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A TALE OF THREE NORTHERN MANHATTAN COMMUNITIES: CASE STUDIES OF POLITICAL EMPOWERMENT IN THE PLANNING AND DEVELOPMENT PROCESS

Richard Bass & Cuz Potter***

Three recent development proposals in Northern Manhattan highlight community participation and empowerment in the planning process. The following will detail community empowerment in the planning and development process and provide a clear definition of some of the issues challenging these communities. In addition, it will explore the three development proposals as case studies defining the success, limitations, and frustrations of community empowerment.

I. ZONING—A DEFINITION

Modern zoning began with the passage of the New York City zoning ordinance in 1916, which regulated the use and location of buildings throughout the city.¹ Though the art of zoning has become more sophisticated since then, zoning basically regulates three fundamental aspects of the developed urban environment: i) type of land use (residential, commercial, industrial, community facility or a mixture of uses); ii) intensity of the land use (how much can be built on a site, usually described as a Floor Area Ratio or FAR, a number multiplied by the lot size to determine maximum development potential); iii) and shape of the land use (governed by lot coverage, set backs, maximum building height, etc.).²

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1. See Emanuel Tobier, *Manhattan's Business District in the Industrial Age*, in *POWER CULTURE AND PLACE* 77, 93 (John Hull Mollenkopf ed., 1988).

2. See ROBERT PECORELLA, *COMMUNITY POWER IN A POSTREFORM CITY: POLITICS IN NEW YORK CITY* 138-43 (1994).

II. CREATION AND INSERTION OF COMMUNITY BOARDS INTO THE PLANNING PROCESS

The creation of New York City's fifty-nine community boards in 1975³ marked the city's return to neighborhood-based politics.⁴ The urban machine politics of the late 1800s and early 1900s had also once relied on decentralized, neighborhood support from the city's new immigrant groups in return for the effective delivery of municipal services,⁵ a practice perfected by the rule of Tammany Hall,⁶ but brought to an end during the fiscal crisis of the 1930s at the hands of urban reformers and Mayor Fiorello H. LaGuardia.⁷ To counteract the clientelism under the previous political order, this new reform government, institutionalized as the "welfare city," concentrated administrative power and control in semi-autonomous central city agencies.⁸ From there, professional bureaucrats, theoretically isolated from political influence, made decisions intended to benefit the city as a whole, rather than any particular neighborhood.⁹ Thus, from roughly 1930 to 1965, New York City's administrative apparatus was decentralized along functional, rather than geographic, lines.¹⁰

The emphasis on city over neighborhood, however, led to the alienation of lower income groups.¹¹ Resultant ethnic strife and conflict between the urban bureaucracies and their clients in the late 1960s and early 1970s initiated a second major readjustment in New York City's political order,¹² as black and Hispanic protest groups organized communities around neighborhood issues.¹³ John V. Lindsay's successful effort to ally these groups with business elites ushered him into the mayor's office in 1965.¹⁴ From there, he introduced a series of measures to geographically decentralize the city's political system,¹⁵ including community control of

3. *Id.* at 130.

4. *See id.* at 28.

5. *See id.*

6. *See id.*

7. *See id.*

8. *Id.*

9. *See id.*

10. *See id.*

11. *See id.* at 68-81.

12. *See* Norman I. Fainstein & Susan S. Fainstein, *Governing Regimes and the Political Economy of Development in New York City, 1946-1984*, in *POWER, CULTURE, AND PLACE* 161, 177 (John Hull Mollenkopf ed., 1988).

13. *See id.* at 177.

14. *See id.*; *see also* PECORELLA, *supra* note 2, at 88.

15. *See* PECORELLA, *supra* note 2, at 88-90, 124.

schools.¹⁶ This shift back to community input into politics and neighborhood service delivery culminated in the City Charter Revision of 1975,¹⁷ which gave communities broad, unprecedented powers.¹⁸

A countercurrent to the predominant tendency toward geographic centralization of government under the mid-century reform regime did exist, however, and ultimately evolved into the community board system.¹⁹ Starting in the late 1940s, some local governmental reform groups called for community planning.²⁰ Manhattan Borough President Robert F. Wagner, Jr., finally heeded this call by establishing twelve Community Planning Councils within the borough of Manhattan in 1951.²¹ Each council had fifteen to twenty members and was intended both to serve as an official place for local residents to register their views on public decisions that would affect their communities and to advise Borough President Wagner on budgetary and local planning matters.²² The administrative boundaries of these councils were chosen to match boundaries drawn up previously by the City Planning Commission to facilitate delivery of public services.²³

This concept was extended to all boroughs of the city in section 84 of the 1963 City Charter,²⁴ which renamed the councils "Community Planning Boards."²⁵ The new City Charter created fourteen boards in the Bronx and seven in Brooklyn.²⁶ These were followed in 1966 by the creation of thirteen boards in Queens and four on Staten Island.²⁷ Subsequent additions brought the total number to sixty-two by the time of the 1975 Charter revision.²⁸ Since the community districts were not coterminous with city council districts, each board was made up of all council members who held seats in districts that lay wholly or partly within the commu-

16. *See id.* at 99-104.

