**CITY PLANNING COMMISSION**

September 22, 2021 / Calendar No. 7 C 200184 ZMK

**IN THE MATTER OF** an application submitted by Franklin Ave. Acquisition LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 16d:

1. changing from an R6A District to an R9D District property bounded by Montgomery Street, Franklin Avenue, a line 150 feet northerly of Sullivan Place, a line 100 feet easterly of Washington Avenue, and a line 300 feet northwesterly of Franklin Avenue; and

2. establishing within the proposed R9D District a C2-4 District bounded by Montgomery Street, Franklin Avenue, a line 150 feet northerly of Sullivan Place, and a line 100 feet northwesterly of Franklin Avenue;

Borough of Brooklyn, Community District 9, as shown on a diagram (for illustrative purposes only) dated February 1, 2021, and subject to the conditions of CEQR Declaration E-586.

This application for a zoning map amendment was filed by Franklin Ave. Acquisition LLC on November 4, 2019, to change an R6A zoning district to R9D and R9D/C2-4 zoning districts. This application, in conjunction with the related zoning text amendment action (N 200185 ZRK) and zoning special permits (C 200186 ZSK, C 200187 ZSK), would facilitate the construction of two 39-story mixed use buildings containing 1,578 dwelling units, along with commercial and community facility space, at 960 Franklin Avenue in the Crown Heights neighborhood of Brooklyn, Community District 9.

## RELATED ACTIONS

In addition to the zoning map amendment (C 200184 ZMK) that is the subject of this report, the proposed project also requires action by the City Planning Commission (Commission) on the following applications, which are being considered concurrently with this application:

**N 200185 ZRK** Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area

**C 200186 ZSK** Special Permit pursuant to Zoning Resolution Section 74-743 to modify certain height, setback, and tower coverage regulations within a large-scale general development

**C 200187 ZSK** Special permit pursuant to Zoning Resolution Section 74-533 to reduce parking to facilitate affordable housing

**BACKGROUND**

The applicant requests a zoning map amendment to change an R6A zoning district to R9D and R9D/C2-4 zoning districts; a zoning text amendment to create an MIH area; a special permit to modify certain height, setback, and tower coverage regulations; and a special permit to reduce parking to facilitate affordable housing. The project area is comprised of eight tax lots (Lots 40, 41, and 46, as well as portions of Lots 1, 63, 66, 77 and 85) on the eastern portion of Block 1192, bounded by Montgomery Street to the north, Franklin Avenue to the east, Sullivan Place to the south, and Washington Avenue and the Franklin Avenue Shuttle right-of-way to the west.

The project area consists of the development site, which encompasses four tax lots owned or under control by the applicant (Lots 41, 46, 63, and 66), as well as four full and partial tax lots (Lots 1, 40, 77 and 85) that are not owned by the applicant. The development site contains a total lot area of 120,209 square feet or 2.76 acres with approximately 225 feet of frontage along Montgomery Street and approximately 576 feet of frontage along Franklin Avenue, both of which are 70-foot-wide streets and classified as narrow streets under zoning. The development site consists of a vacant three-story office building and boiler building (Lot 41), a cluster of five buildings used as a storage and warehouse facility for spices (Lot 46), a vacant one-story warehouse building (Lot 63), and a vacant, unimproved lot (Lot 66). The remaining portion of the project area that is not owned by the applicant consists of a small vacant lot (Lot 40), portions of two lots occupied by six-story, multi-family residential buildings (Lots 77 and 85), and a portion of an open-cut right-of-way used for the Franklin Avenue subway shuttle and owned by the New York City Transit Authority (Lot 1).

The project area is in the Crown Heights neighborhood, which contains a mix of residential, community facility, and commercial uses. Commercial uses are predominantly located along Franklin Avenue, a local retail and mixed-use corridor, and Empire Boulevard, a service-based corridor characterized by one- to two-story commercial buildings. Numerous public facilities and institutions are in the immediate vicinity of the project area. The blocks directly east and northeast of the project area contain the City University of New York's (CUNY's) Medgar Evers College campus, Public School 375, Middle School 352, and Jackie Robinson Playground, a one-acre city-owned park. Located one block west along Washington Avenue is the Brooklyn Botanic Garden (BBG), a not-for-profit institution spanning 52 acres and encompassing several indoor and outdoor facilities--including conservatories, greenhouses, and educational facilities—used for the propagation and stewardship of a wide variety of rare and sensitive plant species.

Residential uses within the surrounding area are primarily characterized by one- and two-family homes and multi-family apartment buildings that range from two to seven stories. Two nearby apartment complexes are developed with towers that are significantly set back from the street; Tivoli Towers, a 33-story building two blocks to the north built in 1973, and the Ebbets Field Housing complex, a cluster of seven, 25-story buildings two blocks to the east, built in 1960.

The project area is within the Transit Zone and served by the 2, 3, 4, 5, and S (Franklin Avenue shuttle) subway lines, accessible at the Franklin Avenue and Eastern Parkway stations, five blocks north of the project area; to the south, the B, Q, and S lines can be accessed at the Prospect Park station five blocks from the project area. The B44, B45, B48, and B49 bus lines also run within a few blocks of the project area.

The surrounding area contains a mix of zoning districts. In 1991, a 13-block area-wide contextual rezoning sponsored by the Department of City Planning (Department) was adopted (C 910293 ZMK), which rezoned R6 and R8 zoning districts to R6A and R8A zoning districts to support the existing neighborhood character and minimize potential shadow impacts on the nearby BBG. In 2018, a private application to rezone a portion of three blocks along the west side of Franklin Avenue, directly north of the project area, was adopted (C 180347 ZMK, N

180348 ZRK), which mapped R8X and R8X/C2-4 zoning districts, in conjunction with an MIH area. The adoption of this application is currently annulled and subject to litigation with a pending appeal by the City. R8A and R8X are contextual residential zoning districts that allow a maximum Floor Area Ratio (FAR) of 6.02 or 7.2 if mapped within Inclusionary Housing Areas. R8A zoning districts allow base heights between 60 and 85 feet with a maximum building height of 120 feet, while in MIH areas R8X zoning districts allow base heights between 60 and 105 feet with a maximum building height of 175 feet with a Qualifying Ground Floor (QGF).

The project area is within an R6A zoning district, a medium-density contextual district with a maximum FAR of 3.0 for residential and community facility uses. R6A zoning districts allow base heights between 40 and 60 feet with a maximum building height of 70 feet or 75 feet with a QGF. Off-street parking is generally required for 50 percent of the market-rate dwelling units and optional for income-restricted units within the Transit Zone.

The applicant proposes to develop two 39-story mixed-use buildings with 1,578 dwelling units, as well as 19,890 square feet of commercial and 9,087 square feet of community facility space located on the ground floors. The proposed development would have a built FAR of 9.7, totaling 1,151,671 square feet of floor area. The southern portion of the site would be developed with Building I, a 39-story, 421-foot-tall building. Building I would have a six-story street wall for approximately 65 feet of frontage along Franklin Avenue at the southern end of the site, which would step up to a seven-story street wall for approximately 225 feet of frontage further to the north along Franklin Avenue. The building would then set back 15 feet before rising to 17 stories and then set back another five feet before rising to 34 stories, followed by an approximately 85-foot setback before rising to 39 stories. The ground floor of Building I would include 9,053 square feet of retail uses fronting on Franklin Avenue.

On the northern portion of the development site would be Building II, a 39-story, 424-foot-tall building. Building II would have an eight-story street wall for 222 feet along Franklin Avenue and 225 feet along Montgomery Street, which would then set back 15 feet from Franklin Avenue and Montgomery Street before rising to 17 stories. Another 50-foot setback would be along the

Franklin Avenue frontage before rising to 31 stories, followed by a final setback of 65 feet on the Montgomery Street frontage before rising to 39 stories. The ground floor of Building II would include 10,838 square feet of retail uses fronting on Franklin Avenue, and 9,087 square feet of community facility space fronting on Montgomery Street. In Buildings I and II, the widths of each tower portion would vary by building segment, ranging from 85 to 210 feet in length.

Two parking garages accommodating a total of 180 spaces would be located on the ground floor and cellar levels, which would be accessed from curb cuts on Franklin Avenue and Montgomery Street. A central court and driveway, measuring 73 feet in width, would separate the buildings in order to provide circulation and access to the residential building entrances. The central portion of this space would be designated as a Publicly Accessible Area (PAA) with hours of operation and maintenance standards, along with plantings and benches for seating.

Lastly, the project area would be mapped as an MIH area, requiring 25 percent or 30 percent of the total residential floor area be set aside as affordable units. Beyond the required percentage of affordable housing, the applicant has stated that they will, on a voluntarily basis, dedicate 50 percent of the units as affordable housing.

