

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,

Index No. 152341/2019

Petitioners,

Hon. Debra A. James

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

-against-

**AFFIRMATION OF
HOWARD GOLDMAN,
ESQ. SUPPLEMENTING
AFFIDAVIT OF HOWARD
GOLDMAN IN SUPPORT
OF AMENDED VERIFIED
PETITION**

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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HOWARD GOLDMAN, an attorney admitted to practice before the Courts of the State
of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am an expert in New York City Land Use Rules. *See* Affidavit of Howard
Goldman in Support of Petitioners' Amended Verified Petition, Aug. 15, 2019 ("Goldman Aff.")

¶ 1.

2. I have reviewed Respondents' Memorandum of Law dated September 26, 2019,
the affirmation of Susan Amron and the affidavit of Leila Bozorg and reaffirm what I concluded
in my first affidavit: that the Proposed Project is affected by a fundamental error of law because
it does not comply with the applicable provisions of the New York City Zoning Resolution.

Goldman Aff. ¶ 2.

3. Therefore, the Negative Declaration, the City Planning Commission's ("CPC") April 10, 2019 approval of the ULURP Application and the June 26, 2019 City Council resolution approving with modifications the ULURP Application must be annulled.

SLID ZONING REQUIREMENTS

4. The Proposed Project violates the zoning requirements of the Special Little Italy District ("SLID") because the Project has two street walls, also known as front building walls, and one wall, the Mott Street wall, is not constructed adjacent to the sidewalk.

5. The Elizabeth Street Garden is located in a "Special Purpose District," which is defined as "an area where the underlying zoning regulations are modified or superseded to achieve specific planning objectives." Department of City Planning, *Zoning Handbook*, 2018 at 208.

6. Specifically, the Garden is within SLID, which was enacted in 1977 "to preserve and strengthen the historical and cultural character of the [Little Italy] community." *See* Zoning Resolution § 109-00.

7. In its report approving the SLID (N 760061 ZRM), the CPC stated that one of the specific planning objectives was to "maintain[] the street wall while providing open space and landscaping in the rear of buildings."

8. In my experience as the former Deputy Counsel to the CPC, I understand that by using the term "street wall," the CPC was referring to a wall facing the street, i.e. front building wall.

9. After thirty-nine years of practicing zoning and land use law in NYC, I am aware that the Zoning Resolution must be strictly applied. Zoning Resolution § 109-131 of the SLID

requires that “the front building wall of any building shall extend along the full length of its front lot line not occupied by existing buildings to remain [...]”

10. The term “front lot line” is defined in § 12-10 as a “street line,” which in turn is defined as “a lot line separating a street from other land.” Thus, Lot 30 has two street lines – the Mott Street lot line and the Elizabeth Street lot line.

11. Therefore, § 109-131 requires that the wall of a building that faces a street that adjoins the lot (i.e., a front building wall) be constructed adjacent to the sidewalk, avoiding front yards or other open areas between the sidewalk and the building, in furtherance of the purposes of the SLID.

RESPONSE TO RESPONDENTS’ POSITION

12. In their Memorandum of Law, the Respondents incorrectly argue that the Proposed Project complies with the SLID regulations because there is no “building wall on the Mott Street side of the Site, much less a front building wall.” *See* p. 13.

13. Additionally, the Bozorg Affidavit asserts that “the Project does not propose any building wall on the Mott Street side of the Site.” *See* ¶ 40.

14. These statements are patently false and contrary to the SLID. According to Figure B-4 of the EAS, the Project has a 7-story building wall located 60 feet from the front lot line along Mott Street, and clearly on the Mott Street side of the site. This is a front building wall under the Zoning Resolution because it faces a street that borders the lot. As such, it must be constructed along the property line adjacent to the Mott Street sidewalk, without an open area separating the building and the sidewalk.

15. Respondents appear to confuse a front building wall, for zoning purposes, with a wall containing the front entrance to a building. The location of entrances and exits has nothing

to do with what constitutes a front building wall under the Zoning Resolution, and Respondents cannot cite any authority to the contrary. In the instant case, the proposed building is located on a lot that has frontage on two streets and therefore has two front building walls. Each front building wall must be located along the sidewalk pursuant to the SLID.

16. Respondents' choice to call one building wall the "front" and the "back" appears to ignore its required zoning compliance and is the opposite of what the SLID intends. If developers were able to arbitrarily designate a building's front and rear walls, it would render the mandatory frontage requirements of the SLID meaningless. The Respondents' arguments could easily be used to justify a building located in the middle of the site, with large open areas separating it from both streets. This is the opposite of what the SLID intends.

17. The Respondents' arguments are not supported by the neighborhood context of the existing SLID buildings, which are predominantly built along the street line. In fact, I find no evidence of a building constructed as-of-right with an open area between the front wall and the street line since the enactment of SLID regulations in 1977. The SLID regulations were adopted with the stated purpose of maintaining the "residential character and scale of the existing buildings in the area." *See* Zoning Resolution § 109-00 of the SLID. My research included a review of recent approvals by the Department of Buildings, which is the agency charged with applying and enforcing the Zoning Resolution pursuant to the City Charter.

PROJECT MODIFICATION

18. Due to the required zoning, the building wall that faces Mott Street must be constructed along the lot line adjacent to the Mott Street sidewalk, without an open area separating the building and the sidewalk.

19. My years of experience in zoning inform me that where the distance between the streets is too great for a single building to be practical (because of the large interior spaces that would result), the commonplace solution is simple: two separate buildings are constructed, one along each sidewalk, with an open area separating them in the middle of the lot. *See* attached Exhibit A. This is consistent with the objective stated by the CPC – to maintain the street wall while providing open space and landscaping in the rear of buildings.

Dated: November 4, 2019
New York, New York



HOWARD GOLDMAN