



**IN THE MATTER OF** an application submitted by 39 Group Inc, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 12.

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This application for an amendment of the Zoning Resolution of the City of New York concerning modification to Appendix F (Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas) was filed by 39 Group Inc (the applicant) on December 18, 2017 to establish a Mandatory Inclusionary Housing (MIH) area on a portion of one block (Block 5583) fronting on 9<sup>th</sup> Avenue, 39<sup>th</sup> Street, and New Utrecht Avenue. This application, in conjunction with the application for the related action (C 180186 ZMK), would facilitate the development of a new six-story mixed-use building containing approximately 40 residential units, including 10 permanently affordable units, and ground floor retail in the Borough Park neighborhood of Brooklyn Community District 12.

### **RELATED ACTION**

In addition to the zoning text amendment (N 180187 ZRK) that is the subject of this report, the proposed project also requires action by the City Planning Commission on the following application, which is being considered concurrently with this application:

C 180186 ZMK      Zoning map amendment to change an M1-2 zoning district to an R7A/C2-4 zoning district.

### **BACKGROUND**

A full background discussion and description of this application appears in the report for the related action (C 180186 ZMK).

## **ENVIRONMENTAL REVIEW**

This application (N 180187 ZRK), in conjunction with the application for the related action (C 180186 ZMK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 18DCP107K.

A summary of the environmental review appears in the report for the related zoning map amendment (C 180186 ZMK).

## **PUBLIC REVIEW**

This application (N 180187 ZRK) was duly referred to Brooklyn Community Board 12 and the Brooklyn Borough President on May 7, 2018, in accordance with the procedures for non-ULURP matters, along with the application for the related action, (C 180187 ZMK), which was certified as complete by the Department of City Planning on May 7, 2018, and was duly referred to Brooklyn Community Board 12 and the Brooklyn Borough President, in accordance with Title 62 of the rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Brooklyn Community Board 12 held a public hearing on this application (N 180187 ZRK) on June 14, 2018, and on that date, by a vote of 30 in favor, none opposed, and no abstentions, adopted a recommendation of approval of the application. A summary of the vote and recommendations of Community Board 12 appears in the report for the related zoning map amendment (C 180186 ZMK).

### **Borough President Recommendation**

The Brooklyn Borough President held a public hearing on this application (N 180187 ZRK) on July 11, 2018, and on August 20, 2018 issued a recommendation to approve the application with

modifications/conditions. A summary of the Borough President's recommendation and conditions appears in the report for the related zoning map amendment (C 180186 ZMK).

### **City Planning Commission Public Hearing**

On August 8, 2018 (Calendar No. 3), the Commission scheduled August 22, 2018 for a public hearing on this application (N 180187 ZRK), in conjunction with the application for the related action (C 180186 ZMK). The hearing was duly held on August 22, 2018 (Calendar No. 38).

There were two speakers in favor of the application, as described in the report for the related zoning map amendment (C 180186 ZMK), and the hearing was closed.

### **CONSIDERATION**

The Commission believes that this application for a zoning text amendment (N 180187 ZRK), in conjunction with the related application for a zoning map amendment (C 180186 ZMK), is appropriate.

A full consideration and analysis of issues, and the reasons for approving this application, appear in the report for the related zoning map amendment (C 180186 ZMK).

### **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

Matter ~~struck out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution

\* \* \*

### **APPENDIX F**

**Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas**

\* \* \*

**BROOKLYN**

\* \* \*

**Brooklyn Community District 12**

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Map 1 - [date of adoption]

[PROPOSED MAP]



 Mandatory Inclusionary Housing Program Area see Section 23-154(d)(3)  
Area 1 — [date of adoption] — MIH Program Option 1 and Option 2

Portion of Community District 12, Brooklyn

\* \* \*

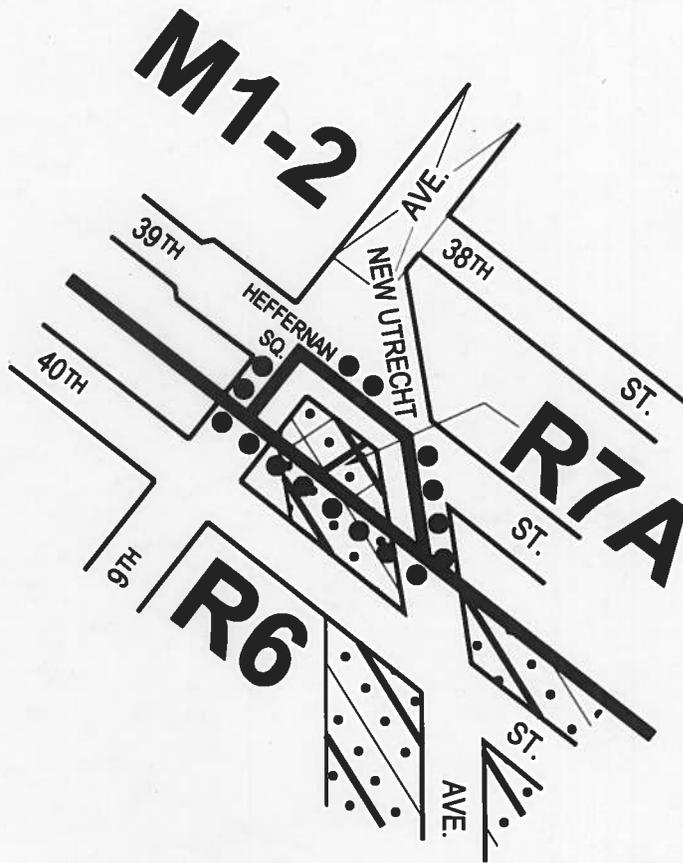
The above resolution (N 180187 ZRK), duly adopted by the City Planning Commission on

