SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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INDEX NO. 153199/2022

NEW YORK UNIVERSITY,

MOTION SEQ. NO. 001 003

Plaintiff,

- v -

DECISION + ORDER ON MOTION

CITY OF NEW YORK,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 52, 54, 77, 80

were read on this motion for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 81

were read on this motion for LEAVE TO INTERVENE.

Kramer Levin Naftalis & Frankel LLP, New York, NY (Jeffrey L. Braun and Elise Wagner of counsel), for plaintiff.
Corporation Counsel of the City of New York, New York, NY (Michelle Goldberg-Cahn, Melanie V. Sadok, Chris Reo, Tess Dernbach, and Chad Hughes of counsel), for defendant.
Jack L. Lester, Esq., East Hampton, NY, and *Lawrence K. Marks, Esq.*, New York, NY, for Proposed Intervenors.
Bond, Schoeneck & King, PLLC, Syracuse, NY (Jonathan B. Fellows of counsel), for the Commission on Independent Colleges and Universities, amicus curiae.

Gerald Lebovits, J.:

This action arises from the City of New York's 2021 rezoning of the SoHo and NoHo neighborhoods in Manhattan. At the last stage of public consideration of the rezoning proposal, the City Council added to that proposal a prohibition on college or university uses of property in the rezoned area. In response, New York University has sued the City of New York, asking this court to declare that the college-and-university-uses prohibition is void as beyond the City Council's authority to impose.

NYU's claims implicate weighty questions of law and policy about local zoning authority in the context of town-gown relations. Also weighty, however, is the principle that courts must limit themselves to adjudicating only "actual controversies for parties that have a genuine stake in the litigation." (*Matter of Association for a Better Long Island, Inc. v New York State Dept. of*

Envtl. Conservation, 23 NY3d 1, 6 [2014].) That principle is relevant—indeed, dispositive—here. The zoning rules for SoHo and NoHo in place before the challenged rezoning *also* prohibited college and university uses of property. As a result, that rezoning did not adversely affect NYU's right to use its property in rezoned SoHo/NoHo. NYU could not use that property without obtaining a zoning variance before, and it may not use that property without obtaining a zoning variance now. Absent some identifiable, current injury, and NYU points to none, NYU lacks standing to bring its current challenge to the City's prohibition on college/university uses in the rezoned neighborhoods. NYU's action must be dismissed.

BACKGROUND

This action relates to an area in the SoHo and NoHo neighborhoods in Manhattan. (*See* New York City Zoning Resolution [ZR] art. 14, Appendix A [map of rezoned area];[1] *see also* NYSCEF No. 31 [map submitted by NYU showing rezoned area].) This area was zoned for many years for manufacturing uses. (NYSCEF No. 2 at ¶ 20 [complaint].) Under that zoning, college and university uses were prohibited, and could be undertaken only through the grant of a zoning variance by the New York City Board of Standards and Appeals. (*See* NYSCEF No. 30 at ¶ 17 [affidavit of NYU's senior director of campus planning]; ZR §§ 42-00, 42-12 [describing educational uses permitted as-of-right in manufacturing district]; *id.* §§ 42-31, 42-32 [describing uses permitted by special permit in manufacturing district]; *see also* NYSCEF No. 21 [grant of zoning variance to NYU for a university building within the area at issue in this action].)

In 2015, the Department of City Planning began studying the possibility of updating SoHo and NoHo's zoning rules. (*See* NYSCEF No. 2 at ¶ 21.) In 2020, the Department began the public-review process for rezoning these neighborhoods into a "special district," in which "zoning rules applicable to both manufacturing and residential districts would jointly apply." (*Id.* at ¶¶ 23-26.) This process, the City's Uniform Land Use Review Procedure, or ULURP, continued through much of 2021. (*See id.* at ¶¶ 27-30.)

ULURP requires the New York City Planning Commission to approve rezoning plans. (*See id.* at ¶ 30.) As approved by the City Planning Commission, the rezoning created a "mixed-use zoning framework, under which "the rules governing the applicable residential and manufacturing districts jointly apply." (*Id.* at ¶ 31.) Residential uses—including college and university uses—would be permitted "as-of-right throughout the newly proposed zoning districts." (*Id.* at ¶¶ 33-34 [internal quotation marks omitted].)

