

Brooklyn Borough President Recommendation



CITY PLANNING COMMISSION
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INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representatives as indicated on the Notice of Certification.

APPLICATION #: 090047 ZMK – 090048 ZSK – 090049 ZRK
363 – 365 Bond Street

In the matter of an application submitted by the Toll Brooklyn L.P. pursuant to Sections 197-c and 201 of the New York City Charter for: (a) an amendment of the Zoning Map, Section No. 16c changing from an M2-1 District to an M1-4/R7-2 District property bounded by Carroll Street and its southeasterly centerline prolongation, the center line of the Gowanus Canal, Second Street and its southeasterly centerline prolongation, and Bond Street; and establishing a Special Mixed Use District (MX-11) District bounded by Carroll Street and its southeasterly centerline prolongation, the center line of the Gowanus Canal, Second Street and its southeasterly centerline prolongation, and Bond Street; and (b) a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the height and setback regulations of Section 123-66, the rear yard regulations of Section 23-47, and the inner court regulations of Section 23-852; and, (c) a zoning text amendment in connection with a proposed mixed use development on property located at 363 – 365 Bond Street.

COMMUNITY DISTRICT NO. 5

BOROUGH OF BROOKLYN

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS
- DISAPPROVE WITH MODIFICATIONS/CONDITIONS
- DISAPPROVE

BOROUGH PRESIDENT

December 17, 2008

DATE

**RECOMMENDATION FOR THE PROPOSED
LAND DISPOSITION OF
CITY-OWNED PROPERTY FOR
RESIDENTIAL DEVELOPMENT
090047 ZMK – 090048 ZSK – 090049 ZRK**

PUBLIC HEARING

On November 19, 2008 Brooklyn Borough President Marty Markowitz held a public hearing on applications by the Toll Brooklyn L.P. (Toll) for the following actions: amendment to the Zoning Map and text; and the granting of a special permit. Approval of these actions are being sought in order to facilitate a mixed-use development consisting of 447 housing units, 269 parking spaces (approximately 60 percent of the number of units) and 2,000 square feet (sq. ft.) each for retail and community boathouse space for the Gowanus Dredgers. A linear, publicly-accessible open space (nearly 31,000 sq. ft., not including the end of public streets) would be provided along the Gowanus Canal for the length of the site, ranging in width from 40 to 70 feet.

The building plans, including bulk, parking, use (except for the affordable housing component), open space and site remediation of hazardous materials, would be memorialized through the filing of a deed restriction recorded against the land. The residential component of the proposal is indicated to provide 130 affordable housing units. The applicant has stated that the rental properties will be affordable to households primarily earning up to 60 percent of area median income (AMI), though efforts would be made to accommodate lower-income families up to 40 percent AMI and moderate-income households up to 80 percent AMI.

In response to the borough president's concern of whether the affordable housing component would be built, the applicant referenced the incentives based on the inclusionary housing zoning bonus in combination with the 421-a real estate tax abatement as strong enticements to proceed with the affordable housing. Responding to the concept that the project could be reshaped to limit height without sacrificing the floor area of the proposal, representatives of Toll stated that such a massing would be monolithic, lack variety, and be unattractive as exemplified by the nearby Mary Star of the Sea elderly housing project as well as having negligible effect on the shadows cast by the buildings. In regards to the borough president's interest in providing more opportunity for family housing by changing the unit mix to include three-bedroom units as part of the affordable housing component, the representative advised that the unit mix could be modified.

There were four speakers in favor of the application and 22 speakers against the application. Speakers in support included representatives for Council Member Bill de Blasio and the Gowanus Dredgers

The council member's representative said that the Toll proposal is consistent with the framework developed by the Department of City Planning (DCP) for Gowanus and that the agency will be moving forward with a rezoning proposal. The council member supports the project for having 30 percent of the units as affordable housing; waterfront open space; exceeding the rate of required parking; and, storm-water improvements. The council member also sees the proposed development as a catalyst for the Department of Environmental Protection (DEP) commitments including the pump station upgrades, flushing tunnel repairs, and reactivation of a forced main.

The representative of the Gowanus Dredgers endorsed the space that would be set aside for the boathouse and access point that would be provided to launch boats into the Gowanus Canal. The contractual commitment signed between Toll and the unions was noted as a positive decision that would set a precedent for subsequent developers and result in jobs that provide good wages. Other supporters believed that the proposal would aid efforts to address negative aspects of the current state of the canal.

