

TAKEROOT JUSTICE

January 6, 2020

Olga Abinader, Director of Environmental Assessment and Review
New York City Department of City Planning
120 Broadway, 31st Fl.
New York, NY 10271

**Re: TakeRoot Justice’s comments on Draft Environmental Impact Statement for
Lenox Terrace, CEQR No. 18DCP084M**

Dear Ms. Abinader,

I submit the following comments on the Draft Environmental Impact Statement (DEIS) for an application to rezone Lenox Terrace in Central Harlem (CEQR No. 18DCP084M) on behalf of TakeRoot Justice. The DEIS contains several flaws and omissions that must be addressed in the Final Environmental Impact Statement to ensure that the approvals that will be based on this environmental-review process are sufficiently informed.

A. Land use

The DEIS inappropriately determines that the proposed project—which would allow a first-ever destination-retail center and enormous new luxury development in an otherwise small-scale residential neighborhood—finds that there would be no significant impact on land use.¹ The DEIS arrives at this conclusion by overlooking the difference between the proposed C6 zoning, described as appropriate for “the central business district and regional commercial centers,”² and the current residential zoning with small commercial overlays “designed to provide for local shopping” that is “relatively unobjectionable to nearby residences.”³ These are, in fact, conflicting uses that indicate that the project will have a significant adverse impact on land use and public policy in the area, and the DEIS must reflect that.

¹ DEIS at 2-1.

² Zoning Resolution of the City of New York § 31-16.

³ *Id.* § 31-11.

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B. Indirect residential displacement

The DEIS's conclusion that there would be no significant impact as a result of the proposed project is based on an insufficient analysis. The DEIS finds that there will be an increase to rents in the area as a result of the project,⁴ but inappropriately ignores this fact, concluding that there will be no significant impact on indirect residential displacement.⁵ The only basis the DEIS provides for overlooking the increased rents is that rents are currently increasing in the immediate area.⁶ This is an insufficient reason to determine that there will be no significant impact on secondary residential displacement: the fact that there is a current trend toward higher rents does not mean that further luxury development will not accelerate or extend that trend in a manner that would not have occurred under the no-action condition.

The DEIS's reference to the CEQR Review Technical Manual (Manual) is unavailing for three reasons. First, adherence to the Manual is not necessarily sufficient to satisfy CEQR or SEQRA,⁷ especially in cases where—as here—there are clear signs that residential displacement is likely to occur as a result of the project. Second, the DEIS does not, in fact, adhere to the Manual: it fails to determine whether the trend is occurring in “the vast majority” of the area or only “within smaller portions of the study area.”⁸ This analysis is particularly necessary for this project, which is occurring in an area with a wide mix of incomes and rents—with rent-stabilized apartments and public housing alongside market-rate buildings⁹—and is therefore likely to have variations in trends within the study area. Finally, the analysis was able to determine only that there exists an upward trend in rents and incomes, not the actual amount of the increase, meaning that the DEIS provides no income on the magnitude of the preexisting trend,¹⁰ and therefore will not help decisionmakers determine the likelihood that the proposed project will accelerate such trends.

The DEIS must also include an analysis of the potential impact of the proposed project on the racial and ethnic makeup of the neighborhood. CEQR requires analysis of impacts to “the character or quality of...existing community or neighborhood character.” 43 R.C.N.Y. § 6-06(a)(5). There is no justification provided, or available, for the decision to exclude analysis of the racial and ethnic impacts of the proposed project. It is inappropriate to ignore this factor, particularly in an area the predominantly Black racial makeup of which is cherished by such a large number of its residents, and in a development which is likely eligible for a State and

⁴ *E.g.*, DEIS at 3-20 (“[T]he proposed actions would result in mostly market-rate housing development, and...are expected to command higher rents and have the potential to bring in a higher income population.”).

⁵ *Id.* at 3-1.

⁶ *See id.* at 3.23.

⁷ *See* Manual at 3-1 (“There may be specific projects that require different or additional analyses.”).

⁸ Manual at 5-9.

