

LAND USE COMMITTEE – MEETING MINUTES

November 2, 2016

Committee Members Present

Wayne Benjamin, Chair
Andrea Kornbluth, Asst. Chair
Anita Barberis
James Berlin
Isaiah Bing
Jason Compton
Osi Kaminer
Steve Simon
Karen Taylor

Committee Members Absent

Jonathan Reyes

Board Members Present

Public Member Present

Vivian Ducat

Public Member Absent

Staff:

Guests: Lesly Almanzar, Pat Courtney, Rita Gorman, Jennifer Bristol, Matthew Spady, Yvonne Stennet, Ryan Singer, Jonathan Kirschenbaum

1. The meeting of the Land Use Committee (“Land Use” or the “Committee”) was called to order with quorum present at 7:12 PM.
2. **Follow up Presentation on West 158 Street Row Houses.**
 - a. Presenter Matthew Spady, a local historian and community resident, has been working with other community residents including Vivian Ducat and Josette Bailey to expand the Audubon Park Historic District to include the 12 row houses on W. 158th Street west of Riverside Drive. In December 2015, Audubon Park was awarded ‘Six to Celebrate’ status by the Historic Districts Council (“HDC”), and the HDC has supported residents’ efforts to compile a Request for Evaluation (“RFE”) to submit to the Landmarks Preservation Commission (“LPC”). Also in December 2015, the Committee informally reaffirmed its support for the community’s efforts to extend the historic district (the Committee and the full Community Board 12M (“CB12M”) passed resolutions supporting these efforts and requesting expeditious action from the LPC in 2009 and 2010).
 - b. An RFE was submitted to the LPC in April 2016, but the following month it was rejected because the rest of the Audubon Park Historic District comprises apartment buildings and not houses, so the row houses were deemed to be too different from an architectural standpoint. However, the LPC did suggest the possibility that the row houses could be included in a standalone district. Accordingly, residents are now working on a revised RFE with an expanded focus that includes multiple revitalization projects along 158th Street. By switching the focus to the row houses, the RFE will be able to refer to other historic districts that feature row houses in Manhattan.
 - c. Efforts to revitalize W. 158th Street and Audubon Lane, the name of alley between the westernmost row house and Safety City, are intended to increase livability and improve the sense of place on the street (as opposed to having it be just a transition between the highway and the rest of the neighborhood), and could include the following initiatives:
 - i. Rerouting the W. 158th Street bike path when the W. 153rd Street overpass to Riverside Park is completed: the current bike path is a two-way path that takes up one third of W. 158th Street west of Riverside Drive. That leaves one lane of traffic in each direction on W. 158th Street, making it difficult for delivery vehicles, etc. to stop at residents’ houses. When the overpass is completed, bikers could use it to access Riverside Drive, take Riverside Drive through Audubon Park, and connect with the existing path on 158th Street and Edward M. Morgan Place – this route would also allow bikers to avoid the steep incline of the current path.
 - ii. Improving the street wall on the north side of W. 158th Street with an Audubon Mural and/or plantings.
 - iii. Purchasing the vacant lot behind the row houses, possibly in collaboration with the Trust for Public Land, to restore the community garden that was in place between 1900 and the 1970s, and was created largely by Reginald Pelham Bolton, author of Washington Heights, Manhattan: Its Eventful Past (1924) and other works on the history of the area, and architect, amateur archaeologist and a member of one of the earliest preservation organizations in New York State. Bolton waged a 30-year unsuccessful battle to preserve the Audubon House on W. 155th Street, but was successful in saving the Poe Cottage in the Bronx. The garden was started as a

cooperative, but eventually Bolton became the sole owner. The Trust for Public Land has recommended that a nonprofit be formed to manage the project, and that the deeds for all the houses be reviewed to see if the restrictive covenant implemented when August Cordes (owner of all of the lots and one of the architects for the Macy's Department Store in Herald Square) sold some of them to John P. Leo in 1893 runs with the land. The covenant specified that only single-family brick or stone homes of four stories or less could be built on the lots, and that the covenant could only be broken with the agreement of all the property owners. The landlocked lot is currently used for parking, but there is concern that without a covenant or historic district designation, etc., one or more of the row houses could be knocked down and combined with the vacant lot to build a building of up to 45,000 square feet with no height limitation.

