Matter of Save Gansevoort, LLC v City of New York
2017 NY Slip Op 30563(U)
March 17, 2017
Supreme Court, New York County
Docket Number: 158482/2016
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

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In the Matter of the Application of
SAVE GANSEVOORT, LLC, and THE HISTORIC DISTRICT COUNCIL, INC.,

Petitioners,

Index No. 158482/2016

-against-

Decision and Order

CITY OF NEW YORK, THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION, MEENAKSHI SRINIVASAN, 60-74 GANSEVOORT STREET, LLC,

Respondents,

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Petitioners Save Gansevoort, LLC and The Historic District Council, Inc. currently challenge a June 7, 2016 determination of respondent The New York City Landmarks Preservation Commission. In the decision, the Commission issued a Certificate of Appropriateness (COA) which allows developer 60-74 Gansevoort Street, LLC (the Developer) to make changes to two structures located at 60-68 and at 70-74 Gansevoort Street (individually, 60-68 and 70-74), between Washington and Greenwich Streets. The Developer also sought and received permission to perform work at 42-50 Gansevoort Street and 52-58 Gansevoort Street, but Petitioners do not appeal this portion of the determination. All of the structures are part of a single block in the Gansevoort Market Historic District. According to Petitioners, the changes to the buildings at 60-74 Gansevoort would both "eviscerate the historically rare and significant" historic district and "threaten the existence and vitality of every other designated historic district in New York City." Pet. ¶ 1.

The City respondents, which include the City of New York, Landmarks Preservation Commission, and Meenakshi Srinivasan, the chair and commissioner of the Commission (collectively, LPC), and the Developer all oppose the petition. In February, 2017 Petitioners moved for a temporary restraining order and preliminary injunction to prevent the Developer from beginning work on the buildings. The Court stayed the Developer from acting until February 9, 2017, when the Court heard and granted the preliminary injunction on the record. The Court set up an expedited submission schedule for the parties to submit opposition papers and reply papers for the underlying petition, and heard oral argument on March 8, 2017. Now, and for the reasons below, the Court dismisses the petition.

LPC's purpose and powers are set forth in Chapter Three, Title 25 of the New York City Administrative Code (Landmarks Law). There are eleven commissioners who comprise LPC. Of these, there must be at least three architects, one historian qualified in landmarks preservation issues, one city planner or landscape architect, one realtor, and one resident of each of the city's five boroughs. LPC designates and regulates landmarked districts and landmarked buildings. This includes the power to approve changes to buildings within a historic district by issuing a certificate of appropriateness. According to the affidavit of Sarah Carroll, who currently serves as the Executive Director of LPC, there currently are 140 landmarked districts in New York City.

LPC designated the area in question as the Gansevoort Historic Market District on September 9, 2003. Roughly, it is bounded by the Greenwich Village Historic District, Hudson Street, West 15th Street, and the High Line, and it contains 104 buildings. Petitioners note, among other things, that at the second public hearing, on September 9, 2003, Sherida Paulsen, who at the

time was the LPC chair, stressed the importance of the markets and market districts in the city's history. In addition, then-Commissioner Pike stated the market district was important because it showed the city's resilience, vitality, tolerance, and creativity. As Petitioners point out, experts and the members of the LPC spoke of the District's function as a marketplace.

A 307-page Designation Report (the Report) discussed the District and its designation. In addition to considering the testimony and evidence provided at the hearings, LPC reached its determination in reliance on a history of the neighborhood which detailed the changes it had undergone over the years during its "four distinct phases" of development, Report, p. 299, and discussed the evolution of every block and building for which information was available. The two buildings at issue here were part of this study. The Report notes that a 1940 alteration to 60-68, a nineteenth-century construction, connected the five tenement buildings on the lot, reduced their height from five stories to two, and converted them into a single market building which had a metal canopy and second-floor offices. The building has "significant historic fabric reflecting its 1940 alteration," "contributes to the historically-mixed architectural character" of the District, and adds to the areas "visual cohesion of the district through its brick and stone façade and metal canopy." Id., p. 123. 70-74, the Report indicates, is on the same tax lot as 60-68. During its history it consisted of three tenements, a trucking depot, and a wholesale meat market building. The buildings themselves are not landmarked.