To facilitate the proposed development, the applicant seeks a zoning map amendment, two zoning special permits, and a zoning text amendment.

*Zoning Map Amendment (C 200184 ZMK)*

The applicant proposes a zoning map amendment to change an R6A zoning district to an R9D zoning district and map a C2-4 commercial overlay within 100 feet of Franklin Avenue. R9D is a high-density residential district that allows a maximum FAR of 9.0 or 10.0 within Inclusionary Housing areas. The R9D zoning district was created in 2009 in connection with the 161st Street area-wide rezoning in the Bronx (C 090365 ZMX, N 090364 ZRY), for a specific subset of sites located along an elevated transit line. In R9D zoning districts, building frontage adjacent to the elevated train must maintain a base height between zero to 25 feet and then set back, while other frontages may have base heights between 60 and 85 feet, after which buildings must set back 15

feet along a narrow street and 10 feet along a wide street. R9D zoning districts do not have a maximum building height, however buildings over 85 feet must comply with tower regulations, while other tower coverage regulations apply to ensure articulation for the highest four stories or the building portion above 165 feet, whichever is less. Off-street parking is generally required for 40 percent of the market-rate dwelling units and optional for income-restricted housing units (IRHU) within the Transit Zone. C2-4 commercial overlays are paired with residential districts and typically allow commercial development or ground floor retail in mixed-use developments with a maximum FAR of 2.0.

*Zoning Text Amendment (N 200185 ZRK)*

The applicant requests a zoning text amendment to designate the project area as an MIH area mapped with Options 1 and 2. Option 1 requires that at least 25 percent of the residential floor area be provided as housing affordable to residents with household incomes averaging 60 percent of the Area Median Income (AMI), including a 10 percent band at 40 percent of the AMI. Option 2 requires that at least 30 percent of the residential floor area be provided as housing affordable to residents with household incomes at an average of 80 percent of the AMI.

*Zoning Special Permit (C 200186 ZSK)*

The applicant requests a Zoning Special Permit pursuant to Zoning Resolution (ZR) Section 74-743(a)(2) to modify certain height, setback, and tower coverage regulations within a large-scale general development (LSGD) plan.

First, the applicant requests a waiver to modify ZR Section 23-662(a), which requires new developments in R9D zoning districts to have a minimum base height of 60 feet and a maximum base height of 85 feet. Building II of the proposed development would have a base height of 95 feet along the Franklin Avenue and Montgomery Street frontages. The applicant requests a waiver to increase the maximum base height to better align the development's street wall with the base height permitted under the R8X zoning district to the north. Second, the applicant requests a waiver to modify the tower regulations of ZR Section 23-663, which require towers above 85 feet to have a lot coverage between 33 and 40 percent of the zoning lot. The proposed

development would have a lot coverage ranging from five to 44 percent above 85 feet. The applicant requests a waiver to modify the minimum and maximum lot coverage permitted in the tower portion of R9D zoning districts, leading to taller towers closer to the street line. Third, the applicant requests a waiver to modify the tower coverage requirements of ZR Section 23-663(c), which requires the highest four stories of a building in R9D zoning districts to have 50 to 80 percent tower coverage of the story immediately below such stories. The applicant requests a waiver to allow the building's highest four stories to have 100 percent tower coverage of the story immediately below such stories.

*Zoning Special Permit (C 200187 ZSK)*

The applicant requests a zoning special permit pursuant to ZR Section 74-533 to waive parking requirements within the Transit Zone to facilitate affordable housing. The applicant proposes to reduce the required percentage of accessory residential off-street parking spaces from 40 percent to 16 percent of the non-IRHU units, which would allow the proposed development to waive 314 total parking spaces.

**ENVIRONMENTAL REVIEW**

This application (C 200184 ZMK), in conjunction with the applications for the related actions (N 200185 ZRK, C 200186 ZSK, C 200187 ZSK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 19DCP095K.

It was determined that this application, in conjunction with the applications for the related actions, may have a significant effect on the environment, and that an Environmental Impact Statement (EIS) would be required. A Positive Declaration was issued on February 8, 2019, and subsequently distributed, published, and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on February 8,

2019. A public scoping meeting was held on March 13, 2019, and the Final Scope of Work was issued on January 29, 2021.

A DEIS was prepared and a Notice of Completion for the DEIS was issued on January 29, 2021. Pursuant to SEQRA regulations and the CEQR procedure, a joint public hearing was held on July 29, 2021, in conjunction with the public hearing on the related Uniform Land Use Review Procedure (ULURP) and non-ULURP items (C 200186 ZSK, C 200187 ZSK and N 200185 ZRK). A Final Environmental Impact Statement (FEIS) reflecting comments made during the public review process was completed, and a Notice of Completion for the FEIS was issued on September 10, 2021.

The proposed project, as analyzed in the FEIS, identified significant adverse impacts with respect to community facilities and services (childcare services); open space, shadows, and natural resources; transportation (traffic and pedestrians); and construction (transportation, noise).

Significant adverse impacts related to hazardous materials, air quality and noise would be avoided through the placement of (E) designations (E-586) on the project site as specified in Chapter 10, Chapter 15, and Chapter 17, respectively, of the FEIS.

The application, as analyzed in the FEIS, contained Project Components Related to the Environment (PCREs), which are set forth in Chapter 5, "Open Space." The identified significant adverse impacts and proposed mitigation measures under the proposed actions are summarized in Chapter 21 "Mitigation" of the FEIS.

**UNIFORM LAND USE REVIEW**

This application (C 200184 ZMK) and the related applications for special permits (C 200186 ZSK, C 200187 ZSK) were certified as complete by the Department on February 1, 2021 and were duly referred to Brooklyn Community Board 9 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the

related application for a zoning text amendment (N 200185 ZRK), which was referred for information and review on February 1, 2021 in accordance with the procedures for non-ULURP matters. Due to court-mandated Temporary Restraining Orders (TROs), ULURP was suspended from March 2 to May 12 and again from June 4 to June 10; ULURP resumed on June 11th after the TROs were lifted.

**Community Board Public Hearing**

Brooklyn Community Board 9 held a public hearing on this application (C 200184 ZMK) and the related actions for a zoning text amendment (N 200185 ZRK) and special permits (C 200186 ZSK, C 200187 ZSK) on June 21, 2021, and on June 23, by a vote of 22 in favor, two in opposition, and nine abstaining, adopted a resolution recommending disapproval of the application, noting that any proposed modifications to the application after certification should not be considered as part of this ULURP review as the Board had not been provided sufficient documentation to substantiate or refute any claims made in revised presentations.

**Borough President Recommendation**

The Brooklyn Borough President held a public hearing on this application (C 200184 ZMK) and the related actions for a zoning text amendment (N 200185 ZRK) and special permits (C 200186 ZSK, C 200187 ZSK) on June 29, 2021, and on August 6, 2021, issued a recommendation to disapprove the application.

**City Planning Commission Public Hearing**

On July 14, 2021 (Calendar No. 20), the City Planning Commission scheduled a public hearing on this application (C 200184 ZMK) and the related applications for a zoning text amendment (N 200185 ZRK) and special permits (C 200186 ZSK, C 200187 ZSK). The hearing was duly held on July 29, 2021 (Calendar No. 1). There were six speakers in favor of the application and 45 in opposition.

The applicant team, consisting of five representatives, testified in support of the application. The applicant stated that the development would be built, financed, and operated through labor

unions with the support of the AFL-CIO labor council, which has committed to underwriting the cost of construction. The applicant also stated that the project received active support from several unions and that the proposed density is necessary to achieve the project's affordable housing objectives. The applicant's land use attorney summarized the requested land use actions, described the surrounding area and nearby zoning, and indicated that the applicant is revising the proposed development to 34 stories, as shown in the DEIS as a partial mitigation scenario. The applicant team showed images of a lower-density alternative scenario under an R8X zoning district framework, which they stated was not reliant on special permit bulk waivers. The applicant team also stated that the CPC Report for the 1991 area-wide rezoning references the objective to reduce shadows cast on BBG, but that this objective was directed at the R8A zoning along Washington Avenue, rather than the R6A zoning along Franklin Avenue. The project architect provided an overview of the proposed uses, site programming, and breakdown of dwelling units, and presented a massing diagram with the 34-story scenario.

In addition to the applicant team, one person spoke in favor of the application. A representative speaking on behalf of the 32BJ property services labor union testified in support, stating that the applicant has expressed an early commitment to hiring workers with prevailing wages and the project would offer affordable housing opportunities for local residents and working families.

Those who spoke in opposition included local residents, members of the Community Board, and representatives from local block associations and tenant advocacy groups; staff, members, and supporters of BBG; and representatives from other planning and open space advocacy organizations.

