

Land Use Committee Minutes
Monday, January 12,2022 at 7 pm
Meeting held virtually via Zoom

Attendance:

Committee Members: C. Moerdler (Chair), M. Wolpoff, R. Ginty, S. Alexander, B. Bender, D. Padernacht, D. Gellman, N. Fazio, J.Reyes, C.Tepelus, L.Chong, Laura Spalter (Board Chair, Ex Officio)

Guests: Paula Caplan, Jodie Colon, Christina Carlson, Assembly Member Dinowitz, Abbie Nehring(Riverdale Press), Jesse Lehrer (Assembly Member Dinowitz’s Office), Camila Thomas (DCP)

C. Moerdler called the meeting to order at 7:00 pm.

Discussion of SNAD & Enforcement

The Community Board Office has consistently received tree removal complaints in SNAD zoned areas. C. Moerdler asked residents to continue to call 311 and contact the board office with complaints and photos. The office is working with DOB and DCP regarding the complaints.

The Department of City Planning has appointed a new Bronx Liaison, Camila Thomas. She was in attendance. Moerdler spoke about the need of DCP in this process and asked Ms. Thomas to take notes back to the DCP office.

C. Moerdler presented the following resolution that was previously sent to the committee.

WHEREAS, in the 1970s and 1980s the Department of City Planning (“DCP”) established a set of rules through the creation of three special zoning districts, two in Staten Island and one in the Bronx, designed to “... ensure that neighborhood development and preservation of environmentally sensitive resources are balanced.” (App. 1); and

WHEREAS, those rules, which were embodied in and authorized by the Special Natural Area District, Zoning District Amendments and regulatory measures thereunder (“SNAD”), resulted in the envisioned, according to DCP “... tree-lined streets, the preservation of local wetlands .. and forested parks that, today exemplify, these last remaining and extraordinary green New York City communities.” (id); and

WHEREAS, in 2018 and 2019 DCP, then under a different Municipal Administration, sought to drastically modify and eviscerate SNAD; and

WHEREAS, Bronx Community Board 8, which jurisdictionally embraces the entirety of the Bronx SNAD, and the Community Boards in Staten Island., supported by the Bronx and Staten Island Borough Presidents and elected officials, vigorously opposed such modifications on the ground that they would effectively eliminate the broad natural and environmental preservation intent of SNAD and permit unacceptable environmental consequences that would have an adverse impact on the “extraordinary green New York City communities” that prior Municipal Administrations had carefully fostered and nurtured; and

WHEREAS, by reason of the foregoing effective opposition of the relevant Community Boards, elected officials and public-spirited citizens, DCP withdrew the proposed eviscerating amendments in and about June and October 2019; and

WHEREAS, in September 2021 the previous mayoral Administration, through its Department of Buildings (“DOB”), promulgated a broadly worded administrative scheme termed the Homeowner Relief Program which, without any legislative authorization or mandate, has been and is currently being interpreted as superseding aspects of SNAD by undermining its effective enforcement (App.2); and

WHEREAS, against the background of a markedly increased number of complaints to Community Board 8 concerning documented non-permitted tree removals and other violations of SNAD, the Board most recently received complaints, supported by photographic evidence, concerning unauthorized tree removals at 5501 Palisades Avenue, which is in the Special Natural Area District, called it to the attention of the SNAD enforcement authorities at DOB and was informed by DOB that, while violative of SNAD, they would not issue violations because the provisions of the non-legislatively authorized provisions of DOB’s Homeowner Relief Program immunized the homeowner from a formal violation seeking corrective action for at least 60-days or until such time as DCP acted thereon (App. 3); and

WHEREAS, notwithstanding the likelihood that during the 60-day immunity period, the trees or any remaining trees will have been removed or the proscribed devastation of natural features will have been completed (perhaps irreversibly) and all evidence of unlawful conduct will have vanished, together with the accurate memories of witnesses, the impetus to correction would diminish, and DOB (which has long claimed to lack the ability or manpower to determine and secure appropriate corrective or other action under SNAD and has repeatedly been charged with failure to effectively enforce SNAD) will have undermined SNAD, its environmental responsibilities and its legally mandated mission; and

WHEREAS, the foregoing were expressly called to the attention of the responsible representative of DOB but to no avail; and

WHEREAS, if the real intent of the legally unauthorized Homeowners Relief Program insofar as it relates to enforcement of SNAD was to afford a brief grace period for compliance, such could have been effectuated post-service-of-a-violation by any one or more recognized vehicles (e.g., the brief adjournment of corrective action proceedings involving DCP or calendared OATH or other violation proceedings upon a showing by the property owner that corrective action was demonstrably committed within a reasonable period of time or is underway);