September 26, 2018 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

**MARISA LAGO**, *Chair*

**KENNETH J. KNUCKLES, Esq.**, *Vice Chair*

**ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III, JOSEPH DOUEK,  
RICHARD W. EADDY, CHERYL COHEN EFFRON, HOPE KNIGHT,  
ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ** *Commissioners*



CITY PLANNING COMMISSION  
 CITY OF NEW YORK  
 DIAGRAM SHOWING PROPOSED

**ZONING CHANGE**

ON SECTIONAL MAP

**22c**

BOROUGH OF  
**BROOKLYN**

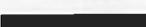
S. Lenard, Director  
Technical Review Division

New York, Certification Date  
MAY 07, 2018

SCALE IN FEET



**NOTE:**

-  Indicates Zoning District Boundary.
-  The area enclosed by the dotted line is proposed to be rezoned by changing an M1-2 District to a R7A District, and by establishing a C2-4 District within the proposed R7A District.
-  Indicates a C2-3 District.
-  Indicates a C2-4 District.

NOTE: THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.

Application #: 180-186-ZMK

Project Name: 3901 9th Avenue Rezoning

CEQR Number: 18DCO107K

Borough(s): Brooklyn

Community District Number(s): 12

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

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description:*

IN THE MATTER OF an application submitted by 39 Group Inc. pursuant to sections #197-c and 201 of the New York City Charter for an amendment to the zoning map, Section No. 22c:

- Changing from an M1-2 District to a R7A District property bounded by 39th Street, New Utrecht Avenue, a line midway between 39th Street & 40th Street and 9th Avenue; and
- establishing within the propped R7a District to a C2-4 District bounded by 39th Street, New Utrecht Avenue, a line midway between 49th Street and 40th Street, and 9th Avenue.

<b>Applicant(s):</b> 3901 Group Inc. 2283 79th Street Brooklyn, NY		<b>Applicant's Representative:</b> Richard Lobel Sheldon Lobel, P.C. 18 East 41st Street, 5th Floor New York, NY 10007	
<b>Recommendation submitted by:</b> Community Board 12 <input type="checkbox"/>			
<b>Date of public hearing:</b> June 14, 2018		<b>Location:</b> Community Board 12 Office	
<b>Was a quorum present?</b> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
<b>Date of Vote:</b>		<b>Location:</b>	
<b>RECOMMENDATION</b>			
<input checked="" type="checkbox"/> Approve		<input type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
<b>Please attach any further explanation of the recommendation on additional sheets, as necessary.</b>			
<b>Voting</b>			
<b># In Favor:</b> 30	<b># Against:</b>	<b># Abstaining:</b>	<b>Total members appointed to the board:</b> 50
<b>Name of CB/BB officer completing this form</b> Barry Spitzer	<b>Title</b> District Manager	<b>Date</b> 7/13/2018	

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



**INSTRUCTIONS**

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

**APPLICATION #:** 3901 9<sup>TH</sup> AVENUE REZONING – 180186 ZMK, 180187 ZRK

In the matter of applications submitted by 39 Group Inc, pursuant to Sections 197-c and 201 of the New York City Charter for zoning map and text amendments to change from M1-2 to R7A a property bounded by New Utrecht and 9<sup>th</sup> avenues, and 39<sup>th</sup> Street, to establish a C2-4 district within the rezoning boundary, and to designate the project area a Mandatory Inclusionary Housing (MIH) area. Such actions would facilitate the development of a six-story, commercial and residential building with approximately 43,815 square feet (sq. ft.) of zoning floor area in Brooklyn Community District 12 (CD 12). The building would have frontage on both 39<sup>th</sup> Street and 9<sup>th</sup> Avenue, and would result in approximately 40 dwelling units. According to MIH Option 1, 25 percent of the residential floor area, or an estimated 10 units, would be affordable to households earning an average 60 percent of the Area Median Income (AMI). The development will provide approximately 8,550 sq. ft. of ground-floor commercial space which is currently envisioned for supermarket use. The development does not intend to include commercial or residential parking.

