

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

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In the Matter of the Application of

ELIZABETH STREET GARDEN, INC., RENEE GREEN,
ELIZABETH STREET, INC., ELIZABETH FIREHOUSE
LLC and ALLAN REIVER,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

-against-

THE CITY OF NEW YORK, THE DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT,
MARIA TORRES-SPRINGER, in her capacity as
Commissioner of the Department of Housing Preservation and
Development, THE NEW YORK CITY COUNCIL, and THE
NEW YORK CITY PLANNING COMMISSION,

Respondents.
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Index No. 152341/2019

Hon. Debra A. James

**SUPPLEMENTAL
AFFIDAVIT OF ADRIAN
BENEPE IN SUPPORT OF
AMENDED VERIFIED
PETITION**

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

ADRIAN BENEPE, being duly sworn, deposes and says:

1. I was the Commissioner of the Department of Parks and Recreation of New York City from February 2002 through August 2012. *See* Affidavit of Adrian Benepe in Support of Verified Petition, Mar. 5, 2019 (“original affidavit”) ¶ 1.

2. I have reviewed Respondents’ Memorandum of Law dated September 26, 2019 and continue to have serious concerns about the adverse environmental consequences of the Proposed Project. Destruction of the Elizabeth Street Garden could cause heat in the surrounding blocks that would have the effect of increasing and heightening the risk of sewer overflow from

storm water runoff. In the face of quickly escalating climate change, every green space is essential to protecting New York City.

3. Additionally, the Proposed Project runs counter to the City's existing environmental policies.

4. City parks provide valuable, much-needed space for improving physical and mental health, mitigating the impacts of climate change – especially urban heat and flooding – enhancing human enjoyment of nature and the outdoors as well as providing an opportunity for recreation and a home for wildlife, such as birds, squirrels and insects. Elizabeth Street Garden does just this.

5. Respondents argue that Elizabeth Street Garden is not a “park.” Resp. Mem. at 20. Although not officially mapped as NYC parkland, the Garden functions as and provides the same environmental and physical and mental health benefits to the residents of the City as any officially designated park.

6. I disagree with Respondents' implication that Washington Square Park can ameliorate the destruction of Elizabeth Street Garden. Washington Square Park is too far away to easily walk to and is already very crowded with tens of thousands of daily users including neighbors, NYU students, staff and tourists from all over the world. Additionally, I am familiar with other nearby “parks,” and they are mostly asphalt and concrete play spaces or sitting areas with little or no greenery and few permeable spaces and are often hot and very crowded.

7. On page 19 of Respondents' Memo, they introduce the concept of “major regional parks” as a factor that the Technical Manual considers and, in the next sentence, reference “the proximity of Washington Square Park.” This raises the possibility that Washington Square Park might be thought of as something similar to a “major regional park.” While there is no commonly accepted definition of “Major Regional Park” or even “Regional Park,” in my 27 years of working

for the NYC Department of Parks & Recreation, and in an additional 12 years of working at related environmental and parks non-profits in NYC, I have never heard Washington Square Park referred to as either a “Major Regional Park” or as a “Regional Park.” Rather, it has been referred to as a “Neighborhood Park,” “Small Park,” or “Historic Square.” In my experience, the “regional” or “major regional” parks of Manhattan are Central Park, Fort Washington Park, Highbridge Park, Inwood Hill Park, Randall’s Island Park, East River Park, Hudson River Park, Fort Tryon Park, and Riverside Park. All of those parks are larger than 60 acres. By contrast, Washington Square Park is about 10 acres – in league with other neighborhood parks or small parks such as Madison Square, Union Square, Tompkins Square, Bryant, and Marcus Garvey Parks.

The destruction of Elizabeth Street Garden will have an adverse effect on the City’s official policies to combat climate change.

8. Impermeable urban asphalt surfaces intensify rising temperatures and flooding associated with climate change. Parks and green space are vital to mitigate the consequences of urban environments because they can produce an “oasis effect,” cooling neighboring areas. For more information, see my original affidavit at ¶ 17.

9. Trees help mitigate urban heat. Mature trees, in particular, play a critical role because they provide shade that reduces the ambient temperatures. Parks shaded by trees can be between ten and twenty degrees cooler than unshaded urban areas. Trees also absorb and store carbon and other pollutants. Elizabeth Street Garden is home to multiple mature trees, which may be clear-cut if the Garden is destroyed.