Following the City Planning Commission's approval of the rezoning plan, the plan went to the City Council for its own review. During that review, the City Council added several use-related restrictions. (*See id.* at ¶ 38; ZR § 143-11.) These restrictions included a bar on "college and university uses and student residence halls." (NYSCEF No. 2 at ¶¶ 38-41; *see* ZR § 143-11 [a].) The City Council approved the SoHo/NoHo rezoning, with these added restrictions, on

[1] A searchable version of the Zoning Resolution is available online on the website of the New York City Department of City Planning, at https://zr.planning.nyc.gov/ (last visited May 15, 2023).

December 15, 2021, and its approval of the rezoning was not vetoed by the Mayor. (NYSCEF No. 2 at ¶ 41.)

NYU brought this action in April 2022.[2] NYU is seeking a declaratory judgment that the bar on college/university uses imposed by ZR § 143-11 (a) is ultra vires: void as beyond the City's power to adopt. NYU is also asking this court to grant injunctive relief restraining the City and its agents from applying or enforcing that bar. (*See id.* at 19 [prayer for relief].)

The City has moved to dismiss NYU's complaint for lack of subject-matter jurisdiction under CPLR 3211 (a) (2) and failure to state a cause of action under CPLR 3211 (a) (7). (NYSCEF No. 5.) NYU has cross-moved for summary judgment under CPLR 3211 (c) and CPLR 3212. (NYSCEF No. 29.)

During briefing on the motion and cross-motion, a group of community members and organizations moved by order to show cause for leave to intervene, contending that they have a separate interest in NYU's ability to develop and use property in rezoned SoHo/NoHo that would not be adequately represented should this court grant NYU's requested declaratory and injunctive relief. (*See* NYSCEF No. 69 [order to show cause]; NYSCEF No. 67 at 1-2, 10-12 [mem. of law].) NYU and the City each separately opposed the motion to intervene. (*See* NYSCEF No. 75 [NYU]; NYSCEF No. 70 [the City].) This court heard oral argument in March 2023 on the motion to intervene (*see* NYSCEF No. 81 [oral-argument transcript]), and reserved decision pending the court's resolution of the City's motion to dismiss and NYU's cross-motion for summary judgment (*see id.* at Tr. 39).[3]

The parties completed briefing on the motion and cross-motion at the end of March 2023; and the court heard oral argument on May 10. The motion to dismiss and cross-motion for summary judgment (mot seq 001), and the motion to intervene (mot seq 003), are now ripe for decision and are consolidated here for disposition. The motion to dismiss is granted; the cross-motion for summary judgment is denied; and the motion to intervene is denied as academic.

DISCUSSION

In moving to dismiss, the City contends that (i) NYU has no standing to bring this action, such that this court lacks subject-matter jurisdiction; and (ii) NYU's claims fail to state a cause of action.

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[2] A separate challenge to other aspects of the rezoning plan is now pending before Justice Erika M. Edwards of this court. (*See Coalition for Fairness in SoHo & NoHo, Inc. v City of New York*, New York County Index No. 151255/2022.)

[3] During briefing on the motion to dismiss and cross-motion for summary judgment, the Commission on Independent Colleges and Universities (CICU) moved for leave to submit a brief amicus curiae in support of NYU (mot seq 002). (*See* NYSCEF No. 49 [order to show cause]; NYSCEF No. 46 [proposed amicus brief].) This court granted CICU's motion without opposition. (*See* NYSCEF No. 53.) This court also granted the request of counsel for CICU to speak briefly at oral argument on the motion and cross-motion, again without objection from the parties.

As an initial matter, it is unclear whether a challenge to NYU's standing due to the (asserted) absence of a legally cognizable injury goes to the court's jurisdiction to adjudicate this action, or whether the City's challenge presents only prudential justiciability grounds to refrain from addressing the merits of NYU's claims.[4] But given that the issue of standing has been raised and ably briefed by the parties, the distinction between the two is immaterial for purposes of the parties' motion and cross-motion.[5] Either way, this court must determine whether NYU has sufficiently alleged a legally cognizable injury to establish its standing to bring a facial challenge to ZR § 143-11 (a).