17. *See id.* at 126-27.

18. *See id.* at 127.

19. *See id.* at 123.

20. STATE CHARTER REVISION COMM'N FOR N.Y. CITY, COMMUNITY BOARDS 18 (1974).

21. *Id.*

22. *Id.* at 18-19.

23. *See* PECORELLA, *supra* note 2, at 123-24.

24. STATE CHARTER REVISION COMM'N FOR N.Y. CITY, *supra* note 20, at 19.

25. N.Y. CITY CHARTER AND ADMIN. CODE § 84 (1963), *reprinted in* STATE CHARTER REVISION COMM'N FOR N.Y. CITY, *supra* note 20, at app. H at i [hereinafter N.Y. CITY CHARTER].

26. STATE CHARTER REVISION COMM'N FOR N.Y. CITY, *supra* note 20, at 19.

27. *Id.*

28. *Id.*

nity district plus five to nine representatives who served without compensation at the pleasure of the borough president.²⁹ The City Charter defined each board's responsibilities as advising the borough president "in respect to any matter relating to the development or welfare of its district."³⁰

Though many supported the extension of the Community Planning Boards throughout the city,³¹ the specific provisions of the 1963 Charter were criticized as inadequate.³² Because the provisions did not provide clear methods for selection or removal of board members,³³ board members were at the mercy of the borough presidents and could not develop independent political support.³⁴ The description of responsibilities and implementation was vague and established a limited role for the Community Planning Boards as non-binding, advisory entities.³⁵ Thus, the boards effectively functioned as vehicles for top-down communication from city or borough officials.³⁶

In 1968, as part of a larger effort to decentralize New York City government, Mayor Lindsay proposed Local Law 39 to replace section 84 of the City Charter.³⁷ Local Law 39 strove to address demands for genuine decentralization by more clearly delineating both the role of Community Planning Boards (now renamed "community boards" to reflect their expanding responsibilities) in land use and service delivery questions and the regulations for nominating board members.³⁸ As in previous legislation, community boards were not given decision-making power and were mandated to advise public officials on matters that related to the welfare of the district and its residents.³⁹ Local law 39 went much further, however. The new law explicitly dictated a planning function for the boards, though this also remained non-binding,⁴⁰ and gave the boards authority to hold public hearings on matters that would affect their districts.⁴¹ Additionally, a community board was:

29. See PECORELLA, *supra* note 2, at 124.

30. N.Y. CITY CHARTER § 84.

31. See STATE CHARTER REVISION COMM'N FOR N.Y. CITY, *supra* note 20, at 19.

32. See *id.*

33. See PECORELLA, *supra* note 2, at 124.

34. See *id.*

35. See *id.* at 124-25.

36. See *id.* at 124.

37. N.Y. City Local Law 39 (1969); see also PECORELLA, *supra* note 2, at 124.

38. See PECORELLA, *supra* note 2, at 124-25.

39. See *id.*

40. N.Y. City Local Law No. 39; see also PECORELLA, *supra* note 2, at 125.

41. N.Y. City Local Law No. 39.

to cooperate and consult with local administrators of city departments and agencies; . . . to cooperate with other boards on matters of common concern; keep a public record of its activities . . . and provide the borough president with copies of all such records; render an annual report to the mayor and borough president; . . . keep the public informed on matters relating to the welfare or development of its district; meet at least once a month; employ such assistants as it may require with funds appropriated or contributed for that purpose.⁴²

Local Law 39 also restructured the recruitment and appointment of board members, limiting the influence of the borough presidents over the boards.⁴³ First, Local Law 39 increased the maximum number of members on each board to fifty.⁴⁴ Second, members were to be appointed only after consultation with the district councilors.⁴⁵ And finally, members could only be removed by borough presidents for cause, limiting the borough presidents' power over these appointees.⁴⁶

Although Local Law 39 established most of the core components of community boards as we know them today, additional pressures for decentralization and participation in the early 1970s⁴⁷ pushed forward the 1975 City Charter revision.⁴⁸ Mandated to increase citizen participation in local government and to improve local government responsiveness,⁴⁹ the State Charter Revision Commission for New York City considered a variety of plans for redistricting the city, including one that would have created 150 boards of roughly 50,000 people.⁵⁰ This was rejected as too unwieldy, and the board recommended forty to fifty community boards representing from one hundred thousand to two hundred fifty thousand persons.⁵¹ Then Mayor Abraham Beame's administration, however, is generally believed to have failed to resist special interests,⁵² and as

42. N.Y. City Local Law No. 39; *see also* STATE CHARTER REVISION COMM'N FOR N.Y. CITY, *supra* note 20, at 21-22.

43. *See* PECORELLA, *supra* note 2, at 125.

44. N.Y. City Local Law No. 39.

45. *Id.*

46. *Id.*

47. *See supra* notes 11-13 and accompanying text.

48. *See* PECORELLA, *supra* note 2, at 126.

49. *See id.* at 126 (citing 1972 N.Y. LAWS § 1224-25).

