

**Special Natural Area District Working Group
Land Use Committee, Community Board #8
Final Report
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Foreword

The SNAD Working Group has been following the development of changes to the Special Natural Area District Zoning Regulations by the Department of City Planning since the Spring of 2015. This is the Third and Final Report of the SNAD Working Group to the Land Use Committee in anticipation of certification of proposed zoning district changes by the City Planning Commission. This certification will begin the Uniform Land Use Review Process (“ULURP”) and is scheduled for May.

The First and Second Interim Reports covered all issues as developed to the point of their writing. This Final Report will attempt to summarize changes since the last two reports and evaluate the total effort of the Department of City Planning. Please note that as of the writing of this Report, the Working Group does not have the actual final proposed zoning text.

Purpose and Background

The Land Use Committee of Bronx Community Board 8 created this Working Group to strengthen SNAD. Towards that end, the Working Group elicited public sentiment within Community District 8 about possible changes to the SNAD regulations that would better protect key natural areas and set about to identify a series of changes to reach that goal. Subsequently, and wholly unrelated to the formation of the Working Group, the Department of City Planning began a study for a zoning change that would amend the SNAD regulations for the three boroughs that have such Districts mapped. (Any such changes would also amend the regulations applicable to two additional Special Zoning Districts created on Staten Island – Special Hillside Preservation District and Special South Richmond Development District.) The Working Group has worked extensively with the Department of City Planning, most recently in three lengthy meetings during 2017 and 2018, during which specific zoning concepts and language was explained and discussed. The history of the prior meetings in 2015 and 2016 is described in the First and Second Interim Reports.

Over the last four years, the Department of City Planning has made three separate presentations to the Land Use Committee, two presentations to the entire community and a number of presentations to individual community groups.

Planning Framework

The central principles of the proposed zoning changes are described in some detail in the Second Interim Report, which is not repeated here.

In summary, under the proposed changes, many development applications will be removed from discretionary review by the Department of City Planning and the Community Board, and instead will be deemed to be “as-of-right” and subject to review by the Department of Buildings. The stated rationales for cutting back the opportunity for review by the Department of City Planning and the community are (1) reduced time and expense for owners and developers in seeking approvals, and (2) lessening the workload of the Department of City Planning’s staff.

Another principle embodied in the Department of City Planning proposal, simply explained, was that regulation and review of applications for development of sites would be divided into three tiers of importance, with the natural capital in Parks (“Natural Resources”) as the central point. Moving outward from this central point, regulation and review would decrease, from more regulation and review to less, in descending order, for “Resource Adjacent Areas,” “Conservation Areas” and “Base Protection Areas”. Because of opposition from the Working Group, this tri-partite consideration of sites has been eliminated in the current version of the proposal, and has been replaced by a two-tiered system. “Resource Adjacent Areas” remain, as originally defined, but have little applicability in The Bronx SNAD. The remainder of the sites would be categorized as “Base Protection Areas.”

Lastly and new to the proposal, is the elimination of properties under 1 Acre from any discretionary review by the Department of City Planning or the Community Board, with a few exceptions that will be further discussed below in connection with the Bulk Requirements under the Department of City Planning proposal.

Department of City Planning Proposal

Natural Features:

The proposal generally seeks to update the regulations take account of current “best practices” in the already established areas of concern in the Special Natural Area District.

Trees, Tree Credits and Updated Species List

The protection of trees has always been an important concern and from the beginning, the local community felt that the SNAD regulations did not afford sufficient protection for trees. The Second Interim Report details the proposal’s approach to tree preservation. The Department’s proposal changes the tree credit requirement and implementation by both preserving more trees and attributing greater importance to larger trees. In addition, the Species List has been properly updated to remove invasive and non-native species.

Biodiversity Rules

The proposal basically allows two options for compliance by development sites: install Wildlife Gardens or Green Roofs, for which points are allotted. A third option is a Landscape Buffer for Resource Adjacent Areas, but this is of limited applicability since the Bronx SNAD has few Resource Adjacent Areas.

Rock Outcroppings

Protection of rock outcroppings in the proposed changes focuses on only front yards, as visible from the street. Rear yard protection of outcroppings is not emphasized. It should be noted that the Department of City Planning derives its definition of “Neighborhood Character” in the proposed regulations—an important standard for SNAD decision making—from the front yard alone, notwithstanding that natural features such as old-growth trees and rock outcroppings occur elsewhere on properties.

Erosion

Questions about the amount of impervious surface area on development sites have always been part of the community’s review. The Department of City Planning’s goal is to establish limits on impervious areas. This is evident in new SNAD regulations on large lot Community facilities, which contain a lot coverage limit of 25% and a requirement for 35% “natural state” preservation.” Reference is made to the pertinent sections of both the First and Second Interim Report for a discussion of the high priority the community places on erosion, storm water run-off and non-porous paving, and the implications of the proposed changes for the development of the Department of Environmental Protection’s federally mandated Long-Term Control Plan.

