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Citywide Zoning Text Amendment Application

CITY OF YES FOR ECONOMIC OPPORTUNITY – N240010ZRY

IN THE MATTER OF an application submitted by the NYC Department of City Planning to propose a citywide zoning text amendment to support economic growth and resiliency in New York City. This text amendment would facilitate the repurposing of existing nonresidential space by providing businesses with additional zoning flexibility to locate and expand. The proposed zoning text amendment would apply to all 59 of the city's Community Districts. See companion ZR amendment in 2024Y0161.

CITYWIDE TEXT AMENDMENT

RECOMMENDATION

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

(See individual proposal responses below for recommendations)

RECOMMENDATION FOR: CITY OF YES FOR ECONOMIC OPPORTUNITY – N240010ZRY

The Department of City Planning (DCP) is proposing sweeping changes to the Zoning Resolution (ZR), with the intent of supporting small businesses, strengthening commercial corridors, and providing flexibility for entrepreneurs to start businesses in the city. The zoning regulations that govern where business can locate have remained nearly unchanged since 1961, and this text amendment also intends to update the definitions and types of uses that are outlined in the ZR.

Community Board Position

According to DCP's Zoning Application Portal, as of January 23, the following Brooklyn Community Boards have taken action on this application:

- CB1: Held a public hearing on December 19, 2023, and voted conditional favorable on January 9, 2024
- CB10: Held a public hearing on January 23, 2024

- CB11: Held a public hearing on January 9, 2024, and voted conditional unfavorable on January 11, 2024
- CB15: Held a public hearing on November 28, 2023, and voted conditional favorable on the same day
- Borough Board: Held a public hearing on January 4, 2024 and intends to vote on February 6, 2024

The Borough President heard process-related feedback from community boards about this Zoning Text Amendment. Boards reiterated that the zoning text is complicated, dense, and long, and the referral period to properly review these changes was insufficient, particularly when taking into account winter holidays. Further, the Department of City Planning (DCP) was not clear on community board or Borough President recommendation deadlines. While the Borough President appreciates the flexibility DCP committed to providing in reviewing all feedback through February, the Borough President remains concerned that the City Planning Commission will hold a hearing before all recommendations have been submitted.

The Borough President also shares community concerns around enforcement. While zoning cannot regulate enforcement, zoning changes could affect enforcement agencies' workloads, operations, training, etc. The Borough President understands that the updated zoning regulations will provide increased flexibility that could require more from enforcement agencies.

Approval Rationale

The Borough President held a public hearing on this item on December 18, 2023. Five members of the public testified during the hearing, and two additional members of the public submitted written testimony.

Goal 1: Make it easier for businesses to find space and grow

1. Reactivate storefronts *(Approve)*

   The Borough President supports proposals that reactivate vacant storefronts along existing retail corridors and within neighborhoods, and supports expanding this provision to cover all Residence Districts instead of limiting it to R5, R6, and R7 Districts. According to a recent report from the Association for Neighborhood & Housing Development (ANHD) analyzing storefront vacancy data from 2019 and 2020, there are "troubling vacancy rates in outer-borough ethnic enclaves such as Flushing Chinatown, Sunset Park, and Brighton Beach." We must take measures to help stabilize neighborhoods by allowing more small, local businesses to locate and thrive.

2. Simplify district types *(Approve)*

   The Borough President appreciates DCP's effort to make zoning more predictable for small businesses and understands the rationale for allowing similar uses along both sides of commercial and retail corridors. The Borough President heard community concerns about potential nuisance uses being newly allowed across C1/C2 and C4/C5/C6, and requests that DCP review the new uses being permitted across the districts and contemplate whether a square footage cap is appropriate on some of these new uses.

3. Small-scale production *(Approve)*

   Borough President Reynoso has long been advocating for DCP to create new tools to facilitate inclusion of light manufacturing space in mixed-use buildings. He supports this proposal but wants to be clear that it should not be used as a rationale for rezoning any

more of the city's Manufacturing zones, which remain necessary to support a broader range of industrial uses.

4. Loading docks *(Approve with modifications)*

   Borough President Reynoso supports proposals that provide flexibility for manufacturing businesses. However, he is concerned about unintentionally creating a legalized loophole for particularly traffic-generating uses such as last-mile facilities or other warehouses. For example, the Borough President wants to avoid a scenario where a business could legally occupy a building with few loading docks, report one use to the Department of Buildings, and a few months later begin operating as a last-mile warehouse or other business with a high level of truck throughput. If the cost savings were significant enough, such a loophole could have the secondary effect of increasing displacement pressure on existing manufacturing businesses.

   Borough President Reynoso believes the most appropriate way to guard against such a scenario is to add extra scrutiny for last-mile warehouse facilities through a new special permit (elaborated in response to Proposal 14).

5. Upper floor commercial (*Disapprove with modifications*)

   The Borough President shares DCP's desire to see vibrant commercial corridors and increased opportunities for small businesses. However, Brooklynites have shared valid concerns about this proposal, including about privacy, safety, pollution, potential loss of residential units, and especially noise. On the issue of preventing access between commercial and residential uses, DCP has noted that separate entrances, stairwells, lobbies, etc., would be required; however, the zoning text does not include this level of specificity. The Borough President requests that "access" be more specifically defined in order to preclude any potential ambiguity that could lead to safety and privacy issues.

   Additionally, the Borough President agrees that co-locating eating and drinking establishments in residential buildings is likely to generate noise that would negatively impact residents' quality of life. When bars and restaurants locate adjacent to or above residential, they should be required to implement both the 15 ft. and wall/ceiling buffer, *and* the prescribed sound attenuation measures, not one or the other. Even so, this will be an ongoing enforcement challenge that is going to require a more proactive response than residents in existing mixed-use areas with restaurants and bars on the ground floor feel they are currently receiving.

