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March 27, 2018

Landmarks Preservation Commission Certificate of Appropriateness Public Hearing Testimony by FRIENDS of the Upper East Side Historic Districts

Re: Proposed Rules Changes

Madam Chair and Honorable Commissioners:

Introduction

FRIENDS' Preservation Committee appreciates the Commission's desire to codify determinations routinely being made by LPC staff and to expedite the application process for the benefit of the volunteer Commission's time. However, it seems that the only clear justification for the changes to these rules is a customer-fronting efficiency that will ease this process for applicants and their architects.

FRIENDS' concerns include the physical ramifications for historic structures, especially the proposed hierarchy of designated buildings; the justification for and genesis of the proposed new rules, and their lack of clarity and explication for implementation; and the lack of transparency or public process and participation. We feel strongly that the public, including dedicated Community Boards, the professional preservation community, and local stakeholders, deserves a larger role than backseat observation. The engaged and spirited public review process is one of the most valuable and constructive safeguards for the citywide character of historic districts, and any proposal to streamline the process must start with that premise.

Physical Ramifications

The new rules place significant weight on individual staff members to determine the appropriateness of proposed alterations. The rules significantly expand the authority of LPC staff but conversely limit the opportunity for critical thought and a nuanced approach to individual applications based on their particular context. The rules are fixated on regulating individual buildings but do not account for the cumulative impact that incremental changes may have on the character of streetscapes and broader historic districts. At times the rules contradict themselves by being overly prescriptive, but still vague. For example, there are areas that award the staff undue discretion in considering an application by inserting loopholes such as item (E) in General criteria for replacement materials in restoration and façade repairs on page 27 in Chapter 2-11. This stipulation allows a staff member to approve any substitute material that has been previously approved by the Commission "provided the substitute material is an acceptable match" where acceptability is determined by a single staff member.

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These rules do not foster critical thought on the best practices of preservation work, but instead introduce a check list for automatically approved work. Moreover, there is no consideration given to the long-term compatibility and quality of performance of substitute materials.

Another character-altering determination that would now be handed over to staff is the oversight of building envelopes in the case of excavation and rooftop and rear yard additions. These are major interruptions, not only to the mass of a building, but on the overall composition of a block within a historic district. It is distressing to think that excavation and rear façade reconstruction may be deemed appropriate by staff particularly as it is only suggested that an engineer signs off on the work, but only required for an architect to do so.

FRIENDS also finds it troublesome that a regulatory hierarchy in the treatment of buildings within historic districts is being established in the text of the rules. The distinction of treatment of individual landmarks within and outside historic districts, and introduction of exceptions made to the allowances on no-style and non-contributing buildings are both illogical. The total number of no-style and non-contributing buildings make up a miniscule portion of protected historic architecture, and as stylistic outliers, we could argue that they should be treated with even more care than examples of well-defined styles. For buildings deemed no-style or non-contributing, additions or subtractions have the potential for a greater impact, particularly if opportunities for alteration are limitless. Re-facing a building has a proportionally greater impact on a streetscape than a smaller change to a highly regulated “styled” building, and offers the chance to completely alter the way such a building fits into its surroundings. FRIENDS maintains that impactful changes to the appearance of no-style and non-contributing buildings certainly deserve the level of nuanced review that a public hearing before the full Commission can offer. Additionally, since the determination that a building is non-contributing can apparently be made informally by Commissioners at a public hearing, it would be all too easy for this stock to expand, and could subsequently result in an overwhelming class of designated yet loosely-regulated non-contributing buildings.

Justification of Intent

The new rules are not rooted within any discernable preservation philosophy, nor are the newly codified staff-level allowances intuitive enough to be presented with no justification. The City Planning Commission, for example, is required to document the decision-making process of all its actions in publically accessible reports, which often outline the historical and political context behind its decisions. These reports can be invaluable in illuminating the plain English intent and justification behind new zoning rules, for example, when the regulatory text can be indiscernible to the layperson. Absent a similar companion document, the reasoning and thought process behind the components of the proposed LPC rules remains completely opaque. In order for the LPC rules to maintain their relevance and provide clarity for future staff, Commissioners, and applicants, a similar

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record should be produced and be easily accessible for future reference.

Similarly, the Commission has not shared any data which might aid in analyzing the overall impact of this new text. It would be helpful to know which percentage of applications that came in front of the Commission at public hearings would now fall under the umbrella of staff-level approvals, as well as the threshold number of past Certificate of Appropriateness applications that had to be consistently approved by the Commissioners in order to consider moving such determinations to the staff. The LPC has made the claim that the review of applications will be expedited by these new rules, but has not referenced a metric beyond internal conjecture by which this was determined. The LPC ought to compile this data, and disseminate it alongside the proposed rules in order for this claim to be better examined.