Several speakers spoke in opposition due to concerns about affordable housing, gentrification, and displacement. A New York State Assembly Member, who grew up near the project area with family residing nearby, stated that the anticipation of luxury housing would lead to increased displacement pressure. A representative from the Crown Heights Tenants Union (CHTU), a union of local tenant associations, raised concerns that the proposal's affordable housing would not adequately meet the needs of local residents and that secondary displacement would occur

from the substantial increase of market-rate housing. Other speakers stated that many local residents are rent-burdened and that the proposal would exacerbate gentrification of the neighborhood.

Several speakers raised concerns about the applicant's engagement with local community members and the applicant's approach of presenting development alternatives after the Community Board's and Borough President's public hearings. A Prospect Heights resident stated that the developer has not held a meaningful dialogue with the community, which could have made the project a model for community-centered development. The Chair of Community Board 9 reiterated the Board's recommendation to disapprove the application with no modifications. He explained that the project's harms would greatly outweigh the benefits and that any alternatives or modifications to the proposal, shown after certification, should not be considered because the Board had not been provided sufficient documentation. He elaborated further that an alternative proposal was first presented in late February of 2021 without any notice, which deprived the Board of the opportunity to conduct any substantive review. A CHTU and Community Board 9 member stated that the developer has evaded questions and refused to share important project documents.

A number of speakers affiliated with BBG, including various staff, organization members, and volunteers, spoke in opposition due to the shadows cast by the proposed development and their impact on indoor and outdoor plant facilities. The President of BBG provided an overview of the shadow impacts on BBG's individual facilities and Jackie Robinson Playground. Several BBG staff and members, along with other residents or organization representatives, described BBG as a world-renowned institution with plants that would be directly threatened and damaged by shadows from the proposed development, particularly many rare plant collections in nurseries, conservatories, and other facilities that are unique sunlight sensitive resources. Many speakers stated that BBG is a valuable neighborhood asset, connecting people to nature and fostering environmental stewardship, while providing educational programs for both children and adults. Other speakers noted that BBG also serves as a resource that advances public health and provides a space for quiet or respite. The President of the Municipal Arts Society (MAS)

reiterated many of the concerns related to shadow impacts and affordability, while stating that MAS has conducted its own shadow study and noted that 70,000 people have signed a petition against the proposal. She also stated that such a proposal could be tweaked on the margin and made palatable, explaining that even the 34-story alternative would do little to mitigate the shadow impacts identified in the DEIS.

A number of speakers stated that the current zoning, which was mapped in 1991, considered BBG's access to light and should be sustained in order to minimize shadow impacts on BBG and better reflect the neighborhood character. A representative from the Movement to Protect the People (MTOPP), a local organization, stated that the project area was identified as a soft site in the 1991 area-wide rezoning, that the R8X zoning to the north was annulled by a judge, and that the local community has received minimal information about a 17-story alternative proposal. Another MTOPP representative expressed concerns about access to light and air due to the proposed development massing.

Regarding other aspects of the environmental review, a few speakers stated that the proposal lacked sufficient infrastructure improvements to address potential traffic congestion, additional subway ridership, and other issues that would affect the quality of life of current and future residents. A few speakers raised concerns about the proposed development's site plan and design, stating that the building height would be out of context, the existing spice warehouse buildings could be repurposed, and the open area between the two proposed buildings would not adequately function as open space for the community.

There were no other speakers, and the hearing was closed. In addition to speakers at the public hearing, written comments were submitted in opposition to the application, highlighting the shadow impacts on BBG's many indoor and outdoor plant facilities and other concerns described above related to affordability, displacement, and infrastructure.

**CONSIDERATION**

The Commission believes that this amendment to the zoning map (C 200184 ZMK), in conjunction with the related applications for a zoning text amendment (N 200185 ZRK) and special permits (C 200186 ZSK, C 200187 ZSK), is not appropriate.

The Commission firmly believes in the strong need to support opportunities for housing growth and affordable housing that serve both the needs of the local neighborhood and the broader city so as to address the city's housing crisis. As such, the Commission has approved numerous rezonings throughout the city that increase density and height to generate new housing with affordable housing, including the area immediately to the north of the proposed project, which was rezoned in 2018. In its review of rezoning applications, the Commission carefully considers whether the proposed density, building form, and scale of the new buildings are appropriate for the location. These considerations include whether a building fronts on wide streets to allow for adequate access to light and air, whether a building's massing and design responds to the pedestrian perspective and the surrounding built context, and whether it is proximate to transit, public services, jobs, and open space, as well as any potential significant impacts identified in the environmental review.

The proposed density of 9.7 FAR is comparable to densities mapped in and around Downtown Brooklyn and other major transit hubs and central business districts. These locations feature many wide streets and avenues, a confluence of transit options, and are centers for jobs, retail, services, and entertainment destinations. In fact, the proposed R9D zoning district is intended to be mapped in high-density areas along wide streets and adjacent to elevated train lines. Specifically, C6-3D, which is R9D's commercial district equivalent, is mapped along River Avenue and East 161st Street adjacent to Yankee Stadium in the Bronx -- immediately adjacent to three major subway lines and a commuter rail station. In contrast, the 960 Franklin Avenue project area is located solely along narrow streets, not immediately proximate to major subway lines, and within a predominantly residential neighborhood, rather than being near major job hubs or retail destinations. Accordingly, the Commission believes that the proposed zoning map amendment is not appropriate because it would allow a density that is not suitable at this location

and within this context.

In addition to the proposed zoning map amendment, the applicant is seeking a special permit pursuant to an LSGD, which would waive certain height, setback, and tower coverage regulations. In conjunction with the proposed R9D zoning district, the special permit would result in two 39-story towers that are not sufficiently differentiated or articulated. In particular, the tower lot coverage waiver would enable unusually wide and bulky towers. The Commission observes that the applicant is seeking too much density for this site, which has led to an overbearing building envelope and development that does not respond to the scale of the surrounding built context. Although Tivoli Towers and the Ebbets Field Housing complex have tower-style buildings, these buildings are significantly set back from the street by open space. The tower-style of these buildings also reflects a different era in architecture and urban design philosophy, deviating significantly from the neighborhood's mid-rise character.

Therefore, the Commission does not find that the special permit results in a better site plan and a better relationship among buildings, open areas, and adjacent streets pursuant to ZR Section 74-743(b)(1). The Commission does not find that the proposed buildings will not unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks pursuant to ZR Section 74-743(b)(2) based on the extensive shadows cast on BBG, as identified in the FEIS and discussed in further detail below.

With respect to the environmental review, the Commission notes that the FEIS includes a shadow analysis that demonstrates that the height and bulk of the towers would result in a significant, adverse, and unmitigated shadows impact on BBG's greenhouses, conservatories, and other indoor and outdoor facilities. As discussed in the FEIS, these facilities, many of which are located near Washington Avenue, contain a wide range of rare plant species that are unique sensitive resources and frequently require full, year-round sun, including sunlight during the winter months. The FEIS shows that the proposed actions may result in extensive shadows being cast on BBG throughout the year, with an incremental shadow duration lasting for several hours. The potential for significant adverse impacts related to shadows were also identified in a 34-story

option discussed in the FEIS for the purposes of analyzing a partial mitigation scenario.

During the Commission's public hearing, the applicant team discussed the possibility of the Commission exercising its discretion to adopt a lower density alternative. In support of this approach, the applicant team submitted environmental review materials related to an alternative scenario shortly before the Commission's public hearing and subsequently offered to submit supporting land use analyses. The Commission notes that this alternative involves a significantly different project under a newly proposed R8X zoning district, compared to the certified application. As was noted by Department staff during presentations at CPC Review Sessions for certification and for pre-hearing, throughout the pre-certification process Department staff continuously and repeatedly conveyed to the applicant that the proposed actions would result in a bulk envelope and density that are inappropriate for this location. During this entire time, the applicant refused to heed staff concerns regarding the density and bulk of their project.

The applicant is now seeking to have the Commission modify their proposal, a scheme that the applicant had been advised should not have been pursued in the first place. As such, while the applicant submitted an alternative environmental analysis, and additional information in a subsequent letter, the Commission is not willing to consider the applicant's proposed alternative development at this late date. The Commission notes that the applicant has had ample time and plenty of opportunities to revise their proposed project to a more appropriately scaled project, having been advised by Department staff numerous times over a prolonged period prior to public review, and yet elected not to do so. The Commission further notes that such a substantial change to the proposal this late in the process, especially with only limited information provided by the applicant team, makes a mockery of the public review process and the engagement by local residents and other stakeholders, the Community Board, and the Borough President to review a proposed change. At this late point in the public review process, if the applicant seeks to pursue a different proposal, the Commission advises that a new application be submitted that will benefit from a complete and thorough public review.

Regarding the comments in support of maintaining the existing R6A zoning district, adopted in 1991, the Commission believes that opportunities for housing growth at this site could be considered at a later time, after further consideration is given to the appropriate design and scale of development of this complex site.

