CITY PLANNING COMMISSION

May 9, 2016/Calendar No. 2 N 160081 ZRK

IN THE MATTER OF an application submitted by Conover King Realty, LLC pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York modifying Appendix F (Inclusionary Housing Designated Areas) and a related section in Article XII, Chapter 3 (Special Mixed Use District) to apply Inclusionary Housing regulations in Community District 6, Borough of Brooklyn.

The application for an amendment of the Zoning Resolution of the City of New York concerning modifications to Appendix F (Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas) and a related section in Article XII, Chapter 3 (Special Mixed Use District) was filed by the Conover King Realty, LLC on November 24, 2015. The proposed amendment, in conjunction with the related action, would facilitate the development of a nursing home and an ambulatory diagnostic and treatment facility at 141 Conover Street (Block 555, portion of Lot 5), in the Red Hook neighborhood of Community District 6, Brooklyn.

RELATED ACTIONS

In addition to the application for a zoning text amendment which is the subject of this report (N 160081 ZRK), the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

C 150362 ZSK	Special permit pursuant to Section 74-902 of the Zoning Resolution to modify the requirements of Section 24-111 (Maximum floor area ratio for certain community facility uses) to permit the allowable community facility floor area ratio of Section 24-11 (Maximum Floor Area Ratio and Percentage of Lot Coverage) to apply to the Proposed Development
N 150363 ZCK	Certification pursuant to Section 22-42 of the Zoning Resolution, which is required for nursing homes and health-related facilities in residence districts

C 150361 ZMK Zoning Map Amendment to change an approximately 38,000 square foot portion of Block 555, Lot 5 from an M2-1 District to an M1-4/R-6 District and establish a Special Mixed-Use District (MX-5)

BACKGROUND

A full background discussion and description of this application appears in the report of the related action for a zoning map amendment (C 150361 ZMK).

ENVIRONMENTAL REVIEW

This application (N 160081 ZRK), in conjunction with the related applications (C 150361 ZMK, C 150362 ZSK, and N 150363 ZCK), was reviewed pursuant to 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, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 15DCP193K. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on November 30, 2015. On May 6, 2016, a Revised Negative Declaration which reflects the withdrawal of the Special Permit and Certification applications, as referenced in the Background section of this report, was issued.

The Revised Negative Declaration includes an (E) Designation (E-371) related to hazardous materials, air quality and noise to avoid the potential for significant adverse impacts, as described below.

The (E) designation requirements related to hazardous materials, air quality and noise would apply to the following development site:

Brooklyn Block 555, Lot 5

The text for the (E) Designation related to hazardous materials is as follows:

Task 1: Sampling Protocol
Prior to construction, the applicant must submit to the New York City Mayor's Office of Environmental Remediation (OER), for review and approval, a Phase II Investigation protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented.

No sampling should begin until written approval of a protocol is received by OER. The number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of the sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2: Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated for the test results, a proposed remedial action plan (RAP) must be submitted by OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

An OER-approved construction-related health and safety plan (CHASP) would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This plan would be submitted to OER for review and approval prior to implementation.

The text for the (E) Designation related to air quality is as follows:

Any new development on the above-referenced property must ensure that the HVAC stack is located on the highest tier of the proposed development.

The text for the (E) Designation related to noise is as follows:

In order to ensure an acceptable interior noise environment, future residential or community facility uses must provide a closed-window condition with minimum attenuation of 28 dBA window/wall attenuation on the Conover Street façade in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided.

Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners.

The City Planning Commission has determined that the proposed action will have no significant effect on the environment.

UNIFORM LAND USE REVIEW

This application (N 160081 ZRK) was duly referred to Community Board 6 and the Borough President on November 30, 2015, in accordance with the procedures for non-ULURP matters, along with the related actions (C150361 ZMK, C 150362 ZSK), which were certified as complete by the Department of City Planning (DCP) on November 30, 2015, and in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 6 did not submit a recommendation on this application.

Borough President Recommendations

This application (N 160081 ZRK) and the related action (C 150361 ZMK) was considered by the Borough President, who issued a recommendation on March 9, 2016 to disapprove the application, subject to the following conditions:

1. That the proposed M1-4/R6 MIH zoning be modified as follows:
    a. King and Conover streets zoned to M1-2/R6A MIH
    b. Sullivan Street zoned to R6B
2. That the Sullivan Street parking garage entrance and exit be relocated to King Street
3. The applicant coordinate with Department of Transportation to pursue the installation of direction signage to encourage cars, delivery trucks and ambulates to turn off Van Brunt Street and King Street, and
4. That the applicant shall provide, to the City Council, in writing, commitments:
    a. To the extent it would be advancing resiliency and sustainability measures
    b. To retain Brooklyn-based contractors and subcontractors, especially those who are designated LBEs consistent with section 6-108.1 of the City's Administrative Code, and MWBE and LBE establishments, as a means to meet or exceed standards per Local Law 1 (not less than 20 percent participation), as

well as to coordinate the monitoring of such participation with an appropriate monitoring agency

c. To coordinate local hiring efforts with local service providers and community organizations
d. To provide quarterly updates to CB6 and local elected officials to demonstrate its monitoring and performance of such local hiring efforts, and
e. That for residential conversion of the existing nursing home, it shall be required to contain no less than 25 percent of the residential floor area to be occupied in compliance with the zoning provisions of the MIH designated areas

City Planning Commission Public Hearing

On March 9, 2016 (Calendar No. 4), the CPC scheduled March 30, 2016 for a public hearing on this application (N 160081 ZRK), in conjunction with the related applications (N 150361 ZMK and C 150362 ZSK). The hearing was duly held on March 30, 2016 (Calendar No. 15). There were 27 speakers in favor of the application and 12 speakers opposed as described in the report for the related application for a zoning map amendment (C 150361 ZMK), and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application (N 160081 ZRK), in conjunction with the related applications (C 150362 ZSK C 150361 ZMK, N 150363 ZCK), was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 14-058.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that this application for a zoning text amendment (N 160081 ZRK), is appropriate.

A full consideration and analysis of issues and the reasons for approving this application appear in the related report for the zoning map amendment (C 150361 ZMK).

RESOLUTION

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, and subject to the conditions of the CEQR Declaration E-371.

RESOLVED, the City Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter that based on the environmental determination and 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 as follows:

Matter <u>underlined</u> is new, to be added;
Matter within # # is defined in Section 12-10;
Matter in ~~strikeout~~ is old, to be deleted;
* * * indicates where unchanged text appears in the Zoning Resolution

* * *

Article XII - Special Purpose Districts

Chapter 3
Special Mixed Use District

*** * ***

123-63
Maximum Floor Area Ratio and Lot Coverage Requirements for Zoning Lots Containing Only Residential Buildings in R6, R7, R8 and R9 Districts

* * *

#Special Mixed Use District#	Designated #Residence District#
MX 2 - Community District 2, Brooklyn	R7A R8A
MX 5 - Community District 6, Brooklyn	R6
MX 8 - Community District 1, Brooklyn	R6 R6A R6B R7A
MX 11 - Community District 6, Brooklyn	R7-2
MX 14 - Community District 6, The Bronx	R7A R7X

APPENDIX F

* * *

BROOKLYN

* * *

Brooklyn Community District 6

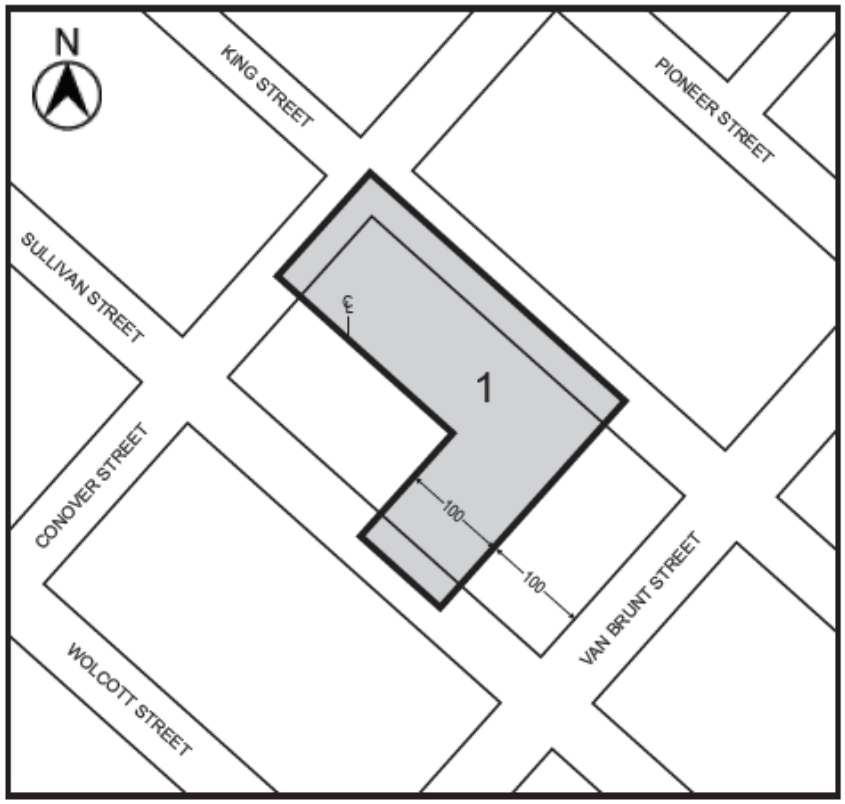
In the R6 and R7-2 Districts within the areas shown on the following Maps 1 and 2:

Map 1 - (3/11/09)

* * *

Map 2 - [date of adoption]

[proposed map]



Mandatory Inclusionary Housing Area (MIHA)

1 [date of adoption] - MIH Program Option 1 and Option 2 [Section 23-154(d)(3)]

Portion of Community District 6, Brooklyn

* * *

The above resolution (N 160081 ZRK), duly adopted by the City Planning Commission on May 9, 2016 (Calendar No. 2), 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
RAYANN BESSER, ALFRED C. CERULLO, *III*,
CHERYL COHEN EFFRON, JOSEPH I. DOUEK,
RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ, Commissioners

IRWIN G. CANTOR, *P.E.*, Commissioner, Abstained
MICHELLE R. DE LA UZ, Commissioner, Voted No

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 #: OXFORD NURSING HOME – 150361 ZMK, 150362 ZSK

In the matter of the applications submitted by the Conover King Realty, LLC, seeking a zoning map amendment to rezone an existing M2-1 manufacturing district to the proposed MX-5 special mixed-use district (M1-4/R6) on part of the lot, a zoning special permit pursuant to Zoning Resolution (ZR) Section 74-902, and a zoning certification pursuant to ZR Section 22-42. Such actions will facilitate the development of a seven- to eight-story, 200-bed, skilled nursing home and ambulatory diagnostic and treatment facility at 139-141 Conover Street in the Red Hook neighborhood of Brooklyn, within Community District 6.

COMMUNITY DISTRICT NO. 6 BOROUGH OF BROOKLYN

RECOMMENDATION

☐ APPROVE
☐ APPROVE WITH MODIFICATIONS/CONDITIONS
☐ DISAPPROVE
☒ DISAPPROVE WITH MODIFICATIONS/CONDITIONS

SEE ATTACHED

BOROUGH PRESIDENT

March 8, 2016
DATE

RECOMMENDATION FOR OXFORD NURSING HOME 150361 ZMK, 150362 ZSK, 150363 ZCK

The applicant, Conover King Realty, LLC, is seeking a zoning map amendment to rezone an existing M2-1 manufacturing district to the proposed MX-5 special mixed-use district (M1-4/R6) on part of the lot, a zoning special permit pursuant to Zoning Resolution (ZR) Section 74-902, and a zoning certification pursuant to ZR Section 22-42 to facilitate the development of a seven- to eight-story, 200-bed, skilled nursing home and ambulatory diagnostic and treatment facility at 139-141 Conover Street in the Red Hook neighborhood of Brooklyn Community District 6 (CD 6). The proposed nursing home would replace an existing 230-bed nursing home operated by Oxford Nursing Home Inc. that is currently located at 144 South Oxford Street in Brooklyn Community District 2 (CD 2). In addition to the above-listed actions, the applicant is also seeking a zoning text amendment to Appendix F of the ZR to establish a Mandatory Inclusionary Housing area (MIH) consistent with the proposed rezoning area in accordance with the City's mandatory inclusionary housing policy.

Borough President Adams held a public hearing on this matter on December 22, 2015. There were 21 speakers on this item, two in favor of the proposed actions and 19 in opposition. Organizations represented by these speakers included: the Brooklyn Chamber of Commerce, Red Hook New York Rising Community Reconstruction Planning Committee, Community Board 6 (CB 6), Red Hook Civic Association, Congress Member Nydia Velazquez, and Pioneer Works.

The speakers in support of the proposed actions voiced comments regarding:

- the potential for increased local economic activity
- the creation of local jobs
- the provision of a community facility, and a much-needed, up-to-date nursing facility for this area, and
- Oxford's willingness to listen and adhere to the community's concerns, as well as their support of the union

The speakers in opposition of the proposed actions voiced concerns regarding:

- the safety and resilience of this area, as it is within the flood zone, and after Superstorm Sandy, it took people up to six months to return to their homes
- the placement of a critical facility in an area where it would increase burden in case of emergency
- the use of federal funds within the flood zone
- the validity of the community board's voting process and lack of knowledge on flood zone regulations
- Oxford underestimating the number of daily visitors to the facility, resulting in increased vehicular traffic
- the proposed building's height and bulk, which make it out of context with the rest of the neighborhood
- the loading zone being located on a primarily residential street, which is also one-way-only
- the increased stress on already strained infrastructure, especially streets and on-street parking
- the loss of industrial land and displacement of industrial space in an area where it should be protected and preserved
- the proposed rezoning being a spot zoning and not following the uses outlined in the community's comprehensive plan
- the use of the MX district, in past cases, primarily producing residential uses, which are not constructive to a neighborhood

- the noise pollution during and after the construction phase, considering the adjacent residential uses
- the location of event space, Pioneer Works, across the street, and the impact that would have on the elderly residing at the nursing home
- the uncertainty of whether local residents would be eligible to use the new nursing home facility
- Oxford overestimating the impact on local economy, considering that visitors and staff would most likely remain within the facility for meals, and
- the lack of guarantee that the proposed diagnostic facility will be an urgent care facility, and general lack of necessity for this use in the area, as existing clinics are below capacity

Additional testimony was provided subsequent to the hearing from Red Hook West Resident Association and Red Hook East Resident Association. The President of Red Hook West Resident Association emphasized the importance of this project's potential to provide health care, construction and permanent jobs, and overall neighborhood investment in this area. Resident Association Leader for Red Hook East Resident Association provided comments strongly in support of the project's purpose and benefit to the community, as well as the developer's commitment to accommodate the neighborhood and its residents.

In response to Borough President Adams's concern with regard to site selection for the proposed nursing home, considering existing context and the flood zone designation, the representative for the developer stated that it is very difficult to find a site of adequate size for this type of facility. The proposed site is conveniently located on the periphery of the mixed residential/commercial corridor of Van Brunt Street and the manufacturing district to the west, but still within walking distance of NYCHA's Red Hook East and West developments, which house more than 6,500 residents. Acknowledging that there are numerous existing vacant hospitals, such as the old Greenpoint Hospital, that would have been able to appropriately house a nursing home facility, the representative stated that retrofitting an existing building is very challenging. Building a brand new facility offers more flexibility in providing a state of the art nursing home facility. The representative stated that the developer will provide a written response outlining their site criteria and reasoning behind choosing this specific site versus other sites, and the details of other sites vetted for this project.

While located within the flood zone, the facility will follow the current codes set by the Department of Buildings and State Department of Health. In the event of an unanticipated disaster, the facility will be able to safely shelter in place, temporarily. Currently, Oxford has an 80-page evacuation plan for the existing facility, which includes transfer agreements with hospitals and nursing homes, as well as an agreement with an ambulance company to transport residents.

In response to Borough President Adams's concerns regarding the loss of industrial land, the representative stated that this site is located on the periphery of the industrial district. The site, which is surrounded by a large residential presence, was specifically removed from the adjacent Industrial Business Zone (IBZ) in order to accommodate the proposed nursing home. The representative stated that the proposed zoning district of MX-5 was agreed upon in consultation with the Department of City Planning (DCP). The MX-5 district is intended to be a buffer between industrial and other uses and, therefore, seems appropriate in this case. Additionally, this site has been historically underdeveloped and has not contained active manufacturing uses. The operator believes the proposed nursing home and diagnostic center, as a community facility, are appropriate uses for this area as they would benefit the community overall.

In response to Borough President Adams's concern regarding the retention and/or loss of existing employees, the representative stated that, while Oxford would like to retain as many employees as possible, depending on their place of residence, it is inevitable that some will not be amenable to a new, potentially longer, commute. The developer also expects that additional staff will be required simply due to the significantly increased size of the facility. In such cases, the operator looks forward to reaching out to the community and hiring additional staff locally.

In response to Borough President Adams's concerns regarding increased traffic associated with ambulettes, delivery trucks, employees, and visitors, to both the nursing home and the diagnostic center, the representative stated that there would absolutely be an increase in traffic. However, such increase is primarily due to the site currently housing open storage uses that require minimal staff presence, and did not trigger any thresholds within the environmental analysis. The traffic study performed by the developer revealed that the increase in traffic caused by the proposed nursing home and diagnostic facility would be much less than the traffic that would be generated by an as-of-right use. Due to the nature of nursing home operations, the developer stated that all 200+ employees will not be arriving simultaneously, instead, arriving in three shifts, with about 80 to 100 employees during the day shift. The developer does not estimate more than 10 visitors at any given time. In order to minimize traffic, the developer is committed to providing a shuttle service to encourage employees to take public transportation, as well as 53 on-site parking spots, 10 more than required.