50. *Id.* at 129.

51. *Id.* at 129-30.

52. *See id.* at 130.

a result, the Board of Estimates⁵³ wound up approving fifty-nine Community Districts.⁵⁴

The maximum size of the community boards was maintained at fifty, but the recruitment and appointment procedures were once again refined. The 1975 Charter revision, which went into effect on January 1, 1977, dictated that borough presidents appoint all members, but also that one-half of them had to be nominated by the community district's city council members.⁵⁵ Community boards also rose in stature within the administrative system. By receiving line-item budget allocations, community boards obtained independent agency status, placing them on the same level as other city agencies, while constraining their autonomy by subjecting board hiring practices to the city's Department of Personnel review process.⁵⁶

Though there have been suggestions that community boards simply insulate City Hall from neighborhood concerns,⁵⁷ the strengthening of community boards' position within the New York City government has notably boosted their influence in land use decisions.⁵⁸ In the Uniform Land Use Review Procedure ("ULURP"), which was also initiated through the 1975 Charter revision, community boards are given sixty days to review and make a recommendation on an application before it progresses to the borough president, who also makes a recommendation, and to the City Planning Commission, which actually votes on the application.⁵⁹ While these decisions—like all decisions by community boards—are non-binding, borough presidents appear to be responsive to the decisions made by their appointees,⁶⁰ and the City Planning Commission takes these recommendations into account.⁶¹ Thus, developers generally strive for community board approval in developing their projects.⁶² Variation in local politics and strategy, however,

53. Until it was abolished in 1990, the New York City Board of Estimate consisted of the mayor, the president of the city council, the city comptroller, and the five borough presidents, and had the authority to set the city's budget and approve various permits and licenses. See Martin Shefter, *Board of Estimate*, in *ENCYCLOPEDIA OF NEW YORK* 122, 122-23 (Kenneth T. Jackson ed., 1995).

54. See PECORELLA, *supra* note 2, at 130.

55. *See id.* at 127.

56. *See id.* at 128.

57. Fainstein & Fainstein, *supra* note 12, at 187; Susan Baldwin, *Community Boards in the Buffer Zone*, *CITY LIMITS*, June 1, 1988, at 13, 14.

58. See PECORELLA, *supra* note 2, at 128.

59. *Id.* at 140.

60. *See id.* at 141.

61. *See id.*

62. Fainstein & Fainstein, *supra* note 12, at 187.

has led to different levels of success in establishing and achieving local land use goals.

III. MANHATTAN COMMUNITY BOARD 9 MORNINGSIDE HEIGHTS/WEST HARLEM

Teachers College of Columbia University proposed in the fall of 2002 to develop an “as-of-right” residential dormitory project on West 121st and 122nd Streets, between Broadway and Amsterdam Avenue.⁶³ Though this development was “as-of-right”⁶⁴ and did not need any discretionary public approval, the College, cognizant of the Morningside Heights community’s concerns with the expansion of institutional developments in the area,⁶⁵ initiated contact with local elected officials, Manhattan Community Board 9, student tenants (both from Columbia University and Teachers College) and other residents near the project site.⁶⁶

The project entailed the development of two residential buildings, totaling approximately 112,000 square feet and containing 252

63. Teachers Coll., Columbia Univ., *New Residence Hall: Project Overview*, at <http://www.tc.columbia.edu/administration/construction/projectoverview.htm> (last visited Apr. 5, 2004) [hereinafter *Project Overview*].

64. See Denny Lee, *Neighborhood Report: Morningside Heights; A Dispute With Teachers College Adds A Twist To Town-Gown Tensions*, N.Y. TIMES, Oct. 6, 2002, § 14, at 7. Any proposed new construction or expansion of an existing structure that complies with the New York City Zoning Resolution does not require a discretionary public or site plan review; a zoning complying project is only subjected to New York City Department of Buildings plan review to address public safety concerns prior to the issuance of a building permit. See N.Y. City Dep’t of City Planning, *About Zoning—Terms and Procedures*, at <http://www.ci.nyc.ny.us/html/dcp/html/zone/zonetod.html> (last visited Apr. 5, 2004) (defining “as-of-right” development).

65. These institutions include Columbia University, Teachers College, Bank Street College, Union Theological Seminary, Barnard College, Riverside Church, the Cathedral of St. John the Divine, St. Lukes-Roosevelt Hospital, and the Manhattan School of Music. See Michele Herman, *Morningside Heights*, in ENCYCLOPEDIA OF NEW YORK 771, 771 (Kenneth T. Jackson, ed., 1995). There is a long history of “town-gown” conflict, particularly in the context of community opposition to institutional expansion, conflict that climaxed in the late 1960s after Columbia University’s badly conceived plan to construct a building inside a nearby public park led to violent student demonstrations. See Harold Wechsler, *Columbia University*, in ENCYCLOPEDIA OF NEW YORK 259, 260 (Kenneth T. Jackson, ed., 1995). Additionally, residential buildings containing lower income persons were acquired for academic housing or out-of scale buildings to the existing built environment were built. See *id.*; Maggie Garb, *If You’re Thinking of Living In/Morningside Heights: 2 Parks Sandwich Town and Gown*, N.Y. TIMES, Nov. 21, 1999, § 11, at 5.

