



# BROOKLYN COMMUNITY BOARD 9

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*Borough President*

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*District Manager*

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*Chair*

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*Treasurer*

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*Member-at-Large*

**Vacant**  
*Member-at-Large*

**TO:** Fred Baptiste, (Ex-Officio); Yaacov Behrman, CB9 Board Member; Nichola Cox, Resident Committee Member; Max Davidson, CB9 Board Member; John Craver, Resident Committee Member; Esteban Giron, Resident Committee Member; Yisroel Lehrer, CB9 Board Member; Hector Robertson, Resident Member; Joshua Thomas-Serrano, CB9 Board Member; Tom Thomas, Resident Committee Member; Theresa Westerdahl, CB9 Board Member; John Woelfling, Resident Committee Member;

**FROM:** Suki Cheong, Committee Chair

**RE:** ULURP/Land Use Committee Meeting

**DATE:** Friday, September 6, 2024

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The meeting of the ULURP/Land Use Committee has been scheduled as follows:

**DATE:** Tuesday, September 10, 2024

**TIME:** 7:00 pm

**PLACE:** 890 Nostrand Avenue  
Brooklyn, New York 11225  
Livestreamed on CB9 Facebook Page:  
<https://www.facebook.com/cb9bklyn>

## AGENDA

1. Meeting Call to Order – 7:05-7:10
  - a. Review of rules of order
  - b. Welcome and Introduce committee members and guests
2. Review of Old Business – Status Updates
  - a. City of Yes for Housing Opportunity
  - b. 962-972 Franklin Avenue
  - c. 73-99 Empire Blvd
  - d. Vital Brooklyn
3. Community Concerns
4. Discussion of comprehensive planning goals for the year
5. Other Business
6. Adjourn



**Brooklyn Borough President Antonio Reynoso**  
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209 Joralemon Street, Brooklyn, NY 11201

City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor, New York, NY 10271  
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**Uniform Land Use Review Procedure (ULURP) Application**

962-972 FRANKLIN AVENUE– C230356ZMK | N230357ZRK | C230358ZSK

IN THE MATTER OF a private application by William Wallace IV for a zoning map amendment from R6A to R8A and R8A/C2-4 and a zoning text amendment (Appendix F) to map a Mandatory Inclusionary Housing Area, and Special Permit ZR 74-533: Reduction of required accessory off-street parking spaces, to facilitate a new 472,474 sf 14-story mixed-use development, with 373,800 sf of residential area (475 DUs, 152 MIH) and 103,556 sf of commercial area, being sought at 962 -972 Franklin Avenue in Crown Heights, Community District 9, Brooklyn.

**Amended as of July 12, 2024** | IN THE MATTER OF an amended private application to include:

- A zoning text amendment to amend ZR 23-443 to establish maximum heights on certain Mandatory Inclusionary Housing Areas within Brooklyn Community District 9; and
- A zoning text amendment to amend ZR 24-56 to establish a companion provision to ZR 23-443 applicable to community facilities

...to facilitate the development of a mixed-use, Use Groups (“UG”) 2 and 6, 14-story building with a floor area of approximately 382,919 zoning sq. ft. (7.19 FAR), containing commercial space and 475 dwelling units (the “Proposed Development”) to be constructed at 962-972 Franklin Avenue, Block 1192, Lots 63 and 66 (the “Development Site”). The Applicant would utilize MIH Option 1 for the Development Site to provide 119 units of permanently affordable housing.

BROOKLYN COMMUNITY DISTRICT 9

**RECOMMENDATION**

APPROVE  
 APPROVE WITH  
MODIFICATIONS/CONDITIONS

**DISAPPROVE**  
 DISAPPROVE WITH  
MODIFICATIONS/CONDITIONS

**RECOMMENDATION FOR: 962-972 FRANKLIN AVENUE– C230356ZMK | N230357ZRK | C230358ZSK**

The Project Area includes six tax lots within the block bounded by Franklin Avenue to the east, Washington Avenue to the west, Sullivan Place to the south, and Montgomery Street to the north. The proposed Development Site is currently a mix of vacant land and a one-story warehouse that is part of a larger defunct spice factory primarily located on the neighboring lots to the north. The larger Project Area includes four additional lots, including the MTA’s Franklin Avenue subway shuttle right-of-way, a portion of an irregularly shaped corner lot, and a portion of a lots occupied by two six-story, multi-family residential buildings. The site is in close proximity to two sunlight-sensitive community resources: the Brooklyn Botanic Garden (BBG) and the Jackie Robinson Playground (JRP).

In 1990 through 1991, the Department of City Planning (DCP) conducted a [zoning study](#) which resulted in a subsequent zoning map amendment. This zoning map amendment mapped the Project Area with an R6A district to reflect the context of the existing structures, mostly six- to seven-story buildings. This amendment also mandated the Quality Housing Program for all new residential development. This land use study concluded that “buildings built to maximum FAR and height under the R8 zoning would cast shadows on the Botanic Garden’s recently renovated greenhouses and newly constructed Steinhardt Conservatory.” The purpose of these changes was to encourage new development to “keep[ing] with the existing neighborhood character...and minimize the potential shadow impact upon the Botanic Garden from any new residential development.” The applicant’s proposal would be a significant departure from this protection.