In response to Borough President Adams's concerns regarding excessive height and bulk of the proposed building, the representative stated that even if the diagnostic and treatment facility was removed from the site, the nursing home would retain the same footprint. According to the developer, and confirmed by the New York State Department of Health (DOH), the nursing home cannot exceed 40 beds per floor, which results in five floors. Considering that flood zone regulations require the building to be elevated by 15 feet, it would be impossible to use the ground floor or basement for any of the necessary support spaces. Additional space would also be required for recreation and support spaces, such as laundry and kitchen equipment, mechanicals, and nurse's stations. While the representative stated that it would be possible to look into the feasibility of providing the additional spaces horizontally, it was stated that the vertical plan is much more efficient for nursing home operations. Therefore, while the proposed development would be financially viable without the diagnostic and treatment facility, it may not be reasonable to remove additional height. Removing additional floors and accommodating the support spaces horizontally may result in circulation issues.

As clarification, the representative stated that the Certificate of Need was issued to Oxford specifically for the 200-bed nursing home, excluding the diagnostic center. The diagnostic center is being proposed in order to provide a benefit to the community, which is currently lacking in such services. Through the developer's public outreach, there is wide community support for the diagnostic and treatment facility. Additionally, it was stated that the site's ability to support the diagnostic and treatment facility would also provide benefit for the nursing home, enabling on-site primary care and/or emergency treatment.

In response to Borough President Adams's concerns regarding increasing sustainability efforts, the representative stated that the design of such aspects of the site is still in the preliminary process but the developer will consider incorporating sustainable aspects suggested by Borough President Adams. A stormwater retention system will be introduced, which would be a significant improvement from the current site; at present time, it primarily

consists of a paved lot. The architect for this project stated that the building is intentionally set further back in order to provide opportunities for landscaped areas that could serve as rain gardens and bioswales. The rooftop also provides two garden areas that would be used in consistency with green roof design. On the rest of the roof, where possible, the developer is contemplating solar paneling but there still needs to be further study to determine the actual output and benefit. It is the developer's goal to create a building with the smallest possible carbon footprint. Passive House design will also be considered for this project.

Subsequent to the hearing, the Presidents of the Red Hook East and Red Hook West tenant associations submitted testimony in support based on need for a nursing home facility in their community and that the primary and urgent care services would be extremely valuable as well as the opportunity for jobs. In addition, the applicant's land use counsel submitted a letter to Borough President Adams, dated March 4, 2016, to supplement statements made at the public hearing. Regarding site selection criteria, the site was deemed to have sufficient lot area to allow a large enough floor plate, was minimally improved, fairly priced, and located in a nearby Brooklyn neighborhood that is sorely underserved with regard to this type of facility. Vacant or nearly vacant parcels, meeting these criteria, are not readily available at a cost feasible to develop this type of community facility, therefore, when Oxford identified this site as available, it was quickly purchased without extensive further research. Given the surrounding development and concertation of residential uses in close proximity to the site, the zoning change was deemed justified from a land use policy perspective, and the site was considered by the applicant to be appropriate at the time of its purchase in 2003.

Consideration

CB 6 voted to approve this application with the proviso that the developer's commitment letter to the community be incorporated into the approval of the application. The letter, dated December 8, 2015, outlines the developer's response to the community's stated concerns regarding:

- the project's location in the flood zone, to which the developer assured that the project follows careful design and emergency planning, in compliance with current codes of the Department of Buildings and State Department of Health (NYSDOH)
- the scale of the proposed building, to which the developer clarified that while the scale has been reduced by one full floor in response to initial community concern, it would be impossible to decrease the scale of the building any further as it would affect the number of beds and overall operations
- the prioritization of local hiring, to which the developer voiced commitment to work with local stakeholders, CB 6, and local elected officials to ensure local hiring
- the availability of nursing home beds for local residents in need, to which the developer assured that while beds will not be able to be set aside specifically for local residents, relationships are maintained with local hospitals, which, in turn, refer patients to nursing homes within a proximity of their residence
- the developer being a good neighbor, to which the developer is committed to working with the community in minimizing any nuisance to the adjacent residents during the construction phase and future operations of the facility
- the proposed urgent care facility, to which the developer ensures the provision of a comprehensive urgent care facility that will categorically preclude a dialysis center
- the increase in traffic volume and parking demand, to which the developer assures that the facility will have multiple shifts of employees throughout the day and will promote public transportation, as well as provide a shuttle for the employees

- the emergency preparedness and evacuation plan, to which the developer assures the intention of evacuating the nursing home residents in an event that requires such action, outlined in an 80-page evacuation plan, that includes transfer agreements with hospitals and other nursing homes, as well as with an ambulance company, and
- the misconception of proposed residential use, to which the developer guarantees that he has absolutely no intention of developing any residential use, nor any intention of selling the property for residential development in the future

Oxford Nursing Home, Inc. is a for-profit, health care facility operator, and a family-owned business that has operated since around 1957. The existing six-story facility is located approximately three miles northeast of the proposed replacement site at 144 South Oxford Street, in the Fort Greene section of Brooklyn. The existing building, built around 1930, was not originally constructed as a nursing home facility, but was converted at a later date. The building contains approximately 48,000 square feet, on an 11,500 square feet lot.

The NYSDOH has deemed Oxford's existing facility below modern nursing home standards—partly due to its lack of accessible facilities. It is not considered to be part of the City's long-term resources of skilled nursing homes and would eventually be closed permanently. The current facility is not eligible for federal loans for improvements to the site and the premise has been deteriorating.

In response, Conover King Realty, LLC acquired the proposed development site in 2003 with plans to extend the residential zoning over the land and then build a modern replacement for the existing Oxford Nursing Home. The property was chosen because it satisfied the need to be located within Kings County, be of sufficient size, and be a site suited for development of a new building, given it is currently underdeveloped. Oxford Nursing Home then began the application process for the Certificate of Need by submitting an application to construct a replacement facility at 139-141 Conover Street to NYSDOH in June 2003, shortly after purchasing the site. In 2006, architectural drawings were provided to NYSDOH, and, between 2006 and January 2009, the application was reviewed by NYSDOH. During this time, in 2006, the site was included within the boundaries of the Southwest Brooklyn Industrial Business Zone (IBZ). In a letter issued by NYSDOH, dated February 26, 2009, the State Hospital Review and Planning Council approval of the Certificate of Need application was memorialized subject to customary conditions and contingencies.

The Certificate of Need does not expire, but can be terminated by NYSDOH due to lack of activity or progress. The applicant has kept NYSDOH apprised of the project's status since 2009, most recently sending a letter confirming submission of the ULURP application in June 2015. A response letter from NYSDOH confirmed that the Certificate of Need is still open and active for a 200 bed nursing home facility, which is assumed to be operational by December 31, 2019. If that date is not met, the applicant can submit a modification letter asking for an extension of the time allotted. If no progress is reported and the time has lapsed, NYSDOH will send a potential abandonment letter to the applicant asking for clarification. There is no set limit to the number of modifications that can be submitted for a Certificate of Need project as NYSDOH looks at each situation individually.

On the proposed development site, the applicant intends to develop a modern replacement facility consisting of approximately 157,500 square feet, including approximately 131,150 square feet of skilled nursing home facility, with specialized nursing care, containing 200 beds, and approximately 26,350 square feet of diagnostic and treatment center. The diagnostic and treatment center would likely provide ambulatory diagnostic services and such treatments as physical rehabilitation and chemotherapy, though not dialysis services. The

proposed development would range in height from two to eight stories, and would include 53 accessory parking spaces, with 39 enclosed parking spaces.

The proposed site for the nursing home and ambulatory diagnostic and treatment facility, until 2013, remained within the Southwest Brooklyn Industrial Business Zone (IBZ), though underdeveloped and mainly used for open storage uses including bus and refuse vehicle storage operations, metal fabrication, welding, and repair shops. Nursing homes are not permitted in zoning districts that preclude residential use and the City policy, at the time, precluded residential rezoning in IBZs. In 2013, the applicant benefitted from boundary modifications by the IBZ Boundary Commission, which resulted in exclusion of the proposed site from the IBZ, and provided the opportunity to advance the relocation of the Oxford Nursing Home.

The proposed development site comprises approximately 40,000 square feet and has frontages on King, Van Brunt, Sullivan, and Conover streets, with primary frontage along King Street. The lot is currently split by existing zoning district boundary lines — the majority of the property is zoned M2-1, though the easternmost 2,250 square feet are zoned R5 with a C1-3 commercial overlay and 25 feet of frontage along Van Brunt Street. The R5/C1-3 segment is currently used for vehicle storage. It is anticipated that the Van Brunt Street portion of the lot would be subdivided as a separate zoning lot, and is, therefore, not part of the proposed development site. Given that the M2-1 zoning does not permit nursing homes, land use actions are necessary to facilitate this development.

