

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of
400 & 500 STATE STREET BLOCK ASSOCIATION,
EILEEN BOXER, LAURA McCALLUM, JONATHAN
GLAZER, ALAN SEALES and MICHELLE ITKOWITZ,

Index No.: _____

VERIFIED PETITION

Petitioners,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
PLANNING COMMISSION, NEW YORK CITY
COUNCIL, NEW YORK CITY EDUCATIONAL
CONSTRUCTION FUND and 80 FLATBUSH
AVENUE, LLC.

Respondents.
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Petitioners by their attorney, **JACK L. LESTER, ESQ.**, for their Petition
herein, allege as follows:

I. PRELIMINARY STATEMENT

1. This action challenges the constitutionality of an unprecedented spot upzoning of one discreet block (“80 Flatbush Avenue”) located at the legislatively designated buffer between downtown Brooklyn and the residential brownstone community of Boerum Hill. This block was designated as a buffer in 2004 by the City of New York as part of the Special Downtown Brooklyn Zoning District (“SDBD”). The destruction of this buffer for private profit constitutes unlawful and constitutionally impermissible “Spot Zoning”.

2. 80 Flatbush’s southern boundary is occupied by the residents of Boerum Hill, including Petitioners. Petitioners live in three to four story

brownstones on State Street within the 400-500 Block. This district is designated by zoning limitations, which restricts that block to low-rise residential homes of maximum of three to four stories, known as an R6-B zone.

3. 80 Flatbush Avenue was legislatively designed, through long term planning and years of study, public review and comment, to be a transition between the commercial C6-2 zone of Downtown Brooklyn and the residential R6-B zone of Boerum Hill.

4. Petitioners seek a declaratory judgment annulling and vacating the New York City Council Resolution passed on September 26, 2018, which upzoned 80 Flatbush Avenue in the County of Kings, City and State of New York a/k/a Block 174, Lots 1, 9, 13, 18, 23 and 24, from a Floor Area Ratio¹ (“FAR”) from 6.5 to 15.7 in violation of constitutionally permissible zoning and land use planning.

5. This unprecedented re-zoning of one discreet block requested an increase in density and height, which would nearly triple the Floor Area Ratio (“FAR”) currently allowable in this zoning district from 6.0 to 18.0. The application submitted by a consortium of private developers and the New York City Educational Construction Fund (“ECF”) would enable the development of two skyscrapers bordering on brownstone low-rise homeowners and renters of Boerum

¹ Floor Area Ratio (“FAR”) is defined as the total allowable square footage of all the floors of the building divided by the total square footage of the lot. It is a measure utilized by the City of New York to regulate the height and density of all development projects.

Hill. One tower would rise to a height of 845 feet or approximately 74 stories, and the other tower will rise to a height of 510 feet or approximately 38 stories.

6. The total square footage slated for this one block, which is 75% owned by a private developer, is 1.1 Million square feet. This enormously out of context development will encompass two schools, retail space, office space and 870 new residential units. The re-zoning was based upon, and intended for, the financial benefit and profit of 80 Flatbush, LLC (“Alloy Developers”).

7. This re-zoning was enacted in direct contravention to, and in disregard of years of long-term land use planning, which resulted in the enactment of the Special Downtown Brooklyn Zoning District (“SDBD”) created by the City of New York and crafted by the City Planning Commission of the City of New York in 2004. The SDBD had the unanimous support of the local elected officials, the Community Board and the local residents. The intention of the SDBD was to serve as a **transition** or buffer between the expanding Downtown Brooklyn District and the brownstone low rise historic Boerum Hill community.

8. The re-zoning will have drastic, unexamined and unmitigated environmental and land use negative impacts upon Petitioner-homeowners residing in the 400 & 500 block of State Street. Their homes border this humungous development project and the legislatively designed buffer will be torn asunder. As set forth herein, this Petition shall detail the unlawful and unconstitutional nature of

this Spot Re-Zoning, and the unexamined impact on the neighborhood character of the Boerum Hill community. This upzoning, despite a nod to public benefits, was undertaken for the financial benefit of Alloy Developers and to the stark detriment of the residential community of Boerum Hill. Petitioners will be plagued by almost a decade of unmitigated construction, noise, toxic dust, traffic, congestion and potentially structurally damaging vibrations, as construction is slated to continue at least until 2025, and with delays most certainly years beyond that.

