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Recommendation on ULURP Application Nos. C 170358 ZMM, N 170359 ZRM, and C 170360 HAM - East Harlem Rezoning by The New York City Department of City Planning

Summary of Recommendation

The East Harlem Neighborhood Plan (EHNP) is a community driven plan for the redevelopment of East Harlem produced after an almost two-year process with input from hundreds of community stakeholders. It calls for:

(1) An extensive and upfront effort to preserve affordable housing;
(2) A maximum residential density of R9 or R9A on certain avenues to preserve neighborhood character;
(3) A broad rezoning area stretching all the way down to East 96th Street to ensure that the development needed to create adequate affordable housing is not so concentrated that it puts existing neighborhood context at risk;
(4) A plan for setting aside no less than 20 percent of the new affordable housing to be for residents earning at or below 30 percent of Area Median Income (AMI);
(5) Addressing a number of community needs including preservation of cultural and historic resources, NYCHA funding, and resources for youth and seniors.

The Administration's ULURP application addressed here, while intended to create and preserve affordable housing falls short of the community plan in a number of significant ways. Additionally, Manhattan Community Board 11 in a show of faith with the extraordinary process that was the EHNP, issued a recommendation with conditions to improve the rezoning framework but significant progress has not been made in satisfying those conditions.

This application:

(1) Fails to provide a significant enough upfront preservation effort to stem the loss of existing affordable housing in East Harlem;
(2) Rezones significant swaths of Park Avenue and Third Avenue to the maximum residential density of R10;
(3) Shrinks the boundaries of the rezoning to exclude East 96th Street to East 104th Street necessitating the higher densities on Park and Third Avenues;
(4) Fails to demonstrate that the target of 20 percent of newly developed affordable housing will be affordable to East Harlem residents earning below 30 percent of AMI; and

(5) Does not address many of the needs identified by the community, including a viable cultural and historic building landmark plan.

I support an East Harlem rezoning, but I cannot support the administration's ULURP application. I support most of what is contained in the EHNP, although it is not perfect. When I supported the administration's mandatory inclusionary housing program two years ago, I recognized that somewhat higher density would be required in order to build large amounts of new affordable housing. But the degree of density would have to be consistent with neighborhood context and community input. Here, the community gave extensive, thoughtful, and informed input, but the administration could not see its way to support significant elements of the community's recommendations, which forces me to recommend a disapproval of the application.

Introduction

Residents of East Harlem are frightened by and angry about the prospect of tenant displacement caused by widespread and rapid gentrification. By all measures, it appears that East Harlem has been and continues to be one of the most quickly gentrifying neighborhoods in New York City. It is one of the neighborhoods in the City where rents are increasing most rapidly[1] and affordable housing is being lost at a fast pace[2]. According to the East Harlem Neighborhood Plan (EHNP), there are 46,000 households in East Harlem and over a quarter of them have severe housing needs that include those who spend more than half their income on rent, those entering homeless shelters, and those living in extreme overcrowding. The neighborhood is losing close to 300 units of affordable housing from rent protections and regulations every year with the rate of loss increasing substantially each year. If nothing is done (or if what is done does not adequately address the problem) we leave 12,000 households that currently remain in need of affordable housing or housing that they can afford.[3]

In the meantime, new as-of-right development continues in East Harlem under the current zoning framework and with no requirements for affordable housing. Through the purchase of existing buildings, new owners are pricing their apartments to take advantage of a hot market. The average costs per square foot of multifamily buildings in the neighborhood rose to $416 in 2016, an 8 percent increase from 2015. This year development sites are going for over $200 per-buildable-square-foot, a 25 percent increase from 2015.[4]

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[1] Kolomatsky, Michael, "South Bronx Rent Increases Greatest in the City". NY Times. March 3, 2017. Retrieved from https://www.nytimes.com/2017/03/03/realestate/south-bronx-rent-increases-greatest-in-the-city.html

[2] Clark, Dartunorro, "East Harlem's Affordable Housing 'Under Threat,' Report Warns". DNA Info. August 16, 2016. Retrieved fromhttps://www.dnainfo.com/new-york/20160812/east-harlem/east-harlems-affordable-housing-under-threat-report-warns

[3] This number represents the "total serve housing need" for East Harlem which includes those entering homeless shelters, households severely rent-burdens and those units that are severely overcrowded. More information, including the data sets used, can be found in the EHNP, pg 85 http://www.eastharlemplan.nyc/EHNP_FINAL_FINAL_LORES.pdf

[4] *East Harlem: A.K.A. "The Neighborhood Hood" - Market Report, Quarter 1 2017* GFI Realty Services, LLC pg. 7 Retrieved from http://gficap.com/wp-content/uploads/2017/03/Marketing-Report_Q1_2017_Final.pdf

In these circumstances, doing nothing is not an option - unless we want to see accelerating large-scale displacement of East Harlem residents. To prevent this, our first priority is to preserve as much existing affordable housing as possible. Second, we need to ensure that new development creates housing that is affordable to neighborhood residents and to limit market rate development that speeds up displacement. Finally, we must, as I have always maintained, require that development respect the neighborhood character.

In March 2015, I joined Council Speaker Melissa Mark-Viverito, Manhattan Community Board 11 and Community Voices Heard as a project partner for the EHNP steering committee. The process involved 21 stakeholders, 8 public visioning workshops, and over 40 meetings. Approximately 1,500 East Harlem residents helped inform over 260 recommendations that covered 12 key topics areas. It was not an easy process, and all the Steering Committee partners worked hard to overcome the significant fears over adverse impacts on the part of stakeholder organizations and community members. The City knows this because the Department of City Planning (DCP) was present at most meetings and public forums.

That process culminated in the East Harlem Neighborhood Plan (EHNP) (www.eastharlemplan.nyc), a comprehensive roadmap for the redevelopment and future growth of the community. The plan is designed to carefully balance the goals of preserving and developing affordable housing, protecting neighborhood character and affording sufficient opportunity for development. That plan includes:

- An array of preservation actions including substantial funding for tenant legal services and organizing, and an East Harlem anti-harassment/anti-eviction district similar to the Special Clinton District to deter and remedy abusive practices by landlords; and a land trust and other mechanisms to preserve distressed and warehoused properties for affordable housing;
- Boundaries that stretch farther south on the Avenues – in some cases to the upper East 90s -- than the boundaries in the DCP proposal, so that greater density as well as affordable housing opportunities could be spread over a larger area and significant luxury housing pressure above East 96th Street might be tempered with mandatory inclusionary housing;
- No greater density than an R9 or R9A District on Avenues and wide streets to preserve neighborhood character and ensure that additional density is not being utilized predominantly for taller luxury housing that puts additional pressures on rents and strains preservation efforts; and
- A minimum requirement that 20 percent of the affordable housing added be for income brackets at or below 30 percent of AMI, with specific commitments to go even lower, so that they would be available to East Harlem residents and so that the affordable housing component of the rezoning would not further exacerbate displacement.

Even with these well-considered and carefully balanced recommendations, crafted to maximize benefit to the East Harlem community, there was concern among community stakeholders that significant new development would increase housing pressure on residents without providing sufficient housing opportunities that would be available to them.

When the DCP certified this application, it was obvious that there were some major differences that we hoped could be resolved. But at this point, despite the community planning process they participated in, the administration has not made sufficient progress in resolving these differences.

Separate from the zoning - but almost equally important - are the policy, capital, and programmatic recommendations in the EHNP that were made to offset impacts from any proposed rezoning. While the administration committed to some significant items, key priorities that were outlined by the EHNP steering committee still remain unaddressed and even more are awaiting further discussion.

Perhaps the most significant of all the issues continues to be density. Not only has the administration insisted on keeping large swaths of Third Avenue and Park Avenue with an R10 zoning designation, they have included a loosening of the tower-on-a-base rules so that even taller building heights can be achieved. These building forms -- much more appropriate for luxury high-rise buildings than for building affordable housing -- only further feed the community's fears that the proposal is tipping the balance too far in favor of market-rate development. It is the opposite of how we should be adjusting this proposal.