NOW THEREFORE BE IT RESOLVED, Bronx Community Board No. 8

1. Respectfully demands that the Department of Buildings modify and amend the Homeowners Relief Program to make clear that its provisions do not apply to its duty to timely enforce SNAD and, instead, ensure that DOB, its employees and agents forthwith comply with its lawfully mandated responsibility to rigorously and vigorously enforce the letter and intent of SNAD;
2. Calls upon the elected representatives from constituencies in Bronx Community District No. 8 to support the foregoing demands and to introduce and rigorously and vigorously pursue legislation effectuating such demands; and
3. Authorizing the Land Use Committee to retain pro bono counsel to commence and prosecute such proceedings as may in law, equity or otherwise compel the foregoing result;
4. Respectfully request that counsel for DOB work with Bronx Community Board 8 to create a procedure that permits DOB to commence on behalf of the City of New York civil cases against SNAD violators with simplified information based upon information and belief, supported by evidence (including, without limitation, oral, documentary and/or photographic evidence) submitted by witnesses to the infraction.
5. Respectfully request that the the maximum penalty amount for SNAD violations be increased so as to realistically deter violation.

The Committee discussed the resolution at length. B. Bender and D. Gellman suggested changes to the resolution and will send to C. Moerdler. A vote was called for the resolution as amended:

Vote:

Approve: C. Moerdler (Chair), M. Wolpoff, R. Ginty, S. Alexander, B. Bender, D. Padernacht, D. Gellman, N. Fazio, J.Reyes, C.Tepelus, L.Chong,

Oppose:0

Unanimous: 0

DISCUSSION DRAFT -- AFFORDABLE HOUSING RESOLUTION

C. Moerdler shared the following resolution draft finalizing several months of discussion by the committee.

WHEREAS, the current definitional formula for “Affordable Housing” provides in substance that prospective tenants may be charged rentals predicated on the “Average Median Income” in a designated area that incorporates not just the 5 Boroughs of the City of New York but portions of Westchester and Nassau Counties: and

WHEREAS, what is affordable to residents of Manhattan’s Eastside is not necessarily affordable to residents of the South Bronx, and that what is affordable to residents of Riverdale is not necessarily affordable to residents of the South Bronx or portions of Brooklyn, thus illustrating a core deficiency in the affordable housing programs currently in effect; and

WHEREAS, there are reports that the New York City Administration proposes to significantly amend the Zoning Resolution and other municipal ordinances and regulations to encourage the construction of additional affordable housing but lacks either the initiative or power to change the formal definition of affordable housing insofar as it relates to housing in the City of New York as a result of which those truly in need of true affordability in housing rental are often either priced out of the available options or forced to spend more than they can possibly afford;

WHEREAS, the Land Use Committee of Community Board 8, Bronx County supports added construction of affordable housing in and for the City of New York that is truly affordable and, to that end, requests that, at least insofar as it relates to any measures in and by which “affordability” is measured in the City of New York, the applicable definition(s) therefor be officially modified or clarified;

WHEREAS, suggestions for change in the definition of affordable housing have included proposals that include (a) determining affordability by postal codes or Community Board Districts or, as a final resort, the Borough in which the proposed tenant resides or the proposed housing is located, whichever is lower, or (b) some other more meaningful basis than currently is employed, and that consideration should be given to further revising the term to at least creating four affordable categories those with an average median income at or in proximity to the average median income of or not the exceed (1) the prospective or entry level tenants in the 2

NYCCHA developments in or adjacent to the relevant Community Board District in which the new housing is located, (2) residents of Mitchell Lama Housing in or adjacent to the relevant Community Board District in which the new housing is located, (3) a specified percentage of tenancies with average median income in each of the aforementioned categories, which percentage allocations shall be publicly disclosed, and (4) a specified percentage of tenancies with average median income not to exceed 120%-150% of the Average Median Income (“AMI”) of residents of the City of New York plus a specified percentage of tenancies with average median income in each of aforementioned categories (1) and (2), which percentage allocations shall be publicly disclosed;

WHEREAS, the issue as to what is truly affordable housing has been delayed too long, it is recommended the City of New York through its appropriate agencies provide a redefinition applicable to any proposed Affordable Housing as to which a Certificate of Occupancy or Temporary Certificate is requested to be issued by the City of New York on or after January 1, 2023 and failing the formal recommendation and/or adoption of such redefinition by the appropriate legislative body on or before May 1, 2023, the Corporation Counsel shall be directed to request or, failing such action, any Community Board may request that the Appellate Division of the Supreme Court, First Department, appoint a Special Master to frame such a definition within 90 days thereafter, the reasonable cost thereof to be borne by the City of New York.

