



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

April 26, 2018

**Recommendation on
ULURP Application Nos. 170380 ZMM and N170381 ZRM
East 33rd Street Rezoning
By 33rd Street Acquisition LLC**

PROPOSED ACTIONS

33rd Street Acquisition LLC (“the applicant”) is seeking the following actions:

- (1) Zoning map amendment to Zoning Sectional Map 8d to rezone Block 939, Lots 20, 21, 22, 23, 24, 25, 26, 27 and a portion of lot 28 (Project Area) from R8A to C1-9A;
- (2) Zoning text amendment to designate the Project Area as a Mandatory Inclusionary Housing Area

These actions will facilitate the development of a 23-story mixed-use building on lots 24, 25, 26 and 27 (Proposed Development) that will contain a total of 155 rental units and a superintendent’s unit and 6,400 square feet of retail floor area on the ground floor and 4,000 square feet in the cellar. The Proposed Development is located mid-block on East 33rd Street between First Avenue and Second Avenue in the Kips Bay neighborhood of Manhattan Community District 6.

In evaluating the text amendment, this office must consider whether the proposed language meets the underlying premise of the Zoning Resolution of promoting the general health, safety and welfare of the city and whether the developments it will facilitate would be appropriate to the neighborhood. Any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, for appropriate growth, improvement and development of the neighborhood and borough.

PROJECT DESCRIPTION

The Project Area consists of Block 939, Lots 20, 21, 22, 23, 24, 25, 26, 27, and a portion of Lot 28. It encompasses both the Proposed Development Site on lots 24, 25, 26, and 27 and additional existing buildings on lots 20, 21, 22, 23, and a portion of Lot 28. The Project Area has a total area of approximately 17,281 square feet. Lot 20 is a 2,469 square foot privately owned lot that is currently occupied by a 5-story residential building with 22 dwelling units. Lots 21 and 22 each have a lot area of approximately 1,975 square feet and are privately owned. Lot 21 is occupied by a 5-story residential building that includes 13 dwelling units. Lot 22 is occupied by

a 5-story residential building that includes 12 dwelling units. Lot 23 is a 1,975 square foot privately owned lot currently occupied by a 4-story residential building with 13 dwelling units. Approximately 16,000 square feet of development rights from Lot 23 will be transferred to the Proposed Development. The existing building on Lot 23 will remain.

Lot 24 is a 1,975 square foot privately owned lot currently occupied by a 4-story residential building with 7 dwelling units. Lot 25 is a 1,975 square foot privately owned lot currently occupied by a 4-story residential building with 7 dwelling units. Lot 26 is a 2,469 square foot privately owned lot currently occupied by a 4-story residential building with 9 dwelling units and medical office space on the ground floor. Lot 27 is a 2,469 square foot privately owned lot currently occupied by a 4-story residential building with 17 dwelling units. Lot 28 is 13,770 square foot privately owned lot that is currently occupied by a 23-story residential building with 209 dwelling units, an NYU Child Study Center, and subsurface parking. This lot is mostly zoned C1-9A, with approximately 2,469 square feet that is zoned R8A, which is included in the Project Area.

33rd Street Acquisition LLC is seeking a zoning map amendment of the existing R8A zoning to C1-9A in order to facilitate the construction of the Proposed Development, and a zoning text amendment to designate the Project Area as a Mandatory Inclusionary Housing Area.

Background

In 1995, the City Planning Commission (“CPC”) approved a rezoning involving 28 new zoning designations and 44 locations between East 14th and East 34th Street (C 940304 ZMM). The Project Area was included in this rezoning, which was rezoned from R8 to R8A.

In 2007, CPC approved a modification to a special permit and restrictive declaration (M 990544B ZSM, N 070205 ZCM) to facilitate a large new residential development west of the Project Area, located in a C1-9 district, along the block’s Second Avenue frontage (300-312 East 34th Street a/k/a 201 East 33rd Street). This approval, coupled with prior actions and the acquisition of additional property, facilitated the construction of a 36-story building with 355 dwelling units with ground floor retail and medical office space.