In addition, the administration has failed to commit to an up front and rigorous housing preservation program for the neighborhood. The City's plan for housing preservation in East Harlem remains in draft form and has been criticized for not being tailored enough for East Harlem. To feel confident about the preservation program it would need to:

- Permanently increase enforcement and building sweeps by HPD in East Harlem;
- Integrate more mission-driven developers and community land trusts into city sponsored new development on city-owned land;
- Rely on those same partners to rehabilitate distressed and abandoned properties for use as affordable housing; and
- Create an anti-eviction/anti-harassment district modeled on the Clinton Special District.

Another place where the Administration and the EHNP diverge from one another is on the appropriate boundaries of the rezoning. As part of the EHNP process, the facilitators and steering committee members had difficult conversations with the public about the tradeoffs between density and affordable housing. The final position in the EHNP represented a compromise that would trigger the minimum amount of additional density required to create new affordable housing but spread out that new bulk throughout the neighborhood so that no specific corridor would be overly burdened with a drastic change in scale or pressure from new users. The City's application narrows the boundaries - leaving out the area west of Second Avenue and below East 104th Street - and calls for the maximum residential density allowed on swaths of Park Avenue and Third Avenue. Rezoning proposals at the start maximize their scope for the purpose of environmental review; but the City's unwillingness to compromise from that maximum is not reasonable or in the best interest of the community.

East Harlem needs new affordable housing, but the distribution and concentration of new development should reflect the recommendations that came out of the EHNP process in which so many local participants sough to balance growth and preservation.

Finally, and admittedly difficult to address, is the need for commitments on how we can achieve deeper affordability in the planned affordable housing. The EHNP called for a minimum of 20 percent of affordable units to be affordable to those earning 30 percent of AMI or less. We have barely been able to meet that target in most projects on City-owned land. If we cannot do it there, success is less likely on private development. Thus, from the community's perspective, their fears of too much luxury development are compounded by fears that even the affordable development will remain out of reach.

Each one of these failings alone, while significant, might not be fatal. But in the aggregate, given the enormous study and work of the EHNP, a failure to address and incorporate the community's concerns and recommendations puts the proposed proposal at odds with the community planning process.

What follows below is my recommendation on the City's proposed application for the rezoning of East Harlem. Because the factors I have outlined are so essential to an acceptable rezoning, this recommendation is a recommendation to disapprove.

BOROUGH PRESIDENT'S COMMENTS

After careful review, the application in its current form still does not represent a plan that I believe ensures a better future for East Harlem and for that reason I cannot support it. While the application shares broader themes with the EHNP about the need for required affordable housing, active street walls, and concentrating new commercial use along the viaduct to better utilize that area, there remain significant points of disagreement.

As Borough President, I came into office determined to challenge the top-down planning framework that drove many neighborhood-rezoning efforts. Instead, I have worked for decision-making models that approach planning from the bottom-up.

For Manhattan Community Board 11, which encompasses the East Harlem neighborhood, the loss of affordable housing and corollary need for new affordable housing development, the increased market-rate development, the increasing occurrences of tenant harassment, and the displacement of existing residents motivated discussions and repeated efforts to plan comprehensively. The Board, with the help of Civitas and the Regional Planning Association, launched several studies to understand the various housing problems of their community and come up with solutions. Other advocacy organizations such as Picture the Homeless undertook their own analysis and focused on underutilized and warehoused properties, which they believed could contribute to replenishing a diminishing affordable housing stock if activated and put into the hands of nonprofit developers and/or community land trusts.

With the announcement of Mayor de Blasio's housing plan in 2015 and its focus on East Harlem, the East Harlem Neighborhood Plan Steering Committee, convened by City Council Speaker Melissa Mark-Viverito, came together to respond with a bottom-up plan for the future of the community. Two years of in-depth analysis, engagement, research, organizing, and consensus

building produced a plan and a process that has been recognized nationally as the gold standard for other neighborhoods to replicate. In the end, we believed that the Plan was a fair and comprehensive strategy for achieving critical neighborhood investments.

The EHNP was submitted to the administration in February 2016. The City made its proposal in the fall of 2016, and while there were some significant differences, members of the EHNP believed these differences could be resolved. My office and the rest of the members of the EHNP spoke to the Administration early about our disagreement with this application's proposed densities along portions of Park and Third Avenues. We also voiced our concern that there were no specifics on how the potential gap between the affordability of the lower-income housing proposed to be developed and the incomes of the current residents would be addressed.

Unfortunately, months of meetings did little to resolve differences on the environmental analysis, the geographic boundaries, and additional density proposed by the City. Given the difficulty involved in coming to the consensus in the EHNP, the failure to make headway on significant differences with the administration led us to conclude that the City's proposal is inappropriate.

Land use applications for the redevelopment of East Harlem constitute only one piece of the neighborhood plan necessary to achieve the complement of preservation and growth the neighborhood desperately needs and has been promised. The Mayor's 10-year housing plan commits to aggressive preservation strategies including legal services, other anti-harassment programs and funding for rehabilitation of existing housing. The allocations of dedicated pools of capital for rezoning areas through the Neighborhood Fund (administered by EDC), the Rezoning fund (administered by DEP), and the Housing and Acquisition Funds (separate entities, both administered by HPD)[5] and the mayor's statements and housing plan created an expectation that neighborhoods subject to these rezonings could expect an upfront, targeted and aggressive preservation program in conjunction with any rezoning proposal.[6]

While there are some City-wide programs and strategies available for housing preservation, the programs are not comprehensive, sufficiently funded or tailored to meet the preservation challenges of the East Harlem community. East Harlem is a community in which three-quarters of all housing is regulated in some form, units are rapidly being deregulated and landlords are warehousing properties subject to regulations. What is more, some 28 percent of residents live in distressed NYCHA properties. So there is a clear need for more aggressive and tailored strategies.

In addition, the EHNP sets forth numerous other capital and programmatic investments needed to ensure the success of the neighborhood rezoning as contemplated in the Administration's housing plan. While some of these have been addressed, others, discussed below, have not. All of these programmatic and capital needs-related recommendations have been available to the

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[5] *Capital Spending & Neighborhood Rezoning: More Than $1.6 Billion Planned for New Infrastructure Funds.* New York City Independent Budget Office. May 2015. Retrieved from http://www.ibo.nyc.ny.us/iboreports/capital-spending-neighborhood-rezoning-more-than-1.6billion-planned-new-infrastructure-funds-may2015.pdf

[6] Housing New York: A Five-Borough, Ten-Year Plan. Office of the Mayor. May 2015. Retrieved from https://shnny.org/images/uploads/NYC-2014-housing-plan.pdf

administration for over a year and a half and could have been incorporated into commitments accompanying this rezoning proposal.

To separate the land use elements from the programmatic and capital-needs elements of the plan would yield an inadequate analysis of the merits of the proposal and so for our review we consider the work done on both the zoning and community commitments together.

We begin with what, in my opinion, should come before, and continue throughout and beyond the period of any rezoning – the preservation effort. Then, a discussion of the proposals for the development of new affordable housing is laid out, followed by a discussion of the need for additional support for NYCHA developments. Next, this recommendation covers the land use issues of rezoning boundaries, density, and other zoning issues. And finally we address other programmatic and infrastructure efforts to strengthen the East Harlem Community. We are left with an incomplete picture of what the impact of this application will be and how we can ensure the better future for the community promised by the applicant. Ultimately, the current proposal falls short in both the land use and the programmatic categories.

Affordable Housing

Housing Preservation Plan

If we are concerned about affordable housing for the residents of East Harlem, then protecting the existing housing stock is essential. Approximately 75 percent of East Harlem residents live in regulated housing.[7] Given that East Harlem has lost approximately 3,444 units of affordable housing since 2007 and is estimated to lose 3,666 units over the next 13 years,[8] this proposal needs to lead with a robust preservation strategy because new construction alone is insufficient.