BROOKLYN COMMUNITY DISTRICT NO. 12

BOROUGH OF BROOKLYN

**RECOMMENDATION**

APPROVE  
 APPROVE WITH  
MODIFICATIONS/CONDITIONS

DISAPPROVE  
 DISAPPROVE WITH  
MODIFICATIONS/CONDITION

SEE ATTACHED

BROOKLYN BOROUGH PRESIDENT

August 20, 2018

DATE

## **RECOMMENDATION FOR 3901 9<sup>TH</sup> AVENUE REZONING – 180186 ZMK, 180187 ZRK**

39 Group Inc. submitted applications pursuant to Sections 197-c and 201 of the New York City Charter for zoning map and text amendments to change from M1-2 to R7A a property bounded by New Utrecht and 9<sup>th</sup> avenues, and 39<sup>th</sup> Street, to establish a C2-4 district within the rezoning boundary, and to designate the project area a Mandatory Inclusionary Housing (MIH) area. Such actions would facilitate the development of a six-story commercial and residential building with approximately 43,815 square feet (sq. ft.) of zoning floor area in Brooklyn Community District 12 (CD 12). The building would have frontage on both 39<sup>th</sup> Street and 9<sup>th</sup> Avenue, and would contain approximately 40 dwelling units. According to MIH Option 1, 25 percent of the residential floor area, or an estimated 10 units, would be affordable to households earning an average 60 percent of the Area Median Income (AMI). The development will provide approximately 8,550 sq. ft. of ground-floor commercial space, which is currently envisioned for supermarket use. The development does not intend to include commercial or residential parking.

On July 11, 2018, Brooklyn Borough President Eric L. Adams held a public hearing on these zoning map and text amendments.

In response to Borough President Adams' inquiry regarding the qualifying income range for prospective households based on household size, the anticipated rents based on the number of bedrooms, and the distribution of units by bedroom size, the applicant's representative stated that the development will contain 40 units, with 10 designated as affordable pursuant to MIH Option 1. Of these, four units will be one-bedroom apartments and six units will be two-bedroom apartments.

The development would offer four apartments at 40 percent AMI, including one one-bedroom and three two-bedroom units. At this AMI tier, rents will range from \$667 to \$810 for households earning between \$29,240 and \$41,720. At 60 percent AMI, the building would provide three apartments, including one one-bedroom and two two-bedroom units, with rents ranging from \$1,058 to \$1,280 for households earning between \$43,860 and \$62,580. At 80 percent AMI, the building would provide three apartments, including two one-bedrooms and one two-bedroom units, with rents ranging from \$1,509 to \$1,820 for households earning between \$58,480 and \$83,440.

In response to Borough President Adams' inquiry as to whether one of the community's affordable housing administering agents would be used in the tenant selection process in order to ensure the highest level of participation from CD 12, the representative stated that the developer has not identified a nonprofit administering agent, but is committed to working with the New York City Department of Housing Preservation and Development (HPD), the Brooklyn Borough President's Office, and the office of Council Member Carlos Menchaca to identify an appropriate entity.

In response to Borough President Adams' inquiry regarding the applicant's marketing strategy, and whether it would include a financial literacy campaign to assist local residents in becoming lottery-eligible, the representative expressed that the preferred nonprofit administering agent would provide a robust financial literacy program.

In response to Borough President Adams' inquiry regarding the incorporation of sustainable features such as blue, green, or white roof coverings, passive house design, permeable pavers, rain gardens, and/or solar panels, the representative stated intent to include solar panels and a green roof in the proposed development. The owner will further explore stormwater management measures such as rain gardens.

In response to Borough President Adams' inquiry as to the mechanism that would guarantee that the proposed commercial space is leased to a supermarket tenant, the time commitment that would be reserved to secure a supermarket, and the duration of lease that the applicant would be willing to offer a supermarket, the representative disclosed that the applicant has had preliminary discussions with some supermarket owners but has not reached an agreement at this time. The representative confirmed that the commercial space was envisioned for a supermarket, which was deemed appropriate in this area.

In response to Borough President Adams' inquiry regarding the inclusion and participation of minority- and women-owned business enterprises (MWBEs) and locally-owned business enterprises (LBEs) in the construction process, the representative expressed that the developer would make strong efforts to utilize MWBE businesses where possible, in accordance with Borough President Adams' policies.

### **Consideration**

Brooklyn Community Board 12 (CB 12) voted to approve this application on June 25, 2018.

The proposed rezoning area covers the applicant's lot and all or part of six other lots, facing 9<sup>th</sup> Avenue, 39<sup>th</sup> Street, and New Utrecht Avenue. The development site consists of one lot, comprising approximately 9,525 sq. ft. with 95 feet of frontage on 9<sup>th</sup> Avenue, and 100 feet of frontage along 39<sup>th</sup> Street. It is currently used as an open parking area for commercial automobile sales, and contains a one-story building.