II. PARTIES

Petitioners

9. 400 & 500 State Street Block Association (“Association”) is an incorporated association of New Yorkers, who live and work in the Boerum Hill community and who reside within close proximity to the spot re-zoning block. Association was organized to maintain the contextual neighborhood character of the 400-500 State Street community, respecting the quiet, residential, low rise brownstone, multi-class and multi-ethnic residential quality of the community. The site is within the Boerum Hill Historic District and borders the 80 Flatbush Avenue project.

10. Petitioner, Eileen Boxer resides at 548 State Street, Brooklyn, NY 11217 and owns and occupies a brownstone since 1980 in close proximity to the project. Petitioner will be adversely impacted by the increase in traffic, congestion

and high rise dense characteristics of the proposed project in violation of the 2004 zoning.

11. Petitioner, Laura McCallum resides at 526 State Street, Brooklyn, NY 11217 and owns and occupies a brownstone since 1995 in close proximity to the project. Petitioner will be adversely impacted by the increase in traffic, congestion and high rise dense characteristics of the proposed project in violation of the 2004 zoning.

12. Petitioner, Jonathan Glazer resides at 496 State Street, Brooklyn, New York 11217 and owns and occupies a brownstone since 1999 in close proximity to the project. Petitioner will be adversely impacted by the increase in traffic, congestion and high rise dense characteristics of the proposed project in violation of the 2004 zoning.

13. Petitioner, Alan Seales resides at 538 State St, Brooklyn, NY 11217, and owns and occupies a brownstone since 2016 in close proximity to the project. Petitioner will be adversely impacted by the increase in traffic, congestion and high rise dense characteristics of the proposed project in violation of the 2004 zoning.

14. Petitioner, Michelle Itkowitz resides at 524 State Street, Brooklyn, NY 11217 and owns and occupies a brownstone since 2004 in close proximity to the project. Petitioner will be adversely impacted by the increase in traffic, congestion

and high rise dense characteristics of the proposed project in violation of the 2004 zoning.

Respondents

15. Respondent, City of New York (“the City”) is a municipal corporation organized under the New York General City Law and, through its City Planning Commission and the New York City Council, has and had ultimate responsibility and authority with respect to the review and approval of the project and the disposition of the project site.

16. Respondent, New York City Planning Commission (“CPC”) is an agency of the City invested with authority to review and act on various land use matters, including, in this case, the disposition and rezoning of the project site and related text amendment.

17. Respondent, New York City Council is the legislative body of the City, with authority to review and act on certain land use matters following their consideration by the City Planning Commission, including, in this case, the disposition and rezoning of the project site and the related text amendment.

18. Respondents New York City Educational Construction Fund (“ECF”) is a public benefit corporation established in 1967 with the authority to conduct financing and development on behalf of the New York City Department of Education. ECF selected Respondent, 80 Flatbush, LLC a/k/a Alloy Developers as

the private company to develop the site. Alloy owns every lot within Block 174, except Lot 1. Alloy owns 75% of Block 174 and will benefit financially from the challenged re-zoning.

19. Respondent, ECF was the lead agency selected by the CPC to conduct the environmental review process.

III. FACTUAL BACKGROUND

A. Uniformed Land Use Review Process (“ULURP”)

20. At stake in this proceeding is the proper planning and utilization of the Zoning Resolution of the City of New York (“ZR”).

21. The Zoning Resolution in its current form, was amended to create a comprehensive, long term, well planned land use scheme for the City of New York.

22. Zoning at its core, respects the proper development, protection and enhancement of various uses throughout the City of New York.

23. The 1961 Amendment to the Zoning Resolution provided for different districts emphasizing the protection of the health, welfare and safety of residential districts.

