

# CITYLAND

JULY 2013

CENTER FOR NEW YORK CITY LAW

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Rendering of BAM South project's public plaza and tower. Image Credit: Two Trees Management.

### CITY COUNCIL

Rezoning/Special Permit  
Fort Greene, Brooklyn

### BAM South Cultural and Residential Tower Approved by Council

Local Council Member Letitia James reaches agreements with developers and City to increase affordable housing, preserve nearby public library. 22 Lafayette LLC and the NYC Economic Development Corporation proposed to develop a cultural and residential tower and plaza at [113 Flatbush Avenue](#) in Brooklyn. The site for development is a triangular lot bounded by Flatbush and Lafayette Avenues and Ashland Place. The lot was previously the subject of a [2007 request for proposals](#) that sought a developer to create an underground parking garage as part of the [BAM Cultural District](#); those

original plans evolved into the current proposal. The current use of the site includes a surface parking lot and a vacant one-story building. The lot is owned by the EDC and the City, and the development would be built, managed and operated by [Two Trees Management](#) in partnership with the City.

The project, known as BAM South, calls for a 16,000 square-foot public plaza and a 382-foot, 32-story mixed-use tower with a below-grade parking garage. The mixed use building would include 28,400 sq.ft. of retail and restaurant space on the ground floor, 47,000 sq.ft. of cultural space on the second through fourth floors, and 273,000 sq.ft. of residential space on the fifth through thirty-second floors. The cultural uses would include a branch of the Brooklyn Public Library, BAM cinemas, and studio and rehearsal space for [651 Arts](#). The *(cont'd on page 75)*

## San Gimignano and New York City

In the fourteenth century wealthy Tuscan families in San Gimignano built narrow, overly tall towers as a show of economic power and to defend themselves during the wars between the Guelfs and Ghibellines. Today tourists see the towers as curious, oversized stone steles. Were the descendants of those San Gimignano families to tour New York City they would feel at home in some of the new residential towers being built in Manhattan.

The [Alexico Group](#) in the mid-2000s demolished [New York Law School's](#) four story Mendik Library in anticipation of building an 820-foot tower at 56 Leonard Street at the corner of Church Street. At the same time New York Law School built a five story classroom building at the West Broadway end of the same city block. Work on the Alexico site halted for four years during the housing crisis, but has started again with a rush. Through the magic of the zoning resolution Alexico is building an 820-foot residential tower. The tower, called iconic by Alexico, will rise in twisting layouts that have cantilevered apartments projecting in dizzy cascades. The *Wall Street Journal* reported on [June 26, 2013](#) that 80 percent of the apartments in [56 Leonard Street](#) have been sold for a total of \$900 million, with the top duplex penthouse selling for \$47 million to a hedge fund manager. At that height the duplex owner will be able to send semaphore signals to the penthouse residents of the 76-story Frank Gehry-designed residential tower near City Hall at [8 Spruce Street](#). For the moment the Spruce Street residents have the pride of height.

New York City's land use policy fluctuates between "the sky's the limit" on the one hand and "preserve the neighborhood" on the other. [Tribeca](#) is mostly landmarked except for Church Street sites like 56 Leonard Street, which explains the sudden, jarring height change. The view Alexico shows to prospects is the view west that overlooks low, landmarked Tribeca to the Hudson River and the George Washington Bridge, a view guaranteed by the landmarks law. The view from within Tribeca looks more like a ground level view of San Gimignano.

Competitive tower building in San Gimignano halted when the town council decreed that no one could build higher than the 175-foot tall Palazzo Comunale. Maybe our City Council could learn a lesson from their fourteenth century colleagues.

Ross Sandler

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residential portion would include up to 402 units, 20 percent of which are planned to be affordable. The tower would occupy the north-eastern side of the triangle and was designed to preserve views of both the Brooklyn Academy of Music's Howard Gilman Opera House and the [Williamsburgh Savings Bank](#), which was designated an individual landmark in 1977.

The actions requested in the application would extend an adjacent C6-2 zoning district to replace the current C6-1 zoning. The change would accommodate more residential floor area. The applicants also seek the creation of a new special permit that would allow for increased community facility floor area and modified street wall, height, setback, and signage regulations for buildings with cultural uses within the [Special Downtown Brooklyn District](#). This action would facilitate the unique design of the building and provide more community space.

At the City Planning Commission's hearing on March 20, 2013, the two main areas of contention with the proposal targeted the design of the building, and the new library's impact on the nearby NYPL Pacific branch. Local residents testified that the building's design should be modified to preserve views from the Bank. Local organizations, including the [Park Slope Civic Council](#), and neighboring District 33 Council Member [Stephen Levin](#) contended that a new branch would lead to the close of the nearby Pacific library branch. Speakers expressed concern that the new branch would be in a heavily trafficked area, making it difficult for young and elderly patrons of the Pacific branch to access the new library's location.

The proposal was approved without modification by City Planning on April 24, 2013. City Planning stated that the project would enhance Downtown Brooklyn's cultural environment and provide needed housing in a transit-rich

area. The tower's design, massing, and location was deemed appropriate as proposed; the building's transparency and varied heights and balconies would accommodate views of the Bank and Opera House, while providing light and air to the public plaza. City Planning noted that permission to site a new library at the lot was [granted](#) in 2004 and that NYPL's plans for the Pacific branch were not within the scope of review for the current proposal.

At City Council's Subcommittee on Zoning & Franchises hearing on June 4, 2013, [Chair Mark Weprin](#) questioned Two Trees on its commitment to the community facility and cultural uses of the site. Two Trees testified that although the cultural uses like the new library branch are not part of the contract with the City, there was no other plan for that site other than the proposal presented to City Planning and the Council. Local [Council Member Letitia James](#) questioned the adequacy of the amount of affordable housing and urged Two Trees to commit to more. Council Member Levin reiterated his concerns over the fate of the NYPL Pacific branch. The Subcommittee voted to approve the proposal on June 17, 2013.

At the Land Use Committee meeting on June 17, 2013, Council Member James announced that she had reached agreements with Two Trees and the City for a commitment to make 30 percent of the residential units affordable. She also announced agreements that would ensure affordable and permanent cultural space in the building. Regarding the NYPL Pacific branch, Council Member James said that the City agreed to work with the Council and the community to preserve the branch. Council Member James led a positive vote on the proposal by the Committee. Council Member Charles Barron was the lone "no" vote, arguing that "meager attempts at affordable housing [have not] really met the need of the people in this City."

The full City Council approved the proposal on June 17, 2013.

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Council: BAM South (C 130116 ZMK – rezoning); (N 130117 ZRK – text amendment); (N 130117 ZRK – special permit) (June 17, 2013).

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## CITY COUNCIL

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### Legislation

#### Citywide

### Sidewalk Cafe Legislation: Brunch Bill Approved

*Community boards fight City Council on shortened sidewalk cafe review period.* On May 7, 2013, the City Council's Committee on Consumer Affairs held a joint hearing with the Land Use Zoning & Franchises Subcommittee to discuss proposed amendments to sidewalk cafe regulations. Introductions 875-2012, 876-A-2012, and 1039-2013 seek to expand sidewalk cafe hours and streamline the sidewalk cafe licensing and registration process.

Sidewalk cafes are licensed and monitored by the City's [Department of Consumer Affairs](#). In order to operate a sidewalk cafe, owners must first submit various documentation and fees to the DCA. Certain public safety regulations must be met and documented at this time, such as whether the proposed cafe will be on a sidewalk that is at least 12 feet wide. Applicants go through a multi-step approval and review process in order to be granted a revocable consent before a sidewalk cafe license will be issued. DCA controls and facilitates the process; sending the revocable consent petition to various City entities for discrete review periods. The petition is first sent to the City's Department of City Planning, Department of Environmental Protection, and the Landmarks Preservation Commission if applicable. From there, the petition is then sent to the local community board, then back to DCA, and then on to the City Council. Each entity is entitled to hold its own public hearing on the

petition and recommend approval, approval with modifications, or denial. Finally, the petition is sent to the [Mayor's Office of Contract Services](#) for review and approval. When a revocable consent is granted, DCA will issue the sidewalk cafe a license to operate.

