

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
NEW YORK UNIVERSITY,

Index No.: 153199/2022

Plaintiff,

-against-

**AFFIDAVIT OF THOMAS
ANGOTTI IN SUPPORT OF
ORDER TO SHOW CAUSE
FOR A MOTION FOR LEAVE
TO INTERVENE**

CITY OF NEW YORK,

Defendant.

-----X
STATE OF NEW YORK)

ss.:

COUNTY OF KINGS)

THOMAS ANGOTTI, being duly sworn, deposes and says:

INTRODUCTION

1. I submit this affidavit in support of the Order to Show Cause of The Coalition for Fairness in SoHo and NoHo, Inc., Village Preservation, NoHo Neighborhood Association, Bowery Alliance of Neighbors, Kay Powell, Amit Solomon, Ian Kerner, Lisa Rubisch, Jennifer Pettit, Robert Riccobono and Jeanne Wilcke to intervene in the above titled action.

2. The proposed intervenors are organizations and individuals that face significant environmental harm by virtue of the failure of the City of New York to conduct an environmental review of the proposed expansion of New York University (“NYU”) into the Special SoHo-NoHo Mixed Use District (“SNX”) rezoning and have a direct and distinct interest in the outcome of this proceeding.

3. The above titled action was initiated by New York University to challenge the constitutionality of New York City Zoning Resolution § 143-11(a), which bans all college and university education uses from the newly created the SNX zoning district.

4. If NYU's challenge is successful, the influx of university related uses and the increased population converging into the SNX rezoning district will be environmentally significant and detrimental to intervenors.

PROFESSIONAL BACKGROUND AND QUALIFICATIONS

5. I am Professor Emeritus of Urban Policy and Planning at Hunter College and The Graduate Center, City University of New York. One of the areas I have specialized in is zoning and planning in New York City.

6. I was founder and director of the Hunter College Center for Community Planning and Development. I have a Ph.D. in Urban Planning and Policy Development from Rutgers University and 45 years of experience as a practicing urban planner and educator in the field. I was a Senior Planner for the City of New York and the Commonwealth of Massachusetts. I am the author of six books, including two books on planning and zoning in New York City.

CEQR PROCESS AND FACTUAL BACKGROUND

7. I have reviewed the Final Environmental Impact Statement (FEIS) for SoHo/NoHo Neighborhood Plan (CEQR Number 21DCPO59M) and conclude that it fails to take a "hard look" at the potential for NYU expansion (see link to FEIS at: <https://www.nyc.gov/site/planning/applicants/env-review/soho-noho.page>)

8. In fact, the FEIS fails to examine NYU's potential for expansion in any respect, manner or form. This omission of NYU's expansion potential is a blatant and drastic breach of the CEQR and New York City's Uniform Land Use Review Process ("ULURP"). The section pertaining to neighborhood character set forth in Chapter 19 of the FEIS intentionally excludes any analysis or evaluation of NYU's potential expansion. Chapter 19 at pages 19-1 and 19-2

draws the following conclusion in relation to the SNX rezoning impact upon neighborhood character:

The Proposed Actions would facilitate a mix of residential, commercial, and community facility uses that would be consistent with the mixed-use character of the neighborhood. As described in Chapter 2, “Land Use, Zoning, and Public Policy,” **no significant adverse impacts related to land use, zoning, or public policy would occur with the Proposed Actions.** The Proposed Actions would allow residential use, expand the supply of affordable housing through Mandatory Inclusionary Housing (MIH), and expand the types of commercial and community facilities allowed beyond the current narrow band of permitted light manufacturing and limited commercial uses. The Proposed Actions would enhance the mix of uses found in SoHo/NoHo by allowing residential use and expanding commercial and community facility uses. The zoning changes would allow for residential conversion and infill development in historic districts and present opportunities for more substantial new residential development and affordable housing production in areas beyond the historic districts. Existing JLWQA would remain or could be converted to standard residences. The Proposed Actions would expand the types of commercial uses allowed in the primary study area to include uses such as theaters, restaurants, bakeries, bookstores, clothing stores, salons, and drug stores. With the Proposed Actions, community facilities such as libraries, museums, and medical offices would be allowed as-of-right. (*emphasis added*)