For the reasons below, the court agrees with the City that NYU has not shown that it has suffered a cognizable injury that would give it standing to sue here. The court therefore does not reach the parties' merits arguments about whether the prohibition on college and university uses is ultra vires. And the dismissal on standing grounds of NYU's complaint renders academic the pending motion to intervene.

I. Whether NYU has Standing to Bring this Action (Mot Seq 001)

A plaintiff challenging governmental action must demonstrate at the outset that it "has an actual legal stake in the matter being adjudicated." (*Matter of Acevedo v New York State Dept. of Motor Vehs.*, 29 NY3d 202, 218 [2017] [internal quotation marks omitted].) To do so, a plaintiff "must show 'injury in fact,' meaning that plaintiff will actually be harmed" by the action it challenges. (*New York State Assoc. of Nurse Anesthetists v Novello*, 2 NY3d 207, 211 [2004].) The plaintiff must also demonstrate that the asserted injury "fall[s] within the zone of interests or concerns sought to be promoted or protected by the statutory provision" under which the government took the challenged action. (*Id.*) The City argues that NYU lacks standing because it has not alleged (or shown) a cognizable injury in fact. This court agrees.

A. The City's Challenge to NYU's Standing

[4] Tension exists among the precedents of the Appellate Division, First Department, on this issue. (*Compare Murray v State Liquor Auth.*, 139 AD2d 461, 461 [1st Dept 1988] [holding that standing is an unwaivable question of subject-matter jurisdiction], *with Fundo de Recuperação de Ativos-Fundo de Investimentos em Direitos Creditórios Não Padronizados v Ceagro Agrícola LTDA*, 210 AD3d 585, 586 [1st Dept 2022] [holding that "the defense of lack of standing does not implicate subject matter jurisdiction; hence, it can be waived"], citing *CDR Créances S.A.S. v Cohen*, 77 AD3d 489, 491 [1st Dept 2010], and *Security Pac. Natl. Bank v Evans*, 31 AD3d 278, 280 [1st Dept 2006].)

[5] For the same reasons, the City's citation to CPLR 3211 (a) (2) in its notice of motion would not require denial of the motion even if this court were to conclude that lack of standing goes to justiciability rather than to subject-matter jurisdiction. (*See* CPLR 2001; *Eugene Di Lorenzo, Inc. v A.C. Dutton Lumber Co.*, 67 NY2d 138, 142-143 [1986] [holding that a court "has the discretion to treat a CPLR 5015 (a) motion as having been made as well pursuant to CPLR 317"]; *accord Moon v Tupler*, 110 AD3d 486, 487 [1st Dept 2013] [holding that because defendant was not prejudiced, the plaintiff's citation of an incorrect provision as the basis for her motion should be disregarded].)

As articulated in NYU's complaint, motion papers, and presentation at oral argument, NYU's principal claim of injury is that "were it not for [Zoning Resolution] § 143-11 (a), NYU would be free to immediately co-locate instructional facilities"—*i.e.*, classrooms—in buildings in the rezoned area that NYU must instead "use solely for faculty and administrative offices and other non-instructional operations." (NYSCEF No. 43 at 20 [mem. of law]; *see also* NYSCEF No. 30 at ¶¶ 27-28, 32 [aff. of NYU senior director of planning] [describing a building in rezoned area that NYU would use for classrooms were it legally able to do so without a zoning variance].) More broadly, NYU suggests that § 143-11 (a) "has an actual and immediate adverse impact" by "constrain[ing] NYU's facility planning and usage and interfer[ing] in a material way with NYU's ability to fulfill its institutional needs." (NYSCEF No. 30 at ¶ 10.) Thus, NYU argues, it has standing to challenge the SoHo/NoHo rezoning "[a]s a property owner whose rights have been materially curtailed by the rezoning." (NYSCEF No. 80 at 6.)