The sidewalk cafe license renewal process is similar to the new application process. Both the license and the revocable consent expire every two years. While the renewal goes through the revocable consent review and approval process, DCA will issue the sidewalk cafe owner a temporary operating letter in lieu of a license until the revocable consent is granted. Sidewalk cafes that operate without a license or temporary operating letter or in violation of the revocable consent terms may be fined or eventually sealed by DCA.

[Introduction 875](#), proposed by Council Member [Daniel R. Garodnick](#), Council District 4 (Manhattan), would allow sidewalk cafes to

open and operate on Sundays starting at 10:00 A.M. The current law prohibits sidewalk cafes from operating before noon on Sundays.

[Introduction 876-A](#), also proposed by Council Member Garodnick, would clarify and stagger the timeframe in which licenses and revocable consents are renewed. The bill would set a two-year term for licenses and a term of no less than four years for revocable consents. Additionally, a revocable consent expiration could not be dated earlier than six months after a license expiration date. The purpose is to ensure that the two renewals needed to continue operation of a sidewalk cafe do not create a burden on applicants with overlapping processes. The City Council noted that because DCA will not issue a license renewal until the revocable consent is granted, some sidewalk cafe owners have been fined for operating without a license while the revocable consent petition is under review. Therefore,

the bill would ensure that a sidewalk cafe owner is not treated as an unlicensed operation during the revocable consent review process if the applicant has submitted a complete petition to renew, the owner previously held a valid license to operate, and the owner is in compliance with the terms and conditions of the previous revocable consent.

Intro. 875-2012, which will allow restaurants to open at 10am on Sundays, was passed by the City Council on June 26, 2013.

.....  
Council: Intro. 875-2012 (May 7, 2013); Intro. 876-2012 Version: A (May 7, 2013).

## LANDMARKS PRESERVATION COMMISSION

### Designation

Woodhaven, Queens

### Carousel Designated as "Compelling Artifact of an Earlier Era"

*Forest Park Carousel is one of two remaining examples of the work of German immigrant wood-carver. On June 11, 2013, the Landmarks Preservation Commission held a hearing on the potential designation of the [Forest Park Carousel](#) in Queens' [Forest Park](#) as an individual City landmark. The original carousel at the site burned in 1966. The current carousel, built in 1903, was located and purchased from a Connecticut architect in 1971. The carousel again closed in 1985, and was restored in 1990. Murals by Queens artist [Jonathan Lev](#) were added in 2002.*

All but three of the carousel's 52 figures are believed to have been carved by the Philadelphia-based wood-carver [Daniel Muller](#). A German immigrant, Muller trained at the [Pennsylvania Academy of the Fine Arts](#), and is thought to have crafted figures for twelve carousels in his lifetime, of which the Forest Park Carousel is one of only two that remain. The other remaining carou-



The Odeon's unenclosed sidewalk cafe, 145 W. Broadway, Manhattan. *Image Credit: CityLand.*



The Forest Park Carousel in Forest Park, Queens. Image Credit: LPC.

sel is in Cedar Point, Ohio.

John Krawchuk, Director of Historic Preservation for the City's Department of Parks & Recreation, voiced support for the proposed Landmarking. He added to Landmarks' description by noting that the carousel was originally commissioned in Lowell, Massachusetts. Krawchuk called the carousel "a treasured amenity" that has entertained generations. He further noted that operation of the carousel had recently been awarded to a new concessionaire, who appreciated the ride's history and aesthetics, and planned work to "enliven" the site, and treat it as "a major historical attraction."

The Society for the Architecture of the City's Christabel Gough, testified in support and called the carousel "a revolving menagerie of early 20th-century woodcarvings." The [Historic Districts Council's](#) Nadezhda Williams stated that, if designated, the carousel would join Coney Island's [Wonder Wheel](#) and the [Cyclone](#) in the unique category of individual landmarks that also functioned as operating amusement rides. Council Member [Elizabeth Crowley](#) said that the preservation was in the community's best interest, and called the carousel "different from any other object or building."

Chair Robert B. Tierney noted that the Commission had received letters in favor of designation from, among others, the Queens Preservation Council, Greater Woodhaven Development Corporation, the [Rego-Forest Preservation Council](#), and [Queens Borough President Helen M. Marshall](#). Tierney read a letter from former council member and chair of the Land Use Committee [Melinda Katz](#), who had long been an advocate for the carousel's preservation, which called the ride a "beautiful, entertaining attraction in Forest Park since 1973."

The Carousel came before Landmarks again on June 25, 2013 for a vote on designation. Chair Tierney noted that the carousel was a very different type of structure than the vast majority of individual landmarks, and the commission entered into the consideration carefully. Tierney determined however, that the unique qualities of the carousel merited the exceptional step, and recommended a vote for designation. Commissioner Fred Bland found the carousel to represent an "extraordinary historical connection with the past," as did Commissioner Michael Goldblum, who called it "a completely compelling artifact of an earlier era." Commissioner Michael Devonshire found the carousel to be "a work of art," and commended

Parks for their support of designation and willingness to maintain the landmark.

Commissioners voted unanimously to designate the carousel.

.....  
LPC: Forest Park Carousel, Forest Park, Queens (LP-2528) ([June 11, 2013](#)).

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## LANDMARKS PRESERVATION COMMISSION

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Designation

Upper West Side, Manhattan

### 220-Property Extension to West End-Collegiate Historic District Approved

*Commissioners voted unanimously to approve district two years after initial hearing, though split on the inclusion of modern apartment complex.* On June 25, 2013, the Landmarks Preservation Commission voted to approve an extension to the [West End-Collegiate Historic District](#), encompassing 200 buildings. The extension more than doubles the size of the previously designated district, and lies to the north and to the south of the original district, between 70th and 79th Streets, and Riverside Drive and Broadway. The district is primarily residential, characterized by rowhouses and apartment buildings built in the period between the 1880s and the 1930s.

The first wave of development in the area saw the construction of single-family rowhouses, constructed in brownstone, limestone, and brick in a variety of architectural styles, including Beaux-Arts, Queen Anne, Renaissance Revival, and Romanesque Revival. In the 1890s, as apartment living lost its stigma among the upper class, the neighborhood saw the construction of several "French flats" or small, multi-family dwellings. Through the turn of the century to the turn of the 1930s, elevator apartment buildings dominated new construction.

At the June 28, 2011 hearing, designation was supported by Bor-



ough President Scott M. Stringer, State Senators [Thomas Duane](#), [Bill Perkins](#), and [Adriano Espaillat](#), Council Member [Gale Brewer](#), and Manhattan Community Board 7. Preservationist groups that testified in support included the [Historic Districts Council](#), the [New York Landmarks Conservancy](#), [Landmark West!](#), and the [West End Preservation Society](#). Numerous residents also spoke in favor of designation.

Opposition came from the [Real Estate Board of New York's](#) Michael Slattery, who argued that the proposal represented an “unwarranted broad brush approach” to designation. Some individual property owners opposed the inclusion of their buildings in the district.

At the meeting, commissioners debated whether to include a certain structure which the owners had asked Landmarks to carve out of the district. Commissioners were divided on the inclusion of [285 West End Avenue](#), a 1949 apartment complex on the district’s border. The owner had requested the

excision of the property, and Landmarks’ Research Department recommended that it be included as an example of mid-century modern residential architecture. Commissioner Margery Perlmutter found the structure “effectively a no-style building” that could be removed, and Commissioner Fred Bland concurred that its absence would not compromise the district. Commissioner Libby Ryan argued that Landmarks would be “short-sighted” to omit the building because it was not of the same period as the rest of the district, and that it was clearly “intentionally designed.”