The Report concludes that the District "contains buildings and other improvements which have a special character and special historical and aesthetic interest and value and which represent one or more eras in the history of New York City. . . ." Id. at 299. The architectural

character, the Report states, is reflective of "the area's long history of continuous, varied use as a place of dwelling, industry, and commerce, particularly as a marketplace." Id. Among the District's distinctive features are the use of brick for building facades, the one- to six-story scale of the buildings, the metal canopies used for "market purposes," the Belgian blocks paving many streets, and the irregular shape of the area. According to the Report, the district's history as a marketplace is significant; it is one of only two remaining marketplace districts in the city "that served the once-flourishing Hudson River commercial waterfront." Id.

Additionally, the Report indicates that the buildings in the District are significant for their history and their adaptability to the neighborhood's evolving needs. The earlier structures, from the mid-19th century, were row houses and townhouses, some of which were adapted into tenements and all of which ultimately had stores on the first floor. The buildings served more commercial purposes during the city's ascendance as a financial center. The Report notes the creation of the Gansevoort open-air market, which featured produce from the area, in 1879, and of the West Washington Market, which sold meat, poultry, and dairy. From 1880 until around 1970, low-rise market buildings were constructed in the District. In addition to the low-rise buildings, the Report states, stables, five- and six-story store-and-loft buildings, and warehouses were being erected. [1] Atypically, as businesses and lifestyles changed many of the old buildings were retained and adapted for newer uses. Following the decline of maritime commerce in the area, the District's importance as a meat-packing and poultry area declined. By 2003, when the Report was issued, the District was "a vibrant neighborhood of remaining meatpackers, high-end retail commerce,

[1] Respondents refer to the above as the four periods of development in the District, which is consistent with the testimony of Jay Shockley, who authored the report and who currently submits an affidavit in support of the petition.

restaurants, offices, clubs, galleries, and apartments." Id., p. 300. Despite its continuing evolution, the Report states, the area retains "a strong and integral sense of place as a market district." Id.

In the years since this designation, the Commission has approved several changes to buildings within the District. According to the Carroll affidavit, in 2005 LPC approved the addition of a sculptural glass addition to the building located at 440-442 West 14th Street. Subsequently LPC approved the addition of a partially visible story to 401 West 14th Street, and a one-story addition to row houses at 21-27 Ninth Avenue, a four-story addition to a two-story market building at 837 Washington Street, and a two-story addition to a two-story building at 9-19 Ninth Avenue. Additionally, LPC has authorized the removal of one floor of a two-floor market building at 36-40 Gansevoort Street, along with the addition of four stories and the alteration of the façade; the demolition of two market buildings, which were replaced by a five-story building at 13-15 Little West 12th Street; and, the demolition of a two-story market building, at 402-404 West 13th Street, and its replacement with a five-story building.

In September 2015, the Developer applied for permits to work on all five buildings on the south side of the block of Gansevoort Street between Greenwich and Washington Streets. It submitted three applications as part of its comprehensive plan for the block. In the application, the Developer proposed to add three stories to the existing two-story building located at 60-68, and to demolish the one-story, "no-style" building located at 70-74 and replace it with a six-story building. The proposed work on the other buildings did not substantially alter their appearance. LPC held a public hearing on November 10, 2015. In addition to the testimony, LPC considered numerous emails, letters and petitions both opposing and supporting the changes; the vast majority

of these communications appear to have been in opposition to the proposal, and all the statements are part of the administrative record. On February 9, 2016, the public hearing portion of the procedure concluded, after which the first public meeting began.

All of the commissioners commented on the proposed changes. Commissioner Srinivasan, the Chair, stated that the Designation Report treated each of the four periods of the neighborhood's history as having equal significance, and therefore he found that alterations to the buildings that are consistent with and reflective of the neighborhood's overall history are acceptable – that is, they did not have to adhere to a market style or low-rise height. He did not view the designation as a signal to "stop what was a natural evolution of the District." Feb. 9, 2016 Hearing Trans., p.32, ll. 17-18. At the same time, he opined that the building heights should be reduced to conform more closely to the history of the area and to that of the loft buildings, and that a proposed setback and penthouse were inconsistent with the architecture of the neighborhood.

In large part the other commissioners agreed. Several cited additional concerns, however, including that the elaborate canopies should be more consistent with the neighborhood's simpler aesthetic and that the additional floors at 60-68 should in some other way be distinguished from the two-story building presently at the site. Commissioner Goldblum stated the goal was to change the buildings "but hold on as hard as possible to the remnants of what was there so you can read both the change and the original, I mean, the Palimpsest principle." Id., p. 43, ll. 9-13. The commissioners expressed mixed, but primarily positive, feelings about evaluating the block as a whole.