The six non-applicant lots are located within or predominantly within an M1-2 district, which extends 95 feet southerly to the interior lot line of the development site, and does not permit residential floor area. While commercial FAR is permitted, there are some use exclusions and size limits to certain commercial uses. Beyond 95 feet from 39<sup>th</sup> Street, the lots are zoned R6 with a C2-3 commercial overlay on New Utrecht Avenue, though for three of the four lots within the R6/C2-3 district it affects their rear portions that extend from the M1-2 district.

According to New York City Zoning Resolution (ZR) Section 77-11 Conditions for Application of Use Regulations of the Entire Zoning Lot, five of the lots adjacent to the development site include three that would remain split into two zoning districts, which means that all subsequent development would be pursuant to the proposed R7A/C2-4 MIH zoning. The adjacent referenced lots are developed as follows: 914 39<sup>th</sup> Street encompassing approximately 1,900 sq. ft. is improved with a one-story commercial building; 3902 New Utrecht Avenue encompassing approximately 1,500 sq. ft. contains a three-story mixed-use building; 3906 New Utrecht Avenue encompassing approximately 1,973 sq. ft. is improved with a three-story commercial and residential building; 3908 New Utrecht Avenue encompassing approximately 1,745 sq. ft. contains a three-story mixed-use building, and 3910 New Utrecht Avenue encompassing approximately 1,672 sq. ft. is improved with a three-story commercial and residential building.

The surrounding context includes a mix of commercial, manufacturing, and residential uses. There are multi-family homes south of 40<sup>th</sup> Street, and east and west of 9<sup>th</sup> Avenue, as well as commercial and industrial businesses north and west of the development site. Nearby transportation and utilities uses include the 9<sup>th</sup> Avenue subway station and the New York City Transit (NYCT) 36<sup>th</sup>/38<sup>th</sup> Street Yard, which extends from 7<sup>th</sup> to 9<sup>th</sup> avenues. Open space resources include Heffernan Triangle and Green-wood Cemetery, which are both located north of the site.

Under an R7A/C2-4 MIH district, the requested R7A MIH zoning permits a maximum height of 95 feet, and nine stories with a qualifying ground floor. However, according to the application document, the proposed development would be constructed to the maximum permitted FAR of 4.6 and contain 43,815 sq. ft. of zoning floor area, while merely rising to a height of 75 feet along

both 9<sup>th</sup> Avenue and 39<sup>th</sup> Street, in a building containing five stories of apartments above ground-floor and cellar commercial space. The building would have a qualifying ground floor, with a complying second floor level of at least 15 feet, containing 8,557 sq. ft. of the total 17,522 sq. ft. (including cellar space) for commercial use.

The development would contain 40 dwellings, with 30 offered as market rate and 10 as affordable according to MIH. The development's commercial ground floor is envisioned for supermarket use, and would be accessible via entrances on 9<sup>th</sup> Avenue and 39<sup>th</sup> Street. The project would be pursuant to ZR sections 36-232 (a) and 25-261 waivers for commercial and residential parking requirements.

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

According to MIH Option 1, the development rights generated from the R7A section of the site would result in, at minimum, 25 percent of the residential zoning floor area made permanently affordable according to MIH. Development adhering to the MIH program is consistent with Borough President Adams' policy for affordable housing developments to remain permanently affordable.

Brooklyn is one of the fastest-growing communities in the New York metropolitan area, and the ongoing Brooklyn renaissance has ushered in extraordinary changes that were virtually unimaginable even a decade ago. Unfortunately, Brooklyn's success has led to the displacement of longtime residents who can no longer afford to live in their neighborhoods. Borough President Adams is committed to addressing the borough's affordable housing crisis through the creation and preservation of needed affordable housing units for very low- to middle-income Brooklynites. Borough President Adams, therefore, supports developments that provide housing opportunities to a diverse range of household incomes, allowing a wide range of households to qualify for affordable housing through the City's affordable housing lottery.

The affordability options of the MIH program provide a range of opportunities to address the need for housing that serves a broad range of diverse incomes, consistent with Borough President Adams' objectives to provide affordable housing to households through various income band targets. As a result, the redevelopment of 3901 9<sup>th</sup> Avenue would target units to households at multiple income tiers through the affordable housing lottery.

Borough President Adams is supportive of increasing density in proximity to areas well-served by public transit. The site is accessible via the 6<sup>th</sup> Avenue Express D train, which stops at 9<sup>th</sup> Avenue, and the B35 bus, which runs along 39<sup>th</sup> Street and directly in front of the proposed development.

Borough President Adams' 2014 housing report entitled "Housing Brooklyn: A Road Map to Real Affordability for Brooklynites," which examined underdeveloped sites in Brooklyn, suggested decking over the New York City Transit BMT Yards along 37<sup>th</sup> Street as a means to achieve a significant number of affordable housing units. The proposed development is consistent with Borough President Adams' policies to realize greater density along this corridor served by this subway station. Such developments can provide an impetus for creative utilization of existing rail infrastructure air space above rail yard corridors in a manner consistent with the Metropolitan

Transportation Authority's (MTA) initiatives along the shared Long Island Rail Road (LIRR) and MTA Sea Beach Division right-of-way between 61<sup>st</sup> and 62<sup>nd</sup> Streets in CD 10.