A central idea behind all of the administration's neighborhood rezonings is to create opportunities for new development that include significant amounts of required affordable housing in areas that are experiencing major development pressures. A plan to preserve affordable units is essential to ensure that these plans actually result in a net gain of affordable housing and not merely an attempt to tread water against strong currents of incoming market rate housing and outgoing regulated units.

The City has put forward a draft of their preservation plan for East Harlem with goals to preserve and develop affordable housing, reduce barriers to applying for affordable housing and increase economic opportunities along-side their planned housing investments. The draft report provides important details about the housing crisis in East Harlem, the impact of as-of-right development in a strong real estate market on stability in the neighborhood and why government intervention is necessary to stave off further harm. The analysis goes on to outline several existing and some new programs that correspond to the aforementioned goals. But this housing preservation plan

[7] *Draft East Harlem Housing Plan.* Office of Neighborhood Strategies, NYC HPD. pg. 5. May 1, 2017. Retrieved from http://www1.nyc.gov/assets/hpd/downloads/pdf/community/east-harlem-housing-plan-draft.pdf
[8] The data is based on CB11 analysis, using RPA affordable housing database, John Krauss rent stabilization data, and NYC PLUTO database. pg 83 http://www.eastharlemplan.nyc/EHNP_FINAL_FINAL_LORES.pdf

falls short from what the EHNP and other stakeholders requested to have in place prior to the push for more density.

A draft housing plan that has been crafted and circulated to the public is a laudable step forward but its status as a "draft" highlights its failure as an upfront and aggressive strategy. Strategies to forcefully root out existing harassment and poor building conditions, which will only be exacerbated with the incentive to develop even with new affordable housing requirements, need to be underway now.

As part of their analysis of conditions on the ground, the HPD's Office of Enforcement and Neighborhood Services (OENS), the Neighborhood Planning and Preservation Unit, the Division of Neighborhood Preservation (DNP) coordinated to do "block sweeps" and additional enforcement visits as part of the development of the proposed rezoning. The results included a more robust list of distressed properties that can be stabilized through subsidized repairs or proactive identification of places that need tenant services, violations corrections, or litigation. While the temporary increase in services were welcome it still is unclear if this heightened level of involvement is permanent for an area that has needed it for some time and will need it even more moving forward.

Also missing is a commitment that strengthens the anti-harassment protections afforded to tenants in situations where bad landlords are creating unsafe conditions and trying to remove tenants to achieve higher rents. For tenants, the burden of providing proof of harassment is extraordinary, with most judges requiring an extensive history laid out in excruciating detail for a case to be seriously considered. A *Real Deal* article from July 2017 explained that in NYC Housing Court from 2014 to 2016 tenants only won 2 percent (or less) of cases brought when suing for harassment. In 2016, only 15 of the 977 cases that tenants lodged were decided in a tenant's favor.[9] Recommendation 1.7 of the EHNP called for an East Harlem anti-harassment / anti-eviction district, modeled after the Special Clinton District on Manhattan's West Side with the funds to support tenant organizers that will monitor for abuse. At our first meeting with HPD after the release of the report, my office made clear that this would be essential to any support for this proposal. In response, we were told that a citywide answer to the request for anti-harassment districts was being crafted. However, several deadlines have passed and we have nothing yet to assure us that it will be in place. [10]

One particular stock of existing housing within the rezoning boundaries that has remained inaccessible to East Harlem residents is the warehoused units kept unoccupied by various property owners throughout the neighborhood. One *Crain's* article estimates at least 50 properties throughout East Harlem fit this description.[11] These units – many of which are located between East 106th and East 116th Streets and between Lexington and Third Avenues - have been off line for decades and residents and business owners view them as blighted. Based on the age

[9] Bockman, Rich and Parker, Will. *Life after Croman* .The Real Deal. July 01,2017. Retrieved from https://therealdeal.com/issues_articles/life-after-croman/
[10] *East Harlem Neighborhood Plan*. East Harlem Neighborhood Plan Steering Committee. pg 68. February 2016. Retrieved from http://www.eastharlemplan.nyc/EHNP_FINAL_FINAL_LORES.pdf
[11] Anuta, Joe, *Rezoning could be boon for East Harlem landlords.* Crain's. June 12, 2017. Retrieved from http://www.crainsnewyork.com/article/20170612/REAL_ESTATE/170619989

and size of these buildings and their similarity to occupied buildings in the area, there is reason to believe these units, if they were in circulation, would constitute a much-needed pool of rent-regulated apartments. Despite that, a lack of concern for the surrounding area has resulted in owners of these warehoused buildings keeping those units vacant and limiting activity to the commercial ground floor simply to keep up with tax bills. Now the rezoning we are considering would award those same owners for their speculative actions.

DCP has explained that applying the proposed zoning districts would ensure any value realized by these particular owners will at least result in the minimum affordable housing requirements of MIH, and maybe more if HPD term sheets are considered by the developers of those sites. While this is encouraging, the minimum 25 percent of required affordable housing that would be created at these locations is not sufficient. If new development occurs here, mechanisms should be explored to require additional affordable housing to reflect the disinvestment these buildings represented for the community. While the City has pushed back against applying modified versions of their inclusionary housing program, exploring this concept in East Harlem for these sites could send a strong message against speculation and warehousing.

The City needs to confront this issue because it is not only an East Harlem problem; it is a citywide problem. A 2012 report, *Banking on Vacancy*, initiated by Picture the Homeless (PTH), found that 3,551 vacant buildings that were surveyed could potentially house 71,707 people.[12] There are several recommendations in the report, including some legislative solutions that should be piloted as part of the East Harlem Preservation Plan. The *Housing Not Warehousing Act*[13] is a package of three City Council bills that create a mandatory registry for all landlords holding their property vacant, mandate the City to do an annual count of all vacant property, and require a report of all city, state, federal, and authority-owned vacant property suitable for the development of affordable housing. The report would also include recommendations on how to turn these city-owned properties into affordable housing as soon as possible. These underutilized properties should be targeted for extremely low to middle-income families and kept permanently affordable under the direction of mission-driven developers and/or community land trusts.

Development of New Affordable Housing

The EHNP recognizes that the City's current affordable housing development tools leverage the private market and balance affordable unit production with market-rate unit production. Our plan called for at least 50 percent of all units produced in East Harlem to be affordable to extremely low-income up to middle income residents and a minimum of 20 percent of those units to be affordable to those at or below 30 percent of AMI.

There is significant doubt that MIH alone will deliver on the units we need for East Harlem families searching for affordable housing. Option 1 and Option 3, the most likely designations for this area, are set at 60 percent of AMI with a required tranche of 20 percent of MIH units at 40 percent AMI. These levels of affordability do not go deep enough to provide housing for our

[12] *Banking on Vacancy: Homelessness and Real Estate Speculation*. Picture The Homeless. January 2012. Retrieved from http://www.issuelab.org/resources/14899/14899.pdf
[13] Picture The Homeless. "Announcing the Housing Not Warehousing Act." Picturethehomeless.org. Retrieved from http://picturethehomeless.org/announcing-the-housing-not-warehousing-act/

most vulnerable communities. In East Harlem, 37 percent of residents make under $23,350 or lower than 30 percent of AMI. That is not a specified AMI bracket addressed by MIH, but instead is a probable result of the averaging that will happen as projects move forward. But this creates uncertainty that causes people in the community not to trust that these residents are being considered in this plan.

Where we have found some common ground is that the EHNP and the administration both look to maximize our opportunity for lower levels of affordability on public sites where we have more control. My office has regularly stood by the policy that projects on public sites should be 100 percent affordable and that the affordability should be made lasting through "practical permanence." Recent HPD affordable housing pipeline projects like La Promesa/Acacia Gardens (C-150212 HAM), Lexington Gardens II (C-160338 ZSM), and the proposed Sendero Verde (C-170361 ZMM) give us a sense of what to expect. Those projects have set aside 10 to 20 percent of their units for residents that are at or below 30 percent AMI. On some of the public sites, such as the Harlem Burial Ground Project on the former 126th Street Depot site (C-170275 ZMM), the City is only agreeing to making 50 percent of the total development affordable, citing the funding constraints for the community facility and memorial elements that will be part of the future ground plan. While on this project it will include 20 percent of the affordable units at 30 percent of AMI, we are still forced to access market-rate housing on city-land. If we are barely (or in some cases not) reaching the 20 percent target of affordability necessary for a significant segment of the East Harlem community on public sites , it is impossible to assure the community that we can satisfy this goal overall when developments on private land are added.