Those opposed included representatives of the Center for the Urban Environment, the Carroll Gardens Neighborhood Association, the Coalition for Respectful Development, Friends of Greater Gowanus (FROGGS), Gowanus Canal Conservancy and the Urban Divers and various individuals.

Several concerns were expressed in opposition to Toll's proposal. A number of those who testified stated that the canal is highly polluted and that development along its banks should not happen until it is cleaned up. A report issued by the Army Corps of Engineers was referenced for noting the vast number of toxic chemicals contained in the canal. It was suggested that cleaning the Toll site of its pollutants would not protect subsequent residents from the adjacent health hazards, including biohazards, when the canal floods over its banks. Some speakers called for a health study to be initiated, prior to permitting development, to determine if a cancer cluster exists. Others advocated for establishing a Gowanus preservation land trust through public ownership that would pursue comprehensive clean-up prior to any rebuilding. There were also those who questioned building in areas susceptible to 100-year flood events which apparently are increasing in frequency.

Other concerns pertained to whether it was appropriate for the development of this site to be given consideration before the outcome of the DCP framework is formally approved. Since this DCP framework has not been reviewed as a land use application, it is believed that it should not be used as a basis to justify Toll's proposed height. At issue was the part of the plan that exceeded 8 stories (12 stories proposed) and the resulting canyon-like effect along the canal and shadows that would be cast. Speakers believed that shadows from a 12 story building would make the open space along the canal less usable and would hamper its ecological benefits. Many speakers supported an 8-story height limit because they felt it would provide improved light and air. By limiting the height to 8 stories, they said, would eliminate the view of the project from the Carroll Gardens Historic District. It was believed that the resulting building, without exceeding 8 stories, could be designed creatively with architectural diversity, including recreating the townhouses at the building's base to maintain multiple entrances along the street.

Additional concerns included the following: the adequacy of the parking to be provided; whether the higher performing schools (such as M.S. 51) would become overcrowded due to the increase in school age population. Some speakers questioned whether the affordable housing would be built.

Prior and subsequent to the hearing, the borough president received additional comments – primarily against this application. The general consensus for those against this proposal called for this development to be limited to eight stories.

Subsequent to the hearing, representatives of Toll met with the borough president's staff to further discuss the project. The developer's representative explained that limiting the building to eight stories, as requested by many community residents,

would result in either long corridors or another vertical circulation core with space diverted towards elevators and stairwells. Both cases would divert revenue producing floor area to such spaces. Furthermore, the vertical core would result in additional costs to provide security for the residents and in the loss of parking spaces (five spaces on the north side of First Street and ten spaces on the south side); and, remove street life by replacing the individual entrances of the townhouses. In a letter to the borough president dated December 15, 2008, Toll projected that providing an extra vertical core and lobby would increase the development cost by \$1 million and reduce revenues by \$3 million.

In terms of the commitment to provide affordable housing, the Toll representative said that the affordable housing development partner, L & M Equities, has a compelling track record with the expertise to obtain the required financing through the government application process. It is anticipated that L & M will apply for tax-credits through the annual competitive process of the state. In the December 15 letter, Toll advised that if the application was not selected in 2009, it would commit that L & M would file again in 2010 in order to deliver the affordable housing aspect of the project. In correspondence dated December 17, 2008, a representative of Toll noted that the development will be a continuous multi-year process projected to take between 12 to 24 months to complete.

If for any reason by 2010 the public funding needed to provide housing affordable to lower-income households is not obtained for the second of the proposed affordable buildings, Toll will apply for funding in the 2011 approval cycle for the number of units that represents 20 percent of the total floor area of that block.

At the aforementioned meeting, the borough president's representative told Toll that the borough president believed there should be some retail space fronting the public esplanade along the canal. In response, the representative of Toll stated his belief that such a space would be difficult to market and that a vacant space along the open space would be detrimental for the users of the open space. Representatives of Toll submitted documentation that indicated subtle differences in the shadows cast on the publicly accessible open space between an 8- and 12-story building configuration during the afternoon hours.

CONSIDERATION

Community Board 6 approved these applications at the requested height subject to the development being constructed as presented with affordable housing.

The site is zoned for industrial use with limited applicability for retail development. Toll is seeking zoning that would substantially increase the range of retail and commercial uses, including hotels, while allowing residential and community facility use. However, Toll intends to voluntarily record a deed restriction on this land that would be legally enforceable with an expectation that development would occur subsequent to the remediation of the hazardous materials. These restrictions include the following: development would not exceed the requested height and building configuration; uses would be as indicated in the application drawings, including the number of parking spaces presented; open space would be developed as delineated; and, storm water treatments would be constructed. Thus, with the recording of the deed restriction, the proposed zoning is only relevant in that it permits residential development.