⁹ The vulnerability of the study area's particular mix of incomes is admitted in the DEIS. *See* DEIS at 3-19 (“[M]aintenance of the mixed-income demographic as it currently exists in the study area would depend in large part on the introduction and preservation of affordable housing.”) Notably, although the DEIS acknowledges the importance of affordable housing in preventing adverse socioeconomic impacts, it fails to analyze the likely results of different amounts of affordable housing—a necessary piece of information for decisionmakers.

¹⁰ *See* DEIS at 3-16 to -17.



National Historic Registry listing because of its “cultural associations with prominent African Americans in the Harlem community.”¹¹

C. Direct commercial displacement

The DEIS incorrectly determines that the elimination of all of the businesses currently located in the project area would have an insignificant impact. The proposed action would evict a Goodwill, a grocery store, several restaurants and local retail stores, and a Chase Bank. The Goodwill will be a particularly hard loss for the area, as it is an important shopping center for low-income families, and there are no other Goodwill locations in Manhattan north of 125th St. The DEIS also inappropriately glosses over the loss of the supermarket that serves Lenox Terrace by referring to other supermarkets about a quarter-mile away; the loss of the supermarket next door would be a significant impact on residents’ lives, particularly residents who are elderly or otherwise have difficulty walking that distance.

Part of the basis for the DEIS’s conclusion that eliminating all businesses in the project area would have no impact is that the project would create commercial space.¹² But the DEIS fails to analyze the likely makeup of the tenants of the new commercial space, which is necessary to determine the project’s potential socioeconomic impact and effect on neighborhood character. The proposed project would create the only C6 zoning in the immediate area, and so it is likely to attract large-scale retail that will compete with local businesses. The large-scale retailers would likely be able to afford higher rates, and therefore drive up rents and other costs for local businesses, making it unlikely that the current mix of businesses—or any local business at all—would return in the area.

D. Open space

Although the DEIS finds that the proposed project would have a significant impact on open space,¹³ it entirely fails to offer specific mitigation proposals. This directly contradicts the response provided to commenters in the Final Scope of Work, which said that “[i]f significant adverse impacts related to open space are identified, mitigation measures will be proposed in the EIS.”¹⁴ The DEIS does promise that mitigation proposals “will be refined between the DEIS and FEIS,”¹⁵ but later suggests that it may not, in fact, propose mitigation for this impact.¹⁶ Even if the FEIS does, in fact, provide mitigation measures, refusing to even suggest mitigation measures in the DEIS deprives the public of its right to comment on those proposals.

E. Impact of destination retail

Olnick’s requested rezoning would create a high-density commercial district allowing for large-format retail—essentially a giant shopping mall—on top of Lenox Terrace. It would create

¹¹ DEIS Appx. B at 2.

¹² *Id.* at 3-2.

¹³ *Id.* at 5-1.

¹⁴ Final Scope of Work at A-15.

¹⁵ DEIS at 21-5.

¹⁶ *Id.* at 22-1 (contemplating declaring the impact “unavoidable” if “feasible mitigation measures are not identified”).



a C6-2 district covering the entire development,¹⁷ which would allow for a large number of commercial uses not currently permitted, as well as far greater density of commercial use. Specifically, the current zoning allows for local uses such as small retail, groceries, and cafes and restaurants, mostly within 100’ of the street.¹⁸ Olnick’s requested rezoning would allow much higher commercial density throughout the entirety of Lenox Terrace, and would allow for many more uses.¹⁹ These uses include department stores and large variety stores—stores like Wal-Mart and Target—that would completely disrupt the local area.²⁰

The DEIS at some points admits that the commercial rezoning will lead to “destination retail tenants.”²¹ In fact, the DEIS even states that it assumes that new retail “could be split evenly” between local and “destination” retail²² (although the DEIS never explains the basis for this assumption). Elsewhere, the DEIS argues in favor of placing new shopping malls in Central Harlem, on the ground that “Harlem is in the midst of a retail transformation from small-format retailers to large-format stores,” and adding a big-box store at Lenox Terrace would be “in-line with existing trends.”²³ In other words, the application argues that the 125th St. rezoning—and all the “destination retail” that came with it—is the future of Harlem.

