

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of :

:

STERLING PLACE BK-NY BLOCK :

ASSOCIATION INC., NOÉMIE BONNET, :

and DANIEL SALK, :

:

Petitioners, :

:

For Judgment Pursuant to Articles 63 and 78 of the :

Civil Practice Law and Rules, :

:

- against - :

:

CITY OF NEW YORK, NEW YORK CITY :

LANDMARKS PRESERVATION :

COMMISSION, HOPE STREET CAPITAL LLC, :

959 STERLING PLACE GROUND OWNER LLC, :

and XYZ CORP./LLC, :

:

Respondents. :

:

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Index No.

VERIFIED PETITION

PETITIONERS STERLING PLACE BK-NY BLOCK ASSOCIATION INC., NOÉMIE BONNET, and DANIEL SALK (collectively, “Petitioners” or the “Coalition”), as and for their Verified Petition (“Petition”) against Respondents, allege and aver as follows:

PRELIMINARY STATEMENT

1. By this proceeding, the Coalition challenges the grant of a certificate of appropriateness (“COA”) which was issued by the Landmarks Preservation Commission (“LPC”) on December 9, 2021. As set forth below, the COA should be annulled, vacated and/or otherwise reversed and remanded, insofar as it was issued in derogation of the LPC’s rules and procedures, was affected by errors of law, and was the product of arbitrary and capricious decision-making.

2. Through the COA, the LPC granted developer-respondents Hope Street Capital, LLC and 959 Sterling Place Ground Owner LLC (together, the “Developer”) the right to construct, in the Crown Heights North Historic District II (“Historic District”), a monstrous apartment complex (“Proposed Project”) directly behind an historic 19th-Century church (the “Church”) commonly referred to as the “Crown Jewel” of the Crown Heights neighborhood of Brooklyn.

3. At the time the Historic District was designated in 2011, the City Council Subcommittee on Landmarks, Public Siting and Maritime Uses held a hearing, at which then-City Council Member (and current New York State Attorney General) Letitia James stated:

this designation...will protect this [Crown Heights] community against rapacious developers who unfortunately have destroyed the character and fabric of significant parts of Brooklyn.

(City Council Subcommittee Hearing Tr. Sept. 15, 2011 at 10-11, Ex. 1).

4. Unfortunately, the LPC has now approved the Proposed Project in the Historic District, and given license to the very same type of “rapacious developers,” thereby undermining the primary objective that the designation intended to achieve. Specifically, the Developer, a Manhattan-based real estate company, plans to develop its newly-acquired property in the Historic District, and on the same campus as the cherished Church – a Romanesque Revival and Gothic Revival-style building which is now the Hebron Seventh Day Adventist Church and School, located between Sterling Place and Park Place and between New York Avenue and Brooklyn Avenue (the “Landmark-Protected Property” or “Project Site”). The Developer approached the LPC under the guise of supposedly “saving” part of the cherished Church from its current state of disrepair (while demolishing another part). In reality, however, much to the chagrin of the Crown Heights community, the Developer, an interloper and utter stranger to the neighborhood, is seeking to profit

financially from development on the Landmark-Protected Property in a manner that threatens the preservation of the Historic District, and in particular, its “Crown Jewel.”

5. After the LPC initially rejected the Developer’s first two proposals for its Proposed Project, which originally consisted of a single building, the LPC granted an application (“Application”) for a certificate of appropriateness to permit the Developer to install a series of multiple, out-of-scale and inappropriate buildings (“Multi-Building Proposal”) that would obscure the views of the Church, destroy the architectural, historical and cultural integrity of the Historic District, and adversely impact the surrounding Crown Heights neighborhood.

6. Worse, in granting the Application and issuing the COA, the LPC failed to comply with the LPC’s rules and procedures, the general principles of the New York City Landmarks Law (N.Y.C. Admin. C. §25-301, *et. seq.*) or decisional law. The violations of the LPC’s rules and Landmarks Law occurred here when the Developer submitted the Multi-Building Proposal which substantially deviated from the design for a single building that was originally proposed. As reflected below, after a public hearing is held on a proposed design for a certificate of appropriateness, New York law requires that the LPC schedule and conduct an additional public hearing if and when there are substantial deviations to the originally-proposed design. This requirement is intended to ensure that members of the public are afforded the opportunity to review, testify and provide comment on any substantially revised design.

7. Here, however, despite the Developer’s submission of a substantially revised design, the LPC failed to conduct a second public hearing. Specifically, the Developer initially presented at a public hearing a proposal which included a single proposed building (“First Design”), in response to which the LPC heard testimony by members of the community and preservationist

organizations in fervent opposition to the Proposed Project. The Commissioners, too, opposed the First Design and suggested substantial changes before inviting the Developer to present a revised proposal at a future meeting. Subsequently, the Developer presented at a public meeting a second design which substantially deviated from the first one and included the Multi-Building Proposal instead of a single building (“Second Design”); the public, however, was not permitted to testify in response to the Second Design because, unlike public hearings, at which testimony from the public is permitted, the LPC instead scheduled a mere public meeting, at which the public has no right to offer testimony.¹

8. After additional changes were suggested by the LPC Commissioners, the Developer submitted yet another design with yet additional changes, which the LPC ultimately approved (“Third Design” or “Approved Design”); as with the Second Design, the Third Design was presented at a public meeting at which the public, again, was not permitted to testify.

9. The Developer’s architect acknowledged that in the Second and Third Designs, he had made a “significant change” and a “pretty dramatic change” to the overall design of the Proposed Project. The LPC Commissioners similarly acknowledged that the Developer had presented a “new design;” that changes made to the Proposed Project in the Second and Third Designs were, for example, “tremendous,” almost “like night and day,” and the product of the Developer’s architect “completely disassembling his previous scheme and really re-thinking it,” and that the Developer’s

¹As shown *infra*, the LPC conducts public hearings and public meetings. At public hearings, members of the public are afforded the opportunity to observe the applicants’ oral presentations to the LPC and then provide testimony in opposition or support. By contrast, at public meetings, members of the public cannot respond to applicant presentations. The LPC typically transitions from public hearings to public meetings after the review process by the LPC has reached the point that any changes are largely minor or technical, and not major or substantive.

architect had to “modify [his] scheme this much [so] many times,” and had to “*redesign this thing....*” Nevertheless, in violation of its procedures, long-standing practices and decisional law, the LPC, despite repeatedly acknowledging the substantial, if not completely radical, revisions made to the First Design, failed to hold a single public hearing with respect thereto, thereby depriving the public of the opportunity to testify with respect to what is essentially an entirely new project.

10. Moreover, the Proposed Project is utterly inappropriate for the Historic District. Apparently, the Commissioners of the LPC, while seemingly in awe of the talents of the Developer’s architect and the artistry involved in the design of the Multi-Building Proposal, never stopped to consider its inappropriateness, lack of context, and most importantly, the damage the newly-proposed buildings would cause to the Historic District and surrounding neighborhood. This was a classic instance of an administrative agency, led by Commissioners consumed by the technical details of their jobs, utterly failing to consider the real-world consequences of its decision upon the neighborhood. And the real-world consequences of its decision were never considered because the LPC failed to hold a public hearing to receive testimony from, *inter alia*, elected public officials and from those members of the public such as Petitioners, whose proximity to the Landmark-Protected Property could have provided a unique and insightful perspective in that regard (*Id.*).