   Finally, the Borough President shares concerns that this proposal could lead to the loss of residential units. While DCP has stated that it is unlikely that a landlord would retrofit an existing residential building to accommodate commercial due to the cost of separating the two uses, there is nothing in the zoning that would prevent this from happening. New York City's housing crisis is so dire that we cannot afford to lose existing units, let alone run the risk of existing tenants being displaced. The Borough President recommends including a provision that no commercial space will be allowed that displaces existing residences.

   Given the concerns outlined above, and the proliferation of vacant storefronts throughout the city, the Borough President questions whether this proposal is necessary to achieve DCP's stated goals.

6. Use terms *(Approve with conditions)*

   Borough President Reynoso agrees that the uses and Use Groups currently written in the Zoning Resolution need to be updated. Use Groups should never have been allowed to

become so outdated in the first place. The Borough President requests that DCP use this Zoning Text Amendment to set a precedent that uses and Use Groups be updated in a standalone Zoning Text Amendment on a decennial basis. Combining a use group reorganization with the other 17 proposals in this Zoning Text Amendment has exacerbated the difficulty of thoroughly reviewing the draft zoning text.

Updating and defining new land uses is a core responsibility and competency of DCP. However, the status quo for updating uses is too reactive and relies too heavily on outside advocacy. For example, in the last decade, last-mile warehouses have emerged as a significant land use affecting the daily lives of New Yorkers. As a participant of the Red Hook Traffic and Truck Study, DCP should be aware of the impact of this land use on environmental justice communities. The Borough President will further elaborate on this issue under Proposal 14, but the lack of action on defining this pressing use underscores the need for a more proactive, regular approach to updating uses and use groups. Such an approach would also help obviate the need for unusual text amendments such as the Citywide Zoning Text Amendment for gaming facilities, which, as drafted at the time of this recommendation, combines adding a new use to the Zoning Resolution with waiving the regulations of the entire Zoning Resolution for said use in favor of a separate approval process.

While Borough President Reynoso supports the removal of antiquated terms, some of the proposed simplifications go too far, particularly the new amusement use proposed for Use Group 8. Consolidating uses such as bowling alleys, skating rinks, and pool halls from four different Use Groups into one makes sense, but renaming all of these uses to the vague "amusement or recreation facilities" seems counterproductive, especially since Use Group 6 is proposed to include many uses similar or adjacent to entertainment and recreation. If the goal is for businesses to reference uses more easily, such a vague name could create more confusion than before and create ambiguity between nightlife and amusements.

Borough President Reynoso feels that currently, use and Use Group information is needlessly difficult and confusing for members of the public to access. While reorganizing the Zoning Resolution is a step in the right direction, the public should not have to rely on referencing clunky zoning text in order to find information on uses. Currently, there is no resource where every use and Use Group is exhaustively listed in one place; the closest is a page of the NYC Zoning Handbook that directs the reader to different parts of the Zoning Resolution for each use group. DCP should provide a reader-friendly supplement to the NYC Zoning Handbook that exhaustively lists all uses, use groups, and in which zoning districts they are permitted.

Some of the City's tools, particularly PLUTO/MapPLUTO and ZoLa, the City's Zoning and Land Use Map, are good resources that are widely used by subject matter experts and the public alike. Unfortunately, use and Use Groups are not currently included in this data. In the spirit of improving the transparency, legibility, and access of the City's land use regulations, Borough President Reynoso requests that DCP work with the Department of Finance (DOF), the Department of Buildings (DOB), and the Office of Technology and Innovation (OTI) to update record and record-keeping systems to include this information.

In summary, Borough President Reynoso supports the effort to rationalize and reorganize Use Groups provided that:

1. DCP commits to setting a precedent for use group updates on a decennial basis
2. "Last-mile warehouse" is added as a use (further discussed under Proposal 14)
3. The proposed "amusements and recreation facilities" is broken out into more specific uses, consolidated under UG 8
4. DCP provides reader-friendly reference materials other than the Zoning Resolution

5. DCP works with relevant partner agencies to publish use and Use Groups data on a parcel level through PLUTO, MapPLUTO, and the City's Planning and Land Use Map (ZoLa)

Goal 2: Support growing industries

7. Urban agriculture *(Approve with conditions)*

While the draft zoning text allows for agricultural uses "provided that no offensive odors or dust are created," the Borough President remains concerned that the text does not discuss noise, vibrations, and, while indoor agriculture is typically less chemical-intensive than outdoor agriculture, the potential usage and disposal of chemicals or pesticides. If any chemicals are used in indoor growing operations, the Borough President recommends that commercial buildings with agricultural uses comply with standards for hazardous material storage and transportation that align with those set forth in other sections of the ZR, particularly in relation to any buildings with agricultural use in areas subject to flooding.

Further, recent reports show vertical farming involves significant energy usage when compared to greenhouses. The Borough President wants to ensure that renewable energy sources are used to help power these facilities, and he would like DCP to provide clarity on how energy efficiency standards will be measured, how energy use will be regulated, and how the energy related to this use will tie into recent regulations passed in City of Yes for Carbon Neutrality.

Finally, The Borough President received community feedback concerning the regulation of cannabis-production facilities as a permitted use within urban agriculture. The State administers Adult-Use Conditional Cultivator licenses, which growing facilities would need to obtain in order to operate in New York City. The Borough President echoes community concerns around the need for continued enforcement of unlicensed facilities, and asks that DCP contemplate the appropriateness of a CPC Authorization for facilities that exceed a certain square footage to provide an opportunity to assess both agricultural use and energy usage.

