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November 18, 2021

**BY EMAIL**

Michael McSweeney, City Clerk  
Office of the City Clerk  
The City of New York  
141 Worth Street  
New York, NY 10013

Re: New York Blood Center Project, NYC Charter Section 200(a)(3) Protest

Dear Mr. McSweeney:

Our firm represents Friends of the Upper East Side Historic Districts in connection with ULURP review of the New York Blood Center application.

It has come to our attention that there are press reports indicating that “legal advisors” to the Blood Center have claimed that protests filed by nearby property owners pursuant to NYC Charter section 200(a)(3) would fail because “the objecting co-op and condo don’t represent 20% of the land area as required.”<sup>1</sup> Although we do not represent those protesting owners we have followed the issue closely, and we write to point out that if indeed such a claim has been advanced, it is wrong. The protests submitted against N 210352 ZRM meet the requirements of the NYC Charter for triggering a supermajority vote of the City Council.<sup>2</sup>

As you know, section 200(a)(3) provides that any of three distinct groups may file a protest against a resolution of the City Planning Commission approving certain land use changes, including text amendments:

the owners of twenty per centum or more of the area of:

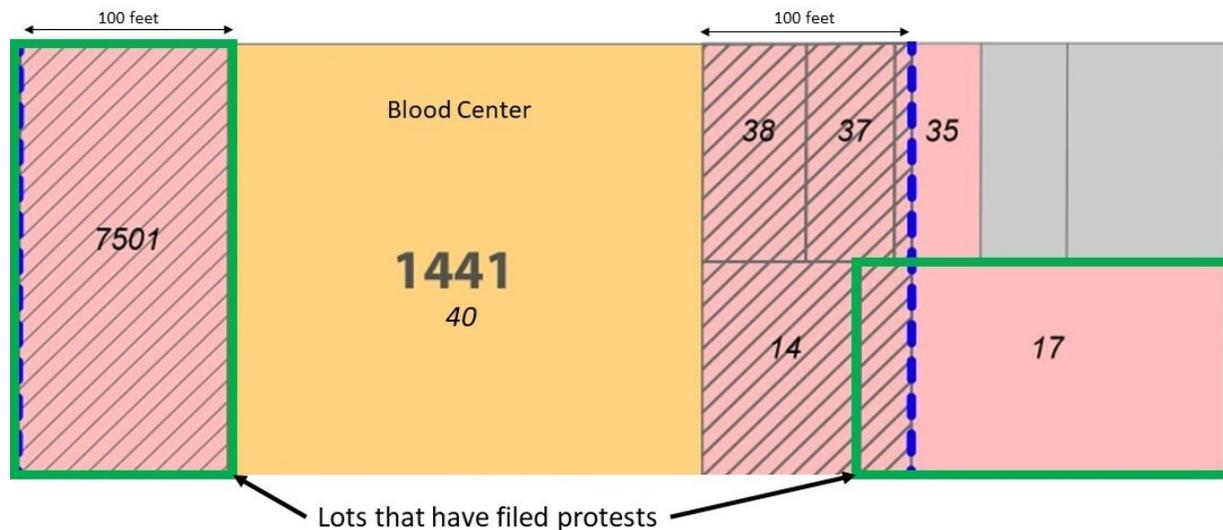
- (1) the land included in changes proposed in such proposed resolution, or
- (2) the land immediately adjacent extending one hundred feet therefrom, or
- (3) the land, if any, directly opposite thereto extending one hundred feet from the street frontage of such opposite land

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<sup>1</sup> [From SoHo to Gowanus to the Upper East Side, de Blasio Developments Hit Council - THE CITY](#)

<sup>2</sup> We do not comment on protests against other resolutions.

The focus of this letter is the protest of CPC resolution N 210352 ZRM, approving a text amendment that would impact the zoning controls on a single tax lot – block 1441 lot 40 in Manhattan (“Impacted Land”). It is our understanding that the protest is brought pursuant to subsection (a)(3)(2) of Charter Section 200. That subsection refers to land within 100 feet of the Impacted Land, without crossing any public streets. See, e.g., *Dole v New York* 182 Misc. 408 (Sup Ct. Bronx County, 1943).<sup>3</sup> The total land area within 100 feet of the Impacted Land without crossing any streets (the hatched area on the diagram below) totals roughly 40,000 square feet. It is our understanding that the owners of the land outlined in green have filed protests. Given that the lot to the west of the Impacted Land is by itself 20,000 square feet, the protesters clearly meet the 20% threshold.