The applicant is proposing a zoning map amendment to rezone approximately 38,000 square feet of the lot from the existing M2-1 zoning district to an M1-4/R6 (a special mixed-use zoning district). With the proposed zoning map amendment, a mix of uses would be permitted, including residential and community facility uses. The proposed special mixed-use zoning district regulation would further control potential development in the project area by limiting the total building height of the proposed development to 110 feet.

The intended nursing home requires a certification from the City Planning Commission (CPC), pursuant to ZR Section 22-42, that it would not result in any of the following conditions in CD 6: a concentration of nursing homes and other health-related facilities as compared to other CDs; a scarcity of land for general community purposes, or a disruption in the land use balance in the community due to the construction of health-related facilities within the last three years. If the CPC finds that one or more of these conditions applies, a special zoning permit pursuant to ZR Section 74-90 would also be required for the project.

Pursuant to ZR Section 74-902, the applicant is requesting to increase the permitted maximum community facility floor area for the proposed development from a floor area ratio (FAR) of 2.43 to 3.94 to allow the applicant to build approximately 157,500 square feet of community facility use.

Considering the proposed rezoning would also affect properties not owned by the applicant, allowing the potential to be fully developed for residential use, an additional application was filed. The additional application seeks a zoning text amendment to establish a Mandatory Inclusionary Housing area (MIH) in anticipation of applicability dependent on the Department of City Planning (DCP) proposed citywide zoning text amendment to promote the development of affordable housing. MIH developments in special MX districts with R6 zoning district designations would require at least 25 percent of proposed residential floor area to be made permanently affordable for low-income residents.

In considering the appropriateness of the intended nursing home facility, there is a need to acknowledge that the site is located in the section of Red Hook almost entirely located within the Federal Emergency Management Agency's (FEMA) High Risk flood zone. This area experienced devastating damage, among the worst in New York City, from Superstorm Sandy, losing electricity and heat for more than two weeks. This specific block was submerged under approximately five feet of turbid seawater, trapping the residents as the streets were cut off by the coastal surge. The constriction of existing streets was further exacerbated by downed trees and other debris blocking the roads, restricting vehicular access. Subsequently, the new preliminary Flood Insurance Rate Map (FIRM) released by the Federal Emergency Management Agency (FEMA), in December 2013, elevated the flood elevation by several feet.

Subsequent to the hearing, Borough President Adams's Office contacted FEMA in response to testimony expressing concern that siting a 200-bed nursing home within a limited access flood zone area would jeopardize Red Hook's participation with Federal coastal storm surge resiliency funding. From FEMA's perspective, as long as the facility is built in compliance with current New York City code, FEMA has no issues with the structure and it will not be precluded from applying for eligible funding in the future. FEMA is not aware of any issues resulting from the construction of the nursing home (in and of itself) that might jeopardize the award of FEMA's Hazard Mitigation Grant Program funding for the Red Hook Integrated Flood Protection System (IFPS) project. In addition, a public hearing was held on January 21st to discuss the next steps in moving forward with Red Hook's IFPS, which includes efforts consisting of various permanent and deployable features (a permanent wall, deployable gates, landscape features, drainage modifications, and street elevations) that integrate with the urban environment and work together to reduce flood risk from coastal flooding and sea level rise. The next steps in implementing the IFPS are to complete a feasibility study by October 2016, which is currently underway, and move onto the design, engineering, environmental review, and construction phases. Such efforts would be funded by $50 million from HUD Community Development Block Grant-Disaster Recovery and $50 million from FEMA's Hazard Mitigation Grant Program.

Though the proposed development would be required to meet all applicable New York City Building Code requirements, as well as the recently-adopted flood resilience zoning text amendment for construction within the 100-year floodplain, it is still subject to mandatory evacuation. Reportedly there are more than 1,400 skilled nursing home beds in the coastal storm surge evacuation zone, representing approximately 11 percent of all such beds. The relocation of Oxford Nursing Home would increase that total to approximately 13 percent. At this time, it is too soon to know whether the coastal storm surge resiliency measures would minimize the need for possible evacuations. Borough President Adams shares the concern expressed by many community residents regarding the appropriateness of housing those requiring skilled nursing care in a facility that is subject to possible coastal storm surge related evacuations.

This proposal has the potential to result in devastating impacts on the 200 elderly who are likely to require substantial assistance in the event of an evacuation. Some of those elderly might also have care issues that might be compromised through abrupt change as a result of rapid deployment measures. It has been documented that such impacts on the health of the elderly can occur long after an evacuation. Borough President Adams believes that Oxford Nursing Home should be relocated to a site that is not subject to the possibility of coastal storm surge evacuation. However, that consideration needs to be balanced by the reality that it would be difficult to affordably secure an alternative site in Brooklyn, given the strength of Brooklyn's real estate market. Even if another appropriate location is ultimately secured, the

number of years that the existing out-of-date facility would need to remain in operation, and the impact on the consequent quality of life of the elderly residing there, should also be considered.

While the building would be designed to withstand coastal storm surge and be operational for several days, due to the nature of its occupants, the fact that the facility would be subject to notification for mandatory evacuation must not be taken lightly. The operator recognizes that operating within the flood zone would partially be addressed by careful design and emergency planning, in compliance with government requirements. However, in the event of a Sandy-type emergency, which would require evacuation, while the facility would be able to safely shelter the nursing home residents, Borough President Adams has concerns regarding the absence of an evacuation plan for this location and the sensitivity associated with displacement of the patients.

Without a site-specific evacuation plan, there is no way to estimate how long it would actually take to safely move the patients to their transportation. There are questions in terms of to what extent patient transfer might require wheelchair assistance or even more extreme measures to overcome a lack of mobility. Due to the dependency on elevators to bring patients to street level, with a percentage being moved with the assistance of wheelchairs, there is a need to understand how many patients can be accommodated in an elevator cab. Additionally, there is a need to understand how long it might require for both loading and unloading of each elevator cab. There is also a need to know the time involved in taking patients to the elevators and from the elevators, to then be placed in awaiting transportation. All this, while ensuring that the patients are being moved with their medical histories, sufficient personal effects and proper medications, and, in some instances, special equipment such as oxygen tanks.

In reviewing the current evacuation plan provided by Oxford, for the existing facility, with the understanding that it will be updated to reflect the new facility, there seems to be a lack of pertinent information. There is a lack of detail of methodology outlined for evacuation based on the different types of events. The provided transportation agreements do not include contact information, the number of vehicles, or the capacity of each vehicle. It is not clear that such agreements would be binding in a citywide or regional event if the transportation agencies may be spread thin. Another consideration in an evacuation scenario is the number of staff that is available to help the residents. According to the federal database, Oxford Nursing Home has extremely low staffing, with registered nurse staffing at less than half of the national average. The level of care staff is one of the most important indicators of a nursing home's quality and would be particularly essential in an emergency evacuation or other urgent situations.

Given that nursing home patients, whether they are rehabilitating or permanently placed, tend to be mostly elderly, while displacement might be only a few days, the experience could be very unsettling, especially for those afflicted with Alzheimer's disease and related dementias. Temporary relocation results in unfamiliar surroundings with unfamiliar care givers, which may not be an ideal situation for this specific population. However, such evacuations are rare and the consequences for these patients should be measured against the deferment of an opportunity to be served in a modern state-of-the-art nursing facility as opposed to an outdated premise that has been deteriorating. NYSDOH has deemed Oxford's existing facility below modern nursing home standards, partly due to its lack of accessible facilities. The longer it takes to replace the facility, the more days that its patients lack optimal care. In addition, there might come a point in which NYSDOH would no longer support the operation of the existing facility. It is not an obvious conclusion to assume the potential for disrupted services outweighs the everyday experience in an out-of-date facility.

Given that the inspections of the existing outdated facility, conducted through December 31, 2015, resulted in citations that were not harmful or caused immediate jeopardy to the residents, they did pose moderate discomfort and could potentially pose minimal harm over time. Such comparisons might be best considered by patient advocate organizations. Finally, consideration must also be given to the family aspect and to what extent a Red Hook nursing home facility might allow loved ones to be able to more readily spend time with family members residing in nursing homes.

Borough President Adams generally supports land use actions that would allow for the modernization of skilled nursing facilities and provide employment opportunities for local residents. He also supports the designating of rezoned areas that would result in more residential floor area to be designated as MIHA according to zoning regulations as proposed to be modified according to the recommendations of the Brooklyn Borough Board. Granting of the proposed rezoning and special bulk permit would allow Oxford Nursing Home to relocate and develop an up-to-date nursing home and ambulatory diagnostic and treatment facility. The project is anticipated to provide 100 new jobs for the local community, as well as elderly services. However, whether or not it is appropriate to place a skilled nursing facility in a coastal storm-surge evacuation area, with regard to the evacuation logistics as opposed to offering services in an outmoded facility, Borough President Adams has concerns regarding the appropriateness of the building height and bulk, and directing of vehicular traffic through residential streets. Should those aspects be addressed, Borough President Adams believes there should be sustainability and resiliency enhancements, and steps taken to ensure locally-based employment for the construction and operation of the proposed facility. In addition, should there be a residential conversion of the current facility, Borough President Adams believes it should be tied to the provision of affordable housing.

