

# Resolution

## Manhattan Community Board 10

### Disapproving Rezoning Application of Lenox Terrace with Conditions

WHEREAS, the owners of Lenox Terrace (hereafter known as Olnick) has made several land-use action applications to the New York City Department of City Planning seeking to rezone the Lenox Terrace block to accommodate five 28 story mixed use buildings— *in particular, a zoning map amendment from R7-2 and C1-4 zoning districts to a C6-2 zoning district; two special permits to waive bulk and parking requirements; and a zoning text amendment* - (hereafter known as the “project”); and

WHEREAS, the project as now proposed by Olnick, would consist of approximately 1600 units, which 1200 of those would be market rate, and

WHEREAS, the public reviewing process known as ULURP to review Olnick’s application has begun and Community Board 10 is the first step of review in such process; and

WHEREAS, Community Board 10 has *approximately* 60 days to review the Olnick application and render an opinion on same, which such time began on August 26, 2019; and

WHEREAS, Community Board 10, through its Land Use Committee, held two public hearings on September 19, 2019 and October 17, 2019, respectively, affording Olnick the opportunity to present its rezoning plans to the board and the public, and affording the community at large the opportunity to review said applications and comment; and

WHEREAS, the Lenox Terrace Tenants Association known as LT-ACT, concerned residents and other community residents and organizations presented their positions and opinions in opposition to the Olnick applications; and

WHEREAS, other residents and union members, namely members of 32B-J, presented reasons in support of the Olnick application; and

WHEREAS, the Land Use Committee after hearing all of the views, including written submissions, for and against the project have deduced from such hearings the following concerns:

### ***Concerns***

#### ***Threat of Losing an African American Plurality in CB 10***

Community Board 10 makes up a large part of City Council District 9 and its plurality is African American, giving Council District 9 also an African American Plurality; and <sup>1</sup>

Lenox Terrace is a huge housing development (approx. 1,700 units) within Community Board 10 with a tremendous cultural and political history, including home to several world renowned people; and

Community Board 10's citizen voting age plurality is also African American; and

The African American population in the United States is a protected group under the Voting Rights Act of 1965; and

Community Board 10 (Central Harlem) and Council District 9 have enjoyed an African American plurality for over one hundred years and political power for the last four score years; and

The community at large, expert opinions and other evidence have alleged or demonstrated that the rezoning as proposed by the Olnick plans could affect the African American plurality in such a way that within 10 years, Harlem will not be an African American plurality; and, in that

The Lenox Terrace Rezoning proposal brought forth by the Olnick Group/Family is massive, calling for the development of 5 *State Office Building* sized towers, covering most of a large rectangular zoning block that encompasses the equivalent of four streets (North and South) and two well distanced avenues (East and West) and will be situated on the block's outer perimeters; and, in that

It has been testified to that this form of dense redevelopment threatens a neighborhood community that has enjoyed light and air and moderate density; and in that

It is further attested to that this form of redevelopment threatens a community that has also enjoyed an African American plurality by potentially terminating such plurality and its history, as the overwhelming majority of units will be market rate and, such buildings will dwarf and overshadow the original Historic Lenox Terrace buildings character. Furthermore, the Metropolitan African Methodist Church, located at 58 W. 135<sup>th</sup> St. – the second oldest African Methodist Episcopal congregation in Manhattan – which is in the footprint of the rezoning proposal – has sold its property to Empire Development Fund 4, LLC, and there is a strong likelihood that another massive residential tower will be built in the former church space. Even further, the possibility that the privately owned Joseph P. Kennedy, Jr. Center could be sold to a private developer and that space too could see one or two 28 story towers, thereby development on this block in totality could set a dangerous precedent for multifamily buildings in Harlem built in this era and accelerate the termination of the African America Plurality in the neighborhood forever; and, in that

Such concerns are realistic because historically open market apartments are occupied mostly by non-African Americans, as historically African Americans have a higher unemployment rate due to discriminatory systems that have long been in place and African Americans historically have faced and still do unequal employment practices precluding them from open market apartments; and in that