24. Residential districts, which are codified in Article II of the Zoning Resolution are legislatively protected from the deleterious impacts of commercial and manufacturing development, therefore the Zoning Resolution provided for residential districts governed by Article II of the Zoning Resolution, commercial

districts, governed by Article III and manufacturing districts governed by Article IV. In singling out a particular block to allow an overwhelmingly high FAR breaches and violates Article II of the Zoning Resolution (“ZR”).

25. ULURP is the charter-mandated review which involves the submission of proposals for zoning changes to Community Boards, the Borough President, the City Planning Commission and City Council subject to binding timetables promulgated by the City Charter and CPC regulations and subject to an environmental analysis set forth in the State Environmental Quality Review Act (“SEQRA”) and city regulations codified in the City Environmental Quality Review (“CEQR”). The review process can only commence upon certification by the CPC that the application is complete and complies with all governmental statutes, rules, regulations and ordinances. *See* ULURP Rules of Procedure §2-02(a)(iii).

26. The Community Board and the Borough President merely serve in an advisory capacity. Neither the Community Board nor the Borough President has any legislative authority. However, the Borough President recommended disapproval of the re-zoning with certain modifications pertaining to modifying the height and density of the project. The Community Board articulated the voice of the community and recommended disapproval, with only a single vote in favor, and thirty-two opposed, because the challenged ZR is out of scale and out of context in an overwhelming destructive manner to the residents of Boerum Hill.

27. The ULURP process is the legislatively mandated procedure codified in the New York City Charter providing for public participation in land use decisions that impact the City's ZR.

28. The CPC is only permitted to certify a ULURP application as complete when the application addresses all land use and environmental considerations set forth in the Environmental Conservation Law ("ECL"), SEQRA and CEQR. As set forth herein, the challenged ZR failed to satisfy zoning land use imperatives and the environmental review failed to weigh the impact of the re-zoning upon the neighborhood character of Boerum Hill.

29. On May 24, 2017, ECF issued a declaration that the challenged re-zoning would have a significant environmental impact and thus a full environmental review was mandated. A scope of work for the Draft Environmental Impact Statement ("DEIS") was issued on May 24, 2017. A public scoping session was held on the draft scope of work on May 28, 2017. A final scope of work was issued on February 7, 2018. A DEIS was issued on February 23, 2018. A Public Hearing was held on the DEIS on June 13, 2018. A Final Environmental Impact Statement ("FEIS") was issued on July 27, 2018.

30. The application was certified as complete by the Department of City Planning on February 29, 2018.

31. Community Board #2 in Brooklyn reviewed the application and held a Public Hearing on March 28, 2018.

32. On May 9, 2018, the Community Board voted to disapprove the re-zoning application.

33. On June 15, 2018, the Brooklyn Borough President issued a report recommending disapproval of the application with modifications.

34. On June 13, 2018, the CPC held a Public Hearing and on August 6, 2018, the CPC approved the application *inter-alia* authorizing the unprecedented tripling of allowable FAR to 18.0, fully approving every aspect of the application to spot upzone 80 Flatbush Avenue.

35. On September 26, 2018, the City Council approved the Spot Zoning reducing the maximum FAR from 18.0 to 15.75.

36. Neither the CPC nor the City Council issued any findings, reports or conclusions assessing the impact of this Spot Zoning upon the neighborhood character of Boerum Hill in relation to the transitional imperative codified within the SDBD.

B. The Application

37. The crux of the application to re-zone 80 Flatbush Avenue involved the unprecedented increase in FAR in order to maximize the financial return of

developing 80 Flatbush Avenue, however the application was multi-faceted and involved several related actions.

38. The objective of the application was to facilitate the construction of a 1.1 Million-square-foot-mixed-used-development. The development is slated to encompass two schools, retail, office and residential units all to be located at 80 Flatbush Avenue.

39. The re-zoning application reclassified 80 Flatbush Avenue from a C6-2 zoning district to a C6-9 zoning district. This spot singled out one discreet location within the Special Downtown Brooklyn District (“SDBD”) for preferential and discriminatory treatment. This carve out, rendered the legislative purpose of the SBDB to serve as a transitional location between Boerum Hill and Downtown Brooklyn useless and ineffectual. It undermined, impeded and thwarted the legislative purpose of the SBDB.