11. If all of that weren’t bad enough, the Developer has already begun excavating at the Project Site and, in doing so, has shown very little regard for the Crown Heights North community and residents in the surrounding area. Multiple residents have reported that, since the excavation began, they have experienced extensive vibrations in their homes, to the point where objects have been falling off of shelves. Neighbors are, therefore, deeply concerned that their homes are at risk of severe damage as a result of the Developer’s excavation and construction.

12. For these and the reasons set forth below, the COA should be vacated and annulled because it was affected by: (i) failures to comply with lawful procedure and errors of law; (ii) arbitrary and capricious decision-making; and (iii) other errors of law.

PARTIES

Petitioners

13. Sterling Place BK-NY Block Association, Inc. (“Sterling Place Association”) is a non-profit corporation existing under the laws of the State of New York.

14. Members of the Sterling Place Association consist of residents, business, and/or not-for-profit organizations on Sterling Place between Brooklyn Avenue and New York Avenue in Crown Heights, Brooklyn (the “Sterling Block”), which is in the Historic District and in close proximity to the Project Site.

15. The purpose of the Sterling Place Association is to strengthen communication and representation among residents in relation to matters that impact the residents and their guests and property regarding public and/or private services. The Sterling Place Association was created for the betterment of the Sterling Block, and the extended community.

16. Daniel Salk (“Daniel”) is, and at all relevant times has been, a citizen of the City and State of New York, with a residence in the Historic District in close proximity to the Project Site.

17. Daniel is the President of the Sterling Place Association.

18. Noémie Bonnet (“Noémie”) is, and at all relevant times has been, a citizen of the City and State of New York, with a residence in the Historic District in close proximity to the Project Site.

Respondents

19. Respondent City of New York (the “City”) is a municipal corporation under General Construction Law §66(2). It is the governmental body charged with oversight responsibility for public affairs and public lands within the City’s five boroughs.

20. Respondent Landmarks Preservation Commission (“LPC”) is an agency of the City, and is the largest municipal preservation agency in the nation. It is charged with the responsibility of protecting the City’s architecturally, historically, and culturally significant buildings and sites by granting them landmark and/or historic district status, and by protecting and regulating them once they have been so designated. Accordingly, the LPC is, and at all times relevant hereto has been, charged with protecting and regulating designated historic districts, including the Historic District.

21. Upon information and belief, respondent Hope Street Capital LLC, is, and at all relevant times has been, a limited liability company organized and existing under the laws of the State of New York, with an office located at 475 Park Avenue South, 12th Floor, New York, New York 10016.

22. Hope Street Capital LLC is the name of the entity to whom the COA was issued (Ex. 2).

23. Upon information and belief, Hope Street Capital LLC is the name of the corporation listed on the Application and materials filed with the LPC relative to the Application.

24. Upon information and belief, Hope Street Capital LLC was and is the applicant with respect to the Application.

25. Upon information and belief, Hope Street Capital LLC, despite being the applicant with respect to the Application, does not own the property at the Project Site.

26. Upon information and belief, respondent 959 Sterling Place Ground Owner LLC is, and at all relevant times has been, a limited liability company organized and existing under the laws of the State of Delaware, with an office located at 56 West 22nd Street, Suite 1000, New York, New York 10010.

27. Upon information and belief, 959 Sterling Place Ground Owner LLC is the owner of record of the property at the Project Site (Deed and Acris Records, Ex. 3).

28. Upon information and belief, 959 Sterling Place Ground Owner LLC was not and is not the applicant with respect to the Application.

29. Upon information and belief, 959 Sterling Place Ground Owner LLC and Hope Street Capital, LLC are owned by the same individuals.

30. XYZ Corp./LLC are named as place-holding entities in the event that it is determined that another party, although not readily discernable from publically-filed documents and records, has an interest in the outcome of this proceeding.

CLAIM FACTS

The Historic District and the Church

31. In 2011, the LPC, along with City Council, designated the Historic District as an “historic district” within the meaning of the Landmarks Law (Designation Report, Ex. 4; *see also* City Council Hearing Tr., Ex. 1).

32. In connection with its designation of the Historic District, the LPC issued a 588-page designation report on or about June 28, 2011 (the “Designation Report”) (Ex. 4).

33. Located in the northwestern section of the Crown Heights neighborhood in Brooklyn, New York, the Historic District is:

bounded by Atlantic Avenue and Eastern Parkway on the north and south, and by Bedford and Albany Avenues on the west and east. On its north, the district adjoins the Crown Heights North Historic District, which was designated by the Landmarks Preservation Commission in 2007 and contains more than 450 buildings of similar age, style, and type. The Crown Heights North II designation extends this district southward to Eastern Parkway, and includes properties on Bergen Street, St. Mark's Avenue, and Prospect Place to the west of the earlier-designated buildings on these streets.

(*Id.* at 4).

34. The Historic District consists of “more than 600 buildings, including single- and two-family row houses, freestanding residences, flats buildings, institutional buildings, churches, and apartment houses built primarily from the 1870s to the early 1940s” containing various architectural styles, including “the neo-Grec, Queen Anne, Art Deco, and Art Moderne, as well as the Romanesque, Renaissance, Colonial, Gothic, and Medieval Revival styles” (Designation Report at 4, Ex. 4).

35. One of the most significant properties in the Historic District is a large 19th-Century building complex which is now known as the Hebron Seventh Day Adventist Church and School (the Church, previously defined), located at 920 Park Place. *See* Designation Report at 12; *id.* at 541, Figure 9.²

36. The Church is often referred to as the “Crown Jewel” of Crown Heights.³

37. The Church is located on the State and National Register of Historic Places.

38. Built in 1888-89, the Church was originally the Brooklyn Methodist Episcopal

²According to the Designation Report, the Church has various addresses, including 914-920 Park Place, 201-225 New York Avenue and 941-981 Sterling Place.

³*See* LPC Public Hearing Oct. 20, 2020, <https://www.youtube.com/watch?v=OwHUI8i0DNQ>, (“Public Hearing Video”).

Church Home for the Aged and the Infirm (Designation Report at 299).

39. The Church building complex is located in the center of a large lot of land with open space, including extensive greenspace (“Church Property”) (*Id.*; October 2020 Presentation Materials, Ex. 5).

40. The Church Property is bounded on the north by Park Place, on the south by Sterling Place, on the west by New York Avenue, and extends east about a half block toward Brooklyn Avenue. *See* Designation Report, Ex. 4; October 2020 Presentation Materials, Ex. 5.

41. The Church is described in the LPC Designation Report as having Romanesque and Gothic Revival styles (Designation Report at 299, Ex. 4).

