Community/Borough Board Recommendation

Pursuant to the **U**niform **L**and **U**se **R**eview **P**rocedure

Application #: **N 160051 ZRY**	Project Name: **Mandatory Inclusionary Housing**
CEQR Number: 16DCP028Y	Borough(s): Brooklyn
	Community District Number(s): 14

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

SUBMISSION INSTRUCTIONS

1. 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** 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"
2. 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:

Brooklyn Community Board 14.
Please see attached summary of conditions on Mandatory Inclusionary Housing Text Amendment.

Applicant(s):	**Applicant's Representative:**
NYC Department of City Planning 120 Broadway, 31st Floor New York, NY 10271	Jonah Rogoff Brooklyn Office NYC Department of City Planning 16 Court Street, Suite 705 Brooklyn, NY 11241

Recommendation submitted by:
Brooklyn Community Board 14

Date of public hearing: October 26, 2015 **Location:** 810 East 16th Street, Brooklyn, NY 11230

Was a quorum present? **YES** ☐ **NO** ☐ *A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.*

Date of Vote: November 9, 2015 **Location:** 1600 Avenue L, Brooklyn NY 11230

RECOMMENDATION

☐ Approve ☐ Approve With Modifications/Conditions
☐ Disapprove ☐ Disapprove With Modifications/Conditions

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

Voting

 # In Favor: 2 **# Against:** 29 **# Abstaining:** 3 **Total members appointed to the board:** **46**

Name of CB/BB officer completing this form	*Title*	*Date*
Alvin M. Berk	Chairman	11/27/2015

Brooklyn Community Board 14
Summary of Conditions
Mandatory Inclusionary Housing (MIH) N 160051 ZRY

Background

Zoning for Quality and Affordability (ZQA) and Mandatory Inclusionary Housing (MIH) are complementary city-wide zoning text changes that share the stated purpose of incentivizing affordable housing. Both enable larger buildings to be constructed: ZQA by raising height limits for affordable or senior housing or a long-term care facility, and MIH by allowing a building of more than 10 units to grow by (typically) 50% or more in bulk if it uses 25%-30% of its floor area for affordable housing and requires a rezoning or special permit.

The Department of City Planning (DCP) emphasizes that MIH and ZQA are designed to work together – so much so that DCP's descriptive literature portrays them as two interlocking pieces of a four-piece jigsaw puzzle (City Housing Subsidies and 421-a Reform are the remaining pieces depicted).

Characterizing MIH and ZQA as distinct but interdependent initiatives, DCP has chosen to certify them simultaneously for concurrent but separate public review. This decision has several important implications. It:

- Conveys so much information at once – hundreds of pages - that all but professional planners and land use experts are challenged to understand the implications of the proposed changes;
- Allows DCP to present MIH as a generic action under CEQR, the City Environmental Quality Review, thereby obviating the need to predict adverse environmental impacts of specific projects required under and incentivized by MIH;
- May generate objections that the separate CEQR consideration of MIH and ZQA constitutes segmentation, as discussed in Section 130 of the 2014 CEQR Technical Manual;
- Encourages community boards and others to rely heavily on DCP-prepared presentations and summary materials, which may not emphasize important information;
- Makes it impractical for reviewers to evaluate the two proposals independently.

Accordingly, Brooklyn Community Board 14 (CB14) will ask a uniform group of questions about MIH and ZQA, and will offer answers specific to each proposal:

1. Will they work to increase affordable housing?
2. Will they change the character of the community district's neighborhoods?
3. Will they create challenges for service delivery and necessary infrastructure?
4. Will they affect the public's ability to participate in the City's land use process?

Mandatory Inclusionary Housing

1. **Will MIH work to increase affordable housing?**

CB14 believes that MIH needs to be substantially modified to work effectively to support the goal of creating affordable housing.

As a first step, DCP should increase the number of MIH options, to serve the range of diverse needs within and between neighborhoods.

Second, DCP should require that off-site MIH developments set aside an additional percentage of affordable units above the on-site requirement. This will recognize that off-site options may benefit from lower property acquisition and construction costs.

Third, DCP should inoculate MIH against lengthy negotiations and legal challenges by clarifying its rules. For example, MIH bars practices such as poor doors (in the same building), which are said to "stigmatize" affordable housing occupants, but states, in Section 23-94(f)(2), that the Department of Housing Preservation & Development (HPD) may, in some separate-building circumstances, determine "that the primary entrance is located in a manner that does not stigmatize occupants of affordable housing units." This could prompt challenges by affordable housing advocates, or developers.

Moreover, DCP has admitted that the separate building on separate lot option has not been popular among those developers who have participated in the voluntary inclusionary housing program, because such buildings are not eligible for 421-a tax benefits. DCP says that NYC has no plans to seek changes in State regulations to solve this conundrum.

Finally, MIH does not require that the stipulated affordable housing actually be built. It permits developers of buildings between 11 and 25 units to seek approval to make an *in lieu* contribution to an affordable housing fund. This provision could induce a developer to try to buy the right to build a bulkier building without including any affordable housing.

2. **Will MIH change the character of the community district's neighborhoods?**

The effect of MIH on Brooklyn Community District 14 (CD14) would depend on then-current affordable housing policy, market conditions, availability and terms of governmental subsidies such as 421-a, and on land availability and construction opportunities.