Therefore, the Commission does not approve this application and its related applications.

**RESOLUTION**

**RESOLVED,** that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on September 10, 2021, with respect to this application (CEQR No. 19DCP095K), the City Planning Commission finds that:

1. the application does not minimize to the extent practicable, consistent with social, economic and other essential considerations, the significant shadows that the proposed actions will cast on the conservatories and greenhouses of the Brooklyn Botanic Garden, which contain uniquely rare and sensitive plant species frequently requiring full, year-round sun;
2. The significant shadows impact identified on the Brooklyn Botanical Garden conservatories and greenhouses could be further minimized by reducing the height and bulk of the proposed development; and
3. While a lower-density scenario was submitted immediately prior to the scheduled public hearing held by the Commission on the DEIS and proposed actions, the submission did not constitute a reasonable alternative, pursuant to Section 617.9(b)(v) of Title 6 of the Codes, Rules, and Regulations of the State of New York. The submitted scenario was premised on the Commission electing to significantly modify the applicant's complex proposal, and the Commission declined to exercise such discretion. Throughout the preparation and review of the application, the Department repeatedly recommended that the applicant reconfigure the proposed development and pursue a different, lower-density zoning district for this irregular-shaped site, and applicant instead chose to pursue the mapping of an R9D district, which is an inappropriate zoning district for this location. Reconceptualizing the proposed development and significantly modifying the proposed

actions at this point in the review process would undermine the intent of ULURP and would entail complex issues that cannot be appropriately addressed at this late stage.

The report of the Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic, and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

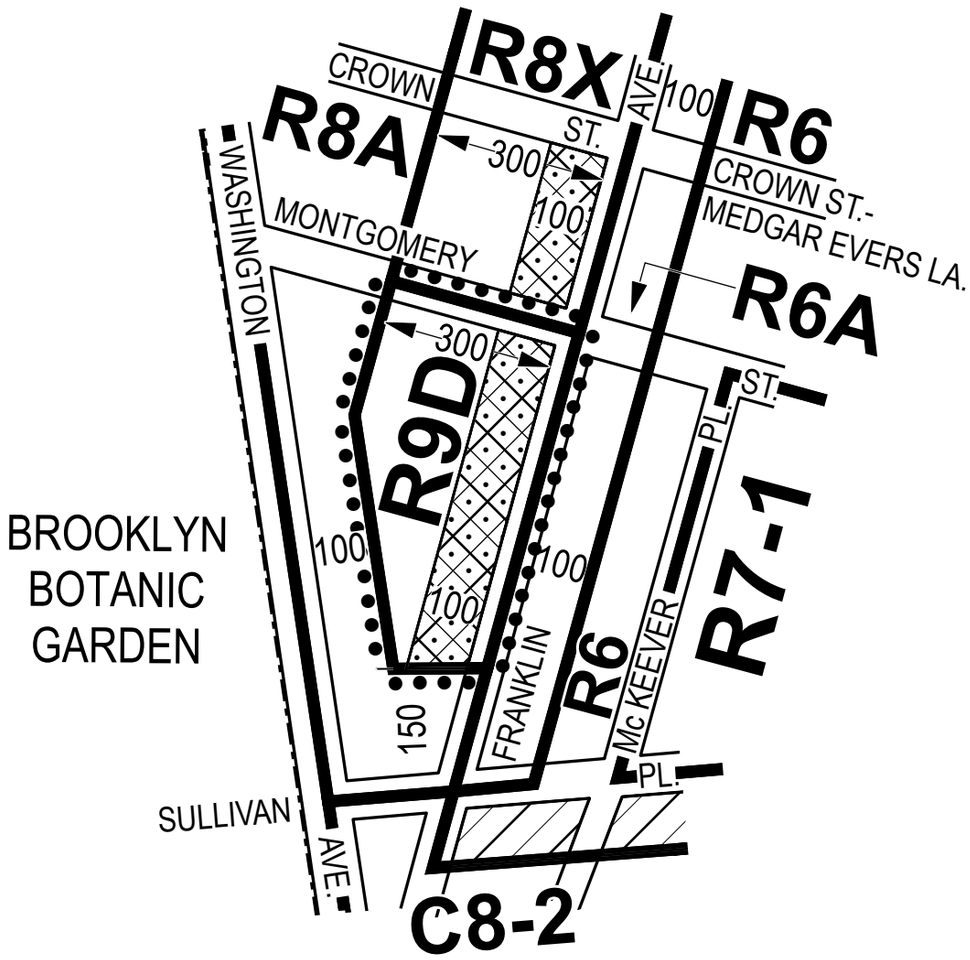
**RESOLVED,** by the City Planning Commission, based on the considerations described in this report and the environmental determination that the application submitted by Franklin Ave. Acquisition LLC, pursuant to Sections 197-c and 200 of the New York City Charter, for an amendment of the Zoning Map, Section No. 16d:

1. changing from an R6A District to an R9D District property bounded by Montgomery Street, Franklin Avenue, a line 150 feet northerly of Sullivan Place, a line 100 feet easterly of Washington Avenue, and a line 300 feet northwesterly of Franklin Avenue; and

2. establishing within the proposed R9D District a C2-4 District bounded by Montgomery Street, Franklin Avenue, a line 150 feet northerly of Sullivan Place, and a line 100 feet northwesterly of Franklin Avenue;

Borough of Brooklyn, Community District 9, as shown on a diagram (for illustrative purposes only) dated February 1, 2021, and subject to the conditions of CEQR Declaration E-586 is **DISAPPROVED**.

**KENNETH J. KNUCKLES, ESQ.,** *Vice Chair*
**DAVID J. BURNEY, ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO III, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, LARISA ORTIZ, RAJ RAMPERSHAD,** *Commissioners*




CITY PLANNING COMMISSION
CITY OF NEW YORK
DIAGRAM SHOWING PROPOSED
**ZONING CHANGE**
ON SECTIONAL MAP
**16d**
BOROUGH OF
**BROOKLYN**

New York, Certification Date:
February 1, 2021

S. Lenard, Director
Technical Review Division

SCALE IN FEET
0 150 300 450 600

NOTE:

Indicates Zoning District Boundary

The area enclosed by the dotted line is proposed to be rezoned by changing from an R6A District to an R9D District and by establishing a C2-4 District within the proposed R9D District.

Indicates a C1-3 District

Indicates a C2-4 District

NOTE: THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.

# COMMUNITY/BOROUGH BOARD RECOMMENDATION

| | |
|---|---|
| **Project Name**: 960 Franklin Avenue Rezoning | |
| **Applicant**: Franklin Ave. Acquisition, LLC | **Applicant's Primary Contact**: William Wallace |
| **Application #** 200186ZSK | **Borough**: |
| **CEQR Number**: 19DCP095K | **Validated Community Districts**: K09 |

**Docket Description**:
IN THE MATTER OF an application submitted by Franklin Ave. Acquisition LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 74-743 of the Zoning Resolution to modify the height and setback requirements of Section 23-662 (Maximum Height of Buildings and Setback Regulations) and the tower coverage requirements of Section 23-663 (Tower Regulations in R9D and R10X Districts), in connection with a proposed mixed-use development, within a large-scale general development, on property generally bounded by Montgomery Street, Franklin Avenue, a line 150 feet northerly of Sullivan Place, a line 100 feet easterly of Washington Avenue, and a line 300 feet northwesterly of Franklin Avenue (Block 1192, Lots 41, 46, 63, & 66), in R9D* and R9D/C2-4* Districts.
* Note: This site is proposed to be rezoned by changing an existing R6A District to R9D and R9D/C2-4 Districts under a concurrent related application for a Zoning Map change (C 200184 ZMK).
Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31st Floor, New York, N.Y. 10271-0001.

*Please use the above application number on all correspondence concerning this application*

| | | | |
|---|---|---|---|
| **RECOMMENDATION: Unfavorable** | | | |
| **# In Favor:** 22 | **# Against:** 2 | **# Abstaining:** 9 | **Total members appointed to the board:** 33 |
| **Date of Vote**: 6/23/2021 12:00 AM | | **Vote Location**: Zoom Virtual Platform | |

*Please attach any further explanation of the recommendation on additional sheets as necessary*

| | |
|---|---|
| **Date of Public Hearing**: 6/21/2021 6:00 PM | |
| **Was a quorum present?** No | *A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members* |
| **Public Hearing Location**: | Zoom Virtual Platform - https://zoom.us/meeting/register/tJwvfu-ppjgoHtKIRLJtUoa7xW1WngAWN2OQ |

**CONSIDERATION:**

| | | |
|---|---|---|
| Recommendation submitted by | BK CB9 | Date: 6/25/2021 2:32 PM |

# BROOKLYN COMMUNITY BOARD 9

**Eric L. Adams**
*Borough President*

**Dante B. Arnwine**
*District Manager*

**Fred P. Baptiste**
*Chair*

**Warren P. Berke**
*1st Vice Chair*

**Francisca Leopold**
*2nd Vice Chair*

**Alejandra Caraballo**
*Executive Secretary*

**Dexter Roberts**
*Treasurer*

**Eve-lyn Williams**
*Member-at-Large*

**Nicolas Almonor**
*Member-at-Large*

**COMMUNITY BOARD 9 BROOKLYN**
**RESOLUTION ON THE LAND USE APPLICATION FOR 960 FRANKLIN AVENUE (ULURP NUMBER C200187ZSK)**
**(CBR# 2021-02)**

**WHEREAS**, the application for 960 Franklin Avenue (ULURP Number C200187ZSK) was filed on April 30, 2020 and certified for public review by the City Planning Commission on February 4, 2020.