In his concluding comments, Commissioner Srinivasan summed up the various concerns of the commissioners. He stated, as is relevant here, that 1) the height of 60-68 should be decreased, 2) the penthouse should be removed, 3) the Developer should consider whether to "nod" to the original two-story structure at 60-68, 4) the Developer should reduce either the number of floors or the floor-to-ceiling heights at 70-74, and 5) throughout, the Developer should replace the elaborate canopy design with one more reflective of the District. The February meeting adjourned without a determination, and LPC scheduled a second public meeting on June 7, 2016.

In the interim, the Developer made alterations to the plans, and it formally presented these to LPC on June 7, 2016. The design for 60-68 no longer included the penthouse, leaving only a stair bulkhead on the roof, and the building retained its metal canopy. The added floors used slightly different brick to differentiate it from the original building, thus showing the building's evolution. The building at 60-68 was not reduced in height to the extent the committee had asked, but the Developer presented arguments justifying this fact in light of the history of the District. Among other things the Developer scaled down 70-74, though keeping the building's six-story plan; and, eliminated the penthouse, leaving only mechanical equipment on the roof which, like the bulkhead at 60-68, was set back so less visible from the street. The new plan modified the façade, redesigned the windows and canopies, and made other alterations so they were more consistent with other buildings in the area, reflected the neighborhood's history.

LPC approved the Developer's plans that day after each commissioner went on record with comments, and on January 17, 2017 it issued a COA which expires on June 7, 2022. The findings, which were consistent with the commissioners' comments at the February and June

2016 meetings and reflective of the Developer's presentation in June, included that the block would "represent the varied scale and typologies contained in the historic district, including two-story market buildings, five-story tenement houses, and six-story industrial buildings," that there would be lower-scale buildings at the eastern end of the block to preserve the vistas and the open character of this portion of the District, that the slight variance in the brick for the façade of the added floors at 60-68 would reflect the evolution of the building, that the "higher articulation" on the facades of the two buildings strengthened their relationship, and that the demolition of 70-74 did not have architectural import because it had been deemed to be a no-style building. This Article 78 proceeding followed.

In the petition, Petitioners argue that LPC erred in two principle ways. First, Petitioners state, LPC has allowed changes so significant that they not only alter the buildings in question but alter the essence of the District as a market district. Therefore, they contend, under the guise of issuing a COA, LPC actually either rescinded or redefined the District's designation without going through the necessary procedure set forth in Section 25-303(b) of the Landmarks Law for making such changes. The failure to do so, Petitioners argue, mandates vacatur.

Second, Petitioners assert that even if the Court concludes the COA did not amount to a rescission, it should find that LPC issued an irrational decision under Section 25-307 of the Landmarks Law. In particular, the COA allegedly allows changes which are utterly inconsistent with the District. Further, according to Petitioners, LPC illogically states it is approving the restoration of the two buildings in a manner faithful to the area's tenement roots by allowing the development of buildings which are not tenements. The petition states that the District's name,

The Gansevoort Market Historic District, underscores LPC's intention in 2003 to maintain the market nature of the District, and it supports this position by quotations from the Designation Report and by the affidavit of Robert Jay Shockley, a professional historic preservationist. According to Petitioners, the history of the District and of the changes it has undergone over the years are discussed in the Report for historical context only and do not demonstrate an intention to treat the District as a malleable one reflective of all four periods of development. On the contrary, Petitioners contend LPC's 2003 determination was entirely focused on the area's ongoing status as a market district. They state the existing structures at 60-74 Gansevoort have been used only for market-related purposes, and that as a result of the approved changes the buildings will bear no resemblance to the current ones. Petitioners argue that LPC's determination to the contrary was arbitrary and capricious.

In addition, Petitioners point to the testimony and letters of community members and others opposed to the plans, and submit affidavits by respected experts who speak to the importance of the area as one of the few remaining market districts in the country. Among the numerous affidavits and letters the Court has reviewed are the affidavit of Zachary Winestine, manager of the board of managers of Save Gansevoort; and the affidavit of Mr. Shockley, a professional historic preservationist who worked at LPC for many years and worked on numerous designation reports in addition to the one in question. Mr. Winestine states the proposed changes would overwhelm the existing market buildings and alter its landscape so much that this no longer would be a true market district. He contends that the historic significance of the building at 60-68 is not that is was once a tenement building, but that the tenement building was converted to the "Historic Market Building." Winestine Aff. ¶ 7. Mr. Shockley reiterates the conclusions in the