8. Life sciences *(Approve with conditions)*

Existing zoning text only allows for laboratories to locate within hospital or educational settings, which are equipped to deal with the handling, storage, and disposal of hazardous materials. The proposed text allows these facilities to locate in mixed-use buildings. While it defines "laboratories" in a way that implies hazardous substances cannot be used, the performance standards dictated correspond to regulations for M1 districts. The Borough President would like DCP to revisit this requirement, as stricter environmental and disposal standards may be necessary when laboratories are co-located with residences.

The Borough President reiterates these concerns in relation to the BSA Special Permit defined in 73-171, which allows for ground floor offices in Residence Districts located in flood zones. The Borough President requests that DCP take measures to ensure that hazardous substances are strictly regulated for these uses in Residence Districts and to track buildings that are requesting this special permit and be prepared to address if there is a proliferation of these uses on the ground floor in areas vulnerable to climate change.

9. Nightlife *(Approve with modifications)*

When he was a Member of the City Council, Borough President Reynoso supported the effort to overturn the outdated Cabaret Law, which was often unfairly applied to target nightlife establishments in communities of color. DCP has described this proposal as an effort to both to match zoning with the post-Cabaret Law regulatory framework, and to take the pressure off of

Manufacturing districts, to which many types of nightlife establishments are currently restricted. The Borough President agrees with both these goals, but has three important concerns with the proposal as it currently exists.

First, as described in comments on Proposal 5 above, the Borough President is concerned about the quality-of-life impacts that eating and drinking establishments may have on adjacent residents when co-located in residential buildings, and is asking that when bars and restaurants locate adjacent to or above residences, they be required to implement both required buffer space and sound attenuation measures.

Second, as a supporter of our city's vibrant industrial sector, Borough President Reynoso has long advocated for the removal of nightlife establishments from core industrial districts. These districts exist to support heavy manufacturing uses, some of which depend on access to water. Adding nightlife to these areas can create dangerous conditions for the public and can prevent the manufacturing sector from expanding. While he appreciates that nightlife establishments are barred from the proposed M3A districts, this does nothing to stop proliferation of nightlife in existing M3 zones. This process presents the opportunity to update the existing M3 district to disallow further expansion of nightlife into core industrial areas without pursuing new mapping actions.

Third, the Borough President is concerned that the proposed BSA permit process allowing businesses to expand up to 200% may have unintended consequences for M districts. A restaurant expanding from one small commercial storefront into another is quite different from a warehouse-sized club in a manufacturing zone taking over an adjacent warehouse. While the required findings specifically address impact on residential and mixed-use neighborhoods, they are silent about the impact on manufacturing businesses. Further proposed changes to these special permit processes are discussed in the recommendation for Proposal 17.

10. Amusements (*Approve with modifications*)

    As with nightlife, Borough President Reynoso has advocated for the removal of amusement establishments from core industrial districts. The Borough President echoes his concerns in response to Proposal 9: while he welcomes the potential to relieve pressure by loosening restrictions for amusements in commercial districts, he requests that the existing M3 district be updated to disallow further expansion of these uses into core industrial areas without pursuing new mapping actions.

    The Borough President echoes his concern about simplified amusement uses in response to Proposal 6: while consolidating amusement uses under one use group makes sense, collapsing commonly understood terms such as "bowling alley" or "skating rink" into "amusement and recreation facilities" invites unnecessary ambiguity. If such terms become antiquated in the future, Borough President Reynoso encourages DCP to adjust them in future decennial use group updates, as requested in response to Proposal 6.

11. Home occupations *(Approve with modifications)*

    While the Borough President understands that many more New Yorkers are working from home, he wants to ensure the proposal does not incentivize larger apartments to be used for business uses rather than dedicated living space for families. To that end, the Borough President requests that DCP reinstate a square footage limit within the "Home occupation" definition in Section 12-10, specifically within (a)(3), with an increase to 750 square feet of floor area. While the provision would only allow for the resident plus three additional persons not residing in the unit, small firms of this size could still be encouraged to locate in the city's commercial centers and in vacant storefronts along retail corridors.

Goal 3: Foster vibrant neighborhoods

12. Streetscape *(Approve with modifications)*

Borough President Reynoso supports the expansion of streetscape regulations beyond the bounds of special districts. Every commercial corridor in the city deserves to have quality streetscapes, not just the areas with the circumstances or resources to obtain a special district designation. To that end, the Borough President urges DCP to draft a bolder vision of this proposal to include more of the so-called "automotive corridors," shopping centers, and areas near freeways that are exempted in the draft zoning text.

This proposal is in alignment with the priorities identified in the Borough President's Comprehensive Plan for Brooklyn, particularly the Healthy Streets & Environment framework. Improved streetscapes will be part of a just transition to a healthier, de-carbonized public realm. Tier A identifies auto-oriented uses and street-facing parking as an issue to resolve but excludes C8 districts, the most prominent "automotive" district in the Zoning Resolution. As seen in the attached map, (Proposal 12: Streetscape Design Tiers) C8 is widely mapped throughout the borough, often connecting other commercial streetscapes. In urban design parlance, these districts too often serve as an "edge" that separates neighborhoods when they could be serving as "paths" that encourage lively corridors and public spaces.

Borough President Reynoso requests that DCP extend the line of reasoning behind Tier A to envision what better streetscapes might look like in automotive corridors as well, whether that means including C8 districts within Tier A, or developing a new tier of regulations for C8 districts, shopping centers, and areas near freeways. As seen in the attached map, there are already several areas where C8 districts and special districts overlap.

As outlined in the Comprehensive Plan for Brooklyn, Borough President Reynoso is committed to the preservation of manufacturing jobs and land in the borough. Manufacturing areas do have different needs than central business districts, but it is possible to design better streetscapes with those needs in mind. The Borough President is concerned that by excluding C8 districts from these regulations entirely, DCP is abetting the idea that the only way to improve streets is to remove the potential for manufacturing uses entirely.

