appropriateness of a fully commercial building in an increasingly residential area; the limited capacity of the York Street subway station to accommodate the building's future employees; potential problems associated with locating a loading dock on Plymouth Street, and existing issues with pedestrian and vehicular congestion on local streets.

Consideration

Brooklyn Community Board 2 (CB 2) voted to approve this application on August 27, 2018.

The proposed zoning actions would affect two lots with a total area of 28,500 square feet (sq. ft.) fronting Jay, John, and Plymouth streets. The northern lot is occupied by 25 Jay Street, a five-story commercial and residential building that is not owned by the applicant. The southern lot contains the development site, 29 Jay Street, a one-story warehouse currently used as a dance school and studio.

Both sites are part of the DUMBO Historic District, designated in 2007 by LPC. However, 29 Jay Street is listed as a non-contributing building and is therefore not subject to the same level of regulation as would apply to 25 Jay Street, where utilization of excess development rights would be highly restricted. The proposed rezoning area would affect a section of the existing M1-4/R8A district that was created as part of the 2009 DUMBO rezoning, which established a mixed manufacturing and residential (MX-2) district over 12 blocks previously zoned M1-2 and M3-1, along with a zoning text amendment that permits the utilization of the voluntary Inclusionary Housing (IH) bonus. This rezoning was designed to facilitate residential conversion of the neighborhood's loft buildings, incentivize new residential construction with an affordable housing component, and position Jay Street as a gateway to the revitalized DUMBO waterfront entry to Brooklyn Bridge Park.

The M1-4/R8A zoning district allows a commercial FAR of 2.0 and a maximum FAR of 7.2 based on residential development inclusive of affordable housing. It was anticipated that this rezoning would be conducive to resulting in this site being redeveloped as a high-rise residential building with ground-floor commercial space. The requested zoning map and text modifications would facilitate a 12-story fully commercial building with a continuous street wall to the full height of the building, a building typology that reflects earlier high-rise loft construction in DUMBO, including 20 Jay Street, directly opposite the site, but that is not permitted under the current zoning. The proposed building would front both Jay and Plymouth streets, which are classified as narrow streets. The project's required loading berth would be located on Plymouth Street.

The rezoning area is part of the DUMBO BID and located within the Coastal Zone Boundary and the 100-year floodplain, with a moderate to low risk of flooding. The surrounding context includes a mix of commercial, light industrial, and residential uses. The majority of the buildings are historic in character, and higher than six stories. The site is accessible via the Sixth Avenue Local F train at the York Street station, located three blocks south, and the B67 bus, which stops at Bridge and Front streets.

Borough President Adams acknowledges concerns from several local residents with regard to the proposed development's bulk and height, which seeks to not include the extent setbacks for air and light required for the existing zoning, though notes that even with the requested zoning map and text

changes, building form would still remain the purview of LPC to determine the extent of appropriateness that the building's represented configuration.

Borough President Adams generally supports the redevelopment of underutilized land for productive uses that maximize opportunities for permanent jobs for Brooklyn residents. He supports the rezoning of the existing M1-4 to M1-6 as a means to establish appropriate opportunities for the expansion of the commercial office district established in recent years, as the DUMBO neighborhood has seen an influx of technology companies, contributing to increased demand for commercial office space. However, while the proposed development is represented as a fully commercial building, Borough President Adams is concerned that the applicant retains the right to maximize the permitted amount of market-rate residential floor area. As such, there is no guarantee that the eventual development would not substantially diminish the public policy benefit associated with the represented commercial development project. He, therefore, does not support the requested zoning district designation, which involves pairing the requested M1-6, which would substantially enrich the site with commercial FAR, with an R8X residence district, and the zoning text changes that would modify height and setback regulations for 29 Jay Street. While the R8X retains the allowable residential FAR of the existing paired R8A district, it could result in a building of up to 155 feet (with a qualifying ground floor and up to 175 feet with affordable housing), with no affordable housing and significantly less commercial office floor area. Borough President Adams believes that legal or other zoning mechanisms would best safeguard the represented intent of the proposed development. Additionally, Borough President Adams believes that there are opportunities to further a range of his policies such as setting aside space for local art and/or cultural entities, incorporating resilient and sustainable energy and stormwater practices, and promoting a high level of LBE/MWBE hiring.

Appropriateness of the Requested Zoning/Certainty of Development as a Commercial Building

If developed as a commercial building, 29 Jay Street would advance a legitimate public purpose of job creation while meeting demand for new office space in the DUMBO neighborhood. However, the actions before Borough President Adams do not adequately ensure that 29 Jay Street would be developed as proposed. While the applicant has presented a fully commercial building, there is no mechanism in the ULURP process to preclude the inclusion of residential use in lieu of a portion of commercial space.

