

LAND USE COMMITTEE – MEETING MINUTES

June 5, 2019

Committee Members Present

Wayne Benjamin, Chair
James Berlin
Osi Kaminer
Cindy Matos
Jay Mazur
Christopher Ventura
Curtis Young

Committee Members Absent

Steve Simon
Nicholas Martinez

Board Members Present

Elizabeth Lorris Ritter

Public Members Present

Vivian Ducat
Andrea Kornbluth

Public Members Absent

Staff: Paola Garcia

Guests: Paul Hintersteiner, Nancy Preston, Lee Kallman, Sarah Ellmore, Edith Prentiss, Lucrecia Montemayor, Brendan Pillar, Elliott Cohen, Ryan Desso, Allegra LeGrande.

- 1) The meeting of the Land Use Committee (“Land Use” or the “Committee”) of Community Board 12 Manhattan (“CB12M”, or the “Board”) was called to order with quorum present at 7:11 PM. Chair Benjamin greeted guests and welcomed new Committee member Cindy Matos. Committee members introduced themselves.

2) **Presentation by the Department of City Planning (“DCP”) on Proposed Zoning for Coastal Flood Resiliency.** Brendan Pillar of DCP made a presentation on Preliminary Recommendations for Zoning for Coastal Flood Resiliency. The project is still in the scoping stage (i.e., determining what will be studied in the formal environmental review process), and the recommendations presented are only a draft. DCP is requesting Board and public feedback on scoping, with comments due by June 27, 2019. The proposed text should be available in October of this year.

- a) New York City has 520 miles of waterfront, with over 3,000 buildings located on flood plains. 240 of these buildings, mostly multi-family residences, are located in Manhattan Community District 12 (“CD12”). The current regulatory framework does not allow enough flexibility for buildings with different levels of flood risk to take adequate design or modification measures to increase resiliency (defined here as the ability to withstand a major flood event such as Hurricane Sandy, etc., or to recover quickly from such an event) under both current and anticipated future conditions.
- b) Flood risk is currently assessed using a map drawn by the Federal Emergency Management Agency (“FEMA”). Waterfront lots considered to be at the greatest risk are categorized as being in a “1% annual chance [of major flood event] floodplain”, while lots at lesser risk are categorized as being in a “0.2% chance floodplain”. This information is used to set flood insurance rates. The map was created over 30 years ago, however, and does not reflect expected sea level rise or other climate change realities. FEMA has been working on revising the map following Hurricane Sandy (2012), and the revisions are expected to be completed in 2022 - 2023. The new zoning rules will be in place when the new map is completed.
- c) DCP has been conducting community outreach since 2016, and has worked to incorporate into the proposed amendment several issues raised by communities, such as inconsistencies in the way building height is measured (i.e., from the ground or from the Design Flood Elevation (“DFE”)), zoning rules that hampered the recovery of homes located in industrial areas, the need for more flexibility in designing and modifying to code, etc.
- d) The proposed amendment will be a final codification of temporary zoning provisions and subsequent revisions thereof that were issued after Hurricane Sandy (2012) to make it easier for property owners to build or rebuild in compliance with higher flood elevation and resilient construction requirements. The amendment aims to promote resiliency and lower flood insurance premiums with measures such as the following:
 - Extending applicability to more buildings and lots that face current and future flood risks. The existing zoning only applies to buildings that are in a 1% annual chance floodplain, but the amendment will also cover buildings in 0.2% chance floodplains and adjacent lots.

- (1) Note: The proposed zoning only applies to homes and businesses. Resiliency for infrastructure, such as the MTA subway yards that were flooded during Hurricane Sandy, is being addressed by other agencies.
- Limiting future density in areas that are particularly vulnerable, while supporting planned density in other areas.
 - Allowing buildings on all lots in the 1% and 0.2% floodplains to measure height from a DFE or reference plane, rather than setting the DFE based on a building's use and zoning district.
 - Allowing buildings in industrial areas to rebuild or retrofit to meet flood-resistant standards. Currently, buildings built prior to the 1961 zoning resolution cannot be elevated.
 - Allowing greater flexibility for commercial or mechanical use of ground floors that are below the DFE, and allowing for commercial use of the second floor.
 - Allowing for partial resiliency strategies, such as the construction of mezzanines or separate buildings to house mechanical equipment, or the use of berms in yards, etc.
 - Allowing for relaxed documentation requirements to facilitate recovery after a disaster. Experience with Hurricane Sandy showed that the documents required to get permits, etc. were frequently lost not only in the destroyed buildings, but within city agency archives as well.
- e) Discussion:
- Buildings in floodplains are regulated by both zoning rules and by Appendix G of the Building Code (Flood-Resistant Construction). Some issues, such as the placement of a building entrance, are entirely controlled by the Building Code, and have nothing to do with zoning. Chair Benjamin noted that the Board recently adopted a resolution asking the City Planning Commission to incorporate best practices into the Building Code.
 - DCP can't require new buildings to opt in to the new regulations at this point, but it can recommend that they do if the building is not being built as-of-right.
 - The new regulations are designed to allow for proactive retrofitting or improvements to reflect the reality that water levels are rising.
 - Insurance premiums will rise as flood risks increase, and this cost could result in disinvestment in floodplains.
 - New buildings in floodplains should be as resilient as possible, and there should be some sort of protection available for buyers who are affected by a developer's failure to do so.
 - Other agencies and entities involved with resiliency efforts include the Department of Environmental Protection ("DEP"), which is responsible for green roof tax credits and bioswales, etc., utility providers (incentivizing solar panels), and the Mayor's Office of Resiliency, which deals with a broad range of climate change issues, including the health risks of increasing heat.
- f) Comments on scoping:
- Regarding carbon footprint reporting, a uniform unit of measurement such as gigatons/resident should be adopted.
 - Climate change should be considered for each task of the Environmental Impact Statement and ruled out where it doesn't apply.