There is no guarantee that the legacy of Lenox Terrace will be protected under the plurality of a non-African American group in the event that African Americans are no longer the majority thereby threatening our legacy in said place; and

***CB 10's and City Council District 9's Prior History Regarding a Threat to its African American Plurality and Outcome***

WHEREAS, in 2007 Community Board 10 responded to New York City's 125<sup>th</sup> Street Rezoning plan in its Resolution Disapproving of the 125<sup>th</sup> Street Rezoning which included the ground that its plurality and political power would be threatened by such rezoning, thereby making such zoning in part a violation of the Voting Rights Act (*infra*); and

WHEREAS, the New York City Council paid close attention to Community Board 10's concern in that regard and within the 125<sup>th</sup> Street Special District's zoning's area for the highest residential density, such development is discouraged by certain mechanisms that have been put in place under local law; and

WHEREAS, City Council District 9 residents successfully fought to strengthen the African American plurality in District 9 (as well as Community Board 10) when the City brought forth its City Council Redistricting plan in 2012-2013, making such plurality (59%) greater by 8%; and

WHEREAS, Community Board 10 and District 9 residents relied on the Voting Rights Act of 1965, as amended in 2006 known as the ***Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006***; and

WHEREAS, such Act's purpose in part is to guarantee the right of protected groups (i.e., African American) to be able to cast meaningful votes [Section 2]; and

WHEREAS, Congress has found that the reasons for such concerns by the African American group (*supra*) are justified; and

WHEREAS, Congress has declared in part through such Act that any practice or procedure that affects voting that has the purpose of or will have the effect of diminishing or diluting the ability of any citizens in a protected class (i.e., African American) to elect their preferred candidates of choice denies or abridges the right to vote [Section 5]; and

WHEREAS, the African American population in CB 10 and Council District 9 is sufficiently large and geographically compact to constitute a majority in a single – member district; such group is politically cohesive; and the majority votes sufficiently as a bloc; and

WHEREAS, because of the above, African Americans living in CB 10, Council District 9, Senate District 30, Assembly District 70, enjoy African American representation in government, which is by their choice and they have demonstrated that they want to continue voting for people in their group; and

WHEREAS, the United States Supreme Court in 2013 in a matter known as **Shelby County v Eric Holder** upheld Section 5, which means a district's plurality could sustain its political power and reject any rezoning or redistricting that threatens such political power; and

***Tenants' Rights: Overall Maintenance, Repairs and Capital Improvements***

WHEREAS, according to LT-ACT, Olnick has a poor record of stewardship to Lenox Terrace residents ranging from poor service, negligent maintenance and repair, and insufficient staffing on the premises which compromises the resident's safety. The evidence provided by the Committee is that the Olnick organization has failed to maintain the apartments and common areas of the complex some of which have resulted in significant health hazards. Tenants have identified mold, lead contamination in the water pipes<sup>2</sup>, and friable asbestos from cracked asbestos in the vinyl tile flooring. It is reported that many residents are living in "deplorable conditions" or as the testimony suggests, at the least conditions that are not bargained for. To date, no legal plan has been put in place to rectify the outstanding maintenance repairs or the desperately needed capital improvements required as a "Tenant Right." Tenants have reached out to CB10 to vote "No" to the proposed resolution without conditions to "put an end to the "crippling" landlord-tenant relationship where residents feel like hostages"; and

***Pending Litigation, Affordable Housing, Impact of Open Market Units***

WHEREAS, according to LT ACT, there are claims currently pending or litigated against the applicant. Claims filed and damages sought and recovered need to be better understood. The Land Use committee heard testimony which was later supported by written submission, and Olnick has not disputed such testimony or written submission, that it receives J51 tax credits and has unlawfully (attempted to) deregulate apartments at the Lenox Terrace properties while still receiving such tax credits and that it is involved in a civil dispute regarding the matter<sup>3</sup>; and

WHEREAS, this pending lawsuit, the outstanding maintenance concerns and alleged displacement of 700 residents has resulted in high levels of mistrust of Olnick among residents and the community at large questioning Olnick's overall integrity for any project moving forward; and

