

NYC Landmarks Preservation Commission
Application to Legalize an Improvement
LPC 16-6793

34-45 83rd Street, Jackson Heights, NY 11372
LPC Hearing Date: 11/24/15

Submitted by

Marc H. Gerstein, Esq.

(husband of property owner Yu Chan Li)

The Issue

- Whether this petition to legalize the alteration of a fence in front of a landmarked property should be approved
 - This is a proceeding per NYC Administrative Code §25-317.1b(1) to legalize an exterior improvement made on property subject to the Landmarks law
 - It is acknowledged that the improvement was made in error and that advance permission should have been sought
 - Consistent with the notion of legalization, this presentation will be made as if it were being done in the past and as if it were seeking permission to make an improvement

Exhibit 1 – Prior to the Alteration



34-45 83rd Street From



Exhibit 2 – Showing the Alteration



Special Notice

- Exhibit 1 consists of four post-designation pre-alteration photographs. The one on the lower left is submitted by Petitioner. The others were supplied by LPC Deputy Counsel John Weiss.
- Petitioner stipulates to the accuracy of these photographs
- Exhibit 1 differs dramatically from a photograph supplied by LPC staff (Exhibit A-1: See APPENDIX).
- This is a vital issue.
 - Exhibit 1 shows a pre-existing fence – meaning the LPC would be called upon to evaluate the replacement of one fence with another
 - Based on Exhibit A-1, Staff treated this as the erection of a new fence on a property that did not have one at the time of landmark designation, and advised petitioner that the LPC is reluctant to approve such alterations.
- Petitioner contends that the LPC may not consider Exhibit A-1, a photo that pre-dated landmark designation by 13 years, and that LPC must accept Exhibit 1 as the only standard against which the matter may be judged.
- The detailed argument is set forth in the APPENDIX portion of this presentation
 - Also in the APPENDIX, Petitioner reiterates and reserves legal rights regarding procedural objections submitted to the LPC Executive Director and which were denied
- The rest of the main part of this presentation will presume Exhibit 1 is the correct, lawful and only relevant depiction of the pre-alteration condition

STANDARDS FOR EVALUATING THE ALTERATION

Purpose/Goals of the Landmark Law

- To “(a) effect and accomplish the protection, enhancement and perpetuation of such improvements and landscape features and of districts which ***represent or reflect elements of the city's cultural, social, economic, political and architectural history***; (b) safeguard ***the city's historic, aesthetic and cultural heritage, as embodied and reflected in such improvements, landscape features and districts***; (c) stabilize and improve property values in such districts; (d) ***foster civic pride in the beauty and noble accomplishments of the past***; (e) ***protect and enhance the city's attractions to tourists and visitors*** and the support and stimulus to business and industry thereby provided; (f) strengthen the economy of the city; and (g) promote the use of historic districts, landmarks, interior landmarks and scenic landmarks ***for the education, pleasure and welfare of the people of the city.***”
 - NYC Admin Code §25-301(b) emphasis supplied

Note What §25-301 Does Not State

- **No intention is expressed to freeze the aesthetics of historic districts**
- In fact, very substantial alterations may be authorized
 - “In considering a proposal to construct, alter, or demolish any structure located in a historic district, the Commission must assess the effect of the proposed work on existing architectural features, the relationship between the proposed work, and the exterior features of neighboring improvements. Specifically, the Commission considers the “factors of aesthetic, historical, and architectural values” and the architectural style, design, texture, materials, and colors of the proposed work.”
 - Byrne, *Historic Preservation and its Cultured Despisers*, Georgetown Public Law and Research Paper No. 12-021 (2012) citing N.Y.C. Administrative Code §25-307(a) and citing, as an example of the extent of evolution permitted by the the Commission, the 36-floor tower it allowed to be built above the six-story landmarked Hearst Building

The New Tower Authorized Above the Landmarked Hearst Building – an alteration far bolder and far more dramatic than that made by Petitioner