42. The Church building (“Church Building”) features, *inter alia*: Queen Anne style multi-pane double-hung wood windows; stained-glass windows in the chapel; arch-headed windows at the western wall dormer and at the fourth story above the main entrance; two triple arch-headed windows at the western porch; an arch-headed door entry; a picturesque intersecting gable roof with dormers; a tower with an octagonal dormered roof; a chapel with Gothic-arched stained-glass windows; and a historic porch with stoop railings (*Id.* at 299-300, Ex. 4).

43. In or about 1911, three additions (the “Additions”) were made to the Church building, including: (1) a structure to the east of the original Church tower; (2) a two-story connector and chapel to the west of the original Church tower; and (3) a four story plus basement modern brick addition located at the center of the rear facade of the original Church tower (“Rear Addition”) (Designation Report at 299, Ex.4).

44. In the opening summary of the Designation Report for the Historic District, the LPC discussed the Church as follows:

In 1889, the district's only 19th-Century institutional building, and one of its most impressive examples of Romanesque Revival architecture, was completed on Park Place east of New York Avenue. Intended as a “comfortable residence” for the elderly, the Brooklyn Methodist Episcopal Church Home, designed by Mercein Thomas, is entered through a massive arched doorway and anchored by a high tower with an octagonal, dormered roof.

Designation Report at 4, Ex. 4 (emphasis added). *See also id.* at 12.

45. The Designation Report further states:

The Church Home was founded in 1883 to create and maintain a “comfortable residence” with board, clothing, employment, medical aid, and other necessary care and attendance for the elderly of the church; it engaged Mercein Thomas, an architect of factories and Queen Anne and Romanesque Revival style residences, to design its facility. Constructed in 1888-89, the Home originally consisted of the central portion of the present building, anchored at its northeastern corner by a high tower with an octagonal, dormered roof. Entered through a massive arched doorway, the building is fairly severe in design, but its red-brick facades are enlivened by its gabled roofline, terra-cotta and Connecticut brownstone trim, and Thomas’ juxtaposition of round-headed and rectangular windows featuring a variety of surrounds. It was expanded between 1911 and 1913 according to the designs of builder William Kennedy, who sat on the Home’s advisory board. Kennedy’s eastern wing mimicked Thomas’ original design, while a new chapel extending from the western facade of the original building was executed in the Gothic Revival style. The Church Home moved to a different Brooklyn location in 1976, and the building is now occupied by the Hebron Seventh-Day Adventist Elementary School.

Id. at 12.

46. The entire Church Property was previously owned by the Northeastern Conference Corporation of the Seventh-Day Adventists (“Seventh-Day Adventists”), a religious non-profit organization of the General Conference of Seventh-Day Adventists.

47. On or about December 15, 2017, the Seventh-Day Adventists entered into a Real

Property and Development Rights Purchase and Sales Agreement (“Sales Agreement”) with respondent Hope Street Capital LLC (Sales Agreement, Ex. 6). As part of the Sales Agreement, the Seventh-Day Adventists agreed to subdivide the Church Property into two parcels. One parcel, consisting of the Church Building, would continue to be owned by the Seventh-Day Adventists; the other parcel, located on the southern edge of the Church Property, would be acquired by the Developer (Sales Agreement, Ex. 6).⁴

48. The Sales Agreement also gave the Developer the right to demolish the Rear Addition and reconstruct the exposed facade of the Church (Sales Agreement, Ex. 6).

49. Soon after executing the Sales Agreement, the Developer announced plans for a proposed project which would include the: (1) demolition of the Rear Addition; (2) reconstruction and restoration of the exposed six-story brick facade of the Church; and (3) construction of a large apartment building complex, parking garage, and gymnasium on the southern edge of the Church Property (Proposed Project, previously defined).

50. In October 2020, the Developer presented its plans for the Proposed Project to Brooklyn Community Board 8 (“CB8”) in advance of seeking a certificate of appropriateness from the LPC (CB8 Letter to LPC, Oct. 15, 2020, Ex. 7).

51. The full board of CB8 overwhelmingly disapproved the Proposed Project and voted to reject the Application for a COA for the Proposed Project by a vote of 28-2 (*Id.*).

⁴It was at this southern edge of the Church Property where the Developer initially proposed to construct a single building, which was later substantially redesigned for development as part of the Multi-Building Proposal.

First Design Before the LPC

52. The Developer, in complete disregard of the community's objections to the Proposed Project including the aforesaid rejection by CB8, applied for a COA to seek the LPC's approval for the Proposed Project, upon information and belief, in or about October 2020 (Application, previously defined).⁵

53. The LPC held a public hearing on October 20, 2020 ("Public Hearing"), during which the Developer presented its plans for the First Design of the Proposed Project. *See* October 2020 Presentation Materials, Ex. 5; *see also* Public Hearing Video.

54. The Public Hearing was held remotely on the Zoom videoconferencing platform, and no in-person public testimony was permitted.

55. When the Developer presented its proposal to the LPC on Zoom, its representatives were able to share their screen with the LPC and the public to show everyone images from its presentation.

56. By contrast, prior to the Public Hearing, Petitioner Noémie requested, but was denied, permission from the LPC to share her screen on Zoom so that she would be able to share images as part of her testimony in opposition to the Proposed Project. *See* Affidavit of Noémie Bonnet, sworn to on April 7, 2022 ("Noémie Aff.") ¶5.

57. Had the LPC conducted an in-person hearing, in the same way it did prior to the COVID-19 pandemic, Noémie would have had the opportunity to use visual aids to support her testimony.

⁵Upon information and belief, the Developer listed the address of 959 Sterling Place on the Application.

58. Because the community members did not have the opportunity to present images in real time during their testimonies, the Developer maintained complete control of the visual narrative at the Public Hearing. *See* Noémie Aff. ¶5.

59. The Public Hearing on October 20th was the only public hearing before the LPC in connection with the Proposed Project.

60. The First Design, presented at the Public Hearing, consisted of plans for construction of a single proposed building with a continuous street wall that extended 350' in length, and to a height of 60' with no setback until the penthouse, which was to be set back 20 feet from the facade (“Single Proposed Building”).

61. The Single Proposed Building was to be located parallel to the Church, on the southern edge of the Church Property, along Sterling Place.

62. The Single Proposed Building was designed with massing of 128,000 square feet.

63. The Single Proposed Building was also designed to feature: (1) a gable roofed end-piece at the corner of New York Avenue and Sterling Place to house a gymnasium (“Gabled Roof Portion”); (2) the lengthy building mass to house residential apartments along Sterling Place; and (3) a common one-story foyer in the middle on Sterling Place (“Central Foyer”). The Single Proposed Building was also designed to (nearly) abut the adjacent row houses to the east on Sterling Place. *See* October 2020 Presentation Materials at 70, Ex. 5.

64. The facade on the Gabled Roof Portion of the Single Proposed Building was designed to be constructed of brick with metal, windowed dormers.

65. The Central Foyer was designed to contain a masonry (*i.e.*, brick) lattice screen on the front facade, transitioning to a small canopy and a change of material at the street level.

66. The First Design included the proposed construction of a curb cut on New York Avenue to allow access to below-grade parking.

67. At the Public Hearing, opposition to the Application and the First Design was overwhelming.

68. In fact, of the 43 people who testified at the Public Hearing, 42 of them spoke in opposition to the Proposed Project.