Borough President Adams is generally supportive of the proposed development. He believes that there are opportunities to improve the proposal while furthering a range of his policies such as setting aside space for an affordable supermarket, local cultural, or maker spaces on the commercial ground and cellar floors, securing a family-oriented bedroom mix, maximizing community participation to obtain the affordable housing units, advancing the Vision Zero agenda, incorporating resilient and sustainable energy and stormwater practices, and promoting a high level of LBE/MWBE hiring.

**Set Aside Portion of Commercial Space for an Affordable Supermarket and/or Specific Commercial Service/Light Industrial Establishments and/or Local Cultural Entities**

Borough President Adams supports the inclusion of ground-floor non-residential space in the proposed development, and believes that such permitted use is an important opportunity to enliven the streetscape of 39<sup>th</sup> Street, which is characterized by semi-industrial uses, interspersed with residential ones. By providing a more active streetscape, permitted non-residential ground-floor space has the potential to not only activate the street but also generate more pedestrian foot traffic and an overall brighter, livelier, and safer atmosphere. Such efforts would also supplement existing commercial uses along 9<sup>th</sup> Avenue, as well as serve those who access subway service at the 9<sup>th</sup> Avenue subway station.

It is one of Borough President Adams' policies to review all land use applications to determine whether it is appropriate to include a supermarket within proposed plans due to his concern about limited access to affordable fresh food stores in many Brooklyn neighborhoods. In order for all of Brooklyn to flourish, it is imperative that the borough's residents have an adequate supply of grocery stores and supermarkets in their neighborhoods that provide affordable and fresh foods. Access to healthy food options, whether achieved by creating more options and/or maintaining access to healthy food options, is a top priority for Borough President Adams.

The proposed development is situated at the boundary of two densely-populated neighborhoods, Borough Park and Sunset Park. The site's location makes it eligible for Food Retail Expansion to Support Health (FRESH) discretionary tax incentives, and the proposed 8,550 sq. ft. commercial ground floor and/or its 8,965 sq. ft. commercial cellar floor provides an opportunity to establish a supermarket in the development. While there is a small supermarket nearby, the area may benefit from an additional affordable supermarket at 3901 9<sup>th</sup> Avenue that would serve a range of incomes, while meeting additional demand for fresh and quality food options.

Borough President Adams is aware that there are some supermarket operators that occupy smaller spaces while providing locally affordable goods and services. Such operators have a significant presence in areas of Brooklyn typically underserved by larger supermarkets. He, therefore, encourages the applicant to make a demonstrated effort to reach out to supermarket operators of smaller establishments that feature affordable and healthy food so as to better serve the Borough Park and Sunset Park communities. His office is available to facilitate contact with such operators and support organizations in order to establish an affordable supermarket at 3901 9<sup>th</sup> Avenue. He believes that such supermarket should be consistent with ZR section 63-01 to be at least 6,000 sq. ft. in commercial floor area or cellar space, to utilize at least 50 percent of retail space for a general line of food products, and to allocate at least 30 percent of such space for the sale of perishable goods, of which at least 500 sq. ft. must be dedicated toward the sale of fresh produce.

Borough President Adams understands that industrial advocates are often concerned by the reduction of land that remains available for more traditional industrial use. He believes that the reduction of land zoned for manufacturing use could be offset by requiring a percentage of the proposed commercial

floor area to be set aside for specific small businesses that would be complementary to existing uses in the M1-2 district. According to the ZR, the proposed commercial overlay would permit uses such as studios for art, dancing, music, and theatrical use, as well as service establishments, contractor

showrooms, medical laboratories, and wholesale establishments, all uses that might be located in a manufacturing area to provide employment opportunities consistent with the maker economy. Therefore, as a means to promote maker jobs, in addition or in lieu of an affordable supermarket, Borough President Adams believes that the combined 17,515 sq. ft. commercial ground and cellar floors could include space dedicated to providing opportunities for such establishments.

It is also one of Borough President Adams' policies to assist community-based non-profit organizations with securing affordable space. These organizations play an important role in the neighborhoods they serve, though it is too often a challenge to secure sufficient affordable space to grow and maintain their operations. Many cultural organizations have contacted Borough President Adams seeking assistance in securing space to expand and sustain their programming. In response to those concerns, Borough President Adams' policy is to review discretionary land use actions for their appropriateness to promote cultural activities.