Rationale For Landmarking Jackson Heights

- From: New York City Landmarks Preservation Commission, *Jackson Heights Historic District (10/19/93) hereinafter referred to as* Designation Document
 - Conceived, planned, built in part, and managed under the direction of a single real estate firm, the Queensboro Corporation, and its president Edward A. MacDougall, Jackson Heights is one of the earliest neighborhoods in New York to introduce two new building types, "garden apartments" and "garden homes." (p. 10)
 - [T]he Queensboro Corporation initiated in Jackson Heights an important planning concept, developed from ideas and examples of the model housing movement of the nineteenth century, which involved the treatment of the rectangular block created by the street grid system as a single unit of planning and design, rather than as a collection of individual building lots to be developed independently. (*Id*)
 - The buildings in the Jackson Heights Historic District were erected between 1911 and the present, the great majority of them dating from the four decades between the mid-1910s and the early 1950s. The unusual character of Jackson Heights owes much to its pioneering development as a community of block-plan garden apartments and house groups. These buildings are complemented by later end-block and mid-block apartment buildings, as well as by commercial, civic, and institutional buildings which were built over a wide span of years. (p. 28)

Comment

- The subject property, including the improvement for which legalization is sought, is completely consistent with the core vision:
 - The Rectangular block as a unit of design
 - A community of block plan garden apartments and house groups
- Continuing . . .

The Jackson Heights Historic District, continued . . .

- The buildings in the Jackson Heights Historic District were erected between 1911 and the present, the great majority of them dating from the four decades between the mid-1910s and the early 1950s. (*LPC Doc at p. 28*)
- The architecture of Jackson Heights is characterized by an overall simplicity of design, reflecting the movement away from the extensive use of ornament popular during the late nineteenth century. (*Id.*)
- Generally, simple facade treatments are combined with such picturesque elements as loggias and belvederes (on the apartment buildings), entrance porches, gables, tile and slate roofs with various profiles, and decorative brickwork. The facades of the buildings in the district are largely executed in brick, and are rendered in historically-based styles, ranging from Georgian, Tudor, Gothic, Italian Renaissance, and Spanish Romanesque in the 1910s, '20s, and '30s, to Art Deco, Moderne, and International Style in the 1930s, '40s, and '50s. As a rule, the architectural expression of the buildings in Jackson Heights tends toward the conservative. (*Id.*)
- The names of architectural styles by which buildings are identified in this report are generalizations based on references to historic sources. The architects who designed what are called "neo-Tudor" or "neo-Romanesque" buildings did not intend to produce archeologically correct recreations of historic styles. Instead, they attempted to evoke the flavor, or suggestion, of English, Spanish or Italian buildings, and the resulting work is best described as a free adaptation, often combining elements drawn from more than one source. (*Id.*)

Comment

- It's about the overall visual flavor, not the details
 - “movement away from the extensive use of ornament popular during the late nineteenth century”
 - Different times and different styles: “historically-based styles, ranging from Georgian, Tudor, Gothic, Italian Renaissance, and Spanish Romanesque in the 1910s, '20s, and '30s, to Art Deco, Moderne, and International Style in the 1930s, '40s, and '50s. “
 - “generalizations based on references to historic sources. “
 - The architects who designed what are called "neo-Tudor" or "neo-Romanesque" buildings did not intend to produce archeologically correct recreations of historic styles.
 - Instead, they attempted to evoke the flavor, or suggestion, of English, Spanish or Italian buildings, and the resulting work is best described as a free adaptation, often combining elements drawn from more than one source.
- Continuing . . .

The Jackson Heights Historic District, continued . . .

- The LPC Designation Document makes numerous references to alterations that occurred throughout the district between initial construction and the conferring of landmark status in 1993
- This includes the block in which the subject property is located:
 - “Alterations include the replacement of doors; the resurfacing of portions of some facades with aluminum siding; the installation of through-the-wall air conditioning units; the reconstruction of retaining walls in the front gardens; and the replacement of clay tile roofs.” (LPC Doc at 170)
- The existence or non-existence of a fence was not considered sufficiently important to warrant being photographed or verbally discussed in the designation document
- The existence or non-existence of the fence is not part of the LPC’s elaborately detailed statement of the historical significance of the district
 - An alteration to a fence would be improper if and only if it interferes with the ability of the public to appreciate the elements of the housing history as per the narrative in the Designation Document
- The fence that is the subject of this case enhances the relevant elements of historical significance of the property and should thus be approved

