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Uniform Land Use Review Procedure (ULURP) Application

441 & 467 PROSPECT AVENUE– C240282ZSK | C240280ZMK| N240281ZRK

IN THE MATTER OF a private application by John Magliocco for a zoning map amendment from R5B to R7-1, a zoning special permit pursuant to ZR 74-533 to waive required parking minimums, and a zoning text amendment to create an MIH area to facilitate two new 13-story buildings, with approximately 248,000 sf of residential development including approximately 244 DUs, being sought at 441 & 467 Prospect Avenue in South Slope, Community District 7, Brooklyn.

BROOKLYN COMMUNITY DISTRICT 7

RECOMMENDATION

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

RECOMMENDATION FOR: 441 & 467 PROSPECT AVENUE– C240282ZSK | C240280ZMK| N240281ZRK

The Project Area is the mid-block portion of Prospect Avenue between Eighth Avenue and Prospect Park West. Prospect Avenue is a wide (80 ft) street that bisects Windsor Terrace, connecting the neighborhood to Hamilton Avenue and Gowanus to the northwest and Ocean Parkway and Kensington to the South.

The Project Area is comprised of 13 lots, two of which are controlled by the applicant and are the proposed Development Site. The Development Site is composed of two lots that together make a U-shape that surrounds a row of three-story brownstones. Both lots has a frontage and curb cut onto Prospect Avenue: the western lot at 441 Prospect Avenue has an entrance to commercial parking lot, while the eastern lot at 467 Prospect Avenue is an entrance to an active loading dock. Both lots are occupied by a laundry business that has been active for approximately 100 years and operated by the applicant since 1978.

Community Board Position

On September 18th, 2024, Community Board 7 (CB 7) voted to disapprove the application with conditions requesting for the applicant to retract the application, conduct additional public engagement that would result in further consideration of development alternatives, and to then resubmit their rezoning application to include evaluation of a new community preference.

While the CB 7 recommendation does not provide clear consensus on how the applicant may modify their proposal as a formal condition, CB 7 notes discussion and public comments on themes around building design (namely concerns regarding height), lack of alternatives evaluated, a community preference for increases in the amount and depth of affordability, the experience of the applicant team in developing housing projects of this scale, and uncertainty about the potential application of City of Yes for Housing Opportunity on this application, which will be decided on by City Council prior to the review of the application.

Outside of these issues with the specific proposal, comments were received about potential for future rezonings which could continue to alter the contextual zoning districts, increase in market pressure and indirect displacement in the surrounding area resulting from speculation, and the adequacy of environmental remediation and local infrastructure (particularly sewer) to responsibly accommodate additional growth at this location.

Borough President ULURP Hearing and Public Comment

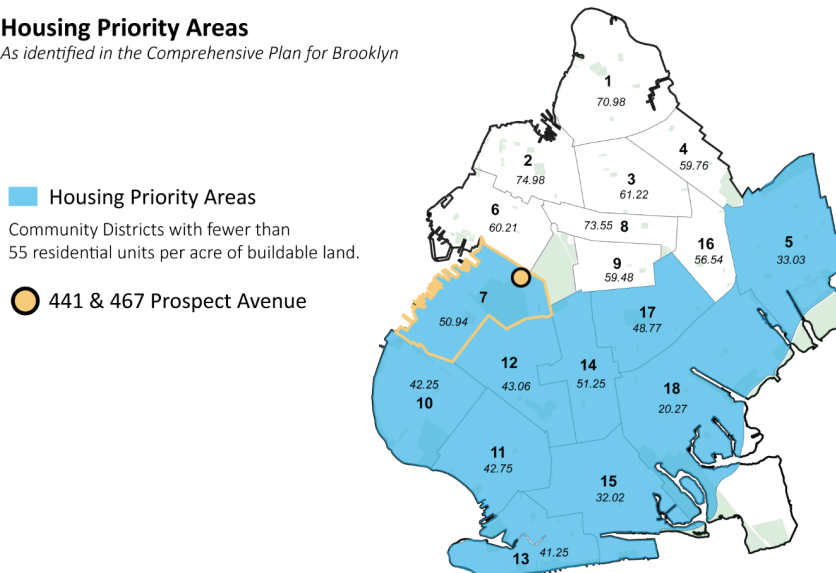
Borough President Reynoso held a public hearing on this application on October 9th, 2024. Over 71 members of the public were in attendance (virtually and in person) and 36 members of the public testified at the hearing, including representation from community members identifying as members of Housing not Highrises and Open New York. The Borough President’s Office received written comments from 375 unique members of the public through October 11th, 2024.