In June 2016, Borough President Adams released "All the Right Moves: Advancing Dance and the Arts in Brooklyn," a report examining the challenges facing artists in the borough, along with accompanying recommendations. The report highlighted the benefits of arts and dance, including maintaining physical fitness and enjoying creative self-expression, as well as contributions to the vibrant culture of Brooklyn. Borough President Adams finds many challenges facing the local arts community, such as an absence of diversity — fewer than half of the individuals working in dance in Brooklyn are people of color based on 2000 United States Census data. Additionally, funding for the arts has decreased dramatically in New York City in recent years, including by 37 percent from the New York State Council of the Arts (NYSCA), 15 percent from the National Endowment for the Arts (NEA), and 16 percent from the New York City Department of Cultural Affairs (DCLA).

Data show that such cultural activities create a variety of positive contributions, including combating the borough's high rate of obesity — as of 2016, 61 percent of adults are overweight or obese, according to the New York State Department of Health (NYSDOH) — and helping children succeed in school, a finding supported by research released by the Citizens' Committee for Children of New York, Inc. Demand for cultural programs continues to grow across Brooklyn. A 2015 report from the Center for an Urban Future found a 20 percent increase in attendance at events organized by local cultural institutions since 2006.

In addition or in lieu of any of the above commercial uses, Borough President Adams believes that the combined 17,515 sq. ft. commercial ground and cellar floors would provide an opportunity for local arts or cultural uses including dance organizations.

Therefore, prior to considering the application, the City Council should obtain commitments in writing from the developer, 39 Group Inc., that clarify how it would memorialize the extent that it would set aside a portion of the commercial space for an affordable supermarket of not less than 6,000 sq. ft. and/or Use Group (UG) 7 service establishments or UG 9 medical labs, contractor show rooms, studios for artists, artisans, and/or local cultural non-profit organizations such as arts and/or dance entities based on offering below-market lease terms as warranted.

To the extent that the City Council seeks to provide below-market rents to accommodate for such arts and/or cultural organizations, the developer should actively solicit such organizations, based on reasonable lease terms, as determined in consultation with CB 12 and local elected officials.

### **Bedroom Mix**

A recent report has identified that rent-burdened households, which typically represent those applying to the City's affordable housing lotteries, are more likely to require family-sized units. Therefore, Borough President Adams seeks for proposed developments to achieve an affordable unit mix that would adequately reflect the needs of low- to middle-income rent-burdened families. Borough President Adams believes that right-sizing the bedroom distribution should be a higher priority than maximizing the number of affordable housing units.

Borough President Adams believes that discretionary land use actions are appropriate opportunities to advance policies that constrain what would otherwise be permitted as-of-right. As represented by the applicant, six out of the 10 projected affordable apartments would be two-bedroom units, though such representation is not legally-binding.

The proposed rezoning presents an opportunity to assure that such representation of accommodations for family-sized apartments is consistent with Borough President Adams' policy for advocating for having at least 50 percent two- or three-bedroom affordable housing units and at least 75 percent one or more bedroom affordable housing units, consistent with the zoning text for MIH floor area, pursuant to ZR Section 23-96(c)(1)(ii). 39 Group Inc. presented a non-binding family-oriented affordable housing bedroom mix consistent with Borough President Adams' policies.

In order to ensure that the envisioned family-sized units are provided in the development, Borough President Adams believes that prior to considering the application the City Council obtain commitments in writing from the developer, 39 Group Inc., that clarify how it would memorialize a bedroom mix having at least 50 percent two- or three-bedroom affordable housing units and at least 75 percent one or more bedroom affordable housing units.

### **Maximizing Community Participation of the MIH Affordable Housing**

The New York City Zoning Resolution (ZR) requires the affordable housing units to be overseen by a non-profit administering agent, unaffiliated with the for-profit developing entity, except when otherwise approved by the New York City Department of Housing Preservation and Development (HPD). Such administering non-profit becomes responsible for ensuring that the affordable housing remains in accordance with its regulatory agreement, which governs the development's affordable housing plan. These tasks include verifying a prospective tenant household's qualifying income, and approving the rents of such affordable housing units. The administering non-profit is responsible for submitting an affidavit to HPD attesting that the initial lease-up of the affordable housing units is consistent with the income requirements, and for following up with annual affidavits to ensure conformity.

Various non-profits have proven track records of successfully marketing affordable housing units, as well as promoting affordable housing lottery readiness through educational initiatives. It is Borough President Adams' policy to advocate for affordable housing non-profits to play a contributing role in maximizing community participation in neighborhood affordable housing opportunities, including serving as non-profit administering agents for new developments involving affordable housing.

Borough President Adams believes that prior to considering the application, the City Council should obtain in writing from the developer, 39 Group Inc., commitments that clarify how it would memorialize utilizing one or more locally-based affordable housing development non-profits to serve as the administering agent and have such entities play a role in promoting affordable housing lottery readiness.

### **Advancing Vision Zero Policies**

Borough President Adams is a supporter of Vision Zero, one of which is to extend sidewalks into the roadway as a means of shortening the path where pedestrians cross in front of traffic lanes. These

sidewalk extensions, also known as bulbouts or neckdowns, make drivers more aware of pedestrian crossings and encourage them to slow down.