The owners of a 1941 apartment building at [300 West 72nd Street](#) asked that their building be classified as “no style” in Landmarks’ designation report, while the Research Department recommended it be identified as “Moderne.” Commissioner Michael Goldblum said of the building that it was “clearly of a style” but wondered if a note could be made in the designation report to make it easier for applicants to

modify the building. Commissioners Perlmutter and Bland found a no-style designation appropriate.

The commission ultimately voted to designate the district as it was heard, without modifications. In voting for designation, Commissioner Roberta Washington called the district “a cohesive architectural community,” and Commissioner Bland called it “an extraordinary group of buildings.” Commissioner Goldblum found the district to merit designation for its “defined character” that was “unique to New York.” The vote for designation was unanimous.

.....  
LPC: West End-Collegiate Historic District Extension, Manhattan (LP-2462) ([June 25, 2013](#)).

## LANDMARKS PRESERVATION COMMISSION

Designation

Harlem, Manhattan

### Author Ralph Ellison’s Former Riverside Apartment Complex Designated

*Residents, local cultural organizations, and preservationists testified in support of designation of ornate Arts & Crafts-style apartment build-*



The Beaumont Apartments, 730 Riverside Drive, Manhattan. *Image Credit: LPC.*

## New York City's Parking Odyssey: A Play in Several Acts

Traffic congestion in 2013 stems in large part from how the City has allocated street space among motorists, pedestrians, bicyclists, CitiBike stations, pedicabs, and horse-drawn carriages. While changes to address street space allocations can be anticipated, the logic and purpose of the allocations have changed over time.

### Act I – Suffocation on the Streets

Facing public streets “choked” with cars, the City in 1950 amended the 1916 Zoning Resolution to require developers of residential buildings to provide off-street parking. In approving this controversial amendment, City Planning Commission Chairman Jerry Finkelstein silenced opponents of the proposal, noting: “The policy of this Commission is and will continue to be: Get parked cars off the City’s streets. . . We wouldn’t have the congestion today in Manhattan and Brooklyn, if this amendment had been made law 25 years ago.”

The 1961 Zoning Resolution maintained the concept of keeping parked cars off of the City’s streets. A minimum number of off-street parking spaces were mandated for new multiple dwellings depending on the number of units in the building. In addition, parking garages with less than 150 spaces were permitted in most areas on an as-of-right basis.

### Act II – A Breath of Fresh Air?

In response to the federal Clean Air Act, and under pressure to demonstrate how it would comply with carbon monoxide and other air quality standards, the City in 1982 adopted sweeping new zoning rules to manage off-street parking in the area below West 110th Street and East 96th Street in Manhattan (the Manhattan Core).

Enacted in conjunction with the 1982 Midtown Zoning, these new regulations eliminated the requirement for parking in residential buildings and made the provision of parking optional at the developer’s choice. A distinction was drawn between “accessory parking,” which was primarily for the use of the occupants of and visitors to a particular building, and “public parking,” which could be used on a transient basis by any member of the public. Strict limits on the number of permitted accessory parking spaces were imposed and public parking facilities required a special permit.

The City’s rationale behind the 1982 amendments was that, over time, a reduction in the number of available parking spaces would result in fewer vehicle trips within and to Manhattan, thereby reducing air pollution. The City assumed that most

people, when faced with the inconvenience and expense of finding a parking space, would switch over to mass transit.

### Act III – Shifting Lanes

A [2011 comprehensive parking study](#) of the Manhattan Core undertaken by City Planning showed that the total off-street parking supply below 60th Street decreased from approximately 127,000 public parking spaces in 1978 to 102,000 spaces in 2010. This decrease was primarily as a result of the redevelopment of public parking facilities into other uses.

The study also revealed a new trend in automobile and parking usage in the City. Manhattan-bound commuters and other visitors exhibited a trend toward using mass transit over cars more than in 1982, whereas higher-income (i.e., car owning) residents in formerly peripheral neighborhoods such as Tribeca and the Far West Side began increasingly using public parking facilities.

As a result of the shrinking supply and changing usage of public parking, many accessory garages became de facto public parking garages, readily accepting transient parkers, catering especially to residents looking for a parking space close to home. The illegal use of accessory parking spaces for public garages was extremely difficult to enforce.

In response, the City recently enacted the [Manhattan Core Parking Text Amendment](#). Rather than create a controversial new rule or a sweeping policy change, the amendment conforms the zoning rules to reality by allowing public parking in accessory residential garages, subject to a right of recapture by building residents if there are insufficient spaces in the garage to meet their needs.

### Act IV – The New Congestion

The 1982 restrictions on off-street parking, together with emission standards, the price of gasoline, and improved mass transit cumulatively allowed the City to meet the Clean Air Act standards. Now, with automobile-generated air pollution under control, an emerging planning issue is the conflict between uses of the streets.

The Zoning Resolution already addresses, on a limited basis, some aspects of this conflict, for example, by mandating pedestrian circulation improvements for major projects in Midtown, the Hudson Yards, and Lower Manhattan. In addition, the Resolution requires that projects adjacent to subway entrances located on the sidewalk relocate those entrances to within the property line.

*(cont'd on page 80)*

### New York City's Parking Odyssey: A Play in Several Acts

The newest concept for improving pedestrian conditions in Midtown, while encouraging growth, is found in the proposed [East Midtown Rezoning](#), which is currently undergoing ULURP review. Under this proposal, the City could sell additional floor area to developers in exchange for cash payments to a District Improvement Fund, which would in turn devote the funds to pedestrian improvements. The wisdom of this approach is questionable. If density can be sold

for pedestrian improvements, then it can be sold for any improvements that government cannot or does not want to pay for. This approach should be viewed with caution.

— Howard Goldman & Eugene Travers

*Howard Goldman is a partner at GoldmanHarris LLC, a New York City land use firm. Eugene Travers is an associate at the firm.*

*ing; owners deny any architectural significance.* On June 18, 2013, the Landmarks Preservation Commission held a hearing on the potential individual landmark designation of the Beaumont Apartments, at [730 Riverside Drive](#) at the corner of 150th Street, in Harlem. The building was constructed in 1912-1913 to the designs of George and Edward Blum, French-born architects specializing in apartment buildings. The eleven-story structure features a wide array of decorative brickwork and terra cotta ornament above its two-story limestone base, including foliated terra-cotta bandcourses and octagonal panels with birds in high relief. U.S. Representative Jacob Javits and singer Marian Anderson were tenants of the building, and Ralph Ellison, author of *Invisible Man*, was also a long-time resident.

Tenant John Martin Green testified that “history fairly oozes through both the structure and the legacy of the Beaumont,” and argued for an understanding of the building as a smaller-scale relation of such grand apartment buildings as the [Dakota](#) and the [Ansonia](#). Green alleged that previous owners had removed wrought-iron balconies, and destroyed terra-cotta detailing, and that the current owners had filed applications with the Department of Buildings for further demolition. Christabel Gough, of the Society for the Architecture of the City, noted that at the time of the Beaumont’s construction, the neighborhood was still a “romantic outpost” of the City,

occupying the former estate of John James Audubon and was near the recently established campus of Columbia University. Author Thomas Wirth testified that the property was once owned by Edward Atkinson, a lover of Countee Cullen, an American poet and an active figure in the Harlem Renaissance.

At the well-attended hearing, John Reddick, of the [Ralph Ellison Memorial](#) Committee, urged Landmarks to “advance the designation...immediately.” Dale Dobson, who had known Ralph Ellison while growing up in the Beaumont, said that the Ellison family would have attended the hearing “with bells on” to support designation were they still alive, and added that designation was important to preserve the context of the memorial. Landmarks Chair Robert B. Tierney stated that [Council Member Robert Jackson](#) had communicated his support for designation to the commission, calling the building “a Harlem treasure.” The Historic Districts Council is also in favor of designation.