The borough president believes that this proposal is consistent with the land use aspect of the DCP framework for Gowanus. Though there may be aspects of the DCP

framework that needs thorough examination during the public scoping hearing and eventual ULURP process, he is confident that the sites being sought for residential development are largely in agreement.

If approvals are granted to Toll, it will allow them to begin to remediate the hazardous materials within its site, construct its separate storm sewer infrastructure and build its residential development. Approval of these applications is appropriate only after Toll provides a satisfactory commitment to address concerns pertaining to: height; affordable housing (including more family-sized units); and, location of retail use.

BUILDING HEIGHT

The borough president believes that there is merit in the plan presented by the joint volunteer efforts of the architects that are residents of the community. Their position is that height above eight stories is inappropriate and that the floor area that Toll is proposing above such height can be redistributed within the project. The borough president believes that this proposal has significant acceptance within the community. For the building site on the north of First Street, the borough president concurs with the position of the community that the building height should not exceed eight stories. The views of the proposed project from the Carroll Street Bridge strongly justify a reduction of building height. The historical bridge is envisioned by the borough president as an essential component of the anticipated open space system along both banks of the Gowanus Canal. The height along the canal must be carefully contemplated in terms of the future users of this open space system. Limiting height on this block to eight stories would eliminate views of the project from within the Carroll Gardens Historic District along Carroll Street.

The part of the building above 8 stories of the development site south of First Street is a sufficient distance from both the Carroll Street and Third Street Bridges to not impact on the open space users on those canal crossings. Toll has provided sufficient shadows analysis demonstrating that the 12-story portion would have nominal effects on users of the canal-side, linear, open space network.

The floor area of the proposed north block tower can be adequately redistributed on the site without impacting the proposed transition height indicated at the Bond Street section of the block. The borough president believes that Toll's design team has the capability to generate new Brooklyn architecture that rivals successful architecture where buildings are fairly uniform in height, as has been achieved in the development in Cobble Hill known historically as the "Home Apartments" located at Baltic and Warren Street. This can be achieved without compromising the benefits of multiple building entrances associated with row-house development. It will still be possible to provide direct street access for individual apartments at grade as a means of activating the street, perhaps in a duplex arrangement, at the base of the building. The borough president understands Toll's position that such development might be less financially attractive due to diverting useable areas for circulation, that is, longer hallways or additional vertical circulation and lobby areas. However, the scale of the project should respect the community that is hosting this development. The attractiveness of the scale and design of buildings in the area has made the project site attractive enough for Toll to want to invest in the area.

Furthermore, the Toll design is not consistent with the DCP framework for open space along 12-story building portions. Toll provides an open space adjacent to the canal

40 feet in width. The framework apparently prescribes 55 feet. In light of these concerns, the borough president believes that the height of the north block should not exceed 8 stories.

AFFORDABLE HOUSING

By Toll voluntarily recording a deed restriction on this land, the project will be legally bound to not exceed the requested height and building configuration; that the uses would be as indicated on the drawings; including the proposed number of parking spaces presented; open space would be developed as delineated; and, storm water treatments would be constructed – all subsequent to the remediation of hazardous materials. What would remain uncertain is whether the affordable housing would be constructed. Toll's commitment to the affordable housing, while commendable, is dependent on the successful efforts by L & M Equities to be awarded financing resources through an annual competitive process of the state.

In a letter from Toll dated December 15, 2008, Toll advised the borough president that it intends to forgo the zoning bonus and 421-a real estate tax abatement in order to develop the site if L & M was not successful after applying in 2009 and 2010. On December 17, this commitment was clarified to extend to 2011 if needed for part of the project.

Though development would result in publicly-accessible open space and the removal of environmental hazards from the site, the borough president believes that these factors by themselves do not justify approving this project. In the past decade Carroll Gardens has evolved into a highly desirable neighborhood. As more affluent households have moved in, long-time residents that do not own their residence have been displaced or have been finding it more challenging to remain in the neighborhood. Many rental apartments in this area are not protected by rent stabilization, which at times is not sufficient enough to keep rent within the means of certain households. In order to appropriately provide opportunities for displaced residents to return to the neighborhood and for those at risk for being displaced, the borough president believes that Toll's commitment to building the affordable housing based on correspondence received on December 15, and December 17, 2008 is sufficient.