9. The 2021 CEQR Technical Manual, Chapter 21, page 1, defines the criteria in evaluating a zoning change’s impact upon neighborhood character and states in relevant part, the following:

Moreover, a significant impact identified in one of the technical areas that contribute to a neighborhood’s character is not automatically equivalent to a significant impact on neighborhood character. Rather, it serves as an indication that neighborhood character should be examined. **The examination focuses on whether a defining feature of the neighborhood's character may be significantly affected. For example, a significant traffic impact may occur if a**

project adds vehicles to an intersection, increasing the delay to unacceptable levels. This significant impact would not constitute an impact on neighborhood character, however, if a neighborhood's traffic conditions are not considered one of its defining features (i.e., if the traffic conditions are comparable to those of many other neighborhoods and areas in the City). Conversely, a significant impact on neighborhood character may result due to an increase in traffic or a change in the type of traffic (i.e., an increase in truck deliveries) on a neighborhood's roadways if that neighborhood is defined by particularly quiet residential streets, even if that increase did not constitute a significant traffic impact. (*emphasis added*)

(See link to 2021 CEQR Technical Manual at:

<https://www.nyc.gov/site/oec/environmental-quality-review/technical-manual.page>)

10. The CEQR Technical Manual, Chapter 21, Section 220 at page 2 further delineates the factors utilized by a lead agency in assessing environmental impacts upon neighborhood character:

When considered together, effects on defining elements of a neighborhood may have the potential to significantly affect neighborhood character. **These may consist of a combination of urban design, historic resources, shadows, open space, and noise effects. Moderate effects on several these elements may affect defining features of a neighborhood and, in turn, a pedestrian's overall experience. Additionally, a combination of moderate effects on the land use, socioeconomics, and transportation conditions of a neighborhood may also result in changes in the prevailing businesses and economics of an area, which in turn may affect defining features of the neighborhood and the overall experience of pedestrians, workers, residents, and visitors. If it is determined that two or more categories may have potential 'moderate effects' on the environment, the following question should be answered: *Would the proposed project result in a combination of moderate effects to several elements that cumulatively may affect neighborhood character?*** (*emphasis added*)

11. The William Haas Affidavit (NYSCEF Doc. #30) offered on behalf of NYU's constitutional challenge identifies a significant number of locations that are potential sites of NYU's anticipated expansion: a) 8-10 Astor Place; b) 411 Lafayette Street; c) 20 Cooper Square; d) 383 Lafayette Street; e) 404 Lafayette Street; and f) 14 East 14th Street.

12. **The City of New York has already determined that the expansion into one discrete location, 726 Broadway is a Type 1 action requiring an environmental assessment to determine whether or not an Environmental Impact Statement must be performed and thereafter, whether or not a Negative Declaration is appropriate. On May 7, 2013, after fifteen months of review, the New York City Board of Standards and Appeals declared the potential expansion into 726 Broadway to be a Type 1 action. See NYSCEF Doc. #21, the BSA Resolution, which states the following:**

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA047M dated December 14, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health. (*emphasis added*)

13. The fact that NYU's expansion into a singular location triggers a Type 1 finding, it can only be concluded that it was an arbitrary and capricious violation of law to disregard NYU's potential expansion into at least a half a dozen locations already occupied and identified for expansion alongside "as of right" potential to further expand within the entire 56-block SNX district.

14. In performing the environmental review, the Planning Commission must utilize the "2021 CEQR Technical Manual," which is a set of guidelines the agency uses to ensure consistency in the City's review processes. The CEQR Technical Manual sets forth guidelines and methodologies for determining the potential significance of 19 different categories of impact.

15. Within those categories, the manual typically provides screening thresholds below which an impact is known not to occur or considered to be so insignificant such that further analysis is not warranted. The City ignored basic CEQR mandated minimum thresholds in failing to do any environmental assessment in relation to the potential NYU expansion; particularly in the areas of impact upon neighborhood character and potential displacement.