We must call for more affordability on our city-owned sites since we are limited in our ability to push for changes in how the Mandatory Inclusionary Housing program is implemented. In these projects, we would work with mission-driven developers and/or the East Harlem/El Barrio Community Land Trust to get to those tiers that are below 30 percent and require entire projects to be 100 percent affordable. Together with projected private development under MIH we could target for 50% of the new housing on private rezoned and public sites to be affordable at a variety of low- and moderate-income levels. This model still encourages the building of desperately needed moderate and middle-income units and targets our housing policy and scare city-owned land where it is needed most.

The EHNP identified at least five public sites for the City to review. We should receive a commitment to target these sites, and any other remaining city-parcels for mission-driven developers and community land trust partners who share our goal of creating housing inclusive of all families, regardless of total income.

A Commitment to NYCHA residents in East Harlem

Manhattan's largest concentration of public housing is in East Harlem and represents almost 28 percent of all the residents that call this area home and 9 percent of the City's entire NYCHA

population[14]. Data using NYCHA's 2011 Physical Needs Assessment Summary compiled by the Community Service Society places the total cost for capital needs of the NYCHA developments in East Harlem at approximately $1.88 billion.[15] Any final proposal that moves forward with a growth plan for this community should identify a significant down payment toward bringing these developments back to a state of good repair. Without a commitment at this stage, the plan lacks a central piece advocated for by residents.

Regarding the zoning proposal specifically, there were several areas where the City's proposal deviated from the EHNP and made my support for the application improbable.

Zoning Changes

Rezoning Boundaries

The EHNP- recommended rezoning boundaries included all of Manhattan Community Board 11. The proposed study area was supported with a list of potential soft sites we felt represented the kind of as-of-right development that may be possible and should be subject to MIH. The current application shrinks those boundaries to an area generally bounded by East 104th Street to the south, East 132nd Street to the north, Park Avenue to the west, and Second Avenue to the east. Part of the rationale to support a larger study area was that the EHNP sought structured growth on a scale more appropriate for the neighborhood. Instead of concentrating higher densities into narrower corridors as this application does, the EHNP looks to spread the additional density needed to achieve affordable housing goals over a greater area and reduce the burden that comes with new development on any one location.

Moreover, there is significant concern about the area south of East 104th Street. The southern area has been rising in value due to several factors such as its proximity to the Upper East Side, access to existing and new mass transit with the opening of the 96th Street Q train station and distance from the Manhattan Core. Institutions are even recognizing value here; Marymount had recently filed a BSA application to build a new campus. This strong market has also seen a decline in existing rent–regulated housing. Property tax data collected by programmer and cartographer John Krauss shows numerous buildings losing between 10 to 50 percent of their rent-regulated stock below East 104th Street and above East 96th Street.[16] We believe current and potential market attraction to this area warrants preservation districts or mandatory housing requirements for new development in this area.

Height, Density and Neighborhood Character

It is important to recognize there are several areas where this application overlaps with the spirit of the EHNP. Along Madison Avenue above East 126th Street, DCP included our

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[14] *Community Visioning Workshop #3: NYCHA / Housing Preservation*.pg.54.East Harlem Neighborhood Plan. Retrieved from http://www.eastharlemplan.nyc/EHNP_FINAL_FINAL_LORES.pdf
[15] *2011 Physical Needs Assessment (PNA) Summary*. New York City Housing Authority. Retrieved from https://www1.nyc.gov/assets/nycha/downloads/pdf/transparency-pna-2011.pdf
[16] To view the property tax data and review the change over time of rent-stabilized units in the area you can visit http://blog.johnkrauss.com/where-is-decontrol/

recommendations about contextual and preservation districts. DCP proposes to map large sections of Lexington Avenue and several midblock sections with contextual districts that reflect the existing built character. This application also embraced recommendations for active street requirements along East 116th Street and additional density along Second Avenue. However, those areas of agreement still left some significant disagreement over key corridors.

The difference between the East Harlem Neighborhood Plan and the applicant's proposal in suggested density for Park and Third Avenues was one of the most difficult components to overcome. DCP put forward a proposal that would apply the highest floor area districts available along parts of Park Avenue between East 115th Street and East 132nd Street and Third Avenue between East 104th Street and East 122nd Street where our own community-driven process suggested a more contextual alternative that triggers MIH but is more closely aligned with the existing neighborhood character.[17]

- For Park Avenue between East 115th Street and East 132nd Street, the EHNP recommended MX/R7 or R8 districts, with some additional density above that around transit nodes. This works out to densities ranging from 7.2 to 10 FAR. The Administration proposed a R9, R10 and MX/R9 and R10 districts or densities ranging from 8.5 to 12 FAR.
- For Third Avenue between East 104th Street and East 122nd Street, the EHNP recommended R9 or R9A with densities of 8 and 8.5 FAR respectively. The Administration proposed a R10 and C4-6 (R10 equivalent) district with a maximum 12 FAR for residential use.

Since the release of DCP's proposal in the fall of 2016, there has been no support for the City's proposed R10 districts. One important reason why some preferred R9 or R9A was that the bulk of the extra density would go to create affordable housing, whereas R10 would have allowed for a greater ratio of market-rate units. Though asked by EHNP, our office and others to consider revisiting other, more modest alternatives, the administration has refused to amend their application. The opposition to change includes refusing to study height limits more generally as one of the alternatives so that we can identify other possibilities that could create affordable housing but also preserve neighborhood character.

I am concerned that the new tower form proposed in the East Harlem Corridors Special District exacerbates the height and density issue even further. As currently written in the application's "Proposed Actions," the new text would allow thin, tall towers on a small base, a floor plate more appropriate for luxury and not affordable development. This further plays into the fears that the balance struck by the proposal has swung too far to the side of market-rate development. Instead, the text should require the tower-on-base regulation typically found in high-density districts or set high enough minimums where you have a building form that responds to the proximity of the viaduct, but also addresses the concern for excessive height in residential areas.

[17] A comprehensive comparison of the EHNP and this application is available on the CB 11's website under "Presentations" at http://www.cb11m.org/east-harlem-rezoning/

Finally, during negotiations with the Administration over potential height limitations my office was told that Federal Aviation Administration (FAA) regulations for this area prohibited buildings from going above specific heights identified in the La Guardia field Flight Obstruction Area Map. This would place an effective height-limit on buildings in the proposed R10 districts from achieving heights that might otherwise be allowed.

After reviewing the FAA obstruction area map, it was clear that the airport conical surface[18] that extends west from the airport over Manhattan only covered the northern proposed R10 districts (above East 118th Street along Park Avenue and above East 116th Street up to East 124th Street along Third Avenue) while leaving the southern proposed R10 district untouched. According to the Administration's own Market and Financial Study that was done as part of the MIH Program application, the southern portion of the district is considered a "strong market" identified by strong sales prices, robust land prices and the ability to command attractive market-rate rents.[19] This is exactly the kind of area where we would fear out-of-context development. For the northern proposed R10 Districts that are covered by the FAA obstruction map, the effective height limit is approximately 400 feet and much higher than what the community was comfortable with during height discussions in the EHNP process.

As of Right Parking Garages

The application would allow public parking garages of up to 150 spaces as-of-right in districts where they are not currently allowed. This provision is in conflict with the policy of this office to disincentivize car use in areas with access to mass transit. Even in areas where the special permit is required, we have raised concerns with some of the study parameters and underlying assumptions of the residential parking study that accompanies those types of applications. My concern would only deepen if the public review component is removed.

