

Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION

120 Broadway, 31st 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

RESILIENT HOUSING AND OPEN SPACE ACQUISITIONS – 190394 PPK, 190395 PPK

An application submitted by the New York City Department of Housing Preservation and Development (HPD) and the New York City Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter for the acquisition of the following properties in Brooklyn Community District 13 (CD 13): 3826 Cypress Avenue and 3749 Neptune Avenue in the Seagate neighborhood, and the following properties in Brooklyn Community District 15 (CD 15): 25 Abbey Court, 5 Beacon Court, and 17 Noel Avenue, in the Gerritsen Beach neighborhood; 124 Oxford Street in the Manhattan Beach neighborhood, and 2 Lake Avenue, 12 Lake Avenue, 19 Lake Avenue, 18 Stanton Road, 23-25 Stanton Road, and 17 Webers Court in the Sheepshead Bay neighborhood. Such action would facilitate the disposition of the Resilient Housing Lots to private owners for redevelopment as flood-compliant, one- and two-family homes.

BROOKLYN COMMUNITY DISTRICT NO. 13 and 15

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

SEE ATTACHED

BROOKLYN BOROUGH PRESIDENT

August 29, 2019

DATE

RECOMMENDATION FOR: RESILIENT HOUSING AND OPEN SPACE ACQUISITIONS – 190394 PQQ, 190395 PPK

The New York City Department of Housing Preservation and Development (HPD) and the New York City Department of Citywide Administrative Services (DCAS) submitted applications pursuant to Section 197-c of the New York City Charter for the acquisition of the following properties in Brooklyn Community District 13 (CD 13): 3826 Cypress Avenue and 3749 Neptune Avenue in the Seagate neighborhood, and the following properties in Brooklyn Community District 15 (CD 15): 25 Abbey Court, 5 Beacon Court, and 17 Noel Avenue, in the Gerritsen Beach neighborhood, 124 Oxford Street in the Manhattan Beach neighborhood, and 2 Lake Avenue, 12 Lake Avenue, 19 Lake Avenue, 18 Stanton Road, 23-25 Stanton Road, and 17 Webers Court in the Sheepshead Bay neighborhood. Such action would facilitate the disposition of the Resilient Housing Lots to private owners for redevelopment as flood-compliant, one- and two-family homes.

On July 2, 2019, Brooklyn Borough President Eric L. Adams held a public hearing on the proposed acquisition request. There were no speakers on the item.

In response to Borough President Adams' inquiry as to what consideration would be given to requiring that the requested affordable homeownership sites be disposed with permanent affordable housing restrictions, according to the shared equity model, the HPD representative stated that the agency Request for Proposals (RFP) was open to community land trusts (CLTs) or shared housing models but did not receive responses from such types of nonprofits. Instead, the sites will be developed pursuant to HPD's Open Door program, which relies on a 20-40 year tax exemption to maintain affordability.

In response to Borough President Adams' inquiry as to why the resilient housing sites were not all proposed for redevelopment as affordable housing, and whether HPD would consider offering all of the sites as affordable homeownership opportunities, the HPD representative stated a number of the properties do not meet criteria for development as affordable housing. Some sites lack street and/or sewer access, while others are exceedingly small and would require redevelopment with an adjacent site that is not in the HPD portfolio. In such cases, construction would simply be too expensive and create problematic access issues. The representative also noted that in Seagate, homeowners association fees present a barrier to affordability. The Seagate Association charges fees equivalent to annual assessed taxes on each property, including those with tax abatements. Prior to Superstorm Sandy, such annual fees were generally between \$3,000 and \$5,000. However, new homes would likely have higher assessed tax values. When combined with the costs of flood insurance and a mortgage, such fees would exceed 30 percent of a household's income.

Consideration

Brooklyn Community Board 13 (CB 13) approved this application on June 26, 2019. CB 15 approved this application on June 25, 2019.

The proposed land use actions are part of a larger application for the acquisition and disposition of 141 properties in Brooklyn, Queens, and Staten-Island. All of the sites were previously improved with one to four family homes that were substantially damaged by Superstorm Sandy in 2012. Subsequently, the lots became part of New York City's Building Back Acquisition, Relocation and Buyout Program (Build It Back), which is funded by the United States Department of Housing and Urban Development (HUD) through the Community Development Block Grant Disaster Recovery (CDBG-DR) program. The purpose of Build It Back is to allow the City to purchase damaged homes and/or lots for redevelopment as resiliency projects. The program is managed by HPD, via a non-profit subsidiary, Project Rebuild, Inc. that purchases, clears, and holds the properties for responsible future use. All of the lots are currently either vacant or will be delivered as such upon disposition.