AFFORDABILITY and LOCATION

WHEREAS, reasonable people can reasonably disagree on priorities, there is much to be said for prioritizing public assistance for the construction or renovation of housing in essentially the tenant occupancy order set forth above, thereby to permit New York City to survive as an economically sustainable urban center with an adequate work and executive force as well as a municipality that provides adequate shelter for those in the greatest need therefore;

WHEREAS, a major cost factor in the construction of truly affordable housing involves land costs and availabilities; and since, from time to time, properties become available that are owned or controlled by the City or other governmental or quasi-governmental entities but no effective centralized program currently exists for such properties to be identified or allocated, as appropriate, on a prioritized basis for affordable housing on a materially reduced or no-cost basis, it is recommended that the City create an office, agency or mayoral entity charged with identifying all such current or potential sites and recommending to the Mayor their designation as potential affordable housing sites and that consideration be given to authorizing and directing that such office, agency or mayoral entity recommend to the Mayor and Corporation Counsel for such action as may appear appropriate and consistent with other locational factors any other sites in the City that may reasonably warrant condemnation for the purpose of providing affordable housing on such terms as may appear reasonable and apt;

WHEREAS, the City of New York in determining whether to approve applications for the construction or renovation of proposed buildings under its several current assistance programs currently does so without community input as to location or other relevant factors, it is recommended that, on an advisory basis only, the appropriate governmental entities promulgate protocols designed to insure that such input is henceforth sought, prior to any approvals, from those community entities, including Community Boards, that are committed to ensuring equal access to affordable housing throughout the relevant community; and that such input also be sought by the office, agency or mayor entity referenced above;

WHEREAS, the construction, renovation and maintenance of affordable housing is largely dependent on the willingness and/or ability of government to finance or otherwise provide financial assistance therefore, and such determination is, in turn, dependent on resource availability and allocation, it is recommended that:

1. That the borrowing capacity of the City of New York be enlarged on a one time basis for the creation of (a) an agency or entity authorized to, or, (b) the authorization and the endowment of the requisite powers to the New York City Housing Development Corporation, to issue State and New York City tax-free bonds not to exceed \$500 million, in such denominations and in accordance with such timetable as may appear appropriate, solely for the use in connection with the construction and renovation of Affordable Housing as redefined in accordance with the foregoing;

2. That the real estate taxing authority of the City of New York be enlarged to permit the levying of a tax, alongside the annual real estate tax, of a sum not to exceed \$500 per annum for each apartment unit of cooperative or condominium housing and \$250 for each single family residence in the City of New York, such proceeds to be used exclusively to assist in connection with the construction and renovation of Affordable

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Housing as redefined in accordance with the foregoing, the authority herein provided to sunset without further action three (3) years following enactment;

3. That the office, agency or mayoral entity proposed to be created as set forth above (i.e., for site identification and allocation) be further authorized to receive said funds and, together with the funds generated in accordance with or derived from the use of the funds generated by or through paragraphs 1 and 2 above, be empowered directly or in conjunction with the New York City Housing Development Corporation to enter into pari passu agreements (or public-private partnerships) with private sector developers of predetermined expertise and financial and other capacity exclusively for the construction and redevelopment of Affordable Housing, as redefined above:

4. The New York City Council, together with the Mayor, shall have oversight authority of the foregoing;

WHEREAS, the partial real estate tax abatement benefits of Section 421-a of the Real Property Tax Law were allowed to expire in 2022 and many real estate developers maintain that the lapse of the law will disincentivize construction of Affordable Housing in New York City, while progressives in the Legislature maintain that, while 421-a had incentivizing benefits, it did not sufficiently guard against abuse or provide commensurate long term public benefit, particularly in the areas of real affordability of the housing constructed thereunder to those in need thereof, was inappropriately and too liberally construed in favor of applicability and lacked sufficient permanence of affordability protections; because we agree that both arguments have some merit but recognize that 421-a, in concept, was designed to and is capable of advancing the goal of providing more Affordable Housing and thus we urge that the concept be re-examined with its excesses and inadequacies corrected; and

WHEREAS, both State and local legislation may be required to implement some or all of the foregoing recommendations, a copy of this Resolution shall be forwarded to each elected official serving any constituent residing in any portion of the Bronx Community Board 8 district, together with a request for active support thereof.

Update from the 3745 Riverdale Ave Working Group

M. Wolpoff reported that There will be a meeting later this month and the relationship between CB8 and Stagg is going well.

Old Business/ New Business

Neighbors of the Visitation Site asked for updates on the development. C. Moerdler explained that School Construction Authority and Tishman Speyer have been invited to update the committee but have declined. There is an Article 78 against the School Construction Authority and they have sited the pending litigation as their reason for not attending. Tishman Speyer has concerns of the pending litigation as well. C. Gannon reported that Tishman Speyer has erected a fence around the property. Residents

question if Tishman Speyer have permits to erect fence. C. Gannon will look into it and report back. C. Moerdler reported that he will invite both parties to the February 6, 2023 meeting.

Minutes of the December 5, 2022 Land Use Committee Meeting were approved unanimously.

The next Land Use Committee Meeting will be held on February 6, 2023. A motion to adjourn the meeting was seconded and approved unanimously.

The meeting was adjourned at 9:00 pm.

Minutes submitted by C. Gannon, District Manager
Reviewed by: C. Moerdler, Chair