WHEREAS, the Olnick organization has not presented an income targeted housing plan that is more attractive than 60% (47K 3ppl ) of the AMI, which is something that they will most likely do anyway, *supra*; and

WHEREAS, to date, the Olnick Organization has not presented an income targeted housing plan that is satisfactory to CB 10 or the Community-at-large. Community Board 10 has submitted their Mandatory Inclusionary Housing resolution to the owner and the Olnick plan does not meet our Resolution standards and expectations; and

WHEREAS, it has been historically demonstrated that major developments that consist of mainly open market units increase rents, overall property values and taxes in the catchment areas where such developments are situated. The Lenox Terrace block is surrounded by many properties owned by senior African Americans with limited income, thereby putting such properties at risk of higher property taxes; and

***Physical Context/Neighborhood Character***

WHEREAS, the five 28 story towers in the Olnick plan will almost reach as high as the Adam Clayton Powell Jr., Harlem State Office Building and be positioned on the street line rather than set back with open space in the forefront. Such height is generally allowed in areas that can provide considerable set back and open space

in the forefront, near parks or on hills, etc., and the Olnick plan is way out of the contextual landscape of the area; and

WHEREAS, even the [Victoria Theater Project] which is a towering 26 story building on W, 125<sup>th</sup> Street – a project under the control of the Empire State Development Corp - has honored the spirit of Section 5 of the Voting Rights Act of 1965 and the 125<sup>th</sup> Street Special District, whereby it has a 100 feet set back and its housing model is targeted at 50/30/20, which housing income bands are Open, Moderate and Low, respectively. Plus, the Victoria building is shorter than the buildings in the Olnick plan; and

***Historic Preservation/Resources (Historic and Cultural)***

WHEREAS, according to the CEQR, the Landmark Preservation Council determined that the Lenox Terrace complex appears to be National Register eligible. To date, Olnick has inadequately addressed the historic, architectural and cultural significance of the Lenox Terrace complex. For example, in the existing site plans it is suggested that a six story podium be erected in front of the classic driveway in front of 470 Lenox Avenue. The driveways of Lenox Terrace were a unique feature of the complex during the postwar period; other Harlem buildings built during this period did not have them. The driveways gave the complex a cache; the driveways coupled with the doorman was a feature that attracted upwardly mobile African Americans to live at Lenox Terrace as both they and their guests arriving to the residence could be dropped off in front of the *full service* building; it was this element of service and convenience at that time that was only to be experienced in downtown Manhattan; and

WHEREAS, the CB 10 community desires that any proposed development must protect and celebrate the Lenox Terrace architectural relics of the period; in the current site plan the buildings are built at a height that put the Lenox Terrace as originally built, at risk. The plans will overshadow the distinguished architectural gem the Lenox Terrace is known for; and

WHEREAS, our New York City society at large wants more than photographs, statues or written information on historic resources, hence we have a Landmarks Preservation Commission and New York State Registry of Historic Sites that support the physical brick and mortar of historic resources; and

WHEREAS, the Olnick plan will overshadow the original Lenox Terrace buildings, diminishing the visibility of such buildings and potentially create an “out of sight out of mind” effect and Olnick has not adequately addressed either negative impacts and how it could mitigate such impacts; and

***Shadows/Over Shadowing***

WHEREAS, it is believed that the new buildings will cast major shadows on the old buildings thereby depriving tenants in the old buildings adequate sunlight and Olnick has not assessed this area at all; and

***Public Health: Existing Conditions, Vulnerable Populations and Air Quality***

WHEREAS, it is well documented in the Community District 10 profile that there is a high rate of asthma among young children and adults in Harlem, a condition that has plagued the Harlem community for decades. In addition, Harlem residents suffer from other conditions that impact health and quality of life such as

cardiovascular disease, depression and stress. Even diseases like diabetes has been associated with higher rates of stress and pollution<sup>2</sup> and