40. The re-zoning application established a requirement known as mandatory inclusionary housing, which requires that 20% of the residential units are “affordable”. In this instance, affordability is defined as households earning 60% of the Area Median Income (“AMI”).

41. The project envisioned for this spot would encompass five separate buildings and have space for 922 residential units.

42. The location of the spot rezoning is a trapezoid configuration bounded by Flatbush Avenue, Schermerhorn Street, State Street and Third Avenue. State Street is the residential low-rise brownstone community occupied by Petitioners that will suffer the severe environmental and land use consequences of this development.

43. The application calls for the development of five separate buildings, with three new buildings. At issue in this proceeding, are the two skyscrapers planned for this spot that will increase the allowable height by an additional 30 stories. There are two towers to be developed in two phases. The first tower will be a mixed use commercial and residential building rising 560 feet. All of the residential units in phase one will be market rate, for profit luxury units. The second tower will rise approximately 845 feet, built to an FAR of 15.75 going as high as 74 stories. Additionally, the reuse and renovation of a high school and the introduction of a new lower school which would be developed along with retail space along Schermerhorn Street and Flatbush Avenue.

44. The residential entrance of the skyscraper and loading areas are designated for State Street and the lobby entrance for the commercial space is on Flatbush Avenue.

45. The spot re-zoning allows 700 market rate units, 210,000 square feet of commercial space and 42,000 square feet of retail space all converging on this one

block. The 38 story, free market-for profit building, bereft of any affordable housing, designated for phase 1 will contain 321,400 square feet of usable floor area with ground floor retail and office space. The loading area will directly impact upon the residents of State Street causing a confluence and cacophony of noise, pollution, congestion, honking, double parking and general mayhem. Disturbingly, no additional space for parking has been planned for this project.

46. The construction and development of this project will violate years of long term planning that sought to preserve, enhance and protect the historic low rise brownstone neighborhood character of Boerum Hill.

C. The Special Downtown Brooklyn District

47. 80 Flatbush Avenue carves out a discriminatory exception that directly contradicts the legislative purpose behind years of civic planning that created the SDBD.

48. In 2004, the CPC, along with local elected officials, sought to protect the Boerum Hill community, particularly residents of the 400 and 500 Block of State Street, from the encroaching Downtown Brooklyn commercial expansion. Downtown Brooklyn is now the third largest commercial district in the City of New York. Recent development projects in the Downtown Brooklyn community have necessitated legislative protection for residential communities such as Boerum Hill.

49. The SDBD was designated as a specific zoning district to create height limits in order to create a transition to the nearby residential communities, particularly Boerum Hill.

50. The purpose of the SDBD was to maintain the current contextual mix of commercial, residential and community uses.

51. The SDBD codified long term planning which mandate that any uses introduced into the zoned area would be compatible with existing use and **ensure the protection of the residential communities by providing transitional areas between high rise development and the residential community.**

52. The CPC report specifically indicated that new residential and mixed residential-commercial development was mandated to provide **an appropriate transition between the low to mid rise Boerum Hill community to the south and the high density core of Downtown Brooklyn to the North.**

53. The SDBD represented a long range land use planning strategy to create a transition zone, which would allow a contextual buffer between the expanding large scale commercial buildings emerging in the context of the development of Metrotech, Atlantic Yards and the Fulton Mall. Explicit in furtherance of this planning, was to reduce the height specifically at 80 Flatbush Avenue, by the implementation of height limits enacted by the C6-2 zoning designation.

54. The out of context nature of the spot rezoning is highlighted by the fact that there are 4000 buildings within a one half mile radius of 80 Flatbush Avenue and the mean height of all of those buildings is 43 feet. The tallest building within that contextual zone is hundreds of feet shorter. The brownstones within Boerum Hill have a median height of 38 feet.

