

**Land Use Committee Minutes**  
**December 7, 2020 at 7pm**  
**Meeting held virtually via Zoom**

**Attendance:**

Committee Members: Charles G. Moerdler (chair), Sylvia Alexander, Bob Bender, Bob Fanuzzi, David Gellman, Margaret Della, Rosemary Ginty, Martin Gluck, Dan Padernacht, Julie Reyes, Laura Spalter (ex-officio), Martin Wolpoff, Marvin Goodman, Paul Ellis

Absent members: Tracy Pardo

Guests: Juton Horstman (Dept. of City Planning), M. Joyce (Board Member), Camelia Tepulus ( Board Member), Mariel De La Cruz (Comptroller's Office), Sherida Paulsen (Riverdale Nature Preservancy), Sam Leitdka (Assemblyman Dinowitz's Office) Ciara Gannon (District Manager)

**Zoning for Coastal Flood Resiliency (ZCFR)**

Committee Chair Moerdler convened the meeting at 7:00 pm. There was a public hearing on this citywide text change held on November 30<sup>th</sup>. All open questions directed to DCP have been responded to at this time. A draft proposed resolution was circulated by Chair Moerdler.

Juton Horstman provided additional information on the disaster recovery rules for the proposed text amendment. The Mayor of New York City can always call emergency orders which would put the disaster recovery rules in effect and in turn would remove legislative obstacles necessary to respond to a disaster.

Committee members and guests asked the following questions of Department of City Planning:

- How are these maps different from the FEMA maps? Do these maps override FEMA maps?
- Why can't DCP propose new rules when FEMA releases new flood maps? Why now?
- How will this affect individual homeowners especially in the Marble Hill neighborhood?
- Why are Corlear Ave, Tibbett Ave and other low-lying streets not included in this map?
- What socio- economic impacts will this "unfunded mandate" have on residents of Kingsbridge & Marble Hill?

- What impact will this have on homeowner's insurance and mortgage/refinancing?
- Where does the FEMA community rating come into place with this text amendment proposal?
- Why is DCP rushing this through now?

Discussion of draft resolution circulated by Chair Moerdler:

WHEREAS, pursuant to City Planning N210095 ZRY there has been proposed a Citywide text change in the Zoning Resolution with respect to Coastal Flood Resiliency ("ZCFR") and a public hearing thereon was duly noticed and conducted by the Land Use Committee of Community Board No. 8, Bronx, County ("Land Use" and "Board 8," respectively) on November 30, 2020;

WHEREAS, in addition to previously providing a copy of the proposed ZCFR and of links to the relevant Board 8 maps, representatives of the Department of City Planning ("DCP" or "City Planning" ) at the November 30, 2020 public hearing made a detailed presentation, having previously and thereafter provided additional mapping and other information to Members of Land Use and of the public in response to questions raised by them;

WHEREAS, upon the totality of the presentations made and data provided as noted above, as well as independent research by members of Land Use, the following appear:

1. ZCFR and its mapping data and conclusions appear based on 2007 Federal Emergency Management Agency ("FEMA") data and maps, which are currently scheduled to be revised and updated in 2021;
2. The maps provided to date indicate the specific properties included for coverage under ZCFR by a colored line only and without specificity, some of which was, however, obtainable by inquiry of City Planning representatives and an online link causing at least some meaningful burden to property owners seeking to determine whether their property is or is not included;
3. The language of the proposed ZCFR is cumbersome, if not confusing, as to the bases for action by City agencies in the grant or denial of applications thereunder, let alone the applicable standards governing determinations respecting grant or denial; what specific regulations are superseded, and to what extent and under what specific circumstances;
4. The presentations made expressly stated that the proposed ZCFR is intended to and would or could be used under so-called Emergency Declarations to afford remedies or permit governmental action wholly outside issues related to Coastal Flood Resiliency (e.g., Covid-19 circumstances were specifically cited) or even Zoning, but no standards, guidelines, scoping or management were presented respecting the circumstances surrounding invocation of the Emergency, its duration, its scope or remedies and the like.

WHEREAS, after due consideration and debate the Land Use Committee of Board 8 makes the following factual findings based upon the totality of the record before it:

1. Climate change and attendant issues, including Coastal Flooding, their impact and the need for governmental and public response, are undeniable matters of substantial public importance, as is the need that such responses be deliberate, reasoned and as soundly predicated as circumstances and available knowledge permit.
2. The proposed ZCFR is premature and ill-considered in view of the fact that the underlying FEMA maps and data are scheduled for change in less than a year and there presently exist interim regulations and procedures covering most, if not all, the issues and matters proposed to be made “permanent” (the term used by City Planning) by ZCFR;
3. The proposed ZCFR is, according to City Planning, intended to be and can be applied beyond Zoning concerns and even Coastal Flooding and Environmental concerns to as yet unspecified “emergencies,” the nature, temporal and substantive scope of which are unspecified, as are the procedures for the implementation and management of which, thereby affording an unacceptable “blank check” to government that is both legally and philosophically unacceptable in a democratic society;
4. The bases for action and standards upon which decisions are to be rendered on applications under ZCFR are unspecified and thus leave room for unbridled arbitrary and capricious action (for example, the jurisdiction of the Board of Standards and Appeals – which is an agency with significant zoning authority – is inappropriately extended well beyond circumstances involving flood elevation without a showing of justifiable circumstance);
5. The proposed ZCFR permits the superseding of various unspecified regulatory controls with respect to not just zoning but to non-zoning matters and matters unrelated to flood control matters and does not clearly establish circumstances for the temporal or substantive need therefore, the term thereof, the attendant scope, management or governing standards applicable thereto, etc (to illustrate, Special Natural District requirements and zoning provisions designed to facilitate the construction of affordable housing are among the potential casualties of the overly broad provisions here proposed);
6. The proposed ZCFR relegates to at best afterthought basic zoning concepts—the juridical and practical basis of the Zoning Resolution (e.g., Use, parking, side yard and other concerns underlying the Zoning Resolution).

NOW THEREFORE, BE IT RESOLVED THAT the Land Use Committee of Community Board 8, Bronx County, rejects and votes “NO” on the proposed ZCFR Citywide Text Amendment and all of its provisions, without prejudice to a duly notice future timely and appropriate submission.

B. Fanuzzi presented a friendly amendment that would include socio- economic impacts that was accepted by Chair Moerdler. The friendly amendment will be sent to the Board Office in advance of the full board meeting.

Some committee members raised concerns of timeliness of the resolution and would like additional time to review the resolution.

A vote on the resolution was taken:

**Approved** (7): C. Moerdler, R. Ginty, D. Padernacht, M. Goodman, M. Wolpoff, B. Fanuzzi, J. Reyes

**Opposed** (0)

**Abstained** (5): S. Alexander, D. Gellman, M. Della, P. Ellis, B. Bender

*(abstentions were a result of some committee members not having time to review the dense resolution in time for vote)*

The motion passed and the resolution will be sent immediately to the full board. A vote on this resolution will be taken by the Full Board at the December 8<sup>th</sup> meeting.

### **Retaining Wall along Henry Hudson Parkway Service Road**

C. Moerdler reported that the homeowner on Delafield Ave has made major repairs to the fallen retaining wall along the Henry Hudson Parkway Service Road. Chair Moerdler thanked the homeowner, Fieldston Property Owners and community members who made the initial complaint.

A unanimous vote was taken to approve the November Committee Minutes.

The meeting was adjourned at 8:45 pm.

Minutes submitted by C. Gannon, District Manager

Reviewed By: Chuck Moerdler