10. From my experience, I know that the single gravest danger of climate change is heat. Federal statistics over a 30-year period show extreme heat is the leading cause of weather-related

deaths in the United States, greater than urban flooding from storm surges and riparian floods.

Extreme heat causes serious health consequences, in particular for elderly people and people with health issues, and affects city residents more than others. Combatting urban heat is critical to any effort by NYC to combat climate change.

11. Elizabeth Street Garden is currently mitigating urban heat in that area. The Trust for Public Land (“TPL”) recently completed a 3-year effort to map all of the “Urban Heat Islands” in every city and other densely populated areas in the United States. “Urban Heat Island” means an area that is hotter than other parts of New York City and much hotter than suburban or rural areas. TPL mapped the heat severity for every “pixel” – a 30x30 meter unit containing thermal measurements for that location – for every city in the United States over the summers of 2018 and 2019. Our mapping shows that the North Little Italy, SoHo, and NoHo neighborhoods are in an Urban Heat Island, an area of elevated heat. See Exhibit A, attached.

12. Elizabeth Street Garden helps to create a “cool island” whose benefits extend well beyond the boundaries of the Garden. Surrounding this little “cool island” is a large Urban Heat Island.

13. Destroying Elizabeth Street Garden, and in particular its mature trees, will exacerbate the Urban Heat Island conditions of the area. If the Elizabeth Street Garden is eliminated, in my opinion, it is likely that the “cool island” would cease to exist and that neighborhood would become an urban heat island. The destruction will also eliminate an important resource for residents and visitors to find respite from intense heat.

The destruction of Elizabeth Street Garden is counter to the City’s official policy supporting its obligation to implement green infrastructure to comply with Federal and State regulations.

14. As discussed in my first Affidavit, during my tenure as Commissioner of the Department of Parks and Recreation, the City of New York entered into an Order on Consent with the New York State Department of Environmental Conservation (“DEC”), with oversight from the federal Environmental Protection Agency (“EPA”), regarding combined sewer overflows (“CSO”) in New York City. As a result of that consent decree, the City is required to make best effort to implement green infrastructure in order to achieve certain benchmarks with respect to the reduction of CSO incidents, *In the Matter of the Violations of Article 17 of the Environmental Conservation Law and Part 750, et seq., of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York by The City of New York and The New York City Department of Environmental Protection*, Order on Consent, DEC Case No, C02-20110512-25 (Dep’t of Env’tl. Conservation, Mar. 8, 2012) (“2012 Consent Order”). For more information, see my original affidavit at ¶ 7–14.

15. Respondents claim that the new building and “open space” will be designed to “manage and reuse stormwater” but have not provided the public with any specific information or architectural plans detailing these measures. No analysis of the rooftop water harvesting system was recorded in the EAS and the Revised ULURP Application.

16. Consequently, no meaningful assessment of the impact of the destruction of Elizabeth Street Garden on the City’s policy and obligations relating to green infrastructure is possible. However, based on the little information provided, I have the following concerns:

- a. First, whatever rooftop infrastructure is added will likely, based on my familiarity with similar projects, briefly detain, but not eliminate, the storm water runoff that will go directly into the city’s combined sewer system, exacerbating the CSO problem.

b. Second, even if permeable surfaces are implemented, the remaining open space will be roughly one third the size of Elizabeth Street Garden and will not have the numerous mature trees that are present in the Garden. Moreover, there was no assessment of how much permeable open space will remain after the destruction of Elizabeth Street Garden, but it will likely only be a fraction of the existing mostly permeable garden landscape.

17. The destruction of the Elizabeth Street Garden flies in the face of the consent decree and stated policies. The City, in its zeal to develop this site even when a better opportunity exists, may blithely minimize its obligations and broken promises.

18. First, after entering into a binding consent decree with the New York State DEC, the city has a legal obligation to reduce, not enlarge, the amount of storm water runoff going into the combined sewer system.

19. Second, the City under Mayor Bloomberg and Mayor de Blasio has committed to very ambitious climate change mitigation and adaptation strategies, including using all means to address urban heat islands.

20. While Respondents attempt to minimize this site's significance in the overall discussion of the environmental health of New York City and the physical benefits of its residents, every tree, every plant, every square foot of green, permeable surface matters as we confront the very real threats of climate change and its impact on our collective health and safety.

Adrian Benepe

ADRIAN BENEPE

Sworn to before me this 4 day of November 2019.

Blythe S. Hawthorne-Loizeaux

Notary Public