Bulk Requirements:

The Department of City Planning will be proposing amendments to a number of bulk requirements, such as the Open Space and Lot Coverage Requirements. The First Interim Report in particular made the focus on these zoning controls a high priority. The proposal also includes a new concept—“preservation requirement,” expressed as a percentage of total lot size—which is not additional to and may be duplicative of the other bulk requirements.

Landmark Districts

New to this zoning proposal is a separate category of review—sites located within Historic Districts. While the proposal categorizes applications for sites under 1 Acre as “as-of-right” and subject to review only by the Department of Buildings, such sites within Historic Districts will receive a full Department of City Planning and Community Board review. Also exempted in the proposal from the automatic “as-of-right” review for properties of less than 1 Acre will be lots with private roads, which will receive full Department of City Planning and Community Board review.

Institutions:

Given the significant number and size of community facilities in the Special Natural Area District, institutional development and expansion have been important issues for the community. Community facilities enjoy a significantly higher floor area ratio than residential properties and uniformly occupy large sites. The SNAD regulations therefore have been an important land use tool for guiding development.

The Department of City Planning’s proposal changes the review of these large and significant sites by instituting a two-step process. An institution’s “Campus Plan” application would define future development needs even in the absence of a specific plan for such development. Such an application

for approval of a Campus Plan could be granted by an authorization, but could, in addition, at the same time seek approval for future development on the site. The Department of City Planning would be empowered to approve designated development areas on the institution's site for future, unspecified development, which would additionally not be subject to environmental review.

Enforcement of SNAD Regulations:

The enforcement of any municipal requirement is essential if rules, regulations and public policy are to be respected. The lack of strict enforcement of the SNAD regulations has been the source of constant complaint from members of the local community. Cutting down trees, destroying steep slopes and construction that disturbs natural features—without appropriate review or enforcement—have all been experienced here in the Bronx SNAD. The requirement that owners undertake Restoration Plans and the imposition of fines have generally been either nonexistent or weak, and certainly not a deterrent to illegal practices.

The Department's proposal contains no detail on the subject of enforcement, except to say that the Department of Buildings is strengthening enforcement and construction safety. So far as the Working Group is aware, the Department of Buildings has no expertise or experience with applying or enforcing SNAD regulations.

Evaluation of Proposal

A central premise of the City Planning Department's proposed zoning text changes is the elimination of existing discretionary review of development applications for the majority of sites less than 1 Acre in favor of an as-of-right application process, with any review responsibility transferred to the Department of Buildings. The Second Interim Report describes this community's long history of discretionary reviews, which have historically imposed a burden on very few non-institutional applicants in the Bronx SNAD and have had a negligible impact on the workload of the Department of City Planning staff.

The statistics provided by the Department of City Planning to the Working Group show that during the 5-year period 2014-2018, the Bronx SNAD averaged only 7 applications per year. Of the 35 projects that were reviewed by the Department of City Planning and the Community Board, a third involved institutions, which would continue to be reviewed in the same way under the proposed regulations. Further, of the 24 applications submitted by private owners, 7 sites were located in historic districts or were 1 Acre or more in size, and thus would continue to be reviewed in the same way under the proposal. Consequently, the reduction in the burden on homeowners and on Department of City Planning staff that would result from the proposal in the Bronx SNAD would affect, on average, only 3 applications per year. The importance to the community of being able to participate in the review process is demonstrated by the frequency with which the Community Board has either disapproved an application or approved the application subject to conditions to be fulfilled by the owner. Of the 35 applications the Community Board reviewed between 2014 and 2018, at least 8, almost 25%, fell into this category. In fact, the frequency with which the Community Board disapproves or recommends changes is actually higher when some 7 applications from this period that were withdrawn or otherwise removed from the review process, sometimes in response to concerns expressed by the Community Board, are taken into account. Losing the benefit of the Community Board's input, especially when

viewed in terms of the negligible impact on the burdens imposed on applicants and the Department of City Planning, would therefore be a serious step backward in ensuring that the benefits of the SNAD regulations' protections are realized.

We also have very serious concerns about the Department of Buildings' capacity to review such a highly technical set of zoning regulations. Questions about their capability, institutional knowledge, historic experience and ability to implement any meaningful SNAD review are central to these concerns. Such environmentally significant and important regulations are much better left with the agency, City Planning, that wrote the rules and whose staff has a demonstrated experience and expertise in administering SNAD. To this date, the Department of City Planning has not provided any specifics concerning plans to add qualified staff to the Department of Buildings, to train existing Department of Buildings personnel, to certify that the Department of Buildings has the capability to administer SNAD, or to continually monitor the Department of Buildings in order to ensure the effectiveness of DOB oversight.

The First Interim Report called for even more discretionary review than under the current SNAD regulations. The Working Group recommended that Natural Area "certifications," presently the exclusive responsibility of the Department of City Planning, should be referred to the Community Board. A recent multi-story school in this SNAD District was approved solely through a Department of City Planning certification. A review by the Community Board should have been part of the certification process.