In 2015, Borough President Adams also launched his own initiative, Connecting Residents on Safer Streets (CROSS) Brooklyn. This program supports the creation of bulbouts or curb extensions at dangerous intersections in Brooklyn. During the program's first year, \$1 million was allocated to fund five dangerous intersections in Brooklyn. By installing more curb extensions, seniors will benefit because more of their commutes will be spent on sidewalks, especially near dangerous intersections. At the same time, all users of the roadways will benefit from safer streets.

39<sup>th</sup> Street is a designated New York City local truck route with multiple intersections lacking traffic controls such as stop signs or traffic lights. Given the mixed commercial, manufacturing, and residential character of 39<sup>th</sup> Street, the foot traffic stemming from the 9<sup>th</sup> Avenue subway station, the residents expected to occupy the proposed development, together with potential users of its retail establishments, it is important to advance improvements that promote pedestrian safety at crossings along 39<sup>th</sup> Street.

Borough President Adams believes there is an opportunity to implement the provision of a curb extension, either as a raised extension of the sidewalk or as a protected area as defined by the installation of temporary perimeter bollards bordering a section of roadbed where gravel and/or paint is applied, per his Connecting Residents on Safer Streets (CROSS) Brooklyn initiative, at the intersection of 9<sup>th</sup> Avenue and 39<sup>th</sup> Street. However, the presence of a bus stop at the northeast corner of 9<sup>th</sup> Avenue and 39<sup>th</sup> Street necessitates that such curb extension be built out onto the 9<sup>th</sup> Avenue-facing side of the applicant's property, so as not to interfere with the flow of traffic along 39<sup>th</sup> Street.

Borough President Adams recognizes that the costs associated with construction of sidewalk extensions can be exacerbated by the need to modify infrastructure and/or utilities. Therefore, where such consideration might compromise feasibility, Borough President Adams urges DOT to explore the implementation of either protected painted sidewalk extensions defined by a roadbed surface treatment or sidewalk extensions as part of the Builders Pavement Plan. If the implementation meets DOT's criteria, the agency should enable 39 Group Inc. to undertake such improvements after consultation with CB 12, as well as local elected officials, as part of its Builders Pavement Plan. Where that is not feasible, as the implementation of a sidewalk extension through roadbed treatment requires a maintenance agreement that indemnifies the City from liability, contains a requirement for insurance, and details the responsibilities of the maintenance partner, Borough President Adams would expect 39 Group Inc. to commit to such maintenance as an ongoing obligation.

Therefore, prior to considering any rezoning, the City Council should seek a demonstration from 39 Group Inc. of their implementation of CROSS Brooklyn in coordination with the New York City Department of Environmental Protection (DEP) and DOT to install curb extensions either as part of a Builders Pavement Plan or as treated roadbed sidewalk extensions. The City Council should further seek demonstration of the developer's commitment to enter into a standard DOT maintenance agreement for the intersection of 9<sup>th</sup> Avenue and 39<sup>th</sup> Street. Furthermore, DOT should confirm that implementation will not proceed prior to consultation with CB 12 and local elected officials.

#### **Advancing Resilient and Sustainable Energy and Stormwater Management Policies**

It is Borough President Adams' sustainable energy policy to promote opportunities that utilize blue/green/white roofs, solar panels, and/or wind turbines, as well as passive house construction. He encourages developers to coordinate with the New York City Mayor's Office of Sustainability, the New

York State Energy Research and Development Authority (NYSERDA), and/or the New York Power Authority (NYPA) at each project site. Such modifications tend to increase energy efficiency and reduce a development's carbon footprint. The proposed development offers opportunities to explore resiliency

and sustainability measures such as incorporating blue/green/white roof finishes, passive house construction principles, solar panels, and wind turbines in the development.

Furthermore, as part of his flood resiliency policy, Borough President Adams also encourages developers to incorporate permeable pavers and/or establish rain gardens that advance the New York City Department of Environmental Protection (DEP) green infrastructure strategy. Blue/green roofs, permeable pavers, and rain gardens would deflect stormwater from the City's water pollution control plants. According to the "New York City Green Infrastructure 2016 Annual Report," green infrastructure plays a critical role in addressing water quality challenges and provides numerous economic, environmental, and social co-benefits.

Borough President Adams believes it is appropriate for the developer to engage government agencies, such as the Mayor's Office of Sustainability, NYSEDA, and/or NYPA, to give consideration to government grants and programs that might offset costs associated with enhancing the resiliency and sustainability of this development site. One such program is the City's Green Roof Tax Abatement (GRTA), which provides a reduction of City property taxes by \$4.50 per square-foot of green roof, up to \$100,000. The DEP Office of Green Infrastructure advises property owners and their design professionals through the GRTA application process. Borough President Adams encourages the developer to reach out to his office for any help in opening dialogue with the aforementioned agencies and further coordination on this matter.

