

Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION
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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

2513-2523 AVENUE O – 190438 ZMK

An application submitted by Pulmonary and Sleep Medical, PC pursuant to Sections 197-c and 201 of the New York City Charter for a zoning map amendment to change the southeast portion of a block on Avenue O between Bedford Avenue and East 26th Street in Brooklyn Community District 14 (CD 14), from an R2 to an R3-2 district. Such action would achieve zoning conformance and compliance for a property consisting of two combined, semi-detached homes, with a ground-floor ambulatory medical facility and a single-family residence above.

BROOKLYN COMMUNITY DISTRICT NO. 14

BOROUGH OF BROOKLYN

RECOMMENDATION

- APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

- DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

SEE ATTACHED

BROOKLYN BOROUGH PRESIDENT

December 5, 2019

DATE

RECOMMENDATION FOR: 2513-2523 AVENUE O – 190438 ZMK

Pulmonary and Sleep Medical, PC submitted an application pursuant to Sections 197-c and 201 of the New York City Charter for a zoning map amendment to change the southeast portion of a block on Avenue O between Bedford Avenue and East 26th Street in Brooklyn Community District 14 (CD 14), from an R2 to an R3-2 district. Such action would achieve zoning conformance and compliance for a property consisting of two semi-detached buildings, including the building that contains a ground-floor ambulatory medical facility.

On November 13, 2019, Brooklyn Borough President Eric Adams held a public hearing on this zoning map amendment. There were three speakers on the item, all in support, including an employee of a community-based organization, a member of a local business association, and one of the applicant's regular patients. The speakers noted that the applicant provides an important service to the community and that his practice does not contribute to vehicular traffic in the area.

In response to Borough President Adams' inquiry as to what additional development rights would the buildings gain under the proposed R3-2 rezoning, the applicant's representative noted that R2 and R3-2 districts have very similar bulk regulations. In an R3-2 zone, community facilities are permitted as-of-right at a floor area ratio (FAR) of 1.0, but only at 0.5 FAR in an R2 zone, though 1.0 would be allowed by the granting of a special permit by the New York City Board of Standards and Appeals (BSA). Furthermore, in R2 districts, residential uses can be constructed in excess of 1.0 FAR with a BSA special permit, while R3-2 districts allow a maximum FAR of 0.6 for housing.

In response to Borough President Adams' inquiry as to what additional uses would be allowed according to the proposed rezoning, the representative stated that certain community facilities, including medical offices, are not permitted in R2 districts. Such uses would be permitted as-of-right in an R3-2 zone. The representative noted that non-profit or voluntary hospitals are allowed as-of-right in both R2 and R3-2 districts, and that New York Community Hospital owns one of the lots in the rezoning area.

In response to Borough President Adams' inquiry regarding the total existing square footage of community facility use located at the applicant's property, the representative stated that medical offices occupy 1,424 square feet (sq. ft.) of the ground floor.

In response to Borough President Adams' inquiry as to why R3-1, a zoning district meant for semi-detached residences that permits up to 1,500 sq. ft. of community facility use, was not proposed, the representative noted that R3-2 districts appear widely throughout the surrounding neighborhood. They also expressed that representatives of the New York City Department of City Planning (DCP) deemed the district appropriate due to an intensive medical use across Avenue O, which is a wide street. Finally, the representative noted that while an R3-1 district would legalize the existing medical offices, it would limit the applicant's ability to expand the use beyond 1,500 sq. ft.

During the hearing, the applicant's representative provided 82 signed letters from local residents in support of the application.

Subsequent to the hearing, Borough President Adams received a letter from a local resident and president of the East 26th Street – Avenue O Block Association in opposition to the application: The individual expressed concerns that approval would spur similar rezonings in the R2 district, contribute to traffic congestion, and permit future expansion on the site. The letter also noted that the applicant's two properties were illegally combined into a medical office, and argued that there was no such use on the lots prior to their purchase by the applicant.

Consideration

Brooklyn Community Board 14 (CB 14) has not taken a position on this application. However, on November 4, 2019, the board voted against the resolution of its land use committee to approve this application.

The proposed land use actions would affect four two-story, semi-detached buildings intended for residential occupancy. 2513 Avenue O is owned by New York Community Hospital of Brooklyn, Inc. 2517, 2519, and 2523 Avenue O are owned by an individual who is the principal for the applicant. Prior to 2006, the four properties, containing semi-detached single-family buildings, were located in an R6 district and were compliant as a building type and occupied by conforming uses. The buildings became non-compliant structures with non-conforming uses in 2006 when the adjacent R2 district was enlarged as part of an approximately 80-block rezoning of the Midwood neighborhood. This comprehensive rezoning, initiated by DCP, replaced R6-mapped areas that extended into East Midwood with a combination of reduced-density and height-limited zoning districts to better reflect the built context and allow greater density in specific locations. For 2519 and 2523 Avenue O, the change of the zoning from R6 to R2 assured that residential use would remain single-family, consistent with the predominantly residential occupancy in the R2 district north of Avenue O. While the current R2 zoning allows single family use, new residential development is restricted to detached homes. Moreover, while R2 districts permit some community facility uses, they do not allow ambulatory diagnostic and treatment health care facilities. The current ground floor occupancy of 2519 and 2523 Avenue O as ambulatory medical use is therefore non-conforming.