The Subject Block: Deliberate Street-Level Visual NON-Conformity

- The east side of 83rd Street between 34th and 35th Avenues looks very different from the west side of the same block.
- This is not an accident. ***It is the inevitable result of important design, aesthetic and ambiance choices made by Queensboro Corp.*** at the commencement to the neighborhood's development
- See following slides for details

The East Side of the Block

- The Plymouth Houses on the east side of the block (including the subject property), designed by Pierce L. Kiesewetter designed
 - “a block plan with back-to-back clusters on 83rd and 84th streets, between 34th and 35th avenues. The fifteen houses on each blockfront are divided into three clusters of five houses each. Garages are located at the rear basements of the houses and are reached by driveways entered and exited at the ends of the blockfronts.”(*LPC Doc at p.169*)
 - “The facade designs of the houses vary in the form and placement of details, using alternating roof profiles, entrance porches in various forms, and projecting bays to create a lively diversity within an overall pattern. The outer five-house clusters of each blockfront have mirror-image configurations ("a-b-c-d-e" at one end and an "e-d-c-b-a" pattern at the other) and the central cluster has a nearly symmetrical configuration ("f-g-h-g-f" with slight variations in the "g" houses). The placement of the individual facade designs is different on each blockfront, but the overall pattern is the same.” (*Id.*)
 - Of brick with cast-stone, stucco, and wood trim, the houses are designed in the neo-Tudor style. Elements typical of that style include oriels, battlements, label lintels, half-timbering, clay tile roofs, dormer windows, and gable-end chimneys. Many original multi-pane double-hung wood windows and wood doors remain. The side and rear facades of the houses are similar to the fronts, and are partially visible from the street. (*Id. at p. 170*)

The East Side of the Block



The West Side of the Block

- The homes on the west side of the block (across the street from the subject property), designed by James Junge, is a group of houses that is:
 - “characteristic of many similar groups of attached and semi-detached houses built in Jackson Heights during the second half of the 1920s. The houses are arranged in two clusters of five attached houses each, with front gardens, attached garages, and a common driveway in the rear.” (*LPC Doc at p. 177*)
 - “Each five-house cluster is designed in an "a-b-c-b-a" pattern, a symmetrical configuration which produces the effect of a larger single entity. The placement of the entrances in a mirror-image formation and the alternating roof profiles help to reinforce the symmetry of each group, and the overall consistency of the patterning gives the blockfront a cohesive design.” (*Id.*)
 - “The design of the houses is drawn largely from the neo-Georgian style. Elements typical of that style are the red brick facing laid in Flemish bond; front porches with pitched roofs ("a" houses) and pent hoods ("b" and "c" houses); window and door openings with segmental heads; paneled wood doors; multi-pane double-hung windows; wooden shutters; iron balconettes; and pitched roofs with gables, shed dormers, and chimneys. Spanish tiles are used on the roofs and hoods. The side facades of the end houses, each with a chimney and bay window, are visible from the street.” (*Id.*)
 - “The driveway leading to the interior of the block is entered at the ends of the blockfront. The ten garages are arranged in two groups of five each, one garage per house. The design of the brick garages, with pedimented tile roofs and dormers, is similar to that of the houses.” (*Id.*)

The West Side of the Block



The Nature of the Block-Unit

- The plan of the neighborhood was to design the block as a unit, not the street
 - Hence the appearance of the subject property and its neighbors relate to those “behind” them, on the west side of 84th street
 - The visual logic is only visible to planners looking at schematic maps
 - The visual logic is and from day one has been completely invisible and irrelevant to anybody walking or riding through 83rd Street
 - It did not have to be this way; Queensboro could have assigned the homes on the west side of 83rd Street to Pierce L. Kiesewetter, who could have been directed to or could have chosen a visually compatible look for both sides of the street
 - But that did not happen. Instead, Queensboro retained a different architect for the west side and allowed him to pursue a different visual voice; one within the broad big-picture approach to Jackson Heights but one that was also incompatible with what was being done across the street