Attorney Scott Maslin, speaking on behalf of the owners, 730 Riverside Owner, LLC, spoke in opposition to designation, saying the building lacked special character or historical or aesthetic interest. Maslin stated that the Blums’ work was considered “conventional,” and that there were many other similar apartment buildings in the area. Maslin said the owners did not intend to demolish the facade, but wanted to make the building “the

best living environment for our tenants as possible.” He also said Landmarks was an improper forum for tenants to voice their frustrations.

Just one week after holding a public hearing, Landmarks reconvened on the issue on June 25, 2013, and unanimously voted to designate the Beaumont Apartments as an individual City landmark. Commissioner Libby Ryan called the building “a spectacular landmark.” Commissioner Margery Perlmutter selected as noteworthy the exuberant “textile-like” facade ornamentation which she said “still retains its elegance.” Commissioner Michael Devonshire also praised the architecture of the building, calling it one of the Blums’ best works, “as if the social history wasn’t important enough” to merit designation.

The vote was met by applause and tears from designation proponents in the audience.

.....  
LPC: The Beaumont Apartments, 730 Riverside Drive, Manhattan (LP-2545) (June 18, 2013).

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### LANDMARKS PRESERVATION COMMISSION

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Designation

Upper West Side, Manhattan

#### Catholic Church Designated Despite Church Representative Opposition

*Medieval Revival-style Catholic Church served as home for the Paulist Fathers.* On June 11, 2013, the

Landmarks Preservation Commission held a hearing on the potential designation of the [Church of St. Paul the Apostle](#), at [8 Columbus Avenue](#) in Manhattan. The church, at the corner of 60th Street, was primarily constructed during the period between 1875 and 1885. The upper parts of the church's two imposing towers were completed in 1900, and a decorative bas-relief mural was installed over the church's entrance in 1959. Landmarks initially considered the church for designation in 1966, but no action was taken at the time.

The church was commissioned by the Missionary Society of St. Paul the Apostle, known commonly as the Paulist Fathers. The order was established in 1858, with the goal of serving as missionaries to Protestant Americans. The group's initial Upper West Side parish soon proved inadequate, and a new church was commissioned. Architect Jeremiah

O'Rourke, based in New Jersey, conceived the design for the church but was replaced on the project by Paulist priest George Deshon in the early 1880s. The building is faced in granite, some of it salvaged from other Manhattan structures.

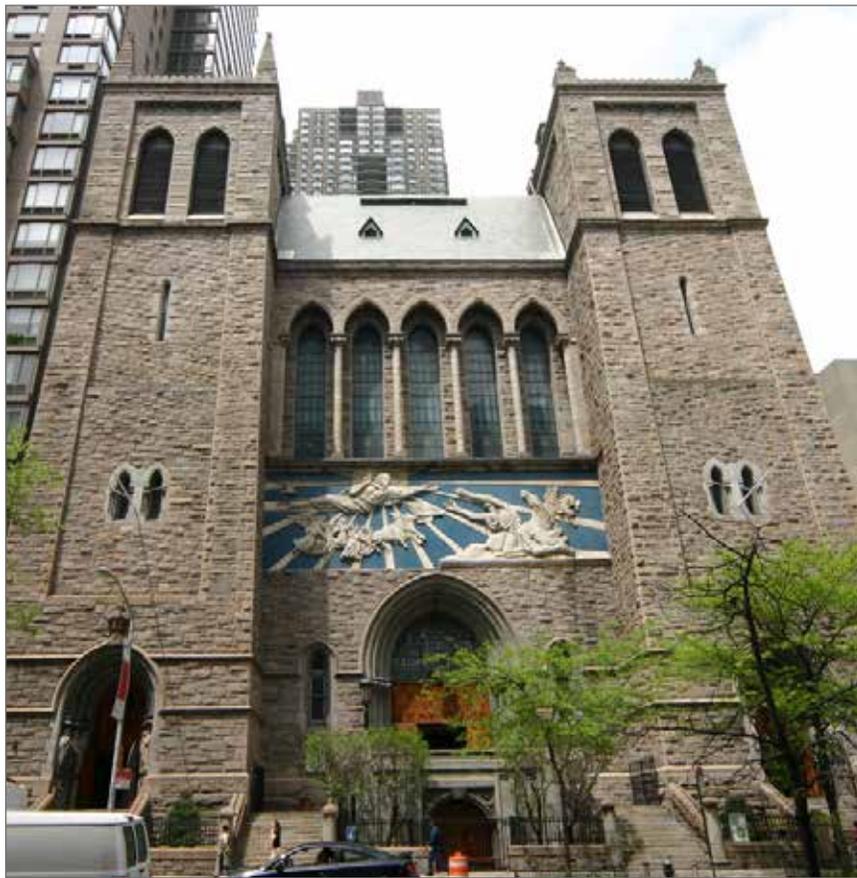
In the early 1970s, facing bankruptcy, a proposal to demolish the church and replace it with a residential development was considered. Ultimately, however, the church only sold its development rights, and a portion of its lot. The church has recently been undergoing a major restoration.

A representative of [State Senator Brad Hoylman](#) read a statement urging swift designation of "this extraordinary piece of our heritage." He stated that "in the context of rapid urban development on the Upper West Side ... it is time for LPC to act." A representative of [Manhattan Community Board 7](#) also spoke in support of designation of the neigh-

borhood's "calming anchor," which she said had long been known as a significant structure worthy of preservation. Rachel Levy of [Landmark West!](#) said the church's architecture evoked "a sense of solidity and strength," and said that designation should have taken place before the church could sell its air rights. The [Historic Districts Council's](#) Nadezhda Williams, noted that though the interiors of religious structures are ineligible for landmarking, the church contained the work of a "who's who array of Gilded Age New York artists," including Augustus Saint-Gaudens. Chair Robert B. Tierney stated that local [Council Member Gale A. Brewer](#) also communicated her support of designation to Landmarks.

Diane Macon, business manager for St. Paul the Apostle, spoke in opposition to landmarking, arguing that it would add to the church's financial burden at a time when "contributions are dwindling." She asked that the record be held open so that the pastor, [Father Gilbert S. Martinez, CSP](#), could submit a statement detailing the church's opposition to the designation. Chair Tierney agreed to hold the record open for seven days, and closed the hearing without commissioner comment.

On June 25, 2013, Landmarks voted to designate the church an individual City landmark. Commissioner Margery Perlmutter, who called the church "a very remarkable structure," took the opportunity to expound on the church's recovery from near-bankruptcy in the 1970s through the sale of its air rights. Perlmutter called the availability of salable development rights "a fantastic preservation tool." Commissioner Christopher Moore found the building to possess a "fascinating history." Commission Libby Ryan drew attention to the fact that a significant work of art – the bas-relief mural – was added to the building long after its initial construction, and that Landmarks should remain



Church of St. Paul the Apostle, 8 Columbus Avenue, Manhattan. Image Credit: LPC.

open to such modifications.

The vote for designation was unanimous.

.....  
LPC: Church of St. Paul the Apostle, 8 Columbus Ave., Manhattan (LP-2260) ([June 11, 2013](#)).

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## LANDMARKS PRESERVATION COMMISSION

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Designation

Financial District, Manhattan

### Marine Midland Bank Designated Following Two Public Hearings

*Preservationists turned out to support designation of mid-century modern bank building.* On April 2, 2013 and May 14, 2013, the Landmarks Preservation Commission heard testimony on the potential designation of the Marine Midland Bank building at [140 Broadway](#) in Manhattan's Financial District. The building was designed by the Gordon Bunshaft-helmed firm of [Skidmore, Owings & Merrill](#), and exemplifies mid-century modernism in its unadorned curtain walls of black aluminum and bronze-tinted glass, and trapezoidal form. The building is offset by a sculpture by artist Isamu Noguchi, a 28-foot-tall red cube balanced on a corner. The building primarily housed financial-services industry offices, and was named for one of its principal tenants, the Marine Midland Grace Trust Company. As of 2010, the primary building tenant is Brown Brothers Harriman. The 49-story structure was calendared by Landmarks on November 20, 2012. (See *CityLand* coverage [here](#)).