Based on a public engagement and evaluation process, HPD has determined two possible pathways for Build It Back sites: buyout and acquisition for redevelopment. Properties assigned for buyout are termed Open Space Lots and located in areas deemed inappropriate for development. Such lots will be acquired by DCAS and maintained as open space in perpetuity, under the auspices of the New York City Department of Environmental Protection (DEP) or the New York City Department of Parks and Recreation (NYC Parks) to provide flood mitigation. HPD has designated 75 lots in three of the five boroughs as Open Space Lots. The remaining 66 properties have been assigned for redevelopment and termed Resilient Housing Lots. They are located in areas suitable for housing development and must be rebuilt with flood-resilient residential use or open space, as feasible. Resilient Housing Lots would be disposed via one of two pathways: Housing Managed Redevelopment, which entails acquisition by the City and disposition to private entities for managed development (preferably as affordable housing) or Housing Private Auction, which entails a fair market sale and redevelopment by future owners to flood-compliant standards, according to deed restrictions.

In Brooklyn, HPD has proposed to acquire 13 Resilient Housing Lots within CD 13 and CD 15 that are located within the current one percent annual chance floodplain, with base flood elevations ranging between six and 12 feet. These lots would also be located in the 2050 one percent annual chance floodplain, given 90th percentile projections for sea level rise.

The CD 13 properties are located exclusively in Seagate, and slated for Housing Private Auction. 3826 Cypress Avenue is a 4,000 square-foot (sq. ft.) lot occupied by a 0.74 FAR three-family home, while 3749 Neptune Avenue is a 3,000 sq. ft. vacant lot. The CD 15 properties are located in Gerritsen Beach, Manhattan Beach, and Sheepshead Bay. The Gerritsen Beach properties include 25 Abbey Court, an 1,800 sq. ft. lot occupied by a 0.67 FAR one-family home; 5 Beacon Court, an 1,800 sq. ft. lot improved with a 0.42 FAR one-family home, and 17 Noel Avenue, an 1,800 sq. ft. lot occupied by a 0.7 FAR one-family home. All three properties are slated for Housing Managed Redevelopment. The one Manhattan Beach property, 124 Oxford Street, is a 2,500 sq. ft. lot improved with a 0.28 FAR one-family home and is slated for Housing Managed Redevelopment. The Sheepshead Bay sites include 2 Lake Avenue, a 1,200 sq. ft. vacant lot; 12 Lake Avenue, a 1,200 sq. ft. lot improved with a 0.51 FAR one-family home; 19 Lake Avenue, a 1,960 sq. ft. lot occupied by a 0.27 FAR one-family home; 18 Stanton Road, a 1,320 sq. ft. vacant lot; 23 Stanton Road, a 1,035 sq. ft. vacant lot; 25 Stanton Road, a 1,907 sq. ft. vacant lot, and 17 Webers Court, a 2,147 sq. ft. vacant waterfront lot that is located within the Special Sheepshead Bay District (SB). All of these properties are located on narrow, private walkways that lack street access, which was deemed a barrier to affordable housing development. Therefore, the Sheepshead Bay lots were proposed to be designated for Private Auction.

Borough President Adams supports the redevelopment of underutilized and vacant land for productive uses, especially those that address the City's need for affordable housing. Though affordable homeownership is not required as part of the Build It Back program, the acquisition and disposition of storm-damaged properties provides an opportunity to achieve such objectives where warranted. Borough President Adams also supports efforts to strengthen community resiliency to climate change and sea-level rise, including promoting development that complies with flood and stormproof construction practices.

Borough President Adams is generally supportive of the proposed acquisition and disposition program. However, he believes that the intended affordable housing needs to be permanent, that more sites should be prioritized for affordable housing, and that existing structures should meet coastal flood resiliency requirements.

Permanent Affordability

In areas where new developments can be realized on City-owned sites, Borough President Adams supports the disposition of such sites being developed for affordable housing to remain permanently affordable as a means to minimize the loss of affordable housing units.

One strategy that warrants consideration is the disposition of property to a Community Land Trust (CLT). CLTs are non-profit stewardship entities that maintain community ownership of real estate assets. They are governed by boards that contain a diverse array of stakeholders, including community development organizations, elected officials, and local residents. CLTs are seen as being an effective tool to reduce land speculation and preserve affordability in communities. In recent years, New York City has taken important steps to foster the development of CLTs. In 2017, City Hall solicited proposals from interested stewardship groups, while City Council passed legislation authorizing and codifying CLTs. There are currently more than a dozen CLTs in various stages of development across the city, with at least two located in Brooklyn.