Moreover, while development is subject to approval by the LPC, and the project drawings represent an entirely commercial building, there would be no guarantee that subsequent plans filed with the New York City Department of Buildings (DOB) would be based on the pending LPC consideration as opposed to a subsequent filing.

Therefore, if the requested zoning actions are approved, and there is a change in the applicant's development philosophy, the owner would retain the right to advance a new design for LPC's consideration that could incorporate up to 5.4 FAR of market-rate residential floor area, while not exceeding the permitted M1-6/R8X base FAR of 10.0.

Borough President Adams believes that allowing a development site the dual benefit of exceeding the existing base FAR, resulting in the addition of a few floors of commercial development while including significant market-rate residential floor area, is not a desirable outcome as it would merely be largely transferring the voluntary affordable housing zoning bonus for more lucrative commercial floor area, and subsequently creating a negative precedent for the area.

According to the existing zoning, the applicant could exceed the base 5.4 FAR by utilizing a 33 percent density bonus, 80 percent of which would be permanently affordable housing floor area with initial rents set at no more than 80 percent Area Median Income (AMI). Under the proposed M1-

6/R8X rezoning, the developer could utilize the 5.4 market rate residential FAR, and in lieu of the opportunity to realize an additional 1.44 FAR of affordable housing, achieve up to 4.6 FAR of commercial development. However, the ability to do so would depend on the massing approved by the LPC, which might preclude the full utilization of the available 4.6 FAR in excess of 5.4 market rate residential floor area. Moreover, the R8X portion of the requested M1-6/R8X rezoning could allow the LPC to grant residential development rights to exceed the existing permitted height by an additional 30 feet, despite the fact that the represented development does not incorporate residential floor area. The permitted residential development scenario contradicts any basis for approving the requested M1-6/R8X upzoning.

In order to provide greater certainty that 29 Jay Street would be constructed as proposed, Borough President Adams believes that in lieu of the requested zoning text amendments to modify the standard height and setback requirements, and overall height through the M1-6/R8X zoning district, that such development according to M1-6/R8A should also be pursuant to an amended version of the existing special permit according to ZR Section 74-711 applicable in historic districts, as would need to be further modified to be applicable to non-contributing buildings in LPC-designated historic districts. Requiring such a special permit as a pathway to modify standard height and setback requirements would more likely result in any resulting development being contingent on drawings approved by the LPC that would allow for waivers for exceeding maximum permitted height, required building setback, and other modifications to realize a building massing. Furthermore, in response to concerns expressed by several community residents, it would even be possible to seek a waiver of the otherwise required loading berth. Any redesign of 29 Jay Street to include residential use that would seek zoning modifications would also require the filing of a development-specific special permit, subject to a separate ULURP application and review process.

Therefore, Borough President Adams recommends that unless a legally binding mechanism is established to require only commercial and/or community facility development, in lieu of approving zoning text amendments to ZR Sections 123-63 and 123-66, the City Council should seek for the zoning map amendment to be linked to an application for modifying ZR Section 74-711 Landmark preservation in all districts, to make the special permit applicable to non-contributing buildings in New York City historic districts, along with the filing of such a special permit for waivers subject to LPC discretion prior to consideration by the New York City Planning Commission (CPC), with a right to review by the City Council.

Set Aside Portion of Commercial and/or Retail Space for Local Arts and/or Cultural Entities

It is one of Borough President Adams' policies to assist community-based non-profit organizations with securing affordable space. These organizations play an important role in the neighborhoods they serve, though it is too often a challenge to secure sufficient affordable space to grow and maintain their operations. Many cultural organizations have contacted Borough President Adams seeking assistance in securing space to expand and sustain their programming. In response to those concerns, Borough President Adams' policy is to review discretionary land use actions for their appropriateness to promote cultural activities.

In June 2016, Borough President Adams released "All the Right Moves: Advancing Dance and the Arts in Brooklyn," a report examining the challenges facing artists in the borough, along with accompanying recommendations. The report highlighted the benefits of arts and dance, including maintaining physical fitness and enjoying creative self-expression, as well as contributions to the vibrant culture of Brooklyn. Borough President Adams finds many challenges facing the local arts community, such as an absence of diversity — fewer than half of the individuals working in dance in Brooklyn are people of color based on 2000 United States Census data. Additionally, funding for the arts has decreased dramatically in New York City in recent years, including by 37 percent from the

New York State Council of the Arts (NYSCA), 15 percent from the National Endowment for the Arts (NEA), and 16 percent from the New York City Department of Cultural Affairs (DCLA).