**WHEREAS**, Brooklyn Community Board 9 (CB9) through its ULURP, Parks/Recreation/Cultural Affairs, Environmental Protection, and Housing committees has conducted a coordinated review of the application,

**WHEREAS**, CB9 as part of its due diligence has requested the production of supplemental materials as part of the application review from the applicant and the Department of City Planning (DCP),

**WHEREAS**, CB9 requested project financial documents and a copy of the restrictive declaration with any proposed community benefits and they were not provided after repeated requests,

**WHEREAS**, shadow studies conducted as part of the Draft Environmental Impact Statement (DEIS) have indicated the potential for significant adverse effects on portions of the community district including the Brooklyn Botanic Garden (BBG) and the Jackie Robinson Playground,

**WHEREAS**, CB9 conducted a public hearing on June 21, 2021 on the 960 Franklin Avenue application with a quorum in accordance with the Uniform Land Use Review Procedure,

**WHEREAS**, the overwhelming majority of the testimony provided to the Board as part of the public review was in opposition to the application,

**WHEREAS**, testimony provided indicates serious concerns on the effects this unprecedented development would have on the Brooklyn Botanic Garden, Medgar Evers College, the Jackie Robinson playground, local infrastructure, service delivery and quality of life,

**WHEREAS**, the large influx of market rate housing in the district has the potential to create upward pressure on current housing stock rental pricing,

**WHEREAS**, the affordable housing options proposed by the developer are insufficient given a significant portion of the community district falls below the proposed income bands,

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WEBSITE: www. https://cbbrooklyn.cityofnewyork.us/cb9/ • EMAIL: BK09-1@CB.NYC.GOV

# BROOKLYN COMMUNITY BOARD 9

**WHEREAS**, the project is grossly inconsistent with current zoning and threatens to set a precedent of large-scale, unaffordable development,

**WHEREAS**, CB9 previously participated in a scoping review for 960 Franklin Avenue in March 2019 and subsequently voted in the negative on the application,

**WHEREAS**, there was little interaction between the applicant and the Board to try and incorporate community concerns into a revised application prior to filing,

**WHEREAS**, the 1991 zoning of the district previously contemplated the issue of height restrictions of buildings in close proximity to the BBG,

**THEREFORE**, it is RESOLVED, that the recommendation of Brooklyn Community Board 9 is to DISAPPROVE the application for 960 Franklin Avenue (ULURP Number C200187ZSK) without modifications/conditions.

It is **ALSO RESOLVED** that the 1991 zoning of the district previously contemplated the issue of height restrictions for the protection of the BBG and should be sustained.

It is **FURTHER RESOLVED** that any proposed modifications to the application after certification should not be considered as part of this ULURP review as the Board has not been provided sufficient documentation to substantiate or refute any claims made in revised presentations.

It is **FURTHER RESOLVED** that as the magnitude of the proposed project is grossly inconsistent with the character of the neighborhood and the applicant has not acted in good faith to address community concerns, the recommendation of Brooklyn Community Board 9 is that the Brooklyn Borough President, the Borough Board, the City Planning Commission (CPC), the City Council, and the Mayor should DISAPPROVE the application without modifications/conditions.

ADOPTED: JUNE 23, 2021

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WEBSITE: www. https://cbbrooklyn.cityofnewyork.us/cb9/ • EMAIL: BK09-1@CB.NYC.GOV

**Brooklyn Borough President Recommendation**
CITY PLANNING COMMISSION
120 Broadway, 31st Floor, New York, NY 10271
CalendarOffice@planning.nyc.gov

**INSTRUCTIONS**

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

**APPLICATION**

960 FRANKLIN AVENUE – 200184 ZMK, 200185 ZRK, 200186 ZSK 200187 ZSK

Applications submitted for Franklin Avenue Acquisition LLC, pursuant to sections 197-c and 201 of the New York City Charter for the following land use actions, affecting a 2.76-acre project area on an irregular block bounded by Franklin Avenue, the Franklin Avenue subway shuttle right-of-way, Montgomery Street, Sullivan Place, and Washington Avenue in Brooklyn Community District 9 (CD 9).

- A zoning map amendment to change the project area from R6A to R9D and map a C2-4 overlay proposed within 100 feet of Franklin Avenue
- A zoning text amendment to establish a Mandatory Inclusionary Housing (MIH) area coterminous with the project area
- A special permit pursuant to New York City Zoning Resolution (ZR) Section 74-743 Special Provisions for Bulk Modification for a Large-Scale General Development (LSGD) to waive certain height, tower, and tower coverage requirements in R9D districts
- A special permit pursuant to ZR Section 74-533 for a 70 percent reduction in the number of required parking spaces for the non-income restricted to facilitate affordable housing

The requested actions would facilitate two 39-story mixed-use buildings, totaling more than 1,150,000 square feet (sq. ft.). The development would contain 1,578 apartments, of which 50 percent would be affordable to households earning 50 to 120 percent of Area Median Income (AMI), pursuant to MIH Options 1, 2, and 4 (the Workforce Option). The project would also provide approximately 9,678 sq. ft. of community facility space, 21,183 sq. ft. of ground-floor retail, and 128 parking spaces, pursuant to the partial waiver.

BROOKLYN COMMUNITY DISTRICT NO. 9 — BOROUGH OF BROOKLYN

**RECOMMENDATION**

☐ APPROVE
☐ APPROVE WITH MODIFICATIONS/CONDITIONS

☒ DISAPPROVE
☐ DISAPPROVE WITH MODIFICATIONS/CONDITIONS

SEE ATTACHED

Eric L. Adams

BROOKLYN BOROUGH PRESIDENT

August 4, 2021

DATE

**RECOMMENDATION FOR:** 960 FRANKLIN AVENUE – 200184 ZMK, 200185 ZRK, 200186 ZSK, 200187 ZSK

Franklin Avenue Acquisition LLC submitted applications pursuant to sections 197-c and 201 of the New York City Charter for the following land use actions, affecting a 2.76-acre project area on an irregular block bounded by Franklin Avenue, the Franklin Avenue subway shuttle right-of-way, Montgomery Street, Sullivan Place, and Washington Avenue in Brooklyn Community District 9 (CD 9). Applications include a zoning map amendment to change an area from R6A to R9D and map a C2-4 overlay proposed within 100 feet of Franklin Avenue. In addition, a zoning text amendment is proposed to establish a Mandatory Inclusionary Housing (MIH) area coterminous with the proposed rezoning area. In order to achieve the height and desired bulk configuration, there is an application for a special permit pursuant to New York City Zoning Resolution (ZR) Section 74-743 Special Provisions for Bulk Modification for a Large-Scale General Development (LSGD) that permits waiver of certain height, tower, and tower coverage requirements in R9D districts. Finally, there is an application for a special permit pursuant to ZR Section 74-533 for a 70 percent reduction in the number of required parking spaces for the non-income restricted to facilitate affordable housing.

The requested actions would facilitate two 39-story mixed-use buildings, totaling more than 1,150,000 square feet (sq. ft.). The development would contain 1,578 apartments, of which 50 percent would be affordable to households earning 50 to 120 percent of Area Median Income (AMI), pursuant to MIH Options 1, 2, and 4. The project would also provide approximately 9,678 sq. ft. of community facility space, 21,183 sq. ft. of ground-floor retail, and 128 parking spaces, pursuant to the requested partial waiver.

On June 29, 2021, Brooklyn Borough President Eric Adams held a remote public hearing on these zoning map and text amendments. There were 105 speakers on the item, with two in support and 103 in opposition.

Speakers in support included representatives of 32 BJ Service Employees International Union (SEIU) and the New York City & Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America (NYCDC).