WHEREAS, for the area covered by CB10, New York's own Environmental Health agency reports high levels of very fine (PM 2.5) airborne contaminants and ozone derived from vehicle emissions. Fine particulates (PM10) derived from construction and other types of activities are also elevated in Central Harlem. These particles are small enough to lodge in the lungs and cause short and long term lung damage<sup>3</sup>

While there has been some discussion to date around air quality testing pre, during and post construction, there is no discussion concerning air quality post construction and the impact it will have on residents living in the older buildings which will be enclosed and surrounded by larger buildings. It is reasonably believed that 7-10 years of construction as anticipated in the Olnick plan will have a serious negative impact at a minimum on people who suffer from asthma and other related respiratory diseases; and

### ***Overall Socio Economic Conditions***

A project that will increase overall density of approximately 4000 persons (not including the church development) is going to have a socio economic effect on the complex and the public systems (MTA, local schools, recreation areas and existing businesses). While the changes have been acknowledged, the research and plans to date have not been adequate. This project is more than a private developer led rezoning. The level of transformational change anticipated as a result of this project requires a plethora of community stakeholders, urban planners, policy analysts and business leaders to both understand the magnitude of the project and the various components impacted in order to 1) develop effective solutions/recommendations to ensure balanced growth and scale and 2) manage the change. Ultimately, what Olnick is proposing in this resolution is creating a "mini city". To date, there has not been enough collective dialogue with institutional and public partners *at the same table* who can mitigate risk and support the public systems that will be affected.

### ***Summation***

It is important to point out that while Olnick Organization is a private developer that in fact owns the land in question, it is fair to acknowledge that the landlord has also been the agitator for the existing state of affairs with tenants. It is the hope of the tenants and community at large that the developer acknowledge the above referenced concerns shared and the implications for any rezoning. Further, according to LT ACT (from the accounts of the pending litigation whereby Lenox Terrace has been charged with illegally deregulating rent stabilized apartments), there is a strong implication that the owners of Lenox Terrace is the *key driver of displacement and destabilization in Harlem*. This unspoken reality leaves residents of Lenox Terrace vulnerable. In addition to the threat of CB 10's African American plurality, the basic tenant protections that residents seek from any landlord are being compromised through negligence and a lack of transparency.

To date, Olnick has not addressed these concerns nor disputed any of the aforementioned claims nor demonstrated an organizational capacity to address the need for balanced growth. A major development

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<sup>2</sup> LT-ACT (2019) The Lenox Terrace Association of Concerned Tenants OPPOSES Plan to Bring OVERSCALE Development to Central Harlem

<sup>3</sup> LT-ACT (2019) The Lenox Terrace Association of Concerned Tenants OPPOSES Plan to Bring OVERSCALE Development to Central Harlem

such as the one proposed, will no doubt *tip the scale* from a demographic standpoint. In sum, one tenant referred to the proposed development as “dynamite” as it will have explosive effects. It is the hope of the residents and community at large that all these factors be seriously considered by the developer in this process.

The Olnick organization is currently in negotiation with Lenox Terrace residents regarding a “Tenants-Benefits Agreement.” In absence of a final draft of such agreement, Community Board 10 has drafted conditions that such agreement must be finalized to the satisfaction of the current residents and that the Manhattan Borough President’s Office, Department of City Planning and City Council must consider any absence of such legal document as CB 10 has. However, to date there is no tenants-benefits agreement of any kind. A series of comprehensive solutions must be devised one of which include Olnick being a responsible affordable housing partner.

## **NOW THEREFORE, BE IT RESOLVED**

Community Board 10 **DISAPPROVES** of the Olnick Rezoning Plan presented because of, but not limited to, the concerns set forth above and failing to dispute or refute well documented claims, and now sets forth in this Resolution, the following conditions:

- That Community Board 10 rejects the application which calls for a C-6 Rezoning as not consistent with the present and future needs of the community it affects and
- That a permanently binding Tenant's Benefit Agreement (TBA) that addresses immediate and long term concerns of existing and future tenants be in place before any zoning application be approved, and
- That Olnick agrees to a process for completing a binding Community Benefits Agreement (CBA) to be in place before any zoning application is approved.

