

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of

FRIENDS AND RESIDENTS OF GREATER
GOWANUS, VOICE OF GOWANUS, MARLENE
DONNELLY, ANN KATHRIN KELLY, and
MARGARET MAUGENEST,

Petitioners,

-against-

CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF CITY PLANNING, and MARISA
LAGO, in her capacity as Director of the Department of
City Planning,

Respondents.

— and —

CITY PLANNING COMMISSION

Nominal Respondent.

GOWANUS RESIDENTS, OWNERS, AND WORKERS
(GROW), JOSEPH IGNERI, DONNA BRUNO, and
JENNIFER REILLY,

Intervenors/Respondents.

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DECISION/ORDER

Index No. 501178/2021.
(Levine, J.)

WHEREAS, Petitioners Friends and Residents of Greater Gowanus (“FROGG”)

is a grassroots community coalition and a not-for-profit organization operating and existing
under the laws of the State of New York, with a headquarters located at 393 President Street,
Brooklyn, New York; Petitioner Voice of Gowanus (“VOG”) is a grassroots community

coalition and unincorporated association located in the Gowanus neighborhood of Brooklyn, New York; Petitioners, Marlene Donnelly, Margaret Maugenest, and Anne Kathrin Kelly are residents of the Gowanus neighborhood of Brooklyn, and/or members of FROGG or VOG; and

WHEREAS, City Respondents are the City of New York, the Department of City Planning (“DCP”), a mayoral agency, and Marisa Lago, the Director of DCP, all of whom are charged with oversight over the City’s Uniform Land Use Review Procedure (“ULURP”); and

WHEREAS, Intervenors/Respondents Gowanus Residents, Owners and Workers (“Grow”) , and three named individuals are a grassroots coalition of individuals who live, work, or own businesses or property in the Gowanus neighborhood of Brooklyn, New York; and

WHEREAS, On January 15, 2021, Petitioners filed the Petition pursuant to Article 78 of the CPLR alleging violations of New York City Charter §§ 197-c and 197-d, Title 62 Rules of the City of New York Chapter 1 and 2 (“ULURP Rules”), and the First and Fourteenth Amendments of the U.S. Constitution; seeking mandamus to compel City Respondents to hold any Community Board or Borough Board hearing on the Gowanus Neighborhood Plan in-person at a public place of assembly, which Petitioners allege is required under the ULURP Rules; and seeking declaratory and injunctive relief, related to the Department of City Planning’s Gowanus Neighborhood Plan ULURP application and the public review thereof; and

WHEREAS, the petitioners specifically allege that an in person ULURP hearing is mandated pursuant to the Charter and 62 RCNY §2-03(d) which provides that “(A) community Board public hearing shall be held at a place of public assembly chosen by the board and located within its community district,” which argument Respondents opposed; and

WHEREAS, pursuant to an application filed by Petitioners, Hon. Donald S. Kurtz issued a Temporary Restraining Order (“TRO”) on January 15, 2021, enjoining public review of the Gowanus Neighborhood Plan, later modified by the Court to allow the Department of City Planning to release the ULURP application; and lifted by the Hon. Katherine A. Levine, on April 19, 2021, solely to allow the certification of the Gowanus Neighborhood Plan Application into ULURP, which in fact was certified on April 19, 2021, subject to further Order of the Court, and

WHEREAS, the Court has stated on the record that this language must be read in conjunction with the intent behind the Open Meetings Law - to ensure that there is an open transparent system of government to maintain an informed electorate - and the very language of §103© of the OML, which permits members of public bodies to attend and participate in meetings via videoconferencing, provided that the public is given ‘an opportunity to attend, listen and observe at any site at which a member participates.’ The Court has also stated that these provisions require that the City make alternative arrangements for those members of the public with limited economic means and/ or who are elderly and do not have access to the internet, smart phone technology, zoom or other social media technology, by designating a place of public assembly and providing technology access at the site so that these individuals can observe and participate in the community board ULURP proceedings; and

WHEREAS, after several lengthy meetings between all parties, City Respondents have agreed, with the assistance of GROW to undertake the following:

- 1) City Respondents will provide an opportunity for members of the public to assemble at a place of public assembly; i.e. a supplemental outdoor location to observe and/or testify remotely at the Brooklyn Community Board 6 (“C.B. 6”) public hearing required by

ULURP for the proposed Gowanus Neighborhood Plan (the "Supplemental Hearing Location"). City Respondents will make reasonable efforts to facilitate a joint hearing between C.B. 2 and 6 on a date to be determined with the Community Boards and under procedures consistent with this Order (the "ULURP Community Board Hearing"). No additional Supplemental Hearing Location will be required in conjunction with the C.B. 2 hearing.