16. The Haas affidavit articulates NYU's plans and policies governing expansion into the SNX district. NYU's plans do not take into account planning beyond the present moment; rather they reflect current policies that may change as conditions and NYU's growth change. Therefore, notwithstanding the fact that the William Haas projection already triggers a finding of a Type 1 action based upon administrative precedent concerning a variance application for 726 Broadway; the Haas affidavit does not take into account a "worst case scenario" that must be evaluated pursuant to the CEQR Technical Manual. (See 2021 CEQR Technical Manual, Chapter 2, Section A. 100.)

17. For decades NYU's expansion has been a critical issue in Lower Manhattan. The Haas affidavit appears designed to present a minimal projection and not a realistic assessment of NYU's intentions to expand into the entire SNX district. In 2012, NYU prepared various documents which detailed its plans for expansion. The two documents excerpted herein, which demonstrate NYU's clear intention to expand into the SNX district are titled "*NYU 2031: NYU In NYC*" (https://vparchive.gvshp.org/_gvshp/preservation/nyu/doc/overview-2031.pdf ("NYU 2031")); and *New York University: A University as Great as Its City: NYU's Strategy for Future Growth*" https://www.nyu.edu/content/dam/nyu/redevelopment/documents/NYUs%20_strategy_for_future_growth_original_full_plan.pdf ("NYU Strategy").

18. NYU 2031 details NYU's intention to expand by over 6 million square feet between 2012 and 2031. Strikingly, 1.5-2.2 million square feet of expansion plans fall squarely within the SNX district (NYU 2031, p. 33). This expansion will include transformation of not only large floorplate buildings for classrooms and offices, but also residential buildings that could be used as dormitories, as well as smaller residential buildings (NYU Strategy, p.189).

19. Over the last decade I have advised and worked with numerous community organizations in neighborhoods in close proximity to the New York University campus in Lower Manhattan, including the Lower East Side, East Village, Chinatown, and Tribeca. On many occasions, the issue of NYU expansion into these neighborhoods, to build or lease dormitory space or to build or lease classroom and administrative space, was a priority concern. Residents and businesses would raise numerous issues concerning: rising rents; the displacement of existing residents; and the loss of many businesses who were priced out due to NYU's ongoing expansion. Many local retail and service outlets that serve the needs of the neighborhood are

unable to compete with NYU's large-scale expansion which precipitates big box retail and large-scale commercial enterprises geared toward a transient student population. The FEIS for the SNX rezoning failed to analyze direct and indirect displacement triggered by the change in zoning, failed entirely to take into account NYU expansion, and therefore failed to take a "hard look" at potential impacts (2021 CEQR Technical Manual Chapter 21, page 21-4).

20. Commentary and public debate pertaining to previous NYU expansion into the SNX district as a result of prior variance applications and prior zoning changes in Lower Manhattan asserted that ground floor retail spaces that had been occupied for years and even generations by neighborhood-oriented businesses serving the needs of local residents, had been replaced by impersonal corporate chains. These establishments were turned into big box department stores, large-scale outlets, as well as late night bars and restaurants serving NYU students. NYU's main campus immediately abuts the SNX district and NYU's expansion into the SNX district will generate an influx of students, faculty, staff, and visitors, that must be evaluated in relation to impact upon traffic, congestion, noise, loss of open space, and displacement.

21. A common community observation in objections to previously submitted NYU variance applications in Lower Manhattan has been the growth of all-night bars with loud music, garbage on the streets and public drunkenness. This has been an issue at meetings of local community boards and civic organizations and is reflected in the local press. CEQR requires that the city take a "hard look" at noise impacts and public health impacts. During the NYU Core rezoning, NYU acknowledged that the influx of late night noisy and rowdy bars would be a significant negative environmental occurrence that NYU pledged to mitigate during ULURP for

the NYU Core rezoning. (See Letter from NYU President John Sexton to City Councilmember Margaret Chin dated July 16, 2012 annexed hereto as Exhibit “A”.)