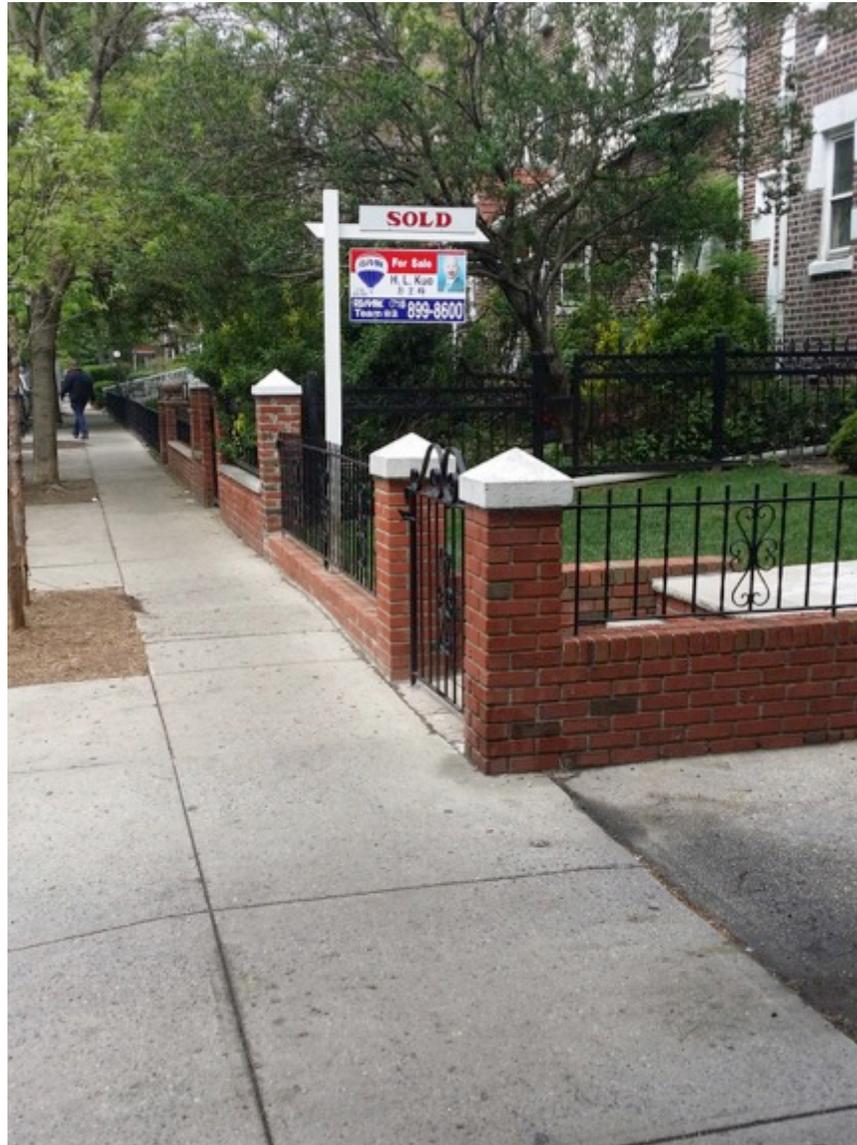
Comment on Old Fence and Neighbors

- It is absolutely impossible to expect the front of the subject property to resemble both neighbors
- The front of the neighbor to the south looks completely different from that of the neighbor to the north
- Street-level visual non-conformity, besides being designed into Jackson Heights from day one, and amplified between construction and the 1993 designation, is an inherent characteristic of the subject property