Commercial Overlays on New York City Public Housing Authority (NYCHA) Campuses

The proposal includes several commercial overlays to be mapped along the wide street frontages of several NYCHA campuses. As part of the EHNP process, there was discussion among the subgroups about targeting these spaces for economic development driven by NYCHA residents. I believe that DCP's inclusion of the overlays was intended to be responsive but it did not reflect the recommendation in the Plan. The EHNP concluded that such a drastic change to NYCHA's built environment required separate and direct engagement with the residents who live there. The proposal uses too broad a brush and applies the overlays without considering fears related to displacing residents, playgrounds and open space.

Special Transit Land Use (TA) District at East 116th Street and Lexington

[18] An Airport Conical Surface is an imaginary surface, which extends upward and outward from the outer limits of the Horizontal Surface and exists primarily to prevent existing or proposed manmade objects, objects of natural growth or terrain from extending upward into navigable airspace. Retrieved from http://www.wacaz.com/services/obstruction-evaluation/airport-conical-surface/

[19] *Market and Financial Study: NYC Mandatory Inclusionary Housing.* BAE Urban Economics, Inc. September 2015. Retrieved from https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/mih/bae_report_092015.pdf

As part of the administration's proposal, special transit land use (TA) districts, first mapped in 1974, were updated to reflect recent planning decisions regarding Phase 2 of the Second Avenue Subway. TA districts have rules that efficiently lessen the conflict between substantial pedestrian movement and access to underground transit by removing stairway entrances from the middle of sidewalks and reserving space in new developments adjacent to subway stations for subway-related uses. For the developer, the reserved space is exempt from their floor area calculations. Given the support for this as a smart planning tool, I was surprised not to see it included elsewhere, particular along the existing Lexington line where additional density is being considered. The application proposes changing the area surrounding the East 116th Street Station on the Lexington Line from an R7-2 to a R9 District. While the plan and my office encourages the theory that extra density is most appropriate near mass transit, this location is not properly prepared to accept that density. This location was one of three transit nodes identified as being adversely impacted under the Draft Environmental Impact Statement (DEIS). Mapping a TA District, roughly similar to the subway improvement language of the Special Lincoln District, would mitigate this impact.

Other Areas of Concern

Preservation of Historic and Cultural Resources

The administration's proposal also lacks concrete ways to preserve architecture, arts and culture in East Harlem. Preserving these assets from the impact that new development might have on visual aspects of neighborhood history has always been a priority for the community. In our plan and subsequent public hearings residents noted it as a top concern. We had hoped to engage in a thorough review of the sites proposed by the EHNP and by Landmark East Harlem or discuss ways the City can continue to explore more culturally and historically relevant designations such as was accomplished with Stonewall Inn. Review and work by the LPC should have been occurring as this application progressed. It is incredibly disappointing that this work was not seen as a priority despite my continued calls since the beginning of my tenure as Borough President for parity for Northern Manhattan in the consideration of landmark designations.

Environmental Review Issues

Our office, the steering committee and the administration remain unable to agree on the appropriate criteria to determine projected and potential project sites in the DEIS. Key differences include the likelihood that houses of worship will build on these sites and the status of rent-stabilized buildings, which are often ruled out as developable sites by DCP. However, our own research suggests these buildings might be susceptible to redevelopment. The City has recently launched the New York Land Opportunities Program (NYLOP), an initiative co-led by the Local Initiatives Support Corporation, a non-profit community development financial institution. , "to help mission-driven organizations with limited real estate experience form joint

venture partnerships to develop affordable housing on their underused land."[20] Faith-based organizations constitute a significant category of these mission-driven organizations, a fact that underscores the potential for redevelopment of these properties. Underestimating the potential development universe will cause us to miss impacts we could have avoided. Moreover, failure to account for all development sites affects the calculations of the number of units of housing that can and will be created thereby impacting how much and where density is acceptable in East Harlem.

Other issues caused my office to question the environmental review. The DEIS found no impact on water and sewer infrastructure and solid waste and sanitation services, a finding that is implausible given that such problems occur in the neighborhood under existing conditions. Our concern about how generation rates for Upper Manhattan school children are calculated was brought to DCP's attention early on. It was also identified as part of the Lexington Gardens II application and the Draft Scope of Work for the Harlem African Burial Ground application. An analysis using American Community Survey (ACS) Public Use Microdata (PUMS) completed by a land use consultant for CB11 shows the rate of child birth in Upper Manhattan as higher than in other areas of Manhattan. However CEQR has one generation rate for the whole borough. While the Zoning Resolution does draw a distinction between the Manhattan Core and Upper Manhattan for a host of other land use policies, this topic is exempt. The result is an underestimating of the need for future school seats.

Community Need for Public Investment in Services and Infrastructure

From the moment East Harlem was announced as a potential area for rezoning, stakeholders in East Harlem were aware that the needs that would have to be addressed so that any rezoning could benefit the community would have to come from a rigourous community process Zoning alone would be an insufficient tool for getting at many of the underlying problems identified in community district need statements submitted by the Community Boards or the lack of investments highlighted by local CBOs. There was general agreement that East Harlem's future has to come from a comprehensive assessment of the state of the neighborhood and has to cover a range of socioeconomic and cultural areas of study. The EHNP brought together residents and topic experts so that we could respond with hard data needed for that assessment.

In terms of our process, the administration has had a year and a half to consider, act on, and incorporate our recommendations. During that time there has been some movement toward agreement. To support the desire for more holistic, service-rich education environments, the City has committed to funding three new community schools next year. Local art and cultural capacity-building initiatives will be funded through the awarding of a Building Cultural Capacity Grant. To address questions about healthy teaching environments for children, the DOE is installing air conditioners, with corresponding electrical system upgrades, throughout the school system by Fiscal Year 2022. The City opened a Neighborhood Health Action Center in April 2017 and partnered with the New York Academy of Medicine (NYAM) to provided small grants and support to local organizations to address community health issues. To respond to some of

[20] *Mission-Based Partnerships*. NYC HPD. August 2017 Retrieved from http://www1.nyc.gov/site/hpd/developers/mission-based-partnerships.page

our open space and green infrastructure concerns, NYC Department of Parks and Recreation (DPR) is simultaneously proceeding with an East Harlem Resiliency Study and a design process for the Harlem River Park Greenway Link along the esplanade between East 125th and East 132nd Streets. Planning for a new East 125th Street Plaza to be located adjacent to the Metro North station has begun, and two Select Bus Service bus stations at Lexington Avenue and East 125th Street are in the works. To help small businesses, the City has committed to $1.49 million in Neighborhood 360 grants to local nonprofit partners and a new Workforce 1 career center to supplement existing nonprofit-driven employment and training programs in East Harlem.

These measures are noteworthy, but essential needs remain unaddressed. There is no plan to boost opportunities for East Harlem students and young adults to access the Career and Technical Education opportunities in their own community board area. For those schools that are not community schools, ways to increase resources for social/emotional services and academic remediation have not been identified. There are no firm commitments on naturally occurring retirement community (NORC) project funding for the neighborhood, or integration of the findings into the EIS from the Health Impact Assessment conducted by NYAM. Few substantive conversations have occurred with the Department of Transportation (DOT) about strategies for decreasing vehicular congestion around East 125th Street and placing more city benches around the community district. The community has received no commitment for a consolidated state of the art sanitation garage, though the DSNY Commissioner expressed interest in doing so at the City Council hearing on the District 11 garage on July 27, 2017. There is disappointment among many EHNP members on the slowness to embrace local purchasing requirements, requiring local hire provisions for projects receiving subsidies under $2 million, as well as other labor demands, including good wages, apprenticeships, and safe working conditions. At the public forum related to education and relevant subcommittee discussions, participants called for increased afterschool program capacity and the desire to see prioritized repair or relocation capital for pre-K, daycare and afterschool facilities, particularly those located in publicly owned buildings such as NYCHA developments and the Heckscher Building. However, there has been little discussion to further these goals. Finally, even though the waterfront was left out of the City's proposal, it must be addressed to prepare for East Harlem's growth. We had hoped to see a funding strategy for esplanade repair and maintenance below East 116th Street and a long-term rebuild plan for the East 107th Street Pier by this time.