The Project Area and applicant were previously involved in a private application certified under the name “960 Franklin Avenue Rezoning” (C200184 ZMK, C200186ZSK, C200187 ZSK, and N200185 ZRK) in 2020-2021. The previous application would have facilitated two 39-story mixed-use towers, including 1,478 dwelling units and was recommended for disapproval by Community Board 9, then-Brooklyn Borough President Eric Adams, and ultimately disapproved by the City Planning Commission (CPC) in September 2021. Figure 1 shows a rendering of the applicant’s 39-story proposals.

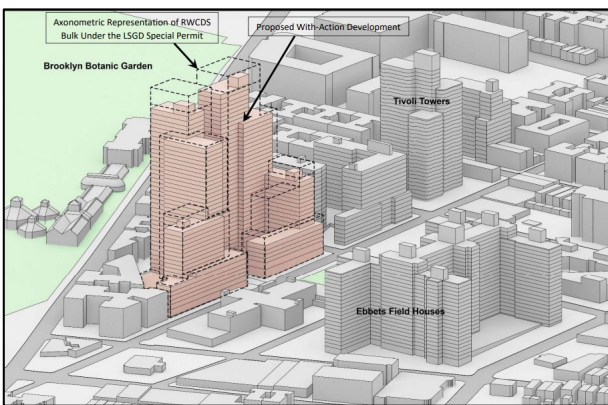


Figure 1: 960 Franklin Avenue Proposal- 2 39-story buildings

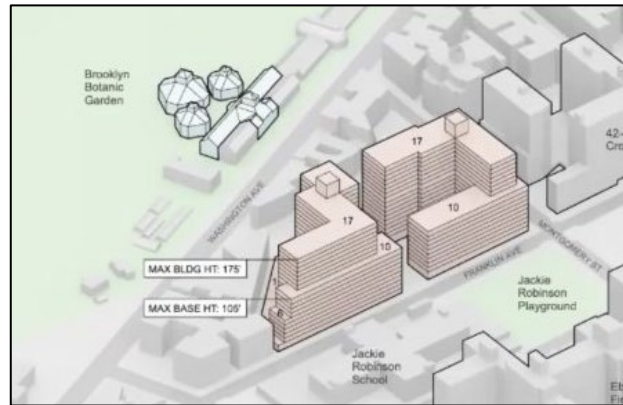


Figure 2: 960 Franklin Avenue Revised Proposal- 17 Story Alternative

During public review for this 2021 application, the applicant also shared a 17-story alternative after certification, shown in Figure 2. This updated proposal included modifications that would

have moved the massing around on the development site and shifted the building from a towers-on-podium design typology to a bulkier building that with a higher base height and upper-level setbacks within two building footprints. The environmental analysis of the proposal at 960 Franklin Avenue reached a conclusion that sunlight impacts here are complex, citing that:

“Though the CEQR Technical Manual states that 4-6 hours of sunlight is necessary for plant survival, the Brooklyn Botanic Garden contains over 18,500 kinds of plants, with globally rare species and native rare species. The minimum sunlight needed to constitute survival may not be enough to promote healthy growth of these rare plants.”<sup>1</sup>

At the time, some community members expressed concerns over the introduction of a new 17-story alternative so late into the process and that would not benefit from full public review.

This proposal currently before the Borough President is 25 stories lower than the application considered in 2021. While this is a substantial reduction by the applicant compared to the 2021 application, it is critical to assess the impact of the current proposal on its own merits. Efforts to ameliorate or amend the 2021 proposal, while providing useful context, are ultimately immaterial to the current application. In other words, the question before the Borough President is whether the applicant’s proposed actions are appropriate in their own right, not whether they are merely improved relative to the legally distinct 2021 application.

On July 12, 2024, the applicant submitted an amendment proposal, in the middle of the review period. This is consistent with the pattern observed in the 2021 review of 960 Franklin. This new amendment responds to projected shadow impacts by introducing a height-limiting plane to regulate the building envelope, and proposes a modified building that the applicant asserts maintains the spirit of the 1991 contextual zoning while largely maintaining the design, density, and massing of the proposal originally certified on May 13, 2024. This amendment was submitted after Community Board 9’s review period had already concluded, and two business days before the Borough President’s public hearing for this application.

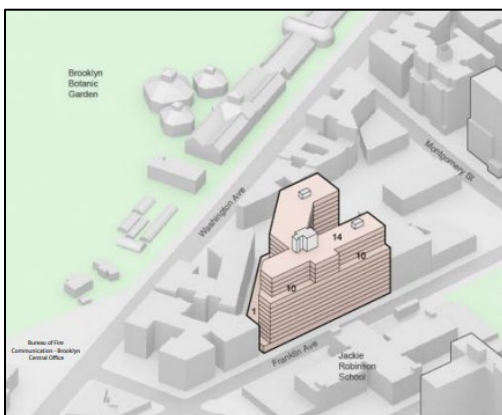


Figure 3: 962-972 Franklin Ave- Original Proposal

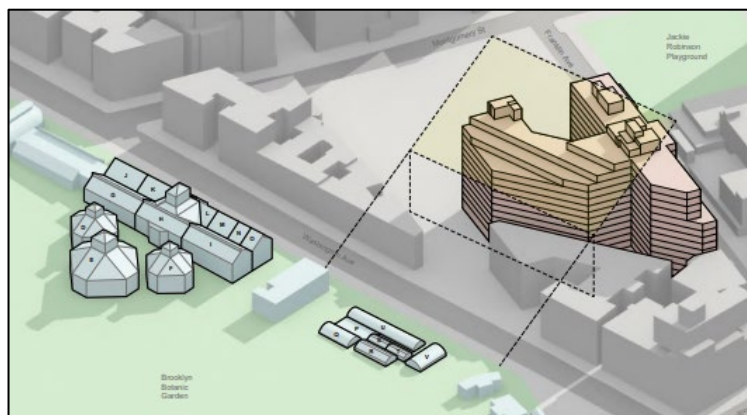


Figure 4: 962-972 Franklin Avenue- Amended Proposal (July 12, 2024)