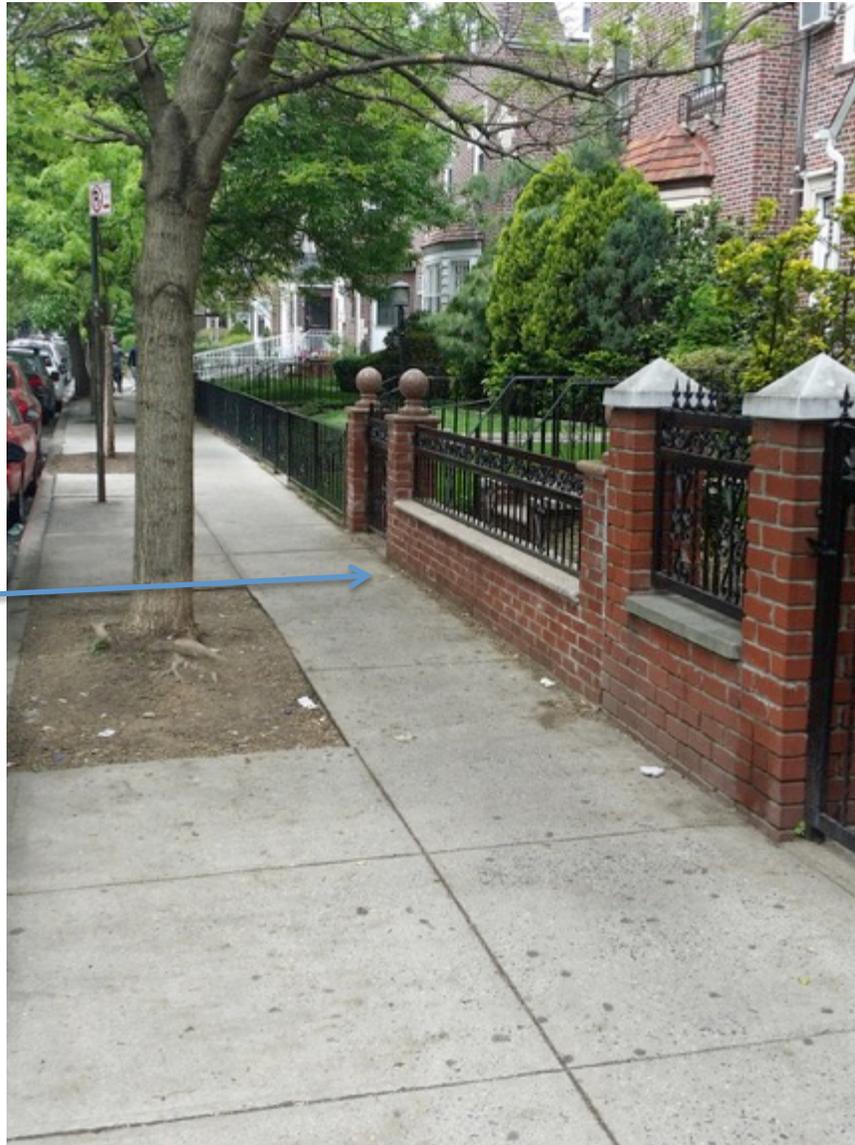
Visual Tour of the Block

Starting on the East Side, from 35th Avenue
and Progressing up Toward 34th Avenue

The subject property is the third one on the East side as we move north from 35th Ave. and beyond the apartment building that fronts onto 35th Ave.