Building Scale

The neighborhood is being asked to accept a significant increase in bulk as compared to the existing built context. The existing character of the neighborhood is a mixture of low-scale, light manufacturing, and commercial and residential uses. The surrounding area supports a mix of land uses, including single-family and multi-family residences, warehousing, industrial/manufacturing, mixed-use (residential and commercial) buildings, transportation/utility, and public facilities and institutions, where industry and housing have coexisted for more than 100 years.

The subject block currently accommodates a variety of land uses. A portion of the block, located at the northeast corner of Sullivan and Conover streets, includes an open vehicle storage lot used for bus storage. There is a small, single-story repair shop for buses located at 143 Conover Street and two four-story, multifamily walkup residential buildings at 114 and 116 Sullivan Street, one of which has ground floor retail. There is also a two-story warehouse at 112 Sullivan Street. The block's Van Brunt Street frontage, which is zoned R5/C1-3, includes single- and multi-family residential buildings with ground-floor retail, as well as vacant land. Van Brunt Street, a heavily-utilized truck route, is the commercial/retail spine of this section of Red Hook, lined with strips of commercial establishments that are intermixed with industrial uses, vacant properties and parking lots, as well as a few transportation-related uses.

The proposed rezoning for this site involves changing the existing M2-1 zoning district to an M1-4/R6 (a special mixed-use zoning district), to a permitted height of 110 feet. Such possible height on the properties that are not in the applicant's ownership, as well as the eight to nine stories proposed for the combined skilled nursing facility and ambulatory diagnostic treatment facility, are out of context with the existing structures.

Borough President Adams believes that, should his concerns regarding coastal storm-surge evacuation be resolved, it would be more appropriate to govern development according to R6A standards along King and Conover streets and R6B standards along Sullivan Street. Development should also be governed according to how these districts would be modified by the pending regulations being considered by the City Council regarding the DCP Zoning for Quality and Affordability (ZQA) Zoning Text Amendment, as recommended to be modified by the Brooklyn Borough Board.

The R6A portion of the site would be limited to a height of 70 feet and 3.0 FAR. The R6B portion of the site would be limited to a height of 50 feet and 2.0 FAR. According to the Brooklyn Borough Board resolution on the proposed ZQA text amendment, R6A would be permitted to a height of 75 feet with 3.9 FAR, for long-term care facilities, and R6B would be permitted to have 2.2 FAR. The blending of these districts would permit 139,000 square feet of development, sufficient enough to accommodate the development of a skilled nursing home.

According to the construction standards for nursing home facilities, as provided by the New York State Department of Health, the nursing home facility with a capacity for 200 beds could be built lower than the proposed eight to nine stories. By removing the ambulatory diagnostic and treatment center from this development site, without exceeding the set maximum of 40 beds per floor, the nursing home could decrease in the number of floors by providing the additional support spaces horizontally, though, in the applicant's March 4, 2016 letter, it was noted that doing so would be detrimental to the nursing home's overall operations. The applicant also noted that the project's floor area was already reduced by 10 percent, and its height lowered from nine to eight stories, per community's concerns. Borough President Adams believes that the concerns over the proposed development's out of context height and bulk outweigh such logistics.

Therefore, Borough President Adams believes that the proposed zoning is inappropriate because it exceeds the requirements of an R6A district along King and Conover streets and an R6B district along Sullivan Street.

Should the City Council deem it appropriate to approve these land use actions, it should modify the proposed R6 zoning district to the more appropriate districts outlined in this section.

Traffic

The proposed development introduces the parking facility entrance (and one of its two means of egress) and loading/unloading area along the site's Sullivan Street frontage. Sullivan Street is a one way, Van Brunt Street-bound street that contains a number of residential buildings. The loading area and driveway are directly opposite recently constructed residences. The most direct route to the parking facility and loading area would be to drive west of Van Brunt Street, along Wolcott Street, then turn right for one block along Conover Street to Sullivan Street. With the exception of the west side of Conover Street, these streets contain residential uses and are zoned to permit residential development for the properties currently containing non-residential uses, resulting in a higher chance of more residential development over time. Introducing this facility as indicated can potentially have a significant negative impact on the residents of this community through increased traffic, including trucks introduced by this development. In addition, if the ambulatory diagnostic and treatment center were located at Conover Street, the resulting ambulettes and other vehicles, providing pick up and drop off, would further add to the traffic along this section of Wolcott Street. Additionally, the vehicles that would be accommodated in the parking facility would also add to the traffic along this section of Sullivan Street.

As this location has limited transit services, an ambulatory diagnostic and treatment facility of the proposed size would likely have a service area beyond Red Hook, likely resulting in an over-reliance on vehicle use. The nearest subway station, Smith-Ninth Streets, serving the F and G subway lines, is located approximately 1.1 miles east of the proposed facility. Therefore, the most practical public transit option is the B61 and B57 bus routes, which are not likely to discourage the use of vehicles, when available. Though, should the announced Brooklyn Queens Connector light rail service be implemented, it would improve transit access to the facility to some extent.

While the March 4, 2016, letter from the applicant's representative noted that the proposed development would not trigger adverse impacts relative to transportation, the traffic analysis does not remedy a potential quality-of-life concern. While the letter rightfully points out that the existing M2-1 zoning permits a Use Group 6B, professional office building for ambulatory diagnostic or treatment health care — a use that would generate more traffic than the proposed use; such use in this location is not likely the highest and best use based on evolving market trends. The same holds true for a Use Group 16D, a truck-based distribution warehouse, as Brooklyn has not witnessed recent ground-up warehouse construction, other than self-storage facilities. Although, the lack of centrality might favor innovation economy office space, should rents continue to evolve to a point that supports new construction, such as being contemplated by the owner of 25 Kent Street in Williamsburg.

In order to minimize the extent to which vehicular traffic would be introduced to the development, it should proceed without the inclusion of the ambulatory diagnostic and treatment facility. In addition, Borough President Adams believes that traffic should be redirected away from the residential streets by relocating the Sullivan Street parking garage entrance and exit to King Street. The applicant should coordinate with the Department of Transportation (DOT) to pursue the installation of direction signage to encourage cars, delivery trucks, and ambulettes to turn off Van Brunt Street at King Street.

Should the City Council deem it appropriate to approve these land use actions, it should obtain such commitments from the applicant in writing prior to granting its approval.

Advancing Sustainable and Resilient Energy and Storm Water Management Policies

It is Borough President Adams's sustainable energy policy to promote opportunities to utilize solar panels and/or blue/green/white roofs, as well as Passive House construction. He encourages developers to coordinate with the Mayor's Office of Sustainability, New York State Energy Research and Development Authority (NYSERDA) and/or New York Power Authority (NYPA) at each project site. Such modifications would reduce the development's carbon footprint and increase energy efficiency. Furthermore, as part of his flood resiliency policy, Borough President Adams also encourages developers to incorporate permeable pavers and/or establish bioswales that advance the Department of Environmental Protection's (DEP) green-water storm-water strategies. Blue/green roofs, permeable pavers, and bioswales would deflect storm-water from entering the City's water pollution control plants. According to the NYC Green Infrastructure 2014 Annual Report, green infrastructure has a critical role in addressing water quality challenges and provides numerous environmental, social, and economic co-benefits.

Borough President Adams believes that it is appropriate for the applicant to further evaluate the feasibility of pursuing additional sustainable and resilient rooftop features as well as Passive House construction. This includes using the building's roof for any combination of solar, blue, green and/or white roof improvements. Incorporating roof-top renewable

energy features to harness direct sunlight would be a valuable use of this project's roof surfaces, considering the relatively low height of surrounding structures, in order to generate sustainable energy. The required Builders Pavement Plan and the site's paved surface area provide opportunities to incorporate permeable pavers and bioswales as well as blue and/or green roofs that could help advance DEP green-water storm-water strategies, enhancing the operation of the Red Hook Water Pollution Control Plant during wet weather. Such bioswales have the added benefit of serving as a streetscape improvement.

It is also 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 programs and grants that might offset costs associated with enhancing the sustainability and resiliency 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. DEP's 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 opening the dialogue with any of the aforementioned agencies and further coordinating on this matter.

As further clarified in the March 4, 2016 letter from the applicant's representative, it is the applicant's intent to have storm water collected on-site, which would also be diminished by the incorporation of rain/gardens and green roof areas. The gardens would recharge storm water into the ground rather than directly to the City's combined sewer system. The green roof would contribute to the storm water retention while protecting the roof from solar heat gain. Solar panels, possibly funded in conjunction with NYSERDA, would generate a portion of the building's electricity.