As drafted, the proposal includes a carve out for street fronts within 1,000 ft of a freeway entrance. A strong street wall can be a defining component of a street's "friction" - surrounding context that encourages drivers to be aware of their surroundings and drive more carefully. For this reason, allowing an automotive-oriented buffer surrounding freeway off-ramps may just expand the area where cars drive at inappropriate and dangerous speeds rather than making anyone safer.

In the attached map, the areas in red have been explicitly excluded from streetscape regulations, either due to proximity to freeway on-ramps, lot size, or distance from transit. Particularly of note is the concentration of red around BQE access-ramps in South Williamsburg, Downtown Brooklyn, Carroll Gardens, and Gowanus. Currently the City and State are undertaking a major redesign effort for the Brooklyn-Queens Expressway (BQE) aimed at repairing the harm and disruption it has caused these very neighborhoods. Borough President Reynoso holds steadfast in demanding a corridor-wide approach to repairing the BQE. The Zoning Resolution is just one tool at the City's disposal, but it should assist in proactively mitigating and retrofitting hostile streetscapes.

Borough President Reynoso supports the proposal to require a BSA permit for drive-throughs, rather than allowing them as-of-right in some districts.

13. Auto repair *(Approve with modifications)*

Borough President Reynoso supports rationalizing the classification of auto servicing uses, restricting heavy servicing to C8 and M districts, and requiring light auto servicing uses only by special permit in C1-C7 districts. However, Borough President Reynoso requests that this special permit be reviewed by the City Planning Commission rather than the BSA.

Borough President Reynoso agrees with DCP that the core issue at hand is the conflict between pedestrians and automotive work and storage spilling out onto sidewalks. This issue is inherently concerned with the public realm and deserves more public participation than the BSA process provides.

Borough President Reynoso is concerned that this proposal is promising more than it can deliver. Rationalizing regulation is a step in the right direction, but lack of enforcement is the elephant in the room. New Yorkers who read a summary of this proposal may walk away with the impression that if passed, the cars cluttering sidewalks in their neighborhood may finally be removed. This proposal includes no new enforcement mechanisms to achieve this goal. Instead, the strategy is focused on containing some future auto repair shops to C8 and M districts. (It is unclear how many auto servicing businesses are expected to qualify as "light" and be eligible for the BSA permit process proposed for C1-C7 districts, as DCP has not provided analysis on the proposed classification and left it to the public's imagination.)

In this context, the Borough President echoes his concern from Proposal 12, that C8 districts are being written off as automotive corridors instead of included in a vision for a better, healthier public realm. As such, Borough President Reynoso requests the City accompany this zoning change with improved enforcement on businesses, City agencies, and private individuals that unlawfully store vehicles on sidewalks, bike lanes, and other public places across the city.

14. Micro-distribution *(Approve with modifications)*

One of the lasting impacts of the pandemic is that e-commerce is here to stay. It is incumbent upon the City to address its impacts, especially increased truck traffic and associated effects on air quality, traffic congestion, and street safety. Borough President Reynoso strongly supports the shift from large last-mile warehouse facilities to smaller, community-oriented micro-distribution centers, and appreciates the Department of Transportation's work on this issue and the proposed changes here to support it.

In order to necessitate even fewer truck trips in our communities and encourage the use of cargo bicycles for delivery, the Borough President would support an increase in square footage allowed on the ground floor for these facilities up to 5,000 sq. ft. in C1 and C2 districts, and 10,000 sq. ft. In C4-C7, in line with the Use Group 10 size limitations outlined in 32-202. Paired with updated streetscape requirements in this proposal and considering the high number of storefront vacancies in the city, use of some ground-floor spaces for micro-distribution rather than retail seems to be a reasonable tradeoff given the environmental benefits. However, the Borough President is concerned that excessive siting of these facilities could counter this progress and hinder local retail expansion. Therefore, he encourages DCP to explore creating a reasonable district cap or other mechanism to limit the total number of these facilities allowed.

Supporting micro-distribution centers only solves for half of the problem, doing nothing to address the proliferation of last-mile warehouse facilities in Manufacturing districts. A May 2023 analysis by Consumer Reports showed two large last-mile warehouses operating in or near Red Hook, with three more under construction and three more in the planning phase. According to this report, a business on Van Brunt Street sometimes recorded more than 1,200 trucks or vans

passing *per day,* and this was with only two of the eight facilities operating.[i] The impacts on the surrounding community's health and safety cannot be understated. Additionally, more warehouses means less space for manufacturing businesses and associated well-paying jobs. Yet nothing in the current zoning prevents this concentration of facilities from existing or these warehouses from expanding further.

To address this, Borough President Reynoso, along with local elected officials, advocates, and residents, has submitted a proposed zoning text amendment to create a special permit process that will ensure that when last-mile warehouses locate in the city, they are held to certain environmental standards, and that there is oversight over siting such that one community cannot become overburdened by these facilities, as Red Hook already is.

The Borough President calls on DCP to include this zoning text amendment in City of Yes for Economic Opportunity, or commit to implementing it as a follow-up action sponsored by the Department. As demonstrated by many facets of the City of Yes proposal, when new uses, careers, and technologies proliferate in the city, it is DCP's responsibility to address these through zoning by creating new use groups and adding regulations as appropriate. Last-mile and e-commerce presents perhaps the biggest change to our current retail landscape, and is a citywide issue that cannot continue to go unaddressed. Draft text is provided in the Appendix below.

Goal 4: Create new opportunities for local businesses to open

15. Campus commercial *(Approve with modifications)*

Borough President Reynoso agrees that residential campuses can benefit from conveniently located retail and service businesses. However, our city's NYCHA campuses are likely to be the most impacted by this proposal, and historically NYCHA residents are underrepresented on community boards. Therefore, while this may not be something that can be addressed through zoning, the Borough President requests that NYCHA provide a written commitment to engage its residents regarding what they would like to see in any new commercial facilities to be located on their campuses and provide this information to the appropriate community board to inform comments on any relevant proposal.