- iv. Converting W. 158th Street into a one-way street to improve pedestrian safety. Because this would involve closing an entrance to the Henry Hudson Parkway, and because the River Arts building's garage opens onto W. 158th Street, this is admittedly a long shot.
 - v. Creating an historic district on W. 158th Street to commemorate architect and developers John P. Leo and John Lilliendahl.
 - vi. Finding a better use for the Safety City property, and reviving the name Audubon Lane, which was in place as late as the 1930s.
- d. A new development in the matter is that 815 Riverside Drive, at the northwest corner of W. 158th Street and Riverside Drive, is now on the market for the first time since the 1970s. This building, which is one story taller than the row houses, was built as 17 Boulevard Lafayette by Francis J. Schnugg, an associate of John P. Leo's at the Builders' League of New York City. Expanding the potential 'Leo-Lilliendahl Historic District' to include this section of the street (815 – 825 Riverside Drive) could offer the following advantages:
- i. The creation of a larger district that includes eighteen similar houses constructed within a three-year period (1896-1898).
 - ii. Increased potential for buy-in from a broader cross-section of community residents. Currently, only three of the twelve row house owners actively supports this effort, and one of those owners recently passed away. The conveyance of two of the properties is being determined in Surrogate's Court, and four other owners on the western end of the block wanted to sell their properties together for development. Expanding the area under consideration would add new stakeholders to the mix and create a new opportunity to include everyone's concerns and address possible misperceptions about the effect of landmark designation on property values and repair and maintenance costs.
 - iii. 815 Riverside is being offered for \$3.75 million as a development property; inclusion in an historic district would ensure that the building stayed in keeping with the neighborhood.
 - 1. Chair Benjamin noted that the site is built rather full and there may be no extra FAR available for that lot. Under R8 zoning, any new building would require setbacks and backyard space, so the new footprint would likely need to be smaller than the existing footprint. A large proportion of uptown buildings are already too large for their lots under current zoning regulations.
 - 2. The realtor's advertisement appears to show the existing building with three floors added; this would require a BSA variance.
 - iv. It was also noted that expanding the district will require additional time for research and stakeholder outreach, and that the owner of 815 Riverside might see this effort as a deterrent to selling. Alternatively, it was noted that historic designation tends to increase not decrease property values, so it should not be assumed to be a deterrent.
- e. The Committee suggested that community residents present the matter to other relevant CB12M committees, such as Traffic and Transportation. A motion was made by Osi Kaminer and seconded by Jim Berlin to support the establishment of a separate row house historic district encompassing both sides of W. 158th Street, and to request that the LPC take prompt action on the matter. The motion passed with the following votes:

Land Use Committee: 9 – 0 – 0

Other Board Members: 0 – 0 – 0

Members of the Public: 4 – 0 – 0

3. **Discussion with Board of Standards and Appeals ("BSA") Executive Director Ryan Singer:**

- a. The BSA, established in 1916, is an independent board that grants relief from the Zoning Resolution and other codes to prevent claims against the city of unconstitutional takings, and to allow reasonable development to occur where it otherwise might not.
- b. The BSA is composed of five board members, appointed by the mayor, with staggered six-year terms. Two directors were appointed by the current mayor. The Board must include a planner with at least 20 years of experience, a licensed architect, and an engineer (currently, civil engineer Eileen Montanez), and

it generally includes specialist in real estate finance. No more than two board members may live in the same borough.