69. Those who testified in opposition include Petitioners Daniel, other members of the Sterling Place Association, and Noémie; then-City Councilmember Robert E. Cornegy, Jr.; Brooklyn Community Board 8; Historic Districts Council; New York Landmarks Conservancy; the Victorian Society; and dozens of individuals and groups from the Crown Heights community. *See Public Hearing Video.*

70. In addition to the oral testimony, the LPC received 950 letters in opposition to the First Design of the Proposed Project, including from Noémie and members of the Sterling Place Association, including Daniel.

71. The only person who testified in support of the Proposed Project was the Chair of the school board at the Church and a leader at the Church; however, his support was, no doubt, heavily influenced by the fact that it was *his* Church that was slated to receive funding from the Developer for restoration of the Church Building. *See Public Hearing Video.*

72. In stark contrast to the staggering 950 letters submitted in protest of the First Design of the Proposed Project, the LPC received just one single letter in support. *See Public Hearing Video.*

73. The LPC did not announce, and upon information and belief, the Commissioners did

not consider, that a community petition with over 6,800 signatures in opposition to the Proposed Project was submitted to the LPC prior to the Public Hearing.⁶

74. Once public testimony concluded at the Public Hearing, LPC Chair Sarah Carroll closed the Public Hearing.

75. The Public Hearing was closed without a vote on the Proposed Project.

76. The closure of the Public Hearing resulted in the termination of all public testimony, but allowed the Developer to continue its submission of both: (i) written materials and (ii) oral testimony in support of the Proposed Project. Thus, once the Public Hearing was closed, the Developer and its representatives were the only individuals afforded the opportunity to address the LPC with respect to the Proposed Project.

77. On or about November 4, 2020, LPC's General Counsel Mark Silberman sent a letter to a local community association, denying that group's request for a meeting and stating that "the Chair and staff do not meet with community members about [COA] applications. The public hearing is the proper venue for the Commissioners to hear from the community on an application" (Silberman Letter Nov. 4, 2020, Ex. 8) (emphasis added).

78. Mr. Silberman further stated that the Developer would return to the LPC at a public meeting in November and present its response to public testimony, at which point the Commissioners would ask additional questions and provide comments (*Id.*).

79. However, the community would not have the opportunity to provide any oral testimony in response to the Developer's future presentations to the LPC, including presentations

⁶Upon information and belief, the same signed community petition in opposition to the Proposed Project currently consists of over 8,000 signatures.

of its complete redesign of the Proposed Project which substantially deviated from the First Design.

80. Once the public hearing process is concluded by the LPC, no further testimony from members of the community is permitted.

81. Following the Public Hearing on October 20, 2020, the LPC held the first of three public meetings in connection with the Proposed Project on November 17, 2020 (“First Public Meeting”).⁷

82. Public meetings differ from public hearings.

83. As set forth previously, members of the public are permitted to attend a public meeting, but are not afforded an opportunity to testify; however, the applicant and members of its team are given free rein to address the LPC.

84. By contrast, at a public *hearing*, members of the public *are* permitted both to attend *and respond to the oral presentation made by an applicant and its team*.

85. At the First Public Meeting, the Commissioners expressed their opposition to the First Design.

86. Commissioner Frederick Bland questioned the sheer length of the Single Proposed Building of 350 feet. He observed that “there’s no individual apartment building which is this long in the district...So I'm beginning to wonder if at least two buildings might be a better approach, *literally two different buildings* with not just a space where the lobby is glassy, but actual space between the two buildings that allows visual contact, and...maybe physical contact with the common area in the back...I think the metal and glass seems to be pretty inappropriate in this [context] as

⁷See LPC Public Meeting Video, Nov. 17, 2020
<https://www.youtube.com/watch?v=et4BGESipmY> (“November Public Meeting Video”).

well.” *See* November Public Meeting Video.

87. Commissioner John Gustafsson announced that he agreed “100% with Commissioner Bland” on this issue. *See* November Public Meeting Video.

88. Commissioner Jeanne Lutfy stated that the First Design “doesn’t really work as designed within this context.” *See* November Public Meeting Video. She suggested, for example:

- lowering the scale of the Proposed Project;
- moving the apartment building back "so it doesn't read as a mass And it may be...that it is *more than one building*";
- using materials that would be more harmonious with the area;
- creating "a little more air" between the Proposed Project and the adjacent rowhouses on Sterling Place; and
- creating some open space for the community.

Id. (emphasis added).

89. Commissioner Diane Chapin echoed the suggestion to break up the streetwall to have "*separate buildings* and perhaps with more views into the landscaping.” Commissioner Chapin stated that other changes that were also needed, and further suggested:

- preserving the "sense of sitting in the landscape;"
- pulling the building back on the corners to allow for a better view of the existing structures;
- reducing the metal used in favor of masonry that would "be much more successful and integrate better into the district;" and
- reducing the scale of the penthouse.

See November Public Meeting Video (emphasis added).

90. Commissioner Adi Shamir-Baron acknowledged the importance of the "campus-like

feel" of the Church Property, stating that is "the kind of air the space, the green, the open around the historic building, and what it kind of gives back to the local perimeter buildings, but also to the sense of the neighborhood broadly." *See* November Public Meeting Video. Commissioner Shamir-Baron opined that the scale of the Proposed Project should be lower and/or contain accentuated, exaggerated roof pitches throughout. *See id.*

91. Commissioner Michael Goldblum raised his concerns with, *inter alia*, the concealment of the landscaped area to the eastern portion of the Single Proposed Building, architecture of the apartment building itself – noting: (i) that "it's exactly the wrong architecture for this site," and (ii) the lack of "some kind of lawn, interior courtyard perhaps with visual access from the street that allows for views of the eastern portion of the South Facade of the building." *See* November Public Meeting Video.

92. The Commissioners took no action on the Application at the First Public Meeting.

93. The Chair asked the Developer to consider the Commissioners' comments and "re-study their proposal and we'll have them back when they have a revised proposal." *See* November Public Meeting Video.

94. No public testimony was allowed by the LPC at the First Public Meeting.

95. By deferring and tabling the Application without a vote, even though the Commissioners at the First Public Meeting were generally opposed to it, the LPC provided the Developer a second bite at the apple with the opportunity to go back to the drawing board to prepare a new proposal – one with respect to which members of the public, including public officials, would be deprived of any opportunity to address directly with the Commissioners.

Second Design Before the LPC

96. Thereafter, a second public meeting was scheduled by the LPC for March 16, 2021 (“Second Public Meeting”).

97. Prior to the Second Public Meeting, on or about March 4, 2021, then-Councilmember Cornegy wrote a letter to the LPC requesting that the LPC provide the affected community board (CB8) – which had previously rejected the First Design – the opportunity to review any new design proposals by the Developer prior to further LPC consideration of the Proposed Project (Councilmember Cornegy March 4, 2021 Letter, Ex. 9).

98. Councilmember Cornegy stated that he believed the “LPC would benefit from the expertise the community has to offer on any new proposal” (Ex. 9).

99. Councilmember Cornegy further stated that, “[s]ince the developer will have a second opportunity to present new plans to LPC, the community should also be afforded the chance to weigh in” (Ex. 9).