In consulting with for-profit affordable housing developers, the borough president learned that the general consensus was that two attempts for the necessary funding assistance through the state should lead to an award. Apparently it is the practice of the State Department of Housing and Community Renewal (DHCR) to work with applicants who have not been selected to help them succeed with subsequent attempts. There are specific items that might weigh heavily in DHCR's scoring system to determine which meritorious project is likely to obtain an award. While seeking funding, Toll should report to DHCR the current plans in which it will follow to gain insight into how well the project weighs on the agency's scoring system. It should be noted that even with the best of intent, developers have advised that more than two funding cycles are at times necessary to achieve an award.

Due to the proposed development being on two blocks, it is reasonable to expect the project to be phased. Through phasing, the number of market rate units will be able to be absorbed over a more gradual amount of time. Therefore, it is conceivable that a first phase could be under construction while the developer benefits from an extra year to pursue affordable housing funding resources through the government.

The site north of First Street contains approximately one-third of the proposed affordable housing. Based on the insight provided to the borough president, he accepts Toll's December 15 commitment to seek funding over two request cycles as long as it is applicable to the site that contains the lower percentage of affordable housing, meaning for the north site building (minimizing the risk of the loss of affordable housing units if two attempts do not result in an award from the State). With Toll's December 17 commitment to seeking funding over three cycles, the likeliness that affordable housing will be achieved is substantially enhanced. Toll should be compelled to reserve this commitment for the block south of First Street (which contains the greatest share of the affordable housing). This funding would allow Toll to be permitted to file for building permits in conjunction with a "lower income housing plan" acceptable to the Department of Housing Preservation and Development, pursuant to Zoning Resolution Section 23-93, as part of the building approval documents.

Furthermore, the affordable housing proposed by Toll would contain studios and one- and two-bedroom apartments. Many two-bedroom affordable apartments are ill-suited for families with more than one child. In order for the affordable housing to provide a wider number of family sizes the opportunity to apply for housing, the borough president believes that the earmarked affordable units (not less than 20 percent of the development) contain less studio and one-bedroom units in order to incorporate a suitable number of three-bedroom units. Though this would reduce the number of affordable units to less than 130 units as proposed, the number of families that would become eligible to seek such housing would greatly increase. The borough president believes that expanding opportunities to more households within the space that would be developed for affordable housing is much more important than an absolute number of units that excludes opportunity for families of four or five persons. Therefore, construction should proceed based on the written commitments of December 15 and 17, 2008, provided that the commitment to apply for funding for three cycles before the start of the second block benefit the development on the south side of First Street - containing approximately 2/3 of the proposed affordable housing component; and, that the affordable housing on both blocks also includes three-bedroom units.

PARKING

The borough president shares the concerns raised by area residents regarding that the project may result in a shortage of on-street parking. The Draft Environmental Impact Statement (DEIS) predicts that a limited number of onsite spaces would be available when the Toll development becomes fully occupied. The deed restriction that Toll will file, prior to the review of these applications by the City Planning Commission, provides parking onsite for approximately sixty percent of the housing units. This is higher than the less than fifty percent that is required when a development contains a blend of market-rate and affordable housing units. If the distribution of unit types were modified to include three-bedrooms amongst the planned affordable units, and more family-sized units within the market-rate component of the project, the ratio between parking and apartments can be improved. If the number of households within the Toll development that want to utilize the onsite parking does not meet the number of spaces available, such spaces may be rented to area residents. The issue of parking would be further evaluated as part of the review process for the DCP application.

RETAIL/ARTISAN SPACE ALONG THE CANAL

The borough president believes that the open space along the canal would be enhanced if some portion of the development fronting the canal was occupied by commercial use. This does not mean that the developer would have to give up more valuable residential development. The retail proposed along First Street could be switched to a canal frontage location. In this way, the commercial space becomes more of a community amenity. Even with subsequent redevelopment on the east bank of the canal per the DCP framework, the borough president believes that the publicly accessible space that Toll would construct would benefit from sunlight from the mid-morning until the early afternoon. Such space would be enhanced as a community congregation area by having an opportunity to obtain beverages and food adjacent to the canal. Though convenience food in itself might be challenging to operate successfully as a business from the sales generated from building residents and open space congregants from the neighborhood, joint use as gallery/artisan (wares such as handmade jewelry, etc.) space could help sustain such a commercial space, while being in synergy with the many galleries that are already integrated within Gowanus. Therefore, space for such uses should be included along the canal.