66. The author, in his role as a consultant on the project, coordinated and facilitated these discussions.

studio units.⁶⁷ The buildings were designed to be as contextual to the neighborhood as possible, maintaining the familiar form and character of the existing community, while providing a much-needed development opportunity.⁶⁸ The proposed buildings were designed to be built to the front property line, would contain a building base (similar to the contiguous buildings), and would be set back to facilitate a tower element. The tower portion of the West 121st Street building (“South Building”) was designed to be eleven-stories and the tower portion of the West 122nd Street building (“North Building”) was designed to be nineteen-stories.⁶⁹

A. Zoning

The area is zoned “R8,”⁷⁰ which permits, for an educational/institutional use, a 6.5 floor area ratio (“FAR”), or 140,276 square feet of zoning floor area.⁷¹ The existing buildings contain 39,948 square feet in area; therefore the allowable floor area of the proposed building is 100,328 square feet.⁷² The proposed project contains 97,749 square feet of zoning floor area, and a total of 112,000 gross square feet.⁷³

The NYC Zoning Resolution permits greater density (i.e., a larger FAR) for educational/institutional uses (defined as a Community Facility) than a zoning compliant private-sector development (i.e., a 6.02 FAR for a residential building).⁷⁴ The existing buildings on the block are underbuilt to the permitted zoning (i.e., are only built to approximately 4.0 FAR).⁷⁵ Therefore, the proposed dormitory buildings, though as-of-right,⁷⁶ were significantly larger than the neighborhood’s existing buildings; the Teachers College site was also on the crest of a hill, between Broadway and

67. Teachers College Student Life Residence Facility (Dormitory Auth. of the State of N.Y. Feb. 24, 2003) (State Envtl. Quality Rev. Negative Decl., Notice of Determination of Nonsignificance); see also *Project Overview*, *supra* note 63.

68. See *Project Overview*, *supra* note 63.

69. *Id.*

70. *Id.*

71. The FAR is a number multiplied by the lot size to determine maximum development. See *id.*

72. See *id.*

73. See *id.*

74. N.Y. City Zoning Res. § 21.10, § 24.111 (2002). Except where noted otherwise, all references hereinafter to the New York City Zoning Resolution are to the current, 2002 Zoning Resolution.

75. *Project Overview*, *supra* note 63.

76. See *supra* note 64.

Amsterdam Avenue, further accentuating the disparity between the building height and the existing built environment.

B. Community Reaction

Not surprisingly, community reaction was extremely negative.⁷⁷ There had been recent battles, for example, against a proposed large building at Broadway and West 122nd Street for the Manhattan School of Music (which was eventually built),⁷⁸ and Columbia's Social Work School proposed building for West 113th Street, between Broadway and Riverside Drive (ultimately built at Amsterdam Avenue and West 122nd Street).⁷⁹ One Morningside Heights community organization criticized the Teachers College plans by saying "[t]he problem with this building is that the towers are out-of-context for the low-rise block."⁸⁰

There were a series of meetings with the host community: Community Board 9 Land Use Committee and Full Board; tenant meetings with contiguous buildings; an area-wide meeting; elected official sponsored meetings; and finally a formal hearing held by the Dormitory Authority of the State of New York ("DASNY") in compliance with the State Environmental Quality Review ("SEQR") regarding potential DASNY bond financing.⁸¹

C. Community Ineffectiveness

In summary, the host community requested that the proposed buildings be reduced to match the existing built conditions. During the DASNY hearing, the local Democratic District leader recounted the community's opposition (usually unsuccessful) to various development proposals dating back to 1988.⁸² What was telling about this statement, however, was how ineffectual the host community had been for almost fifteen years. Though Morningside Heights is the home of many institutional organizations, with indi-

77. See Denny Lee, *A Dispute with Teachers College Adds a Twist to Town-Gown Tensions*, N.Y. TIMES, Oct. 6, 2002, § 14, at 7.

78. See Shaila Dewan, *Construction Plans at Music School Surprise Neighbors*, N.Y. TIMES, Apr. 7, 2000, at B3.

79. See Daniel J. Wakin, *Columbia Reconsiders a Building, And the Neighbors are Pleased*, N.Y. TIMES, Dec. 10, 2000, § 14, at 6.

80. Teachers College Building on 121st St., at <http://www.Morningside-Heights.net/tcb.htm> (last visited Apr. 5, 2004). The Morningside-Heights.net web site is maintained by the West 112th St. Block Association. About Morningside-Heights.net, at <http://www.morningside-heights.net/us.htm> (last visited Apr. 5, 2004).