100. LPC’s general counsel, Mark Silberman, responded to Council Member Cornegy’s letter by email dated March 9, 2021 (Silberman March 9, 2021 Email, Ex. 10).

101. Mr. Silberman wrote that, after the First Public Meeting on November 17, 2020, the Developer “submitted a revised design” (Ex. 10). And, “upon reviewing the revised design it *was determined* that it was not so substantially different from the original design to require a new public hearing. Instead, the revised design will be presented to the Commissioners at a public meeting” (*Id.*) (emphasis added). Mr. Silberman never disclosed by whom it “was [supposedly] determined” that the revised design (*i.e.*, the Second Design) was not sufficiently different from the First Design so as to warrant a reopening of the public hearing process. More importantly, by disclosing that the

Second Design “will be” presented to the Commissioners at the public meeting, Mr. Silberman made clear that the Commissioners had not yet reviewed it (Ex. 10); in other words, the individual(s) who made the determination that the Second Design was not sufficiently different from the First Design to warrant reopening the public hearing process was (or were) not a Commissioner(s).

102. Because the Commissioners had not yet reviewed the revised design, and did not yet hear the Developer’s presentation of it, they could not have possibly made the determination as to whether the Second Design substantially deviated from the First Design.

103. Mr. Silberman wrote in his email to Council Member Cornegy that the LPC does not require applicants to present to the Community Board when a revised proposal is coming back to the Commission at a public meeting (Ex. 10). He wrote that “[d]ifferences in materials, fenestration, and façade composition do not trigger a requirement for a new hearing” and that “modest changes in massing, size and scale also do not trigger the requirement for a new hearing” (*Id.*).

104. Mr. Silberman, who is not a Commissioner, opined in his email that “[i]n this case...the revised design has a similar footprint, size, scale, although the massing has been reduced and adjusted and the location of the driveway has been moved to respond to some of the Commissioners’ comments. Although some of the project's design features have been notably changed to address the Commissioners’ comments, these changes are in keeping with the original intent and are not significant enough to trigger the requirement for another public hearing and, concomitantly, community board review” (Ex. 10).

105. Upon information and belief, Mr. Silberman does not have formal education or training in architecture.

106. The Developer presented its Second Design at the Second Public Meeting, which was

held on March 16, 2021. *See* March 2021 Presentation Materials, Ex. 11.⁸

107. The LPC announced that, after the First Public Meeting and prior to the Second Public Meeting, it had received 350 new letters in opposition to the Proposed Project and only three letters in support. The 350 new letters in opposition were in addition to the 950 letters in opposition received by the LPC prior to the Public Hearing.

108. The Developer's Second Design substantially deviated from the First Design.

109. Most prominently, following the comments of several Commissioners at the First Public Meeting, the previous Single Proposed Building design was revised into the Multi-Building Proposal, with two distinct buildings of six stories each to the east and west (“East Building” and “West Building,” respectively).

110. Other significant changes between the First Design and the Second Design included, *inter alia*:

- a common entryway on Sterling Place ("Common Entryway") between the East and West Buildings was created;
- a 25' gap between the East Building and the adjacent existing rowhouses, whereas in the First Design, there was virtually no separation whatsoever between the Single Proposed Building and the adjacent rowhouses;
- the overall facade along Sterling Place was changed and "simplified;"
- the metal and glass "window wall" components on the north façade were changed to masonry (brick) with mostly double hung windows;

⁸*See also* LPC Public Meeting March 16, 2021, <https://www.youtube.com/watch?v=4VNV4zm1M-E> (“March Public Meeting Video”).

- the entire base of the development structure was given additional articulation and texture "to ground the building and address the pedestrian scale;"
- the design of the roof was also modified by changing the material used on the top floor and dormers from metal to brick, using diamond shaped zinc shingle cladding on the roof, and the use of a metal expression on the top floor on the rear side of the building (*i.e.*, the side facing the Church);
- the portion of the new West Building changed the Gabled Roof, which was substantially "simplified;" the height of the proposed volume was reduced by one floor; and its setback off New York Ave. was increased by 10 feet;
- six stories of new balconies were added to the East Building;
- the overall massing and square footage was reduced by approximately 14,000 sf.; and
- the curb cut and garage ramp were relocated from the west side (on New York Avenue) of the Single Proposed Building to the new East Building.

See Affidavit of Architect David Helpern, sworn to on April 8, 2022 ("Helpern Aff.") ¶15; *see also* March 2021 Presentation Materials, Ex. 11.

111. As the Developer's architect (the "Developer's Architect") acknowledged during the Second Public Meeting, "you can see the dramatic change" between the First and Second Designs. *See* March Public Meeting Video.

112. The Commissioners agreed that the changes from the First Design to the Second Design were dramatic. *See* March Public Meeting Video.

113. Commissioner Lutfy stated that the revised proposal was a "*new design*;" the multiple differences between the First and Second Designs were "*tremendous*" and that comparing the two Designs was almost "*like night and day*." *See* March Public Meeting Video (emphasis added).

114. Commissioner Goldblum stated that the Second Design was the product of the Developer's Architect "completely disassembling his previous scheme and really re-thinking it." See March Public Meeting Video (emphasis added).

115. Several of the Commissioners, including, for example, Commissioners Holford-Smith and Chapin agreed that the Proposed Project had changed insofar as the Second Design now reads as much more residential instead than commercial or institutional. See March Public Meeting Video.

116. Notwithstanding the multiple acknowledgments by the Commissioners that the Second Design so substantially deviated from the First Design, neither the Chair nor Mr. Silberman (nor anyone else) addressed the longstanding LPC rule requiring the reopening of the public hearing process under such circumstances. See March Hearing Video.

117. The Second Design -- even with its "dramatic changes" -- still garnered criticism by the Commissioners.

118. For example, Commissioner Bland stated that the cornice line of the two buildings is too high and "repetitive." See March Public Meeting Video.

119. Commissioner Gustafsson stated that the height of the East and West Buildings is a floor too high. See March Public Meeting Video.

120. By scheduling the Second Public Meeting as a "public meeting" (rather than a public hearing) the LPC deprived members of the public the opportunity to testify with respect to the Second Design or otherwise respond to the oral presentation by the Developer and its team before the LPC.

121. At the conclusion of the Second Public Meeting, Chair Carroll again invited the Developer to revise its plans and once again return to present at yet another public meeting, thus

giving the Developer a *third* bite at the apple.

Third Design, Which the LPC Ultimately Approved

122. In response to the comments made by the Commissioners at the Second Public Meeting, the Developer proposed and presented its third and final design, which was ultimately approved by the LPC (Approved Design, previously defined). *See* May 2021 Presentation Materials, Ex. 12.

123. The Developer proposed and presented the Approved Design at a third public meeting, which the LPC held on May 11, 2021 ("Third Public Meeting").⁹

124. After the Second Public Meeting, and prior to the Third Public Meeting, the LPC received nearly 300 new letters in opposition to Proposed Project, including from Petitioners Daniel, other members of the Sterling Place Association, and Noémie. These new letters were in addition to the 950 letters received by the LPC after the Public Hearing and the 350 letters received after the First Public Meeting.