Should the City Council deem it appropriate to approve zoning districts of R6A and R6B, it should obtain the applicant's commitments in writing, to the extent that it would be advancing resiliency and sustainability measures.

Jobs

Borough President Adams is concerned that too many residents of Brooklyn are currently unemployed or underemployed. It is his policy to promote economic development to create more employment opportunities. Double-digit unemployment remains a pervasive reality in many of Brooklyn's neighborhoods, and more than half of our community districts have experienced poverty rates of 25 percent or greater, according to averaged data from 2008 to 2012. Prioritizing local hiring would assist in addressing this employment crisis. In addition, promoting Brooklyn-based businesses, including those that qualify as MWBE and LBE, is central to Borough President Adams's economic development agenda. This site provides opportunities for the developer to retain Brooklyn-based contractors and subcontractors, especially those who are designated LBEs, consistent with section 6-108.1 of the City's Administrative Code, and MWBE establishments, as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation).

Borough President Adams encourages responsible development and good practices by contractors and subcontractors. He believes that workers should be able to work in a non-threatening environment while promoting his agenda for achieving employment for Brooklynites through discretionary land use actions.

Borough President Adams believes that where development in Brooklyn would provide significant opportunity to add permanent jobs, businesses should be encouraged to maximize the employment of borough residents. As Oxford Nursing Home anticipates growing its staff to

potentially 100 additional employees, Borough President Adams believes it is appropriate for Oxford to establish relationships with community-based development organizations that offer candidate placements as well as job-training for such skilled labor. In additional, Oxford should promote awareness of such qualified training programs in the surrounding community, including the nearby public housing complexes.

The applicant provided a letter to CB 6 dated December 8, 2015, indicating that they are committing to local hiring and working with various stakeholders and local organizations to ensure that notice of available positions is first given to the Red Hook community. Job postings would be advertised locally and further efforts would include opening a temporary employment office at the site, as well as publishing employment opportunities in a local publication prior to opening the proposed facility and as positions become available. Borough President Adams believes that Oxford Nursing Home should reach out to and coordinate with the local service providers, such as Fifth Avenue Committee, Carroll Gardens Association, Opportunities for a Better Tomorrow, and Southwest Brooklyn Industrial Development Corporation, and community organizations on ensuring local hiring for their operations staff. Additionally, the developer should provide quarterly updates to CB 6 and local elected officials to demonstrate its monitoring and performance of local hiring efforts in reference to MWBE and permanent operational jobs.

Should the City Council deem it appropriate to approve zoning districts of R6A and R6B, it should obtain, in writing, commitments from the applicant to retain Brooklyn-based contractors and subcontractors, especially those who are designated LBEs consistent with section 6-108.1 of the City's Administrative Code, and MWBE and LBE establishments, as a means to meet or exceed standards per Local Law 1 (no fewer than 20 percent participation), as well as to coordinate the monitoring of such participation with an appropriate monitoring agency. Additionally, the City Council should obtain, in writing, commitments from the applicant to coordinate local hiring efforts with local service providers and community organizations and provide quarterly updates to CB 6 and local elected officials to demonstrate its monitoring and performance of such local hiring efforts.

Residential Conversion of the Existing Nursing Home

The applicant's December 8, 2015 letter to CB 6 notes that it merely leases its existing facility. However, given the strength of the housing market in Fort Greene, the landlord of the existing facility stands to significantly benefit from Oxford's departure.

As one of the fastest growing communities in the New York metropolitan area, Brooklyn has experienced a renaissance that has ushered in a series of unforeseen changes, even from 10 years ago. Unfortunately, Brooklyn's success has led to displacement of longtime residents, who can no longer afford to live in their own neighborhoods. Borough President Adams supports the mayor's goal to achieve 200,000 affordable housing units over the next decade. Borough President Adams is committed to addressing the borough's affordable housing crisis through creation and preservation of much-needed affordable housing units for very low- to middle-income Brooklynites. Among numerous strategies and approaches, Borough President Adams is committed to advancing his affordable housing policy through his role in the Uniform Land Use Review Procedure (ULURP).

Borough President Adams believes that upon Oxford's relocation, should the building be converted to residential occupancy, it would be appropriate to mandate that such conversion is in accordance with the DCP's proposed citywide zoning text amendment to promote the development of affordable housing. The conversion should require no less than 25 percent of the residential floor area to be occupied in compliance with the zoning provisions of MIH designated areas.

Should the City Council deem it appropriate to approve the relocation of Oxford Nursing Home, it should obtain such commitment, in writing, coordinated by the applicant, that its landlord would file a legal mechanism to ensure that affordable housing would be included as part of such conversion to residential occupancy.

Recommendation

Be it resolved that Borough President Adams of Brooklyn, pursuant to section 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council disapprove of the land use action requested subject to the following conditions:

1. That the proposed M1-4/R6 MIH zoning be modified as follows:

    a. King and Conover streets zoned to M1-2/R6A MIH

    b. Sullivan Street zoned to R6B

2. That the Sullivan Street parking garage entrance and exit be relocated to King Street

3. The applicant coordinate with Department of Transportation to pursue the installation of direction signage to encourage cars, delivery trucks and ambulates to turn off Van Brunt Street at King Street, and

4. That the applicant shall provide, to the City Council, in writing, commitments:

    a. to the extent it would be advancing resiliency and sustainability measures

    b. to retain Brooklyn-based contractors and subcontractors, especially those who are designated LBEs consistent with section 6-108.1 of the City's Administrative Code, and MWBE and LBE establishments, as a means to meet or exceed standards per Local Law 1 (not less than 20 percent participation), as well as to coordinate the monitoring of such participation with an appropriate monitoring agency

    c. to coordinate local hiring efforts with local service providers and community organizations

    d. to provide quarterly updates to CB 6 and local elected officials to demonstrate its monitoring and performance of such local hiring efforts, and

    e. that for residential conversion of the existing nursing home, it shall be required to contain no less than 25 percent of the residential floor area to be occupied in compliance with the zoning provisions of the MIH designated areas

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March 4, 2016

VIA EMAIL AND HAND DELIVERY

Hon. Eric Adams
Brooklyn Borough President
209 Joralemon Street
Brooklyn, New York 11201

Re: Oxford Nursing Home
ULURP Nos. 150361ZMK, 150362ZSK, N150363ZCK, 160081ZRK
141 Conover Street, Borough of Brooklyn, New York

Dear Borough President Adams:

Our firm represents Oxford Nursing Home in connection with a land use application that seeks a Zoning Map amendment, an authorization, a certification and a zoning text amendment to facilitate the development of a proposed comprehensive health care center that includes a 200-bed nursing home and an ambulatory diagnostic and treatment facility at 141 Conover Street, in Red Hook, Brooklyn (the "Site").

As we explained at your public hearing on December 22, 2015, the proposed facility will replace Oxford's current facility at 144 South Oxford Street in Fort Greene, Brooklyn (Community District 2), which Oxford currently leases. That existing facility, which has been family-owned and operated for nearly 60 years, is located in a 100-year old building that does not meet current NYS Department of Health standards for a skilled nursing facility and is not handicapped accessible.

The proposed Oxford facility would preserve 200 short-term and long-term nursing beds in Brooklyn, and bring critical health care services to Red Hook, which is a severely underserved neighborhood. In addition, the new replacement facility will involve additional staff hiring, resulting in at least 225 preserved and new union jobs (1199 SEIU) in Brooklyn. The proposed development also will generate approximately 600 construction jobs (400 direct and 200 indirect), revitalizing an underutilized site and economically stimulate the surrounding area.

Although the Site is located within a manufacturing (M2-1) zoning district, it has not historically been developed with a manufacturing use and, instead has mainly been used for storage of building supplies and vehicles. Once constructed, the proposed state-of-the-art, flood

resilient health care facility would provide 200 beds as well as an approximately 26,000 square foot ambulatory diagnostic and treatment center that will be open to the public. Despite the neighborhood's significant residential population (including approximately 6,500 residents in the Red Hook East and West NYCHA developments alone, which make up more than half of the residential population of Red Hook), Red Hook is very underserved with regard to health care. Indeed, only the Addabbo Family Health Center is in walking distance, and there is only one other nursing home in all of Community District 6, the Cobble Hill Health Center.

By way of comparison, including the existing 235-bed Oxford Nursing Home facility, Community District 2 has 1,071 nursing home beds (a 10.8 population/bed ratio), while Community District 6 has only 364 nursing home beds (a 3.5 population/bed ratio). Should the replacement 200-bed facility in Red Hook be approved, the ratio in Community District 2 would be 8.4 (still far above the the Citywide ratio of 5.4) and the ratio in Community District 6 would be 5.4, resulting in a more equitable distribution of facilities within Brooklyn.[1]

The proposed nursing home and health care facility will accept Medicare, Medicaid and most major insurance plans, and has contracts with several Medicaid managed long term care providers.[2] As is the practice at the current Oxford facility, the vast majority of patients will be referred by hospitals based on patient preference which is almost always involves a facility near their home and/or family, effectively providing an opportunity for that Red Hook residents to be referred to the proposed facility.