55. The spot rezoning has eviscerated years of long term planning, removed the transitional zone and pushed 80 Flatbush Avenue away from a buffer into the midst of the fourth densest zoning district in the City of New York and into the densest district outside of Manhattan.

56. The environmental consequences upon Petitioners will be unique, specific and catastrophic.

D. Negative Environmental Consequences Upon Boerum Hill's Neighborhood Character

a. Construction Activity

57. The FEIS undertaken by the ECF, as lead agency, determined that construction activity would result in significant construction noise impacts throughout the entirety of the construction project, which is not slated to complete until 2025.

58. The area specifically designated to be severely impacted, are the homes of Petitioners along State Street. No specific mitigation measures have been legislatively or contractually implemented to protect Petitioners.

59. The FEIS concluded, without details and without specific mitigation measures, that the disruptions would occur throughout the construction period, which according to the developer, will last until at least 2025. Various proposals are outlined in the FEIS, but no enforceable measures have been implemented. The FEIS merely refers to existing Administrative Codes as the remedy for Petitioners. Obviously, this is inadequate given the enormity of the forecasted significant adverse environmental impacts.

60. For example, Petitioners residing on State Street will experience noise levels far in excess of the minimum decibel levels allowable by the City of New York. The FEIS predicts noise levels that will increase to the mid-70's dBA. These levels have been assessed to be intolerable with severe health consequences attendant to such levels.

61. The excessively intrusive noise levels will stretch for at least eighteen months, without the developer specifying a time frame. The eighteen months are set to be "non-consecutive".

62. Noise levels of this magnitude over such an intermittent extended period will drastically alter, diminish and destroy the quiet neighborhood character of this Boerum Hill community.

63. Mitigation measures addressing vibration levels and air emissions, including dust, are not specified nor are they addressed contractually or legislatively for the benefit of Petitioners.

64. In particular, construction traffic during the period extending until 2025, will necessitate the staging of construction equipment, intrusive fencing, sidewalk and lane closures and traffic, both vehicular and pedestrian from an influx of construction workers. This significant adverse impact has not been addressed legislatively or contractually for the benefit of Petitioners.

b. Solid Waste Disposal

65. The FEIS identifies the fact that the project would generate a net increase of 19.7 tons of solid waste per week. An estimated 6.4 tons of commercial solid waste would be hauled away by private carters, along with New York City Sanitation trucks.

66. The drastic increase in solid waste would necessitate frequent increases in curbside truck pickups entailing the loading of trash into two cubic yard containers, which would be wheeled out onto the street on a regular basis. The drastic increase in truck traffic on residential State Street alters the residential neighborhood character of Boerum Hill without mitigation.

67. The increase in traffic, noise and pollution generated by this drastic increase in solid waste on State Street is not addressed legislatively or contractually for the benefit of Petitioners.

c. Loading Zone on State Street

68. Proper land use planning, particularly in residential districts must account for and address proper safeguards to maintain traffic proper traffic flow and safety.

69. In particular, under the ZR, the adequacy and safety of off-street loading is a critical component of any plan to relieve traffic congestion and to promote and protect general public health, safety and welfare.

70. In recognition of this fact, the ZR requires the minimum numbers and sizes of loading zones in residential communities. *See* ZR §25-70, §25-72 and §25-74.

71. The location of loading zones is especially important in transitional neighborhoods, particularly residentially zoned State Street, which borders the Flatbush commercial district. Petitioners residing on State Street are already plagued by traffic congestion and air quality concerns resulting from the expansion of Downtown Brooklyn.

72. Despite documentation and extensive testimony during the Public Hearing phases of ULURP detailing the serious congestion, noise and fumes that

will result from the ever-expanding Downtown Brooklyn, the project sponsors failed to evaluate the impact of placing a loading zone on quiet, narrow, residential, low-rise State Street. No rational explanation was provided to Petitioners as to why a loading zone had to be placed on State Street, as opposed to the sides facing commercial traffic such as Schermerhorn Street.