81. The author, in his role as a consultant on the project, coordinated, and facilitated these discussions.

82. The author was present at the hearing.

vidual expansion needs, there had never been an attempt to convene an area-wide planning effort to address the individual expansion needs holistically. The community board never established a Morningside Heights Committee to address the special nature of the development pressures in the area.⁸³ This was despite the fact that the newly elected assemblyman, Daniel J. O'Donnell, who was the former Chair of Community Board 9's Land Use Committee, was primarily elected by the Morningside Heights community for his leadership in the area regarding land use.⁸⁴ Instead, each institution individually had engaged the host community in a dialogue concerning future expansion. So, in turn, Columbia would meet with the community, Barnard would meet with the community, and Teachers College would meet with the community.

Because of the fractured way the host community dealt with institutional expansion, the fundamental zoning regulations that permitted out of scale buildings went unchanged. In short, the zoning regulations were not amended to reflect community concerns. Nor was the area designed a historic district, another means to insure future development to be compatible with the existing built environment. One state official, during the DASNY hearing, likened the community "outrage" about the scale of the proposed buildings to that of a community concerned with the speed limit of a local street: if a community feels the local speed limit is too fast, it can either stand on the side of the road and yell at the cars to slow down or the community can lobby to have the speed limit reduced!⁸⁵

D. Result

The community effectively made it difficult for DASNY to issue tax exempt bonds to finance the construction of the dormitories, forcing the College to obtain taxable financing, thus making the project more expensive. Because interest rates were so low, how-

83. For comparison, Manhattan Community Board 4 has special committees established to review, by neighborhood (Clinton, Chelsea, etc.), development proposals; other Community Boards, when development pressures affect a specific area, will often establish committees in order to emphasize and recognize the unique nature of those areas.

84. See N.Y. State Assembly, *Assembly Member Daniel J. O'Donnell, 69th Assembly District, Biography*, at <http://www.assembly.state.ny.us/mem/?ad=069&sh=bio> (last visited Apr. 21, 2004).

85. The author, in his role as a consultant on the project, coordinated and facilitated these discussions.

ever, the College was still able to proceed with the development of the buildings. The net result was that the proposed buildings were built despite community opposition, and the zoning for the area remained the same, thus permitting additional future out-of-scale institutional development.

IV. MANHATTAN COMMUNITY BOARD 10—CENTRAL HARLEM

Uptown Partners proposed to demolish an existing, partially constructed church structure (construction stopped in 1985) and to develop, at 400 Lenox Avenue, the first non-subsidized, market rate housing in Central Harlem in 75 years,⁸⁶ a 24-story mixed-use project consisting of 175,947 residential square feet (containing 138 condominium dwelling units), 28,260 commercial square feet and 104 below-grade parking spaces, for a total of 204,207 square feet.⁸⁷ An existing, adjacent landmarked structure, containing 5,970 square feet, would be retained.⁸⁸ In the future, a 9,836 square feet church would be built by a third party. Ultimately, the site would contain 220,013 square feet.⁸⁹

The mixed-use residential/commercial building was proposed for the corner of Lenox Avenue and West 129th Street, furthest from the landmark structure; the building base for the mixed-use building was contextual to existing six-story buildings on West 129th Street.⁹⁰ The Lenox Avenue and West 130th Street corner was reserved for the proposed church structure, which also would be contextually in scale with the landmarked Astor Row buildings.⁹¹

A. Zoning

The site is located on the east side of Lenox Avenue, between West 129th and 130th Streets.⁹² The site contains 23,491 square feet and is located in a R7-2 Residential Zoning District, with a 100-foot wide C2-4 Commercial Overlay District along Lenox Ave-

86. See *Green Light for 220,000 s/f of residential developments; approval by New York City Board of Standards and Appeals*, REAL ESTATE WEEKLY, Feb. 4, 2004, at C7 [hereinafter *Green Light*]; *New Luxury Condo Headed for Harlem*, N.Y. SUN, Feb. 18, 2004, at 2.

87. See 400 Lenox Avenue, Res. 73-03-BZ (N.Y. City Bd of Standards and Appeals Jan. 13, 2004) [hereinafter 400 Lenox Avenue].

88. See *id.*

89. See *id.*

90. See *id.*

91. See *Green Light*, *supra* note 86.

92. See 400 Lenox Avenue, *supra* note 87.

nue.⁹³ The New York City Zoning Resolution permits a maximum 4.00 Quality Housing Residential FAR⁹⁴ (maximum 3.44 FAR under Height Factor Zoning,⁹⁵ a zoning form designed to facilitate tower-in-a-park type construction), a 2.0 Commercial FAR, and a 6.5 Community Facility FAR.⁹⁶ The maximum floor area is 93,964 residential square feet, 46,982 commercial square feet, 152,692 community facility square feet, or 152,692 square feet in a mixed-use building. Since relief from the permitted zoning was required to construct the proposed building, a variance application was submitted to the New York City Board of Standards and Appeals (“BSA”), which always requires five findings to be met before granting any variances:

- There are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located.
- That because of such physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return and that the granting of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization.
- That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare.
- That the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a zoning lot subject to the

93. *See id.*

94. N.Y. City Zoning Res. § 23-45

95. N.Y. City Zoning Res. § 23-142.

96. N.Y. City Zoning Res. § 33-121.

restrictions sought to be varied shall not itself constitute a self-created hardship.