But the remainder of the DEIS contradicts this, treating the new development as if it will consist entirely of local retail and service—uses that are *already permitted by the current zoning*. First, the renderings included in the DEIS,²⁴ as well as those presented to the City Planning Commission when the application was certified for the Uniform Land Use Review Procedure,²⁵ show local retail uses such as a coffee shop, restaurant, and supermarket. These would not require a commercial upzoning. Although the contrast between the renderings and the requested rezoning was pointed out by Commissioner Levin,²⁶ and the Department of City Planning (DCP) apparently discussed the possibility of changing only the residential zoning with Olnick, there is no explanation of the discrepancy between the figures in the DEIS and the actual commercial

¹⁷ DEIS at 1-1.

¹⁸ The current commercial zoning is a C1-4 overlay covering 100’ from Malcolm X Blvd., 135th St., and Fifth Ave, and a small additional portion of the northeast corner of the development. The only commercial Use Group permitted in C1 districts is Use Group 6. *See* Zoning Res. § 32-15 (describing Use Group 6).

¹⁹ *See* Zoning Res. §§ 32-16 through 32-21 (describing Use Groups 7 through 12, all of which are permitted in C6 districts).

²⁰ *See id.* § 32-19 (describing Use Group 10, “large retail establishments (such as department stores) that...serve a wide area...and...are not appropriate in local shopping or local service areas”).

²¹ DEIS at 2-13 (“The proposed commercial use is anticipated to include a mix of local and destination retail tenants.”).

²² *Id.* at 2-13.

²³ *Id.* at 3-24 to -25.

²⁴ *Id.* fig. 1-7.

²⁵ Video of the CPC Review Session at which the ULURP application was certified is available at <https://www.youtube.com/watch?v=rfCDCZmcqQM>. Renderings where retail was shown can be seen at timestamp 14:05 to 15:04.

²⁶ *Id.* at 24:20 (“[H]aving a C6-2 designation is kind of an anomaly for this area, and it made me wonder whether you could get to the same result with an R8, which would be an upzoning that would still facilitate [Mandatory Inclusionary Housing], but with a commercial overlay that would allow that same level of commercial and community facility use. Is there a technical reason why we’re not using a residential designation with an overlay?”).



development that is likely to occur.²⁷ Presenting these images as the face of the project is misleading, to say the least.

Other areas of the DEIS completely deny the possibility of new “destination” retail, in direct contradiction with the admission above. The DEIS’s description of the square footage of the predicted new uses states that *all* new retail development will be local.²⁸ Similarly, the description of neighborhood character states that the project “would not add uses not already present” in the general area.²⁹ But nothing like the large-format retail stores the proposed project would bring actually exist nearby.³⁰

F. Emergency services

The DEIS inappropriately ignores the impact that the proposed project would have on emergency services in the immediate area, which will impact public health in the neighborhood and in all areas served by the Harlem Hospital.³¹ The proposed project would double the amount of residents of Lenox Terrace,³² as well as creating new destination-retail space likely to substantially increase foot and vehicular traffic. These changes would both increase the amount of emergency services required—new buildings and commercial uses creating new fire risks, and new residents and large, heavily trafficked stores creating new health and security demands, just to name some examples—and impede delivery of those services by increasing traffic in the area. This omission is particularly glaring given the fact that the project would be located across the street from the Harlem Hospital, the largest hospital in the area.

G. Historical and cultural value of Lenox Terrace

Finally, the DEIS acknowledges that the proposed project would mar the enormous historical and cultural importance of Lenox Terrace, but does nothing to avoid or mitigate that damage. The DEIS includes a statement from the New York City Landmarks Preservation Commission (LPC) stating that Lenox Terrace “appears to be National Register eligible, for its cultural associations with prominent African Americans in the Harlem community.”³³ Because of the importance of the development and its site plan, the DEIS determines that “the demolition of

²⁷ *Id.* at 25:50 (“I believe the residential designation with the overlay was discussed in an earlier iteration, but ultimately the applicant proposed to pursue the C6-2 district. So, I can return to the Commission with a stronger rationale for why that was decided.”).