Figure 3 shows the applicant’s original proposal for 962-972 Franklin Avenue, as certified by the City Planning Commission on May 13, 2024. Figure 4 shows the applicant’s amended

<sup>1</sup> 960 Franklin Avenue FEIS, Chapter 6: Shadows, p. 6-1

proposal submitted on July 12, 2024. At the time of writing, the applicant's Draft Environmental Impact Statement has not yet been officially amended to reflect the changes from the July 12 amendment.

In addition to the building and potential benefits and impacts resulting from the applicant's proposal, the introduction of a new height-regulating plane warrants meaningful discussion by the CPC.

### **Community Board Position and Applicant Timeline**

On April 9, 2024, the applicant met with Community Board 9 (CB 9) prior to ULURP certification, consistent with recommendation 2.1.11 in the *Comprehensive Plan for Brooklyn*. The applicant discussed their application and presented a building proposal that included:

- A step-down on the upper floors of the building with the intent to reduce shadow impacts on the BBG; and
- New mitigation measures to address shadow impacts on JRP by proposing to upgrade lighting, refurbish playground amenities, and replace the handball court with a dog-run.

At this same pre-certification meeting, CB 9 proposed modifications to the project. These proposed modifications included requests for additional units at 60% of the Area Median Income (AMI) to better match the incomes of residents of the area and a reduction in the proposed building height and density. CB 9 notes that the applicant declined these modifications.

The application was certified by the City Planning Commission on May 13, 2024. At the time of certification, the application did not include any of the alternatives with upper-level setbacks that were presented to CB 9, as the applicant determined that there were no viable mechanisms to actually enforce a stepped-down building envelope (having considered restrictive declarations and community benefit agreements). While the applicant included alternatives under different zoning districts (R7A and R7D), the applicant did not include the stepped-down R8 alternative in their DEIS analysis or within their application materials. The Reasonable Worst Case Development Scenario (RWCDS) and applicant's preferred alternative is under a building enabled by R8/C2-4 zoning. According to CB 9, this proposal did not incorporate feedback from the April CB 9 meeting nor respond to BBG's expressed concerns and CB 9's preferences. A breakdown of all development scenarios is included later in this recommendation.

After certification and additional feedback from CB 9 through the formal ULURP process, the applicant revisited their modified massing proposals that include upper-level setbacks. Materials and supplemental environmental analysis for this modified proposal were not included in the materials available on the Zoning Application Portal prior to the Community Board's public hearing.

CB 9 held a public hearing on June 18, 2024. CB 9 voted to disapprove this application without modifications or conditions. CB 9's resolution notes the following as factors for their recommendation: the lack of proactive community engagement prior to filing the application, the previous 1991 zoning decision to restrict building heights to protect BBG from impacts, the potential for significant adverse shadow impacts on BBG and JRP raised by a taller building, a fear that that an increase in new market rate housing has the potential to create upward pressure on rental pricing, and a mismatch between the community's preferences for building height and massing as well as level and depth of affordability.

On July 12, 2024, the applicant submitted the aforementioned amendment to this proposal to:

- Introduce zoning text that would restrict the height and form of the building by establishing a height plane, building from the text used to regulate height relative to airplane travel routes in Midtown Manhattan
- Shift to MIH option 1

### **Borough President ULURP Hearing and Public Comment**

Borough President Reynoso held a public hearing on this application on July 16, 2024. Over 220 members of the public were in attendance and 54 members of the public testified at the hearing, including representation from local community members, labor unions, and members of Brooklyn Botanic Garden. The Borough President’s Office received 603 written comments through July 19, 2024.

During the Borough President’s public hearing and reflected in written testimony, members of CB 9 reiterated their concerns about the proposal. While the applicant included some data in their presentation that reflected the amended proposal, materials and supplemental environmental analysis for this proposal were not included in the materials available on the Zoning Application Portal prior to the Borough President’s public hearing. The technical memo, outlining additional analysis, was uploaded to ZAP on July 24, 2024.

The Borough President received testimony in support of this project from labor unions who would work in the construction and management of the building and members who cited new affordable housing production as a benefit to the neighborhood.

The Borough President received testimony in opposition from community members and BBG on the inadequacy of additional affordable housing provided to outweigh the risk of impact to BBG and JRP. Testimony focused on the applicability and rationale of the 1991 Washington Ave rezoning. Some community members indicated a desire for deeper affordability and modifications to the building form to alleviate concerns about shadows, height, and form.

### **Disapproval Rationale**

**Borough President Reynoso does not believe the proposed actions are appropriate.** The proposal at 962-972 Franklin Avenue speaks to many elements of the housing growth strategy within the Comprehensive Plan for Brooklyn, including growth near transit; however, the potential impacts to BBG’s resources are not offset by the potential benefits of the proposed project.

