# TECHNICAL MEMORANDUM 001
# 817 Avenue H Rezoning
# CEQR No. 23DCP094K

May 7, 2024

## I. INTRODUCTION

The Applicant, Agudist Council of Greater New York, requests approval of a zoning map amendment and a zoning text amendment (the "Proposed Actions") of approximately 28,000 square feet (sf) comprising Block 6496, Lots p/o 36, 37, 39, 45, 47, 49, and p/o 50 (the "Affected Area") bounded by Foster Avenue to the north, East 9th Street to the east, Avenue H to the south, and East 8th Street to the west in the Midwood neighborhood of Brooklyn Community District 14. It should be noted that while the proposed zoning map amendment area includes Block 6496, Lots p/o 36, 37, 39, 45, 47, 49, and p/o 50, the proposed zoning text amendment area only contains Block 6496 Lots 39, 45, and 47.

The zoning map amendment would rezone Block 6496, Lots 39, 45, and 47 from a R5/C1-3 zoning district to a R7A/C2-4 zoning district and Block 6496, Lots p/o 36, 37, 49, and p/o 50 from a R5/C1-3 zoning district to a R5 zoning district. The zoning text amendment would modify Zoning Resolution ("ZR") Appendix F: Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing ("MIH") Areas for Community District 14, Brooklyn, to establish a MIH Area coterminous with Block 6496 Lots 39, 45, and 47. The Applicant proposes mapping both MIH Option 1 and Option 2 to provide maximum flexibility for the future development of the non-Applicant-controlled sites.

The Proposed Actions would facilitate the development of a 69,275 GSF (55,168 ZSF; 4.60 FAR), 9-story-plus-cellar, 95-foot-tall mixed residential and community facility building on the Applicant-owned Projected Development Site 1 (Block 6496, Lot 39). In addition to the Applicant-owned Projected Development Site 1, Block 6496, Lots 45 and 47 are significantly under-built relative to the development potential allowed under the proposed R7A/C2-4 zoning district and therefore, it is assumed that these lots would merge to form one development site. To provide a conservative assessment, Block 6496, Lots 45 and 47 would be considered Projected Development Site 2.

Projected Development Site 1, with a lot area of 12,000 sf, would be improved with new 9-story-plus-cellar, 95-foot-tall, 69,275 GSF (55,168 ZSF; 4.60 FAR) mixed residential and community facility building. The proposed building would contain 5,778 GSF of residential accessory parking at the cellar level, 22,149 GSF (17,128 ZSF; 1.43 FAR) of community facility uses at the cellar level through the second floor, and 41,348 GSF (38,040 ZSF; 3.50 FAR) of residential uses with 61 dwelling units (680 GSF per dwelling unit) on the third through the ninth floor, of which 25-30% (15-18 units) would be affordable pursuant to MIH Options 1 and 2 at an average of 60-80% AMI depending on the Option selected. For the purposes of Early Childhood Programs analysis, 20% (12 dwelling units) of residential floor area is assumed to be affordable at or below 60% AMI. The proposed community facility space would be similar to the existing use currently on the site for religious worship and community center. 23 residential accessory parking spaces would be provided in the enclosed garage at the cellar level, which would be served by an existing curb cut along East 9$^{th}$ Street.

Projected Development Site 2 would consist of Lot 45 (owned by Leon Richter) and Lot 47 (owned by Fisch Edith) and would be developed with a new 9-story-plus-cellar, 95-foot-tall, 41,184 GSF (36,800 ZSF; 4.60 FAR) mixed residential and commercial building on a combined 8,000 sf site. The building is assumed to

contain 8,656 GSF (6,400 ZSF; 0.80 FAR) of ground floor retail space and 32,528 GSF (30,400 ZSF; 3.80 FAR) of residential space on the 1st (residential lobby) to 9th floors. 48 total dwelling units would be provided (assuming 680 GSF per unit), of which 25-30% (12-14 units) would be affordable pursuant to MIH Options 1 and 2 at an average of 60-80% AMI depending on the Option selected. For the purposes of Early Childhood Programs analysis, 20% (10 units) of residential floor area is assumed to be affordable at or below 60% AMI. Parking would be waived for both residential and commercial uses per ZR 25-241, ZR 25-261, and ZR 25-33.

The Environmental Assessment Statement (EAS) for the Proposed Actions (CEQR No. 23DCP094K) was accepted as complete and a Negative Declaration was issued on March 18th, 2024, by the New York City Department of City Planning (DCP) acting on behalf of the City Planning Commission (CPC) as lead agency.

Following the publication of the EAS, modifications to the proposed Affected Area have been identified, at the request of the Land Use Committee of the New York City Council (the "Council Modifications") on March 26th, 2024. The modification is described in detail in Section II below. This technical memorandum examines whether the City Council Modifications would change the conclusions of the environmental analysis included within the March 2024 EAS, which did not identify any significant adverse impacts.