22. Environmental effects directly related to NYU’s expansion emanate from an increase and acceleration of traffic, congestion, noise, utilization of scarce public resources, and elimination of available open space through construction and development. For example, during the NYU Core rezoning, extensive and detailed analysis pertained to construction impacts. (See Letter from New York University Department of Government and Community Engagement, Alicia D. Hurley, Vice President to the New York City Planning Commission, dated May 4, 2012, Tab H.) <https://www.nyu.edu/content/dam/nyu/govCommunAffairs/documents/nyu-in-nyc/core-plan-commitments/2012-05-04-NYU-Core-City-Planning-Sumbission.pdf>

23. These impacts will affect air, light, sunshine and shadows. The BSA in administrative precedent, concerning land use applications, determined that all of these various impacts must be given a “hard look”. It’s a complete violation of CEQR’s minimum standards to fail to conduct any environmental assessment whatsoever of the potential for NYU’s wholesale, unrestrained, unrestricted and unfettered expansion into the SNX district, which NYU indicated its intention to do, if allowed.

24. Rational and reasonable concerns about NYU’s projected expansion are related to actual changes that have occurred over the years in Lower Manhattan. They must therefore be considered in the CEQR analysis relating to the SNX district. Since the potential for NYU’s expansion into the SNX district was not considered in the FEIS, none of the enumerated and mandated areas of environmental concern pertaining to NYU’s expansion were given the requisite statutory “hard look”.

25. The Haas affidavit identifies properties that NYU currently owns or leases in the SNX district and emphasizes that NYU's expansion gives priority to buildings that combine faculty offices, teaching and classroom space. This combination of uses purportedly promotes efficiency of the university's operation, however it emphasizes the need for the City to take a "hard look" and disclose NYU's impact upon the surrounding residential and commercial spaces.

26. The combination of uses requires a more in-depth impact analysis that takes a "hard look" at the worst-case scenarios in which each of its buildings is utilized maximally in four major types of uses – faculty offices, teaching, classroom space and dormitories.

27. Typically, classroom use draws larger numbers of students throughout the day and into the evening hours. Classroom occupancy may vary significantly in accordance with the university's academic calendar, but the "worst case" analysis will assume maximum occupancy for the days and weeks classes are in session. It also must be assumed that faculty offices will be open for those days and weeks. If classrooms are typically occupied above their planned capacity, this must be taken into account. NYU 2031 clearly enunciates NYU's planned dormitory expansion of 1.5 million square feet. How much of that expansion includes the SNX district must be given a "hard look". The Haas affidavit states in conclusory fashion that dormitory use is not intended.

28. The Haas affidavit rationalizes this conclusion by incorrectly asserting that the Landmarks Preservation Commission ("LPC") will prevent dormitory approval and that the light and air restrictions for dormitory use militates against dormitory construction. These assertions are false. First, LPC does not have jurisdiction over internal use, LPC's jurisdiction extends solely to façade and external architectural features; and second Haas' assertion that the current building stock lacks sufficient light and air for dormitory use is incorrect because it does not take

into account available development sites that could easily be constructed to allow for dormitory use in the SNX district.

29. Many universities, including NYU in New York City, hold public events such as lectures, discussions, and performances. These frequently draw audiences from outside the university's own community. They have to be taken into account in an environmental analysis.

30. NYU's potential expansion "as of right" will create a devastating impact upon existing local businesses and services because NYU favors large-scale and upscale buildings. This may ultimately result in the extinction of community-oriented services. Commercial expansion growing alongside NYU's incursion into the SNX zoning district will be required to service and support a growing and transient student and faculty population. This socioeconomic factor will result in upwardly spiraling rents pressuring small businesses to raise prices and cause further dislocation. This requires an analysis of potential secondary displacement.

31. The Haas affidavit highlights NYU's shift towards favoring multi-use, larger buildings. This potential combination of uses in a singular building will have a momentous and compelling impact upon neighborhood character. NYU's current use of occupied residential buildings with large floorplates such as 14 East 4th Street, requires an analysis of NYU's potential expansion displacing existing or potential residential stock. This issue is particularly important because many of these buildings are home to artists and other permitted residential uses in Joint Live Work Quarters for Artists ("JLWQA") units which exist in former manufacturing buildings with the large floorplates NYU desires.

32. The incorporation of multiple uses in a single building will attract a larger number of individuals to each individual site and must therefore be evaluated in terms of the numbers of

staff, faculty, administrators, and students that are drawn to each site. This in turn will impact upon neighborhood character, open space, traffic, congestion, noise, and air quality.