This argument suffers from a simple, fatal flaw: NYU's rights as a property owner have *not* been "materially curtailed by the rezoning." As NYU candidly concedes in its motion papers and at argument on the motion, the prior zoning of SoHo and NoHo "for manufacturing uses . . . meant that educational uses" were prohibited except upon the grant of a zoning variance. (NYSCEF No. 30 at ¶ 17; *see* ZR §§ 42-00, 42-12, 42-31, 42-32.) NYU's own affidavit states that the challenged rezoning "*continu[es]* this prohibition with respect to college and university uses and student dormitories"—and it does not make that prohibition more stringent or restrictive. (NYSCEF No. 30 at ¶ 17 [emphasis added]; *see* ZR § 143-11 [a].) Nor does NYU identify any other way in which planning for, purchasing, developing, or using property in the rezoned district has become more difficult for it than prior to the rezoning process.[6]

Given the lack of any impingement on NYU's ability to develop or use property in rezoned SoHo/NoHo, NYU cannot make out the necessary "threshold showing" that it "has been adversely affected by the activities of defendant[]." (*Sun-Brite Car Wash, Inc. v Board of Zoning and Appeals of the Town of North Hempstead*, 69 NY2d 406, 413 [1987].[7]) NYU points to the

[6] At most, NYU's motion papers note that it is "possible" that as a result of the new, specific prohibition on college/university uses, NYU will find it harder to obtain zoning variances permitting educational use of properties located in the rezoned district. (NYSCEF No. 37 at 4-5 ¶ 7.) But that contingent, fact-specific possibility, without more, does not now constitute an immediate and concrete injury, as required to support NYU's facial challenge to the SoHo/NoHo rezoning. (*See Matter of Association for a Better Long Island*, 23 NY3d at 8-9.) And at oral argument NYU disclaimed reliance on that possible future injury as a basis for its standing to bring this action.

[7] NYU contends that *Sun-Brite Car Wash* is irrelevant here because that decision dismissed the plaintiff's claim for lack of standing due to its alleged injury not being within the zone of interests protected by zoning laws. (NYSCEF No. 43 at 21 n 8.) That is true, albeit only with respect to one of the two actions consolidated on appeal to the Court of Appeals. (*See Sun-Brite Car Wash, Inc.*, 69 NY2d at 415.) Even so, before reaching its zone-of-interests conclusion, the Court of Appeals reaffirmed the basic principle that a plaintiff must provide a basis to believe that it has suffered an "adverse effect or aggrievement" in the first place. (*Id.* at 410; *see also id.* at 413-414.) Courts hearing claims like the one in *Sun-Brite Car Wash*—challenges to

"presumpti[on]" that "[o]wners of real property who are subjected to a new zoning classification or other use restriction" are "affected by the change" in zoning. (NYSCEF No. 43 at 20, quoting *Real Estate Board of New York, Inc. v City of New York*, 165 AD3d 1, 6 [1st Dept 2018] [internal quotation marks omitted].) But any such presumption has been rebutted here by undisputed record evidence that the new zoning classification does not alter NYU's (lack of) right to use its property in the rezoned area.

The rule in New York has long been that courts will dismiss a plaintiff's challenge to a land-use regulation, without reaching the merits, if the plaintiff has not alleged that the regulation "is in some manner interfering with or diminishing the value of the present property rights of the person complaining." (*Headley v City of Rochester*, 272 NY 197, 206 [1936].) A property owner in that scenario is "not an aggrieved party" for standing purposes if the challenged regulation does not "depreciate the value of [the owner's] property . . . nor interfere with any use to which [it] intended in good faith" to put the property." (*Scarsdale Supply Co. v Village of Scarsdale*, 8 NY2d 325, 329 [1960], quoting *Vangellow v City of Rochester*, 190 Misc 128, 132 [Sup Ct, Monroe County 1947] [Van Voorhis, J.].)

Thus, for example, in *Headley*, the plaintiff challenged application to his property of General City Law (GCL) § 35. (*See* 272 NY at 201-203.) That statute provides that "no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out" on a city's official map or plan—even if decades have elapsed without the "mapped" street in question ever being built. A strip of plaintiff's property lay in the bed of a mapped-but-not-yet-built city street, such that the strip could not be developed without plaintiff first obtaining a statutory variance. (*See id.* at 205-206.) Plaintiff challenged this restriction as, in effect, an impermissible regulatory taking. The Appellate Division agreed, and granted plaintiff's requested declaration that GCL § 35 and the city's official map could not operate to restrict plaintiff's use of his property. (*Id.* at 200.)

