



## CITY PLANNING COMMISSION

---

February 4, 2015 / Calendar No. 4

C 150076 ZMK

---

**IN THE MATTER OF** an application submitted by Lula Enterprises, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 22c, by establishing within an existing R5 District a C2-4 District bounded by Fort Hamilton Parkway, a line perpendicular to the southeasterly street line of Fort Hamilton Parkway distant 25 feet northeasterly (as measured along the street line) from the point of intersection of the southeasterly street line of Fort Hamilton Parkway and easterly street line of East 4<sup>th</sup> Street, a line 100 feet southeasterly of Fort Hamilton Parkway, and a line perpendicular to the southeasterly line of Fort Hamilton Parkway distant 30 feet southwesterly (as measured along the street line) from the point of intersection of the southeasterly street line of Fort Hamilton Parkway and westerly street line of East 4<sup>th</sup> Street, as shown on a diagram (for illustrative purposes only) dated September 29, 2014.

---

The application for an amendment of the Zoning Map to create a C2-4 district within an existing R5 district in the Special Ocean Parkway District, to bring existing commercial uses into conformance, was filed by Lula Enterprises, LLC on August 8, 2014. This application seeks to map a commercial overlay on two properties (Block 5318, Lot 1; and Block 5317 Lot 9) with legal, non-conforming commercial uses to bring them into conformance. This action would facilitate an unenclosed sidewalk café at 2826 Ft. Hamilton Parkway (Block 5318, Lot 1) in Windsor Terrace, Community District 7, Brooklyn. The application of a commercial overlay would permit the applicant to proceed with filing an application at the New York City Department of Consumer Affairs (DCA) for an unenclosed sidewalk café license, inapplicable in the current residential (R5) district.

### **BACKGROUND**

The Project Area is located near the border of the Windsor Terrace and Kensington neighborhoods (also the border between CD7 and CDs 12 & 14). This area is primarily zoned R5 and is residential in character, with some supporting commercial retail and community services. The major thoroughfares through the surrounding area include Fort Hamilton Parkway, Ocean Parkway, Caton Avenue and McDonald Avenue. Green-Wood Cemetery is to the north and west of the Project Area, Prospect Expressway is to the east. Prospect Park is a few blocks further to the east.

The Special Ocean Parkway District (OP) extends to cover a portion of the south side of Fort Hamilton Parkway, where the Project Area is located. While according to ZR 14-44, sidewalk cafes are not permitted on Ocean Parkway itself, both unenclosed and enclosed cafes are permitted elsewhere within the OP district. Fort Hamilton Parkway has particularly wide sidewalks (approximately 30 feet wide) in the Project Area and vicinity. Fort Hamilton Parkway serves as a local retail and access corridor to transit and services for the mix of rowhouses, semi-detached homes, and larger apartment houses that characterize the neighborhood's side streets. Besides residential uses, in the area surrounding the Project Area there is a gas station, restaurants, two schools (Brooklyn Prospect Charter, and P.S. 130), professional services, a hair salon, a nail salon, a day care, a Laundromat, Greenwood Playground park, East 4th Street community garden, and the Windsor Terrace branch of the Brooklyn Public Library.

There is NYCT subway service with a Fort Hamilton F and G subway station approximately two blocks northeast of the Project Area. The area is also well served by NYCT bus service, with the B16, B68 and B103 lines passing within close proximity to the proposed development, as well as the BM 1, 2, 3 and 4 express buses providing direct service to Manhattan.

The proposed action seeks to create a new C2-4 commercial overlay at a depth of 100 feet south from the south street line of Fort Hamilton Parkway at East 4th Street; on Block 5318, Lot 1, and Block 5317, Lot 9. The two lots are currently inside an R5 zoning district and are developed with two, three-story mixed use buildings (commercial-residential). The buildings each contain pre-existing, nonconforming commercial spaces on the ground floor. The first contains a restaurant called Hamilton's, an artist studio, contractor storage, and a New York City Dept of Sanitation storage space at 2826 Fort Hamilton Parkway (Block 5318, Lot 1). Hamilton's occupies the portion of the building fronting on Ft. Hamilton Parkway and a portion of East 4th Street. The other commercial uses are to the rear of the building. Behind the building on 4th Street is a community garden. The second parcel has a yoga studio called Jaya Yoga East on the first floor and is located directly across East 4th Street on Block 5317, Lot 9. Hamilton's sits on a lot with an area of 4,280 square feet and is built to an FAR of 1.72. Jaya Yoga sits on a 1,675

square foot lot and is built to an FAR of 2.7. Residential uses are located on the two buildings' upper floors.