In response to questions posed by yourself and Deputy Borough President Reyna at the public hearing, as well as issues raised by speakers at the hearing, we provide the additional information below.

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[1] NYC Department of City Planning, *Residential Facility Bed/Population Ratios by Community District, 2013 (Table 2b: Nursing Homes and Residential Health Care Facilities, Bed/Population Ratios by Community District, 2013)*

[2] Oxford's MLTC plans include the following providers:

1. AGEWELL
2. AMIDACARE
3. CENTERLIGHT
4. CHOICE CARE
5. EMPIRE BCBS
6. EXTENDED MLTC
7. FIDELIS
8. INDEPENDENT LIVING SERVICES
9. METROPLUS
10. NORTH SHORE LIJ
11. SENIOR WHOLE HEALTH

Flood Resiliency

Among the concerns expressed was the issue of flood resiliency. We think it was evident by our presentation at your hearing that flood resiliency has been a concern shared by Oxford in the formulation of the project plans, especially in view of the sensitive population that will be served by the nursing home component of the project. As we explained at the hearing, the proposed building has been carefully designed to comply with Code requirements pertaining to flood resiliency. In addition to physical measures, including elevating the building 15 feet above grade level and a combination of wet and dry floodproofing for at-grade entry spaces, Oxford will maintain a comprehensive emergency preparedness plan, which is monitored by the NYS Department of Health. This emergency preparedness plan will include specific details regarding flood emergencies (for example, the necessary procedures for timely installation of flood shields in advance of a flood event) and a detailed evacuation plan. The evacuation plan would be substantially similar to the current facility's 80-page evacuation plan, which previously was provided to your office (this plan will be updated as appropriate to reflect the new facility and updated staff assignments, but with the same level of detail regarding emergency procedures and protocols).

Further, to ensure the proposed building's resiliency, Oxford has engaged Vidaris, a provider of consulting services for building envelope, sustainability and code issues, specifically the Code Advisory team which includes Robert LiMandri, who served as DOB Commissioner at the time of Superstorm Sandy. Enclosed please find a letter from Vidaris, confirming their engagement and the scope of consulting services they will be providing regarding the proposed facility.

A question was raised at your hearing regarding the applicability of FEMA regulations, specifically Executive Order 11988. We have reviewed FEMA Executive Order No. 11988: Floodplain Management, and sought guidance directly from FEMA regarding the applicability of Executive Order No. 11988 to the Oxford project. In response, we received an email communication from J. Andrew Martin, FEMA's Region 2 CFM (copy enclosed), stating the following:

> *Regarding the applicability of Executive Order 11988 on the construction of the proposed nursing home facility in question, it is the opinion of FEMA Office of Chief Counsel (OCC) that EO 11988 does not apply to this situation.*
>
> *The construction is being privately funded and the Medicare and Medicaid programs are not programs that affect land use. They (as far as we are aware) do not dictate where, when, or even if these types of facilities are built. The action that has the potential to affect the floodplain is the construction of the facility. Unless Medicare or Medicaid have some connection to land use of which we are unaware, it would not trigger EO 11988.*

Site Selection

The Site was purchased by the Applicant in 2003 specifically to develop the proposed replacement facility. As detailed above, the existing Oxford Nursing Home building suffers from physical constraints that make it unsuitable for continued use as a skilled nursing facility. When it became clear that a new facility was necessary, Oxford engaged a real estate broker to look for suitable sites to develop a replacement facility that met the following criteria: sufficient lot area to allow a large enough floor plate to accommodate 40-bed units, minimal improvements, and location in a nearby neighborhood in Brooklyn that is underserved with regard to this type of facility. Vacant or nearly vacant parcels meeting these criteria are not readily available at a cost that is feasible to develop this type of community facility, which is a nursing home business that will be operated by the property owner, very different from a residential building developed for maximum return on investment. For these reasons, when Oxford's broker identified the Site as available, it was quickly purchased without an extensive further search.

Although the site was purchased with the knowledge that it is zoned M2-1, the proposed community facility was considered by the applicant to be appropriate for this location. Given the surrounding development and concentration of residential uses in close proximity to the Site, the needed zoning change was deemed to justified from a land use policy perspective. The Southwest Brooklyn IBZ was not established until after the Site was purchased by the applicant, and the decision by the Boundary Commission in 2013 to remove the site from the IBZ to allow the Oxford project was a tacit recognition that the proposed use is appropriate for the area.

Land Use Rationale for Rezoning Manufacturing Property

The Subject Premises, which was removed from the Southwest Brooklyn IBZ specifically to allow consideration of this project, sits at the periphery of the M2-1 zoning district. In fact, a portion of the Site is within the adjacent R5 zoning district that runs along Van Brunt Street. The proposed Zoning Map amendment, which would change the zoning of the Site from an M2-1 to M1-4/R6 (MX-5) is appropriate, as explained more fully below, based upon the existing and emerging land uses in the surrounding area.

The current M2-1 zoning district is a medium-intensity manufacturing district, which permits commercial and manufacturing uses in Use Groups 6 -14, 16 and 17 (Use Group 18 is also permitted if performance standards are met). It limits any conforming development to an FAR of 2.0, with a maximum base height of 60' and total height governed by a sky exposure plane. The current zoning does not appropriately reflect existing land uses in the surrounding area, which include non-conforming residential uses on adjacent lots and lots across the street, as well as conforming residential use along Van Brunt Street. We note that several of the speakers that testified at the public hearing occupy these residential buildings.

The proposed M1-4/R6 zoning district permits a mix of uses, including the proposed Use Group 3 nursing home and Use Group 4 ambulatory diagnostic and treatment facility. The M1-4 zoning district allows light industrial uses, commercial uses and certain community facilities. It permits a maximum FAR of 2.0 for commercial or manufacturing uses, which is the same as the existing M2-1, but the joint R6 designation permits a maximum FAR of 4.8 for certain community facility uses by special permit (pursuant to ZR 74-902) and a maximum FAR of 2.43 for residential uses. Both the M1-4 and R6 zoning districts permit a maximum base height of 60', above which compliance with a sky exposure plane is required. There is no maximum building height.

M1 zones are often buffers between M2 districts and adjacent residential or commercial districts, which is appropriate here as the Site is located immediately adjacent to (and partially within) an R5/C1-3 zoning district to the east and an M2-1 zoning district to the west.

The Special Mixed Use District (MX) is intended to encourage and enhance existing mixed industrial and residential neighborhoods and create expanded opportunities for new mixed use development. Residential and non-residential (commercial, community facility and light industrial) can all be developed as-of-right and located side by side or even within the same building, subject to some limitations. There is an existing MX special district (MX-5: Red Hook) located several blocks south of the Site.

The MX regulations will also further control potential development in the Project Area beyond the underlying zoning district regulations (for example, by limiting the maximum building height of the Proposed Development to 110 feet, rather than just requiring compliance with a sky exposure plane, which could allow a building taller than 110 feet).

We understand the need to preserve manufacturing zones but as currently zoned, the Premises has been historically underutilized and does not fulfill the intent of manufacturing designation, which is encourage industry and to provide jobs. Further, based on existing adjacent residential development, development of the Site with an M2-1 complaint use, such as a factory or warehouse, would not be consistent. The proposed rezoning is consistent with the existing and emerging land use patterns in the area, which will allow for development of a community facility that serves the residential neighborhood while providing an appropriate buffer between the M2-1 and R5 zoning districts.

Program for Ambulatory Diagnostic and Treatment Center

While the final program for the proposed ambulatory diagnostic and treatment facility has not yet been determined, it is currently proposed as a comprehensive primary and urgent care facility providing 24-hour service seven days per week (see enclosed letter of interest from Dr. Paul Rosenstock of Doctors on Call). In addition to engaging in discussions with private providers such as Doctors on Call, Oxford has been consulting with several hospitals that have expressed interest in operation of a comprehensive health care facility at the Premises.

Traffic & Transportation

As requested, enclosed please find the transportation section (Attachment G) of the Environmental Assessment Statement ("EAS") prepared by Philip Habib & Associates ("PHA") that was submitted to the Department of City Planning with the land use application. As discussed in Attachment G, it was concluded that the proposed action would not result in any significant adverse impacts relative to transportation.

To summarize, the Oxford Nursing Home EAS considered two potential development scenarios for the Site based upon the proposed rezoning. Although the Land Use Review Application proposes the development of the nursing home and ambulatory diagnostic and treatment center, and the Applicant intends to develop the Site with the proposed community facility use, since the proposed action involves establishment of a M1-4/R6 zoning district, the EAS considered the two potential development scenarios, including (1) a 200-bed skilled nursing home facility and an approximately 26,350-zsf ambulatory diagnostic and treatment center with associated accessory parking spaces (proposed project); and (2) a hypothetical mixed-use residential, community facility and commercial development (up to 88 residential dwelling units, 73,800 gsf of commercial office space, and 24,600 gsf of community facility space).