²⁸ The table describes all expected retail as “Use Group 6.” *Id.* table 1-3. Use Group 6 includes local retail, restaurants, supermarkets, and other uses that “have a small service area.” Zoning Res. § 32-15.

²⁹ *Id.* at 18-5.

³⁰ No commercial district in the area studied by the DEIS permits large-format retail. *Id.* at table 2-3 (describing all zoning districts in the area studied, and including only C1 and C2 districts). There are two small manufacturing districts in the area that could theoretically allow for large-format retail, *id.*, but neither actually contains such stores.

³¹ *See, e.g., Friends of P.S. 163, Inc. v. Jewish Home Lifecare*, 30 N.Y.3d 416 (2017) (SEQRA intended “to make sure that [a project] is undertaken in a way that minimizes damage to...public health....”). The DEIS’s public health chapter limits itself solely to the impact of noise. DEIS at 17-1 to -3.

³² *See* DEIS at 1-13 n.4 (projecting population increase of about 4,000 people). Even this dramatic increase is based on an assumption that the area currently owned by Olnick would be built to the current site plans, which are far smaller than the proposed new zoning would permit.

³³ DEIS appx. B, at 2.



the one-story structures on the proposed development site would result in a significant adverse impact to historic resources.”³⁴ In other words, the DEIS found that the new development would demolish an important piece of Harlem’s history for the sake of unwanted luxury high-rises and large-format retail.

The DEIS also ignores much of the damage to Lenox Terrace. The physical destruction of the retail buildings is bad enough, but the proposed project would also radically alter the layout and design of Lenox Terrace, which is as much a part of the history of the place as the individual buildings. The new luxury apartment buildings will damage the layout and design of Lenox Terrace—for example, by removing the iconic circular driveways in front of 470 Malcolm X Blvd. and 40 West 135th St.³⁵ Furthermore, the location of new “destination” retail as a wall around the existing buildings will completely change the character of the perimeter from a charming series of neighborhood stores to a shopping mall.

The DEIS provides wildly inadequate mitigation for these harms. The only concrete proposal that the applicant is “consider[ing]” is installing “educational material and displays” about cultural figures somewhere on the property.³⁶ A plaque on the wall cannot make up for defacing a key Harlem neighborhood, and certainly does not constitute complete mitigation of the demolition of four of the buildings in the original site plan. This mitigation proposal should be removed, or else treated as only partial mitigation of the significant impact of the project on the historical and cultural aspects of Lenox Terrace.

H. Urban design

The DEIS incorrectly states that the “proposed actions would not result in any changes to buildings...in the study area,”³⁷ and, partially on the basis of that conclusion, determines that there would be no significant impact on urban design or visual resources. In fact, the proposed project would demolish four buildings at Lenox Terrace and replace them with residential towers far taller than nearly any building in the immediate area. While residential uses predominate in the area, 30-story buildings do not, and constitute a significant impact on design and views. Plopping a residential complex twice the size of any other in the area on top of a preexisting, well planned design is definitionally a significant impact on design.

The failure to consider urban design in the DEIS is magnified by the failure to provide comparisons of street-level views from nearby the proposed project site. The only renderings provided of the project site are from a substantial distance away, giving an incorrect understanding of the impact of the project on the overall design of the area.³⁸ If renderings of the

³⁴ DEIS at 7-7. Oddly, the DEIS immediately contradicts itself, stating that the project “would *not* be anticipated to have any significant adverse impacts on historic and cultural resources.” *Id.* at 7-9. This appears to be an error.

³⁵ *E.g., id.* fig. 1-5.

³⁶ *Id.* at 21-6.

³⁷ *Id.* at 8-2.

³⁸ *See generally id.* figs. 8-23 to -31.



type suggested by the Manual³⁹ were used, the significance of the design impact would be clear.⁴⁰

I. Transportation

The transportation chapter of the DEIS bases its analysis on standard values or values produced for other environmental assessments.⁴¹ Such a large increase of residents in a small project is not standard, and should be analyzed using data that is specific to this area. Furthermore, the DEIS inappropriately assumes that the enormous population increase planned here will not significantly impact public transportation at the 135th St. 2/3 station, which is frequently overcrowded.