**Community Board 10 will only reconsider a rezoning plan if the current one is withdrawn and a new one is certified with the following conditions and CEQR boilerplate assessments in the areas below**

### ***Zoning Requirements***

- The building heights cannot exceed 195 feet, with appropriate set-backs and the commercial zoning remain C1-4.

### ***Tenant Protection: Outstanding Repairs, Exposures, Capital Improvements***

- That Olnick agrees to present an acceptable plan, approved jointly by the tenant's association of Lenox Terrace and CB 10, one that is legally binding on how it intends to resolve the outstanding maintenance conditions and the conditions of the apartments –all of which have now posed a health hazard that must be remedied;
- CB 10 is requesting a review of any remediation and inspection reports as proof the work has been completed before any other approval or negotiations of any other aspect of the proposed rezoning can occur and

### ***CB 10 Mandatory Inclusionary Housing/Affordable Housing, Regulatory Agreements and Oversight***

- That Olnick agrees that the income bands must be set at 50/30/20 of the AMI – open market, moderate (43K-130K) income, low (29K-42K) income, respectively, and
- That Olnick agrees that the income bands in this housing model must be permanent, and
- That Olnick agrees that poor credit history or having no credit at all cannot be used to disallow an applicant for housing in the new buildings if that is the only reason used to disallow such applicant. And under no circumstances will a person's landlord/tenant litigation history with a landlord be used as a reason to disapprove an applicant, unless such landlord prevailed on an action for non-payment of rent and
- That Olnick agrees that NYC HPD will oversee the application process for such units and report to CB 10 on how many units are transferred to CB 10 residents
- That Olnick agrees that CB 10 residents will have a 50% preference on all the moderate and low income units and
- That Olnick agrees to commit to a legally binding agreement to maintain all of the current units under the rent stabilized law and

### ***MWBEs and Workforce Development Commitment***

- That Olnick agrees that MWBE targets will be established (30% and/or >) and approved by CB 10 and employment preferences will be given to community residents, and
- Construction jobs must be provided to union workers with a diverse workforce and hire locally. Any exceptions must be negotiated in an ironclad agreement between CB 10 and Olnick. Such ironclad agreement shall be written into law, and

### ***Density Plan, Movement, Navigation and Safety***

- That Olnick agrees that a well-conceived density plan approved by CB10 Public Safety Committee and the LT Development Committee; one that examines cumulative traffic impact and considers both pedestrian and vehicular traffic issues as identified by community stakeholders (not an EIS report) and acknowledges overall safety, school zones and peak traffic area days and times (e.g., 135<sup>th</sup> and 5<sup>th</sup> Avenue intersection), and

### ***Health and Population***

- That Olnick agrees to a well-conceived plan that is approved by CB 10, through its Health Committee and considers the high resident senior citizen population (65%) as well as the Harlem population afflicted with high rates of respiratory diseases including asthma. A plan must consider the effects of construction on the health and well-being of residents and those populations at risk;
  - one that implements routine (e.g., monthly) indoor and outdoor air quality testing before, during and after construction
  - one that requires a health proxy taken of all residents with existing respiratory illness pre construction and
  - one that offers relocation allowance and using HEPA air purifiers/ breathing devices based upon medical claims, and

### ***Historic Preservation, Arts and Culture***

- That Olnick agrees to a well conceived plan that is approved by CB 10's Historic Preservation and Arts and Culture Committees, Save Harlem Now and other local preservation/arts organizations as well as support of an application submission to NYS and Federal Registry of Historic Sites; and

### ***Building Staffing Composition***

- That Olnick agrees that building staffing ratios will be addressed and employees dispersed based upon the residents needs and the overall needs of "the Facility", and

### ***Security Plan***

- That Olnick agrees that a detailed security plan will be outlined to ensure the safety of residents, business owners and staff. This plan will be approved by CB 10 Public Safety committee, tenants, affected and surrounding institutional partners and leaders of the 32 Precinct, and