- 2) The City Respondents have indicated that the Community Boards plan to hold the ULURP hearing on June 3, 2021 and will ensure that the Community Boards notify all concerned parties sufficiently in advance of this date or a rescheduled date so that all concerned parties will receive sufficient notification. The City Respondents will work with C.B. 6 and C.B. 2 to notify the public of the opportunity to testify at the Supplemental Hearing Location in addition to any other notice that it is required to provide to the public concerning the zoom hearing, and will also assist the community boards in publicizing the ULURP Community Board Hearing and Supplemental Hearing Location option. The City respondents will also ensure that Petitioners are immediately given the date of the hearing and logistics of the hearing so that they can also disseminate said information to the public.
- 3) The City Respondents will aid the Community Boards in agreeing upon procedures in accordance with this Order and will report agreed upon procedures to the Court no less than two weeks before the ULURP Community Board Hearing is scheduled to commence.
- 4) Individuals desiring to testify at the ULURP Community Board Hearing will be required to register to testify, and will be provided various options for registering. Any individual may register starting no less than three days prior to the ULURP Community Board Hearing, or at an earlier time if so decided by the community boards, by telephone, or may register on-line

or at the Supplemental Hearing Location on the day of the ULURP Community Board Hearing.

- 5) City staff will be on-site at the Supplemental Hearing Location on the day of the Community Board Hearing for the purpose of registering participants and will also provide for sufficient staff to be present at the Supplemental Hearing Location for the purpose of enabling the hearing to proceed as efficiently and effectively as possible
- 6) The City Respondents expect that the Supplemental Hearing Location will be Washington Park, also referred to as JJ Byrne Park, located between 3rd and 4th Streets and between 4th and 5th Avenues in Brooklyn, which can accommodate members of the public, consistent with applicable COVID-19 restrictions in effect at the time of the gathering. If for any reason the City Respondents are not able to use Washington Park, they will identify another location within or adjacent to the Gowanus Neighborhood Plan rezoning area capable of accommodating the requirements set forth in this Order.
- 7) Upon registration, participants will be asked to identify whether they wish to testify in person or through the video-conferencing platform. Participants will also be asked if they wish to submit written testimony and will be provided instructions for submitting written testimony, or, if available, written testimony will be collected at that time by City staff or, where possible, Community Board staff. All written testimony will be promptly provided to Community Boards 2 and 6. While city staff may request of the registrants whether they plan to testify on behalf or against the project, if the bylaws of said community board permit such inquiry, no member of the public is required to answer that question.
- 8) The City Respondents also commit to the following regarding the Supplemental Hearing Location:

- a) Individuals who appear at the Supplemental Hearing Location will be subject to public health requirements in effect at that time, which may include wearing a face mask, submitting to a health screening prior to being permitted into the Supplemental Hearing Location and providing contact information for contact tracing purposes.
- b) After confirming previous registration or registering in-person and submitting to the health check, participants will be shown to socially-distanced seating areas, pursuant to City and State guidelines, and told that they should remain seated except for testimony and needed breaks.
- c) No more than 200 people will be admitted into the Supplemental Hearing Location at any time, in accordance with N.Y. Exec. Order No. 202.98 (March 21, 2021), unless that order is superseded or there are other relevant capacity or public health restrictions pursuant to Federal, State, or City law in effect at that time, taking into account the size of the space allotted for the event. Approximately 75-100 chairs will be available to participants. Designated supplemental seating areas without chairs will be made available to the extent practicable, for the remaining attendees. This is consistent with State and local requirements and New York City Parks Department requirements for events at Washington Park.
- d) The City Respondents will arrange to show the remote ULURP Community Board Hearing on a screen or screens at the Supplemental Hearing Location. The broadcast will include audio and visual feeds, so that members of the public present at the Supplemental Hearing location may hear and see the live remote

public hearing session. City Respondents will ensure that the people assembled in the Supplemental Hearing location and any individuals testifying at the Supplemental Hearing Location will be viewable on Zoom (or other video-conferencing platform). Individuals will be expected to use their phones to testify; however, the City Respondents will provide individuals who do not have access to a personal phone with access to adequate technology in order to testify. The City Respondents will make good faith efforts to arrange for the ULURP Community Board Hearing to be broadcast on a local cable television network. The City Respondents have represented that they are in contact with a Brooklyn public access cable service that has expressed interest in broadcasting the ULURP Community Board Hearing.