We understood that these types of actions, while perharps not appropriately a part of the land use applications, would support and accompany a neighborhood rezoning. We are disappointed that more progress on these critical initiatives has not been made.

I believe that the City put forward this application with the intention of helping and supporting East Harlem. The application's primary goals are to create new affordable housing, preserve neighborhood character, create opportunities for economic development, improve the pedestrian experience, and commit to the kind of capital needs East Harlem deserves. That said, while we agree on the principles, we are far apart on the specifics as to how these goals should be achieved. At this point in the process not enough of the critical community concerns have been addressed to allow me to support this proposal.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **disapproval** of Application Nos. C 170358 ZMM, N 170359 ZRM, and C 170360 HAM.

Gale A. Brewer
Manhattan Borough President

APPENDIX – East Harlem Rezoning

PROPOSED ACTION

The City of New York Department of City Planning (DCP), together with the Department of Housing Preservation and Development (HPD), is proposing a series of land use actions—including zoning map amendments, zoning text amendments, and amendments to the Milbank Frawley Circle-East Urban Renewal Plan (collectively, the "Rezoning Plan") in order to facilitate the creation of permanent affordable housing, amongst other goals. The Rezoning Plan is one implementation measure of the East Harlem Neighborhood Plan which was the result of a two year community planning process. The Proposed Actions would affect an approximately 96-block area of the East Harlem neighborhood in Community District 11, Borough of Manhattan.

Generally, any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough. In evaluating the text amendment, this office must consider whether the amendment is appropriate and beneficial to the community and consistent with the goals of the MIH program. In evaluating the amendments to the Milbank Frawley Circle-East Urban Renewal Plan, this office must consider whether the changes are in line with the original goals of the renewal plan and if the changes improve on the existing agreement.

The Zoning Plan must also be evaluated using the lens of the East Harlem Neighborhood Plan (EHNP). The EHNP called for the development of permanent affordable housing, the preservation of existing affordable units, respect for the existing neighborhood character including its cultural landmarks, improvements to the pedestrian experience, and the creation of new commercial and manufacturing space to support job creation adjacent to existing and future transit nodes.

Goals of the Rezoning Plan

Collectively, the actions that make up the Rezoning Plan reflect DCP's goal to achieve the following land use objectives:

- Create opportunities for requiring permanently affordable housing to ensure that the neighborhood continues to serve diverse housing needs;
- Modify the existing zoning, where appropriate, to preserve the built neighborhood character;
- Create opportunities for economic development while preserving the vitality of existing commercial and manufacturing uses;
- Establish a Special District with urban design controls that balance new development with existing neighborhood context and scale and improve the pedestrian experience; and
- Establish a planning framework that addresses capital infrastructure needs and services required to support current demand and future growth.

PROJECT DESCRIPTION

Background

East Harlem

The boundaries of East Harlem coincide with the boundaries of Manhattan Community Board 11. The Community District is generally bordered by East 96th Street to the south, East 132nd Street to the north, Fifth Avenue to the west and the FDR Drive and Randall's Island Park/Wards Island Park to the east. Additionally, CB 11 includes Thomas Jefferson Park, Marcus Garvey Park and Harlem River Park. As of 2016, East Harlem residents totaled approximately 122,434 residents with a median income of $30,380, down 9 percent from 2010.[21] The area is characterized by multi-family residential and mixed residential/commercial properties (low to midrise multi-family walk-up and elevator buildings).

East Harlem Neighborhood Plan

The East Harlem Neighborhood Plan ("EHNP" or "Plan") is a community-driven comprehensive roadmap for fostering smart growth in East Harlem. The process was led by City Council Speaker Melissa Mark-Viverito, Manhattan Community Board 11, Community Voices Heard (CVH) and our office in partnership with a 21-member steering committee of local stakeholders. Developing the plan was a two year long process with no less than eight large public meetings, approximately 40 policy discussions, numerous calls and meetings with city agencies and on-the-ground person-to-person survey collection. Representatives from mayoral agencies necessary for implementation of the plan, including DCP and HPD, were present at most meetings. This work resulted in a final report with over 260 key objectives and recommendations to ensure a stable and inclusive future for the neighborhood. The Steering Committee continues to meet on implementation of its recommendations.

Previous East Harlem Rezoning Plans

DCP 2003 Rezoning

In 2002, DCP proposed a rezoning for 57 blocks in East Harlem, east of Lexington Avenue and south of East 124th Street to East 99th Street, much of which was originally zoned R7-2, a moderate density residential district. This plan was approved by the City Planning Commission and adopted by the City Council in 2003. The rezoning replaced height factor zoning districts with contextual zoning districts. While contextual, there were greater heights on the avenues and lower heights on mid-blocks. The purpose of the rezoning was to create new opportunities for residential development, encourage ground floor retail and local services, and protect the scale of mid-blocks and broad neighborhood character through targeted contextual districts. The proposal replaced much of the R7-2 with R7A, R7B, R8A, and C4-4D districts. The C4-4D district was

[21] Furman Center. *Manhattan Community Board 11 Profile*. State of New York City's Housing and Neighborhoods 2016. Retrieved from http://furmancenter.org/files/sotc/SOC_2016_PART2_MN11.pdf

specifically written for East Harlem and was a new zoning district at that time. Several existing manufacturing districts were rezoned to residential districts or lighter industry. Parking regulations were also modified to meet the needs of new commercial overlays.

125th Street Rezoning

DCP collaborated with several other mayoral agencies in December of 2003 to generate a development framework for the entire 125th Street corridor between the Harlem and Hudson Rivers. The application affected 24 blocks along 125th Street spanning sections of Manhattan Community Boards 9, 10 and 11. The proposal focused on zoning and urban design controls, encouraging a balanced retail mix, addressing traffic challenges, and supporting growth for arts and entertainment in the area. The final zoning application approved by the City Council in April 2008 modified height and bulk regulations but retained many of the elements that sought to increase opportunities for new, mixed-use housing and cultural and retail development for Harlem.

2013 CB11 Rezoning Study

In January of 2013, Community Board 11 approved the East Harlem Land Use and Rezoning Initiative Final Recommendations, a joint project with CIVITAS and Community Board 11, informed by over a year of community input. The planning and zoning study area included East 115th Street and East 132nd Street, bounded by Madison Avenue on the west and Lexington Avenue on the east. The report made recommendations to update zoning districts and increase density in certain areas, promote affordable housing and economic development, and preserve neighborhood character. Many of the recommendations from this report were integrated into the East Harlem Neighborhood Plan initiated two years later.

Milbank Frawley Circle Urban Renewal Area and Milbank Frawley Circle East Urban Renewal Plan

The Milbank Frawley Urban Renewal Area (URA) is located in Community Board 11 and was created by the Board of Estimate in September 1967. In August 1992, a portion of the URA was established as the Milbank-Frawley Circle East Urban Renewal Area, an action which modified the boundaries to facilitate the development of a130-unit affordable housing project (C-920139HUM). The URA is bounded by East 125th Street to the north, Park Avenue to the east, 107th Street to the south and Fifth Avenue to the west. Since then it has gone through four minor changes and one amendment.

The objectives of the URA are to:

- Redevelop the area in a comprehensive manner, by removing blight and maximizing appropriate land uses;
- Remove or rehabilitate substandard and unsanitary structures;
- Remove impediments to land assemblage and orderly development;
- Strengthen the tax base by encouraging development and employment opportunities in the area;

- Provide new housing of high quality;
- Provide appropriate community facilities, parks and recreational uses, retail shopping, public and private parking; and
- Provide a stable environment within the area which will not be a blighting influence on surrounding neighborhoods.

Harlem-East Harlem Urban Renewal Plan

Established in 1968, The Harlem-East Harlem URP covers portions of Manhattan Community Districts 10 and 11 from approximately East 106th to East 133rd Streets, east of Fifth Avenue. As part of the URP, design, building bulk and parking requirements were included to reinforce the existing urban character. Lots were separated into five land use categories, and supplementary controls were made on specific sites.