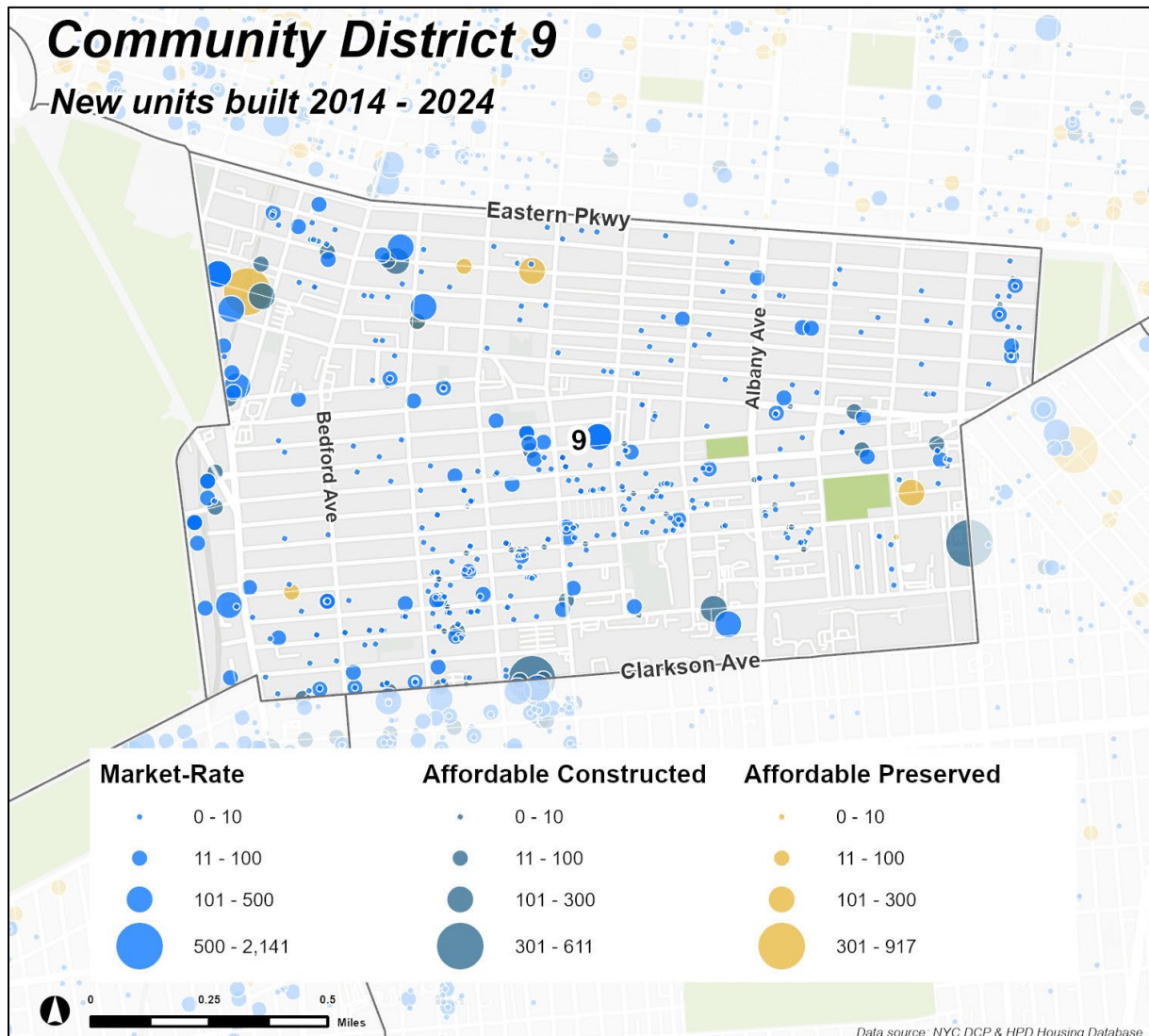
The core consideration for this proposal is the potential impact on BBG and JRP, where the acceptable amount of shadow impact on BBG’s sensitive resources is zero. The Borough President believes that supply is a critical part of addressing the housing crisis—this is simply the wrong place to for this proposed building because of its adjacency to a critical, public, sunlight-sensitive resource.

The existing conditions point out some unique dynamics within Community District 9. CD 9 is categorized in the “highest” category of market pressure according to the Equitable Development Data Explorer, developed by HPD and DCP, though is split between Intermediate and highest level of overall displacement risk. Between 2014 and 2024, CD 9 has added nearly 1,800 new affordable



units, placing the area within the top 20 citywide. In the development of new market-rate and preservation units during this time period, CD 9 ranks in the middle of Brooklyn Community Districts with more than 5,500 new market-rate units and more than 900 affordable units preserved. By prioritizing the MIH “workforce” option, the Community Board has expressed concerns that many members of the neighborhood will not be able to access newly constructed affordable housing. The applicant did not disclose anticipated AMI bands or rental rate for the 356 market-rate units.

As evidenced by recent developments at 111 Montgomery Street and 1 Sullivan Place, the area is experiencing as-of-right development under the existing zoning. As a result of current market dynamics, all residents of all incomes and housing tenure are experiencing housing challenges, though there is more unit availability for the highest income earners, especially as new luxury apartments enter the market. The applicant has noted that absent approval for this application, the area would likely move forward under existing zoning to produce market-rate condos. This form of unit production is also a need throughout the city to create additional ownership options for those who can access these units but have limited choice.



New Housing Development and Preservation in CB 9, 2014-2024

Jackie Robinson Playground is a beloved neighborhood park. Recommendation 4.2.1 of the *Comprehensive Plan for Brooklyn* seeks out options to improve spaces for reflection, recreation, and community activities. As a site of intergenerational activity, JRP serves a wide cross-section of users within the neighborhood. This park received a complete \$900,000 renovation in 2017.