The Court of Appeals reversed. In doing so, the Court focused on the failure of the complaint and the record to indicate "in what manner the ordinance has caused damage to the plaintiff or interferes with any use to which the plaintiff desires to put the land." (*Id.* at 204.) The Court found that plaintiff Headley had not shown, or even attempted to show, that the loss of use of the restricted strip of land would prevent him from developing his property in the "manner in which [he] desires or which would best conduce to the enjoyment of profit which an owner

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governmental determinations about the permissible uses of property owned by third parties—have consistently held that plaintiffs must still demonstrate that their own "land is affected" by the challenged determinations. (*See e.g. Matter of Haber v Board of Estimate of City of N.Y.*, 33 AD2d 571, 572 [2d Dept 1969].) If plaintiffs do not provide allegations of injury, or allegations of facts from which a court may reasonably infer an injury, their challenges will be dismissed for lack of standing. (*See Schapiro v Town of North Hempstead*, 35 AD2d 596, 596 [2d Dept 1970]; *Brechner v Incorporated Vill. of Lake Success*, 25 Misc 2d 920, 921-923 [Sup Ct, Nassau County 1960, *affd* 14 AD2d 567, 567 [2d Dept 1961]; *accord Finger Lakes Zero Waste Coalition, Inc. v Martens*, 95 AD3d 1420, 1421-1422 [3d Dept 2012]; *Harris v Town Bd. of Town of Riverhead*, 73 AD3d 922, 924 [2d Dept 2010]; *Gallahan v Planning Bd. of City of Ithaca*, 307 AD2d 684, 685 [3d Dept 2003].)

might derive from his land." (*Id.* at 206.) Without that showing, no basis existed for the Court to reach the merits of plaintiff's constitutional challenge. (*Id.* at 204, 209.) The Court of Appeals directed that the complaint be dismissed. (*Id.* at 209.)

The Appellate Division, Second Department, reached a similar conclusion in *Kipp v Incorporated Village of Ardsley* (13 AD2d 1012, 1013 [2d Dept 1961]). *Kipp* addressed a challenge to the Ardsley building code's imposition of a 10-foot setback requirement on front yards in the village. Plaintiffs sought a declaratory judgment that (i) as a procedural matter adoption of the setback provision had not complied with applicable statutory notice requirements; and (ii) that provision was unconstitutional because it did not allow for property-owners to obtain a variance. (*See id.* at 1012-1013.) Supreme Court held that the absence of a variance safety-valve rendered the setback restriction void. (*Id.* at 1013.) The Appellate Division affirmed on the different ground that Ardsley had failed to comply with statutory-notice obligations, specifically declining to reach the constitutional challenge. (*See id.*) In doing so, the Court noted that plaintiff lacked standing to raise that challenge because plaintiffs had not shown that they could have taken advantage of a variance process, had one been available. (*See id.*) That is, the absence of a variance process would have constituted a further restriction on plaintiffs' use of their property—and thereby injured them—only if plaintiffs could have obtained a variance had one been available.

These precedents stand for the proposition that if—as here—adopting a land-use restriction that applies to a given piece of property neither impairs the property-owner's ability to use that property for the owner's preferred purposes (or other reasonable uses), nor reduces the property's value, the owner may not maintain a challenge to the validity of the restriction.[8]