petition and numerous other affidavits, and describes the block containing 60-74 Gansevoort as "the 'heart and soul' of the Gansevoort Market Historic District." Shockley Aff. ¶ 9. Among other things, he criticizes LPC's determination that the heights of the buildings are appropriate, claiming this finding runs counter to the purpose of the designation. He concludes that he cannot recall the issuance of a similar COA during his lengthy tenure at LPC, and states that as a whole "the historic districts and neighborhoods of New York City may suffer if the LPC's decision is allowed to stand." Id. ¶ 17. According to Petitioners, LPC's finding that the heights of the buildings will be consistent with those of the former tenement buildings is irrational because the buildings are higher than the tenements. Petitioners also argue that the commissioners relied on their personal feelings about the neighborhood and ignored the designation of the District, and that some of the commissioners made statements showing that they did not understand their role.

The answers of LPC and the Developer deny the contentions in the petition. LPC lays out the pertinent laws governing its authority and discretion and contends that a COA is proper where, as here, the work "affect[s] significant protected architectural features." LPC Answer, ¶ 191. LPC's answer further relies on the affidavit of Sarah Carroll, its executive director. She states that the Designation Report makes it clear that the 104 buildings in the District are representative of the four major periods of development, and that,

> while low-scale market buildings are certainly unusual and important to the district, the district's 'visual cohesion' is not defined by building typology but through a combination of factors: the predominance of brick, the 'one- to six-story scale', the presence of multiple buildings by the same architect; metal canopies, the Belgian block street paving and the street pattern that provides sweeping vistas.

Carroll Aff., ¶ 24. She notes that the Commissioners rationally relied on these factors in reaching their determination. She states that the changes LPC has approved here are consistent with its past decisions regarding changes to or the demolition of buildings in the District. She argues that "historic designation doesn't freeze development" but puts the Commission in charge of regulating change. Id., ¶ 40. She states that Petitioners incorrectly treat 70-74, which is "no-style," as a building which contributes to the District. According to Ms. Carroll, this designation constitutes an existing finding by LPC that the building does not contribute to the character of the District, and therefore LPC need not discuss this issue anew when a COA is requested.

The Developer's answer reiterates the contentions in LPC's answer. It stresses that the work on 60-68 is "restorative in nature" and notes the building's past history as a five-story tenement building. Developer Answer, ¶ 16. It adds that 70-74 is a "no-style" building, that four other no-style buildings have been demolished in the District since its designation, and that the Developer has modified the plan substantially so it is more consistent with the area's height, design, and architecture.[2] The Developer argues that Petitioners did not argue the issue of rescission before LPC and therefore are estopped from raising it now.

In reply, Petitioners argue that Ms. Carroll's affidavit reveals that LPC regularly violates its statutory duty with respect to those buildings that it deems to have no significant architectural style. Petitioners cite Landmarks Law § 25-307(b)(2), which requires LPC to consider the history and significance of buildings in a historic district without exception. According to

[2] The Developer also contends that Petitioners have not shown that Save Gansevoort has standing and instead has merely shown a generic interest in the preservation of the area, and petitioners oppose that argument. At oral argument and on the record, the Court decided that standing exists.

petitioners, it is mandatory that LPC review all nine factors in this provision – aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color. Id. They state that LPC's policy instead allows for demolition of no-style buildings without any evaluation of the necessary factors. Individual buildings within a district can be especially significant historically even if the buildings themselves are nondescript, Petitioners state. Petitioners contend that 70-74 is of historic significance to the District and in particular has been recognized as a market building. Petitioners cite to the affidavit of Mr. Shockley, who wrote the 2003 Designation Report and who states that the Report does not suggest 70-74 lacks value because of its lack of particular style.

In addition, Petitioners reiterate their position that the District is landmarked because it a "market district" and not because of the architecture of the preceding periods of development. They dispute Respondents' purported position that "the loss of two buildings could hardly constitute a change in the orientation of the Market District," stating that the low-rise, market nature of the two buildings are critical to the District as a whole. Reply Mem., p. 16. Petitioners suggest that because 70-74 is at the end of the District, it would have been "carved out" of the District but for a conclusion as to its significance. Petitioners claim LPC evaluated the purpose of the landmark designation superficially and misconstrues its purpose. Petitioners state that LPC amply considered the argument that the changes to 60-68 and 70-74 would destroy the District, and thus Petitioners are not estopped from contending that the changes would be a de facto rescission of the landmark.