Proposed Development

The Proposed Development would be a 23-story mixed-use building on lots 24, 25, 26 and 27 that will contain a total of 155 rental units and a superintendent’s unit and 6,400 square feet of retail floor area on the ground floor. There will be 115 market rate units. The remaining 40 units, or 25.8% of the total residential floor area, would be developed under “Option 1” of the Mandatory Inclusionary Housing (MIH) Program. As the applicant also intends to seek tax benefits under Section 421-a of the New York State real Property Tax Law, these 40 units also satisfy the replacement ratio provision of subsection (i) which requires at least one affordable housing unit for each dwelling unit that existing on the property on the date that is three years

prior to the commencement of construction. The proposed zoning map amendment would allow for residential (Use Groups 1 and 2), community facility (Use Groups 3 and 4, which include uses such as libraries, schools, and houses of worship), and commercial uses (Use Groups 5 and 6, which includes local retail and services uses such as grocery stores, dry cleaners, drug stores, and restaurants) to be as-of-right.

Area Context

The project area is located in the Kips Bay neighborhood of Manhattan. The surrounding area supports a mix of land uses, including multi-family residences, mixed-use buildings, and public facilities and institutional uses. NYU Langone Medical Center is a predominant land use in the area and occupies a large block to the east of the rezoning area along the east side of First Avenue between East 34th and East 30th Streets. They are currently undergoing an extensive renovation project.

Kips Bay Towers is located between Second and First Avenues and East 33rd and 30th Streets and consists of two freestanding, narrow, rectangular 21-story concrete apartment buildings with large footprints that are well set back from the street. These buildings contain a total of 1,118 dwelling units with on-site parking. There are several other large residential developments located within the vicinity of the project site. Within a 600 square foot radius, there are several large residential developments ranging from 20-35 stories.

The sections of the Project Area block (Block 939) that are not located within the rezoning area contain residential uses, with some buildings containing ground floor retail uses as well. The block's Second Avenue frontage, which is zoned C1-9, includes a 36-story primarily residential building with 355 dwelling units and ground floor retail and medical office uses. The block's First Avenue frontage, which contains part of the Project Area (the portion of Lot 28 to be rezoned through the proposed action), is occupied by a 23-story residential building with 209 dwelling units and the NYU Child Study Center on the first and second floors. Directly to the west of the rezoning area, along East 33rd Street, Lot 17 contains a 14,816 square foot community facility building – the Chapel of the Sacred Hearts of Mary and Joseph. Also to the west of the rezoning area is a 136,099 square foot, 12-story recently constructed residential building that includes 129 dwelling units.

First Avenue and Second Avenue serve as major north-south thoroughfares in the vicinity of the project area. The side streets carry one-way, cross-town traffic, with the exception of 34th Street, which is a two-way thoroughfare. Between First and Third Avenues, the regular street grid is interspersed with the Queens-Midtown Tunnel ramp network; the access and egress ramps are located between East 36th and East 37th Streets with dedicated north-south side streets providing one-way access to the tunnel.

There are limited transit services in the immediate vicinity of the proposed rezoning area. The M34 Select Bus Service (SBS), the M34A SBS, and M15 SBS are located within the vicinity of the rezoning area. The M34 SBS runs river-to-river along 34th Street from the 34th Street Ferry Terminal on the East River to the Jacob Javits Convention Center on 12th Avenue. The M34A

SBS runs from Waterside Plaza to the Port Authority Bus Terminal via 34th Street, Second Avenue, Eighth Avenue and Ninth Avenue. The First and Second Avenue - 125th Street SBS Corridor extends between 125th Street in Harlem and South Ferry in Lower Manhattan. The 33rd Street subway station, serving the number 6 Lexington Avenue line, is located approximately 0.3 miles west of the proposed rezoning area. The East 34th Street Ferry Terminal for the East River Ferry is located between East 35th and East 36th Streets, east of the FDR Drive. The East River Ferry provides service between the East 34th Street Ferry Terminal and Pier 11/Wall Street, Brooklyn, and Queens. Vehicles en route to Kips Bay from other parts of the city and Tri-State Area can access the neighborhood via the FDR Drive at East 34th Street.

COMMUNITY BOARD RECOMMENDATION

33rd Street Acquisition LLC presented their formal ULURP presentation of the proposed development at the February 26, 2018 CB6 Land Use Committee Meeting. Several concerns were raised, primarily the issues around the current tenants, who are rent controlled or rent stabilized, as well as the type of retail that would be attracted to the development. The community indicated their desire to have a market establishment specializing in healthy food and/or local retail. There were also concerns about shadows the development may cast on the neighborhood, and the impact the retail space would have on traffic in the area.