- That within the intent and purpose of the Zoning Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.⁹⁷

Expert testimony, regarding subsoil conditions and the cost of development, was submitted to the BSA to meet the above findings.⁹⁸

B. Community Reaction

The immediate contiguous host community and the community board had a strong negative reaction to the proposed height of twenty-four stories, feeling that it was extremely out of scale with the existing environment of three- to six-story buildings. The Astor Row owners and residents especially felt the proposed building was out of scale with their historically designated residential buildings.⁹⁹ Some in the community, including the local councilmember, objected to a development project that would service a middle and professional class seeking to live in market rate residential units located in Harlem¹⁰⁰ (though there is a strong demand for such housing, there is little or none of it presently available in Harlem, and the project was designed to help satisfy that segment of the City's population seeking to live in Harlem).¹⁰¹

Prior to the submission of the variance application for 400 Lenox Avenue, the community board had long advocated for the rezoning of the area around Frederick Douglass Boulevard (Eighth Avenue) from West 110th to 124th streets.¹⁰² The community-sponsored re-

97. See N.Y. City Zoning Res. § 72-21

98. See 400 Lenox Avenue, *supra* note 87.

99. See *id.*; *Green Light*, *supra* note 86.

100. The Community Board has a longstanding fair share policy regarding restricting the placement of special need and social-services housing programs. See, e.g., DEP'T OF CITY PLANNING, N.Y. CITY, STATEMENT OF COMMUNITY DISTRICT NEEDS, MANHATTAN, FISCAL YEAR 2000, 194 (1998) ("This decision [to adopt a fair share policy] was based upon community board and community resident's desire for a tax base which would stabilize the developing community.") Additionally, the Community Board stated there was a "dire need for middle and upper income residents." *Id.*

101. See *Green light*, *supra* note 86.

102. Civitas Citizens, Inc., a urban design, community advocacy organization that represents the Upper East Side (CB 8) and East Harlem (CB 11), had offered to fund a rezoning study for CB 10 (a similar offer was accepted by CB 11), but was refused because Civitas was viewed as "outsider" to the Central Harlem community. The Municipal Art Society of New York maintains a database of urban planning consultants and civic groups in which Civitas has a listing. See Municipal Art Society of New York, *Planning Center Consultant Directory*, available at <http://www.mas.org/Projects/>

zoning action called for mapping a contextual zoning district, which would regulate the height and bulk of new and enlarged buildings; require streetwall development and require conformity with the character of the neighborhood: the building base would be at forty to sixty-five feet, setbacks would be at ten to fifteen feet, and building heights would be at 125 feet. In addition to regulating building form, the community-sponsored action called for increasing the existing density from a FAR of 3.44 to 5.0 on the wide avenues, and a slight increase in FAR, to 4.0, on the side streets. This proposed action was not advanced in the public review because the City of New York believed that the proposed density was insufficient to promote the level of development on the avenues that the community and the City desired.

Subsequently, Manhattan Community Board 11 (representing East Harlem) sponsored a successful rezoning action that included a 6.0 FAR on wide avenues.¹⁰³ Due to the success of the East Harlem rezoning, consensus was found to propose a change in the area around Frederick Douglass Boulevard from a 3.44 to 6.0 FAR on the wide avenues, which was approved in December 2003.

Because of the community board's support for contextual zoning along Frederick Douglass Boulevard, the community board would only support a contextually designed twelve-story building with a maximum height of 125 feet.

C. Result

In early 2004, the BSA approved an application for a twelve-story, 125-foot tall, mixed-use building containing 142,139 square feet (6.05 FAR) (consisting of 131,003 residential square feet (5.58 FAR) and 11,136 commercial square feet (.47 FAR)) and an existing community facility building of 5,970 square feet (.25 FAR) and a future church building of 10,646 square feet (.45 FAR).¹⁰⁴ The total site would include 158,755 square feet (6.75 FAR). The project would include 94 units and 88 parking spaces.¹⁰⁵

The community board successfully lobbied the BSA to approve only a building that kept with their vision of contextually zoned wide avenues, rather than approve the twenty-four-story building

Consulthome.cfm (last visited Mar. 27, 2004). Civitas has provided an entry for this directory giving details about its mission and its work. See <http://www.mas.org/ContentLibrary/Civitas.pdf> (last visited Mar. 27, 2004) [hereinafter Civitas].

103. See discussion *infra* accompanying notes 112-117.

104. See 400 Lenox Avenue, *supra* note 87.

105. See *id.*

initially submitted¹⁰⁶ Their success at the BSA on this application is presumed to set a precedent for any future applications for variances or rezoning. The community board, however, lost an opportunity to study and potentially rezone a majority or the entire area of Central Harlem when they rejected a willing funding source. Therefore, instead of creating a new zoning vocabulary for all of Central Harlem, the CB will be forced to address their vision reactively variance by variance, rezoning by rezoning.