## II. DESCRIPTION OF COUNCIL MODIFICATIONS

The Proposed Actions consist of a zoning map amendment and a zoning text amendment. The zoning map amendment, as evaluated in the March 2024 EAS, proposed to rezone Block 6496, Lots 39, 45, and 47 from a R5/C1-3 zoning district to a R7A/C2-4 zoning district and Block 6496, Lots p/o 36, 37, 49, and p/o 50 from a R5/C1-3 zoning district to a R5 zoning district (See **Figure 1** Previous Tax Map and **Figure 2** Previous Zoning Change Map). The zoning text amendment would establish Block 6496, Lots 39, 45, and 47 as a MIH area with MIH Option 1 and 2.

As listed below, the City Council seeks to modify the proposed zoning map amendment and zoning text amendment to rezone Block 6496, Lot 39 from a R5/C1-3 zoning district to a R7A/C2-4 zoning district, Block 6496, Lots 45 and 47 from a R5/C1-3 zoning district to R5/C2-4 zoning district, and Block 6496, Lots p/o 36, 37, 49, and p/o 50 from a R5/C1-3 zoning district to a R5 zoning district (See **Figure 3** Revised Tax Map and **Figure 4** Revised Zoning Change Map). Under the City Council Modifications, while the existing R5 district mapped on Block 6496, Lots 45 and 47 would remain the same, the commercial overlay would be changed from C1-3 to C2-4. The new proposed zoning text amendment would establish Block 6496, Lot 39 as a MIH area. The establishment of the MIH area would provide two affordable housing options – Option 1 and Deep Affordability Option. Option 1 would require 25% of the dwelling units to be set aside for the households with an average income of 60% of Area Median Income (AMI), with 10% to be affordable to households making an average of 40% of AMI. The Deep Affordability Option would require 20% of the dwelling units to be set aside for the households with an average income of 40% AMI.

**Council Proposed Zoning Map Amendment Change:**

The modification would be as follows:

1. eliminating from within an existing R5 District a C1-3 District bounded by a line 150 feet northerly of Avenue H, East 9th Street, Avenue H, and East 8th Street;

2. changing from an R5 District to an R7A District property bounded by a line 100 feet northerly of Avenue H, East 9th Street, Avenue H, and a line 80 feet easterly of East 8th Street;

3. establishing within the existing R5 District a C2-4 District bounded by a line 100 feet northerly of Avenue H, a line 80 feet easterly of East 8th Street, Avenue H, and East 8th Street; and

4. establishing within the proposed R7A District a C2-4 District bounded by a line 100 feet northerly of Avenue H, East 9th Street, Avenue H, and a line 80 feet easterly of East 8th Street.

*Note: underlined portions have been added by the City Council.

**Council Proposed Zoning Text Amendment Change:**

A Zoning Text Amendment to ZR Appendix F: Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas for Community District 14, Brooklyn, to establish Block 6496, Lot 39 as an MIH Area, Option 1 and Deep Affordability Option.

**Projected Development Sites**

Projected Development Site 1 consists of Block 6496, Lot 39, which is a 12,000-square-foot lot with 120 feet of frontage on Avenue H and 100 feet of frontage on East 9th Street. The lot is occupied by a 9,762 GSF, one-story community facility building, which is used as a house of worship by the Applicant and contains space leased to a senior center for weekday use. There are three small commercial storefronts at the southwest corner of the building totaling 1,200 GSF of floor area.

As shown in **Figure 1** and **Figure 2** below, Block 6496, Lots 45 and 47 was previously considered as Projected Development Site 2. Lots 45 and 47 are not controlled by the Applicant and are owned by different entities.

- Lot 45 is a 4,000-square-foot lot with 40 feet of frontage on Avenue H. It is occupied by a 2,044 GSF, two-story, single-family residence. The lot has a curb cut on Avenue H. Lot 45 was developed with the present residence in approximately 1925. A second story on the garage at the rear was erected in the early 2000s.

- Lot 47 is a 4,000-square-foot lot with 40 feet of frontage on Avenue H and 100 feet of frontage on East 8$^{th}$ Street. It is occupied by a 1,518 GSF, two-story, single-family residence. The lot has a curb cut on East 8$^{th}$ Street.