Brooklyn Botanic Garden is a key cultural resource that advances Objective 5.3 in the *Comprehensive Plan for Brooklyn* to increase access to quality educational opportunities in Brooklyn. During testimony at the Borough President's public hearing on this application, members of the public and BBG staff shared accounts of the ways in which the collections, programs, and offerings BBG provides connects people to their heritage. The diversity of plants within the collection reflects the diversity of the borough and offers unique opportunities to celebrate different landscapes, local botanic history, and access to hands-on science and environmental education.

### **Impacts to Sunlight Sensitive Resources**

The applicant described their amended July 12 proposal as a means "to protect the Brooklyn Botanic Garden from shadows." While the amended proposal, restricted by the introduction of a height-limiting plane, reduces the time in shadow on some sunlight-sensitive resources, the Draft Environmental Impact Statement (DEIS) still determines that new shadow impacts will be created by the proposal. The Borough President does not support any project that harms the critical functions and experience at the Brooklyn Botanic Gardens.

Throughout the review period, the Borough President received testimony from the applicant, concerned stakeholders, and members of the public about the adequacy of the environmental review process to accurately reflect the potential impacts on the site. As part of the presentation given at the Borough President's July 16 ULURP hearing, the applicant presented information regarding the annual incidental solar radiation. The applicant shared additional analysis beyond what is required in the CEQR Technical Manual to account for reductions in solar radiation resulting from trees adjacent to sunlight-sensitive resources at BBG. The applicant relied on satellite imagery for this analysis. BBG provided written testimony outlining the inaccuracy of the satellite imagery and available canopy cover data, as some trees have been cut down or are no longer on site. BBG staff also commented on the inadequacy of the CEQR methodology, noting that the period of shadow is not fully accounted for and that the period of measure begins 90 minutes after sunrise and 90 minutes prior to sunset.

On July 23, 2024, the applicant filed a technical memorandum including supplemental CEQR analysis for their amended proposal to the Zoning Application Portal.

The analysis outlines the following impacts on sunlight-sensitive resources:

#### Jackie Robinson Playground (JRP)

The amended proposal would result in decreases of incremental shadows on JRP but would still cast shadows on a passive area for seating and active play areas (playground and basketball courts), including large portions of the park in spring, fall, and winter. During these times of the year, access to sunlight is critical for thermal comfort. The applicant has proposed investments



and improvements to the park as mitigation in consultation with community members, residents of Ebbets Field Apartments, and NYC Department of Parks & Recreation.

#### Brooklyn Botanic Garden (BBG)

The amended project would cast incremental shadows over several resources in BBG, albeit with some reductions from the originally proposed project. The applicant has demonstrated what reductions are possible by the introduction of a new height-regulating plane but has failed to demonstrate what additional reductions in incremental shadows could be achieved under different alternatives. The modified proposal asserts a solution without any real analysis of other development schemes. As a result of this analysis, it is still not possible to answer the simple question, “what building can be constructed that creates no additional incremental shadow on BBG and its resources?”

Non-public resources, such as the nursery, are critical components of BBG’s operation, programming, and function. The impacts to the Hardy Plant Nursery and New York-Native Flora & Temperate Plant Propagation Tunnel, amongst others, are considerable and should not be discounted on account of being less publicly facing than resources such as the educational greenhouses.

The applicant’s analysis concludes that “while the Modified Project would result in a reduction of the incremental shadow durations from Proposed Project on a number of sun-sensitive resources in the Brooklyn Botanic Garden, ***the Modified Project would not eliminate the significant adverse impacts identified in the DEIS due to the unique nature of the BBG resources.***<sup>2</sup>

#### **Lack of Effective Mitigations for Brooklyn Botanic Garden:**

“Incremental shadows from the Proposed Project would be cast over several of the affected greenhouses in the Brooklyn Botanic Garden, used to propagate plants for desert, tropical, and warm temperate climates that require full, year-round sun including sunlight during the important winter months. Therefore, due to the incremental shadows created by the Proposed Project, significant adverse impacts are likely to occur on the natural resources found within the Brooklyn Botanic Garden.”

The applicant’s mitigations considered for impacts on the BBG include<sup>3</sup>:

1. Relocating the Brooklyn Botanic Garden sunlight sensitive resources, and
2. The installation of artificial lighting within the Brooklyn Botanic Garden sunlight sensitive resources.

Based on guidance from NYC Parks, DCP as the Lead Agency concluded that both of these mitigation measures are infeasible due to considerable costs, logistics, and closures resulting from a relocation and expected impacts to plants resulting from a change in light source via artificial light that would impact the education, instruction, and viewing ability of the public (as a result of needing to be a patron viewing height) as well as weakened structures, altered blooms, changes in color and the potential for plants to not bloom at all.<sup>4</sup> The applicant

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<sup>2</sup> 962-972 Franklin Avenue Rezoning, *Technical Memorandum*, p. T-9

<sup>3</sup> DEIS, Chapter 11: Mitigation, p 11-1

<sup>4</sup> DEIS, Chapter 11: Mitigation, p. 11-5

concludes with the acknowledgement that, because mitigation measures are infeasible, “the significant adverse shadows impacts would not be mitigated on Brooklyn Botanic Garden.”<sup>5</sup>

The proposal for a regulating height plane does not go far enough to prevent incremental shadows on BBG.