Data show that such cultural activities create a variety of positive contributions, including combating the borough's high rate of obesity — as of 2016, 61 percent of adults are overweight or obese, according to the New York State Department of Health (NYSDOH) — and helping children succeed in school, a finding supported by research released by the Citizens' Committee for Children of New York, Inc. Demand for cultural programs continues to grow across Brooklyn. A 2015 report from the Center for an Urban Future found a 20 percent increase in attendance at events organized by local cultural institutions since 2006.

There are many cultural and dance organizations that have contacted Borough President Adams seeking assistance securing space to grow and sustain the programming provided. In response to those concerns, Borough President Adams' policy is to review discretionary land use actions for their appropriateness to promote cultural and dance activities.

Borough President Adams believes that the proposed development's location in DUMBO is ideally suited for the inclusion of arts and cultural activities, given the concentration of these uses in the neighborhood, and a growing residential population that might benefit from such services. Furthermore, tenanting more than 8,000 sq. ft. of ground-floor retail space at this location would activate and strengthen this portion of Jay Street as a commercial corridor.

Borough President Adams believes floor area within a portion of the approximately 8,442 sq. ft. of 29 Jay Street's commercial ground floor, which would otherwise be devoted exclusively for retail uses, and/or from one of the lower levels of the commercial office floors, should be marketed to local arts and cultural groups, or locally-based community organizations. However, he is aware that such uses cannot afford to compete with the rent that retail uses would likely pay to lease at this location.

Therefore, prior to considering the application, the City Council should obtain commitments, in writing, from the developer, Forman Ferry, LLC, clarifying how it would memorialize the extent that it would set aside a portion of the ground-floor commercial and/or retail space at 29 Jay Street for local non-profit organizations such as arts and/or cultural entities at below-market lease terms, as warranted.

To the extent that the City Council seeks to provide below-market rents to accommodate arts and/or cultural organizations, Forman Ferry, LLC should actively solicit such organizations, based on reasonable lease terms, as determined in consultation with CB 2 and local elected officials.

Advancing Resilient and Sustainable Energy and Stormwater Management Policies

It is Borough President Adams' sustainable energy policy to promote opportunities that utilize blue/green/white roofs, solar panels, and/or wind turbines, as well as passive house construction. He encourages developers to coordinate with the New York City Mayor's Office of Sustainability, the New York State Energy Research and Development Authority (NYSERDA), and/or the New York Power Authority (NYPA) at each project site. Such modifications tend to increase energy efficiency and reduce a development's carbon footprint. The proposed development offers opportunities to explore resiliency and sustainability measures such as incorporating blue/green/white roof finishes, passive house construction principles, solar panels, and wind turbines in the development.

Furthermore, as part of his flood resiliency policy, Borough President Adams also encourages developers to introduce best practices to manage stormwater runoff such as incorporating permeable pavers and/or establishing rain gardens that advance the DEP green infrastructure strategy. Borough President Adams believes that sidewalks with nominal landscaping and/or adjacent roadway surfaces

are potential resources that could be transformed through the incorporation of rain gardens, which provide tangible environmental benefits through rainwater collection, improved air quality, and streetscape beautification. Tree plantings can be consolidated with rain gardens as part of a more comprehensive green infrastructure strategy. In addition, blue/green roofs, permeable pavers, and rain gardens would divert stormwater from the City's water pollution control plants.

Borough President Adams believes it is appropriate for the developer to engage government agencies, such as the Mayor's Office of Sustainability, NYSERDA, and/or NYPA, to give consideration to government grants and programs that might offset costs associated with enhancing the resiliency and sustainability of this development site. One such program is the City's Green Roof Tax Abatement (GRTA), which provides a reduction of City property taxes by \$4.50 per square-foot of green roof, up to \$100,000. The DEP Office of Green Infrastructure advises property owners and their design professionals through the GRTA application process. Borough President Adams encourages the developer to reach out to his office for any help in opening dialogue with the aforementioned agencies and further coordination on this matter.

The proposed developments offer opportunities to explore resiliency and sustainability measures such as incorporating blue/green/white roof finishes, passive house construction principles, and solar panels in the development. The required Builders Pavement Plan provides an opportunity to incorporate rain gardens along the frontages of each development site. Such rain gardens might be integrated with new street tree plantings along the Jay Street frontage of the development site, which will be repaved in concrete. The planting of street trees would provide shade on days of excessive heat, as well as other aesthetic, air quality, and enhanced stormwater retention benefits. It should be noted that a rain garden would require a maintenance commitment and attention from the landlord. Maintenance includes cleaning out debris and litter that can clog the inlet/outlet and prevent proper water collection, regular inspection to prevent soil erosion, watering during dry and hot periods, and weeding to keep the plants healthy and uncongested for proper water absorption. However, the implementation of rain gardens could help advance DEP green water/stormwater strategies, enhancing the operation of the Red Hook Water Pollution Control Plant during wet weather. Such rain gardens have the added benefit of serving as a streetscape improvement.