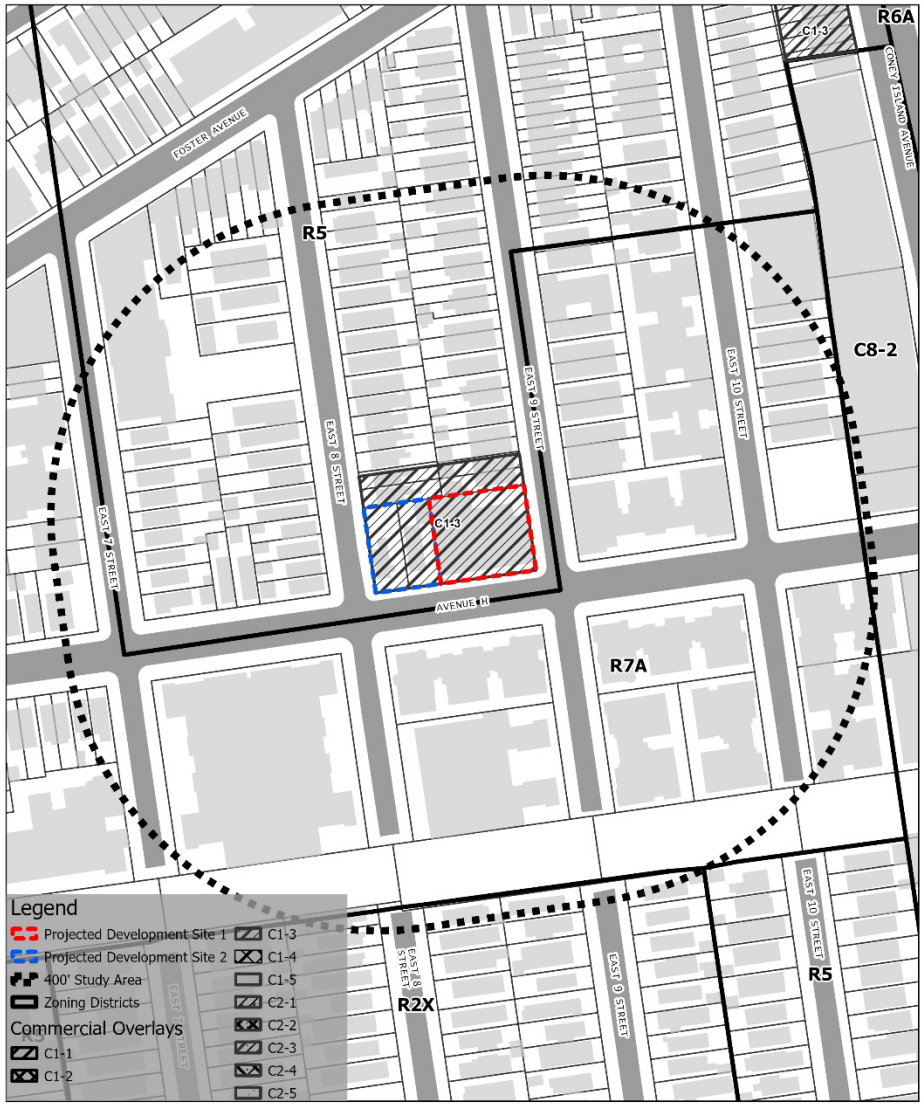
For the purposes of presenting a conservative analysis, the March 2024 EAS assumed that Projected Development Site 2 would be developed with a 9-story-plus-cellar, 95-foot-tall, 41,184 GSF (36,800 ZSF; 4.60 FAR) mixed residential and commercial building, which would contain 8,656 GSF (6,400 ZSF; 0.80 FAR) of ground floor retail space and 32,528 GSF (30,400 ZSF; 3.80 FAR) of residential space on the 1$^{st}$ (residential lobby) to 9$^{th}$ floors. Parking would be waived for both residential and commercial uses per ZR 25-241, ZR 25-261, and ZR 25-33. 48 total dwelling units would be provided (assuming 680 GSF/dwelling unit), with 25-30% (12-14 units) set aside for affordable housing at an average of 60-80% AMI per MIH Option 1 or 2, respectively.

Given that Block 6496, Lots 45 and 47 would fall outside of the revised R7A/C2-4 zoning district after the Council Modifications, these lots would no longer be considered a Projected Development Site for the purposes of the reasonable worst case development scenario (RWCDS) analyzed in the EAS.