### **Consideration of Alternative Development Proposals**

The applicant included alternative development scenarios under R7A and R7D zoning districts in Chapter 12 of the DEIS. It was determined that development under these scenarios, despite adjustments to base height, total height, and FAR would not fully eliminate significant adverse shadow impacts on JRP and BBG.

After the application was certified, the applicant prepared an additional development alternative that takes advantage of the R8A/C2-4 zoning but voluntarily steps the building back on upper floors to minimize the impact on BBG while continuing efforts to mitigate impacts at JRP. To enforce this massing, the applicant included the July 12 zoning text amendment to introduce a restrictive height plane that would govern the allowable envelope of any resulting building.

Additionally, since the application certified, the City has released annotated text amendments for review as part of the City of Yes for Housing Opportunity proposal that, if passed, would grant additional capacity to this site under the Universal Affordability Preference (UAP) program. This proposed program would increase the development capacity under R6A from 3.0 to 3.9 FAR, provided the additional floor area is used for affordable housing units averaging to 60% AMI. That additional density approximates the density allowed under R7A, with a slightly lower base height. For these reasons, the DEIS shows some shadow impacts on BBG resources under an R7A scenario. Based on this analysis, the Borough President is concerned about potential additional height UAP could introduce in this area.

To aid in the comparison of these alternative development scenarios, the table below (Table 1. Comparison of Alternative Development Scenarios on page 9) summarizes the following alternatives:

- **No-Action | Existing Zoning** - 6-story: R6A
- **No-Action | *with* City of Yes for Housing Opportunity** - 9-story: R6A with Universal Affordability Preference (UAP)
- **Alternative A | Slight Zoning Increase** - 9-story: R7A
- **Alternative B | Moderate Zoning Increase** - 11-story: R7D
- **Alternative C | Applicant’s Original Proposal** -14-story : -R8A/C2-4
- **Alternative D | Applicant’s 07/12/24 Amended Proposal** - 14-story: R8A/C2-4 with height-limiting plane

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<sup>5</sup> DEIS, Chapter 11: Mitigation, p. 11-6

**Table 1. Comparison of Alternative Development Scenarios<sup>6</sup>**

	No-Action R6	City of Yes* R6 w/ UAP	Alt. A R7A	Alt. B R7D	Alt. C R8A/C2-4 Proposed RWCDS	Alt. D** Mod R8A/C2-4 Amended Proposal (as of 7/12/24)
FAR	3.00 FAR	3.90 FAR	4.60 FAR	5.60 FAR	7.20 FAR	7.19 FAR
Height	60' Base 70' Total 7-story	65' Base 95' Total 9-story	75' Base 95' Total 9-story	95' Base 115' Total 11-story	105' Base 145' Total 14-story*  *Mech. Equip could add up to 55' on a portion of the roof	105' Base Franklin 111' Base Wash. 145' Total 14-story  *Includes height restricting plane.
Gross Floor Area			318,796 sf	377,012 sf	471,495 gsf	471,472 gsf
Zoning Floor Area			238,179 sf	289,965 sf	383,451 sf	382,919 sf
Residential	177,716 gsf	231,031 gsf	268,432 gsf	326,648 gsf	419,346 gsf	374,449 sf
Local Retail	0 gsf	0 gsf	8,470 gsf	8,470 gsf	8,128 gsf	8,470 gsf
<b>Total Units</b>	<b>168 units</b>	<b>218 units</b>	<b>328 units</b>	<b>402 units</b>	<b>475 units</b>	<b>475 units</b>
Market-Rate	168 units	168 units	246 units	301 units	356 units	356 units
Affordable	0 units	50 units	82 units	101 units	152 units	119 units
Total Parking Spaces Provided	84 spaces	<i>No parking required</i>	79 spaces	79 spaces	71 spaces	81 spaces
Residents	423	550	827	1,013	1,197	1,197
Workers	7	7 - 9	38	41	43	41 - 43
Incremental Shadow Impact on JRP	---	Impacts would likely occur	Impacts would occur	Impacts would occur	Impacts would occur	Impacts would occur
Incremental Shadow Impact on BBG	---	Impacts would likely occur	Impacts would occur	Impacts would occur	Impacts would occur	Impacts would occur

\*City of Yes for Housing Opportunity- Numbers are approximated based on additional capacity proposed | No Parking Required

\*\*As reflected in supplemental application materials by applicant on Zoning Application Portal (July 12, 2024)

<sup>6</sup> DEIS, Chapter 12: Alternatives

## Considerations for Form, Height, and Bulk

The applicant has proposed a new restrictive height plane as a means to establish the buildable envelope within the portion of CD 9 on the block bounded by Montgomery Street, Washington Avenue, Sullivan Place, and Franklin Avenue. The applicant has referenced the 1991 contextual zoning as a framework for establishing this imaginary plane, proposing a line at an elevation of 85 feet above the level of the base plane, referencing the maximum base height within R8A in the parcels along Washington Avenue adjacent to BBG. The line would then extend eastward at a ratio of 5.06 ft vertically to 10 ft horizontally to define the slope. As a contingent factor of this imaginary plane, all parapets, rails or safety guards would be permitted to pierce this plane, provided they are at least 50% open or 90% transparent for any portions above the inclined plane.