Borough President Adams believes that CLTs are a viable solution to safeguarding HPD's substantial investments in affordable housing throughout the borough. HPD reported that its RFP based on its Open Door program did not receive responses from CLTs or shared housing entities. Successful respondents according to its Open Door program are enabled to secure HPD-directed funds for new construction of cooperative and condominium buildings affordable to moderate- and middle-income households. Where appropriate, based on lot size, the program may also fund the development of new one- to three-family homes. Upon completion, the developer would sell the homes or units to households who agree to owner-occupancy for the duration of the regulatory period. Upon resale, the purchaser is required to sell the property to a household earning no more than the project's income cap. Such income cap is restricted to a two percent increase annually above the purchase price for the duration of the designated regulatory period.

The Open Door program relies on a minimum 20-year (complete or partial) exemption from New York City real estate taxes to maintain affordability. During Borough President Adams' hearing, it was expressed that the maximum term would be 40 years. The 40-year tax exemption would traditionally be where affordable housing would be constructed by a Housing Development Fund Company (HDFC), according to Article XI of the Private Housing Finance Law. From HPD's testimony at Borough President Adams' hearing, it does not appear that the agency's RFP garnered any responses from HDCs. Non-HFDC developers are able to request the higher HPD subsidy amount tied to a 40-year regulatory period. It is more likely to expect that the maximum affordability term for any of the Housing Managed Redevelopment lots would be 20 years. Moreover, a complete tax exemption is for the first 10 years, with a 10 percent increase in the tax increment in years 11 through 20.

It is Borough President Adams' policy that, to the extent that redevelopment of City-owned land results in residential floor area, such floor area should only yield affordable housing, and that housing resulting from the disposition of City-owned properties should remain permanently affordable. One way to ensure long-term affordability is through the concept of shared equity.

Shared equity is a model promulgated by municipalities and non-profit housing associations or municipalities. It is an offer that extends affordable homeownership to households lacking the ability to purchase a market-rate home. According to the Urban Institute, "shared equity homeownership programs provide buyers with a way of bridging the gap between what they are able to afford to pay in a mortgage and the actual mortgage cost to own a property" via strategies such as "inclusionary zoning, limited equity cooperatives, and community land trust homes with long-term affordability restrictions."

Borough President Adams is concerned that the Open Door program, which allows a maximum sales price increase of two percent per year for the duration of a 20-year regulatory term (with some possibility of a 40-year term), is insufficient to meet his permanent affordability housing goals. Therefore, he believes that HPD's proposal should be improved by requiring permanent affordable housing, according to a shared equity model such as a CLT, on the sites that would move toward development according to the Housing Managed Redevelopment initiative. Mandating the two percent cap appears to be a suitable form of achieving permanent affordable housing restrictions for those properties.

In order to realize permanent affordability, Borough President Adams believes that the City Planning Commission (CPC) and/or the City Council should direct HPD to establish a legal mechanism to mandate that such Housing Managed Redevelopment properties be required to remain affordable in perpetuity.

Development to Coastal Flood Resiliency Standards

Borough President Adams supports the redevelopment of the 13 Resilient Housing Lots for responsible future use. However, he is concerned that these sites with existing structures could remain vulnerable to flood events if (yet to be known) renovation plans do not trigger compliance with New York City Zoning Resolution (ZR)'s Special Regulations Applying in Flood Hazard areas. Borough President Adams recognizes the conundrum of either undertaking additional construction costs, with the resulting higher permanent mortgage necessitated to afford such improvements, or the alternative of a burdensome monthly flood insurance payment. Either scenario would present a severe cost burden for the eventual affordable housing homeowner. According to HPD, the City retains the right to take possession of the disposed properties if an owner defaults on program requirements, including flood-resistant construction.

Borough President Adams believes it is necessary to ensure that all buildings developed on the Resilient Housing Lots meet the City's standards for flood hazard mitigation, including best practices such as elevation of usable space above the established flood level. Therefore, in order to reduce future flood risk and flood insurance costs, Borough President Adams believes that the CPC and/or the City Council, should direct HPD to establish a legal mechanism that requires existing and intended buildings to be elevated in compliance with ZR Special Regulations Applying in Flood Hazard areas.

Maximizing Affordable Housing Opportunities

Borough President Adams believes that it is important to maximize opportunities for affordable housing ownership in the Resilient Housing and Open Space Acquisition process. One means to achieve this goal is to prioritize properties that meet HPD's criteria for affordable housing development, including lot size, sewer connections, and street access.