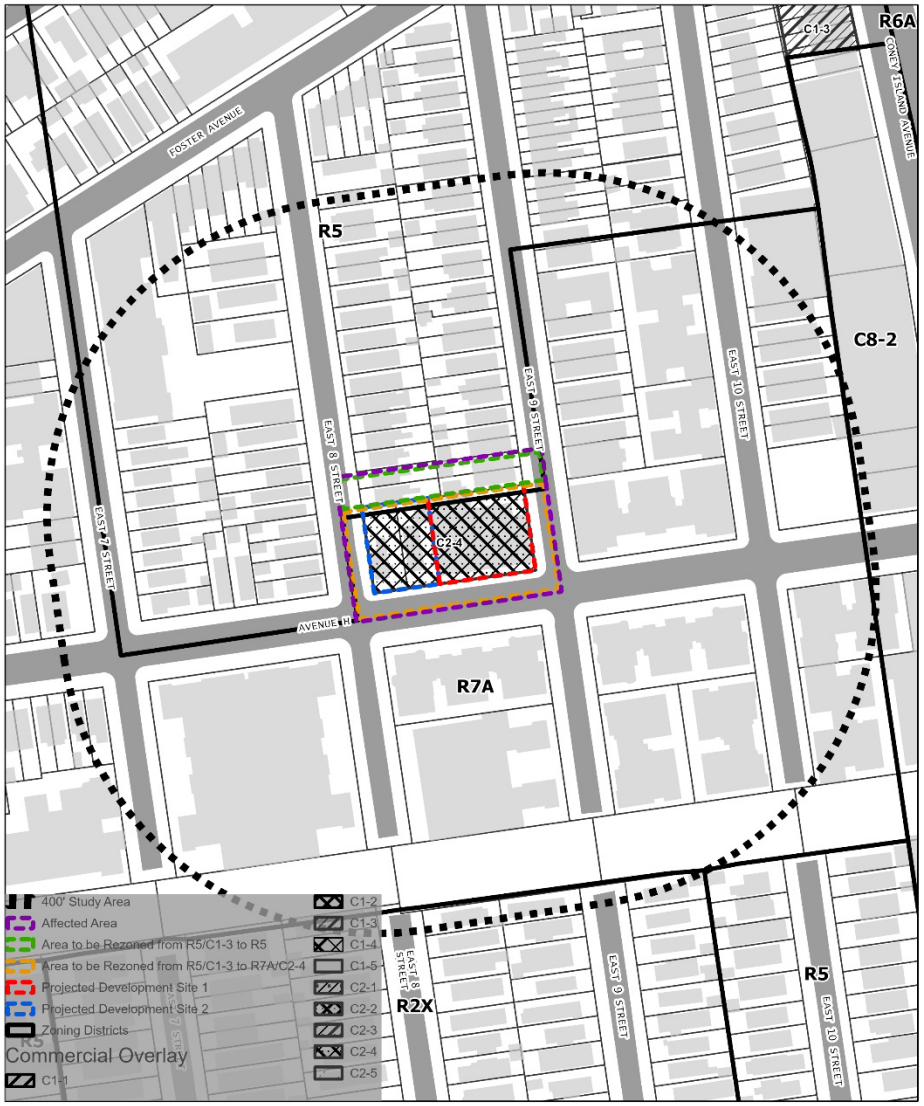
**Figure 1: Previous Tax Map**



**Figure 2: Previous Zoning Change Map**




Existing R5/C1-3 Zoning District