On April 2, 2013, supporters of designation included the [Historic Districts Council's](#) Nadezhda Williams, who noted that the tower was one of the first tall structures to be built under the [1961 zoning resolution](#), and that its design was "almost the definition of minimalism." John Arbuckle, of [Docomomo](#), an organization that advocates for modern



The Marine Midland Bank building.  
Image Credit: LPC.

movement architecture, stated that "the public sidewalks along all four sides...allow its crisply geometrical volume to be appreciated as an elegant freestanding structure." Andrea Goldwyn, from the [New York Landmarks Conservancy](#) also [testified](#) on behalf of designation, and New York University Professor Carol Krinsky submitted a written statement which called the building's architecture "unprecedented at the time of its construction." Fried Frank attorney [Carol Rosenthal](#) asked Landmarks not to close the hearing, but reopen it a later date so that the owners might offer testimony. Chair Robert B. Tierney agreed.

When the hearing continued on May 14, 2013, General Property Manager Cliff Parker testified that the company was "pleased to support designation," and praised the building's "distinctive design" and "beautiful integration" with the Noguchi sculpture. Parker further stated that a landmark "cannot be separated from its need to continue performing as a strong and economically sound real estate asset." He said "we look forward to a productive working relationship" with Landmarks to maintain the

building. Carol Rosenthal testified that the owners requested that they retain flexibility regarding signage, and that they also intended to create a new entrance. She also claimed the building's "visual integrity" was threatened by street vendors who crowded the plaza, and hoped to work with Landmarks to resolve the issue. Preservation consultant [Bill Higgins](#), also retained by the owners, said that activity in the plaza "almost destroys the character of what you see and what was intended to be seen."

Chair Tierney said he also looked forward to a productive relationship with the building's owners, and said he deeply appreciated "the attitude and approach" of the representatives who testified.

At its June 25, 2013 meeting, Landmarks voted in favor of designating the Marine Midland Bank. Commissioner Libby Ryan said "not only is it an incredible building," but its setting in the plaza was an important part of its significance, and Landmarks must "ensure that it stays that way." Commissioner Michael Devonshire praised the building's "sober elegance." Commissioner Margery Perlmutter found the bank building to be one of the "icons" of mid-century Modernist tower architecture, along with the [Seagram Building](#) and [Lever House](#).

Commissioners voted unanimously to designate the building.

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LPC: The Marine Midland Bank Building, 140 Broadway, Manhattan (LP-2533) (April 2, 2013; May 14, 2013).

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## LANDMARKS PRESERVATION COMMISSION

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Designation

Lower East Side, Manhattan

### Seward Park Library Designated

*Testimony supporting designation of 1909 library focused on institution's importance to generations of Lower East Side's immigrant communi-*

ties. On April 2, 2013, the Landmarks Preservation Commission held a public hearing on the potential landmark designation of the [Seward Park branch](#) of the New York Public Library. The branch, located at [192 East Broadway](#), is a Renaissance Revival building that was completed in 1909 to designs from the firm of Babb, Cook & Welch. The library was one of 67 built in the City between 1902 and 1929 with funds provided by Andrew Carnegie. The three-story building is clad primarily in red brick, with limestone trim and a rusticated limestone base. A weathered copper railing stands above the building's modillioned cornices and originally enclosed a unique open-air reading room on the roof, which is no longer in use.

The library originally possessed a large Yiddish-language collection, and served as a center for Jewish cultural life in the City. As successive waves of immigrants groups made their home in the Lower East Side, the library expanded its collection to include Chinese and Spanish texts.

Numerous community members, representatives of local organizations, and preservationists spoke at the hearing. Christabel Gough, of the Society for the Architecture of the City, called the library an exam-

ple of "New York's small civic buildings" that are "the legacy of a more just and intellectually honest society that existed in this City a hundred years ago." Linda Jones, speaking on behalf of the [Seward Park Preservation and History Club](#), said the history and architecture of the Seward Park branch was an "important part of the library experience." A representative of the [Bowery Alliance of Neighbors](#) urged swift designation, and noted that the library was listed on the National Register of Historic Places.

Area resident Rima Finzi-Strauss said it was important to ensure the library's protection as "one of the few remaining reminders of the unique history of the Lower East Side" in light of "all the tremendous real estate changes happening in our immediate neighborhood." Neighborhood resident Judith Prigal testified that the library, "aside from its architectural merits, has also had an important place in the history and lives of the people in its community." The library was a place where her father, along with many other immigrants, were able to study English. Another resident described the library as the neighborhood's "epicenter for immigrants and language learners."

Members of the [New York Landmarks Conservancy](#), the [Friends of the Lower East Side](#), and the [Historic Districts Council](#) also offered testimony urging Landmarks to designate the property.

Landmarks voted to designate the Seward Park Branch at its June 25, 2013 meeting. Chair Tierney praised the building both for its architecture and for its adaptation to the shifting population in the Lower East Side throughout its history. Commissioner Michael Devonshire noted that one could see the "luxury" of Babb, Cook & Welch's mansion architecture in the building. Commissioner Michael Goldblum addressed its relationship to the park, which he said was the first planned playground in the City. Commissioner Fred Bland observed that the library integrated "everything that represents New York."

Commissioners voted unanimously in favor of designation.

LPC: New York Public Library, Seward Park Branch, 192 East Broadway, Manhattan (LP2531) (April 2, 2012).

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## LANDMARKS PRESERVATION COMMISSION

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### Designation Hearing

Greenwich Village, Manhattan

### No Opposition to South Village Designation Proposal

*Proposed historic district would encompass approximately 250 buildings south of Washington Square Park.* On June 25, 2013, the Landmarks Preservation Commission held a hearing on the proposed [South Village Historic District](#). The proposed district is roughly bounded by Washington Square to the north and Houston Street to the south, between Sixth Avenue and LaGuardia Place. The proposed district is comprised of approximately 250 buildings, primarily residential, though also includes commercial and institutional structures.

The first major wave of de-



New York Public Library, Seward Park branch, 192 East Broadway, Manhattan. *Image Credit: LPC.*



Map of proposed South Village historic district. Image Credit: LPC.

velopment in the area took place during the 1820s and 1830s, as the City expanded northward. Several Federal and Gothic Revival-style rowhouses remain from this era as an upscale residential community. In the 1850s, immigrants began to populate the area, as wealthier citizens migrated further uptown. Rowhouses were converted into multi-family dwellings, and the area saw the construction of the first tenement buildings. Tenements remained the dominant building type throughout the 19th century, and were built in a variety of styles, including Italianate, Neo-Grec, Queen Anne, and Renaissance Revival. By the early 20th century, the neighborhood was largely Italian and the focal point of Italian-American culture. In the 20th century, the neighborhood became a center of bohemian life in the City, with multiple music venues, cafes, theaters, and a thriving gay community.

State Senator [Brad Hoylman](#) attended the hearing to voice his support for designation of the dis-

trict, which he called an “epicenter of early lesbian, gay, bisexual and transgender life in the City,” as well as a “hotbed of political and social revolution.” A representative of Council Speaker [Christine Quinn](#) urged Landmarks to designate the district as presented. A representative of Assembly Member [Deborah Glick](#) said the district was “full of rich architectural and cultural history,” and urged Landmarks to move swiftly on designation.

Executive Director of the [Greenwich Village Society for Historic Preservation](#) Andrew Berman said the proposed district was “one of the most important places manifesting evidence of our nation’s last great wave of immigration in the 19th and early 20th centuries.” Berman also noted its artistic significance as the home of the Provincetown Playhouse and performances by such figures as Bob Dylan and Lenny Bruce. Simeon Bankoff, of the [Historic Districts Council](#), said the “architectural mélange works hand-in-hand with the immigrant

history of this district,” and that the neighborhood served as a “palimpsest” on which successive waves of “outsider populations” have repurposed to their own ends. Resident Anita Isola said the district “represents Italian and Italian-American history” and, that if not protected by landmarking, developers “are ready to swarm down like locusts.” Other residents expressed concern about inappropriate development in the neighborhood, and pressed Landmarks not to excise New York University’s Vanderbilt Hall, at [40 Washington Square South](#), from the district, so that the university could not replace it with a tower.