### ***Parking***

- That Olnick agrees that a well-conceived parking plan detailing accessibility and outlining options and payments for both existing residents and new residents. This plan will be approved by the LT Development Committee and will address the allocation of spaces, transferability of spaces, reduced parking fees for rent stabilized tenants and

### ***Retail***

- That Olnick agrees that a detailed plan for the retail one that is approved by LT Development Committee and CB 10 Economic Committee; a plan that includes: uses, type local vs. destination, rent concessions for small business, and incorporates street vendors, coop share for local small businesses and

### ***Environmental Impact, Transportation & Community Impact/Engagement***

- That Olnick agrees to a detailed plan approved by the CB 10 Transportation Committee, MTA and LT Development Committee that addresses the following:
  - Plans to mitigate transportation impacts at the 135<sup>th</sup> Street Subway station and the Intersection at the 135<sup>th</sup> Street and 5<sup>th</sup> Avenue and
- That Olnick agrees to a true community engagement process that includes Lenox Terrace residents as well as the broader Harlem community, a process that includes (but not limited to) charettes, visioning and focus groups, and
  - Plans to include neighboring institutions surrounding Lenox Terrace in the planning of services and the planning of construction and inconveniences caused and

### ***Construction***

- That Olnick agrees to a construction impact assessment as this is an infill project that affects existing residences and open space. The assessment will evaluate the duration and severity of the disruption or inconvenience to all impacted including noise and vibration analyses.
- That Olnick agrees to monthly/quarterly meetings with both the LT Development Committee and CB 10 respectively on the evolution of construction plans, report findings, progress and timelines.

### ***Resident Services Office/Center***

That Olnick agrees that any rezoning and/or as of right development plan they undertake, will include (and Olnick to fund) a resident services office, one that serves tenants 24/7 pre, during and post construction with real time information. The role and its various functions of this office will be negotiated and approved by Community Board 10 and the Tenants. The office will negotiate tenant abatements, concessions, and relocations. The office will administer the LT Development Committee (LTDC) and organize routine meetings with the tenants and the developer concerning construction progress and updates. The office will also manage the newly established resident's council, governing body comprised of various sub committees.

**NOW THEREFORE, IT IS FURTHER RESOLVED** that the aforementioned/conditions run with the land and must be part of any law enacted declaring any consideration of rezoning.

### **Footnotes**

<sup>1</sup> Manhattan Community Board 10 2014 District Needs Statement, "African Americans make up approximately 63% of Community Board 10's population, followed by Hispanic at 22%, White at 10% and Asian at 2%."

<sup>2</sup> DEP Notice of Lead addressed to a Lenox Terrace tenant regarding the DEP's finding that there is lead in the Lenox Terrace property's plumbing system. October 2, 2019

<sup>3</sup> In **Downing v. First Lenox Associates, LLC**, Index No. 100725/2010 (the "Lenox Terrace Class Action"), Lenox Terrace tenants filed a class action lawsuit against the owners of Lenox Terrace in 2010. The Lenox Terrace tenants are alleging that the owners of Lenox Terrace improperly treated apartments as being unregulated under applicable rent stabilized laws even though it was receiving "J-51" tax benefits. The Board takes Notice of such alleged impropriety pursuant to *Roberts v Tishman Speyer Props., L.P.* 2009 NY Slip Op 480 [13 NY3d 270] October 22, 2009 [Court of Appeals] holding that 100% of units in a development under the J51 program must be Rent Stabilized. According to publicly available documents that were filed July 31, 2019, the owners of Lenox Terrace recently agreed to pay \$2,989,000 in a preliminary (i.e., not final) settlement agreement in the Lenox Terrace Class Action.

<sup>4</sup> LT-ACT (2019) The Lenox Terrace Association of Concerned Tenants OPPOSES Plan to Bring OVERSCALE Development to Central Harlem

<sup>5</sup> LT-ACT (2019) The Lenox Terrace Association of Concerned Tenants OPPOSES Plan to Bring OVERSCALE Development to Central Harlem