16. Corner stores *(Approve)*

Borough President Reynoso supports this proposal and its potential to enliven the streetscape in our communities and provide convenient retail options for local residents. This proposal is in alignment with the Borough President's Comprehensive Plan for Brooklyn, particularly the Healthy Streets & Environment framework.

17. Better waiver processes *(Approve with modifications)*

The Borough President is concerned with any process that would limit public input, including special permits issued through the Board of Standards and Appeals. While the Borough President understands that obtaining approvals can be unwieldy for applicants, there should be sufficient public purpose, outside of streamlining bureaucracy, to issue a BSA special permit. Property owners purchased their property with an understanding of the existing regulations that govern the site, and any approvals should be granted only while maintaining sufficient public purpose.

In the proposed updated text for Section 73-03, the Borough President would like to understand what research was used to determine that 10 years should be the maximum allowable length for a new permit. Further, the Borough President requests more clarity in the zoning text on what would trigger a revocation of these special permits. Additionally, the Borough President remains concerned that without sufficient square footage caps on non-

industrial uses in M districts, the city will continue to see losses of manufacturing space in favor of uses that do not provide well-paying, career-pathway jobs.

As such, he proposes changes to Section 42-16 (which is referenced in the new BSA Special Permits 73-161 and 73-162 and new CPC Special Permit 74-161). The Borough President recommends a 10,000 square foot maximum on Use Group 6 (Retail and Services) uses in M districts, which would denote all uses with an "S" in the Use Group tables and subject these uses to size restrictions. The Borough President requests further conversations with DCP to discuss whether it is appropriate to contemplate a maximum of 1 FAR or an increase of 200 percent, whichever is less, of non-industrial uses within Special Permit 73-161 section (a)(1), which permits modifications to size limitations for uses denoted with an "S" in the Use Group tables; and the feasibility of a BSA special permit process that is limited to commercial districts and a CPC special permit process required for any such change in a manufacturing zone.

18. New loft-style zoning districts

Please see recommendation for City of Yes for Economic Opportunity – M-Districts (2024Y0161).

Recommendation

Be it resolved that the Brooklyn Borough President, pursuant to Sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve or disapprove proposals associated with this application with the above-mentioned modifications and conditions.

BROOKLYN BOROUGH PRESIDENT

January 24, 2024

DATE

Appendix: PROPOSED ADDITION TO PROPOSED ZONING TEXT AMENDMENTS 74-191 & 74-192 Additions to Dept. of City Planning text in **RED**.

New Definitions
Section 12-10
Last-mile warehouse
A "last-mile warehouse" is a warehouse that has as its primary purpose the temporary storage, sorting, and redistribution of goods to fulfill e-commerce orders by receiving shipments of goods from one mode of transport and redistributing those goods via a delivery vehicle. Any facility where goods are manufactured or assembled on site and temporarily stored prior to distribution, or any facility that has as its primary purpose the temporary storage of food products for wholesale distribution shall not be defined as a "last mile warehouse".

A "Last mile warehouse" under 50,000sq ft shall be "as of right" in M1, M2, M3 and C8 zoning districts.

A "Large Last- mile warehouse" of 50,000 sq ft or greater shall require a City Planning Commission Special Permit.

NEW Section 74-192
"Large Last Mile Warehouse" of 50,000sq ft. or greater

In C8, M1, M2, and M3 Districts the City Planning Commission may permit "large last-mile warehouses" as defined in Section 12-10 and currently in Use Group 16 (proposed to be in new Use Group 9- Storage)

To grant such permit the Commission shall find that:

(1) the large last-mile warehouse use as defined in Section 12-10 shall be a minimum of 1,000 feet from any school, park, nursing home, or public housing building;

(2) the large last-mile warehouse use shall be a minimum of 1,000 feet from any other large last-mile warehouse;

(3) for a large last-mile warehouse use located in a Significant Maritime Industrial Area, 80% of deliveries to and from the large last-mile warehouse shall be conducted by marine transport unless determined by the NYC Waterfront Revitalization Program staff at the Dept of City Planning to be physically infeasible or to be inappropriate based on the locations of delivery destinations.

(4) the large last-mile warehouse use will not create or contribute to serious traffic congestion, pedestrian safety risks, or adverse impacts to road conditions. *

* to inform the Commission's review, applications for the grant of a special permit pursuant to this Section shall be referred to the Department of Transportation for a report and recommendations on matters related to traffic congestion, pedestrian safety, and road conditions with regard to the proposed large last mile warehouse use. If the report is received within 45 days from the date of the referral, the Commission shall give due consideration to the report and its recommendations;

(5) the large last-mile warehouse use will not increase air pollution in any Disadvantaged Community, as defined under the New York Climate Leadership and Community Protection Act, E.C.L. § 75-0101(5); in the M1, M2, M3, or C8 District or in adjacent residential areas. *

* to inform the Commission's review, applications for the grant of a special permit pursuant to this Section shall be referred to the Department of Environmental Protection for a report and recommendations on matters related to air pollution and worker and public health with regard to the proposed large last mile warehouse use. If the report is received within 45 days from the date of the referral, the Commission shall give due consideration to the report and its recommendations.

6) The large last mile warehouse use will not impair the character or the future use or development of the surrounding area.

Additional requirements

1) The Commission shall require the large last-mile facility operator to submit an annual report to the Dept. of Transportation that includes data regarding the number and age of trucks servicing the facility, the trucks' owners, time-of-use, hours-of-operation, the routes used, and truck idling violations.