These corner lots have little to no rear yards and are slightly irregular in shape due to the angle at which Fort Hamilton Parkway intersects the numbered grid of streets. Hamilton's (2826 Fort Hamilton Parkway) has 25 feet of frontage along Fort Hamilton Parkway and 98 feet of frontage along East 4th Street. The second property (2902 Fort Hamilton Parkway; Jaya's Yoga) has 30 feet of frontage on Fort Hamilton Parkway and 101 feet of Frontage on East 4th Street.

The proposed zoning change would allow the applicant to seek a sidewalk café along the Hamilton's restaurant lot frontage, on both Ft. Hamilton Parkway and East 4th Street. No redevelopment to the existing building is proposed as part of the application and no new development is anticipated on the other property at Block 5317, Lot 9.

The R5 district allows community facility and residential uses to an FAR of 1.25 and the proposed C2-4 commercial overlay would bring into conformance the existing commercial uses. C2-4 overlay districts within an R5 district permit local retail and service uses to an FAR of 1.0, with commercial uses limited to one story if residential uses are placed above them. C2-4 districts require one parking space per 1,000 square feet of general retail uses.

Opposite the Project Site, on the other side of Fort Hamilton Parkway, is an existing C1-3 commercial overlay which has several businesses and restaurants with outside seating areas on the sidewalk.

## **ENVIRONMENTAL REVIEW**

The subject application (C 150076 ZMK), was reviewed pursuant the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations (NYCRR), Section 617.00 et seq. and the New

York City Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 15DCP038K. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on September 29, 2014.

### **UNIFORM LAND USE REVIEW**

This application (C 150076 ZMK) was certified as complete by the Department of City Planning on September 29, 2014, and was duly referred to Brooklyn Community Board 7 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

#### **Community Board Review**

Community Board 7 held a public hearing on this application (C 150076 ZMK) on November 12, 2014, and on November 19, 2014 by a vote of 36 in favor and 0 opposed, recommended approval of the application.

#### **Borough President Recommendation**

This application (C 150076 ZMK) was considered by the President of the Borough of Brooklyn who held a public hearing on December 4, 2014 and issued a recommendation approving the application on December 24, 2014 with the following condition: “that Hamilton’s develops its layout of the sidewalk café, in consultation with its neighbors, towards achieving consensus prior to the City Council Zoning and Franchises’ Subcommittee public hearing.”

#### **City Planning Commission Public Hearing**

On December 17, 2014 (Calendar No. 2), the City Planning Commission scheduled January 7, 2015, for a public hearing on this application (C 150076 ZMK). The hearing was duly held on January 7, 2015 (Calendar No. 14). There were two speakers in favor and none in opposition.

The legal counsel for the Applicant spoke in favor of the application, stating that the application

was widely supported in the local community and that the concerns by neighbors related to the design of the café alluded to in the Borough President’s conditional recommendation had been addressed in a public meeting with neighbors on January 6, 2015.

The Applicant offered to address any concerns.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes the application for a Zoning Map amendment (C 150076 ZMK) to establish a C2-4 commercial overlay within an existing R5 district is appropriate.

The proposed zoning map amendment does not alter currently permitted densities or significantly modify currently permitted uses. The application of a C2-4 overlay will bring the existing legal non-conforming uses into conformance and will fit with the existing mixed-use character of Fort Hamilton Parkway. The existing uses (restaurant, yoga studio, etc.) constitute a commercial presence that contributes to the mixed-use character of this stretch of Fort Hamilton Parkway and are typical retail and service uses found in C2-4 districts throughout the City. The Commission believes that the proposed C2-4 overlay would support these local businesses by making them conforming with zoning.

Fort Hamilton Parkway, which is situated near an entrance to an MTA subway station, functions as a local retail and service corridor with a range of commercial, community facility and residential uses along it, and the Commission notes that vibrant local retail near mass transit promotes a feeling of safety for pedestrians and encourages the sustainable use of mass transit.

In response to the condition stated in the Borough President’s recommendation, the Commission notes that the applicant met with the neighbors of the restaurant to clarify the application and address any concerns.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 22c, by establishing within an existing R5 District a C2-4 District bounded by Fort Hamilton Parkway, a line perpendicular to the southeasterly street line of Fort Hamilton Parkway distant 25 feet northeasterly (as measured along the street line) from the point of intersection of the southeasterly street line of Fort Hamilton Parkway and easterly street line of East 4<sup>th</sup> Street, a line 100 feet southeasterly of Fort Hamilton Parkway, and a line perpendicular to the southeasterly line of Fort Hamilton Parkway distant 30 feet southwesterly (as measured along the street line) from the point of intersection of the southeasterly street line of Fort Hamilton Parkway and westerly street line of East 4<sup>th</sup> Street, as shown on a diagram (for illustrative purposes only) dated September 29, 2014.