Initially, the Court finds that it can consider petitioners' contention that LPC's order constitutes a de facto rescission of the District's landmark. In challenging this issue, the Developer states that a petitioner's failure to raise an argument before LPC "invokes the separate principles of exhaustion of administrative remedies and judicial estoppel." 67 Vestry Tenants Ass'n, 172 Misc. 2d 214, 218 (Sup. Ct. N.Y. County 1997). As Petitioners point out, however, although opponents of the Developer's plans did not use the word "rescission," they argued that if approved the proposed changes would destroy or alter the District, eliminating its market essence. This is sufficiently specific for Petitioners to assert this challenge. Moreover, 67 Vestry Tenants Ass'n is distinguishable because there the court pointed out that the petitioners, who had "encouraged" action by LPC during the agency's determination, challenged LPC's jurisdictional authority to decide the matter only after LPC rendered a decision adverse to the petitioners' interests.

Now, the Court turns to the substantive arguments. Before LPC decides to issue a COA it must consider "whether the proposed work effectuates the purposes of the Landmarks Preservation Law." Id. at 218. The decision is "limited to the appropriateness of the proposed buildings' architectural features and narrowly circumscribed by the architectural, historic, aesthetic and other cultural criteria specifically stated in the Landmarks Law." Citineighbors Coalition of Historic Carnegie Hill v. New York City Landmarks Preservation Committee, 306 A.D.2d 113, (1st Dep't 2003), appeal dismissed, 2 N.Y.3d 727 (2004). In an Article 78 challenge to LPC's determination, as in all Article 78 proceedings, a court asks only whether the determination is rational and is not an abuse of discretion or a violation of the agency's legal duty. Committee to Save the Beacon Theater v. City of New York, 146 A.D.2d 397, 405 (1st Dep't 1989) (Beacon). Courts cannot overturn agency decisions because it would have ruled otherwise.

Wooley v. New York State Dep't of Correctional Serv., 50 N.Y.2d 275, 280 (2010). In particular, because LPC is a "body of historical and architectural experts," id., courts "accord significant deference" to its decisions relating to landmarks. Stahl York Ave. Co., LLC v. City of New York, 76 A.D.3d 290, 295 (1st Dep't 2010); see Beacon, 146 A.D.2d at 405.

In light of this extremely deferential standard, the Court dismisses the petition. LPC held a public hearing which lasted one full day and into the second, during which it considered the objections Petitioners and numerous businesses and individuals raised to the proposed buildings. The commissioners not only asked questions but proposed changes to the project which they concluded would make the buildings' heights more consistent with the other five- and six-story buildings in the District. They also instructed the Developer to retain many of the features, such as the canopies and the brick façades, that are typical of many buildings in the District. Because LPC considered the changes to the block as a whole, it was able to evaluate their collective impact. Thus, the commissioners determined that by retaining the low-scale buildings at the other end of the block, the development would preserve the open vistas which constitute an important feature of the area. LPC noted that the five and six story buildings at 60-78 Gansevoort would have visual continuity with buildings that already were nearer to them. None of this suggests LPC conducted a brief, cursory, or irrational review of the proposed changes. See Beacon, 146 A.D.2d at 405-06 (LPC's "extensive and detailed findings" showed its decision was rational and reasoned even though some commissioners "lamented the proposed change in use").

Petitioners' arguments to the contrary are not persuasive. First, LPC did not state that the alteration to 60-78 Gansevoort would restore the tenements in a literal sense, as petitioners

suggest, but instead concluded the changes would recall or refer back to this early part of the neighborhood's history. Second, though Petitioners point to the Designation Report to support their view that the District is significant primarily for its history as a marketplace, Respondents cite the Report in support of their argument that the area's evolution and the phases of its development are also very significant. Both sides have raised reasonable arguments based on the record. This is because there is evidence that rationally supports both positions, as both were considered extensively during the designation process. In Russo v. Beckelman, the record "is replete with reasoned decision-making during which commissioners grappled with the different landmarking theories in light of the historical record." Russo v. Beckleman, 204 A.D.2d 161, 162 (1st Dep't 1994), lv denied, 85 N.Y.2d 802 (1995). Here, too, the record establishes that the commissioners discussed the importance of the landmark in detail and had a reasoned basis for their conclusion. In light of this, the Court cannot conclude the issuance of the COA and the alteration of one market building and demolition of another was irrational. See 339 29th St. LLC v. City of New York, 125 A.D.3d 557, 557 (1st Dep't 2015). Similarly, the affidavits in support of the petition and the letters and testimony of those who opposed the COA are not dispositive. The well-reasoned submissions by Mr. Shockley, the individual who prepared the 2003 designation report, and the well-respected experts who join in his opinion, do not outweigh the analysis of the commissioners or render LPC's interpretation of the Report irrational.