The objectives of the URA are to:

- Redevelop the area in a comprehensive manner, remove blight and maximize appropriate land use;
- Remove or rehabilitate substandard and unsanitary structures;
- Remove impediments to land assemblage and orderly development;
- Strengthen the tax base by encouraging development and employment opportunities in the area;
- Provide new housing of high quality and/or rehabilitated housing of upgraded quality;
- Provide appropriate community facilities, parks and recreational uses, retail shopping, public and private parking; and
- Provide a stable environment within the area that will not be a blighting influence on surrounding neighborhoods.

Project Area

The Project Area encompasses a portion of the East Harlem neighborhood in Manhattan Community Board 11. The rezoning area encompasses 96 blocks bounded by East 132nd Street to the north, Second Avenue to the east, East 104th Street to the South and Park Avenue to the west.

The predominant land use in the Project Area is residential with several New York City Housing Authority (NYCHA) developments and multi-family walk-up and elevator buildings. There are also a number of mixed commercial and residential developments, commercial and office spaces, public facilities and institutions including: La Marqueta, El Museo del Barrio, Museum of the City of New York, Mount Sinai Center and the New York Academy of Music. The area is well served by mass transit with the No. 4 and 6 subway line train stops at East 125th Street, East 103rd Street, and East 110th Street. Several bus lines also run along the major commercial corridors of 125th Street, 116th Street, Third Avenue and Second Avenue including the: M1, M2, M7, M35, M98, M100, M101, M102, M16, M60 Select Bus, and Bronx bound bus lines. Outside of the Project Area there is access to the No. 2, 3 and 5 subway lines and access to Citibike bike stations.

The Project Area is divided into three geographic areas which reflect distinct neighborhood character and land uses: North of East 125th Street, Mid-East Harlem and South of East 116th Street.

North of East 125th Street
The "North of East 125th Street" area extends along the east and west sides of Park Avenue to the west, midblock between Madison and Fifth Avenues. On the west side of Park Avenue between East 125th and East 132nd Streets is a predominantly residential neighborhood with few ground-floor retail uses and three- to four-story brownstones on the mid-blocks and five- to seven-story mid-rise buildings along the avenue. The northern portion of Park Avenue is predominantly automotive and manufacturing uses with surface parking, gas stations, the Metropolitan Transit Authority (MTA) Metro-North Railroad elevated viaduct and parking for Department of Sanitation vehicles. The intersection of East 125th Street and Park Avenue is a commercial node which was rezoned in 2008 with height limits. Here there is a 12-story building that functions as an office space with ground-floor retail, and a few smaller buildings that have ground floor retail use and residential use on the upper floors.

Mid-East Harlem (between East 125th Street and East 116th Street)
The Mid-East Harlem area is bounded by East 125th Street, East 116th Street, Park Avenue, Lexington Avenue, Third and Second Avenues. This area is predominately residential with the highest concentration of NYCHA developments in the Project Area and mixed residential buildings with ground floor commercial uses along the avenues. The MTA Metro-North Railroad viaduct structure is along Park Avenue along with many surface parking lots facing the avenue and beneath the viaduct. Lexington Avenue is characterized by mixed-use buildings with ground floor retail space. The residential buildings vary from four to six story tenement buildings to tower-in-the-park buildings ranging from 11 to 32 stories. The mid-blocks in this area have shorter residential buildings not exceeding seven stories; there are a number of community facilities and at grade open spaces. Third Avenue is a commercial corridor with many vacant upper floors and heavily underutilized sites.

South of East 116th Street
The South of East 116th Street area includes East 104th Street to East 116th Street and Park Avenue, Lexington Avenue and Second Avenue. This area is largely characterized by mixed use buildings and multifamily walk-up buildings. The building heights range between four and eight stories along Lexington Avenue and along Third Avenue there are four to seven story tenement-style buildings with ground floor retail. Similar to the Mid-East Harlem area, there are many vacant upper floors with active ground-floor retail usage. The NYCHA developments that are in this area include the Lehman and Carver Houses along Park Avenue between East 104th Street and East 110th Street.

PROPOSED ACTIONS

The New York City Department of City Planning ("DCP") and the New York City Housing Preservation and Development ("HPD") seek several land use actions to facilitate a rezoning

plan in response to land use and planning recommendations from the East Harlem Neighborhood Plan (EHNP) and to advance the goals of Mayor De Blasio's *Housing New York: Five Borough, Ten-year Plan*.

The DCP seeks to amend the Zoning Map, Section Nos. 6a and 6b, to change existing light manufacturing districts to mixed residential, commercial and manufacturing uses and establish the Special East Harlem Corridor District ("EHC"). This action would also amend the Zoning Map to include the boundaries of the EHC along major thoroughfares and the modified boundaries of the existing Special Transit Land Use District ("TA"). In addition, DCP also seeks Zoning Text Amendments to the Zoning Resolution to establish the EHC and establish a Mandatory Inclusionary Housing Area ("MIHA") in the proposed rezoning area. As the co-applicant, HPD only seeks amendments to the Milbank Frawley Circle-East Urban Renewal Plan ("URP").

The proposed actions summarized above are discussed in greater detail below.

Proposed Zoning Map Amendment

Changes to zoning map(s) nos.6a and 6b would establish the boundaries of the Special East Harlem Corridors District (EHC) and modify boundaries of the Special Transit Land Use District. The EHC boundaries would be mapped along major corridors within the rezoning area including Park Avenue, Lexington Avenue, Third Avenue, Second Avenue, and the East 116th Street corridor, In addition, the amendments would replace all or portions of existing R7-2, C8-3, M1-2, M1-4, C4-4, C4-4D, R8A, R7A, and C6-3 districts within the rezoning area with M1-6/R9, M1-6/R10, C4-6, C6-4, R10, R9, R7A, R7B, and R7D districts. In addition, the proposed rezoning would replace or eliminate portions of existing C1-4, C2-4, and C1-5 overlays with C1-5 or C2-5 overlays and establish new C1-5 overlays.

Proposed Zoning Text Amendment

The Proposed Actions include amendments to the text of the City of New York's Zoning Resolution (ZR) to:

- Establish special use, bulk, ground-floor design and parking regulations within a Special East Harlem Corridors District (EHC);
- Create a new special permit related to the development, conversion, or enlargement of hotels within the proposed EHC;
- Modify existing provisions of the Special 125th Street Special District applicable to the portion of the special district located at the intersection of East 125th Street and Park Avenue to implement new special use, bulk, ground-floor design, and parking regulations;
- Modify the boundaries of the TA District to reflect the current plans of the Metropolitan Transportation Authority (MTA) for prospective Second Avenue Subway locations, accommodate ancillary support facilities for the future phase of the Second Avenue Subway, and introduce bulk modifications to facilitate the inclusion of necessary

transportation-related facilities in new developments within Special District boundaries; and

- Amend Appendix F of the Zoning Resolution to apply the Mandatory Inclusionary Housing (MIH) program to portions of the proposed rezoning area, including areas where zoning changes would promote new housing.

Urban Renewal Plan (URP) Amendments

The Proposed Actions include amendments to the Milbank Frawley Circle-East URP, to make the URP compatible as warranted with the above zoning actions:

- Remove the supplementary setback control on sites along Park Avenue between East 110th Street and East 123rd Street;
- Change the designated land use of Site 9 from 'residential/public and semi-public' to 'residential';
- Change the designated land use of Site 25A from 'residential, residential/commercial, and commercial/semi-public' to 'residential'.

Waterfront Revitalization Program (WRP)

Portions of the rezoning area are within the Coastal Zone and will require review by the CPC, in its capacity as the City Coastal Commission (CCC), to determine if they are consistent with the relevant WRP policies.