Proposed R7A/C2-4 and R5

**Figure 3: Revised Tax Map**

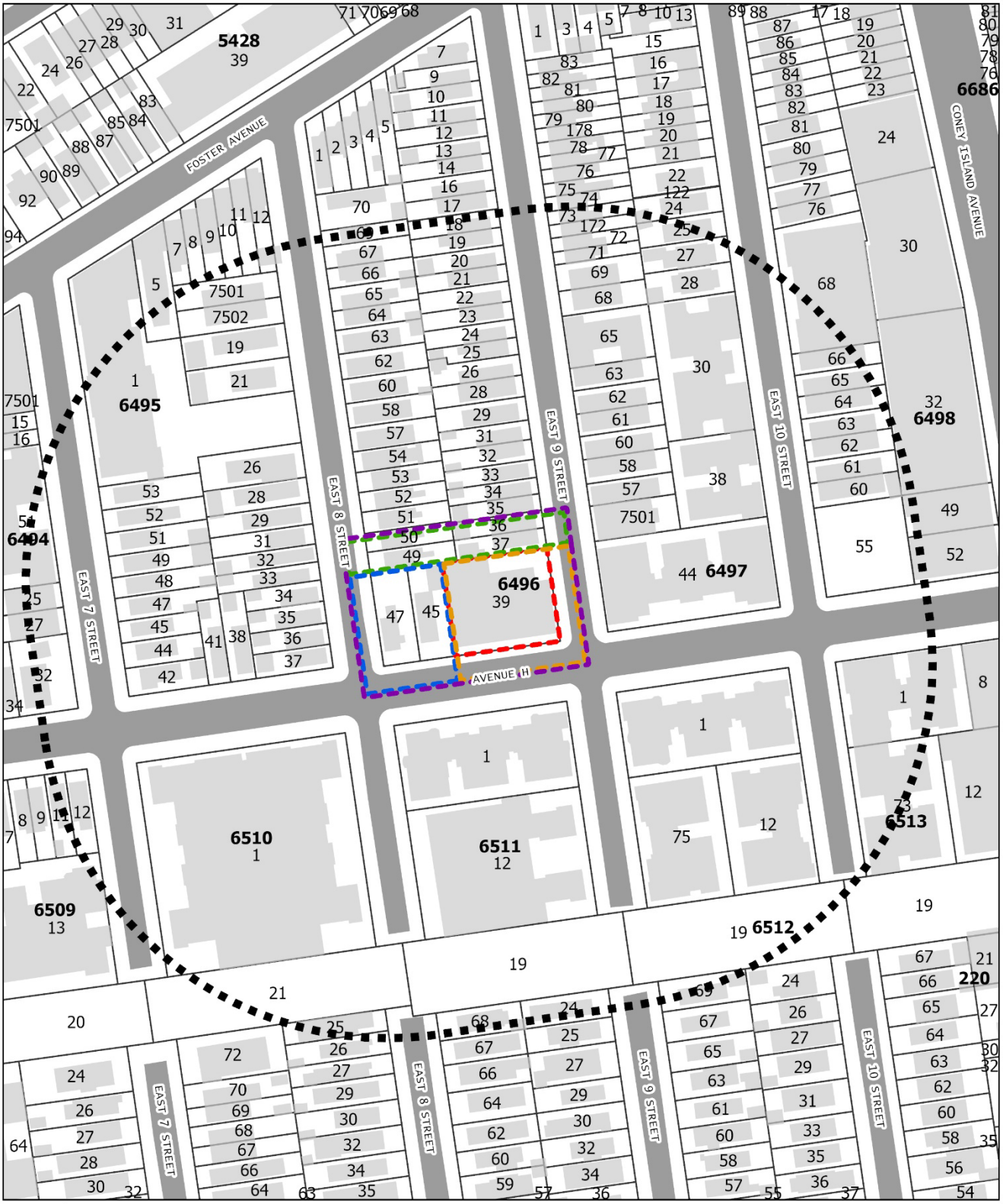
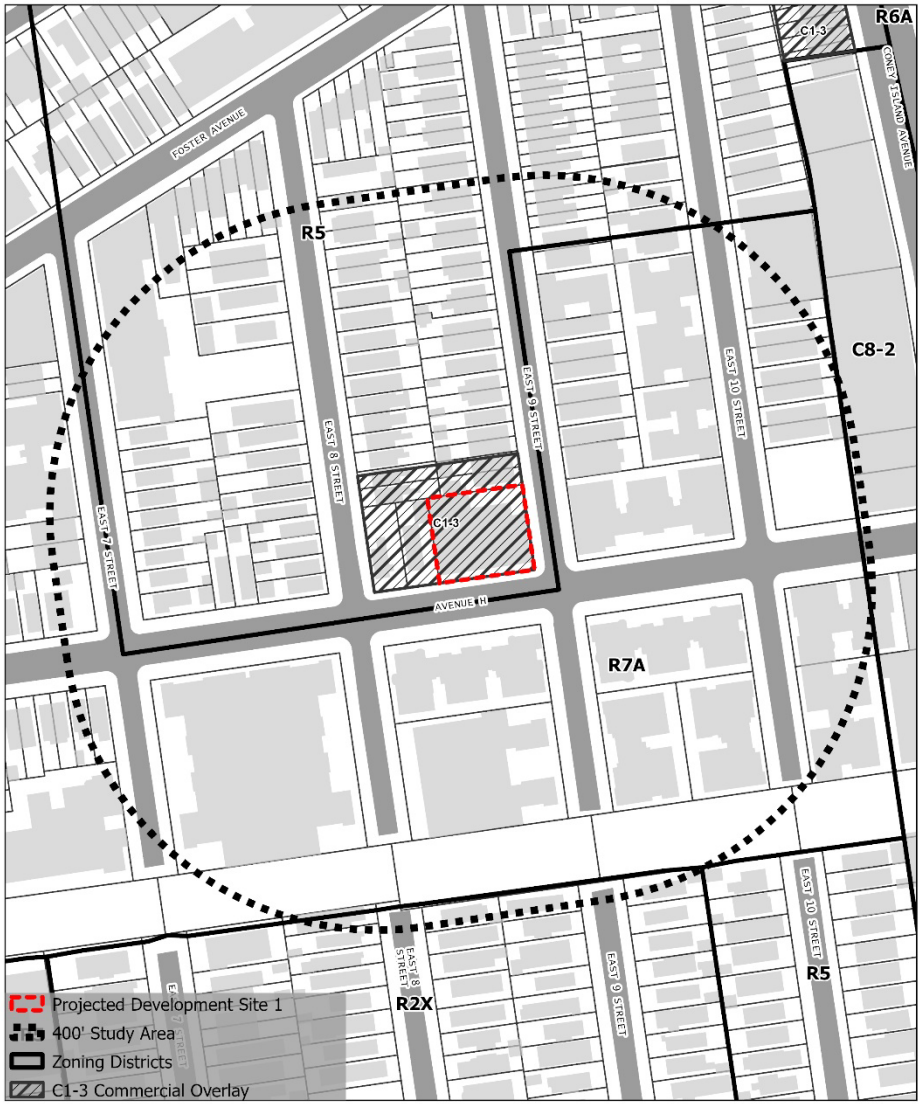
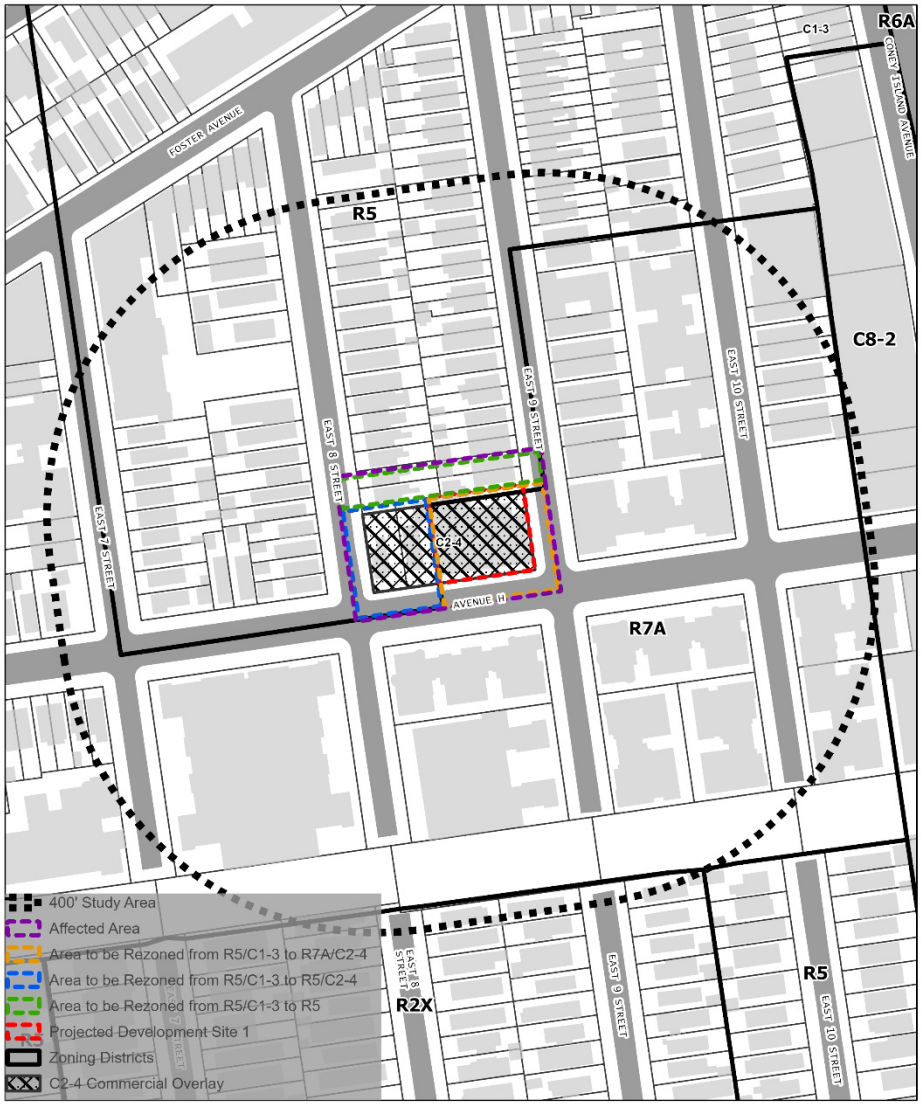