There were speakers present at the meeting in favor of the development, citing the affordable housing units and the creation of new housing units in general in the community. Several of these speakers were not from CB6.

At its Full Board meeting on March 14, 2018, Manhattan Community Board 6 (CB6) disapproved the project with conditions. With 36 in favor, 1 opposed, and 1 abstention, CB6 voted to disapprove the project as presented unless 40% of the residential floor area be dedicated to permanently affordable housing.

BOROUGH PRESIDENT'S COMMENTS

The residents of Community Board 6, like other communities, have a need for additional housing stock. But there are few opportunities within CB6 to develop Mandatory Inclusionary Housing projects that can provide significant amounts of affordable housing. Existing R10 districts cannot be rezoned to trigger MIH. East 33rd Street has the unique characteristic of being a wide street, and the Proposed Development would abut a large development immediately to the east, and would not be out of context if built as proposed. Including the remaining low-rise residential buildings on the north side of the street may provide another opportunity for future development. However, the means by which the Proposed Development would be realized need to be carefully examined, especially given its potential to set a precedent for future large scale development elsewhere on the block.

While the Proposed Development will provide new, permanently affordable housing pursuant to MIH, it is important to consider the nature of the units that are being replaced, and the circumstances of that replacement. Even without accounting for rent control and stabilization, the existing units – studios and one-bedrooms in older, walk-up buildings – provide affordable options in a neighborhood where they are in short supply. The proposed construction of 40 new units of affordable housing will replace those that are being demolished. But the rent regulated tenants will be displaced, while 115 units of market rate housing will be added.

As stated in the applicant's project description, the buildings in the Proposed Development site are largely vacant. When the Borough President's office met with the applicant on March 28, 2018, the applicant indicated that the buildings in the Proposed Development would be mostly vacant, save for the 10 rent regulated tenants currently in occupancy. Thus the developer's proposal will cause a net loss of 30 affordable apartments in the neighborhood.

Representatives from the Borough President's office also visited the Proposed Development site. They entered three of the four buildings slated to be demolished in order to speak directly with the residents to see if they were aware of the Proposed Development, as well as to gauge their current housing status. The report from this site visit raised several issues.

One of the buildings in the Proposed Development not yet acquired by the applicant, 345 East 33rd Street, is in the process of being renovated. Borough President staff observed construction dust covering the hallways and active construction taking place on upper floor units. This renovation is happening piecemeal, with newly renovated units dispersed among older units on all floors. There is a new video intercom system at the building entrance and all hallway floors and stair treads are new. It perplexes us why an owner who is in negotiations to sell and demolish their building would be renovating units in order to attract new tenants at market rates. A rent stabilized tenant in a non-renovated unit confirmed that new residents were moving into the renovated units.

If the applicant is unable to obtain ownership of this site, the Proposed Development would create a serious non-contextual issue on this street, with a four-story building sandwiched between two twenty-plus story buildings. This would not be appropriate for any neighborhood and would create significant inconsistencies on this block with respect to streetscape and building type. The developer's application should be dependent on his full acquisition of the site. This application should not be approved at this time because the full development site is not under the applicant's control; the renovation and occupancy of the property he does not control strongly indicates that he will not be able to complete acquisition.

The Borough President's staff also visited two of the three buildings that are a part of the Proposed Development and are owned by the applicant. Some of the units in these buildings are currently occupied by contractors, using apartments and the medical office space on the ground level as a field office. There is one other tenant living in a unit who does not have a rent

stabilized lease and appears to have a month-to-month lease arrangement with the applicant. The other occupied units appear to be inhabited by residents with rent regulated leases.

One of the rent stabilized tenants in occupancy at the site the staff spoke with had spent the winter of 2016-2017 without heat and got through the cold weather with an electric heater provided by the management company. The tenant also communicated to our staff that they were dealing with a roach infestation. The tenant has called 311 in the past and there are HPD violations on this tenant's unit that were logged into the system in March 2018. This tenant indicated they have been brought to court by building management many times in an apparent attempt to evict him. The tenant has been withholding rent due to lack of repairs, lack of heat, and roach infestation.

