

STATE OF NEW YORK
SUPREME COURT : BRONX COUNTY

In the Matter of the Application of the BRONX COALITION AGAINST
UPZONING INC. and JOHN CERINI, individually and as its President

Petitioners,

For a Judgment Pursuant to Article 78 of the
New York Civil Practice Laws and Rules

VERIFIED PETITION

vs.

Index No. _____

THE NEW YORK CITY DEPARTMENT OF CITY PLANNING , THE NEW YORK
CITY COUNCIL and NEW YORK CITY

Respondents.

Petitioners by their attorneys, Lippes & Lippes, Richard J. Lippes, of counsel,
respectfully allege as follows:

I. INTRODUCTION

1. This proceeding is brought pursuant to Article 78 of the Civil Practice
Laws and Rules, seeking equitable relief to void the Upzoning of certain sections
of the Bronx that will allow the construction of four buildings in the upzoned
area. This Petition is brought due to the Respondents failure to comply with the
New York State Environmental Quality Review Act [hereinafter cited as
“SEQRA”], 8-0101 et seq of the Environmental Conservation Law.

II. PARTIES

2. Petitioner, Bronx Coalition Against Upzoning Inc [hereinafter cited as
“Coalition”]. is a not-for-profit community corporation formed under the laws of
the State of New York, and is a coalition of individuals who reside in or near the

upzoned neighborhood and wish to preserve their neighborhood character and a safe and healthy environment, which they believe will be adversely affected by the upzoning and out of character development that is planned to ensue, as explained herein. It is located at 3600 East Tremont Avenue, Bronx, New York 10465.

3. Petitioner Coalition, is located at 3600 East Tremont Avenue in the Bronx, New York 10465. Each of the members of the Coalition, reside or own property nearby or adjacent to the Upzoned area. As such, they are directly affected by the increased traffic, ongoing and increased flooding and sewer backups of homes and property, shadows on its parks and open spaces, migrating contamination, increased noise, light pollution, and other environmental impacts that will occur if the proposed Upzoning projects are built. Petitioners further seek to assure that the environmental laws of the State of New York are fully adhered to, and that a proper environmental impact statement[hereinafter cited as “EIS”] is adopted.

4. Petitioner John Cerini is President of the Coalition. He brings this Petition individually and in his capacity as President of the Coalition. He resides at 1428 Gillespie Avenue in the upzoned area of the Bronx.

5. Respondents City of New York, the City of New York Council and the City Planning Commission [Hereinafter cited as “CPC”] prior to approving the upzoning amendments or other permits necessary for the construction of the proposed Upzoning Projects, are responsible for assuring that all of the laws and ordinances of the State of New York are fully complied with, including SEQRA.

III. FACTS

A. GENERAL FACTS

6. According to the Environmental Assessment Form prepared for the CPC, the project description is 1) a zoning map amendment to change the existing: (i) R4-1 zoning district to the R5B/C2-4 zoning district for portions of Block 5307 fronting on Bruckner Boulevard south of Gifford Avenue and east of Balcom Avenue; R4-1, R4A, R4-1/C1-2 and R4A/C1-2 zoning districts to the R6A/C2-4 zoning district for portions of Blocks 5312, 5309, and 5306 fronting on Bruckner Boulevard bounded on the east by Crosby Avenue and the west by Revere Avenue; and (ii) a zoning text amendment to establish the Project Area as an MIH Area. A demapping of Meyers Street between Edison Avenue and East Tremont Avenue is also proposed. Overall, the four proposed applicant-controlled developments sites facilitated by the upzoning would contain approximately 324,082 gsf of floor area, including 269,975 gsf of residential floor area (up to 384 dwelling units, of which 20 to 30 percent would be provided as affordable housing pursuant to MIH) and 54,107 gsf of commercial floor area. 301 accessory parking spaces would be provided across all four sites. Additionally, the proposed actions would facilitate development on two non-applicant controlled sites, which would contain approximately 27,301 gsf of residential floor area (27 residential dwelling units, of which 20 percent would be affordable pursuant to MIH) and 5,308 gsf of commercial floor area.

7. The Project Area fronts on Bruckner Boulevard to the south, Hollywood Avenue to the east, and Balcolm Avenue to the west. The Project Area is

alternately bounded by Gifford Avenue, St. Raymond's Cemetery, Haskin Street and Baisley Avenue to the north.

8. Prior to the upzoning, the area at issue was zoned to allow for only low density residential and commercial development. Generally, the residential structures are one and two story homes.