2) In areas where reports from DEP and DOT have identified potential adverse impacts on the surrounding area, the Commission may additionally prescribe appropriate conditions and safeguards such as: the use of alternative transportation, such as electric vehicles, rail, maritime and bikes, for deliveries to and from the facility; the installation of solar panels, vehicle charging equipment, and/or battery storage at the facility; the provision of air filtration systems at any existing or new sensitive receptors such as schools, parks, nursing homes, or residential buildings, including public housing, within a quarter mile.

The current 74-192 (below) would be changed to 74-193

In C-Zones

A. General Storage

USE GROUP 9A – GENERAL STORAGE									
● = Permitted ♦ = Permitted with limitations ○ = Special permit required **– = Not permitted** **S = Size restriction P = Additional conditions U = Open use allowances**									
Uses	**C1**	**C2**	**C3**	**C4**	**C5**	**C6**	**C7**	**C8**	**PRC**
General Storage									
Building materials or contractors' yards	–	–	–	–	–	–	–	● S U	D2
Depositories for storage office records, microfilm or computer tapes, or for data processing	–	–	–	● S	● S	● S	● S	●	D2

Last-Mile Warehouses	–	–	–	–	–	–	–	● S ○	D2
Micro-distribution facility	● S	● S	–	● S	● S	● S	● S	–	D2
Moving or storage facilities	–	–	–	–	–	–	–	●	D2
#Self-service storage facility#	–	–	–	–	–	–	–	●	D2
Trucking terminals or motor freight stations	–	–	–	–	–	–	–	● S U	D2
Warehouses	–	–	–	–	–	–	–	●	D2
Wholesale establishments	● S P	● S P	–	● S P	● S P	● S P	● S P	● P	*

In M-Zones
Section 42-191
Use Group 9 – general use allowances

The following table includes #uses# classified as Use Group 9 and sets forth their allowances by #Manufacturing District#. Such #uses# are categorized as general storage, specialized storage, or vehicle storage, as provided in paragraphs A, B and C of this Section. Notations found in the table are further described in Section 42-10 (USE ALLOWANCES).

A. General Storage

USE GROUP 9A – GENERAL STORAGE				
● = Permitted ♦ = Permitted with limitations ○ = Special permit required **– = Not permitted** **S = Size restriction P = Additional conditions U = Open use allowances**				
Uses	**M1**	**M2**	**M3**	**PRC**
General Storage				
Building materials or contractors' yards	● P U	● P U	● P U	D2
Depositories for storage office records, microfilm or computer tapes, or for data processing	●	●	●	D2

Last-Mile Warehouses	● S ○	● S ○	● S ○	D2
Micro-distribution facility	–	–	–	D2
Moving or storage facilities	● P	● P	● P	D2
#Self-service storage facility#	♦ P	♦ P	♦ P	D2
Trucking terminals or motor freight stations	● P U	● P U	● P U	D2
Warehouses	● P	● P	● P	D2
Wholesale establishments	● P	● P	● P	A4

Use Group 9 consists of #uses# that provide storage for materials, goods, and vehicles. The provisions regulating #uses# classified in this Use Group are set forth as follows:

1. Section 42-191 (Use Group 9 – general use allowances) which includes the compilation of #uses# in the Use Group table;

2. Section 42-192 (Use Group 9 – uses permitted with limited applicability) for additional limitations on applicability for certain #uses#, as denoted with "♦" in the Use Group table;

3. Section 42-193 (Use Group 9 – uses subject to additional conditions) for additional conditions that apply to certain #uses#, as denoted with a "P" in the Use Group table;

4. Section 42-194 (Use Group 9 – uses subject to open use allowances) for open #use

5. New Section 42-192 (Use Group 9 – uses permitted with limited applicability) for additional limitations on applicability for certain #uses#, as denoted with "○" in the Use Group table;

6. allowances that apply to certain #uses#, as denoted with a "U" in the Use Grouptable.

42-192
Use Group 9 – uses permitted with limited applicability

For #uses# denoted with "♦" in Section 42-191 (Use Group 9 – general use allowances), the provisions of this Section shall apply.

1. For #public parking garages# and #public parking lots#, the following provisions shall apply:

1. In the #Manhattan Core#, such #uses are subject to the provisions of Article I, Chapter 3, and in the #Long Island City area#, as defined in Section 16-02 (Definitions), such #uses# are subject to the provisions of Article I, Chapter 6.
2. In M1-1, M1-2, M1-3, M2-1, M2-2, or M3-1 Districts, #public parking garages# and #public parking lots# with a capacity of up to 150 spaces are permitted. The City Planning Commission may permit #public parking garages# or #public parking lots# with more than 150 spaces pursuant to Section 74-193 (Public parking garages or public parking lots outside high density areas); and

3. In M1-4, M1-5, M1-6, M2-3, M2-4 or M3-2 Districts, #public parking garages# are not permitted as-of-right, and #public parking lots# with a capacity of up to 150 spaces are permitted. The City Planning Commission may permit #public parking garages# with any capacity or #public parking lots# with more than 150 spaces pursuant to Section 74-194 (Public parking garages or public parking lots in high density central areas).

[SPECIAL PROVISIONS FOR SELF-STORAGE RELOCATED FROM SECTION 42- 121, WITH CROSS REFERENCES UPDATED]

In designated areas within #Manufacturing Districts#, as shown on the maps in APPENDIX J (Designated Areas Within Manufacturing Districts) of this Resolution, a #self-service storage facility# is subject to the provisions of this Section. Designated areas in which #self-service storage facilities# are subject to the as-of-right provisions of this paragraph are shown on the maps in Subarea 1, and those in which such #uses# are subject to special permit of the City Planning Commission pursuant to Section 74-192 (Self-service storage facility in designated areas within Manufacturing Districts) are shown on the maps in Subarea 2.

A #self-service storage facility# shall, in Subarea 1 of APPENDIX J of this Resolution, be limited to establishments that provide an #industrial floor space# as defined in Section 12- 10 (DEFINITIONS) or "business-sized" storage space as specified in paragraph (b)(2)(ii) of this Section.