The above resolution (C 150076 ZMK), duly adopted by the City Planning Commission on February 4, 2014 (Calendar No. 4), is filed with the Office of the Speaker, City Council and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

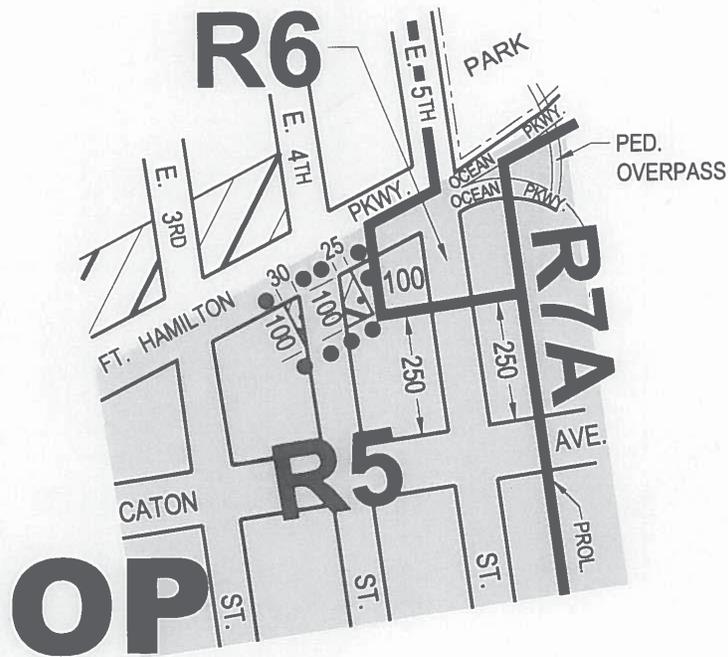
**CARL WEISBROD**, Chairman

**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman

**IRWIN CANTOR, P.E., ALFRED C. CERULLO, III,**

**CHERYL COHEN EFFRON, MICHELLE R. DE LA UZ, JOSEPH I. DOUEK,**

**RICHARD W. EADDY, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ,**  
Commissioners



CITY PLANNING COMMISSION  
 CITY OF NEW YORK  
 DIAGRAM SHOWING PROPOSED  
**ZONING CHANGE**  
 ON SECTIONAL MAP  
**22c**  
 BOROUGH OF  
**BROOKLYN**



New York, Certification Date  
 SEPTEMBER 29, 2014

J. Miraglia, Director  
 Technical Review Division



- NOTE:**
- Indicates Zoning District Boundary.
  - The area enclosed by the dotted line is proposed to be rezoned by establishing within an existing R5 District a C2-4 District.
  - Indicates a C1-3 District.
  - Indicates a C2-4 District.
  - Indicates a Special Ocean Parkway District.





E-mail/ Fax transmittal

<b>TO:</b> Community District 7 Distribution	<b>FROM:</b> Borough President Eric L. Adams
<b>DATE:</b> December 24, 2014	<b>CONTACT:</b> Richard Bearak – Director of Land Use Phone: 718-802-4057 E-Mail: rbearak@brooklynbp.nyc.gov
<b>ULURP Recommendation:</b> 150076 ZMK Hamilton's Patio	<b>NO. Pages, Including Cover:</b> 5

Attached is the recommendation report for ULURP application 150076 ZMK.  
If you have any questions, please contact Richard Bearak at 718-802-4057.

**Distribution**

NAME	TITLE	FAX	E-MAIL
<b>Carl Weisbrod</b>	City Planning Commission Chair	212-720- 3356	ygruel@planning.nyc.gov
<b>Hon. Melissa Mark-Viverito</b>	City Council Speaker	212-788- 7207	mviverito@council.nyc.gov
<b>Winston Von Engel</b>	Director DCP Brooklyn	718-596- 2609	wvoneng@planning.nyc.gov
<b>Jackie Harris</b>	DCP - Director of Land Use Review	212-720- 3356	jharris@planning.nyc.gov
<b>Raju Mann</b>	Dir. City Council Land Use Division	212-788- 7207	mann@council.nyc.gov
<b>Hon. Brad Lander</b>	Council Member, District 39	718 - 499 - 1090	lander@council.nyc.gov
<b>Daniel Murphy</b>	Chair, CB 7	718-436- 1142	danielmurphy8@gmail.com
<b>Jeremy Laufer</b>	District Manager, CB 7	718-436- 1142	communityboard7@yahoo.com
<b>Vincent Petraro, PLLC</b>	Attorney for Applicant	212-736- 0545	vpetraro@gmail.com
<b>Richard Bearak</b>	Director – Land Use		rbearak@brooklynbp.nyc.gov