125. The Approved Design featured yet *additional* substantial changes from the First Design beyond the already-substantial changes reflected in the Second Design. *See* May 2021 Presentation Materials, Ex. 12; *see also* Helpern Aff.

126. The additional and substantial revisions in the Approved Design include, *inter alia*:

- extending the masonry piers on the ground floor and adding a brick bulkhead to reduce the commercial look of the floor apartments;
- pushing back the top floor on the eastern portion on Sterling Place by 10 feet, and by five feet on eastern side adjacent to

⁹*See* LPC Public Meeting May 11, 2021, <https://www.youtube.com/watch?v=XxMOKv7Zdps> ("May Public Meeting Video").

the row houses;

- introducing a recess on the West Building;
- eliminating the "projecting brick gables" which wrapped onto the Sterling Place facade;
- adding a "shed portion" to the Common Entryway (connecting the East and West Buildings) to reduce its (the Common Entryway's) apparent overall height, accentuating the separation between the East and West Buildings and the disconnected/interrupted roofline (whereas in the First Design, the Project consisted of a Single Proposed Building with a continuous roofline).

Helpern Aff. ¶18; *see also* May 2021 Presentation Materials, Ex. 12.

127. The Developer's Architect acknowledged during the Third Public Meeting that the Approved Design includes yet another "significant change" from the First Design. *See* May Public Meeting Video.

128. In particular, the Developer's Architect stated that there is now a "significant change" to the roof scape on both volumes [*i.e.*, the East and West Buildings], particularly on the eastern side, where we both pushed back and sculpted the roof in order to lessen the difference between the heights of the proposed building and the townhouse just to the east." *See* May Public Meeting Video (emphasis added).

129. The Developer's Architect also noted that pushing back the top floor on the East Building (closest to the row houses) "makes a pretty dramatic change," which was approximately a 2,000 square foot reduction. *See* May Public Meeting Video (emphasis added).

130. The Commissioners also acknowledged that there were dramatic changes between the First and Approved Designs.

131. Commissioner Goldblum stated that the Proposed Project has "come a long way" and

noted the difficulties of architects to “*modify their scheme this much this many times,*” as was the case here. See May Public Meeting Video (emphasis added).

132. Commissioner Devonshire stated that the Developer's Architect has “*had to redesign this thing....*” See May Public Meeting Video (emphasis added).

133. A comparison of the First Design and the Approved Design, based upon the Developer’s presentation materials submitted to the LPC, is shown below:

First Design (October 2020 Presentation Materials)



Approved Design (May 2021 Presentation Materials)



Compare October 20, 2020 Presentation Materials at 39, Ex. 5 with May 11, 2021 Presentation Materials at 12, Ex. 12. See also Helpern Aff. ¶3. The above renderings, which were copied from

the Developer's own presentation materials, leaves no doubt that the Approved Design substantially deviates from the First Design. Indeed, the First and Approved Designs barely resemble one another.

134. Given the substantial deviations from the First Design to the Approved Design, the Commissioners, who did not receive the benefit of oral testimony from the public, reversed their prior positions and voted to approve the Application.

135. No public testimony was allowed by the LPC at the Third Public Meeting.

136. Neither Chair Carroll nor any of the other Commissioners opined as to whether the Approved Design substantially deviated from the First Design so as to trigger the requirement for a new public hearing.

137. Given the presentation of a proposal dramatically different from the original, it is shocking that the LPC deprived the public of an adequate opportunity to review the new proposal, and failed to provide those desiring to be heard with any opportunity to express their views. *See* Helpern Aff. ¶¶21-27; Noémie Aff. ¶¶11-12; Affidavit of Daniel Salk, sworn to on April 7, 2022 ("Daniel Aff.") ¶¶9-10.

138. By scheduling the Third Public Meeting as a "public meeting" the LPC once again deprived members of the public the opportunity to testify with respect to the Approved Design or otherwise respond to the oral presentation by the Developer and its team. *See* Helpern Aff. ¶23; Noémie Aff. ¶11; Daniel Aff. ¶9.

139. At the conclusion of the Third Public Meeting, the Commissioners voted on the Approved Design.

140. The LPC approved the Application.

141. In summary, the main aspects of the Proposed Project in the Approved Design consist

of:

- the five-story Gabled Roof building;
- the East Building, consisting of six main stories and a setback seventh story, rising to a total elevation of approximately 80', inclusive of mechanicals and elevator overruns;
- the 35'-tall Common Entryway building; and
- the West Building, consisting of six main stories and a setback seventh story, rising to a total elevation of approximately 80', inclusive of mechanicals and elevator overruns.

See May 2021 Presentation Materials, Ex. 12.

142. The Approved Design features a continuous streetwall with a length of approximately 315,' which would extend over half the length of the block on Sterling Place between New York Avenue and Brooklyn Avenue, without any setbacks off of Sterling Place.

143. Upon information and belief, there is no existing structure in the Historic District that has a continuous streetwall of more than 300 feet in length. Further, to the extent that there are buildings with lengthy, albeit shorter, streetwalls in the Historic District, they have significant setbacks, in order to provide some space from the street.

The LPC Grants the COA to the Developer

144. On or about December 9, 2021, the LPC issued a COA for the Proposed Project based upon the Approved Design (Ex. 2).

145. The COA provides that further refinements of the Proposed Project are necessary.

146. Upon information and belief, the real estate transaction between the Developer and the Seventh-Day Adventists, through which the Developer acquired the property for the Project Site, closed on or about January 20, 2022, after the COA was issued by the LPC.

147. Soon after the COA was issued, the Developer began construction work on the Proposed Project, including excavation at the Project Site (the “Excavation”).

148. The Developer’s Excavation has caused disturbing vibrations in numerous homes in the surrounding area, especially on Sterling Place.

149. Residents of the area filed numerous 311 complaints reporting heavy shaking in their homes due to the Excavation, to the point where objects have been falling off of shelves.

150. On or about February 16, 2022, a full Stop Work Order was issued by the New York City Department of Buildings (“DOB”) and served upon the Developer due to, *inter alia*, the Developer’s failure to provide the proper pre-construction documentation, including a monitoring report to the DOB, in contravention of its Site Safety Plan.¹⁰

FIRST CLAIM

The LPC’s Grant of the COA Was Affected by Violations of Lawful Procedure and Errors of Law

151. The Coalition repeats and realleges each and every allegation set forth in the preceding ¶¶1-150, as if set forth fully herein.

152. Section 25-308 of the Landmarks Law requires the LPC to conduct public hearings with respect to applications for certificates of appropriateness.¹¹ In addition, the New York Department of State defines a public hearing as “an official proceeding of a governmental body or office, during which the public is accorded the right to be heard.”¹²

153. Section 25-313(b) of the Landmarks Law requires that:

¹⁰The Stop Work Order was subsequently rescinded.

¹¹N.Y.C. Admin. C. §25-308.

¹²*Conducting Public Meetings and Public Hearings*, New York Department of State, Division of Local Government Services, 2008, p. 6, Ex. 13.