Approval Rationale

Borough President Reynoso believes the proposed actions are appropriate, with some modifications and conditions. The proposal at 441 & 467 Prospect Avenue advances many elements of the housing growth strategy within the *Comprehensive Plan for Brooklyn*, including growth near transit (within the Inner Transit Zone), growth within a housing priority area, and providing new housing options that help create new housing choices (including affordable housing) and relieve high market pressure.

Housing Priority Areas

As identified in the Comprehensive Plan for Brooklyn



Source: *Comprehensive Plan for Brooklyn*

Borough-Wide and Local Context

Windsor Terrace is characterized as an area with the lowest vulnerability to displacement as measured by the City's Equitable Development Data Explorer (EDDE) Tool, developed by the Department of City Planning (DCP) and NYC Housing Preservation and Development (HPD). As a development atop an existing industrial use within a residential area, the proposal would not create any direct residential displacement. Windsor Terrace is a moderate-income neighborhood with the surrounding census tracts indicating a median income of \$75,000-\$99,000 a year. While these measures help us to understand differences in neighborhoods across the city, it does not always capture pockets of vulnerable renters and homeowners within a geography. Despite this limitation, it is a helpful tool in quantifying the differences across the borough.

When comparing the neighborhoods around Prospect Park, stark differences are observed relative to incomes, health outcomes, zoning, housing tenure, displacement risk, unit loss, and housing development east and west of the park. Objective 2.1 of the Comprehensive Plan calls for the development of new affordable housing in keeping with fair housing principles, especially in areas where housing production has not kept pace with population growth. Windsor Terrace is an area of the city with high access to opportunity, situated within high proximity to two significant green spaces, frequent transit, and other neighborhood amenities. New housing options within the area would allow more households to live in a neighborhood where they don't need a car to get around, are in proximity to high-performing schools, thriving neighborhood business districts, and close access to regional job centers.



Windsor Terrace is marked as having the lowest level of risk on the City's Displacement Risk Index, making it a place that can accommodate new growth with a lower relative risk of indirect and direct displacement. Despite the low level of displacement risk, there is intermediate and high market pressure, as the area is in high demand. The Borough President contends that new housing options here will help alleviate, rather than create, additional market pressure in Windsor Terrace.

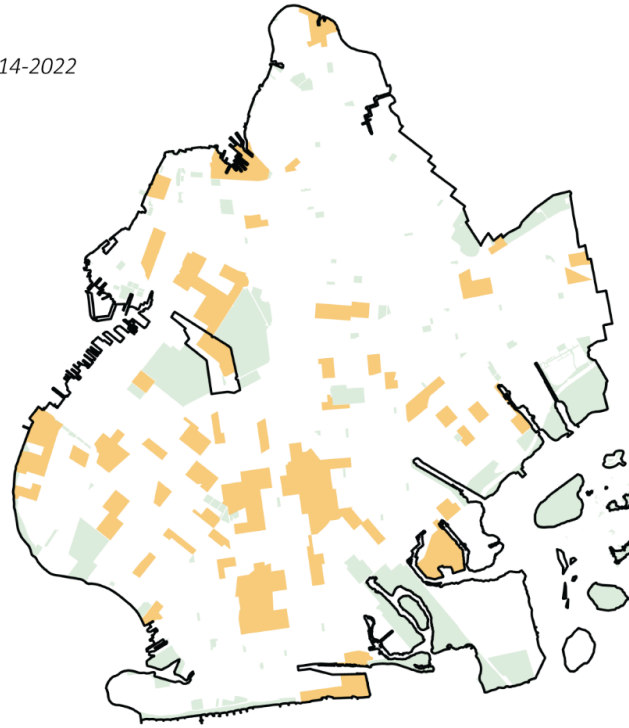
This zoning request is also designed to assist in the relocation of the current business and use. As an industrial use, the Borough President urges the applicant to relocate within New York City, and ideally within one of Brooklyn's Industrial Business Zones. Recently, the South Brooklyn Brownfield Opportunity Area (BOA) evaluated the larger South Slope area for potential industrial relocation and redevelopment. As part of the BOA process, Borough President Reynoso recommended that the BOA encourage and facilitate the relocation of industrial businesses into the Southwest Brooklyn Industrial Business Zone, which begins west of Third Avenue. The Borough President encourages the applicant to assess relocation opportunities along these lines.