9. However, the upzoning amendments were done to facilitate the development of four new mixed-use commercial and residential buildings, consisting of large buildings of 3 stories to 8 stories, and two additional development lots which don't yet have proposed buildings.

10. Overall, the four proposed developments on Projected Development Sites 1-4 would contain approximately 324,082 gsf of floor area, including 269,975 gsf of residential floor area and 54,107 gsf of commercial floor area. 301 accessory parking spaces would be provided across all four sites. On the two non-applicant controlled development sites on Projected Development Sites 5-6, approximately 27,301 gsf of residential floor area and 5,308 gsf of commercial floor area would be developed. (Attached as Exhibit "A" please find a map indicating the location of the development sites.)

11. Prior to approving the upzoning, a lead agency must be designated. The lead agency is responsible for SEQRA compliance. The New York City Department of City Planning designated it self as the lead agency for SEQRA compliance.

12. After reviewing a Short Form Environmental Assessment form and various other documents including an attachment to the EAS which, presumably,

is intended to fulfil the requirement of a reasoned elaboration, the CPC determined that this project would not have a significant adverse effect on the environment(A negative declaration).

13. However, as more fully explained herein, the CPC ignored significant adverse effects, improperly deferred consideration of whether any hazardous substances would expose residents, and did their traffic and noise study at the height of the Pandemic.

II. THE REQUIREMENTS OF SEQR

14. According to the regulations promulgated pursuant to SEQRA:

“The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.”

6NYCRR §617.1(c)

15, Further, the regulations indicate that:

“In adopting SEQR, it was the legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.”

NYCRR§ 617.1(b)

16. The regulations contained at 6 NYCRR § 617.7 indicate that an EIS must be prepared if the proposed action “may include the potential for at least one significant adverse environmental impact.”

6 NYCRR § 617.7(aX1) [emphasis added].

17. Conversely, to determine that an EIS will not be required for an action, “the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.” 6 NYCRR § 61.7.7(aX2).

18. In determining whether there may be significant adverse environmental impacts, the regulations at 6 NYCRR § 617.7 list the following factors, among others, which if they exist, would require the preparation of an Environmental Impact Statement [hereinafter cited as “EIS”]:

- (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels;...;

- (ii) The creation of a material conflict with a community’s current plans or goals as officially approved or adopted;

- (iv) The impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood

character;

- (v) a major change in the use of either the quantity or type of energy;
- (vi) the creation of a hazard to human health;
- (viii) A substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
- ...
- (xi) Changes in two or more elements of the environment, no one of which have a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment;"

6 NYCRR § 617.7(cXI).

19. An Environmental Impact Statement provides the lead agency with all of the appropriate information concerning the effects of the project. Moreover, in considering whether to prepare an Environmental Impact Statement, the lead agency must consider not only issues involved with the specific action that the lead agency is being asked to take, but all potential significantly adverse consequences of the project including those issues or permits that may be issued by other agencies. Just as surely, the EIS provides the public with this information, allowing them to knowledgeably provide input and comment on the environmental review process.

20. The lead agency is required to apply a "hard look standard" in fulfilling its SEQRA responsibilities, which requires an agency to:

- (1) Identify all areas of environmental concern; and
- (2) Take a hard look at the environmental issues identified; and
- (3) Provide a written reasoned elaboration for the decisions that are made, including whether or not to do an environmental impact statement.

III. SEQRA VIOLATIONS

21. As previously indicated, the CPC made numerous errors concerning there SEQRA review, the regulations of which are strictly construed.

22. The lead agency must determine if this project is a type 1 project, type 2 project or an unlisted project.

23. Type 1 projects are those projects because of their size or nature are more likely than not to require the drafting of an EIS. 6 NYCRR 617.4. It provides a presumption that an EIS must be drafted. 6 NYCRR 617.4 (a)(1)

24. The SEQRA regulations provide significance guidance concerning when a project is a Type 1 project. 6 NYCRR 617.4(b)

25. It is not clear whether the CPC designated this project as Type 1, but it is clear that under the regulations, the Project is a Type 1 project.

26. The most obvious failing of the EAS is that the data supporting the CPC's claim that the increased traffic caused by the four new buildings would not have a significant adverse environmental effect.

27. In making this determination, the CPC relied on a traffic study that determined the amount of current traffic and estimated what the future traffic would be based on the data collected. This methodology might have been appropriate but for the fact that the traffic data was determined during November 7 -18, 2020, at the height of the pandemic. Therefore, the amount of traffic determined would be significantly lower than usual daily traffic.