There was no testimony in opposition to designation. A date has not been scheduled for a vote on designation.

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LPC: Proposed South Village Historic District, Manhattan (LP-2546) ([June 25, 2013](#)).

## LANDMARKS PRESERVATION COMMISSION

Designation Hearing

Union Square, Manhattan

### Wide Support Expressed for Designation of Former Tammany Hall

*Speakers largely emphasized the role of Tammany in New York City’s social and political history.* On June 25, 2013, the Landmarks Preservation Commission held a hearing on the potential designation of the former Tammany Hall, at [100 East 17th Street](#) off of Union Square, as an individual City landmark. Landmarks [calendared the building](#) on May 14, 2013. The building was Tammany’s second headquarters, replacing a meeting hall on 14th Street. Built at the height of the political organization’s power in 1929, the neo-Georgian building’s design was inspired by Federal Hall in Manhattan and Thomas Jefferson’s Monticello in Virginia. After Mayor Fiorello LaGuardia came to power, Tamma-

ny's fortunes ebbed, and it sold the building to the International Ladies' Garment Workers' Union. In the 1980s the building was converted to an off-Broadway theater, and is currently home to the New York Film Academy. Margaret Cotter, speaking on behalf of the owners, Liberty Theaters Inc., testified that the owner would not oppose designation, and looked forward to working with Landmarks going forward.

Representatives of numerous elected officials spoke at the hearing in favor of designation, including Council Member [Rosie Mendez](#), who said there was "a groundswell of community support" for landmarking. A representative of Assembly Member [Richard N. Gottfried](#) stated that Tammany played a major role in State and national politics, and that, for better or for worse, New York City's history would be "markedly different" without Tammany Hall. A representative of Manhattan Borough President [Scott M. Stringer](#) testified in support of designation, but said Landmarks' regulation must allow for future adaptive reuse of the building. A representative of State Senator [Liz Krueger](#) called the building "one of the City's treasures." A representative of Manhattan Community Board 5 said the

board had voted unanimously in support of designation in 2009, and continued to favor landmarking.

Jack Taylor, speaking for the [Union Square Community Coalition](#), presented a WPA photograph of throngs crowding Union Square on May Day in 1939, and noted that the building played a large role in the labor history of the City. Taylor said of Tammany that it was "the most storied, and corrupt, urban political machine in American history," and stated that "we hope that the days are long gone when we deny our past, even if it represents unfortunate aspects of our political present." [James S. Kaplan](#) spoke on behalf of the National Democratic Club and the McManus Midtown Democratic Club, disputed the negative characterization of Tammany, arguing that the organization promoted progressive social welfare legislation, and served the interests of the urban immigrant poor. One area resident suggested that the building be converted to a political corruption history center.

Representatives of the Historic Districts Council, the New York Landmarks Conservancy, and the [Gramercy Neighborhood Associates](#) also encouraged Landmarks to swiftly designate the structure.

A date has not been scheduled for a vote on designation.

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LPC: Tammany Hall, 100 East 17th Street, Manhattan (LP-2490) ([June 25, 2013](#)).

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## LANDMARKS PRESERVATION COMMISSION

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Advisory Report  
DUMBO, Brooklyn

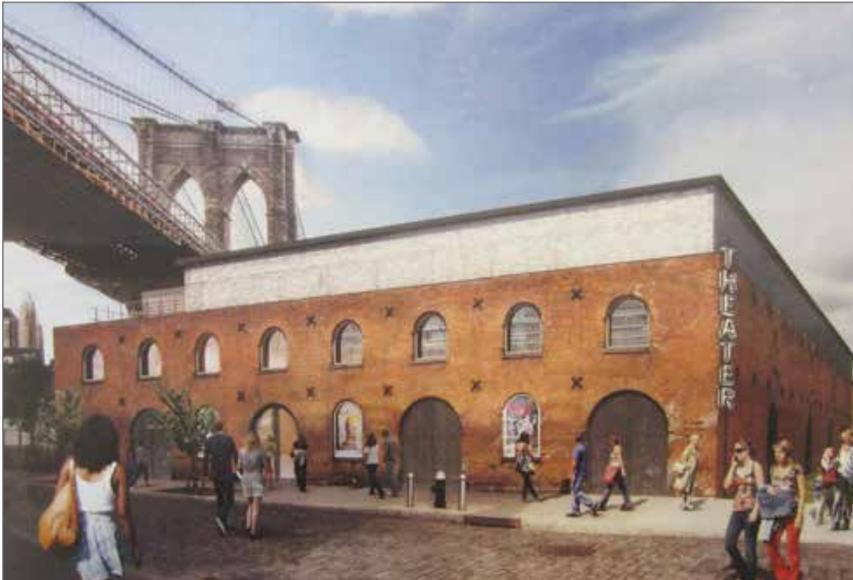
### 19th-Century Warehouse to Theater Conversion Wins Landmarks Endorsement

*Commission heard testimony from those who opposed significant alterations to preserved ruin, and those who wished to see structure used as cultural space.* On June 4, 2013, the [Landmarks Preservation Commission](#) voted to issue a favorable advisory report following a hearing on a proposal to convert the stabilized ruins of a tobacco warehouse into a theater and community facility space. The structure stands at [45 Water Street](#) in the [Empire Fulton Ferry Park](#) within the [Fulton Ferry Historic District](#), near the Brooklyn Bridge. The structure, listed on the National Register of Historic Places in 1974, was stabilized by the National Park Service, which removed the collapsing roof from the dilapidated building, and opened it to the public.

In 2011, a coalition of civic groups and preservationists [won a lawsuit](#) after the National Park Service wrongly excluded the structure from the park's boundaries on the request of the New York State Office of Parks, Recreation, and Historic Preservation in order to convey the land and warehouse to the [Brooklyn Bridge Park Development Corporation](#). The District Court decision pointed out that the Parks Department must go through a formal conversion process, in which the excised land has to be replaced with suitable land of equal or greater value. The conversion process has not yet concluded. The government still



Former Tammany Hall at 100 East 17th Street, Manhattan. *Image Credit: LPC.*



Rendering of proposed St. Ann's Warehouse theater in Brooklyn's Tobacco Warehouse.  
Image Credit: Rogers Marvel Architects.

intends to convey the property to the Brooklyn Bridge Park Development Corporation, which [awarded](#) a contract to the [St. Ann's Warehouse](#) theater company to convert and occupy the space after issuing a request for proposals in 2010.

At the hearing, Brooklyn Bridge Park Development Corporation President Regina Myer testified that the adaptive reuse of the tobacco warehouse had long been part of the park's plans.

Architect Jonathan Marvel, of [Rogers Marvel Architects](#) presented the plan, which would house a theater, community space, and an enclosed publicly-accessible planted triangle. Marvel said the design team was well aware that the warehouse was "beloved" in the neighborhood, and they approached the project "gingerly." At the same time, Marvel said "we don't want this building to be an eternal ruin." He said the project would allow the building to become a place known to theatergoers throughout the world.

A new one-story clerestory of glass brick, topped by an aluminum cornice, and set back from the existing brick would be constructed above the existing walls of the tobacco warehouse. A bulkhead set back from the facade would house

office space and mechanical equipment. The theater would seat 200 to 700 people, depending upon the needs of the event. The building would also house a 100-seat community space. Marvel emphasized that neither the exterior or interior brick would be painted, and that they sought to retain the "rawness" of the existing warehouse. Marvel said the materials presented were inspired by the transparency of the ruin and the industrial architecture of the area.

A corridor through the building would remain open when the theater is not in use, to maintain the "porosity" of the ruin. Windows and entrances would be installed in existing openings. A small portion of the roof would be visible from the Brooklyn Bridge.