COMMUNITY BOARD RECOMMENDATIONS

At its Full Board meeting on June 20, 2017, Manhattan Community Board 11 (CB 11) passed a negative resolution with conditions related to this application. The final vote for the resolution was 32 in favor, 9 opposed, and 1 abstention. Due to difficulty experienced by the Board with recording individual votes from board members, a vote was held on Tuesday June 27, 2017 where the Board voted to ratify and affirm the previous week's vote. The ratification and affirmation was adopted by a vote of 27 in favor, 7 opposed, and 0 abstentions. Before the full board vote, the representatives of DCP and HPD appeared before several committees between December 2016 and June 2017 and the Board held two public hearings, on May 16, 2017 and June 20, 2017, where they heard testimony from the public.

To more fully evaluate the Proposed Actions, CB 11 created the East Harlem Rezoning Task Force, which met from March to June 2017, and which interacted extensively with the community through public meetings, community outreach, electronic and paper surveys, and other efforts to develop a comprehensive response reflecting the community's interests and concerns.

In their written comments submitted to the Department of City Planning, CB 11 supported the EHNP, and the zoning framework that would require affordable housing in every new development in the rezoned areas while minimizing density, preserving community character,

and stimulating local economic growth. However, while CB 11 recognized that the Proposed Actions are in the spirit of the EHNP rezoning recommendations, it found significant differences, especially as it relates to the impacts of increased density.

According to CB 11, the EHNP generally recommended the minimum increase in density necessary to trigger MIH on wide streets and avenues. However, in large portions of the rezoning area, the Proposed Actions would impose the highest density residential districts allowed by law on both Third Avenue and Park Avenue, which are considerably higher than those recommended by the EHNP.

CB 11 stated that it considers this increase in density excessive. Although it creates needed affordable housing, the Proposed Actions will irrevocably change the character of the community while only making approximately 25 percent of new units permanently affordable. Furthermore, CB 11 expressed concerns that the Proposed Actions will result in negative impacts including but not limited to increased pedestrian traffic, strain on public transportation capacity, sufficiency of existing education facilities, demand of social services, displacement of local businesses, and impacts on existing infrastructure.

While noting that there is no mitigation possible for the proposed increase in allowable FAR to 12, CB 11 presents alternatives and mitigation strategies to address these impacts. In particular, CB 11 supports a larger rezoning area as recommended in the EHNP that includes areas east of Second Avenue and south of 104th Street. Furthermore, CB 11 believes that for large portions of East Harlem that are proposed to be upzoned to R10 and R10 equivalent districts, R9 or R9 equivalent districts would provide a more appropriate balance between affordable housing, community character, and mitigation of impacts. CB 11 also raises the longstanding concern about the true affordability of housing for East Harlem residents, and recommends that MIH in new residential developments should be set at a 50/30/20 model, with 50% market units, 30% moderate-income units, and 20% low-income units, while any development on public land should be 100% affordable housing, with income bands targeting a spectrum from 10% of AMI to 120% of AMI.

In conclusion, CB 11 recommended disapproval of the Proposed Actions unless it undergoes a set of extensive and detailed modifications as follows:

1. Limit upzoning to a maximum R9 and R9-equivalent up-zoning, except for an R10 equivalent district along the modified 125th Street Special District;
2. Require a special permit application process for commercial parking garages;
3. Apply an Enhanced Commercial Corridor special district on 116th Street to limiting the width of storefronts;
4. Carve out Eugene McCabe playground and Henry J. Carter Specialty Hospital;
5. Include 127th Street between Park Avenue and Lexington Avenue in the rezoning proposal;
6. Include currently carved out portions of north Park Avenue;
7. Include entrances for MTA subway-related uses into building envelopes if East 116th Street and Lexington Avenue is rezoned;

8. Utilize local community-based organizations for workforce development, training, and placement on East Harlem projects;
9. Establish an adequately funded workforce development program, which offers certifications and apprenticeships;
10. Require 35 percent of the workforce to be from East Harlem;
11. Fund community partnerships with existing community local reentry programs to facilitate productive transitions for those returning to society after being incarcerated;
12. Provide preference for MWBE/DBE;
13. Create a tax incentive program to promote contracts with local MWBE/DBE in development;
14. Create a tax incentive program for commercial property owners to ensure growth of small businesses;
15. Maintain engagement with the community before, during, and after construction, with regular reports to CB11 to track progress on goals;
16. Renew anti-displacement legal services contracts, and improve benchmarks to ensure more effective representation to combat and/or mitigate the effects of gentrification;
17. Increase the number of HPD inspectors; make inspection times convenient to residents, and require follow-up on whether violations were cured, promptly impose fines where the violations go uncorrected beyond the time allowed by law; importantly, HPD must increase its response to complaints regarding emergency conditions (e.g., no heat or hot water), as well as promptly fine and correct failures to correct emergency violations, with the agency billing the emergency repairs to the landlord;
18. Greatly increase HPD outreach in addressing housing maintenance issues and create and publicize HPD website with consolidated user-friendly information regarding housing maintenance issues;
19. Increase proactive outreach by the City to identify landlords who could benefit from subsidies to bring unregulated buildings into rent-regulation schemes;
20. Establish a citywide Certification of No Harassment program, or at least expansion the current program to all of CD11;
21. Develop a 50/30/20 MIH model through subsidies (50 percent market units, 30 percent moderate-income units, and 20 percent low-income units);
22. Prohibit offsetting affordable housing offsite;
23. Require developments on public land to be 100 percent affordable residential housing, including all housing in any NYCHA in-fill project (affected NYCHA residents must be included in decision-making);
24. Give priority to local non-profit developers in all RFPs for development on public land;
25. Ensure that City and State subsidies directed toward housing preservation, deeper affordability in new development, and open spaces continue in perpetuity, regardless of federal budget allocations;
26. Increase programs and subsidies for homeownership opportunities for low-income and moderate-income families;
27. Ensure that M11 sanitation garage is located in a fully enclosed facility with updated technology and relocate M10 sanitation garage to central Harlem to comport with Fair Share Mandate;

BOROUGH PRESIDENT PUBLIC HEARING

On Thursday, July 13, 2017, the Manhattan Borough President conducted a public hearing on both the rezoning plan by the Department of City Planning (DCP) to rezone 96-blocks of East Harlem and a concurrent private application known as Sendero Verde at East 111th Street (Nos. C 170361 ZMM, N 170362 ZRM, C 170363 HAM, C170364 PQM, C 170365 ZSM, C 170365 ZSM, C 170366 ZSM, C 170367 ZSM, and N 170368 ZCM) located in the area of the proposed East Harlem rezoning. Approximately 135 people attended and 25 people presented testimony. Additional testimony from 13 people and organizations were submitted prior to and after the public hearing.

Those who testified all spoke out in opposition to the rezoning plan. Many who testified asked the Borough President to issues a no vote without conditions while some who spoke asked for the City to go back and consider amending aspects of the proposal, particularly around zoning and density, to conform to the recommendations in the East Harlem Neighborhood Plan. Several speakers mentioned the need for targeted investment in public housing developments throughout East Harlem. There were also several speakers who testified to discrepancies and differences of opinion in how the Draft Environmental Impact Statement (DEIS) was conducted and where the analysis might have underestimated the impact on the community as result of the proposed rezoning plan.

A representative from the New York Academy of Medicine testified about the results of a health impact assessment (HIA) done specifically to gauge the impact of the affordable housing component of the application to public health in East Harlem. The HIA was requested as part of the EHNP. HIAs are "structured process[es] to assess the potential health impacts of a policy, plan, or project and make recommendations on how to lessen negative health impacts and increase health benefits"[22]. The New York Academy of Medicine HIA found that the potential for residential displacement posed a threat to the health of the East Harlem community and recommended prioritizing the protection of existing affordable housing and building new units, as well as preventing displacement of long-term residents and local businesses.

[22] Realmuto, Lindsey, Owusu, Shauneequa, and Libman, Kimberly. *Health Impact Assessment Connecting Housing Affordability and Health*. New York Academy of Medicine. pg. 6. September 2016. Retrieved from https://nyam.org/media/filer_public/de/46/de46ec8b-ae8f-4dca-a6b2-c7ce3bfb9ffe/healthimpassessfinal2016.pdf