As discussed in detail in Attachment G, the hypothetical mixed-use scenario presented the reasonable worst case development scenario under the proposed rezoning, which would exceed the Level 2 screening thresholds for traffic and parking. As such, a detailed analysis of traffic and parking impacts for the hypothetical mixed-use residential project was required and is provided in Attachment G. Insofar as the Oxford project is concerned, it would generate less than 50 vehicle trips, 200 transit trips, and 200 pedestrian trips in the weekday AM, weekday midday, weekday PM, and Saturday midday peak hours. Therefore, under the CEQR guidelines the Oxford project did not warrant a detailed analysis of traffic, parking, transit or pedestrians.

Notwithstanding that for environmental review purposes the project does not present traffic or transportation impacts, the Applicant recognizes the transportation challenges that face Red Hook. Therefore, the proposed project includes ten parking spaces in excess of the required parking and Oxford will operate a shuttle from the subway for employees. Independent of the Oxford project, there has been a focus on increasing transportation to the Red Hook area, with City Planning publishing recommendations in its Red Hook Transportation Study in November 2014. The Administration's announcement of the Citywide Ferry Service, will include a ferry stop in Red Hook (operational in 2017), as well as the proposed Brooklyn Queens Connector. While the Brooklyn Queens Connector may be several years from fruition, these initiatives show a long-term interest in the future of Red Hook, and a recognition of the need to address the transportation requirements of area residents.

Quality of Life Concerns

Several comments were made by neighbors and other community members regarding perceived quality of life issues, including the height of the proposed building and traffic concerns. We note that under the existing M2-1 zoning, as-of-right development of the Site could involve far more significant impacts than the proposed Oxford project, including potentially high performance and noxious manufacturing uses. The current zoning also could permit potentially as-of-right taller buildings at the site as the M2-1 district has no maximum height limitation. Thus, for example, a reasonable as-of-right development could include a 7-story, 96-foot tall creative/tech office building or a three-story, 50-foot tall warehouse occupying a majority of the Premises, both of which would block the views of adjacent residential neighbors and also include substantial vehicular and/or truck traffic. In addition to traffic concerns, these types of use would not employ a significant number of union workers, nor would they provide needed health care services to the surrounding community.

In addition to the required EAS transportation analysis, Oxford asked Philip Habib & Associates to prepare a supplemental traffic study to further evaluate whether the proposed development of the subject site would result in traffic impacts. As part of the study, PHA was asked to compare the traffic generated by the proposed project to other uses that would be permitted as-of-right and currently could be developed at the subject site. The memorandum that summarizes this supplemental traffic study is enclosed. As noted in the memorandum, an as-of-right Use Group 6 medical office or creative/tech office use would generate far more automobile traffic than the proposed nursing home and health care facility, while an as-of-right Use Group 16D warehouse would generate significantly more truck traffic.

Sustainable and Energy Efficient Development

As stated at the public hearing by the project architect, David Mammina of H2M architects + engineers, the proposed development will strive for maximum sustainability and energy efficiency. Enclosed please find a letter from Mr. Mammina, expanding further on the items he mentioned at the hearing.

Building Height

A comment was made at your hearing that the height of the proposed nursing home might be reduced further[3] by shifting the nursing home uses to the portion of the development proposed for the ambulatory diagnostic and treatment facility. It bears emphasis that while the proposed building at its highest point is eight stories (seven full floors and one partial eighth story, setback from the street), only seven floors will be occupied. Due to flood elevations, there is no cellar

[3] As we noted at the hearing, the project's floor area was reduced by ten percent, and its height was lowered from nine to eight stories, following our community outreach prior to the project being certified for ULURP review.

and no space other than building entry and lobbies on the first floor level, just at-grade parking. Five of the floors above the first story will be occupied almost exclusively by the rooms for the nursing home beds and required ancillary spaces (40-bed units to each floor). One floor is dedicated to necessary "back of house" space, such as housekeeping, kitchen, offices, laundry and the partial top floor includes a multipurpose space for the residents and additional administrative space, as well as a boiler room.

The suggestion that Oxford shift some of the above-mentioned nursing home functions to the space presently designed for the proposed ambulatory diagnostic and treatment facility, would mean the elimination of a part of the project that meets a critical neighborhood need. Indeed, the ambulatory diagnostic and treatment facility will provide Red Hook residents with access to healthcare that is not currently available. It also serves the purpose of reducing the travel to and from the nursing home for nursing home residents in need of medical care who otherwise would have to be transported off-site.

In addition, the relocation of the non-bed nursing home space into the space currently planned for diagnostic and treatment facility presents severe operational challenges, while the resultant height reduction to be gained by eliminating the set back eight story portion would be inconsequential. The shift of the multipurpose and office spaces on the partial eighth floor (10,000 sq.ft.) of the building would increase the horizontal travel distances for residents of the nursing home, who would now have to travel through their floor to the far side of the building to attend events in the multipurpose room, rather than simply travelling vertically by elevator to the top floor, directly above their rooms. Even if this were done, which would be detrimental to the nursing home operations, the boiler room would remain on the eighth story, and the elimination of the partial eighth floor, which is already set back 41 feet from the street, would not be noticeable. The "back of house" space that occupies the second floor is too extensive to be relocated to the remaining ambulatory diagnostic and treatment facility floor area.

Therefore, further reducing the bulk and height of the proposed facility by eliminating the proposed health care facility is not feasible.

Community Board 6 Approval

After the Land Use Committee hearing on December 3, 2015, at which a recommendation to disapprove the subject land use application was adopted by a vote of 11 to 5, Oxford Nursing Home submitted a letter to the members of Community Board 6 to address comments that were made at the Land Use Committee meeting and clarify misconceptions about the project. A copy of that letter is enclosed. Subsequently, at Community Board 6's monthly full board meeting, the land use committee's recommendation to disapprove was rejected by the full board and a motion to approve with conditions was approved by a vote of 29 to 5. We have not yet received a copy of Community Board 6's resolution; however, below please find a summary of commitments that were made in writing by Oxford to the Community Board.

Local Hiring

- *Oxford will work with various stakeholders, including Community Board 6 and local elected officials, as well as other local organizations, to ensure that notice of available positions is given first to the local Red Hook community.*
- *Oxford will advertise locally, distributing notices to local organizations, opening a temporary employment office at the site and publishing employment opportunities in a local publication prior to the opening of the proposed facility and as positions become available.*

Good Neighbor

- *Oxford will meet with the Community Board and other groups representing residents and local businesses during construction planning and duration.*
- *Oxford will encourage employees as well as nursing home visitors to frequent local restaurants and other businesses, and work with local merchants to facilitate such marketing. This will include distributing information (such as menus, flyers and brochures) about local businesses and attractions and will highlight local attractions and places of interest on their website and as part of their intake process.*
- *Oxford will undertake local purchasing as well as work with local service providers and artisans.*
- *Oxford will work with neighbors to schedule times for deliveries*
- *Oxford will cooperate with Pioneer Works to ensure against any adverse impacts on their operations and public events.*

Evacuation

- *Oxford will comply with any and all evacuation orders from the City or State.*
- *Oxford will maintain a detailed evacuation plan that includes transfer agreements with hospitals and nursing homes as well as an agreement with an ambulance company to transport residents.*

No Residential Use

- *Oxford will not develop any residential use at this site, nor will Oxford sell the property for residential development in the future.*

Traffic & Parking

- *Oxford will provide a comprehensive plan for the use of public transportation by employees and visitors, both on their website and upon intake.*
- *Oxford will encourage employees to take public transportation by providing a shuttle service to and from the subway.*
- *Oxford will not provide a dialysis center at the site.*

As you know, the proposed Oxford Nursing Home project has the strong support of the Tenants Associations of Red Hook East and Red Hook West, as well as the Brooklyn Chamber of Commerce and 1199 SEIU United Healthcare Workers East. Enclosed please find copies of their letters of support, which your office should have received directly. In addition, enclosed please find a petition in support of the project, signed by nearly 450 residents of Red Hook East and West.

Clearly, the support for this project, as expressed by Red Hook East and Red Hook West as well as other project proponents, and as reflected in the overwhelming vote in favor by Community Board 6, is driven by Red Hook's need for health care services. This support also recognizes the measures taken to protect the building and its occupants from the risk of future flood events (which cannot be predicted but can be managed by Code compliance and emergency planning). While Red Hook was devastated by Superstorm Sandy, the threat of similar events should inform, not bar, new development in Red Hook, particularly community facilities such as the Oxford project that are built to the highest standards. Despite its location within a flood zone, Red Hook continues to be home to thousands of residents who need services, including those proposed by the Oxford project.

Your consideration of the foregoing in making your determination on the subject land use application is greatly appreciated.

Respectfully,

Howard S. Weiss

HSW/cdp

Enclosures