Brooklyn Borough President Recommendation  
CITY PLANNING COMMISSION  
22 Reade Street, New York, NY 10007  
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 # C 150076 ZMK - Hamilton's Patio**

In the matter of an application submitted by Lulu Enterprises, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 22c:

Establishing within an existing R5 District a C2-4 District bounded by Fort Hamilton Parkway, a line perpendicular to the southeasterly street line of Fort Hamilton Parkway distant 25 feet northeasterly (as measured from the street line) from a point of intersection of the southeasterly street line of Fort Hamilton Parkway and easterly street line of East 4<sup>th</sup> Street, a line 100 feet southeasterly of Fort Hamilton Parkway, and a line perpendicular to the southeasterly line of Fort Hamilton Parkway distant 30 feet southwesterly (as westerly street line of East 4<sup>th</sup> Street) to apply to two existing commercial uses to allow a pre-existing legal non-conforming restaurant use to be brought into conformance to facilitate an application with the Department of Consumer Affairs to permit a sidewalk café.

COMMUNITY DISTRICT NO.7

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE

APPROVE WITH  
MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH  
MODIFICATIONS/CONDITIONS

BOROUGH PRESIDENT

December 24, 2014

DATE

## **RECOMMENDATION FOR THE PROPOSED HAMILTON'S PATIO REZONING 150076 ZMK**

The applicant, Lula Enterprises, LLC, is seeking a zoning map change to add a C2-4 commercial overlay within an existing R5 District on two parcels located on the corner of Fort Hamilton Parkway and East 4<sup>th</sup> Street to allow pre-existing legal non-conforming uses to be brought into conformance and to facilitate an application to the Department of Consumer Affairs (DCA) to permit for a sidewalk cafe within the Windsor Terrace neighborhood of Community District 7 (CD 7).

On December 4, 2014, the Borough President held a public hearing on the proposed rezoning.

The representative for the applicant (Hamilton's) noted that the purpose of the requested rezoning is to enable the restaurant to apply for a sidewalk café license.

Through a representative, Council Member Brad Lander expressed his enthusiastic support for the zoning change to enable an application to DCA to permit a sidewalk café.

In response to questions from the representative of the Borough President, Hamilton's representatives noted that the issue of the potential for inadequate sidewalk clearance due to placement of the building's residential garbage is intended to be addressed by shifting the placement to between the two mid-building doors along East 4<sup>th</sup> Street, away from the sidewalk café. In order to reflect feedback from the neighbors prior to the City Council hearing regarding the rezoning, the applicant intends to be in contact with all those who provided contact information at the Community Board 7 (CB7) public hearing. An example of the seating arrangement would be set up with neighbors being invited to see the layout. In addition, the restaurant space would be used during off-peak hours to invite the neighbors in for further discussion.

The establishment is a family-owned restaurant that serves beer and wine. They do not serve liquor. The intent is to operate to the extent permitted by the DCA license. As these licenses are up for renewal every two years, there would be an opportunity to observe the operation and make changes during any subsequent renewal process.

Picnic tables that Hamilton's previously used were offered to the community garden as a donation, though no response was received. The tables have since been donated to a local church for community use and are no longer on Hamilton's premises.

Hamilton's anticipates that the sidewalk café will bring more seasonal business, which will result in the need for additional servers and potential kitchen staff. It intends to fill these seasonal positions by using locally-based hiring, as they have recognized that local employees are more reliable, dedicated and loyal.

### **CONSIDERATION**

CB7 approved the application by a vote of 36 in favor, 0 opposed and 0 abstained.

The project area is located in the Special Ocean Parkway District (OP) on the border of the Windsor Terrace and Kensington neighborhoods in an R5 zone. Fort Hamilton Parkway serves as a small local retail and access corridor to transit and services. It has a particularly wide sidewalk within the OP district area, measuring approximately 30 feet deep. By comparison, East 4<sup>th</sup> Street, which runs alongside a large portion of the proposed outdoor café, measures approximately 15 feet deep.