Windsor Terrace has not produced much new housing since 2010 and has been subject to unit loss through unit conversion and consolidation in the surrounding neighborhood. Compared with areas east of Prospect Park, this trend is more concentrated.

Net Loss of Housing Units

HPD's Housing Database 22Q4, Net Change 2014-2022

-  **Housing Unit Loss Areas**
Census Tracts that experienced a reduction in housing units between 2014 and 2022
-  **Windsor Terrace**

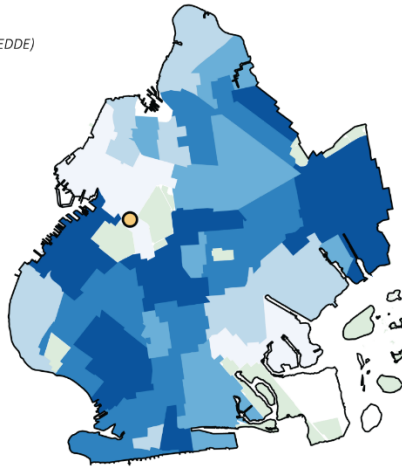


Source: Comprehensive Plan for Brooklyn

Displacement Risk

Per the Equitable Development Data Explorer (EDDE)






-  Lowest
-  Lower
-  Intermediate
-  Higher
-  Highest
-  441 & 467 Prospect Avenue

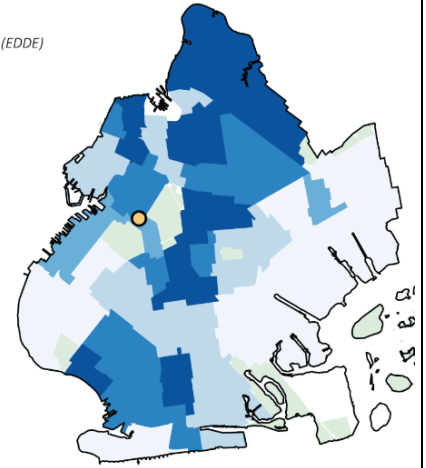


Source: Equitable Development Data Explorer

Market Pressure

Per the Equitable Development Data Explorer (EDDE)

-  Lowest
-  Lower
-  Intermediate
-  Higher
-  Highest
-  441 & 467 Prospect Avenue



Source: Equitable Development Data Explorer

Building Form, Design, and Neighborhood Character

Throughout the public review of this project, much attention has been paid to the relative height of the proposed project compared to neighboring buildings.

Floor Area Ratio (FAR) is only a measure of density. The underlying zoning helps to determine how the building may be shaped to encourage better urban design, architectural quality and character, and flexibility to the applicant. Within the Zoning Resolution, height never acts alone, as it is dependent on the other zoning characteristics that modify the form and bulk of the building. Borough President Reynoso contends that height should not be a limiting factor on its own when considering the fit of new infill housing into established neighborhood blocks.