Speakers in opposition included Brooklyn Botanic Garden (BBG) members, staff, and volunteers, Fight for Sunlight advocates, neighborhood residents, and other concerned New Yorkers, who raised the following issues:

- Inconsistency with the 1991 Washington Avenue Rezoning which was intended to protect BBG from inappropriate development on its periphery
- The potential for irreparable harm to the integrity of BBG, including its collections and mission, due to unavoidable shadow impacts
- Shading of other open space resources including the Jackie Robinson Playground and the City University of New York (CUNY) Medgar Evers College
- Negative effects on quality of life including increased noise, refuse, and traffic stemming from the development's density and size
- Insufficient affordability to meet community need for low-income housing, and potential to exacerbate displacement with high number of market-rate units

On the day of the hearing, Borough President Adams received 92 written comments calling for unconditional disapproval of the proposed development.

Prior to the hearing, Borough President Adams received 55 written comments in opposition from local residents and organizations including 35 Crown Street HDFC, Good Neighbors of Park Slope, and Preserve Our Brooklyn Neighborhoods.

Subsequently, Borough President Adams received 20 written comments in opposition from individuals and civic organizations including the American Institute of Architects (AIA) Brooklyn Chapter, and the Municipal Art Society (MAS).

**Consideration**

Brooklyn Community Board 9 (CB 9) disapproved this application on June 23, 2021. In its resolution, the board cited concerns about unmitigable shadow impacts on the BBG and the Jackie Robinson Playground, disclosed in the project's Draft Environmental Impact Statement (DEIS), upward pressure on local rents from the high number of market-rate units, insufficient affordability based on community need and the AMI in CD 9, establishing a precedent for undermining the existing zoning, and various quality of life issues raised by speakers at its June 21st public hearing. Finally, the board noted overwhelming opposition to the proposal by local residents and supporters of the BBG.

The applicant is seeking to construct a new mixed commercial/residential building at 960 Franklin Avenue, consisting of two 39-story buildings, in the Crown Heights section of Community District 9, Brooklyn. To achieve the development, Franklin Avenue Acquisition LLC has proposed to change the underlying R6A zoning to R9D MIH/C2-4 which would permit up to 10.0 FAR, including residential and ground-floor commercial and community facility use. In tandem with two requested special permits enabling bulk placement – inclusive of height -- and parking reduction. The drawings associated with the requested special permits contain the zoning calculations that limit the FAR to 9.7 of an otherwise permitted 10 FAR. A Restrictive Declaration would be a mechanism to reference these drawings to the extent that they are adopted by the City Council. These drawings would define the height, open space, and other elements that would fit within the zoning envelope.

The original Uniform Land Use Review Procedure (ULURP) application calls for 1,578 apartments, of which 789 would be income-restricted, pursuant to MIH Options 1, 2, and 4. According to the represented affordability program, 20 percent of the residential floor area, or 316 units would be targeted to households earning up to 50 percent AMI; 10 percent or 158 units, would be pegged at 80 percent of AMI; another 10 percent, again 158 units would have rents set at 100 percent AMI, and the final 157 units would be targeted to 120 percent AMI. These two highest income tiers are reportedly additions per complying with the AFL-CIO pension lending program.

The rezoning area covers the northeast portion of a block split into an R8A zone along Washington Avenue and Sullivan Street and an R6A zone along Franklin Avenue and Montgomery Street. These districts were mapped as part of the 1991 Washington Avenue Rezoning, which changed portions of 13 blocks of CD 9 from R6 and R8 to encourage more cost-efficient medium-density development and preclude high-rise construction in proximity to BBG. It also resulted in creating a contextual transition to blocks featuring low-rise development on the mid-blocks to the east.

The surrounding context includes a mix of commercial, community facility, and residential uses. There is a large concentration of institutional buildings around the rezoning area, including the Brooklyn Museum, Medgar Evers College, and multiple public schools. The Bedford Union Armory site, which is being redeveloped into athletic facilities, with commercial and residential uses, is located several blocks to the east. Residential buildings in the area vary from two-story houses to six-story apartment buildings. In addition to Tivoli Towers, which is the tallest building in the neighborhood, the area is home to Ebbets Field Houses, a 25-story complex built in the 1960s. BBG and Prospect Park are the major open space resource in the area.

Brooklyn is one of the fastest-growing boroughs in New York City and the greater metropolitan area. Its ongoing renaissance has ushered in extraordinary changes that were virtually unimaginable even a decade ago. Unfortunately, Brooklyn's success has led to the displacement of longtime residents

who can no longer afford to live in their neighborhoods. Borough President Adams is committed to addressing Brooklyn's affordable housing crisis through the creation and preservation of housing units for very low- to middle-income households.

Moreover, in CD 9 and across New York City, there is a pressing need for affordable and stable housing among elderly adults, homeless households, low-income families, and other populations. Increasing the supply of affordable apartments for a range of incomes and household types in mixed-use buildings is a critical strategy for promoting a sustainable neighborhood and city.

Borough President Adams supports the development of underutilized land for productive uses that address the City's need for additional affordable housing. The proposed development would be consistent with Mayor Bill de Blasio's goal of achieving 300,000 affordable housing units over the next decade, according to "Housing New York: A Five-Borough, Ten-Year Plan," as modified in 2017. It is Borough President Adams' policy to support the development of affordable housing and to seek such housing to remain "affordable forever," wherever feasible. Requiring development pursuant to MIH achieves permanent affordable housing.

Borough President Adams understands the importance of jobs that provide economic mobility for low-income New Yorkers. Jobs within the building service and industrial sectors have long been a pathway to middle-class living for immigrants and people of color. Similar to industrial jobs, building service jobs have low barriers to entry and real career prospects. When compensated at prevailing wage standards, such jobs pay twice that of the retail sector. Additionally, building service opportunities are often filled through local hiring.

Borough President Adams believes that it is appropriate to advocate for economic opportunities that allow families to remain in their neighborhoods, by securing sufficient income to alleviate their rent burdens. He further believes that building service positions often result in locally-based employment. Borough President Adams strongly encourages developers to commit to hire locally for building service jobs and to pay prevailing wages to this workforce. It has been represented that Franklin Avenue Acquisition LLC has made such a commitment to 32 BJ. Borough President Adams considers such representation to be a public benefit of the project.

The proposal has been revised twice since the initial ULURP filing. The first revision proposed a maximum height of 34 stories, with the remaining bulk to be redistributed within the requested special permit bulk envelope, pursuant to the application reference drawings. After many shared concerns from the community and others passionate about the BBG, including a statement made by Mayor Bill de Blasio, the developer unveiled a non-binding alternate plan for a 17-story project with 1,170 units, of which 292 would be affordable to households at an average 60 percent AMI, pursuant to MIH Option 1.

It should be noted that this scenario is not under official consideration, and there are other, less dense zoning districts that could be paired with MIH to that effect. These include R7A, a nine- story district, R7D, an 11-story district, R7X and R8A, both 14-story districts at varying densities, the 17-story R8X district, which still yields R8A density, R9A, and finally, R9X, which would cap heights at 19 stories. Without a zoning special permit, R9D density would result in much bulkier towers with height akin to a mid-20 story building. If both rezonings are disapproved, the applicant would erect an as-of-right condominium development with 518 market-rate units.

Given these potential benefits, it remains a priority for a requested rezoning to be thoughtful to its context while providing public benefits that are commensurate with the requested development rights. The right balance of advancing such objectives determines the adequacy of the zoning request in contributing to the provision of much-needed affordable housing.

**Unmitigable Shadow Impacts**

According to the special permit application drawings, the proposed 39-story towers would shade an area that houses 20 percent of BBG's plant inventory (including endangered and rare species) and serves as the growing facility for the entire property. The incremental shadows would block critical hours of sunlight for BBG's conservatories, greenhouses, and nurseries, which would endanger the Garden's collection and mission. An arborist report noted that over time, the shadows would precipitate a decline in plant health for sunlight-sensitive species. The project DEIS concluded that it may not be possible to mitigate these significant adverse effects.

It should be noted that reducing the bulk to 34 stories would still result in up to four hours of "traveling" shadows across BBG open space. All vegetation requiring direct sunlight – including that within the Garden's enclosed conservatories and greenhouses – would continue to receive at least four to six hours of direct sunlight, though this would be insufficient for certain plant species.

Shadow impacts on Jackie Robinson Playground and Medgar Evers College also warrant serious consideration. Active and passive recreational areas of the playground, located on Montgomery Street between Franklin Avenue and McKeever Place, would be shaded from one to five hours throughout the year. The project DEIS states that "in order for direct shadows impacts on Jackie Robinson Playground to be eliminated, the Proposed Development's height and bulk would have to be modified to a point where the principal goals and objectives would not be fully realized. Due the position of the playground relative to the Development Site, any development that was 30-45 feet taller than the (70-foot-tall) No-Action Alternative would result in a complete elimination of direct sunlight to Jackie Robinson Playground at certain times on at least one of the four representative analysis days."