**Figure 4: Revised Zoning Change Map**




Existing R5/C1-3 Zoning District




Proposed R7A/C2-4, R5/C2-4, and R5

## III. PREVIOUS ANALYSIS FRAMEWORK

The Reasonable Worst-Case Development Scenario (RWCDS) analyzed for the previous Proposed Actions consisted of the following:

Future Without the Proposed Actions (No-Action Scenario)

The No-Action Scenario for the Affected Area would be the same as existing conditions. Redevelopment is not considered likely in the Future No-Action Scenario on lots within the Affected Area as existing buildings almost reach the maximum bulk, density, or number of units that the R5/C1-3 zoning district allows.

Future With the Proposed Actions (With-Action Scenario)

*Projected Development Site 1 (Block 6496, Lot 39; Applicant-Owned)*

A new 9-story-plus-cellar, 95-foot-tall, 69,275 GSF (55,168 ZSF; 4.60 FAR) mixed residential and community facility building would be developed on a 12,000 sf lot. The proposed building would contain 5,778 GSF of residential accessory parking at the cellar level, 22,149 GSF (17,128 ZSF; 1.43 FAR) of community facility uses at the cellar level through the second floor, and 41,348 GSF (38,040 ZSF; 3.50 FAR) of residential uses with 61 dwelling units (680 GSF per dwelling unit) on the third through the ninth floor. The proposed community facility space would be similar to the existing use on the site which consists of a religious worship use and community center.

As Projected Development Site 1 would be located within the proposed MIH area, the Proposed Development would be required to set aside 25-30% (15-18 dwelling units) of the residential floor area for affordable housing at an average of 60-80% AMI per MIH Options 1 or 2. The Applicant is proposing MIH Option 1, and as a result, 15 dwelling units would be set aside as permanently affordable for households with incomes averaging 60% AMI. For the purposes of Early Childhood Programs analysis, 20% (12 dwelling units) of residential floor area is assumed to be affordable at or below 60% AMI.

Given that Avenue H (80 feet wide) is a wide street and East 9$^{th}$ Street (60 feet wide) is a narrow street, the Proposed Development would reach the maximum building height of 95 feet after a 10-foot setback on Avenue H and a 15-foot setback on East 9$^{th}$ Street above the maximum base height of 75 feet. 23 residential accessory parking spaces would be provided in the enclosed garage at the cellar level, which would be accessed by an existing curb cut along East 9$^{th}$ Street.