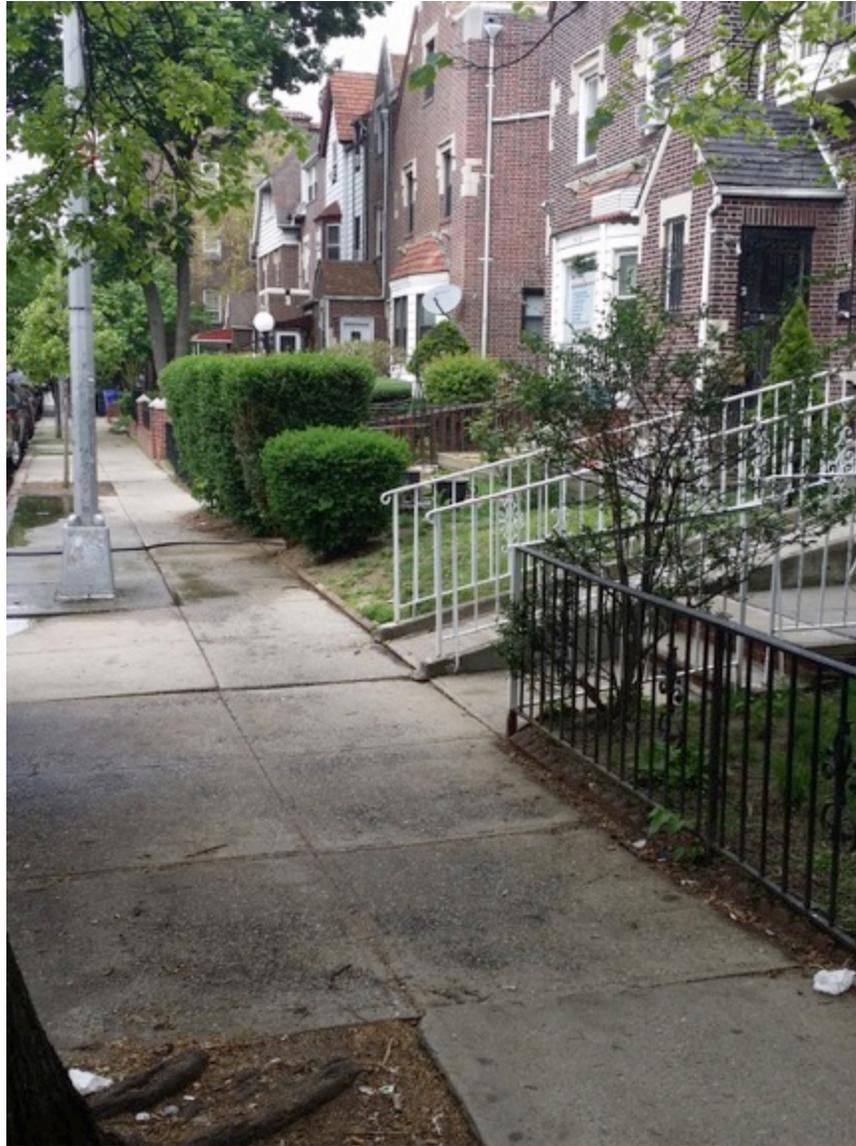
The Two Properties to the South of the Subject Property
(on the East Side of the Block)



Including Subject Property on East Side of the Block



Subject Property and others to the North on the East Side of the Block



Continuing Up the East Side of the Block



Continuing up the East Side of the Block



Continuing up the East Side of the Block

Note: Subsequent to the commencement of this petition, a new fence was erected on the last property before the apartment building. Petitioner is unaware of what, if any, landmark-related decisions may have been made, and is confining this presentation to the facts as they were at the time this petition was filed.



The Northern end of the Row of Houses on the East Side of the Block

Visual Tour of the Block
Starting on the West Side, from 35th Avenue
and Progressing up Toward 34th Avenue