At any such public hearing, the commission shall afford a reasonable opportunity for the presentation of facts and the expression of views by those desiring to be heard ...¹³

154. Moreover, our democratic form of government is founded upon the right of each citizen's voice to be heard. The courts have aggressively defended and reaffirmed this right with regard to quasi-judicial and administrative proceedings, especially when the proposal in such a proceeding substantially deviates from that which was proposed at a prior public hearing.¹⁴ This is essential to the legal validity of, and maintenance of public confidence in, administrative agencies.

155. Furthermore, under well-established practice and procedure at the LPC, if, after closure of the public hearing process, an applicant modifies its plans to create a design that constitutes a substantial deviation from the design contained in the developer's original application for a certificate of appropriateness, the LPC must reopen the public hearing process, during which testimony is accepted from members of the public.

156. As set forth herein, the Approved Design substantially deviates from the First Design submitted with the Application. Specifically, a summary of these substantial deviations includes, *inter alia*:

- the revision from the Single Proposed Building design into the Multi-Building Proposal, with two distinct buildings – an East Building and a West Building;
- the creation of Common Entryway between the East and West Buildings, and the addition of a “shed portion” thereto;

¹³N.Y.C. Admin. C. §25-313(b) (emphasis added).

¹⁴*See Ray v. City of New York*, 2020 WL 863986 (Sup. Ct. N.Y. Co. Feb. 13, 2020) (citing *Maxtone-Graham v. Landmarks Preserv. Comm'n. of the City of New York*, 1 A.D.3d. 295 (1st Dep't. 2003)) (“The law is well-settled and is undisputed that another public hearing would have been required if the revised proposal substantially deviated from the initial proposal”).

- the creation of a 25' gap between the East Building and the adjacent existing rowhouses;
- numerous changes to the overall facade along Sterling Place, including the elimination of the "tower elements";
- numerous changes to the entire base of the development structure;
- numerous changes to the Gabled Roof Portion, including its height and the creation of a setback;
- changes to the overall massing and square footage;
- the relocation of the curb cut and garage ramp;
- the introduction of a recess on the West Building; and
- the addition of six stories of new balconies to the East Building.

(hereinafter, "Substantial Deviations"). *Compare* October 2020 Presentation Materials, Ex. 5 with May 2021 Presentation Materials, Ex. 12; *see also* Helpern Aff. ¶¶3, 15, 18 (showing a comparison of the First Design and Approved Design from the respective Presentation Materials).

157. The Substantial Deviations create a significant difference in the overall character of the Proposed Project. *See* Helpern Aff. ¶¶21-27.

158. That the Approved Design substantially deviated from the First Design is confirmed by the statements made by the Developer's Architect and the Commissioners, including, *inter alia*, that:

- there was a "*new design*;"
- the changes were "*tremendous*" and almost "*like night and day*;"
- the Approved Design was the product of the Developer's Architect "*completely disassembling his previous scheme and really re-thinking it*;"
- the revised plan *now reads much more residential* instead of

commercial;

- the Proposed Project had “come a long way;”
- the Developer’s Architect had to “modify [his] scheme this much this many times;”
- the Developer's Architect “*had to redesign this thing...*”

See March Public Meeting Video; May Public Meeting Video.

159. Furthermore, the fact that the Commissioners universally rejected and condemned the First Design (*see* Public Hearing Video), but approved the Approved Design (*see* May Public Meeting Video), *further* reflects the Substantial Deviations from the First Design.

160. Given the Approved Design’s Substantial Deviations from the First Design, the Second and/or Third Meetings should have been conducted as public hearings, at which the Coalition, elected officials, and other members of the public, including preservationist organizations, would have been afforded the opportunity to testify. *See* Helpern Aff. ¶¶21-27; Noémie Aff. ¶¶10-11; Daniel Aff. ¶¶8-9.

161. The LPC’s closure of the hearing process despite Substantial Deviations to the application is unlawful and constitutes a violation of the Landmarks Law, and of the LPC’s rules and procedures.

162. Upon information and belief, the LPC, on prior applications for certificates of appropriateness, has conducted additional public hearings after the applicant has substantially altered and/or revised its plans from the original application.

163. Here, the LPC never even made a determination on the record as to whether the Second or Third (Approved) Designs substantially deviated from the First Design.

164. In fact, the LPC Commissioners’ comments at the Second and Third Public Meetings

demonstrate that the Commissioners concluded that the Second and Third (Approved) Designs *do* constitute substantial deviations from the First Design, as they described the revisions as “tremendous,” almost “*like night and day*,” and the product of the Developer's Architect “*completely disassembling his previous scheme and really re-thinking it*,” and they noted that the Developer’s Architect had to “*modify [his] scheme this much [so] many times*,” and “*redesign this thing...*” See March Public Meeting Video; May Public Meeting Video.

165. None of the LPC Commissioners commented that the Second or Third (Approved) Designs were substantially similar to the First Design.

166. Upon information and belief, the only document reflecting any sort of supposed “determination” as to whether the Second Design substantially deviated from the First Design was not made by the LPC Commissioners, but was based upon the personal opinion of the LPC’s general counsel. Such information and belief is based upon: (i) the comments of LPC’s general counsel (Ex. 10); and (ii) the absence of any language in the record reflecting that the Commissioners were ever asked to opine on the issue.

167. The general counsel’s supposed “determination” as to whether the Second Design substantially deviated from the First Design was made, upon information and belief, before the Second Design was even presented to the LPC Commissioners by the Developer at a public meeting. Such information and belief is based upon: (i) the comments of LPC’s general counsel (Ex. 10); and (ii) the absence of any language in the record reflecting that the Commissioners were ever asked to opine on the issue.

168. The supposed “determination” by the LPC’s general counsel that the Second Design allegedly did not substantially deviate from the First Design was controverted by the statements by

the Developer's Architect acknowledging that he had made a "significant change" and a "pretty dramatic change." See March Public Meeting Video; May Public Meeting Video.

169. The determination by the LPC's general counsel that the Second Design allegedly does not substantially deviate from the First Design was controverted by the LPC Commissioners' statements that the changes were dramatic. See March Public Meeting Video; May Public Meeting Video.

170. The Approved Design presented even more substantial deviations to the First Design than the deviations presented in the Second Design.

171. The determination as to whether a design has been substantially deviated is not within the purview of the general counsel's responsibilities and authorities; it must be made by the LPC Commissioners themselves.

172. Architect David Helpern reviewed the statements of the Commissioners and Developer's Architect that the revisions were substantial, and he agreed, stating: "From an architectural and preservation perspective, there is no doubt that the Commissioners and Developer's Architect were correct, and that General Counsel, who is not a Commissioner (and to my knowledge, has no formal training in architecture), was clearly mistaken." Helpern Aff. ¶25.

173. As further set forth in the Helpern Affidavit:

[T]he Approved Design substantially deviates from the First Design. Indeed, the most prominent features of the First Design, including especially the single streetscape, comprising a Single Proposed Building and corresponding roofline, are completely absent from the Approved Design, which is comprised of two, multi-segmented buildings (i.e., East and West Buildings), featuring six stories of balconies and joined by one-story Central Foyer; and completely separated from the rowhouses to the east.