An open-lettered "St. Ann's Warehouse" sign designed by [Tom Fruin](#) would be installed on the roof facing the public triangle. A vertical "theater" sign would be installed at the building's corner on Water Street. Removable panels inside the structure would allow for the darkening of the interior at all times and the glass brick would be illuminated by LED lights behind the glass at night.

Andrea Goldwyn, of the [New](#)

[York Landmarks Conservancy](#), argued that it was premature for Landmarks to consider the application before the conversion process was complete, and asked the commission to refrain from voting on the application. Goldwyn also stated that any new construction at the site should be reversible. The Society for the Architecture of the City's Christabel Gough criticized the proposed design, and said it "avails itself of every square foot of usable space, without differentiating the ruin from the theater, or the new use from the old." Gough urged a "more respectful, less utilitarian" proposal. Doreen Gallo, of the DUMBO Neighborhood Alliance, also spoke in opposition. She noted that Brooklyn's industrial waterfront had been listed as an endangered site by the [National Trust for Historic Preservation](#), and that the community desired the tobacco warehouse's preservation as "an urban ruin." Representatives of the [Historic Districts Council](#), the [Brooklyn Heights Association](#), and the Fulton Ferry Landing Association also testified in opposition to the proposal.

A representative of the [DUMBO Improvement District](#) spoke in favor of the application and said the theater would be a "stunning reuse of the space." A resident said that garbage tended to pile up in the existing open structure, frequently making it "look like a dump," and if the theater were built then the space would be occupied by "something useful." Laura Roumanos, of public art non-profit [United Photo Industries](#), testified that the addition of space for community groups in the park would be a welcome addition to the area.

Landmarks Chair Robert B. Tierney read a statement from local Council Member [Stephen Levin](#), who was "thrilled" by the design, which he found to pay homage to the area's industrial past and respectful of the original building. Levin wrote that the proposal would "allow the building's potential to be

maximized.” Tierney also said that [Brooklyn Community Board 2](#) recommended approval of the plan.

Commissioners responded favorably to the proposal, with Chair Tierney urging the endorsement of an “extremely positive” advisory report for what he termed a “model of adaptive reuse.” Commissioner Libby Ryan praised the “carefully considered” materials, as well as the open space through-views. Commissioner Joan Gerner found the plan complemented the neighborhood’s “industrial quality.” Commissioner Michael Goldblum similarly praised the “amazingly interesting project,” but found the use of LED lights to illuminate the glass brick, rather than the internal light of the building, contrary to the design intent of transparency. He recommended that the applicants find another method to meet their blackout needs. Goldblum also recommended that the sign on the building’s corner be relocated. Commissioner Margery Perlmutter agreed with Goldblum’s assessment but generally commended the plan, noting that the majority of interventions were reversible, and called the building’s conversion to a theater “the ultimate public use.”

The Commission voted unanimously to issue a positive advisory report and will recommend that the proposal’s blackout panels be reconsidered.

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LPC: 45 Water Street, Brooklyn (14-3856) ([June 4, 2013](#)) (Architect: Rogers Marvel Architects).

## HISTORIC DISTRICT PROPOSAL

Historic District Consideration  
Sunset Park, Brooklyn

### Local Preservationist Group Builds Support for Neighborhood Designation

*Grassroots campaign takes to the streets to build community support to preserve rowhouses from out-of-character development. On*

Saturday, June 1, 2013, the [Sunset Park Landmarks Committee](#) (SPLC) sponsored its



third walking tour of Sunset Park, Brooklyn. The tour, which begins on 43rd Street and 4th Avenue and concludes on 8th Avenue and 60th Street, is one of the committee’s ways to gain support for the creation of a historic district in Sunset Park by the Landmarks Preservation Commission.

Sunset Park is mainly composed of modest three-story, two-family structures, originally built for working class families during the 1890s to the 1910s. These rowhouses include neo-Grec, Romanesque Revival, and Renaissance Revival styles, and the structures are a combination of brick, brownstone, and limestone.

The Sunset Park community was added to the [National Register of Historic Places](#) in 1988. At the time, the area was the largest historic district in the northeast with 3,237 registered buildings, bordered roughly by 4th Avenue and 7th Avenue, and 38th Street and 64th Street. The National Registry is a list of places worthy of preservation but does not prevent alterations to a building’s facade or demolition.

The Sunset Park Landmarks Committee was established in the spring of 2012. Project Manager Lynn Massimo said that she helped form this committee because “the rowhouses in Sunset Park are beautiful, they make the streets feel special, and they embody a sense of place. Insensitive changes to the rowhouses take away from that.” Massimo, who has been a Sunset Park resident since 2000, went on to add that the group was started by a few local neighbors because houses were being destroyed right before their eyes. “Someone has to preserve the rowhouses and it didn’t seem like anyone else was running

a preservation effort to create a historic district. That’s why we started the SPLC — because someone had to,” said Massimo.

Through building research, the SPLC has identified a [study area](#) of about 800 houses worthy of designation on selected blocks that still have most of their original exterior architectural character intact, and are mostly contiguous. Only blocks where most of the buildings have been largely unaltered would be considered for designation. The SPLC is not calling for the entire Sunset Park community to be designated. The SPLC will only submit area blocks for consideration to Landmarks that have homeowner support and has begun door-to-door canvassing. To gain wide spread community support, SPLC has regular open meetings, walking tours, and informational tables set up around the neighborhood.

The walking tours are led by Joseph Svehlak, a licensed NYC tour guide, an urban historian, and a former Sunset Park resident. The tour spotlights blocks that are part of the committee’s study area, as well as several individual landmarks in the community such as the former [68th Police Precinct Station House and Stable](#) designated in 1983, and the former [Sunset Park Courthouse](#) designated in 2001. Svehlak, who was part of the Sunset Park Restoration Committee in the 1970s, believes Sunset Park has a very strong chance of being awarded designation. “There is a good active community, and the present Landmarks Commission is looking at areas outside of Manhattan.” The next walking tour is scheduled for [June 22](#).

The [Historic Districts Council](#), which honored Sunset Park as one of its [2013 Six to Celebrate](#), will sponsor its own walking tour on July 13. In addition to HDC’s support, local Council Member Sarah Gonzalez is supportive of designation. Council Member Gonzalez, who helped lead a 125-block rezoning effort in Sunset Park in [2009](#), believes there has

been an unfortunate proliferation of out-of-scale, out-of-context development. Council Member Gonzalez has pledged to work with the SPLC and HDC to help preserve the community. Jeremy Laufer, district manager for [Brooklyn Community Board 7](#), stated that the community board is very interested in the work done by the SPLC and believes the full board will vote shortly to encourage further study of the potential Sunset Park designation.

The Sunset Park Landmarks Committee has yet to officially discuss designation with the Landmarks Preservation Commission.

For more information about upcoming walking tours, and to reserve a spot, please click [here](#).

.....  
Sunset Park Landmarks Committee:  
Walking Tours (2013).

## COURT DECISIONS

Department of Parks & Recreation  
Union Square, Manhattan

### Appellate Division Rules in Favor of Planned Restaurant

*Neighborhood coalition sued Parks over proposed plan to open restaurant in Union Square.* [Union Square](#) is comprised of 3.6 acres of dedicated municipal parkland, stretching three blocks in length and one block in width. Union Square Park's pavilion has hosted a myriad of political events and recreational activities for over a century. In 2004, the City announced its plans to open a restaurant in the pavilion. In April 2008, the [Union Square Community Coalition](#) (Coalition) obtained a temporary restraining order proscribing the City from undertaking any construction activity associated with its pavilion proposal. (See *CityLand's* past coverage [here](#)). In March 2009, the New York Supreme Court dismissed the Coalition's [lawsuit](#). The pavilion was subsequently renovated and is currently being used by the City's Department of Parks and Recreation as office and storage space.



The City was forced to halt construction on the pavilion at Union Square Park in 2008.  
Image Credit: Jonathan Reingold.