V. MANHATTAN COMMUNITY BOARD 11—EAST HARLEM

In 1961, New York City significantly revised its zoning regulations.¹⁰⁷ North of 96th Street in Manhattan, however, a vast majority of the area was given one zoning designation, ignoring the reality of existing, beautiful brownstones, intact tenements, and spacious pre-war elevator residential buildings.

Since 1961, there have been isolated rezoning actions in Northern Manhattan and in East Harlem in particular, but nothing on a comprehensive or holistic scale. For many years, the local community boards and community organizations had been calling for a comprehensive revision of the zoning regulations to better fit the community's existing conditions, a move that would protect the neighborhoods' character and scale. East Harlem, in particular, objected to many subsidized housing developments that were out of scale with the existing neighborhood, broke the area's streetwall character, did not include ground floor retail on major north-south commercial avenues, and were generally considered inappropriate to the context of the area.¹⁰⁸

In 1999, the City prepared the first major revision of the Zoning Resolution in sixty years, known as the Unified Bulk Program.¹⁰⁹ In the context of that review, the City met with the East Harlem community board and CIVITAS Citizens, Inc., an advocacy planning and urban design group that worked in Upper East Side and East Harlem, and agreed that northern Manhattan, and East Harlem in particular, warranted greater protection from out-of-scale and inappropriate development.¹¹⁰

106. The variance application was amended several times, primarily reducing the proposed project height.

107. See Howard Goldman, *Overhauling City Zoning Regulations; Unified Bulk Proposal Up for Review, Approval*, N.Y. L.J., Mar. 20, 2000, at S1.

108. See *id.*

109. See *id.*

110. See Civitas, *supra* note 102.

CIVITAS initiated and funded an inclusive planning process, incorporating the vision of the local communities, community organizations and elected/ public officials.¹¹¹ The goal of this initiative was to identify zoning and land use regulations that would be better tailored to the existing built conditions, analogous to having clothing altered for a better fit. Additionally, this initiative would allow East Harlem to utilize land use regulations to advance articulated community goals.

A year-long inclusive planning and formal application process commenced to amend the land use regulations governing northern Manhattan. Not only was this process time consuming, but it was also expensive to retain the technical and political expertise needed to guide an application through the public review process. To supplement and complement the retained expertise, community and student volunteers were utilized. All of East Harlem was studied and a remapping plan was proposed for the entire community.

The Department of City Planning, after a year-long internal policy debate whether to accept the rezoning effort, scaled down the proposed zoning amendment to affect only fifty-seven blocks in East Harlem.¹¹² It was, however, the first comprehensive revision of East Harlem zoning since the last major revision of the Zoning Resolution in 1961.

The area rezoned is generally between East 99th and East 122nd streets, east of Lexington Avenue in Manhattan's Community District 11.¹¹³ Most of the area was zoned R7-2,¹¹⁴ which permits a maximum 3.44 FAR, a moderate-density residential district, and is characterized by five- to six-story residential buildings along the avenues and three- to six-story row houses on the midblocks.

According to the Department of City Planning, the proposed zoning strategy balanced growth and preservation in East Harlem. By amending the zoning map, the proposal would:

- Foster new opportunities for residential development. East Harlem had a 6.6% population increase from 1990 to 2000¹¹⁵

111. *See id.*

112. *See* Dep't of City Planning, N.Y. City, *East Harlem Rezoning Proposal—Approved: Rezoning Objectives*, at <http://www.ci.nyc.ny.us/html/dcp/html/eastharlem/eastharlem1.html> (last visited Mar. 27, 2004) [hereinafter *Rezoning Objectives*].

113. *See id.*

114. *See* Dep't of City Planning, N.Y. City, *East Harlem Rezoning Proposal—Approved: Existing Zoning*, at <http://www.ci.nyc.ny.us/html/dcp/html/eastharlem/eastharlem2.html> (last visited Mar. 27, 2004).

115. *See* Dep't of City Planning, N.Y. City, *Manhattan Community Board 11*, at <http://www.nyc.gov/html/dcp/pdf/lucds/mn11profile.pdf> (last visited Apr. 14, 2004).

and the new zoning would help satisfy this growing community's needs for new housing by permitting larger buildings at appropriate locations.

- Ensure that future development was consistent with neighborhood character. The R7-2 zoning encouraged tall towers set back from the street, a building form inconsistent with the prevailing character of East Harlem. Additionally, schools, health care establishments and other community facilities were permitted to be built considerably larger than residential buildings. The proposed contextual zoning districts would permit new buildings more in keeping with the built character of East Harlem.
- Preserve the scale of midblocks. Because the R7-2 zoning designation did not differentiate the relationship between building form and the width of the street, the community found inappropriately tall buildings on the midblock. Residential midblocks in East Harlem are typified by row houses, with consistent heights and street walls that line up along the sidewalks. To preserve these midblocks, the contextual zoning districts mandate a building form compatible with the existing environment, with the net result a decrease in the maximum permitted size of buildings.
- Encourage ground floor retail and service uses. The approved zoning extended or modified commercial zoning to provide new locations and greater flexibility for ground floor retail uses.¹¹⁶