J. Neighborhood character

The neighborhood-character analysis required by CEQR typically incorporates the analyses of land use, socioeconomic conditions, open space, historic and cultural resources, urban design, and transportation.⁴² The project will have significant impact on each one of these categories, as described above, though the DEIS ignores many of these impacts. These impacts would all damage important determining characteristics of the neighborhood: the primarily residential nature of the neighborhood, the availability of an appropriate amount of open space, the deep history and cultural importance of Lenox Terrace itself, the balance of the Lenox Terrace development and sight lines with the surrounding streets, and the convenience of a central transportation hub. As a result, the DEIS's finding that the project would create no significant impact on neighborhood character is absolutely incorrect.

Neighborhood character may also be significantly impacted by combinations of factors that would not individually be considered significant.⁴³ Thus, even if the DEIS were correct in finding that there is no significant impact in any of the individual areas described in this section—which would be incorrect—the totality of these impacts would certainly be sufficient to produce a significant impact on neighborhood character. Indeed, the cumulative effect of a small changes resulting from new commercial development in a largely residential neighborhood—“changing it from a small-scale, quiet residential area to a busier commercial one”—is used as the primary example of this in the Manual.⁴⁴

³⁹ *E.g.*, Manual at 10-6.

⁴⁰ In fact, the example given *supra* shows that a substantial change in street wall height would ordinarily be considered a significant impact. The DEIS should have listed this as a significant impact or explained why, in this case, it is not.

⁴¹ DEIS table 13-7.

⁴² See Manual at 21-2. The Manual also recommends including consideration of shadows and noise.

⁴³ *Id.* at 21-5 to -6.

⁴⁴ *Id.* at 21-6.



K. Growth-inducing aspects of the proposal

The DEIS determines that the proposal “is not expected to induce any significant additional growth beyond that identified and analyzed” in other chapters.⁴⁵ The only basis for this is the claim that there is a preexisting trend in rents and residential development in the general area.⁴⁶ But as described above, the project could accelerate or extend this trend, meaning that it would create additional growth, and the DEIS cannot even quantify the current rate of rent increase, let alone project future rent increases with enough accuracy to determine that the project would have no effect on them. And the simple logic of neighborhood change demonstrates that such growth is, in fact, likely to occur: increased property value as a result of the rezoning will put upward pressure on neighboring property values, raising both rent and property taxes, and further accelerating the rate at which low-income people are pushed out of the area.

L. Alternative scenarios

The EIS must provide alternative scenarios for comparison to the with-action and no-action scenarios, to enable decisionmakers to understand the other potential paths the development might take.⁴⁷ In particular, the EIS should consider a “no unmitigated impact” alternative that would adjust the proposed project to prevent the unmitigated impacts that would occur as a result of the project, including those described in these comments and those identified in the DEIS.⁴⁸

The DEIS is incorrect in claiming that there are “no reasonable alternatives” that would prevent unmitigated impacts on shadows, open space, historical and cultural resources, or pedestrian traffic.⁴⁹ The impact of shading the Howard Bennett Playground could be mitigated by altering the building envelope creating that shadow, or else providing in the site plan for a playground that would be unaffected by shadow. The excessive reduction of the open-space ratio could be mitigated by scaling down the residential density of the project. The effect of tearing down several buildings that are original to Lenox Terrace could be mitigated either by altering the site plan to retain those buildings or by creating real cultural benefits for Central Harlem residents—beyond the “Walk of Fame” proposed by the developers. Finally the decrease in square feet per pedestrian and level of service of the crosswalk at West 135th and Malcolm X could be mitigated by decreasing the number of new residents or the amount of new commercial development, which would therefore decrease foot traffic.

⁴⁵ DEIS at 23-2.

⁴⁶ *Id.* at 23-1.

⁴⁷ See 62 R.C.N.Y. § 6-09(d)(5).

⁴⁸ Manual at 23-3.