In March 2012, the City signed a licensing agreement with [Chef Driven Market, LLC](#), (Chef) authorizing Chef to open a 200-seat seasonal restaurant in the pavilion. The restaurant would operate from April 15 through October 15 and boast entrée prices topping over \$30. The agreement required Chef to pay the City an annual fee of \$300,000 for the first year, increasing to the greater of either \$457,777 or 10 percent of its annual gross revenues in the 15th year.

In May 2012, the Coalition filed an article 63 petition seeking a preliminary injunction against the City from enforcing its licensing agreement, alleging that the agreement violated the Public Trust Doctrine for two reasons: (1) it alienated “dedicated parkland for a non-park purpose without State legislative approval”; and (2) it was a lease, which is “per se an alienation of dedicated parkland” and required legislative approval, irrespective of whether or not it served a “park purpose.”

On January 8, 2013, Justice Arthur F. Engoron, of New York Supreme Court in Manhattan, granted a preliminary injunction, holding that the City exceeded the scope of its powers by entering into the licensing agreement with Chef. With

regard to the Coalition's first claim, the Public Trust Doctrine prohibits its parkland from being alienated for non-park purposes or leased for any purpose, without State legislative approval. To achieve a park purpose, a park restaurant could fall into either the “refreshment” or “dining” paradigms. The “refreshment” paradigm is a facility where one can get something to eat or drink after several hours of hiking or ball playing without having to leave the park. The court ruled that Union Square's small size, in addition to the plethora of dining options available directly across the street, precluded the “refreshment” paradigm. The Coalition proved that the restaurant was not necessary to ensure park participants would not go hungry or thirsty. The “dining” paradigm is a facility where the aesthetic associated with al fresco dining simultaneously enhance the meal and an individual's appreciation of the park. Here, the court determined that the City overstated its description of the park as a “tranquil” environment with “lush, verdant foliage.” Although the park's visitors are grateful for the pastoral landscape, it is situated only half a block away from some of the City's busiest thoroughfares. The court

## *In Conversation with NRDC's Kate Sinding: Fracking, Land Use, and NYC's Drinking Water*



**K**ate Sinding is a Senior Attorney at the [Natural Resources Defense Council](#) for the [New York Urban Program](#).

She has lived all over the world, spending

her childhood years in Pakistan, the Philippines, and Kenya, as well as various locations in the United States. She studied women's rights and international development at Barnard College. Sinding went to law school at New York University, where she earned a joint degree in law and public policy at Princeton. She started her environmental career at [Sive, Paget & Riesel](#) and dedicated herself to the firm for 10 years. Upon becoming a partner with the firm, Sinding remembered her desire to do non-profit environmental work and left the firm to pursue a career at the NRDC.

Early on in her career at the NRDC, Sinding worked on fighting five Las Vegas-style casinos that were proposed for the Catskill region of upstate NY. The NRDC's stance was that such an intense land use was inconsistent with the region's large system of drinking water reservoirs. Those reservoirs supply approximately 90 percent of NYC's drinking water. This source of clean, unfiltered water is maintained thanks to partnerships between the state, city, local municipalities, and environmental organizations that keep the watershed untouched by development through watershed agreements intended to preserve large swaths of land around the reservoirs. Though the casino projects have been successfully fended off thus far, Sinding and the NRDC quickly learned that there was another looming threat to NYC's drinking water.

Sinding's involvement with the protection of the Catskill watershed made her the natural choice to head up the NRDC's battle against hydraulic fracturing, or fracking, in the area. The entire NYC drinking water reservoir system lies atop the Marcellus Shale. The Marcellus Shale, a large black shale formation underneath a large portion of southern

NYS, is rich in natural gas. Other states on top of the Marcellus Shale, in particular Pennsylvania, have allowed gas drilling to take place on the surface over the last few years with varying successes, failures, and environmental issues. The NRDC was alerted to the possibility of fracking in NYS in 2008 when a [bill](#) was pushed through the state legislature that amended the oil and gas drilling law. Up to that point, low volume vertical drilling for natural gas was common in upstate areas and by statute, gas companies needed to control 40 acres of land around the drilling site in order to drill. The 2008 bill increased the required area to 640 acres, which could suit high volume horizontal fracking. A relatively new technology, horizontal drilling gives gas companies the ability to extract more gas from a single drill site by angling a drill horizontally across the shale layer. The bill passed but not without the NRDC and various other stakeholders that convinced then Governor David Paterson to [direct](#) the NYS Department of Environmental Conservation to subject the new practice to environmental review before a drilling permit could be obtained.

Since then Sinding and the NRDC have been working to ensure that the environmental and public health impacts of fracking are analyzed and considered before any final government decision is made on whether and to what extent to allow fracking in the state. The state is in a "de facto moratorium" while the DEC completes its Environmental Impact Statement, with the NYS Department of Health now analyzing the public health impacts. While small victories have been accomplished by activists and environmental organizations, like ensuring that areas around the Catskill watershed are off-limits to fracking, there are still many concerns over the breadth of impacts. For example, while fracking is prohibited in preserved areas around reservoirs, there are concerns about contaminant migration into public and private aquifers, adequacy of regulatory enforcement, and damage to NYC's aging water supply infrastructure.

To protect vulnerable natural resourc-

es and local drinking water supplies, Sinding helped establish the [Community Fracking Defense Project](#) with [Catskill Mountainkeeper](#). The project seeks to provide guidance to municipalities that wish to ban fracking or help communities find potential land use challenges if fracking occurs. Sinding and the NRDC have been bolstered by recent appellate division decisions that have deemed that municipalities have the power to control fracking within their borders as a land use. Sinding and a small team also offer outreach to these small towns facing big decisions. Sinding believes that the popular argument of jobs that gas drilling will provide vs. the environment is a "false frame." The NRDC seeks to change the conversation to focus on clean, renewable energy as an economic driver for struggling NYS towns, especially in light of Hurricane Sandy and climate change.

— Amber Gonzalez

referred to the City's proposal as generic, contrasting it with Central Park's [Boathouse Cafe](#) – a restaurant within a large park which creates a unique park experience and diminishes the disturbance of traditional park purposes. The current era of retrenchment and austerity supports “modest, toned-down park uses.”

With regard to the Coalition's second claim, even a superficial evaluation of the licensing agreement supports the assertion that it was in fact a lease requiring State legislative approval. It was clear that the goal of both the City and Chef was to transfer possession of the pavilion for a 15-year term in hopes of earning large profits.

On June 18, 2013, the First Department unanimously reversed the lower court's decision. The court ruled in favor of the City's appeal and stated that the “restaurant does not violate the public trust doctrine,

since it is a permissible park use and the concession agreement is a revocable license terminable at will, not a lease.”

In a press release issued by the NYC Law Department, Corporation Counsel Michael Cardozo said, “this decision correctly recognizes that the City Charter gives the Parks Department discretion to include restaurants in parks and that they are appropriate uses of parkland.”

Chef Driven Market, LLC is “thrilled to move forward with serving high-quality, environmentally-friendly, and affordable Greenmarket-based food.” Jennifer Falk, of the [Union Square Partnership](#) was also gratified with the Court's ruling, “this terrific new amenity will enliven the park, making it even more inviting and safer for all visitors.”

Geoffrey Croft, of the Union Square Park Community Coalition, commented that “this issue is a mat-

ter of public importance to all New Yorkers who care about park land. Justice Engoron's decision was detailed, thoughtful and took into account the facts and circumstances of this particular case. So it was even more shocking that the Appellate Division reversed in a decision that is essentially just one sentence long. The brevity calls into serious question the strength of the decision. We believe the reversal is wrong on the merits.” Croft went on to add, “It is clearly not a park purpose to allow a high-end restaurant in an area with the least of amount of playground space and the highest concentration of eating options in the entire city.”

The Coalition is weighing whether to appeal but no determination has been made.

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*Union Square Park Community Coalition, Inc. v. NYC Dep't of Parks and Recreation*, 2013 N.Y. Slip Op. 04544 (1st Dep't June 18, 2013).

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