Third, contrary to Petitioners' contention, LPC did not rescind the District's landmark designation under the guise of the COA. As LPC asserts, a determination concerning 2 buildings in a District which contains 104 structures is not tantamount to a rescission of the area's landmark status. Moreover, the Court agrees with LPC that a COA determination is not only

appropriate for minor changes such as repainting a door or adding an iron grate over a window. Instead, Landmarks Law § 25-307 is triggered when an applicant seeks "to construct, reconstruct, alter or demolish any improvement . . . in an historic district." Id., § 25-307(a); see also id., § 25-307(d) (referring to applications "to alter, reconstruct or demolish a landmark"). Petitioners rely on Save America's Clocks Inc. v. City of New York, 52 Misc. 3d 282 (Sup. Ct. N.Y. County 2016)(Save America's Clocks) for the principle that LPC must apply the more stringent review procedure set forth in Landmarks Law § 25-303(h) when there is an application to rescind a building or district's landmark status. Respondents do not challenge this basic principle, however, but merely assert it is not at issue here. As Petitioners themselves point out, the court in Save America's Clocks rejected the petitioners' argument that the permit constituted a de facto rescission when it granted a COA authorizing changes to an interior landmark.[3] Save America's Clocks, 52 Misc. 3d at 296. In addition, in considering the COA application in dispute, LPC consistently kept the landmarking in mind and concluded that the proposed changes, as modified, would not destroy the District's market nature, its visual cohesion, or its sweeping vistas, and that they would be reflective of the area's rich history.

Fourth, as stated, Petitioners suggest that LPC improperly approved the demolition of 70-74 without consideration of the nine factors set forth in Landmarks Law § 25-307(b)(2) – aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color – simply because LPC deemed the building to have no distinctive architectural style. As an example, Petitioners point to the "Hopper-Gibbons House," a

[3] The Court cannot find, and Petitioners do not cite to, a single case in which a COA was successfully challenged on this basis.

building that has landmark status because of its history as a stop on the Underground Railroad and not because of its Greek revival style. Petitioners are correct that a no-style building may be worthy of preservation because of its historical significance. Indeed, if only those buildings of "extraordinary distinction" or "popular appeal" were landmarked, "much of what is rare and precious in our architectural and historical heritage would soon disappear." Soc'y for Ethical Culture in City of N.Y. v. Spatt, 68 A.D.2d 112, 117 (1st Dep't 1979), aff'd, 51 N.Y.2d 449 (1980). Here, however, LPC considered the significance of the structure in question. LPC referred to the building as "no-style" because it had determined that there was nothing aesthetically or architecturally distinctive about it. Further, LPC discussed at length the impact 70-74's demolition and the impact of the proposed new building would have on the District. LPC concluded, as it has in connection with other market buildings, that 70-74's history was not so unique that its demolition would destroy the cultural and historical significance of the District. In considering the proposed new structure at 70-74, LPC instructed the Developer to make modifications and include features that reflected the style and history of the block and of the neighborhood.

In conclusion, the Court notes that it has considered all of the parties' additional arguments, and they do not alter this conclusion. Petitioners' arguments show LPC could have reached an alternative conclusion that is rational, but they do not satisfy the very high standard of showing LPC decided the matter irrationally or abused its discretion. The Court cannot substitute Petitioners' judgment for that of LPC. See Stahl York Ave. Co., LLC, 76 A.D.3d at 295. On the contrary, where, as here, LPC conducted extensive hearings, considered all of the evidence submitted arguing against approval, and proposed modifications to the plan designed to make the proposed changes consistent with the district's history and design, it would be an abuse of this

Court's discretion to do anything but dismiss the application. See Citineighbors Coalition of Historic Carnegie Hill v. The New York City Landmarks Preservation Commission, 306 A.D.2d 113, 114 (1st Dep't 2003).

Accordingly, it is

ORDERED that the petition is dismissed. The stay currently in effect shall continue for five business days from service of a copy of this order with notice of entry, to allow petitioners time to apply for a further stay in the Appellate Division.

Dated: March 17, 2017

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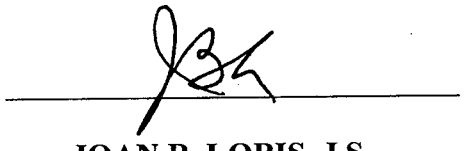

JOAN B. LOBIS, J.S.