- c. Most of the BSA applications that come before the Committee are requests for variances. These must meet the following five findings: 1) unique physical conditions (size/shape of lot, proximity to infrastructure, some subsurface conditions, historical/obsolete development, etc.), 2) which hinder a reasonable return on development, 3) the proposed development will not alter the essential character of the neighborhood, 4) the hardship is not self-created, and 5) the variance is the minimum necessary to enable a reasonable return.
 - i. A classic case of self-created burden would be when an owner subdivides a large lot into unworkably small or oddly shaped lots.
 - ii. Self-creation is examined not only for the applicant, but for owners of record going back to 1961.
 - iii. It is difficult to establish that there is a unique burden when the issue is contamination or fill, as these conditions exist throughout the city. The owner of a property that had a gas station on it may be able to prove sufficient hardship if, for example, the oil and chemical spills go back to a time when there was no regulation requiring prevention and cleanup.
 - iv. Simply purchasing a problematic lot is not grounds for self-creation. However, the BSA takes a dim view of applications that claim financial hardship because the owner paid too much for the property. The Board reviews comparable properties (“comps”) to determine the appropriate price for the lot.
 - v. The BSA compares the financial return of an as-of-right situation and the proposed development, reviewing comps for land value, construction materials and labor, and potential rents and sales. If the applicant is receiving state funds under the Brownfield Cleanup Program (“BCP”), this will be factored into the financial equation. However, since the intent of the BCP is to reactivate contaminated sites, the BSA tries to avoid punishing developers for getting brownfield funds by not granting their variance. Other subsidies, such as tax credits and 421-a tax exemptions, etc., are also factored in.
 - 1. For a rental building, breaking even is considered to be a reasonable return. For sales, a 5-6% return is considered to be reasonable.
 - 2. The applicant is required to hire an independent cost analyst and provide a pro forma estimate of costs. Chair Benjamin noted that the Committee has requested pro forma cost information from the developers of 2420 Amsterdam Avenue.
 - 3. The Board will also consider other economic impacts, such as when a proposed development would block a neighboring building’s solar installation. In such cases, they might require additional setbacks, etc. to protect the neighbor’s sunlight.
 - vi. The property owner is responsible for replacement and cleanup, etc. associated with antiquated subsurface infrastructure (i.e., PCBs leaching from 100-year old cables, leaking gas lines, 150-year old water lines, etc.). This problem exists all over the city, so a developer would have to establish that there is something unique about the infrastructure situation under its property.
 - vii. Funds from the Brownfield Cleanup Program are site specific. If a site adjacent to a known contaminated site that is receiving funds under the program is or is assumed to also be contaminated a separate application is required.
- d. The BSA also has the power to grant special permits, which are generally specified use and bulk waivers. These often involve ‘physical culture establishment’ (gyms and spas, etc.) that were originally restricted to prevent prostitution, but now just create noise issues. The finding required for a special permit is feasibility under city law. The BSA can also grant general city law waivers, for example to allow building on a lot that has no street frontage.
- e. The BSA hears appeals from Department of Buildings (“DOB”) decisions (frequently involving signage code), and can also grant Multiple Dwelling Law (“MDL”) waivers. When changes are made to an existing structure under MDL, the structure must be brought to code in terms of fireproofing, sprinklers, ADA compliance, etc. Density requirements are usually stricter under zoning regulations than under MDL, but there is no clear rule of thumb.
- f. The BSA reviews 300 – 400 cases each year, and holds a hearing on applications following Community Board review. The hearings are posted on YouTube, and a schedule of upcoming hearings is posted on the BSA website. However, the BSA does not send the Community Board notice of hearings – this is the responsibility of the applicant. Applicants are required to send 20-day notice to the Community Board District Manager, and to provide the BSA with affidavits and mailing receipts. Hearings won’t be held if the BSA learns that notice wasn’t given.
 - i. The Committee will advise the CB12M Chair and District Manager to expect formal notice of hearings, and to let the BSA know if notices do not arrive.
 - ii. Applicants must base revisions on Board comments. ED Singer will look into whether it would be possible for the District Manager to be copied on the email with the comments. (In the past,

it has not been clear that CB12M concerns were taken under consideration. We have not been notified of hearings, and in one case in which a community member attended a hearing, it was she and not the Board that addressed our stated issues.)

- iii. Community Board resolutions are reviewed by the Board and some staff members, and included in the case record. It is best to speak the language of the BSA in the resolutions, and limit comments to the requisite findings. Most often this will involve neighborhood character, but information establishing that a situation is not unique is also appreciated. Board members do also make site visits.

The meeting was adjourned at 8:50 PM.

Submitted by Andrea Kornbluth.