*Projected Development Site 2 (Block 6496, Lots 45 and 47; Non-Applicant-Owned)*

Projected Development Site 2 would consist of Lot 45 (owned by Leon Richter) and Lot 47 (owned by Fisch Edith) and would be developed with a new 9-story-plus-cellar, 95-foot-tall, 41,184 GSF (36,800 ZSF; 4.60 FAR) mixed residential and commercial building on a combined 8,000 sf site. The building is assumed to contain 8,656 GSF (6,400 ZSF; 0.80 FAR) of ground floor retail space and 32,528 GSF (30,400 ZSF; 3.80 FAR) of residential space on the 1$^{st}$ (residential lobby) to 9$^{th}$ floors. 48 total dwelling units would be provided (assuming 680 GSF per unit), of which 25-30% (12-14 units) would be affordable pursuant to MIH Options 1 and 2 at an average of 60-80% AMI depending on the Option selected. For the purposes of Early Childhood Programs analysis, 20% (10 units) of residential floor area is assumed to be affordable at or below 60% AMI. Parking would be waived for both residential and commercial uses per ZR 25-241, ZR 25-261, and ZR 25-33.

Parking would be waived for residential uses as Projected Development Site 2 would be under 10,000-sf allowing a reduction to 30% of dwelling units per ZR 25-241, which would result in a parking requirement of 11 spaces for market-rate units. As per ZR 25-261, the parking requirement can be waived as there is under 15 spaces required. Further, no parking for commercial uses is assumed, pursuant to ZR 25-33, non-residential parking spaces are waived if under 40 would be required.

Given that Avenue H (80 feet wide) is a wide street and East 8th Street (60 feet wide) is a narrow street, the Proposed Development would reach the maximum building height of 95 feet after a 10-foot setback on Avenue H and a 15-foot setback on East 8th Street above the maximum base height of 75 feet.

In total, Projected Development Sites 1 and 2 would contain 109 dwelling units, 27 of which would be set aside as affordable housing units.

## IV. MODIFIED ANALYSIS FRAMEWORK

As discussed above, under the Council Modifications, the updated Zoning Map Amendment removes Block 6496, Lots 45 and 47 from the proposed R7A district, however, the City Council Modifications would rezone the overlay on Lots 45 and 47 from an existing C1-3 to C2-4. In addition, the updated Zoning Text Amendment would establish an MIH area over Block 6496, Lot 39 and MIH Option 1 and Deep Affordability Option would be mapped. As a result of the City Council Modifications, the MIH area would only consist of Block 6496 Lot 39 and would not be mapped over Block 6496 Lots 45 and 47.

Since the City Council Modifications would not change the existing R5 district for Block 6496 Lots 45 and 47 and only the commercial overlays of the two lots would change from C1-3 to C2-4, these two lots would no longer be considered "soft sites" and are no longer considered as a projected development site. As a result, the With-Action condition with the City Council Modifications would remove Projected Development Site 2 (Block 6496, Lots 45 and 47), given that these two lots are located outside of the updated R7A/C2-4 zoning district. In the revised With-Action condition, the development analyzed on Projected Development Site 1 would not change.

Future With the Proposed Actions (With-Action Scenario)

*Projected Development Site 1 (Block 6496, Lot 39; Applicant-Owned)*

A new 9-story-plus-cellar, 95-foot-tall, 69,275 GSF (55,168 ZSF; 4.60 FAR) mixed residential and community facility building would be developed on a 12,000 sf lot. The proposed building would contain 5,778 GSF of residential accessory parking at the cellar level, 22,149 GSF (17,128 ZSF; 1.43 FAR) of community facility uses at the cellar level through the second floor, and 41,348 GSF (38,040 ZSF; 3.50 FAR) of residential uses with 61 dwelling units (680 GSF per unit) on the third through the ninth floor. The community facility space would be used similarly to the existing use on the site for religious worship and community center.

Projected Development Site 1 would be located within the proposed MIH area mapped with MIH Option 1 or Deep Affordability Option. The Proposed Development would be required to set aside 25% (15 units) or 20% (12 units) of the residential floor area for affordable housing at an average of 60% AMI or 40% AMI per MIH Option 1 or Deep Affordability Option, respectively. For the purposes of Early Childhood Programs analysis, 20% (12 units) of residential floor area is assumed to be affordable at or below 60% AMI.

Given that Avenue H (80 feet wide) is a wide street and East 9$^{th}$ Street (60 feet wide) is a narrow street, the Proposed Development would reach the maximum building height of 95 feet after a 10-foot setback

on Avenue H and a 15-foot setback on East 9th Street above the maximum base height of 75 feet. 23 residential accessory parking spaces would be provided in the enclosed garage at the cellar level, which would be accessed by an existing curb cut along East 9th Street.

## V. ANALYSIS FRAMEWORK COMPARISON

For environmental analysis purposes, this Technical Memorandum will compare the RWCDS program analyzed in the March 2024 EAS with the future conditions under the City Council Modifications.