33. During ULURP, community members were alarmed that there would be no environmental evaluation of NYU's potential expansion "as of right" into the SNX zoning district. Prior to the enactment of the SNX district, community facilities were by and large prohibited. Previously before the implementation of the SNX zoning, *only* a limited range of community facilities such as houses of worship were permitted; even hospitals were restricted and only allowed into the district via CPC special permit.

34. During the comment period, which occurred after the publication of the Draft Environmental Impact Statement ("DEIS"), community members raised the community facility issue repeatedly through testimonies in public hearings. The City's response was that there would be no evaluation of the NYU expansion because there would be no change in permitted FAR, and therefore any university development would not necessitate new FAR. This rationale was offered based upon the fact that NYU's potential expansion would not cause any change to the existing height and bulk restrictions of the district. This of course, is a "red herring" and clouds the real issues relating to impacts created by the change in use upon neighborhood character and the socioeconomic impacts of the NYU's expansion upon population related factors.

35. The fact that height and bulk will remain unchanged is far from the sole relevant factor in assessing environmental impacts, particularly upon neighborhood character. This rationale provided by the City to avoid an environmental review of NYU's potential expansion was an arbitrary and unlawful abuse of discretion. The City's response to commentary

expressing objections to avoiding an environmental analysis relating to NYU's expansion states in relevant part, the following:

Large portions of the Project Area—the Historic Cores—would have density remain largely unchanged at 6.5 FAR and have height limits and other bulk controls imposed that more closely align with the historic character of buildings in the historic cores. Other areas, such as Broadway, where higher densities are proposed, contain existing buildings that exceed the currently permitted max FAR but would also receive new bulk controls with limited height and urban design controls that reflect historic character more than existing zoning. The highest densities are proposed for the opportunity areas outside of the historic districts, which provide the greatest opportunity for housing production. Additionally, the Proposed Actions would not facilitate dormitory space for NYU. Community facilities such as dormitory space are allowed under the existing zoning. There would be no change to such uses with the Proposed Actions.

Dormitory and educational facilities including those associated with NYU are considered a community facility use under zoning. The Proposed Actions would not increase the allowable FAR for such uses as compared to the existing zoning.

(See City's response to commentary in relation to NYU's failure to conduct an environmental evaluation of NYU annexed hereto as Exhibit "B", page 26-15 of the commentary section of the DEIS)

36. The failure to evaluate NYU's expansion also excludes NYU's potential impact upon indirect residential displacement. The 2021 CEQR Technical Manual in Chapter 5, page 5-6 states, in pertinent part:

322.1 Indirect Residential Displacement. The objective of the indirect residential displacement analysis is to determine whether the proposed project may either introduce a trend or accelerate a trend of changing socioeconomic conditions that may potentially displace a vulnerable population to the extent that the socioeconomic character of the neighborhood would change.

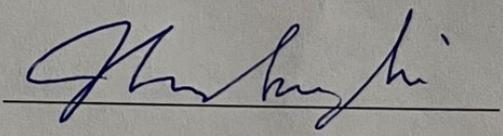
If the detailed assessment identifies a vulnerable population

potentially subject to indirect displacement that exceeds 5 percent of the study area population--or relevant sub-areas, if the vulnerable population is located within the subarea identified-the project may result in a significant change in the socioeconomic character of the study area, and a potential significant adverse impact may occur.

37. The City must evaluate NYU's potential to expand into areas that otherwise would be reserved for affordable housing, currently existing housing or the encouragement of housing expansion as articulated by the rationale behind the SNX rezoning.

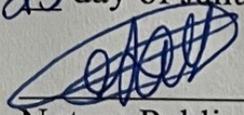
CONCLUSION

38. NYU's constitutional challenge to the NYU exclusion highlights the City's failure to take a hard look at NYU's potential expansion into the SNX rezoning. The inclusion of NYU "as of right" into the SNX rezoning must therefore include an environmental assessment in accordance with the dictates of SEQRA and CEQR, as delineated in the CEQR Technical Manual.



Thomas Angotti

Sworn to before me this 23rd day of January, 2023



Notary Public, State of New York

DOMINIQUE GRECI
NOTARY PUBLIC
STATE OF NEW YORK, KINGS COUNTY
No. 01GR6443024
EXPIRATION: 10/24/2026