1. On a #zoning lot# greater than or equal to 50,000 square feet in area, a #self-service storage facility# shall provide #industrial floor space# that is:

1. equal in #floor area# or #cellar# space to 25 percent of the #lot area#;

2. located below the level of the third #story#, with at least 50 percent of such #industrial floor space# located on the ground floor, with such ground floor #story# located within five feet of #curb level#, or #base plane#, as applicable, and the remaining #industrial floor space# located on a level that is immediately above or below such #story#; and

3. provided with access to freight elevators and the #accessory# off-street loading berth required for such #industrial floor space# in accordance with the provisions of Section 44-566 **(**Regulations for permitted or required loading berths for zoning lots containing self-service storage facilities in designated areas).

2. On a #zoning lot# that on December 19, 2017, is less than 50,000 square feet in area, a #self-service storage facility# shall provide:

1. #industrial floor space# as specified in paragraph (1) of this Section; or

2. #floor area# or #cellar# space containing securely subdivided space for lease within such #self-service storage facility#, where each subdivided space is not less than 100 square feet in area, and with a minimum clear height of eight feet. Such spaces shall be categorized as "business-sized" for the purposes of this Section and the number and sizes of such spaces shall be shown on plans filed with the Department of Buildings. The total area of such business-sized storage space shall be equal in #floor area# or #cellar# space to 25 percent of the #lot area#

3. On a #zoning lot# on which #industrial floor space# is provided in accordance with paragraph (b)(1) or (b)(2)(i) of this Section, an information #sign# shall be provided. Such required #sign# shall be mounted on an exterior #building# wall adjacent to and no more than five feet from all primary entrances of the #building# containing the #industrial floor space#. The #sign# shall be

placed so that it is directly visible, without any obstruction, to persons entering the #building#, and at a height no less than four feet and no more than 5 feet 6 inches above the adjoining grade. Such #sign# shall be legible, no less than 12 inches by 12 inches in size and shall be fully opaque, non-reflective and constructed of permanent, highly durable materials. The information #sign# shall contain the name and address of the building in lettering no less than three-quarters of an inch in height, and the following statement in lettering no less than one-half inch in height: "This building is subject to Industrial Floor Space regulations which require a minimum amount of space to be provided for specific industrial uses." The information #sign# shall include an Internet URL, or other widely accessible means of electronically transmitting and displaying information to the public, where the information required in paragraph (b)(4) of this Section is available to the public.

4. On a #zoning lot# on which #industrial floor space# is provided in accordance with paragraph (b)(1) or (b)(2)(i) of this Section, no later than June 30 of each year, beginning in the first calendar year in which a temporary or final certificate of occupancy was issued for the #industrial floor space#, the owner of the #building# subject to the #use# restrictions of this Section shall prepare a report on the existing conditions of the #building#. Such report shall be in a form provided by the Director of the Department of City Planning, and shall provide the following information at the designated Internet URL, or other widely accessible means of electronically transmitting and displaying information to the public:

1. the total #floor area# of the #industrial floor space# in the #building# required by this Section;

2. the name of each business establishment occupying #floor area# reserved for the #industrial floor space#. Such business establishment name shall include that name by which the establishment does business and is known to the public. For each business establishment, the amount of #floor area# the Use Group, subgroup and specific #use# as listed in this Resolution shall also be included;

3. a description of each establishment, using the North American Industry Classification System (NAICS) code and number of employees;

4. the total amount of #industrial floor space# that is vacant, as applicable;

5. the average annual rent for the portions of the #building#, in the aggregate, required to be #industrial floor space#; and

6. the number of new leases executed during the calendar year, categorized by lease duration, in five-year increments from zero to five years, five to 10 years, 10 to 15 years, 15 to 20 years and 20 years or greater.

The report shall be submitted to the Director of the Department of City Planning, by any method, including e-mail or other electronic means, acceptable to the Director. The applicable Community Board, Borough President and local Council Member shall be included in such transmission.

A #self-service storage facility# shall, in Subarea 2 of APPENDIX J of this Resolution, be permitted by special permit of the City Planning Commission pursuant to Section 74-192 (Self-service storage facility in designated areas within Manufacturing Districts).

Any #self-service storage facility# existing on December 19, 2017, located in a designated area within #Manufacturing Districts#, as shown on the maps in APPENDIX J, shall be considered a conforming #use#, provided that the owner of such #self-service storage facility# has filed documentation satisfactory to the Department of Buildings that it existed on such date and met the definition of #self-

service storage facility# set forth in Section 12-10. Any #enlargement# or #extension# to an existing conforming facility need not provide #industrial floor space#, business-sized storage, or apply for special permit of the City Planning Commission pursuant to Section 74-192, as applicable, provided there is no increase in #lot area# of the #zoning lot# as it existed on December 19, 2017. In the event that a #building# for which satisfactory documentation has been filed with the Department of Buildings is damaged or destroyed by any means, such #building# may be reconstructed on the same #zoning lot# and continue as a #self-service storage facility# without providing #industrial floor space# or business-sized storage, as applicable, provided that the #floor area# of such reconstructed #self-service storage facility# does not exceed the #floor area# permitted pursuant to the provisions of Section 43-10 (FLOOR AREA REGULATIONS), inclusive.

Any #self-service storage facility# existing on December 19, 2017, that does not file such documentation satisfactory to the Department of Buildings pursuant to the provisions of this Section shall be considered #non-conforming# and subject to the provisions of Article V (NON-CONFORMING USES AND NON-COMPLYING BUILDINGS) of this Resolution.