We are appreciative of the thorough list of definitions that accompany each chapter section but we feel that the rules would be much more successful with clearly illustrated and annotated appendices. Carefully explained diagrams will remove subjectivity from the survey and evaluation process for both LPC staff as well as applicants. And just as illustrations would increase clarity and decrease subjective interpretations by staff and applicants, the proposed rules are peppered with vague terminology which makes it difficult for a reader to visualize the true result of the application of the rules. Staff may now determine the appropriateness of changes provided that they “do not otherwise detract from historic character,” “recall a historic character,” do not call “undue attention” to themselves, etc. and this is the area which puts great weight on an individual staff member’s subjective interpretation of such guidelines. Clarifying such terms, or abandoning their use altogether, would create a clearer and higher set of standards to strive toward for staff and applicants. Clearly documented intentions and justifications in tandem with clear, illustrated graphics and appendices would mitigate the potential abuse of this subjectivity.

The documentation of internal thought processes as well as a complete record of work that takes place under the control of these rules would establish a two-pronged system for LPC accountability. Not only will the agency have to back up the reasoning for its regulatory text, but work approved by staff will be on display for the public as well. This opens an avenue for communication that currently does not exist in a formal capacity, and would benefit both the public and our shared historic resources.

Transparency and Accountability

Discrepancies in the text and lack of accountability in the drafting process allude to what is, in our opinion, the biggest shortcoming of these proposed rules which is a lack of transparency that would be systematically introduced to the landmarks process. As mentioned prior, the thought process behind the rulemaking process is unclear, the ramifications of the cumulative effect of easily approved, prescriptive staff level judgements are difficult to determine, and the intent of the language requires

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clarification. Furthermore, much more of the workings of the LPC will be brought behind closed doors.

Under the mask of efficiency, the LPC and its staff are cutting the ties to the public review process which makes the issuance of Certificates of Appropriateness permits collaborative and egalitarian.

Our Preservation Committee was similarly disappointed that the LPC seemingly missed its opportunity to propose a database of active applications that outline the scope of work and projected date of completion beyond just notification of work “in progress.” To ensure sensitivity in regards to community interests, the public should have access to information regarding the full spectrum of ongoing alterations that happen year-round but never see a public hearing. Furthermore, we recommend that all applications should be subject to an appeal process that allows individuals to challenge staff level decisions, similar to advisory testimony at a public hearing. Such a system would open a revolutionary line of communication between the public and the LPC in the interest of constant collaboration from multiple perspectives that would keep staff decisions in check.

It is important for the LPC to consider who the “client” of their work truly is. This set of rules suggests that it is the Commission’s job to cater to the needs of applicants and their architects. The rules create a checklist which applicants may reference to ‘tick all of the boxes,’ so to speak, before coming forth with an application, knowing all the while that it will receive a speedy and guaranteed approval. The basis of concern over the new breadth of staff-level approvals could culminate in a slowly sustained erosion of the very composition of the city’s Historic Districts. The cumulative effect of readily-approved staff-level Certificates of Appropriateness permits that are issued from behind closed doors is the subtle, but sustained, rebuilding of the fabric of our historic districts that will mar the character that is transmitted through the level of authenticity in preservation work.

This presumption of approval does not give the appropriate level of consideration for a landmark or building within a historic district for its own special character and merit, but instead reduces it to a canvas for all of the pre-approved changes that are allowed to be made to it. Applicants will be actively discouraged from potentially unique and contextual approaches if there is any chance of being taken to a public hearing. Instead, they will likely rely on the pre-approved guidelines requiring only cursory staff-level consideration.

If, as predicted, these rules result in fewer public hearings the work of the Commission will recede even further from the public eye. Public review cannot be seen as a hindrance to the work of the LPC. That is a failure, not in the expediency of the approval process, but in the priorities of the agency. Despite the claim that staff members will be relieved of the burden of preparing presentation materials for public hearings, without a massive infusion of funding it simply cannot be possible that the staff won’t be even more overloaded with the influx of applications being rerouted their way. But again, we have not seen any study to

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quantify the new staff-level workload, only the assumption that it will be more “efficient.”

Conclusion

FRIENDS understands and believes rules to be a good thing. However, the rules must be clear to remove any guesswork from process, not reinforce and codify it. The rules do not appear to take their directive from a clear preservation philosophy, or from a logical and quantifiable methodology. Dates and measurements appear arbitrary, material requirements are lax, and the expansion of LPC staff’s ability to singularly determine, a proposal’s appropriateness threatens to conceal more of these applications from public view.

Rules are not the place to sacrifice the integrity of our historic building stock. The agency’s rules should require and uphold the highest standards of preservation practice, fitting of the nation’s first and most comprehensive landmarks ordinance, as opposed to setting a low bar that will, over time, erode the integrity of our city’s character. Any lesser standard than the absolute highest undermines the Landmarks Law.