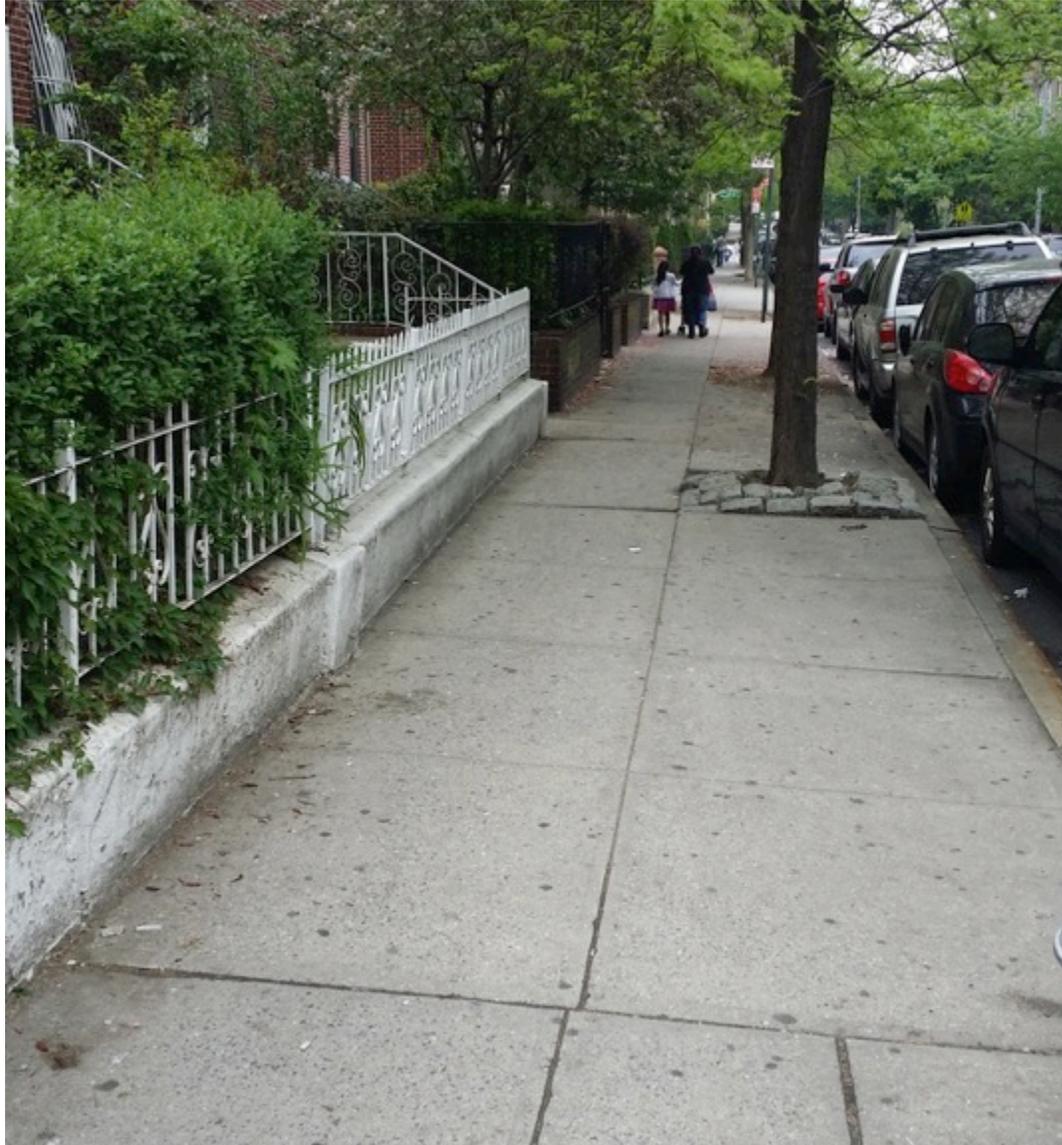
This is across the street from the
subject property



Starting our Trip North along the West Side of the Block



Moving North along the West Side of the Block – We're Across the Street from the Subject Property



Moving Further North along the West Side of the Block



Moving Further North along the West Side of the Block



Moving Further North along the West Side of the Block



The Northern End of the Row of Houses along the West Side of the Block;
Approaching P.S. 212 and the Apartment Building

Thank You For Your Consideration

APPENDIX

Exhibit A-1

A 1980 Photograph of the Property



FACTUAL NARRATIVE

- Exhibit A-1 was presented to Petitioner by Emma Woodstock and Bernadette Artus (Staff) at a 2/2/15 meeting at which time they clearly and unambiguously told Petitioner
 - That the district and property were landmarked in 1980, and
 - That the photograph was from the 1980 landmarking designation, and
 - That while Petitioner has the right to ask the LPC to approve erection of a new fence, the LPC has a history, according to Staff, of being reluctant to granting such approvals
- Exhibit A-1 came as a great shock to Petitioner since it looked nothing like when the property was acquired in 1996 nor did Petitioner remember the premises, or the neighborhood, as having looked anything like that even before 1996
- Subsequently petitioner learned from his own research that the property was landmarked on 10/19/93
- On 6/11/15, Emma Woodstock responded to Petitioner's request for the 10/19/93 photograph by re-submitting Exhibit A-1 and in a contentious conversation, vigorously reiterated that the photograph was from 1980 and that the district was landmarked in 1980
- It was not until after Petitioner angrily challenged Ms. Woodstock to look at the Designation Document that she referred the matter to Ms. Artus, who acted as if 1980 was never part of the conversation and casually asserted (as if she knew it all along) that the district was landmarked in 1993 and that the photo was from 1993
- The LPC photo cannot possibly be from 10/19/93.
 - The designation document did not describe the property in detail, however it did, in general terms refer to pre-existing retaining walls and specifically to the post-construction addition of aluminum siding, which is absent from Exhibit A-1. Hence the LP C Designation Document text is inconsistent with Exhibit A-1 but entirely consistent with Petitioner's Exhibit 1