This idea is not new. In 1991, The Parks Council (now New Yorkers for Parks) also released a series of zoning proposals to ensure sunlight access in their publication, [Preserving Sunlight in New York City's Parks: A Zoning Proposal](#). The study was started from the concept that the City's parks are a vital and limited resource deserving protection from environmental degradation and concluded that zoning is an appropriate legislative means of affording that protection. The report also asserts the discretionary review process (including ULURP) as an appropriate venue to develop more restrictive approaches where "the opportunity for protecting sunlight exists and the purpose for doing so is clear." The context of Brooklyn Botanic Garden meets such a threshold. This report laid out examples of zoning precedents that could protect sunshine in public parks and sunlight sensitive resources, including:

- Solar easements and envelopes as well as green lines (demarking areas where no shadow impacts would be allowed);
- Limited height districts to protect airspace around airports;
- Expanded protections for scenic, environmental, and cultural landmarks; and
- Establishing standards based on particularly beneficial times of year when sunlight is most beneficial for thermal comfort (for play, recreation, and stress relief) or the health of critical plants and environmental systems.

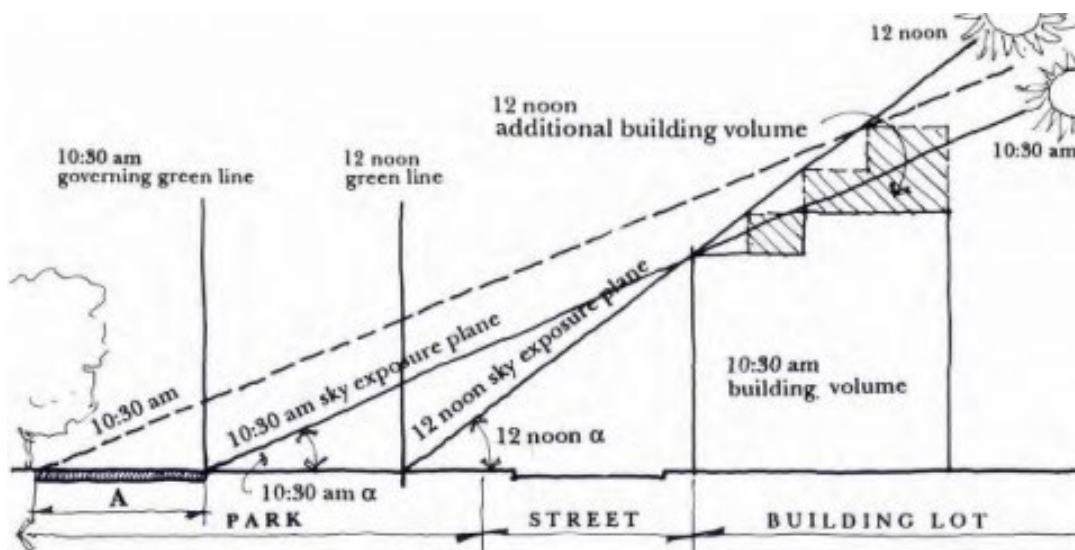


Figure 5: Proposal to Regulate Building Form and Shadow Using Solar Access, Parks Council

This zoning tool was never adopted into the Zoning Resolution but is the antecedent the proposal put forward by the applicant at 962-972 Franklin Avenue.

The use of a height-regulating plane is also present in Section 61 of the Zoning Resolution in relation to flight paths, establishing flight obstruction areas, airport approach and circling districts, defining restrictions on the highest projection of a building or structure, as well as categorizing permitted projections within any flight obstruction area.

DCP's proposal for City of Yes for Housing Opportunity eliminates special limited height districts as a mechanism for regulating height and largely defers to the underlying zoning to describe what could be constructed. Borough President Reynoso supports this change. The historic preservation goals of limited height districts are now better realized through contextual zoning districts and Historic Districts overseen by the Landmarks Preservation Commission. As currently written, limited height districts would effectively prohibit new affordable housing construction enabled by DCP's proposed Universal Affordability Preference (UAP) program. Since the original intent of limited height districts has already been replaced through newer tools, Borough President Reynoso agrees the most straightforward approach is to eliminate these districts.

The Borough President regards this introduction of a new tool to be isolated from the broader context for coordinated planning for this area. Any changes made to this area to regulate bulk and form should result from a publicly led planning effort as in 1991, rather than a private applicant.

As such, the applicant's proposal raises important policy questions that extend beyond this Development Site – with limited height districts on their way out, how should the City govern development in areas with unique constraints or considerations such as light-sensitive resources? Currently, the answer is as clear as it should be. In Borough President Reynoso's view, there are two options: a height-limiting plane (as proposed by the applicant), and a new special purpose district crafted through a public, neighborhood-planning effort.

#### Height Plane

If the City elects to pursue a height plane as its tool of choice, it should consider the following guiding questions:

- How might the City go about articulating a height plane?
- What goals or outcomes should the development of such a plane be rooted in?
- Should this be developed by a private applicant or be the result of a public-led process?
- What potential applications would such a tool set precedent for citywide?

There are a variety of methods to establish a potential plane to regulate the building envelope at 962-972 Franklin Avenue. Though the Borough President does not agree that this is the correct solution for this site, there are tradeoffs that are important to discuss to assist the review of the applicant's proposal. There are two desired outcomes that could be considered for developing such a regulating plane on this site that present different tradeoffs:

- 1. Partial Mitigation:** The applicant's proposal references the 1991 contextual zoning by establishing the height plane at 85 feet, consistent with the bulk regulations under R8A without MIH. In this way, the applicant is requesting to be regarded in the same way as zoning along Washington Avenue. This proposal prioritizes applying a uniform base height to inform bulk regulations, rather than seeking to mitigate shadow impacts on BBG as the 1991 Washington Avenue rezoning intended.