The proposal at 441 & 467 Prospect Avenue has attempted to address a number of design challenges through massing and design decisions. Some of the potential benefits of the proposal include:

- **Open Space & Landscaping:** The proposal distributes the mass of the building away from the mid-block to assist in re-establishing the open space within the midblock between Prospect Avenue, Windsor Place, Prospect Park West, and Eighth Avenue. Additional landscaping throughout the project will also assist in minimizing the bulk of the building at the street level through an attention to the pedestrian experience along the block.
- **Privacy for rear yards:** In addition to the lack of building mass proposed midblock, the applicant has pushed the mass of the away from adjacent uses through upper-level setbacks concentrating the development into two towers.
- **Street Wall & Pedestrian Experience:** The applicant has proposed a street wall height of four stories adjacent to neighboring properties and seven stories in the middle of the development, which creates a complimentary balance with the height of building. Additional street tree planting would assist the sense of the “pedestrian room” created on the sidewalk minimize the perception of height on the block.
- **Residential Quality of the Block:** the applicant is seeking a parking waiver for this project. The omission of parking from the proposal prevents the need to re-introduce curb-cuts to the block. The proposal also features an upper-level setback by maintaining a moderate street wall to balance the visual weight of the building across the block and transition to adjacent buildings.
- **Sustainability:** The elimination of the existing curb cuts will allow the installation of new street trees and rain gardens along the curb, which will help counteract local urban heat island effects and stormwater flooding. The relocation of the laundry business will also eliminate frequent truck trips and their associated emissions.
- **Building More Housing:** the proposal advances *Recommendation 2.2.4* which calls on the Borough President to encourage developers to use all allowable Floor Area Ratio (FAR) and seek parking waivers to maximize housing unit production. Any considerations of amendments to building form should maintain the amount of FAR to ensure the maximum production of housing on the site.

While these design choices are consistent with the goals of proposed zone, many public comments indicated desire for a different contextual design that would trade the height of the two towers for a squatter, bulkier building, in some cases citing concern over the potential for future rezonings in the area that could further alter the character of the district. Building height is a poor measure of a building’s design on its own. It is important to consider context, potential impact, and other tradeoffs that are embedded within the zoning resolution to allow for developers and architects to develop site-specific solutions within the regulations.

Borough President Reynoso believes that any modifications to the building’s design to respond to community concerns and preferences should not limit the unit production potential at this site.

Consideration of Alternative Approaches & Depth of Affordability

Throughout public review of this proposal there have been a number of alternatives floated by members of the public, including members of the group Housing Not Highrises. It is important to note that those alternatives are not subject to ULURP review as they are not linked to the applicant’s proposal. It would not be appropriate to assess the merits of the applicant’s proposal against the possibility of an alternative development scenario under different ownership. Moreover, such a proposal should not be considered as a means to disapprove an application or pressure an applicant to sell their property.

One such proposal reflected in public testimony is that: “Our community has been working with nonprofit developers of affordable housing. If the rezoning is limited to 7 stories or less, they can make a strong market rate offer for the property to build over 200 units of 100% affordable housing at only 7 stories.” It was

previously reported that the non-profit developer referenced was Catholic Charities. On September 5th, 2024, in response to these claims, Catholic Charities Progress of Peoples Development Corporation issued a letter to CB 7 clarifying the extent of their involvement with the site in relationship to this proposal. Catholic Charities indicated in this letter that they had asked the applicant if there was interest in selling the site and that the applicant subsequently communicated that they were not interested in selling the property. Catholic Charities at no point has made an offer to purchase the site. It is difficult to imagine that such a proposal would only result in a loss of 44 units without requiring the unit mix and average unit size to shift, which would likely result in less 2-bedroom units and more studios. The Borough President’s Office studied alternatives at seven stories and determined those schemes would result in loss of units and potentially underutilized FAR.

Additionally, there has been speculation that the applicant is seeking a 19-story alternative under a scenario in which the text amendments under the City of Yes for Housing Opportunity proposal pass. This citywide text amendment proposal currently under review by the City Council would allow for the Universal Affordability Program (UAP), which grants additional FAR provided that it is used for the production of new affordable housing, income averaged to 60% of AMI. Within the City of Yes proposal, increases for R7-1 would allow an increase of FAR to 5.01 from 4.60 allowed in the base zone with MIH mapped. The applicant has gone on record to say that there is not an alternative for a 19-story building that they would pursue, given limits of modest additional FAR and infeasibility of constructing such a narrow building. There continues to be confusion about what is permissible given the confluence of review of this proposal and City of Yes for Housing Opportunity in close proximity to one another that has contributed to the spread of misinformation about the applicant’s proposal. The confusion stems from Table 1 within Appendix 5 of the EAS which provides a Technical Memorandum for the City of Yes for Housing Opportunity. The table is as below:

Table 1: Projected Development Site 1 (Applicant-owned) – EAS No-Action Condition, EAS With-Action, and CHO With-Action Condition RWCDs

Use	EAS No-Action	EAS With-Action	CHO With-Action	CHO With-Action Compared to EAS With-Action
Residential (GSF)	110,094-GSF	299,051-GSF	325,808-GSF	+26,757-GSF
Total Dwelling DUs	94 DUs	352 DUs	383 DUs	+31 DUs
Income-restricted DUs (Pursuant to MIH Options 1 or 2)	0 or 0 DUs	88 or 106 DUs	96 or 115 DUs	+8 or +9 DUs
Accessory Parking Spaces	62 spaces	0 spaces	0 spaces	0 spaces
Population	EAS No-Action	EAS With-Action	CHO With-Action	CHO With-Action Compared to EAS With-Action
Residents	289	1,081	1,177	+97
Workers	5	14	15	+1
Building Height (ft.)	33	135 (145 assuming 10' rooftop bulkhead)	194 (204 assuming 10' rooftop bulkhead)	+59
FAR	1.35	4.6	5.01	+ 0.41

Note: The number of residents has been calculated based on the average household size of 3.07 persons per household for BK07 Sunset Park-Windsor Terrace (CD 7 Approximation) sourced from the 2017-2021 ACS Five-Year Estimates. The number of workers has been calculated based on the following rates: One worker per 25 DUs and one worker per 50 parking spaces.

The table above introduces opportunities for misinterpretation. The analysis assumes a full height of 204’ for analysis purposes but does not represent what could be built with the available FAR. If the additional allowable sf were applied to the towers, they may rise to 14 or 15 stories. A simple extrusion of the building’s massing to 19-stories in an inaccurate representation of what is permissible under a with-action alternative

with City of Yes. The analysis within this appendix reflects the scope of design possibilities rather than a proposal by the applicant. The image on the left below would represent a greater allowance in additional FAR than would be permitted under the City of Yes proposal (an additional 26,757 sq ft of developable area).



19-story presentation by member of Housing Not Highrises at Community Meeting held on Monday, September 9, 2024¹

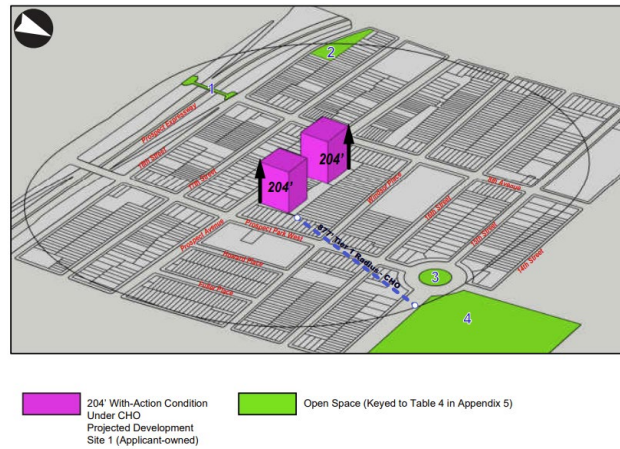


Figure 2: 3D Model for Tier 3 Screening Assessment EAS Appendix 5

The Borough President received some comments indicating support for a modest increase that would be allowable under City of Yes, utilizing the Transit-Oriented Development proposal for the current zone of R5B. Under this proposal, the residential FAR would increase from 1.25 to 2.00 and see an increase in the max height of 15 feet, from 40 ft to 55ft. While the Transit-Oriented Development proposal allows for additional density in areas well served by transit, unlike the UAP proposal there would be no required affordability. While this may satisfy the interest of some members of the community to encourage a modest increase in building height, it would not yield any affordability. The Borough President’s ULURP recommendation for the City of Yes for Housing Opportunity included a proposed modification to extend UAP to R5 zones to increase the level of affordable housing production in these areas of the city.