Id.

174. The failure by the LPC to hold a public hearing on the Approved Design, which substantially deviated from the First Design, deprived Petitioners and the public of the opportunity to testify at the LPC about the Approved Design and constitutes a violation of lawful procedure.

175. As the LPC's general counsel acknowledged, "[t]he public hearing is the proper venue for the Commissioners to hear from the community on an application" (Silberman Letter Nov. 4, 2020, Ex. 8) (emphasis added).

176. The LPC's grant of a COA herein constitutes arbitrary and capricious decision-making and was affected by errors of law, and violations of lawful procedures and rules and practices of the LPC.

177. By reason of the foregoing, the Coalition is entitled to an order vacating and remanding the COA to the LPC for further proceedings which must include at least one additional public hearing.

178. The Coalition has no remedy at law.¹⁵

SECOND CLAIM

The LPC's Approval of the Final Design was Otherwise Arbitrary and Capricious

179. The Coalition repeats and realleges each and every allegation set forth in the preceding ¶¶1-178, as if set forth fully herein.

180. The Proposed Project is inconsistent with, and an affront to, the Historic District.

181. The massing and scale of the Proposed Project is far too large in relation to the other buildings in the Historic District.

¹⁵Beyond the circumstances of this Application, the LPC's practice of depriving community members of the opportunity to address the LPC Commissioners on deviating aspects of an applicant's proposal constitutes a systemic and institutional problem that gives rise to issues arising under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

182. The East and West Buildings of the Multi-Building Proposal, which are more than six-stories tall and rise to an elevation of 80', would obscure the Church and tower over the adjacent, approximately 35' tall rowhouses on Sterling Place.

183. Further, the 315' continuous streetwall length of the Multi-Building Proposal would be, by far, the longest in the Historic District.

184. The lengthy streetwall is especially inappropriate because it contains no setbacks off the street on which it runs, unlike existing lengthy buildings in the Historic District.

185. The Proposed Project approved by the COA is an overwhelming distraction from the Church, the “Crown Jewel” of Crown Heights and the Historic District.

186. As a result, the Proposed Project would not allow for any street-level views of the historic Church Building from Sterling Place.

187. The massive Multi-Building Proposal would significantly block the row of stained-glass windows on the southern facade of the Church Building.

188. The Project would eliminate much of the existing open space on the site of the Church Property.

189. At the First Public Meeting, the Commissioners emphasized the need to maintain more open space on the Church Property, such as the inclusion of a courtyard, to preserve the “campus”-like feel, including the air and greenery around the historic Church Building.

190. However, the Approved Design, with its Multi-Building Proposal, shows an even greater reduction of open space (including greenspace) between the Church and the Proposed Project than was presented in the First Design.

191. The LPC nevertheless voted in favor of, and the LPC thus approved, an out-of-context

design which is inconsistent with the Historic District, deprives community members and passersby of views of the Church Building, and of cherished open space and greenery on the Church Property.

See Daniel Aff.; Noémie Aff.

192. The LPC's grant of the COA herein clearly constitutes arbitrary, capricious and irrational decision-making.

193. By reason of the foregoing, the Coalition is entitled to an order vacating the COA.

194. The Coalition has no remedy at law.

THIRD CLAIM

The Coalition is Entitled to an Injunction

195. The Coalition realleges and reasserts each and every allegation set forth in the preceding ¶¶1-194, inclusive, as if set forth fully herein.

196. Upon the grant of relief set forth in the First, Second and Third Claims, the Coalition would be entitled to an order and judgment, enjoining the Developer from undertaking the work proposed by the Application, including, but not limited to, demolition, excavation and/or construction.

197. The Developer has already began excavation and construction activity, including with respect to the foundation of the Proposed Project.

198. To the extent that the Developer, under the auspices of the COA, may attempt to proceed, during the pendency of this Proceeding, with demolition and/or any other construction activity pertaining to the Proposed Project, the Coalition would be entitled to a temporary restraining order ("TRO") and preliminary injunction, based upon a substantial likelihood of success on the merits, threatened irreparable harm, and a balance of equities weighing in the Coalition's favor.

199. By reason of the foregoing, the Coalition is entitled to an order, enjoining the

Developer from undertaking any work permitted by the COA, and, to the extent that a TRO and preliminary injunction become necessary to preserve the *status quo* pending judgment in this Proceeding, the Coalition is entitled to such relief as well.

200. The Coalition has no remedy at law.

WHEREFORE, for the reasons stated, the Coalition is entitled to an order, over and against Respondents awarding the following relief:

As to the First Claim, an order annulling, vacating, and reversing the COA, or remanding the COA to the LPC for further proceedings;

As to the Second Claim, an order annulling, vacating, and reversing the COA;

As to the Third Claim, an order granting an injunction, enjoining the Developer from undertaking the work proposed by the Application, and, to the extent that a TRO and preliminary injunction become necessary to preserve the *status quo* pending judgment in this Proceeding, the Coalition is entitled to such relief as well, and any and all other relief in favor of the Coalition this Court deems just and proper;

All together with costs, disbursements, legal fees and any and all other and further relief this Court deems just and proper.

Dated: New York, New York
April 8, 2022

Respectfully submitted,

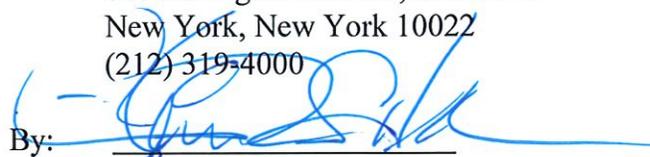
HILLER, PC

Attorneys for Petitioners

641 Lexington Avenue, 29th Floor

New York, New York 10022

(212) 319-4000

By: 

Michael S. Hiller

Jason E. Zakai

Paul M. Kampfer

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of :

:

STERLING PLACE BK-NY BLOCK :

ASSOCIATION INC., NOÉMIE BONNET, :

and DANIEL SALK, :

:

Petitioners, :

:

For Judgment Pursuant to Articles 63 and 78 of the :

Civil Practice Law and Rules, :

:

- against - :

:

CITY OF NEW YORK, NEW YORK CITY :

LANDMARKS PRESERVATION :

COMMISSION, HOPE STREET CAPITAL LLC, :

959 STERLING PLACE GROUND OWNER LLC, :

and XYZ CORP./LLC, :

:

Respondents. :

:

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Index No.

ATTORNEY VERIFICATION

JASON E. ZAKAI, an attorney admitted to practice in the courts of the State of New York, and not a party to this action, hereby verifies the annexed Petition pursuant to the provisions of CPLR 2106 and 3020(d)(3):

I am the attorney for Petitioners Sterling Place BK-NY Block Association Inc., Noémie Bonnet, and Daniel Salk (collectively, "Petitioners" or the "Coalition") in this Article 78 Proceeding. I have read the annexed Petition, and its factual contents are based upon the contents of our file, public records, correspondence and other writings furnished to me by Petitioners.

The reason why this verification is not made by Petitioners is that they are not located in the county where I have my office.



Jason E. Zakai