Medgar Evers College, located diagonally across from 960 Franklin Avenue was not evaluated in the DEIS. However, an analysis by the Municipal Art Society (MAS) found that the student courtyard would lose up to one and a half hours of beneficial sunlight in winter months.

Therefore, in addition to causing irreversible harm to the Brooklyn Botanic Garden, the anticipated shadow effects of 960 Franklin Avenue would pose a serious detriment to local open space resources and quality of life in Crown Heights.

**Appropriate Zoning**

Borough President Adams believes that it is appropriate to zone for increased density in proximity to public transportation. The project area is accessible via the Franklin Avenue-Botanic Garden subway station, served by the Lexington Avenue Express 4 and 5 trains, the Seventh Avenue Express 2 and 3 trains, and the Franklin Avenue shuttle. The B48 bus, which runs along Franklin Avenue, stops in front of the proposed development site. Finally, there are multiple CitiBike docking stations in the vicinity.

Borough President Adams believes that it is appropriate to revisit zoning, whether an area is still regulated according to the 1961 New York City Zoning Resolution (ZR) or more recently amended. However, applications for unprecedented density in contextually zoned areas deserve special scrutiny for public benefit. The question then, is to what extent the proposed development serves the public interest.

Borough President Adams recognizes that the proposed R9D MIH zoning, in combination with the requested special bulk permit, would allow development to exceed the contextual limits established by the Washington Avenue Rezoning, by 30 stories beyond what is already permitted pursuant to the Zoning for Quality and Affordability (ZQA) zoning text amendment for a development with Affordable Independent Residences for Seniors (AIRS) apartments, than what exists, 21 more stories than what was approved north of Montgomery Street, and 24 stories more than what is allowed along Washington Avenue, based on inclusion of AIRS units.

However, the R9D MIH and its commercial equivalent have no precedent in Brooklyn and would exceed all prior rezonings within CD 9. The closest similar district is mapped along both sides of Vanderbilt Avenue between Atlantic Avenue and Fulton Street, though the initial designation included a loft conversion for office development and the district's enlargement across Atlantic Avenue was intended to help preserve a landmarked house of worship in proximity to Downtown Brooklyn. Therefore, Borough President Adams believes that the proposed R9D MIH zoning is not generally appropriate at this site without compelling additional benefit, such as a substantial percentage of deeply affordable units for Crown Heights residents, and only if such density could be achieved without compromising the BBG.

**Concerns Arising from the Rezoning Boundary**

Borough President Adams is concerned about spillover effects of establishing an R9D district at the development site, due to the extensive size of the project area. The adjacent 28,432 sq. ft. 1015 Washington Avenue zoning lot is divided into R6A and R8A districts. It is improved with a six-story, 95,000 sq. ft. apartment building, and retains excess rights resulting from such blended FAR. The proposed jump from R6A to R9D would enrich this property with 27,600 sq. ft. of development rights, on top of the approximately 72,000 sq. ft. currently permitted as-of-right. Such additional rights could incentivize the owner to demolish the building or attempt to add floor area at great disruption to existing occupants.

According to Section 9 NYCRR 2524.5 of the Rent Stabilization Code, it is permissible for a property owner of a rent-stabilized building to not renew the lease of a rent-stabilized tenant on the grounds that the property owner intends to demolish the building. Approval from New York State Division of Housing and Community Renewal (HCR) is subject to approved plans for future development, proof of financial ability to complete the project, and agreement to pay tenant relocation expenses, as well as a stipend according to established formulas. This strategy was well-publicized during a June 2016 real estate summit in Brooklyn.

Borough President Adams believes it is important to account for unforeseen consequences of extensive upzonings. If additional zoning rights are warranted for 960 Franklin Avenue, the project area zoning boundary should warrant careful prior examination.

**Extent of Represented Public Benefit**

Guarantee of Proposed MIH Floor Area

The New York City Zoning Resolution (ZR) specifies four options for new construction subject to MIH regulations. As represented, 960 Franklin Avenue would incorporate MIH Options 1, 2 and 4 to achieve permanent affordability for 50 percent of the units, which would be targeted to incomes ranging from 50 to 120 percent AMI. MIH Option 1 sets aside 25 percent of the floor area for households earning an average of 60 percent AMI, with 10 percent reserved for those at 40 percent AMI; Option 2 sets aside 30 percent of the floor area for households earning an average of 80 percent AMI; and Option 4 permits AMIs of up to 135 percent, with mandatory five-percent set asides for households at 70 and 90 percent AMI.

With approximately 30,000 sq. ft. reserved for commercial and community use, 0.25 of the proposed FAR would be non-residential. Of the remaining 9.46 FAR, affordable housing pursuant to MIH Option 2 would account for approximately 2.838 FAR, while 6.62 FAR would be market rate housing. Though MIH Option 2 stipulates average rent collection of up to 80 percent AMI, the developer has consistently stated intent to blend rents at 50 and 80 percent AMI, which would yield an average rent at 60 percent AMI. However, such representation is not binding, and would have to be memorialized separately from MIH requirements. The adoption of the requested zoning also does

not obligate the developer to provide the additional 20 percent of affordable units at 100 and 120 percent AMI, and the City would not be able to regulate such rent structures. Finally, While MIH floor area is permanently affordable, the affordability term for the additional units remains unclear.

The requested R9D zoning would provide a tremendous increase in FAR compared to the current R6A district, which permits 3.0 FAR for residential development. Allowing R9D density while the developer receives approximately 1.73 FAR (assuming 4.73 non-income restricted residential FAR, and deducting the commercial and community facility FAR) of market rate housing, does not seem to be a reasonable trade-off for securing 2.838 FAR at a blended 60 percent AMI. For one, such AMI average is not binding and would likely require some level of government subsidy, which has not been specified. Second, the represented 187 units at 120 percent AMI might not provide affordability over market-rate units in the area. According to NYU Furman, 92.5 percent of recently-available units in CD 9 were affordable to households at 120 percent AMI.

It is difficult to quantify the degree of public benefit when many of the apartments would be out of reach for rent-burdened households. It has also been suggested that City subsidy would be needed to realize the full extent of affordable floor area, which would further diminish the reciprocal benefit of increased zoning rights.

Borough President Adams believes that substantial density increases should be conditioned on the provision of an appropriate affordable housing floor area and the average effective rents for such units.

Insufficient Affordability to Meet Community Needs

Borough President Adams supports development that allows low-, moderate-, and middle-income residents to qualify for the City's affordable housing lottery. Such policy is met by having multiple income tiers, relaxing regulations that adversely impact rent-burdened households, and providing a good distribution of bedroom sizes.

960 Franklin Avenue would gear apartments to a broad range of incomes, consistent with his objective to extend such opportunities to households at various AMI tiers. Development adhering to the MIH program is also consistent with Borough President Adams' policy for affordable housing to remain in perpetuity.

However, as applications such as this proposal move through the ULURP process, it is important to ensure that the required affordable housing meets the most pressing community need. The MIH obligation provides opportunities to maximize permanently-affordable floor area for very-low and low-income households that are more likely housing-challenged.

Borough President Adams has heard concern about ongoing gentrification and displacement in the Crown Heights, Prospect-Lefferts Gardens and Wingate neighborhoods. The influx of wealthier individuals in CD 9, together with increased land values, has led to the replacement of longtime, low-income tenants, with new residents able to pay higher rents. For households in non-regulated housing there is little recourse beyond targeted downzoning, which may slow the pace of property turnover and new construction by reducing development rights. Regulated buildings, while an important affordable housing resource, do not provide permanent protection from displacement or lawful demolition eviction.

Data shows that more than 80 percent of New York City households earning 50 percent AMI or less are rent-burdened. The situation is even worse among those who earn up to 30 percent AMI or $23,310 for a family of three. More than one-fifth of New York City households — more than two million people — earn less than $25,000 a year and almost one-third earn less than $35,000. Well over 50 percent of this population pays more than half its income toward rent.

According to NYU Furman, 30 percent of CD 9 residents are severely rent-burdened, a number that rises to 46 percent among low-income households. A 2021 Association for Neighborhood & Housing Development (ANHD) report found a very high number of serious housing code violations in the district.

Taken together, these facts point to a dual housing affordability and quality crisis, whereby too many households are paying too much of their income for substandard and dangerous accommodations. There is thus a pressing need to increase the supply of safe, affordable housing in CD 9. Moreover, given the risk of displacement, the City should take steps to increase the probability that rent-burdened households qualify for as many affordable housing lotteries as possible.

According to New York City Department of Housing Preservation and Development (HPD) affordability guidelines, the New York area AMI for a family of three in 2021 is $107,400. To qualify for affordable housing at 40 percent AMI (MIH Option 3), this household would have to earn $42,960; at 60 percent AMI (MIH Option 1), its qualifying income would be $64,440, and at 80 percent AMI (MIH) Option 2, the family's income would be capped at $85,920. In 2019, the median income in CD 9 was $67,840, with more than 50 percent of residents earning less than $60,000. At the same time, those earning $100,000 to $250,000 comprised the fastest growing income group.