We have also had an opportunity to review the substance of the petitions and supporting materials and find that they recite all the necessary elements required for a valid protest. Nevertheless, we assume based on the aforementioned press reports that attorneys for the City and the Applicant have taken a contrary position and shared that thinking with the Clerk’s Office. As a counterpoint, we draw your attention to relevant case law.

New York State courts reviewing protests brought under analogous provisions in New York State Town and Village Law, sections 265 and 7-708, respectively, have resolved any ambiguities in favor of property owners and against municipalities that have applied unduly strict statutory construction in an attempt to avoid a mandated supermajority vote. For example, in *Bismarck v. Bayville*, 244 N.Y.S.2d 529, 531 (Sup. Ct. Nassau County 1963), the Supreme Court rejected an effort by the Village of Bayville to deem invalid a protest brought pursuant to Village Law Section 179 (predecessor to 7-708 and materially identical<sup>4</sup>) by an owner of more than 20% of property proposed to be rezoned, on grounds that the protest was signed by an attorney rather than the property owner. The Court stated

<sup>3</sup> By contrast, subsection (a)(3)(3) refers to land within 100 feet of street frontage directly across the street from impacted land.

<sup>4</sup> See *Id.* at 530.

[l]egislation and ordinances affecting the rights of property owners are in derogation of common law and must be strictly construed against the municipality . . . the purposes of the statute insofar as it related to the filing of a protest, is to provide a means by which the opposition of an owner or owners of property most immediately effected may be made known to the municipal authorities. Consequently, a technical interpretation which would deprive an owner from having her opposition considered would frustrate rather than promote the aim of the statute.

In a more recent case, the New York Supreme Court in Rensselaer County similarly rejected an attempt by the municipality to invalidate a petition through a strict application of Town Law Section 265:<sup>5</sup>

The statute is designed to protect affected property owners. Here, each petition identified the amendment by its official title, stated that the signor was a property owner affected by the amendment, and that he or she protested the adoption of the amendment. This Court declines to interpret the statute in a manner which would add additional, undefined obstacles to the exercise of one's right to protest zoning changes. Any other interpretation would 'frustrate, rather than promote the aim of the statute.'

*Matter of Hanson v. Town Bd. Of the Town of Nassau*, 16 Misc. 3d 1137(A) (Sup. Ct. Rensselaer County 2007) (rejecting Town's efforts to invalidate protest petition, quoting *Bismarck v. Bayville*). Here, the protest clearly meets this standard.

Similarly, where multiple owners own an undivided interest in a parcel of real property, and less than all of those owners have signed the protest, courts have consistently rejected attempts to invalidate the protest on that basis. See, e.g. *Matter of Gosier v. Aubertine*, 71 A.D.3d 76 (App. Div. 4th Dep't 2009) (rejecting attempt to invalidate signatures on grounds that only one of two joint tenants signed for select properties, finding it would be "unfair for one spouse to withhold his or her consent to the signing of the petition and thereby prevent any of the property from being included in the protest petition . . . . If the Legislature deems it appropriate to define 'owners' as all of the record owners of property, it may certainly revise the statute to do so."). Clearly a court would come out the same way in a case where, as here, the signing condominium unit owners own over 80% of an undivided interest in the relevant real property. Pursuant to *Gosier*, that by itself should be enough, but it is our understanding that the protesting condominium owners have also produced bylaws indicating in substance that an affirmative vote of a majority of the unit owners is binding on all unit owners for all purposes, as well as evidence that such a vote authorizing the protest took place.

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<sup>5</sup> See *Matter of Hanson v. Town Bd. Of the Town of Nassau*, 16 Misc. 3d 1137(A) (Sup. Ct. Rensselaer County 2007) ("Town Law § 265 provides that town zoning changes may be approved by at least three-fourths (a super-majority) of the members of a town board, if

- such amendment is the subject of a written protest presented to the town board and signed by
- a) the owners of twenty percent or more of the area of land included in such proposed change; or
  - b) the owners of twenty percent or more of the area of land immediately adjacent to the land included in such proposed change, extending one hundred feet therefrom; or
  - c) the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.)

Respectfully, in light of these precedents and the facts presented to the Office of the City Clerk by the petitioners, there can be no question that the protest was validly brought by “the owners of twenty per centum or more of the area of ... the land immediately adjacent extending one hundred feet” from the land impacted by City Planning Commission resolution N 210352 ZRM.

Thank you for your consideration.

Sincerely,



Karen E. Meara

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c:

Patrick Synmoie, General Counsel  
Office of the City Clerk

Jason Otaño, General Counsel  
New York City Council

Raju Mann, Director of Land Use  
New York City Council

Julie Lubin, General Counsel to Committee on Land Use  
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