According to DCP, MIH's near-term impacts on Brooklyn CD14 are expected to be minimal, because Midwood and Flatbush underwent rezoning in 2005 and 2009, respectively, and are not currently targeted for further changes. But administration policy could shift, or a private action could be initiated by a developer. Any new rezoning or large-scale special permit would trigger the terms of MIH.

MIH – like ZQA - can work to support its stated purpose only if inclusion of affordable housing adds to the profitability of a development project. Presumably, this would be accomplished by allowing additional bulk without commensurately increasing "fixed" costs such as for land acquisition. Given the presumption of increased profitability, MIH would create a financial incentive for developers to seek the stipulated rezoning action. Any incentive to initiate rezoning changes neighborhood character.

Notwithstanding DCP's expectation that MIH would have minimal near-term effect on CD14, a review of the district's current zoning suggests that CD14 includes areas that could become rezoning targets under MIH, if other conditions favor residential development. These areas include the following zones:

- R7-1 between Woodruff Avenue and Crooke Avenue, west of Ocean Avenue**
- C4-2 Albemarle Road to Beverley Road, Flatbush Avenue to Bedford Avenue, including Sears lot**
- R6 along Avenue I between Flatbush Avenue and East 29 Street., and south on Nostrand Avenue to Avenue L**
- M1-1 near Avenue M, Avenue L, East13 Street, and Q/B subway line
- R6 on Elm Avenue, East 12 Street to East 13 Street*
- R4 south of Brooklyn College
- R5 in Midwood

Zones marked with an asterisk (*) already have been identified as eligible for updating of the Quality Housing Option. The allowable base height could be increased in zones marked with two asterisks (**).

Brooklyn Community Board 14 believes that MIH, which enables buildings to have 50% or more additional floor area, could incentivize rezoning actions and yield substantial character change and population growth in Midwood and northeast Flatbush.

3. Will MIH create challenges for service delivery and necessary infrastructure?

The history of major private development in NYC is that it is the prerogative of incumbent administrations to consider and authorize such development, and it is the responsibility of their successors to provide the public funding for the municipal services occasioned by such development. This separation contributes heavily to the City's burgeoning debt service budget and is a danger to the City's fiscal solvency.

On a local level, Community Board 14 is concerned that required adjustments to City services and other infrastructure components, e.g., utilities, would lag far behind the population growth enabled by MIH. This would create service delivery problems for all areas of CD14.

4. **Will MIH affect the public's ability to participate in the City's land use process?**

As previously noted, MIH has been designated a "generic action" under the City Environmental Quality Review process, inasmuch as it does not identify specific development sites. This exempts it from the detailed review of adverse environmental impacts.

In principle, a detailed review might be triggered later by a site-specific rezoning application (if needed to qualify for MIH). But this review could be limited to the rezoning action, if the intended development project is filed later. Moreover, most small-scale rezoning actions receive a "negative declaration" at the short environmental assessment statement (EAS) step of the CEQR process, based on a determination that they are too small to have substantial environmental impacts. This would close the book on the public's ability to comment on the environmental impacts of the intended development.

This scenario embodies a major loophole: It does not contemplate a succession of independent small-scale rezoning actions in the same neighborhood, each incentivized by the bulk allowances made as-of-right by MIH.

Thus, at no point would a developer need to disclose an individual project's incremental adverse impacts on, e.g., population density, traffic, parking, light and shade, noise, air and water quality, waste conveyance, etc.

CEQR does not describe a multi-site environmental assessment process for independent private construction projects occurring at different times in a given neighborhood or community district. Yet the cumulative impacts of such projects could be substantial, and could warrant mitigation.

Fortunately, cumulative impacts are well-defined in the State Environmental Quality Review Act (SEQRA). To borrow from a description published by the New York Public Interest Research Group (NYPIRG):

> These are impacts on the environment that result from the incremental or increased impact of an action(s) when the impacts of that action are added to other past, present and reasonably foreseeable future actions. Cumulative impacts can result from a single action or a number of individually minor but collectively significant actions taking place over a period of time. Either the impacts or the actions themselves must be related. When making the determination of significance the lead agency (the agency that coordinates the environmental review) must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions, which are: (i) included in any long-range plan of which the action under consideration is

> a part; (ii) likely to be undertaken as a result thereof; or (iii) dependent thereon. 6 N.Y.C.R.R. 617.7(c)(2).

CB14 questions whether MIH, by incentivizing multiple independent projects in a newly-rezoned area through added bulk in exchange for certain uses, satisfies the criteria in SEQRA for assessment of cumulative impacts, particularly in a single neighborhood where a multi-site rezoning action is initiated, triggering the provisions of MIH.

Brooklyn CB14 urges DCP to find a solution to this need, such as by requiring that each rezoning application be accompanied by a survey of recent and pending rezoning actions and building permits in the same community district or within a stipulated radius, and a determination by the City Planning Commission that the instant rezoning, taken together with recent and pending rezoning actions, would not cause significant cumulative impacts.

Summary: For the reasons stated above, CB14 cannot endorse MIH in its present form.

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