The only change to the Analysis Framework is the removal of Projected Development Site 2 (Block 6496, Lots 45 and 47) in the March 2024 EAS. Since the number of incremental dwelling units and commercial floor area would decrease with the City Council Modifications and thus introduce less residents and workers into the area, the analysis in the March 2024 EAS would be more conservative for the density related impact categories (such as Open Space and Transportation), and therefore the City Council Modifications would not result in any impacts in those technical areas. All of the impact categories that screened out of analysis in the March 2024 EAS would continue to screen out. The City Council modifications would not require new analysis nor affect the analysis conclusions.

In addition, as Projected Development Site 2 would not be included in the updated R7A/C2-4 zoning district, the analysis in the March 2024 EAS would be more conservative for the Land Use, Zoning, and Public Policy, Shadows, Historic and Cultural Resources, Urban Design and Visual Resources, and Construction sections. For site specific impacts related to Hazardous Materials, Air Quality, and Noise, the same (E) designation requirements identified for Projected Development Site 1 would be warranted. However, the lots associated with Projected Development Site 2 (Block 6496, Lots 45 and 47) would no longer require the (E) designation proposed in the March 2024 EAS.

## VI. ASSESSMENT OF POTENTIAL IMPACTS

As described below, the City Council Modifications would not result in any significant adverse impacts. Nor have any circumstances changed since the publication of the EAS, such as proposed background developments that would create the potential for significant adverse impacts as a result of the Proposed Actions that were not previously identified in the March 2024 EAS.

The RWCDS was assessed for the density-related technical areas of Open Space and Transportation, the massing-related technical areas of Shadows, Urban Design and Visual Resources, and Construction, and the site-specific technical areas of Land Use, Zoning, and Public Policy, Historic and Cultural Resources, Hazardous Materials, Air Quality, and Noise. As outlined in the March 2024 EAS, no significant adverse impacts would occur in these technical areas as a result of the Proposed Actions.

An (E) designation (E-734) was assigned to the previous Projected Development Site 2 (Block 6496, Lots 45 and 47), which would mandate the stack height and setback for heating, ventilation, and air conditioning (HVAC) systems and hazardous materials requirements. Under the Council Modifications, the Projected Development Site 2 (Block 6496, Lots 45 and 47) would no longer be considered as a projected development site and therefore would no longer require (E) designations for Hazardous Materials or Air Quality.

**Urban Design and Visual Resources**

The Urban Design and Visual Resources assessment in the March 2024 EAS analyzed Projected Development Sites 1 and 2. With the City Council Modifications, Projected Development Site 2 (Block 6496, Lots 45 and 47) would no longer be analyzed within the Urban Design and Visual Resources analysis. With

the removal of Projected Development Site 2 from the rezoning area, Block 6496, Lots 45 and 47 would be expected to remain in the current condition. Accordingly, the modifications would not result in a greater change to urban design or visual resources when compared to the analysis presented in the March 2024 EAS. Therefore, the conclusion presented in the March 2024 EAS would not change.

**Hazardous Materials**

The Hazardous Materials analysis concluded that an (E) designation (E-734) would be required for Projected Development Sites 1 and 2. With the City Council Modifications, Projected Development Site 2 (Block 6496, Lots 45 and 47) would no longer be included as a projected development site where development would potentially be induced pursuant to the Proposed Actions.

Accordingly, the (E) Designation language related to Hazardous Materials is revised.

*(E) Designation (E-734):*

*Block 6496, Lot 39 (Projected Development Site 1)*

*Task 1-Sampling Protocol*

*The applicant submits to OER, for review and approval, a Phase I of the site along with a soil, groundwater and soil vapor testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of samples should be selected to adequately characterize the site, specific sources of suspected contamination (i.e., petroleum-based contamination and non-petroleum-based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.*

*Task 2-Remediation Determination and Protocol*

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

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

*A construction-related health and safety plan should be submitted to OER and would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil, groundwater and/or soil vapor. This plan would be submitted to OER prior to implementation.*

**Air Quality**

The air quality analysis provided in the March 2024 EAS analyzed the potential for significant adverse HVAC emissions impact related to Projected Development Sites 1 and 2 on existing buildings. The detailed analysis

conducted in the March 2024 EAS determined that the Projected Development Sites would not result in significant adverse impacts associated with building HVAC emissions on existing land uses.

The HVAC analysis also considered the potential for significant adverse impact related to the Projected Development Sites on each other. As such, a detailed analysis was conducted for the Projected Development Sites and an (E) designation that required a minimum stack height and setback in the HVAC systems was required for the Projected Development Sites.

As the City Council Modifications would result in Projected Development Site 2 (Block 6496, Lots 45 and 47) no longer being considered a projected development site, the (E) designation will no longer include restrictions on the minimum stack height and setback for the previous Projected Development Site 2.

*(E) Designation (E-734)*

*The revised language of the (E) Designation is as follows:*

*Block 6496, Lot 39 (Projected Development Site 1): Any new residential or community facility development on the above-referenced property must ensure the heating, ventilation and air conditioning (HVAC) system and hot water equipment stack is located at the building's highest level and at a minimum of 102 feet above grade to avoid any potential significant adverse air quality impacts.*