Headley and *Kipp* did not involve zoning rules. But that distinction makes no difference: It affects only the basis for the land-use restriction at issue—not the threshold requirement that a plaintiff allege that it has been *injured* by the challenged restriction. In any event, New York courts have applied this requirement in the specific context of zoning changes, too. (*See e.g. Matter of Haber v Board of Estimate of City of N.Y.*, 33 AD2d 571, 572 [2d Dept 1969] [dismissing article 78 challenge to zoning amendment for lack of standing]; *Gordon v Town of Huntington*, 224 NYS2d 149, 150 [Sup Ct, Suffolk County Jan. 5, 1962] [dismissing declaratory-judgment challenge to zoning amendment because plaintiff alleged only that the amendment "affects the uses of plaintiff's property" without specifying the nature of those effects]; *Siegel v Incorporated Vill. of Cedarhurst*, 150 NYS2d 213, 215 [Sup Ct, Nassau County Feb. 7, 1956] [dismissing declaratory-judgment challenge to zoning ordinance because "the proof does not show that the plaintiffs have or will suffer any damage by reason of the restriction of their property"]; *Rose v City of New Rochelle*, 19 Misc 2d 599, 600-601 [Sup Ct, Westchester County

[8] Analogously, in the context of eminent-domain proceedings, the value of property for compensation purposes "should be calculated with due consideration paid to the applicable restrictions upon use," whether those restrictions result from zoning rules, environmental regulations, or covenants entered into by the current or former owner of the property. (*Basile v Town of Southampton*, 89 NY2d 974, 976 [1997].) In essence, a property-owner is not entitled to compensation from the government for the loss of property uses that were already unavailable pre-taking.

1953] [dismissing declaratory-judgment challenge to zoning amendment to "a district in which plaintiff owns certain premises" because "no facts whatever are alleged in this complaint to show that plaintiff or his property is especially affected by the amendment to the ordinance in question, or that he is sustaining any pecuniary loss by reason thereof"].[9])

B. NYU's Arguments in Response

NYU identifies no authority for the contrary proposition—that a plaintiff has standing to challenge a land-use rule that applies to plaintiff's property but which does not limit the use or value of that property.[10] NYU cites four Court of Appeals and Appellate Division decisions that permitted plaintiffs to proceed with facial challenges to land-use or related regulations. (*See* NYSCEF No. 43 at 20-21, citing *Real Estate Board of New York*, 165 AD3d at 6; *Golden v Planning Bd. of Town of Ramapo*, 30 NY2d 359, 365-366 [1972]; *Nicholson v Incorporated Vill. of Garden City*, 112 AD3d 893, 893-894 [2d Dept 2013]; *Janas v Town Bd. of Fleming*, 51 AD2d 473, 476-477 [4th Dept 1976].) But in each of these cases, the challenged regulations added restrictions on the plaintiffs' use of their property, supporting plaintiffs' claims of injury.[11] Those decisions are inapposite here.[12]

Nor may NYU rely for standing purposes on a claim of injury from the City's choice during the rezoning process to refrain from *lifting* the prohibition on as-of-right educational uses in the rezoned area. That claim is foreclosed by the Court of Appeals's decision in *Rudder v Pataki*. (*See* 93 NY2d 273, 278-279 [1997].) In *Rudder*, an official appointed by the governor disapproved a proposed agency regulation that would have increased the educational requirements for hospital social-work departments. (*See id.* at 277.) When an organization

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[9] *Cf. Rosenbloom v Town of Pittsford*, 17 Misc 2d 473, 474 [Sup Ct, Monroe County 1959] [holding that contract-vendor-plaintiff lacked standing to challenge validity of a zoning ordinance because the contracts at issue entitled plaintiff to receive the same price for its property regardless of the ordinance's validity or any rezoning].)

[10] This court's own research has not found caselaw or secondary authority supporting that proposition, either.

[11] *See Real Estate Board of New York*, 165 AD3d at 3-4 (municipal ordinance placing a moratorium "on the conversion to full-time residential use of more than 20% of qualifying hotels' primary hotel space . . . which is defined essentially as living and sleeping space for guests"); *Golden*, 30 NY2d at 367-368 (municipal ordinance adding special-permit requirement for all new residential-development projects); *Nicholson*, 112 AD3d at 893 (municipal ordinance rezoning specified properties, including the property owned by plaintiffs, to increase their minimum lot size and restrict subdividing of those properties); *Janas*, 51 AD2d at 475-476 (municipal ordinance amending town zoning rules to impose density limitations, minimum lot sizes, and other requirements for mobile home parks located within the town).