The diminution of discretionary review is also exhibited in the proposals for institutional applications. The proposed regulations provide that an institution's presentation of a "Campus Plan" be subject only to an authorization that outlines, specifies and approves designated future development sites on the campus, with no detail and no environmental review required. This is a disturbing reduction in the review of development on large sites in the Bronx SNAD. Given the size of institutional sites and the increased floor area allowed for community facilities, discretionary community review is essential. This proposed change thus moves in the direction of less, rather than more review, which will be damaging to the purposes embodied in the SNAD for this District.

The distinction drawn in the proposal between sites under 1 Acre and sites of equal size located in a Historic District, whereby the latter receive City Planning and Community Board review and the former do not (proceeding instead as of right and receiving only Department of Buildings review), is not justified. This disparate treatment of otherwise identical sites establishes two classes of property in the Bronx Special Natural Area District and in our community. The designation of a Historic District has no relevance for land use considerations. The presence of natural features on a site is the central concern, not whether the locale has been determined to be of historical or architectural significance.

In addition, the proposal's imposition of a 1-Acre threshold for Department of City Planning and Community Board review of a site is in our view arbitrary and contra-indicated, as it will exclude too many applications in our community that, taken together, constitute a significant environmental asset in the Bronx SNAD. The standard of "Neighborhood Character" that SNAD regulations were designed to protect is manifested by the very properties—sites of less than 1 Acre—that the SNAD proposal would exclude from discretionary review.

The proposals to enhance tree protection by updating the list of permitted species, changing the credit formula to better account for the quantity and quality of trees, the inclusion of biodiversity credits for gardens and green roofs, and the increased emphasis and specificity in the standards for open space, lot coverage and restriction of impervious surfaces are laudable and should be supported. On the other hand, relegating protection of rock outcroppings to only those that can be seen from the street ignores a key purpose of establishing the Bronx SNAD—protection of all natural features that are part of a site.

Although we value the commitment of the Department of City Planning to the complex level of environmental protection and preservation embodied in the SNAD regulations, we question whether the agency has the technological capacity, city-charter responsibility, and institutional follow-through required to map changes in SNAD district-wide environmental assets without the contribution of Community Boards.

Finally, enforcement of the SNAD regulations deserves significantly more thought than given in this proposal. The absence from the proposal of any increased attention to enforcement is all the more concerning in view of the proposed regulations' expansion of "as of right" development and transfer of all review responsibility for "as of right" sites to the Department of Buildings, which, as discussed above, has no experience or expertise with environmental and land use considerations embedded in the SNAD protections.

Options

It has been a longstanding position of the Land Use Committee and the Community Board, which is expressed in a Board resolution, that the Bronx Special Natural Area District should be separated from the much larger Staten Island District, which will now include three additional SNAD districts—the preexisting Special Natural Area District, the Special Hillside Preservation District and the Special South Richmond Development District. The proposed regulations are obviously far more important on Staten Island, given that such a significant portion of their borough is involved. This is undoubtedly the case with respect to the much higher volume of applications in the Staten Island districts that have in the past been subject to, and will in the future require, review by the Department of City Planning. If the Bronx SNAD and the Staten Island districts were separated, it would then be possible to adopt those elements of the proposed regulations that are best suited to the realities of the Bronx District.

An alternative approach would be to adopt most aspects of the Department of City Planning proposal, as outlined above, with a few exceptions, including the shift of sites under 1 Acre to "as-of-right" with no Department of City Planning or Community Board review and the Campus Plan proposal for applications by institutions. In other words, retain the current discretionary review model, but implement those aspects of the proposal that update the regulations to reflect best practices for the enhancement of natural features and environmental/land management review.

Because the preservation goals of the new SNAD proposal incorporate advances in environmental science and natural areas management, there is no reason why the Community Board, properly informed by these new SNAD standards, cannot be a key contributor to an oversight and approval process that reflects improved standards.

Conclusion

The SNAD Working Group of the Land Use Committee began its own review of existing SNAD regulations with the objective of learning from previous problematic development that had been permitted to proceed and strengthening the SNAD protections in the Bronx District. Our Community Board's experience with large-lot, community facility ULURP applications have informed our review and our dialogue with the Department of City Planning. We see this experience reflected in the new standards for these applications.

As described above, our concern lies with the exclusion of sites from discretionary review and the ULURP process, *i.e.*, removing the Department of City Planning and the Community Board from the review process. Without ensuring the continuation of discretionary review of the very applications that comprise, by the Department of City Planning's own definition, our community's "Neighborhood Character" and its environmental assets, Bronx Community Board 8 will be starved of its land use and environmental stewardship role over the development of its natural resources. SNAD was specifically created to formalize this role as a process within ULURP. Since the creation of SNAD, natural resource management and environmental policy has been devised, fought over, and ultimately decided exactly where it belongs: in the public square of the Land Use committee and Community Board 8. This essential objective of SNAD must be retained in the Bronx District.

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