The primary emphasis of the rezoning affected zoning rules governing FAR, building heights, and street walls:

- R8A (a mid-density designation that would increase allowable density by almost 100%, to 6.02 FAR) was approved along wide avenues, such as Second and Third avenues, and First Avenue in the southern rezoning area. R8A bulk regulations are appropriate because of the width of these streets and their proximity to the subway along Lexington Avenue. The maximum heights permitted in R8A districts are appropriate because they are adjacent to high-rise developments.
- C4-4D, a new zoning district, was approved to replace the existing C4-4 district along Third Avenue between East 115th and East 122nd streets. This new district increased residential FAR on Third Avenue while retaining the commercial FAR

116. See *Rezoning Objectives*, *supra* note 112.

previously permitted in C4-4 districts. The C4-4 district, an R7-2 equivalent, allowed residential FAR of 3.44 (4.0 under the Quality Housing option), community facility FAR of 6.5, and commercial FAR of 3.4.

- R7X was approved along First Avenue between East 114th and East 120th streets. More restrictive bulk regulations along this portion of First Avenue were recommended because the midblocks to the east are generally low-scale.
- R7A replaced existing R7-2 zoning along Pleasant Avenue between East 114th and East 120th streets and for the majority of midblocks. R7A is equivalent to the maximum residential FAR previously allowed on and near Pleasant Avenue under R7-2 zoning.
- R7A was proposed for midblocks where mid-rise row house buildings are interspersed with vacant or underdeveloped sites that are appropriate locations for future residential construction. R7A regulations encourage residential buildings consistent with the existing rhythm and scale of neighboring buildings. The previous zoning on the midblocks permitted residential uses at 3.4 FAR and community facility uses at 6.5 FAR. The R7A zoning now limits both residential and community facility uses to 4.0 FAR.
- R7B, a district that permits a maximum 3.0 FAR, was approved for selected midblocks to preserve the existing lower density context. The building form required in R7B districts is consistent with the low-rise character of these areas and ensured that future development would be consistent with the existing row houses.¹¹⁷

VI. CONCLUSION

Three northern Manhattan communities, Morningside Heights, Central Harlem, and East Harlem, recently faced issues of new developments that were perceived to be out of scale and out of character with the environments of the host communities. Each community reacted differently—with mixed results—but more importantly, set the tone for future development and reflected the level of political empowerment in the land use process for the affected neighborhoods.

117. Dep't of City Planning, N.Y. City, *East Harlem Rezoning Proposal—Approved: Proposed Zoning Changes Affecting Bulk*, at <http://www.ci.nyc.ny.us/html/dcp/html/eastharlem/eastharlem2.html> (last visited Apr. 14, 2004).

Though Morningside Heights mounted an impressive lobbying campaign against the Teachers College dormitories, the host community demonstrated its impotence in terms of winning any changes in the dormitory plans. More importantly, however, nothing changed in terms of the underlying land use regulations that continue to permit out-of-scale buildings—that is, the community failed to amend the Zoning Resolution, designate the area historic, or make any other lasting changes. Neither the community board nor any of the elected officials have yet to create a community-wide process of review to address the future needs of the many institutions in the area, a failure that perpetuates the balkanized manner with which the host community deals with institutional expansion. And now that the first market rate development has been proposed north of 110th Street (at the northeast corner of Broadway and West 110th Street),¹¹⁸ the community continues to be ill-prepared for development that will be out of scale with the community's self image.

Central Harlem was very effective in lobbying against the initially proposed twenty-four-story building, using the rezoning envelope approved for Frederick Douglas Boulevard (R8A) as the standard for the 400 Lenox Avenue proposal (despite the community confusion regarding a 125 foot height limit, which is the height limit for R7X not R8A, which is 120 feet). However, because there are no planning or rezoning actions planned for Central Harlem at the time of this writing, this community will respond reactively to various development proposals for increase density and height. Additionally, this community's infatuation with a zoning envelope (R8A), without a fuller policy understanding of building form, construction costs and market conditions, mandates a supercilious debate of form without substance.

East Harlem gazed into the future and didn't like what it saw in terms of land use and building form. The community board 1) proactively lobbied for third-party funding (from CIVITAS Citizens, Inc., which also offered similar financial assistance to Central Harlem, but was turned down because of turf issues¹¹⁹), 2) created a Zoning Committee to oversee the rezoning effort and to shepherd the effort through the political process, and 3) expended political capital to insure that the rezoning proposal was adopted by the

118. The project is currently under review by the city Bureau of Standards and Appeals. See 543 West 110th Street, Calendar No. 307-03-BZ (N.Y. City Bd of Standards and Appeals).

119. See *supra* note 102.

City. The Community Board did not achieve the rezoning for the entire Board area that it wanted (only about forty percent of the community was rezoned in the recently approved action), but it did receive a commitment for additional planning and zoning actions necessary to achieve the community's self image. The recent rezoning action will be only the first of many steps in changing the land use regulations of East Harlem—something that cannot be said for Morningside Heights or Central Harlem.