⁴⁹ DEIS at 22-1.



M. Restrictive declarations

The proposed rezoning would nearly double the maximum density currently permitted in Lenox Terrace. The current zoning is R7, which allows for a maximum floor area-ratio (FAR—roughly speaking, the ratio of lot size to building size) of 3.44, or 4.0 under certain circumstances.⁵⁰ The actual built FAR, according to the DEIS is only about 3.0.⁵¹ Olnick’s requested rezoning would allow up to a 7.2 FAR.⁵² The DEIS, however, assumes a maximum FAR of 5.61, which would be only about two-thirds of the allowable increase.⁵³

The DEIS justifies the assumption that Olnick will not build to the maximum possible density by claiming that the applicant “is expected to enter into a Restrictive Declaration” limiting residential density. This reflects only the *expectation* of the DCP, and provides no assurances whatsoever that development will not proceed to the maximum possible extent. Yet, that assumption is used throughout the DEIS, and no accounting is made of the possibility that Olnick will take full advantage of the rezoning.⁵⁴

In any case, a restrictive declaration is not a reliable means of ensuring that development will not exceed Olnick’s proposal. Even assuming a declaration is put in place, neither the public nor the relevant decisionmakers know what its precise content would be. It would likely only affect property owned by the current applicant, and would likely only be enforceable by the City of New York, raising questions as to the efficacy of any restraints it placed on development. It could very well be predicated on the issuance of a special permit, meaning that if a developer did not seek a special permit, it would not be bound by the declaration. And more fundamentally, it could very easily contain provisions that do not match the proposed site plan exactly, meaning that the DEIS would not properly reflect the development that the proposed actions would permit.

The unknowability of the restrictive declaration affects the site plan to an enormous extent. The actual build under the proposed new zoning could look like anything from a doubling of the proposed new residential build—if developers build to the maximum residential density allowed—to a massive new shopping mall—if developers build to the maximum commercial density allowed, and take full advantage of the ability to add Use Group 10 uses. Because the restrictive declaration cannot be known at this stage, the DEIS’s assumption that development beyond the site plan presented by the applicant will not occur is inappropriate. In other words,

⁵⁰ The current maximum floor-area ratio (FAR) is 3.44, though the FAR could increase to 4.0 if built to certain specifications. Zoning Res. § 23-151 (FAR maximum of 3.44 for R7 districts); *id.* § 23-153 (FAR maximum of 4.0 for R7 districts built to Quality Housing standards). *See also* DEIS at 2-5 to -6.

⁵¹ DEIS at 1-6.

⁵² Olnick’s requested rezoning is to a commercial district (C6-2) that is equivalent to an R8 for purposes of determining maximum residential density. Zoning Res. § 34-112. An R8 residential district allows for an FAR of 7.2 if built to specified standards. *Id.* § 23-153. *See also* DEIS at 2-13.

⁵³ *E.g.*, DEIS at 1-6.

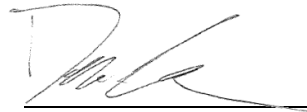
⁵⁴ The DEIS also argues that building to the full allowable density would be difficult because of zoning, setback, and parking restrictions. *Id.* at 1-11. But this provides little assurance. First, waiving these zoning restrictions is substantially easier than winning the commercial rezoning in the first place. Second, these restraints could be partially or completely overcome by design and engineering, and the DEIS provides no explanation of what the effective maximum would be.



the reasonable worst-case development scenario (RWCDS) the DEIS claims to have used as its with-action scenario is not, in fact, the maximum level of development possible should the proposed action be taken.⁵⁵ Therefore, *none* of the DEIS’s findings of no significance are based on comparison of the appropriate scenarios, and none are adequate under CEQR.

Thank you for your careful consideration of these comments.

Sincerely,



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⁵⁵ See DEIS at 1-6; *see also* Manual at 2-2 (RWCDS should “capture[] the upper range of development that would likely occur...”); *Chinese Staff and Workers Ass’n v. Bloomberg*, 896 N.Y.S.2d 588, 595 n.17 (2009) (RWCDS estimates “must be conservative.”).