73. Rather than mitigate the environmental disaster created by the placement of the loading zone, which will add traffic, double parking, noise, pollution, fumes and congestion, the project sponsors are insistent on placing the loading zone upon the beleaguered residents of State Street. Their homes will be plagued by the constant presence of large delivery trucks, which in some cases will be removing hazardous and toxic materials from this site.

d. Shadows

74. A critical component of neighborhood character is air and light.

75. The Boerum Hill community is bereft of parks and is in desperate need of additional green space.

76. The shadows that will be cast by these behemoth skyscrapers will significantly alter the landscape and quality of this Boerum Hill community.

77. In particular, the Rockwell Place Bear's Community Garden would experience significant devastation. This beautifully tended addition to the community providing open space and vegetation will receive less than four hours of

direct sunlight. As a result of the duration and extent of the shadows cast by the towers, open space will be eviscerated, and the health of the vegetation significantly diminished.

78. Five sunlight sensitive buildings in close proximity to the Boerum Hill community will experience project generated significant shadows. Three of the five historic resources identified in the FEIS will inhibit neighborhood enjoyment and beneficial use of historic buildings with sunlight sensitive features.

79. Project generated shadows in total would negatively impact a total of 32 sunlight sensitive open spaces and historic resources.

E. The Environmental Review Process

80. The FEIS concluded that despite significant environmentally negative impacts on neighborhood character resulting from increased noise, pollution, congestion, shadows and loss of open space, the proposed action would not result in significant adverse impacts associated with neighborhood character.

81. In a conclusory and contradictory statement, the FEIS concluded that significant adverse impacts would occur with respect to shadows, historic resources and transportation, however without any rational basis, the FEIS concluded that the significant negative environmental impacts would not result in a significant change to one of the determining elements of neighborhood character.

82. The FEIS did not examine the legislative purpose, nature or content of the SDBD in relation to creating a contextual, transitional zone between Downtown Brooklyn and the low-rise legislatively protected R6-B zone of State Street in Boerum Hill.

83. The failure to evaluate and mitigate the negative environmental consequences befalling Petitioners, resulted in the legislative approval of the unconstitutional Spot Zoning relating to 80 Flatbush Avenue challenged herein.

IV. CAUSES OF ACTION

A. As and for a First Cause of Action

Unlawful Spot Zoning

84. Petitioners repeat and reallege each and every paragraph as if fully set forth herein.

85. The challenged ZR singles out one discreet singular block for special treatment to the detriment of the surrounding community.

86. The challenged ZR unlawfully confers private benefits to a private applicant as the fundamental foundational basis for the challenged ZR. The challenged ZR unlawfully confers benefits of height, scale and density in combination with governmental subsidies to the detriment of Petitioners, neighboring property owners on State Street. *See Citizens for Responsible Zoning*

v. Common Zoning Council of the City of Albany, 56 AD 3d 20+0, 1062 (3d Dept. 2008).

87. The challenged ZR contradicts and undermines the well-considered comprehensive land use plan developed by the community and approved through the ULUURP process in 2004 pursuant to the SDBD buffer zone, which was designed to serve the general welfare of the residents of State Street. *See* Collard v. Incorporated Village of Flower Hill, 52 NY 2d 594, 600 (1981); *see also* Thomas v. Town of Bedford, 11 NY2d 428 (1962).

88. The challenged ZR creates an arbitrary, inappropriate and out of scale development in violation of the comprehensive land use plan for the community contained within the 2004 SDBD buffer zone created for the benefit of the Boerum Hill, State Street residential community.

89. The challenged ZR impermissibly relies, for its justification, upon the identity of the applicant, financial considerations and governmental subsidies rather than upon neutral planning, land use and zoning principles.

90. The challenged ZR is violative of fundamental land use principles that zoning must regulate appropriate height and density in accordance with comprehensive land use considerations and plans for the community. *See* Udell v. Hass, 21 NY 2d at 463, 469 (1998); *see also* Thomas v. Town of Bedford, 11 NY 2d 28 (1962); *see also* Dexter v. Town Board of Gates, 36 NY 2d 102 (1975).