SCHOOL OCCUPANCY

The borough president is aware that the baseline analysis used to determine school populations was subsequently made obsolete after the DEIS was circulated at the outset of the public review process. Prior to preparing the final EIS, the borough president recommends that Toll consult with the following website <http://insideschools.org> or the Department of Education's (DOE) Enrollment, Capacity and Utilization Report to evaluate school occupancy. The Toll site is within the enrollment catchment area of P.S. 32. Using the latest data, it is possible that this project would reach the maximum capacity in the building for the elementary school. At a meeting between the Borough President's Office and DOE held on November 20, 2008, it was noted that P.S. 133 would be split between District 13 (300 seats) and District 15 (600 seats). In addition, the building housing P.S. 32 also contains a middle school and a District 75 school. Therefore, the DOE appears to have multiple options to address capacity at P.S. 32 prior to significant occupancy of what would be developed by Toll or other entities.

Evaluation of area school capacity would again be part of the anticipated DEIS associated with DCP's Gowanus Canal Corridor study. This evaluation would be completed significantly in advance of the Toll project to aid DOE in planning for school seats. However, the borough president expects that DOE would be consulted for this assessment. That DEIS would likely clarify the adequacy of school capacity in this area in light of the Toll application, and the anticipation of more developments subject to other known zoning proposals including Gowanus Green (Public Place) and the DCP Gowanus proposal.

ENVIRONMENTAL CONCERNS

The borough president believes that this application by Toll should cause DEP to focus attention to the needed clean-ups in and around the Gowanus canal. As many areas compete for infrastructure improvements by DEP, the absence of the proposed development by Toll might no longer provide an impetus to prompt a clean-up of the area. Canal area improvements include the upgrades to the Gowanus pump house;

reactivation of the forced-sewer main (diverting a portion of the combined sanitary and storm sewage directing more to the Columbia Street sewage interceptor line rather than continuing in the Bond Street interceptor towards Red Hook first); repairing the system that provides water from the Buttermilk Channel; and, dredging of the canal north of Union Street. These upgrades are critical to improving the water quality of the Gowanus Canal. In that regard, the borough president wrote to DEP Acting Commissioner Steven Lawitts, in a letter dated December 17, 2008, urging for the completion of the necessary clean-up on the Gowanus by 2013, in light of the City's proposed Gowanus rezoning.

In addition to these projects that DEP has suggested it would implement, it has become evident to the borough president that the condition of the Bond Street interceptor makes adjacent buildings along and just uphill (west) of Bond Street more susceptible to sewer back-ups and flooding. The Borough President's Office has been advised by a DEP representative that the Bond Street interceptor is hampered in its ability to bring sewage towards the Red Hook Water Pollution Control Plant (at the Brooklyn Navy Yard) due to a build-up of sediment within the pipes. This is a likely cause of sewage back-ups and flooding for adjacent buildings. The borough president believes that the residents and property owners of these buildings should not continue to be victims of a malfunctioning sewer. To that end, in the aforementioned letter to the DEP Acting Commissioner, the borough president urged for expediting the process to free the Bond Street interceptor of this sedimentation. The borough president believes this issue needs to be addressed prior to the Bond Street interceptor serving the occupants of the development planned by Toll.

The borough president appreciates the documentation provided by a FROGGS representative of the historical places eligible for listing in the National Register and its quest for a Gowanus preservation land trust. However, the fiscal climate at all levels of government appears to render it economically infeasible, due to the high cost of acquiring property around the canal and remediation. Many of the places were also documented in the DEIS submitted by Toll and would be expected to be included in the forthcoming analysis by DCP as part of its evaluation documentation for rezoning a segment of the Gowanus industrial area. That process might play a role in determining whether or where mitigation is warranted for some of the potentially eligible places.

RECOMMENDATION

Be it resolved that the Brooklyn Borough President, pursuant to section 197-c of the New York City Charter, recommends the approval of these applications by the City Planning Commission and the City Council subject to the following conditions:

1. That the building height is not to exceed eight stories north of First Street.
2. That the achievement of affordable housing be enhanced by sequencing construction so that development on the south side of First Street – containing approximately 2/3 of the proposed affordable housing component – be chosen by Toll to be the beneficiary of up to three application cycles for State funding assistance based on the written commitment dated December 17, 2008, that supplements the December 15 commitment; and, that the affordable housing on both blocks also includes three-bedroom units.

3. That retail and commercial gallery/artisans along the canal is provided within the proposed building.

Be it further resolved that the Department of Environmental Protection initiates and completes the following expeditiously:

- The repair of the Bond Street interceptor.
- The rehabilitation/reactivation of the Gowanus Flushing Tunnel, Gowanus Canal Pump Station and associated forced-main between Bond and Columbia Streets.