According to recent data, average asking rents in the study area are approximately $1,960 for a studio, $2,100 for a one-bedroom unit, and $2,470 for a two-bedroom apartment. The annual household income required to rent an apartment is estimated at $70,400 for a studio, $83,600 for a one-bedroom unit, and $100,000 for a two-bedroom unit. These numbers indicate that the area has experienced acute gentrification in the last decade and underscore the importance of targeting affordable housing to low-income and rent-burdened households in CD 9.

While the developer appears to recognize the need for affordable housing in CD 9, Borough President Adams believes that even with 50 percent community preference, the combination of MIH Options 1, and 2 at 960 Franklin Avenue would not meet the affordability needs of many Crown Heights, Prospect-Lefferts Gardens and Wingate residents. Moreover, the large number of affordable units with rents targeted to 100 and 120 percent AMI, would be unattainable to even moderate-income households that are unable to afford market-rate apartments in the area. Borough President Adams believes that targeting affordable housing lottery units to very low-income seniors and families, who tend to be disproportionately rent-burdened, would better justify the requested increase in density. Without the provision of deeply affordable residential floor area, the proposal does not warrant consideration.

Lack of Provision for Seniors

Borough President Adams notes that the intended affordable rents would not be accessible to senior households. As the Federal government has moved away from funding affordable age-based housing, too few new apartments have been produced, deepening the crisis for New York's elderly. Moreover, as real estate values have risen all over Brooklyn, many seniors have become rent-burdened, and unable to remain in their communities.

In 2016, The New York City Department of City Planning (DCP) projected that the senior population would grow 40 percent by 2040, compounding demand for age-based affordable housing. Five years ago, there were 60 applicants for every apartment in lotteries conducted by HPD for senior housing developments. More recently, LiveOn NY found 200,000 New Yorkers aged 62 and older on the City's affordable housing waiting lists, with an average wait of seven years. As many elderly households have limited means, helping more seniors secure stable affordable housing is an essential component of Borough President Adams' policy agenda.

Borough President Adams believes that when studio and one-bedroom units are rented at 30, 40, and 50 percent AMI, such apartments might be accessible to one and two-person senior households. However, given that 960 Franklin Avenue would not include deeply-affordable units, and that the number of units at 50 percent AMI is unknown, it is unlikely that seniors would qualify for the development's affordable housing lottery.

Bedroom Mix

Borough President Adams is concerned about the bedroom distribution at 960 Franklin Avenue, which has not been disclosed in the ULURP process. The application indicates that the development would provide 1,031,763 sq. ft. of residential use, which would accommodate 1,578 dwelling units. The ZR stipulates the maximum number of units based on a factor of 680 sq. ft, which would yield a gross unit size of approximately 710 sq. ft. at 960 Franklin Avenue. As this number includes corridors, elevators, lobbies, and stairwells, and gross to net size generally ranges from 85 to 90 percent, the resulting apartments could be 605 to 640 sq. ft. with a very efficient design. Such limited floor area would imply a dearth of two- and three-bedroom units, and an extensive number of studios and one-bedrooms.

Such bedroom mix would prioritize one- to two-person households, contrary to Borough President Adams' policy to achieve larger units in new developments, to alleviate displacement and rent burden among low-income families. Moreover, the zoning allows for a distribution of bedroom types within the affordable housing floor area that is proportionate to market-rate bedroom mix. As such, government officials would have no say if the rezoning were adopted and the developer chose to provide only studio and one-bedroom MIH units. Such small unit sizes, coupled with high targeted AMIs, would substantially diminish the public purpose of a large-scale, 50 percent affordable development.

Borough President Adams believes that right-sizing the bedroom distribution within the affordable housing floor area is more important than maximizing the number of MIH units. As such, Borough President Adams believes that it is appropriate to use discretionary land use actions to advance policies that constrain what would be permitted as-of-right.

The ZR allows for the provision of at least 50 percent of the MIH units with two or more bedrooms and at least 75 percent with one or more bedrooms. For this building, it is important to mandate that the developer provide affordable housing pursuant to ZR Section 23-96(c)(1)(ii). This would require at least 50 percent of the units to be two- or three-bedrooms and at least 75 percent of the units to contain one or more bedrooms. Borough President Adams typically seeks a mandatory minimum threshold for non-independent senior housing residences to accommodate family-sized apartments at those rents. He supports having at least 50 percent of two- or more bedroom affordable housing units and at least 75 percent of one- or more bedroom affordable housing units, consistent with zoning text for Inclusionary Housing floor area pursuant to ZR 23-96(c)(1)(ii), though he considers it appropriate to have more studios when rents for studios and one-bedroom units would be affordable to seniors.

Borough President Adams has strong concerns about approving any residential zoning at this site without adequate representation of the bedroom mix and an approximation of the percentage of units at each bedroom unit type.

**Commercial and Community Facility Floor Area**

Borough President Adams appreciates the potential benefit of the extensive proposed commercial and community facility space. It has been Borough President Adams' policy to review discretionary land use actions for opportunities to house cultural and non-profit uses. These organizations play an important role in the neighborhoods they serve but often struggle to secure necessary space to

expand and sustain their programs. Many cultural entities have contacted the Office of the Brooklyn Borough President with these concerns.

As proposed, 960 Franklin Avenue would contain an approximately 29,000 sq. ft. commercial ground floor, though the applicant has stated non-binding intent to lease approximately 9,000 sq. ft. to community facility uses. However, such uses include for-profit ambulatory medical offices that tend to pay higher rents than community-based, mission-driven non-profits.

Though the applicant has not expressed intent to provide affordable space for arts and cultural organizations, Borough President Adams believes that ground-floor occupancy by such uses would complement public benefit achieved through MIH-inclusive residential development. Borough President Adams further believes that commercial floor area provided in connection with an overall increase in development rights, should serve as an affordable relocation resource for businesses displaced from the community retail corridors, with priority for immigrant- and minority-owned enterprises.

Such community benefit could also extend to fostering and strengthening community youth programs. The Crown Heights Intermediate School, the Ebbets Field Middle School, and the Jackie Robinson School across the street could provide more youth services with funding assistance. Setting aside affordable commercial and/or retail space for such needs, in tandem with cultural uses and local retail, would elevate the project's public purpose.

However, given projected adverse impacts on the BBG, and the absence of developer commitment to public purpose beyond MIH, the requested zoning does not provide a net benefit to the community, and therefore should not be advanced.

**Quality Jobs**

Borough President Adams is concerned that too many Brooklyn residents are currently unemployed or underemployed. It is his policy to promote economic development that creates more employment opportunities. According to the Furman Center's "State of New York City's Housing and Neighborhoods in 2017," double-digit unemployment remains a pervasive reality for several of Brooklyn's neighborhoods, with more than half of the borough's community districts experiencing poverty rates of nearly 20 percent, or greater. The ongoing COVID-19 pandemic has only exacerbated widespread job insecurity.

960 Franklin Avenue has been represented as a union construction project that would provide three thousand jobs at family-sustaining wages. It has garnered strong support from 32 BJ and NYCDC as well as the AFL-CIO subsidiary, which typically seeks union-constructed developments with significant affordable housing. However, as the affordable housing is premised on the grant of additional rezoning rights, it is unclear whether developer commitments to prevailing wages or union jobs would be retained if the ULURP application were disapproved or reduced in scope. Such community benefit is therefore not guaranteed, regardless of the legal outcome.

**Parking**

Borough President Adams has heard concerns about the limited amount of parking proposed at 960 Franklin Avenue. While he understands the rationale for seeking a parking reduction, he does not believe that the applicant's request of a waiver is justified. The 960 Franklin Avenue DEIS anticipated changes in street parking supply and utilization within ¼-mile of the development, and estimated project-generated overnight parking demand at 366 vehicles. With only 128 accessory parking spaces, the remaining 238 vehicles would have to be accommodated on neighborhood streets, as the area lacks off-street public parking facilities. According to the DEIS, this excess demand would result in a street-parking deficit of approximately 167 spaces, a significant quality of life impact for local residents, as noted in multiple rounds of public testimony on 960 Franklin Avenue.

Taking all these factors into consideration, it is clear that the disadvantages of the proposal and its enabling land use actions outweigh its potential adverse impacts on the community. In conclusion, the 960 Franklin Avenue project and rezoning do not warrant drastic deviation from the 1991 Washington Avenue Rezoning, a well-considered plan.

**Recommendation**

Be it resolved that the Brooklyn borough president, pursuant to Section 197-c of the New York City Charter, recommends that the City Planning Commission and City Council disapprove this application.