Borough President Adams believes that Forman Ferry, LLC should consult with DEP, the New York City Department of Transportation (DOT), and the New York City Parks Department (NYC Parks) for consideration regarding the inclusion of a rain garden with integration of street trees, as part of a Builders Pavement Plan. Where the agencies have interest in implementing an enhancement, consultation should be initiated with CB 2 and local elected officials prior to agreeing to take action.

Therefore, prior to considering the application, the City Council should obtain in writing from the applicant, Forman Ferry, LLC, commitments that clarify how it would memorialize integrating resiliency and sustainability features. The City Council should further seek demonstration of Forman Ferry, LLC's commitment to coordinate with DEP, DOT, and NYC Parks regarding the installation of rain gardens and tree plantings as part of a Builders Pavement Plan, in consultation with CB 2 and local elected officials.

Jobs

Borough President Adams is concerned that too many Brooklyn residents are currently unemployed or underemployed. It is his policy to promote economic development that creates more employment opportunities. According to the Furman Center's "State of New York City's Housing and Neighborhoods in 2015," double-digit unemployment remains a pervasive reality for several of Brooklyn's neighborhoods, with more than half of the borough's community districts experiencing poverty rates of nearly 25 percent or greater. Prioritizing local hiring would assist in addressing this employment crisis. Additionally, promoting Brooklyn-based businesses, including those that qualify as

LBEs and MWBEs is central to Borough President Adams' economic development agenda. This site provides opportunities for the developer to retain a Brooklyn-based contractor and subcontractor, especially those who are designated LBEs consistent with Section 6-108.1 of the City's Administrative Code, and MWBEs that meet or exceed standards per Local Law 1 (no less than 20 percent participation).

Borough President Adams believes that prior to considering the application, the City Council should obtain commitments, in writing, from the applicant, Forman Ferry, LLC, to memorialize retention of Brooklyn-based contractors and subcontractors, especially those who are designated LBEs consistent with Section 6-108.1 of the City's Administrative Code and MWBEs as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency.

Prevailing Wages and Local Hiring for Building Service Workers

Jobs within the building service and industrial sector have long served as a pathway to middle-class living for lower-income individuals, including immigrants and people of color. Like industrial jobs, building service jobs have low barriers to entry and real career prospects. When compensated at prevailing wage standards, such jobs provide average wages twice that of the retail sector. Additionally, building service opportunities are often filled through local hiring.

Borough President Adams believes that it is appropriate to advocate for economic opportunities that allow families to remain in their neighborhoods, by securing sufficient income to alleviate their rent burdens. He further believes that building service positions often result in locally-based employment. Therefore, Borough President Adams strongly encourages Forman Ferry, LLC to commit to hiring locally for building service jobs and paying prevailing wages to this workforce.

Recommendation

Be it resolved that the Brooklyn borough president, pursuant to Section 201 of the New York City Charter, recommends that the City Planning Commission (CPC) and City Council approve application 180344 ZMK and disapprove application 180345 ZRK, both subject to the following conditions:

1. That, unless a legally binding mechanism is established to require only commercial and/or community facility development, in lieu of zoning map amendments for an M1-6/R8X district and text amendments to New York City Zoning Resolution (ZR) Sections 123-63 and 123-66:
 - a. That the proposed M1-6/R8X zoning district be modified to an M1-6/R8A district
 - b. That Forman Ferry LLC, file
 - i. An amendment to ZR Section 74-711 Landmark preservation in all districts, to make the special permit applicable to non-contributing buildings in New York City historic districts
 - ii. A special permit request according to the proposed modified ZR Section 74-711 to seek waivers subject to New York City Landmarks Preservation Commission (LPC) discretion, prior to consideration by CPC, with a right to review by the City Council
2. That prior to considering these applications, the City Council obtain commitments in writing from the developer, Forman Ferry LLC, that clarify how it would memorialize the extent that it would

- a. Set aside a portion of the commercial space for one or more local non-profit organizations such as arts and/or cultural entities at below-market lease terms, as warranted
- b. Integrate additional resiliency and sustainability measures such as blue/green/white roof treatment, rain gardens, and/or solar panels
- c. Retain Brooklyn-based contractors and subcontractors, especially those who are designated Local Business Enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and Minority- and Women-Owned Business Enterprises (MWBEs) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency

Be it Further Resolved:

1. That Forman Ferry, LLC commit to a building service workforce that is recruited from the local population and paid prevailing wages, with appropriate benefits