[12] The same is true of the challenged ordinance in *Trustees of Union College v Members of Schenectady City Council*, referenced by amicus curiae Commission on Independent Colleges and Universities. (*See* 91 NY2d 161, 164-164 [1997] [amendment to zoning ordinance that imposed bar on educational institutions like plaintiff Union College from seeking special permits that would allow educational uses of property located within the city's historic district].)

representing social workers challenged that disapproval (and the legality of the underlying gubernatorial appointment), the Court of Appeals affirmed the dismissal of the action on standing grounds for lack of injury. The Court held that although the organization's members "will not have the benefit of increased job prospects" due to the disapproval of the proposed regulation, "this does not mean that any one individual member" of the organization "has been or will be *injured*" in the sense of decreased job opportunities or lost earnings. (*Id.* at 279 [emphasis added].) Only the latter result would constitute "cognizable harm" for standing purposes. (*Id.*)

Ultimately, NYU's standing argument reduces to a contention that the City exceeded its authority by adopting the provision of the SoHo/NoHo rezoning plan that continued the existing prohibition on educational uses in the neighborhoods at issue. (*See* NYSCEF No. 43 at 21; NYSCEF No. 80 at 5-6.) But that contention goes to the merits of NYU's challenge to the rezoning. It may not be used to satisfy the initial standing burden that NYU must meet *before* it will be permitted to advance its merits arguments. (*See Matter of Sarah K.*, 66 NY2d 223, 240 [1985] ["It is axiomatic that there is no standing to complain where an alleged defect in or violation of a statute does not injure the party seeking redress."]; *Stevens v New York State Div. of Criminal Justice Servs.*, 206 AD3d 88, 97 [1st Dept 2022] ["At the outset, we consider the gateway issue of standing, because it determines whether a litigant is even allowed access to the courthouse to plead the merits of a particular dispute."].)

This court recognizes that "standing principles" in the land-use context "should not be heavy-handed." (*Sun-Brite Car Wash*, 69 NY2d at 413.) But a land-use plaintiff must still shoulder the burden of alleging a "legally cognizable interest that is or will be affected by the zoning determination" at issue. (*Id.*) NYU has not identified or shown such an interest in this case. NYU has not, therefore, met its burden to establish standing. (*See Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 778 [1991].) Absent standing, NYU's complaint is subject to dismissal. The City's motion to dismiss is granted; NYU's cross-motion for summary judgment is denied.[13]

II. Whether to Grant the Motion for Leave to Intervene (Mot Seq 003)

On motion sequence 003, a number of community members and organizations seek to intervene in this action. Proposed intervenors' principal reason for intervening is the possibility that this court would rule for NYU on the merits. Proposed intervenors explain that were this court to determine that ZR § 143-11 (a) is ultra vires, they wish to be able to seek in this action relief requiring the City to assess further potential environmental impacts from permitting colleges and universities like NYU to build as-of-right in rezoned SoHo/NoHo. (*See* NYSCEF No. 67 at 1-2 [mem. of law in support of intervention].) This court's conclusion that NYU's action must be dismissed on standing grounds obviates proposed intervenors' expressed reason for seeking intervention, rendering their intervention motion academic.[14] The motion is denied on that ground.

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[13] Given this disposition, the court does not address the City's argument that NYU's cross-motion for summary judgment is procedurally improper due to issue not having been joined.

[14] Indeed, at oral argument on the motion to intervene, counsel for proposed intervenors acknowledged that "if your Honor were to rule that NYU does not have standing; and therefore,

Accordingly, for the foregoing reasons, it is

ORDERED that the City's motion to dismiss (mot seq 001) is granted, and the complaint is dismissed, with costs and disbursements to be taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that NYU's cross-motion for summary judgment (mot seq 001) is denied; and it is further

ORDERED that proposed intervenors' motion to intervene (mot seq 003) is denied as academic; and it is further

ORDERED that the City serve a copy of this order with notice of its entry on NYU, proposed intervenors, and amicus curiae CICU; and on the office of the County Clerk, which shall enter judgment accordingly.

5/16/2023
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

you are dismissing NYU's case, well to a degree our motion would be moot at that point. I agree with that." (NYSCEF No. 81 at Tr. 12 [oral-argument transcript].)