Public testimony also included reference to Churches United for Fair Housing’s (CUFFH) 2019 report, “[Zoning & Racialized Displacement in NYC.](#)” citing that “Arrow Linen is also proposing to rezone 11 privately-owned, multi-family buildings, and these owners are at great risk of acquisition and tenant displacement due to this application. Following the rezoning of 4th Avenue thousands of residents were displaced, and we lost nearly 1500 units of affordable housing.” This point has been used to call attention to the threat of speculative development; however, the comparisons are not one-to-one. The proposal under review is an individual private application that would be subject to Mandatory Inclusionary Housing, while the example of the Fourth Avenue rezoning is much broader in scope and was passed prior to the adoption of the MIH program.

Additionally, there is sound planning rationale for including the lots between 441 and 467 Prospect Avenue as part of this zoning action. CUFFH’s report, and the advocacy that arose from it, were beneficial in the adoption of legislation that requires rezoning applications to include a Racial Equity Report (the report’s first recommendation). The report also recommends that the City “Identify affluent neighborhoods where mixed-income housing can provide increased access to low-income New Yorkers.” Windsor Terrace is undoubtedly such a neighborhood and has lagged far behind neighborhoods across the borough in affordable housing production.

¹ Bradley-Smith. Brownstoner. “Locals Clash Over Arrow Linen Site's Future at Raucous Community Hearing” <https://www.brownstoner.com/development/arrow-linen-rezoning-cb7-hearing-467-prospect-avenue-park-slope/>

Non-Applicant Owned Sites and Neighborhood Planning

Finally, as discussed earlier, all but one of the existing buildings in the Project Area are overbuilt, meaning that they have more floor-area than is allowed by the existing R5B zoning. In addition to the Project Area, the majority of the lots on the south side of Prospect Avenue are also overbuilt. In other words, the existing zoning is out of character with this block of Prospect Avenue. This may be a surprising finding for those who expressed during public review that they like the neighborhood as it already is – if someone tried to build Prospect Avenue as it is today, they would not be allowed to.

Throughout public review, this application has occasionally been referred to as a “spot rezoning” due to its relatively small Project Area. The removal of non-applicant-controlled lots would accentuate this aspect of the application. Instead of removing these lots, a rezoning to an R6B contextual district would legalize the existing buildings and better reflect the existing massing of Prospect Avenue and other brownstones throughout Park Slope and Windsor Terrace. Mapping an R6B district would also serve to mandate aspects of the design already being proposed by the applicant: height transition rules between R6B and R7-1 districts would limit construction within 25 feet of R6B to 55 feet. Conversely, should the non-applicant controlled lots be re-mapped to a lower-density district or removed from the Project Area altogether, these same height transition rules would restrict the possibility of a shorter, but bulkier building massed along the street.

Throughout public review, there have also been comments expressing a desire for a more comprehensive planning process for neighborhood housing needs. Borough President Reynoso enthusiastically supports this idea. A Windsor Terrace neighborhood plan would present an essential opportunity to intentionally plan sorely needed housing, both through mapping sites for carefully designed setbacks for taller mid-rise buildings such as this application, and by adding a little bit of housing over a wider area by mapping higher-density contextual districts that reflect many of the buildings that already exist in Windsor Terrace.

Borough President Reynoso received comments vowing support for more housing development, just not in the form of mid-rise towers set back from wide streets, and not through the MIH program. The Borough President is impressed by the organizing effort and campaign in response to this application and looks forward to this organizing capacity being dedicated to support for housing development, such as advocating for contextual upzonings, increased funding for Housing Preservation and Development’s pipeline, or the creation of new publicly owned housing.