A motion supporting a resolution in support of the proposed amendment with the comments noted above was made by James Berlin and seconded by Osi Kaminer. The motion was passed with the following votes:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Committee	9	--	--
Board	1	--	--
Public	3	--	--

3) **Presentation by DCP on Land Use Review Application for Privately Owned Public Spaces Signage and Amenities Text Amendment and Consideration of a Resolution.**

Sarah Ellmore of DCP made the following presentation:

- a) There are more than 550 privately-owned public spaces ("POPS") in New York City, none of which are located in CD12, but there are two areas in CD12 with zoning that allow for POPS. The POPS program was established in 1961 to encourage the creation of public spaces by allowing property owners to receive Floor Area Ratio ("FAR") bonuses or waivers from other requirements in exchange for creating publicly accessible plazas or arcades on their property.
- b) The regulations developed over time, with a signage requirement identifying the spaces as POPS being added in 1975. POPS established before 1975 were not required to have a sign. Between 1975 and 2007, property owners were able to interpret the sign requirement in various ways, but spaces created in 2007 and later were required to use a downloadable sign.

- c) The proposed text amendment requires all POPS, regardless of when they were created, to be identified by a uniform sign. DCP decided to take the opportunity presented by this new requirement to overhaul the design of the sign, and launched an international design contest in January 2019 that received over 600 submissions from 58 countries. 17,000 members of the public voted on their favorite designs, and the final design, showing three white chairs against a black background, was selected from a short list by DCP's Director.
- d) Discussion:
 - There are no specifications for the fonts used on the signs, but they must be highly contrasting and either a minimum size or an absolute size relative to the size of the sign.
 - There is no requirement to make existing POPS that are not compliant with the Americans with Disabilities Act ("ADA") compliant. While there used to be some POPS with sunken surfaces, most of these don't exist anymore and new POPS must be ADA compliant.
 - POPS have a separate Rules sign including no-smoking requirements, etc., that can accommodate text in additional languages. This sign will not be changed by the proposed text amendment.
 - The size of the FAR bonus given with the creation of a POPS depends on the district, but can be as large as 20% of the lot size.
 - Concessions are not required in POPS, but they are permitted with proper certification. These are the responsibility of the building owner.
 - The new logo was criticized on its design merits, and for being less obviously indicating a public space than the previous logo.
- e) Comments on the proposed text amendment (due July 15, 2019):
 - Font visibility should be maximized, and other means of increasing accessibility for vision-impaired visitors (Braille, etc.) should be considered.
 - Signs should be multilingual.
 - The responsibility of building owners and managers to maintain ADA accessibility by making sure that furniture doesn't block paths, etc., should be clarified.

A motion supporting a resolution in support of the proposed amendment with the comments noted above was made by James Berlin and seconded by Vivian Ducat. The motion was passed with the following votes:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Committee	9	--	--
Board	2	--	--
Public	2	--	1

2) **Consideration of a Resolution Concerning the W. 207th Street and Exterior Street Waterfront Development.**

- a) This issue was raised at the May Land Use meeting, and was also considered by the Parks and Cultural Affairs Committee. The two committees share the following concerns with respect to the public street-level exterior space that falls under the jurisdiction of the Public Design Commission, which will hold a hearing on the matter on June 17, 2019:
 - The space should be designed to a standard above code-minimum with optimized flood resiliency.
 - It should be integrated with the natural ecology of the waterfront, with a soft edge, etc.
 - It should be a safe, welcoming space. There is an issue with not being able to see around the corner, so design options and amenities (such as a potential concession at the end of the space) that maximize public safety should be considered.
 - View corridors to the water and to the future park at North Cove should be enhanced, and this space should eventually connect seamlessly with the new park and allow access from either direction.
 - There should be access to running water/drinking water in the new space.

A motion supporting a resolution with the comments noted above was made by Curtis Young and seconded by Christopher Ventura. The motion was passed with the following votes:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Committee	9	--	--
Board	1	--	--
Public	3	--	1

5) **Old Business**

In response to questions raised concerning the safety and labor practices of Joy Construction Corp., a construction partner of MADD Equities, at the May Committee meeting, Lee Kallman of the Iron Workers' Union presented information on the company's OSHA violations and recent class action wage theft cases.

- The company has used 20 different names in as many years, but frequently works on tower cranes, planks, and rigging for affordable housing projects. Other names include U.S. Crane, Urban Erectors, Newburgh Iron, etc.
- The company frequently operates without proper certification, and with no lift director on site. Recently, apparently fake rigging certificates (laminated cards including photos) have been discovered.
- The company pays substandard wages and doesn't offer insurance.
- One of the accidents discussed by Ms. Kallman was included in a presentation on construction site safety and wage theft by the Assistant District Attorney at the April Committee meeting.
- In a 2016 wage theft case, Joy Construction paid \$950,000 in back wages, damages, and attorney fees to 10 plaintiffs.
- Chair Benjamin requested any information (best practices, checklists, responsible contracting language, etc.) that could help the Committee consider the matter further.

A motion to adjourn was made by Jay Mazur, and the meeting was adjourned at 9:20 PM.

Submitted by Andrea Kornbluth.