At 3,000 and 4,000 sq. ft., the two Seagate properties represent the largest lots in the Brooklyn portfolio. While these sites are located within a gated community, they are otherwise physically suitable for affordable housing development. The primary barrier, in this case, appears to be the Seagate Association homeownership fees, which, together with the Open Door program's intent to target household incomes at 80 percent of Area Median Income (AMI). According to the Open Door program, sale prices would cap housing costs at 33 percent of such annual income, including monthly maintenance costs, taxes, and projected mortgage payments, assuming a 30-year mortgage, with a five percent down payment and a fixed interest rate. In addition, the HPD Open Door term sheet stipulates that developers of affordable co-operatives or condominiums on public land can qualify for a maximum \$165,000 subsidy, if such units are targeted toward households between 80 and 130 percent AMI. Such subsidies would presumably also be available to developers of one- to three-family homes.

The Open Door term sheet provides a substantial developer subsidy and the opportunity for additional funding. However, taking into account the expected purchase price, a household at 80 percent AMI would be unable to afford the monthly mortgage payments if such costs were exacerbated by the required monthly payment to the Seagate Association. The fact that the HPD RFP extends affordable homeownership to households earning no more than 120 percent AMI, a household of four would have to set aside more than \$42,000 for mortgage costs. Based on the 33 percent standard, such households would be able to devote \$1,150 more per month toward a mortgage payment than a household at 80 percent AMI. With an interest rate of approximately four percent, such borrower could afford a loan in excess of \$300,000 more than a household earning 80 percent AMI. Therefore, Borough President Adams believes that the uppermost income tier of affordability warrants a reconsideration of reassigning both Seagate properties to Housing Managed Redevelopment.

The 3826 Cypress Avenue 4,000 sq. ft. lot, occupied by a 0.74 FAR three-family home, was recently assessed at nearly \$10,000. It is expected that the future owner would pay a similar assessment upon re-occupancy. As the building is fully constructed, it is likely that the most significant redevelopment costs would stem from raising the structure and building systems above the design flood elevation, which would diminish flood insurance premiums. Borough President Adams believes that this building would best serve the public interest if all of its units were designated as affordable housing. The 3749 Neptune Avenue 3,000 sq. ft. vacant lot could reasonably be expected to yield a post-construction assessed value similar to that of a nearby 1,800 sq. ft. home — the amount of floor permitted by the zoning district. This site should also be considered for affordable housing development and occupancy.

Should re-evaluation by HPD determine that 120 percent AMI would be insufficient given the amount of income that is merely required to afford the Seagate Association annual fees, HPD should evaluate feasibility by amending the Open Door term sheet to qualify households at 130 percent or 145 percent AMI, with buyer eligibility at up to 165 percent AMI.

Such modification is justified by the allowance of higher AMIs at other affordable housing developments in Brooklyn, such as the Caton Flats development in Flatbush, the pending development at 142-150 South Portland Street, where 50 percent of the affordable housing units would have rents based on households earning 130 percent AMI, and at 15 Bridge Park Drive, where 50 designated affordable housing units have rents set to be afforded by households earning at least 130 percent of AMI.

Borough President Adams believes that establishing more flexible AMI eligibility vis-à-vis household income limits would increase the likelihood of the Seagate properties becoming affordable homeownership opportunities.

However, the intended disposition of these lots via Housing Private Auction virtually guarantees that the properties would not be developed as affordable homes. Given the possibilities outlined above, Borough President Adams believes that these lots warrant strong consideration as affordable housing opportunities. Therefore, in order to enable the maximum provision of affordable housing, Borough President Adams believes that the CPC and/or the City Council should direct HPD to reassign the Seagate parcels from Housing Private Auction to Housing Managed Redevelopment.

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 (CPC) and City Council approve this application with the following conditions:

1. That the New York City Department of Housing Preservation and Development (HPD), in its Land Disposition Agreement (LDA) with assigned developers of Housing Managed Redevelopment (affordable housing) properties, require the following:
 - a. A mechanism to ensure that the affordable housing would remain affordable in perpetuity
 - b. That, as a means to reduce future flood risk, such developments be elevated in compliance with New York City Zoning Resolution (ZR)'s Special Regulations Applying in Flood Hazard areas
2. That, in order to enable the maximum provision of affordable housing, HPD be mandated to reassign the Seagate parcels from Housing Private Auction to Housing Managed Redevelopment