The proposed mapping of the C2-4 commercial overlay on the project site would allow the applicant, which operates the retail establishment at the site, to apply for an unenclosed sidewalk café in the Fort Hamilton Parkway 'front yard' and the East 4<sup>th</sup> Street 'side yard' areas of Hamilton's Restaurant. The zoning map amendment would not create new floor area, induce new development or enlarge the building, as the existing 4,515 square feet building exceeds the permitted residential and community facility floor area ratio.

A portion of the ground floor of the building is occupied by Hamilton's Restaurant, which took over a 15-year lease from the previous restaurant that occupied the premises. Hamilton's has approximately 12 years remaining on this lease. The ground floor of the non-applicant leased property that is included in the proposed rezoning contains Joya Yoga, which purchased that entire building in 2010.

The unenclosed sidewalk café would include about 40-45 seats within an approximate 574 square foot area. The section along Fort Hamilton Parkway currently presents the appearance of a front yard with a bare concrete surface. The addition of a sidewalk café would result in an improvement to the appearance of the affected yard area adjacent to Hamilton's Restaurant. No other changes would occur to the remainder of the building containing Hamilton's. No redevelopment is anticipated for the building containing the yoga studio on the south side of East 4<sup>th</sup> Street. Joya Yoga does not possess the necessary kitchen facility to operate a sidewalk café. Joya Yoga is aware and supportive of the proposed rezoning map change.

The ground floor of the Hamilton's building also contains three small commercial spaces with use consistent with the proposed zoning. These include: the Department of Sanitation, which has occupied the space for about 30 years and renews their lease every 10 years with the next renewal for 2015; a contractor storage space which is in year two of its five-year lease; and an artist studio that has occupied the space for two years.

Though the existing zoning typically does not permit commercial use, based on existing zoning the commercial tenants of both buildings maintain legal occupancy according to Zoning Resolution (ZR). In fact, even if these uses were to cease, there is a range of commercial uses can be reactivated according to ZR section 52-61, vacant ground floor or basement stores in buildings designed for residential use located in R5, R6 and R7 Districts where the change or reactivated use is listed in Use Groups 6A, 6B, 6C or 6F, with a few excluded uses is permitted. In addition, this section requires conformance with ZR 52-34 which states that eating and drinking places, thus permitted as a change of use, shall be limited exclusively to the sale of food or drink for on-premise consumption by seated patrons within a completely enclosed building. So while the existing zoning permits neighborhood retail use, it does not provide opportunities to permit sidewalk café use, where appropriate.

Approval of this rezoning will bring previously legal-conforming commercial uses back into conformance – a status that was in effect until the 1961 rezoning of this area. The zoning would be neutral in terms of how much floor area is permitted, with the difference being that the ground floor of a residential building would permit commercial use. In addition to Use Group 6, the proposed zoning permits Use Groups 7, 8 and 9 which typically provides for home maintenance and repair, limited automotive servicing establishments, and, limited amusements and service type establishments. Under the proposed zoning, there would be

the opportunity for Hamilton's to lawfully restore outdoor table service by becoming eligible to apply for a sidewalk café permit with DCA.

The Borough President believes the addition of a commercial zone is appropriate based on the land use and generally supports efforts that facilitate the creation and/or growth of Brooklyn-based businesses. This includes rezoning opportunities that are consistent with the predominant land-use patterns and provides an opportunity for one business to grow in a manner that provides for seasonal hiring and activates the street.

The Borough President believes that this land use process provides an opportunity to further address concerns that have been shared with regard to this rezoning during the Community Board's public hearing. Already the proprietors of Hamilton's have coordinated with their landlord towards shifting the placement of the building's residential garbage in a manner at an ample distance away from the closest seating area of the proposed outdoor café, in order to maintain adequate clearance for those walking alongside the intended sidewalk café. The DCA renewal process provides a check and balance to see that noise and other operational aspects are within reason as such sidewalk café licenses are up for renewal every two years and it goes in front of CB7.

The Borough President recognizes that those with apprehension towards approving the rezoning would benefit from continued dialogue with Hamilton's as it develops its layout of the sidewalk café. He believes that rather than waiting for the DCA licensing process, it is best to proceed in a dialogue during the public process pertaining to the requested rezoning. The Borough President supports Hamilton's intent to engage its neighbors through the preparing of mock-ups and having meetings. He urges Hamilton's to proceed swiftly with such consultation with its neighbors, towards achieving consensus prior to the City Council Zoning and Franchises' Subcommittee public hearing.

**RECOMMENDATION**

Be it resolved that the Borough President of Brooklyn, pursuant to sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve the land use action requested according to the condition that Hamilton's develops its layout of the sidewalk café, in consultation with its neighbors, towards achieving consensus prior to the City Council Zoning and Franchises' Subcommittee public hearing.