According to the application, the owner purchased 2523 Avenue O in 2000 and 2519 Avenue O in 2006. In 2016, the applicant performed interior work to open the wall between the buildings and create a combined ground floor for a medical facility. Though the applicant believes that the properties have a prior history of medical use, there is an absence of documentation that would render the current offices a legal, non-conforming use. Both properties lack a Certificate of Occupancy (C of O), or any other form of City records to verify legal use. Therefore, the medical use is, at present, operating as an illegal non-conforming use.

The requested R3-2 zoning would bring the applicant's medical facility into zoning conformance and the buildings themselves into zoning compliance. In addition to semi-detached homes, R3-2 zoning districts permit multi-family residential development, such as a row of attached homes as well as a single low-rise apartment building. R3-2 zones also permit a wide range of community facility uses, including Use Group 4 (UG 4) ambulatory diagnostic or treatment health care facilities (though for buildings containing residential use, community facility uses would be limited to the ground-floor level and below). A rezoning from R2 to R3-2 would change the existing community facility bulk regulations and broaden the range of uses that would achieve such rights. Additionally, under R3-2, the four properties could be combined into a single zoning lot to facilitate a community facility development of up to 10,000 sq. ft. as-of-right, whereas under R2, such action would require authorization from the BSA. Otherwise, development would be restricted to 5,000 sq. ft. if occupied for community facility use.

In consideration of those who have expressed support for maintaining the existing R2 zoning, it should be noted that R2 districts permit a limited number of community facilities such as libraries, non-profit hospital staff dwellings, houses of worship, and non-profit or philanthropic institutions. Borough President Adams has heard concerns about the presence of non-conforming medical uses within the R2 district, and quality-of-life issues stemming from ambulatory facilities in the area. However, as R2 districts permit non-profit and voluntary hospitals as-of-right, retaining the current zoning would not deter the eventual redevelopment of 2513-2523 Avenue O for such uses. Furthermore, while R2 permits have as much floor area as the requested R3-2 district for as-of-right non-profit and voluntary hospitals, New York City Zoning Resolution (ZR) Section 74-901 Certain Community Facility Uses in R1 and R2 Districts and Certain Commercial Districts provides an opportunity to obtain a special permit from the

City Planning Commission (CPC) for the grant of 1.0 FAR of floor area for such uses provided that certain findings are met.

Therefore, disapproval of the proposed rezoning would not provide assurance that these four properties would revert to exclusively residential occupancy. As three of the properties are in single ownership and the fourth is owned by New York Community Hospital of Brooklyn, Inc., maintaining R2 would not preclude eventual hospital expansion.

Borough President Adams generally supports appropriate land use actions that legalize non-complying and non-conforming uses. However, he believes that a zoning remedy for non-conformance should not undermine the existing contextual objectives. The requested R3-2 district would allow multi-family residences and attached homes, which is inconsistent with the 2006 rezoning. This would allow for detached and semi-detached residential building types. In addition, Borough President Adams believes there that traffic conditions along Avenue O warrant consideration to realize improvement.

Appropriate Zoning

The 2006 rezoning placed these lots within an R2 district, restricting the properties to single-family use. However, because R2 zoning only permits detached homes, pre-existing semi-detached residential buildings in the district, including the applicant's properties, were rendered non-compliant. Borough President Adams believes that the solution to the dual issue of non-compliance and non-conformance is an R3-1 district, which allows semi-detached buildings, and also permits up to 1,500 sq. ft. of ambulatory diagnostic and health treatment facilities; additional floor area for such uses would be permitted only by BSA authorization. As affirmed during Borough President Adams' hearing, the applicant's medical facility occupies 1,424 sq. ft. on the combined ground floor of 2519 and 2523 Avenue O. Therefore, an R3-1 district would be sufficient both to achieve compliant bulk for the existing semi-detached homes and legalize the ground-floor medical facility, as are the stated goals of this application. Therefore, Borough President Adams believes that the CPC and/or City Council should disapprove the requested R3-2 district unless it is modified to R3-1.

Addressing Avenue O Traffic

Borough President Adams acknowledges the long-standing concerns related to traffic along Avenue O including ambulatory vehicles, as well as parking, speeding, and traffic.

Avenue O serves as a westbound connection street for vehicles diverting from Kings Highway. This diversion occurs at one block west of New York Community Hospital. Such traffic is mixed with ambulances as well as ambulettes serving the facility. Other diagnostic and treatment centers also generate demand for ambulettes, which carry patients to and from these facilities, and park along this section of Avenue O, in proximity to a dispatch office located on the block. It has been represented that the traffic pattern along this section of Avenue O has been burdened by excessive speeding mixed with ambulatory vehicles. This is in contrast to the low-traffic East 25th and East 26th streets, characterized by detached single family homes.

CB 14 has been on record with New York City Department of Transportation (DOT) to change parking from parallel to angled on Avenue O along the hospital's building line so that ambulances do not have to double-park to offload patients. The board's request is apparently still pending with DOT.

Borough President Adams believes that it would be appropriate for DOT to evaluate the ongoing parking and traffic patterns along this section of Avenue O as a means of advancing Vision Zero and quality-of-life concerns. Such improvements might involve modifications of appropriate signage, curbside parking orientation, and/or street direction, as well as installation of speed-

deterrent devices. Such evaluation should be carried out in collaboration with CB 14 and local elected officials.

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 disapprove this application unless the proposed R3-2 district is modified to R3-1.

Be it further resolved:

1. That the New York City Department of Transportation (DOT) evaluate parking and traffic patterns along the section of Avenue O between Bedford Avenue and East 26th Street, in collaboration with Community Board 14 (CB 14) and local elected officials.