The Borough President agrees with community calls for more affordability to be provided as part of this proposal. Windsor Terrace is a part of the city that needs more housing development and is well resourced to provide access to opportunity. From a fair housing perspective, the Borough President believes that more affordable housing development should be produced in high-opportunity neighborhoods, even when it comes at a higher subsidy or cost. To expand housing choice and further fair housing, we must pursue a housing location strategy that produces new affordable housing in all areas of the city, not just where it is financially expedient to do so. This position is reaffirmed within the City’s [Where We Live Plan](#) as one of key strategies to facilitate equitable housing development in New York City and the region.

Further, *Recommendation 2.1.2* directs the Borough President to work with applicants to explore adding more and deeper affordability than required by Mandatory Inclusionary Housing (MIH). Explorations typically include a review of available funding sources and programs available through HPD, additional voluntary commitments by the applicant, and alternatives that may result in the increased production of housing through additional density or zoning entitlement. During the Borough President’s ULURP hearing, when prompted, the applicant indicated that they are willing to provide more affordable housing than is required under MIH and are actively investigating HPD programs and strategies to maximize the amount and depth of affordability within their proposal.

While additional development alternatives should be considered to respond to community priorities, it is clear that there is no community consensus on how to best proceed. The Borough President received

testimony that expressed a wide range support, opposition, and requests for modifications of the applicant's proposal. ULURP, at its best, supports the discussion and deliberation needed to respond to public comment and ultimately assist City Council in balancing considerations of unit production, depth and amount of affordable housing, building design and compatibility, and how this project contributes to local and citywide needs. These potential tradeoffs must be balanced artfully.

Any modification that would substantially limit the available FAR within this proposal would result in a loss of both market-rate and affordable units. If any identified conditions for approval outweigh the project viability, the applicant can proceed with an as of right development. The applicant indicated there is a market in Windsor Terrace for market-rate condos that will still enable the property owner to make a return on their investment and be resourced to support relocation of the Arrow Linen business activity.

The scale and intensity of the applicant's proposal is a welcome addition of new housing units to an area that is well served by neighborhood services and amenities. More people should have access to neighborhoods like these. Those choices are only increased when consistent action is taken to advance and strengthen proposals in these areas. By supporting this project, the Borough President affirms the direction in the Comprehensive Plan to encourage new units in areas like Windsor Terrace that have lagged in their production of new affordable and market-rate housing.

For these reasons, Borough President Reynoso believes this application should be approved with modifications that enhance this proposals contribution to furthering fair housing and ultimately support the retention of jobs within Brooklyn.

Recommendation

BE IT RESOLVED that the Brooklyn Borough President, pursuant to Sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve this application with the following modifications:

1. Substantially increase the percentage of affordable units and depth of affordability across the project to go beyond MIH requirements. The applicant should consider adopting one of the following strategies to increase affordability at the site:
 - a. Go above and beyond the requirements of the MIH program to construct between 30% and 40% of the units in the buildings as permanently affordable housing units. These units should be leased and monitored through a regulatory agreement with HPD.
 - b. Adhere to MIH Option 1 across the site but construct the project in two phases—one MIH-only building, and one 100% affordable housing building financed through an HPD new construction program. Because affordable housing production in this area is a dire need and speaks to the principle of affirmatively furthering fair housing, any HPD program could be appropriate and would serve community needs.
 - c. Construct one or both of the buildings using NYCHA Section 8 vouchers.
2. The Borough President has heard community discussions around building height and would support design changes that maintain the project's unit count and unit distribution. If a shorter, bulkier alternative design is identified, there should be no significant reduction in the FAR of the project, including the number and diversity of units (nearly 50% of proposed units are anticipated to be 2-bedrooms or above), as a result from a modification to building design or consideration of other applicable zoning designations.
3. The non-applicant-controlled lots should not be removed from the Project Area but be considered for an R6B district rather than R7-1.
4. The applicant should relocate the Arrow Linen business activities within Brooklyn's industrial areas.

BE IT FURTHER RESOLVED that Comprehensive Planning is needed to address critical needs and implement a growth strategy that leverages development opportunities to improve affordability, stability, health, and wellness. Throughout public comment, opportunities were identified outside of the midblock that would be compatible with accommodating new growth, particularly along wide streets.



October 30, 2024

BROOKLYN BOROUGH PRESIDENT

DATE