ADD – Use Group 9 – uses subject to special permits
Need to add proposed new zoning text for large last mile warehouses

42-193
Use Group 9 – uses subject to additional conditions

For #uses# denoted with a "P" in Section 42-191 (Use Group 9 – general use allowances), the following provisions shall apply:

1. Boat storage shall be restricted to boats less than 100 feet in length

2. #Public parking garages# and #public parking lots# shall be subject to the provisions set forth for #accessory# off-street parking spaces in Section 36-53 (Width of Curb Cuts and Location of Access to the Street), 36-55 (Surfacing) and 36-56 (Screening).

3. All #uses# denoted with a "P" in Section 42-191 (Use Group 9 – general use allowances), except boat storage, #public parking garages# and #public parking lots#, shall conform to the performance standards set forth in Sections 42-40 (PERFORMANCE STANDARDS) through 42-48 (Performance Standards Regulating Humidity, Heat or Glare), inclusive.

42-194
Use Group 9 – uses subject to open use allowances

For #uses# denoted with a "U" in Section 42-191 (Use Group 9 – general use allowances), a #use# may be open or enclosed except that:

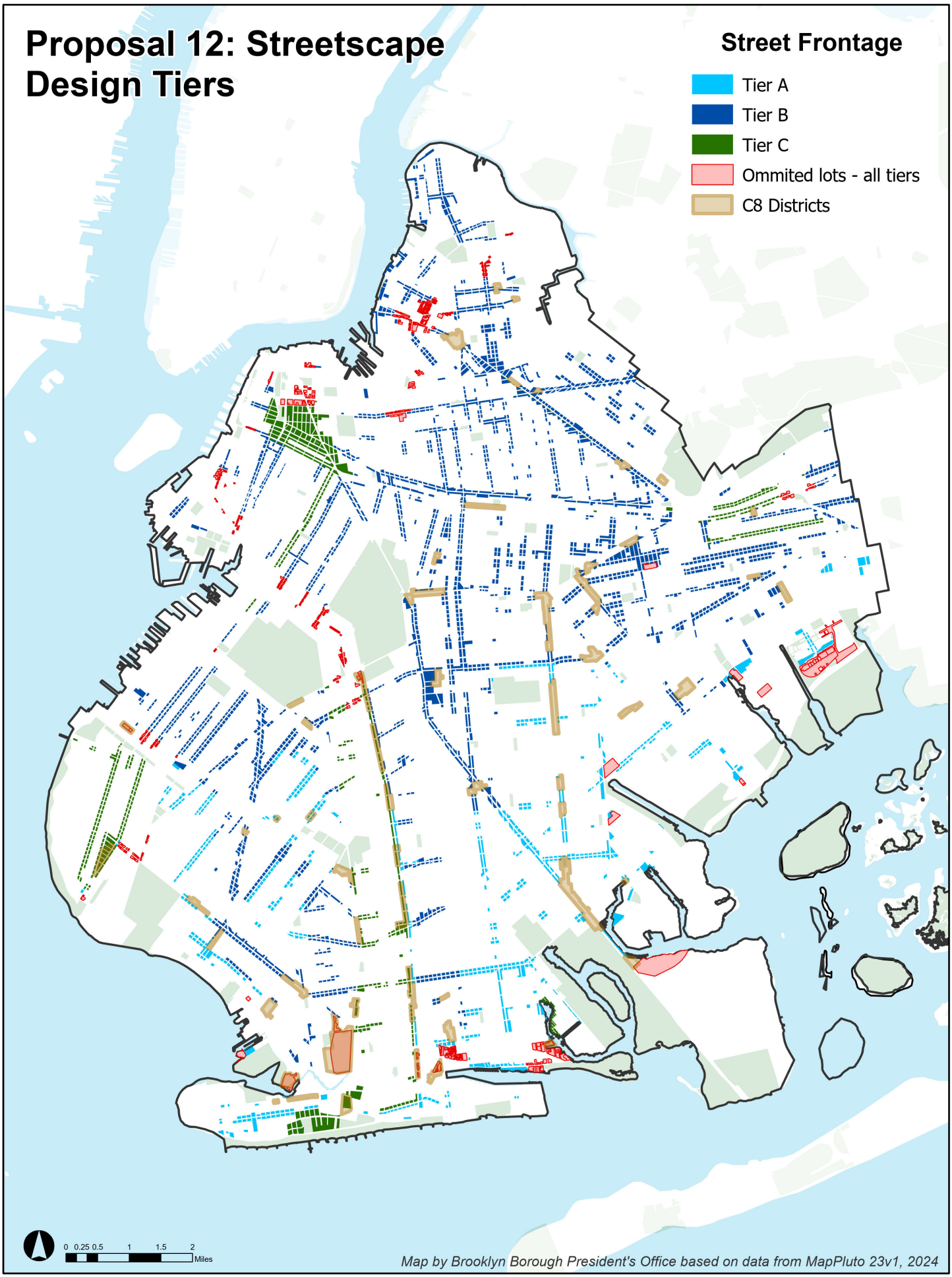
1. building materials or contractors' yard, including sales, storage, or handling of building materials, may be open or enclosed provided that any #yard# in which such #use# is conducted is completely enclosed on all sides by a solid opaque fence or wall (including opaque solid entrance and exit gates) of suitable uniform material and color, at least eight feet in height and constructed in accordance with rules and regulations to be promulgated by the Commissioner of Buildings;

2. boat storage may be conducted outside a #completely enclosed building# only if located at a distance greater than 100 feet from a #Residence District# boundary; and

3. #public parking garages# may be open or enclosed, provided that no portion of such #use# shall be located on a roof other than a roof which is immediately above a #cellar# or #basement#.

[i] https://www.consumerreports.org/corporate-accountability/amazon-warehouses-are-straining-a-brooklyn-neighborhood-a2966247023/

Proposal 12: Streetscape Design Tiers



Map by Brooklyn Borough President's Office based on data from MapPluto 23v1, 2024