28. Based on this data the level of service was determined to be in the mid "d" level, which is the fourth worst level of service, and it was projected that the level of service would only decline to the lower end of the "d" service range.

29. Because the data and conclusions based on the data was taken during the pandemic, the data itself is totally unreliable for determining non-pandemic traffic amounts, which indicates that the CPC never took a hard look at whether the four new buildings would have a significant adverse effect on the environment requiring the drafting of an EIS on this ground alone.

30. The noise calculations fail for the same reason, since they were also taken during the pandemic, and the noise from traffic would have been significantly reduced.

31. The next issue is shadows. While the CPC properly studied when and where shadows would exist on public open spaces, finding that the four buildings would create shadows on the St. Raymond Cemetery, Bruckner pathway and Miele Park, the CPC determined, again, that no adverse effects would ensue

due to these shadows.

32. However, while this may be true for the St. Raymond Cemetery and Bruckner pathway, it certainly is not true for Miele Park. Indeed, CPC's study indicated that during the course of the day, shadows would cover upwards of 90% the Park. This would be a significant adverse environmental effect to anyone using this passive park for rest and sunshine. By not recognizing this fact, the CPC has again failed the hard look test.

33. Next is the issue of Neighborhood character. As previously indicated currently the upzoned area consists of low density homes and commercial buildings. By allowing large mixed use buildings of three to eight stories in height, the height, bulk and character of these buildings are totally out of character with the rest of the community, and will destroy the street scape where they exist, creating a street wall in some instances. Nevertheless, the CPC determined that these new buildings are not out of character and will not adversely affect the neighborhood character. (Attached hereto as Exhibit "B" are overlays of the proposed four buildings.)

34. Finally, it is indicated that significant legacy hazardous substances exist on the development sites. However, rather than making an independent determination as to whether these hazardous substances on the construction sites will cause significant adverse effects to the environment prior to approving the upzoning, the CPC improperly deferred this decision to a later date after the

project was approved.

35. Petitioners do not fault the CPC for requiring additional testing, e designations and construction safety protocols, but pursuant to SERA regulations, these tasks needed to be completed before approving the upzoning, so that CPC would have the proper information before kit in order to determine whether the existence of the hazardous substances and the consβstruction on where they exist can properly be determined and if these facts will cause the need for an EIS to be drafted.

IV. FOR A FIRST CAUSE OF ACTION: VIOLATION OF SEQRA

36. Petitioners repeat, reallege and incorporate each paragraph hereinbefore mentioned.

37. As indicated in this Petition, the CPC has failed to take a hard look at numerous identified areas of environmental concern, and has either ignored or deferred issues and actions that will have significant adverse environmental effects that required the drafting of an environmental impact statement.

38. Do to the fact that the CPC has failed to adhere to the strict requirements of SEQRA, that statute has been violated and the upzoning must be voided.

WHEREFORE, it is respectfully submitted that the Court:

(1) enter a judgment annulling the zoning amendments pertaining to the Upzoning approved by the City Council of the City of New York on November 12, 2022 as they were approved without necessary and sufficient compliance with SEQRA

(2) Award Petitioners their costs, disbursements and expenses, including reasonable attorneys' fees; and

(43 Grant such other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York

February 10, 2023

Yours etc.,



RICHARD J. LIPPES, ESQ.

LIPPES & LIPPES

1109 Delaware Avenue

Buffalo, New York 14209

Telephone: (716) 884-4800

Attorneys for Petitioners

EXHIBIT

“A”



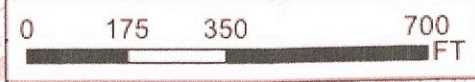
St. Raymond Cemetery

Miele Park

St. Raymond Cemetery

St. Raymond Cemetery

Hutchinson River Parkway



- 1 Projected Development Site (Applicant Controlled)
- 5 Projected Development Site (Non-Applicant Controlled)
- A Potential Development Site (Non-Applicant Controlled)
- Individual 400-Foot Study Area Radii
- Combined Study Area Radius
- Open Space and Recreation

EXHIBIT

“B”



With-Action Condition: View of Potential Development Site A (foreground) and Projected Development Site 3 (background), facing northwest from the intersection of Bruckner Boulevard and East Tremont Avenue



With-Action Condition: View of Projected Development Sites 4 (background) and 6 (foreground) facing east along Bruckner Boulevard



5th Action Condition: View of Projected Development Site 4 facing east along Bruckner Boulevard



With-Action Condition: View of Projected Development Sites 5 (foreground) and 2 (background), facing northeast from the intersection of Bruckner Boulevard and East Tremont Avenue