91. The failure to consider alternatives that evaluated options for affordable housing and educational institutions within the 2004 SDBD zone was an arbitrary and capricious abuse of discretion, violative of considerations set forth within the comprehensive land use plan set forth in the 2004 SDBD zone.

B. As and for a Second Cause of Action

Violation of SEQRA

92. Petitioners repeat and reallege each and every paragraph as if fully set forth herein.

93. The State Environmental Quality Review Act (“SEQRA”) was adopted 1975, with the goal of protecting the environment to the fullest possible consistent with other key areas of policy. To that end, it requires that

Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process. ECL, §8-0109(1).

94. The principle mechanism for ensuring that environmental factors are seriously considered in the decision making process is the environmental impact statement (or EIS) or assessment, which SEQRA requires government agencies to either prepare, or designate others to prepare, in order to take a “hard look” at all statutorily mandated impacts.

95. SEQRA, codified in Article 8 of the Environmental Conservation Law, declares a broad public purpose to protect the environment and to that end, requires that all State and local agencies and governmental bodies conduct their affairs “with an awareness that they are stewards of the air, water, land and living resources” (ECL §8-0101; ECL§8-0103(8)). More specifically, no agency or other governmental body, may undertake, fund or approve an action until the agency or body has complied with the provisions of SEQRA. 6 NYCRR §617.3(a).

96. Under SEQRA, the principal mechanism for assuring that an agency or other governmental body considers environmental concerns is the environmental review, which an agency is required to prepare when an action that it proposes to undertake or approve “may have a significant impact” on the environment. The environmental review must identify the potential impacts and assess reasonable alternative courses of action. If the agency decides to proceed with the action, it must also identify mitigating steps to minimize any adverse environmental impacts and, in the end, must make a finding that is “consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects, including effects revealed in the environmental impact statement process, will be minimized or avoided.” [ECL §8-0109{1}, {2} and {8}).

97. SEQRA is explicit in that the environmental review must present and evaluate the impact of the proposed action including the short term and long term

effects. ECL, §8-0108(2)(b)(*emphasis added*). This obligation to take into account more than the immediate impacts is also reflected in the rules adopted by the New York State Department of Environmental Conservation (“DEC”) to implement the statute, which focuses on forward planning, not only on individual projects, but also of long term programs. *See* §617.1(d) and §617.3(g) and (g1) of DEC’s SEQRA rules [6NYCRR§§617.1(d), 617.3(g) and (g1)].

98. By virtue of the deficiencies, failures and omissions in the environmental review process, the challenged ZR did not meet the requirements of SEQRA or CEQR and the approvals given by the City Council and the CPC were arbitrary, capricious and an abuse of discretion.

99. No analysis was undertaken demonstrating how the City’s goals of maintaining affordable housing could not have been accomplished without an increase in density, traffic, congestion and burdens upon neighboring homeowners. No analysis was undertaken of available governmental subsidies or zoning configurations that would respect or account for the transitional nature of 80 Flatbush Avenue, as legislatively planned and approved in 2004 to protect the residents State Street. This is inexplicable in light of the hundreds of millions of dollars in profitability that will accrue to the private developers at the expense of the neighboring homeowners. The very essence of unlawful Spot Zoning is

triggered by the discriminatory and oppressive nature of the Spot Upzoning challenged herein.

100. The ULURP process failed to take a “hard look” at the impact of spot upzoning of 80 Flatbush Avenue in undermining the long-range planning and careful land use legislative articulation enshrined within the SBDB. Thus the environmental review process was an arbitrary and capricious abuse of discretion in furtherance of unconstitutional Spot Zoning.

V. CONCLUSION

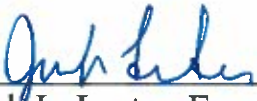
101. The challenged ZR tailored explicitly to a single owner, pertaining to a single zoning lot, violated the most fundamental principles of zoning, land use and environmental planning. The spot zoning was constitutionally defective. The failure to perform an adequate environmental assessment violated the basic principles set forth in the SEQRA and CEQR.