Analysis

- There is a photographic stalemate
 - The LPC can prove what the property looked like in 1980 (no fence), **13 years before it was landmarked**
 - Petitioner asserts the veracity of Exhibit 1 (black wrought iron fence) in 1996 through the 2014 alteration
- Nobody has evidence of the appearance of the property at the time of its 10/19/93 landmarking
- ***The issue of fact must be decided in favor of Petitioner***
 - The absence of direct evidence of the 10/19/93 appearance of the property is due entirely to the LPC's failure to make a photographic record (the sort of record it now deems standard procedure for new landmarkings)
 - The absence of a detailed verbal description of the property, such as is now standard in newer designations, was entirely a matter of LPC choice
 - LPC cannot expect petitioner to prove the condition of property three years before taking ownership while at the same time, the LPC could have but refused to collect such evidence in support of it's newer landmarking initiatives

WHAT IF THERE REALLY WAS NO FENCE ON 10/19/93?

- That would require the LPC to adopt the comical and ridiculous assumption that as soon as the neighborhood was designated on 10/19/93, there was a massive outbreak of illegal fence building, that same took place under the eye of the Community Board (located right in the heart of the district and 1 ¼ blocks from this property) and that the LPC did nothing about it for more than 20 years
 - On 2/2/15, Ms. Artus in fact suggested that all the fences in the area may be illegal
- Had such a bizarre and improbable scenario occurred, then the LPC would now be prohibited from objecting by the doctrine of “laches.”
 - This doctrine “bars the enforcement of a right where there has been an unreasonable and inexcusable delay that results in prejudice to a party[,]” and “[p]rejudice may be established by a showing of injury, *change of position*, loss of evidence, or some other disadvantage resulting from the delay.” *Skrodelis v. Norbergs*, 707 N.Y.S.2d 197, 198 (N.Y.App.Div. 2000).
- The delay was unreasonable:
 - The catch-all New York civil statute of limitations is 6 years (CPLR 213(1))
 - The longest specified criminal statute of limitations (Penal Law 30.10) is for the making of a terrorist threat (eight years). Indefinite limitations periods are permitted only for such crimes as sexual assaults or terrorist threats that result in or have foreseeable risk of death or injury
 - Surely the public interest does not require a 20-plus year limitation period for a fence!
- Petitioner changed its position
 - Many property owners in Jackson Heights purchased properties that with notice of landmark designation but without notice of violations on their property or those of neighbors based on a long-standing and highly-visible features

Procedural Objections and Reservations of Rights

- Petitioner hereby renews a request previously communicated to LPC Executive Director Sarah Carroll that the Notice of Violation be Vacated due to lack of jurisdiction based on the Designation Document's being fatally flawed as a result of its vague descriptions and the absence of 10/93 photograph; material flaws that it not only of deprived Petitioner of Due Process but also contributed to prejudicial staff misconduct
- Petitioner objects to and reserves rights relating to LPC Executive Director Sarah Carroll's denial of a request that Emma Woodstock and Bernadette Artus be disqualified from participation in the case and that the matter be assigned to a different Preservationist and a different Supervisor due to prejudice inherent in what can only be construed as gross negligence or deliberate misconduct as conclusively manifested by their repeated attempts to substantially misrepresent (by 13 years) the landmarking date and their negligent or fraudulent misrepresentation of the designation-date appearance of the property
 - An agency that allows its staff to administer the law without requiring them to look up the law is inherently arbitrary and capricious within the meaning of NY CPLR §7803