The Borough President believes the applicant's proposal is inconsistent with the goal of preventing new shadows on BBG.

- 2. Full Mitigation:** Alternatively, a new solar access plane could be established by using the extent of potential shadows resulting from a full build out of the no-action scenario. By originating the plane from the extent of the shadow anticipated from development along Washington Avenue under the no action scenario, a new building envelope that would not create additional shadows beyond what would be expected under existing zoning could be articulated.

This strategy is a more appropriate approach to developing such a regulating plane for the purpose of mitigating the impact of the proposed actions.

At the heart of the applicant's proposal is an appeal to be treated the same as their neighbors along Washington Avenue. At a high level, this appeal makes sense. However, the applicant's proposed mechanism does not actually deliver on this premise. The land use rationale of the 1991 rezoning along Washington Avenue was to mitigate shadow impacts on the Brooklyn Botanic Garden. To achieve this, an R8A district was mapped, which prescribes a base height of 85 feet along Washington Avenue. The applicant presents this 85-foot figure as the basis for equal treatment, but this puts the cart before the horse. There is nothing magical about the number 85 in its own right – it is only relevant with regard to its ability to govern shadow impacts on BBG. The applicant's proposed 85-foot plane would create additional shadow impacts compared to a no-action scenario where Washington Avenue is fully developed up to the current R8A zoning.

Applying the same land use rationale as the 1991 rezoning to this application should result in a development that fully mitigates shadow impacts on BBG compared to the no-action scenario. The Department of City Planning and City Planning Commission should consider a new solar access plane so that any new development on this site does not cast new shadows compared to a scenario where the buildings along Washington Avenue are fully developed into a basic R8A envelope.

The applicant's proposal highlights the limits of the 1991 contextual rezoning of the area as it seeks to limit, rather than prevent, new shadows on the Brooklyn Botanic Garden. As the DEIS identifies, it is anticipated that new shadows would result from as-of-right development along Washington



Ave. These could be more substantial if a project were to transfer air rights or engage in a zoning lot merger.

The potential for additional development capacity in this area resulting from City of Yes for Housing Opportunity requires additional analysis of impacts on BBG. This calls into question whether the 1991 zoning went far enough to protect resources or if a new approach is needed to guide development in the area, particularly given the high market demand in CB 9.

The Borough President believes that there are zoning approaches that allow for additional development on the site while **preventing all** shadow impacts on Brooklyn Botanic Garden and **mitigating** impacts to Jackie Robinson Playground. There are relevant criticisms on the use of zoning tools that to be overly restrictive to allowing much-needed new development and housing; however, this is not the case in context of BBG. As discussed above, such new tools may be reached for by communities across the city, seeking to find relief from “out of character development” or “incompatible scale.” The Borough President reaffirms that contexts demanding of these tools are rare and the approach here should not set the precedent for additional widespread reductions in development capacity citywide.

#### New Special Purpose District as part of a Future Empire Corridor Plan

In the past, the City has utilized special purpose districts to help govern unique contexts. Such a special district could be used to require additional permit approval or allow for the transfer of development rights for parcels where development would create shadow impacts on sensitive resources. Similar to Special Natural Area Districts (SNADs), which seek to preserve natural landscapes and vegetation while requiring site plan approval prior to permits being issued, a Solar Access Special District (SASD) could designate sunlight-sensitive resources and implement additional form regulations (i.e., additional setback regulations, allowances for variations in building form, performance standards).<sup>7</sup>

Borough President Reynoso believes that a new special purpose district is the most appropriate tool to govern the unique light-sensitive resources in this corner of CB 9. Such a district should be drafted as a public ULURP application that considers the needs of the wider Empire Boulevard corridor. The existing market pressure in CB 9 enhances the need for a more comprehensive housing and land use strategy in the area. Empire Boulevard is a 100 ft wide arterial road currently zoned with low-density automotive-oriented drive-through businesses and self-storage facilities. Previous private applications have proved unable to deliver sufficient public benefit and participation to envision additional density. If conducted responsibly, a renewed public application for an Empire Boulevard plan would present an opportunity to build affordable housing, improve pedestrian safety, take advantage of new planned bus service, embrace the potential for new historic sites at Ebbets Field and Prospect Park, and establish a new special purpose district to settle the question of protecting the Brooklyn Botanic Garden once and for all.

CB 9’s FY 2025 needs assessment identifies that:

CB9 would greatly appreciate the opportunity to have a study of our district with an included focus on the preservation of apartments to better utilize land in the district to address the need for housing. Study should include height and setback controls, open space, commercial

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<sup>7</sup> *Bright Ideas*, Municipal Art Society of New York, p. 28-29

revitalization, upgraded/new schools, job creation, transportation access, improved utility services and infrastructure to support an expected population growth.<sup>8</sup>

For these reasons, Borough President Reynoso believes this application should be disapproved.

**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 disapprove this application.

BE IT FURTHER RESOLVED that the 1991 Washington Avenue Rezoning should be improved upon through a new neighborhood planning process or consideration of a new special district for the area between BBG, JRP, and Empire Blvd in Crown Heights.

BE IT FURTHER RESOLVED that Comprehensive Planning is address critical needs and identify a growth strategy that improves neighborhood outcomes and development opportunities that improve affordability, stability, health, and wellness.



July 25, 2024

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BROOKLYN BOROUGH PRESIDENT

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DATE

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<sup>8</sup> CB 9, *Statement of Community District Needs and Community Board Budget Requests: FY 2025*, p. 30