The proposed development offers opportunities to explore resiliency and sustainability measures such as incorporating blue/green/white roof finishes, passive house construction principles, and solar panels in the development. The required Builders Pavement Plan provides an opportunity to incorporate a rain garden along the development's 9<sup>th</sup> Avenue frontage, as the presence of the bus stop on 39<sup>th</sup> Street would preclude integration of a rain garden. Such efforts could help advance DEP green water/stormwater strategies, enhancing the operation of the Owls Head Water Pollution Control Plant during wet weather. Such rain gardens have the added benefit of serving as a streetscape improvement.

Therefore, prior to considering the application, the City Council should obtain in writing from the applicant, 39 Group Inc., commitments that clarify how it would memorialize integrating resiliency and sustainability features at 3901 9<sup>th</sup> Avenue.

### **Jobs**

Borough President Adams is concerned that too many Brooklyn residents are currently unemployed or underemployed. It is his policy to promote economic development that creates more employment opportunities. According to the Furman Center's "State of New York City's Housing and Neighborhoods in 2015," double-digit unemployment remains a pervasive reality for several of Brooklyn's neighborhoods, with more than half of the borough's community districts experiencing poverty rates of nearly 25 percent or greater. Prioritizing local hiring would assist in addressing this employment crisis. Additionally, promoting Brooklyn-based businesses including those that qualify as Locally-Owned Business Enterprises (LOBEs) and Minority- and Women-Owned Business Enterprises (MWOBEs) is central to Borough President Adams' economic development agenda. This site provides opportunities for the developer to retain a Brooklyn-based contractor and subcontractor, especially those that are designated LOBEs consistent with section 6-108.1 of the City's Administrative Code, and MWOBEs that meet or exceed standards per Local Law 1 (no less than 20 percent participation).

Borough President Adams believes that prior to considering the application, the City Council should obtain commitments in writing from the applicant, 39 Group Inc., to memorialize retention of Brooklyn-based contractors and subcontractors, especially those that are designated Locally-Owned Business Enterprises (LOBE) consistent with section 6-108.1 of the City's Administrative Code and Minority- and

Women-Owned Business Enterprises (MWBE) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency.

**Community Preference: Proximity to Community District Boundary**

City local preference policy is at times unfair to community residents who live just beyond the border of a community district. Residents living in nearby blocks, just within CD 7, are also in need of quality affordable housing, especially considering the local subway station is shared by residents of both community districts, making the development apparent to residents of both neighborhoods. Given that this development site is near the border shared with CD 7, HPD should extend the local preference to both CDs 7 and 12. This is particularly important given that the residential neighborhoods of Borough Park and Sunset Park both include small buildings that are not subject to rent protection laws. Borough President Adams believes this development has the potential to lend itself as a relocation resource to those at risk for displacement.

Therefore, prior to the vote of the City Council, HPD should provide a written commitment advising that local preference be given to community residents of both CDs 7 and 12.

**Recommendation**

Be it resolved that the Borough President of Brooklyn, pursuant to section 197-c of the New York City Charter, recommends that the City Planning Commission and City Council approve this application with the following conditions:

1. That prior to considering the application, the City Council obtain commitments in writing from the developer, 39 Group Inc., that clarify how it would memorialize the extent that it would:
  - a. Set aside a portion of the commercial space for an affordable supermarket and/or Use Group (UG) 7 service establishments or UG 9 contractor show rooms, medical laboratories, studios for artists, artisans, and/or local arts, cultural, or dance organizations.
  - b. Memorialize a bedroom mix having at least 50 percent two- or three-bedroom affordable housing units and at least 75 percent one or more bedroom affordable housing units.
  - c. Utilize a combination of locally-based affordable housing development non-profits to serve as the administering agent, and having one or more such entities play a role in promoting affordable housing lottery readiness.
  - d. Commit to Connecting Residents on Safer Streets (CROSS) Brooklyn coordination with the New York City Department of Transportation (DOT) and the New York City Department of Environmental Protection (DEP) to implement curb extensions as part of a Builders Pavement Plan and/or as treated roadbed sidewalk extensions, with a developer commitment to enter into a standard DOT maintenance agreement for the southeast intersection of 9<sup>th</sup> Avenue and 39<sup>th</sup> Street, with the understanding that DOT implementation would not proceed prior to consultation with Brooklyn Community Board 12 (CB 12) and local elected officials.
  - e. Explore additional resiliency and sustainability measures such as incorporating rain gardens, blue/green/white roof treatment, and/or solar panels.
  - f. Retain Brooklyn-based contractors and subcontractors, especially those that are designated Local Business Enterprises (LBEs) consistent with section 6-108.1 of the City's Administrative

Code and Minority- and Women-Owned Business Enterprises (MWBES) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency

2. That the New York City Department of Housing Preservation and Development (HPD) extend local preference to include residents of both Brooklyn Community Districts 7 and 12 (CDs 7 and 12) in writing to City Council