WHEREFORE, Petitioners seek judgment and an order pursuant to CPLR §3001 declaring that:

- a) The challenged ZR was arbitrary, capricious and violative of law, constituting constitutionally impermissible “spot zoning”;
- b) The challenged ZR violated land use and zoning principles contained within SEQRA and CEQR;
- c) Annuling and vacating the challenged ZR;

- d) Enjoining Respondents from proceeding with the development or implementation of the challenged ZR pending compliance with the applicable law;
- e) Awarding the Petitioners their costs and disbursements in this proceeding, including reasonable attorneys' fees; and
- f) Granting such other and further relief as to this court deems just and proper.

Dated: New York, New York
January 22, 2019



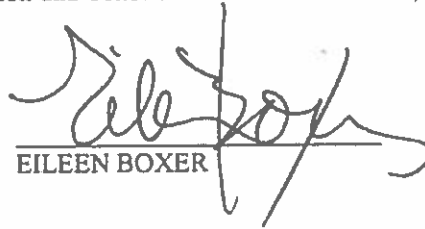
Jack L. Lester, Esq.
Attorney for Petitioners
99 Park Avenue, Ste. 1100
New York, NY 10016
212.832.5357

VERIFICATION

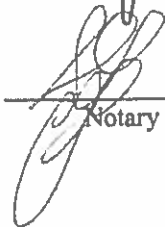
STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

EILEEN BOXER, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action
2. Deponent has read the foregoing **VERIFIED PETITION** and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.


EILEEN BOXER

Sworn to before me on this
20 day of Jan., 2019



Notary Public

SAMUEL JOSEPH GARCIA
NOTARY PUBLIC-STATE OF NEW YORK
Registration No. 01GA6382579
Qualified in Kings County
Commission Exp October 29, 2022

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

LAURA McCALLUM, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action
2. Deponent has read the foregoing **VERIFIED PETITION** and knows the

contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters,

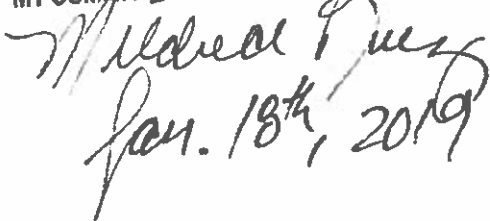
deponent believes them to be true.


LAURA McCALLUM

Sworn to before me on this
18th day of JANUARY, 2019

MILDRED RUIZ
Notary Public

MILDRED RUIZ
NOTARY PUBLIC STATE OF NEW YORK
LIC. #01RU611499
MY COMMISSION EXPIRES 6/14/2020


Jan. 18th, 2019

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)


JONATHAN GLAZER, being duly sworn, deposes and says:

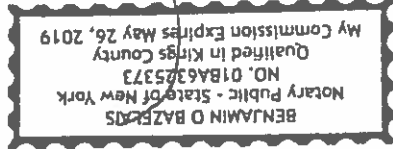
1. Deponent is one of the Plaintiffs in the above-captioned action

2. Deponent has read the foregoing **VERIFIED PETITION** and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.


JONATHAN GLAZER

Sworn to before me on this
18 day of January, 2019


Notary Public



VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

ALAN SEALES, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action

2. Deponent has read the foregoing **VERIFIED PETITION** and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.

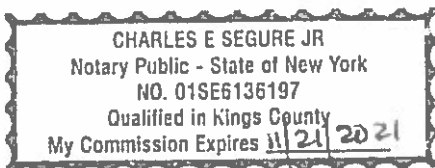


ALAN SEALES

Sworn to before me on this
19 day of January, 2019



Notary Public



VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

MICHELLE ITKOWITZ, being duly sworn, deposes and says:

1. Deponent is one of the Plaintiffs in the above-captioned action
2. Deponent has read the foregoing VERIFIED PETITION and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.

Michelle Marotto Itkowitz

MICHELLE ITKOWITZ

Sworn to before me on this
22 day of January, 2019

Ashley N. Winters

Notary Public

ASHLEY N. WINTERS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02W16358209
Qualified in New York County
Commission Expires 05/08/2021