- e) The hearing will be chaired by a member or members of C.B.6 and C.B. 2 as agreed between the Community Boards' leadership. At the Community Boards' request, City Respondents will provide additional City personnel to help facilitate the ULURP Community Board Hearing, by, for example, assisting in registering attendees and monitoring the speakers list.
- f) Reasonable efforts will be made to allow individuals to testify in the order they register, subject to the practice of grouping individuals so that a small number of speakers in opposition are followed by the same number of speakers in favor, and so on, whether in-person or remotely, while also striving to reduce wait time for individuals who register in-person at the Supplemental Hearing Location. City Respondents will achieve this balance by: (i) maintaining one digital list of individuals who register to testify; (ii) asking during registration whether

individuals intend to testify remotely or at the Supplemental Hearing Location; and (iii) alternating between remote testimony and testimony at the Supplemental Hearing Location so as to hopefully obviate the need for another supplemental hearing date. City personnel will be in communication with a person designated by Community Boards 2 and 6 for the purpose of facilitating the orderly conduct of public hearing participation at the Supplemental Hearing Location.

- g) The ULURP Community Board Hearing is expected to start in the afternoon of the selected date, but not earlier than 3:30 PM, and will continue until adjourned or recessed by the personal presiding, but at least until 7:00 PM. The Supplemental Hearing Location will close no later than 10:00 PM, in accordance with amplified sound permit requirements.
 - h) In the event of sustained, widespread, hazardous weather, such as pouring rain, thunder and/or lightning, in the neighborhood of Washington Park, as indicated by the National Weather Service, that would make holding the ULURP Community Board Hearing potentially unsafe, the D.C.P. will reschedule the hearing to an alternate date noticed in advance of the original hearing date.
 - i) If more than 20 individuals who signed up to testify at the Supplemental Hearing Location are not provided the opportunity to do so due to time restrictions, the City Respondents will arrange for a continuation of the ULURP Community Board Hearing on a subsequent date and will make similar arrangements for the Supplemental Hearing Location, or a nearby location, as provided herein.
- 9) If a ULURP Borough Board hearing is noticed, the City Respondents will write to the Court and parties to report the procedures under which it will be conducted.

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- 1) City Respondents will undertake the terms as outlined in paragraphs 1-9 above, subject to a more detailed plan for the Supplemental Hearing Location being presented to the Court and to the other parties in this Proceeding by May 10, 2021, after consultation with C.B.s 2 and 6. City Respondents' failure to comply with the terms above may result in reinstatement of the TRO or other related relief to Petitioners.
- 2) The official mandated hearings before the C.B. 2 and 6 in connection with such ULURP Application shall not proceed or be noticed until the Court has approved the more detailed plan for the supplemental hearing as detailed above; and the time limitations set forth in the ULURP Rules (*i.e.*, Ch. 8, §197-c(e) of the City Charter and 62 R.C.N.Y. §2-03(1)), which require affected community boards to hold public hearings within 60 days of receipt of a certified ULURP Application, are hereby paused until the Court signs off on the detailed plan for the supplemental hearing;
- 3) Should the Mayor or Governor revoke the operative Executive Orders regarding significant social gathering restrictions, and specifically revoke the provisions suspending in person public hearings under the Open Meetings Law and reinstate the provisions of Title 62 of the Rules of the City of New York to as to require physical in-person hearings or meetings to be held by community boards, borough boards, or the City Planning Commission prior to the June 3rd scheduled date of the hybrid zoom/ supplemental outdoor hearing location, the court will entertain an application to hold the entire hearing at a place of public assembly;
- 4) Petitioners' motion for a preliminary injunction is denied but the court will entertain a new motion for a preliminary injunction should the City respondents not comply with

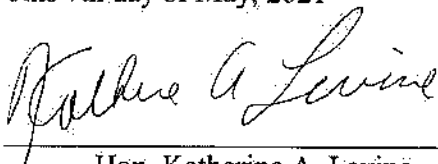
this order.

- 5) The Court shall retain jurisdiction of this matter for the purpose of enabling the parties to this Order to apply to the Court for any further order that may be needed to construe, carry out, or enforce compliance with the terms of this Order.
- 6) The caption of this proceeding is hereby amended to delete the name of the late Linda Mariano.

This constitutes the decision and the Order of the Court:

SO ORDERED.

This 7th day of May, 2021



Hon. Katherine A. Levine
Justice, Supreme Court

**HON. KATHERINE A. LEVINE
JUSTICE SUPREME COURT**