The staff spoke with another rent stabilized tenant who was aware of the Proposed Development. Their living conditions appeared to be better, but they indicated they had difficulty obtaining their lease renewal, which under the Rent Stabilization Law is required within 90-150 days prior to lease expiration. The tenant was finally able to renew their lease, but then faced a further challenge in obtaining a countersigned copy for their own records, a critical item when dealing with potential legal proceedings and negotiations.

None of the tenants the staff spoke with indicated any desire to leave this community and are aware that the Proposed Development will result in their displacement.

In reviewing this application we must, in light of these reports, consider the circumstances by which the formerly regulated units in these buildings became vacant. It appears likely that neglect and other forms of harassment resulted in the emptying of these units. This history is relevant given the potential for future developments similar to the Proposed Development, in lots 20, 21, 22, and 23, which are part of the Project Area of this application. The buildings on these lots contain 60 units, all or most of which may be rent regulated at present. The Borough President is concerned about what will happen to these units if this rezoning is approved, and especially the impact of reducing the availability of affordable units in the surrounding community.

Rezoning the remaining low-rise buildings would permit the construction of large buildings with mandatory amounts of permanently affordable housing in the future, but it is almost certain to place current tenants and current units at risk. Experience shows that units will be warehoused to prepare buildings for demolition and development, further decreasing affordable housing stock in the neighborhood and possibly increasing rents as regulated units become less available to. Many rent regulated tenants facing similar redevelopments have been displaced or obtained buyouts, but there is nothing in place in such situations to ensure that tenants are being treated fairly or are provided adequate legal representation.

The Proposed Development would replace 40 units that at one point were all subject to rent regulation with 40 units that would be permanently affordable to various incomes averaging to 60 percent of the Area Median Income. While MIH allows for the development of permanently affordable housing, and 421-a preserves affordable units by requiring them to be replaced in full

in redevelopment, one can argue that in this case there will be no overall net increase in the number of affordable units. There is dearth of appropriate MIH sites in the neighborhood, and CB6 has called for a higher percentage of affordable housing in this development. Therefore the Borough President also believes that this Proposed Development should provide for more affordable housing than is required by MIH.

According to the Project Description provided by the applicant, the current tenants would have the option to relocate into the Proposed Development once completed. Their units would be in addition to the approximately 39 units (25% of the residential floor area) required by MIH. If allowed by the Department of Housing Preservation and Development (HPD), one tenant could be relocated into the one additional affordable housing unit required by the 421-a program's replacement ratio. The applicant has communicated to this office that if any existing tenants were relocated into the new building, their rents would not be subject to rent regulation or permanently affordable but would be negotiated with the owner and subject to a private contractual agreement. If the tenant is low income, the rent could be below market. In such a case, the unit would be affordable for the duration of the tenancy, but not the life of the building.

The Borough President believes that the applicant should provide permanently affordable housing units that are equal to the 10 existing rent controlled or rent stabilized units, in addition to the approximately 39 units required by MIH. Thus, the affordability of the existing rent regulated units would be preserved in perpetuity, and MIH would create new affordable units. If income eligible, the existing tenants would have the option to relocate into the 10 new affordable units that are replacing the existing rent regulated units. This would increase the total number of permanently affordable units to 50 (including the 1 additional unit required by 421-a), and allow the rehousing of the existing tenants in regulated units and prevent their permanent displacement.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **disapproval** of ULURP Application Nos. 170380 ZMM, and Zoning Text Amendment N170381 ZRM unless the following conditions are met:

- Lot 28 is purchased by the applicant and incorporated into the Proposed Development as currently planned to avoid contextual issues;
- City Council and the City Planning commission apply the “Deep Affordability Option” to “Option 1” under MIH. The surrounding uses, particularly the medical center, employ many people who earn lower incomes who would be eligible for this type of housing. There is a great opportunity to provide housing for those who contribute to this community as local employees;

- The applicant increases the number of permanently affordable units from 40 to 50 units., creating 10 new permanently affordable units in order to replace the existing occupied rent-regulated units; and
- Any existing tenants that are income eligible should be offered relocation into these additional permanently affordable units, including provisions for the applicant to cover moving expenses and any rent differential during the period in which the existing tenants are placed in temporary housing during construction of the Proposed Development.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, slightly slanted style.

Gale A. Brewer

Manhattan Borough President