nyrej

A tale of Two Bridges: How did 4 towers get approved without the Uniform Land Use Review Procedure? - by Christopher Wright

January 05, 2021 - Front Section

Christopher Wright
Lasser Law

A zoning saga is unfolding at the Two Bridges Development site located on five blocks abutting the East River between the Manhattan and Williamsburg Bridges. At question is how zoning applications filed by developers to expand the permitted heights of four buildings from 26 to 63-80 floors were not subject to the Uniform Land Use Review Procedure (ULURP), which is the standard public review process for major zoning applications.

At first glance, the development appears to fully comply with the Two Bridge's underling C6-4 zoning district, which permits high density and tall buildings. However, there are exceptions to every zoning regulation. A disagreement over the interpretation of the zoning exceptions that regulate building heights at Two Bridges has created a classic "developer versus community" dispute, resulting in three lawsuits that challenged a City Planning Commission (CPC) determination that ULURP was not required to review the zoning applications to expand the building heights. One of these lawsuits was recently ruled upon by New York's highest court, which denied a request by the community to appeal an Appellate Division ruling that upheld the CPC determination that ULURP was not required. The Appellate Division had reversed a lower Supreme Court ruling that had voided the CPC decision and ruled that ULURP was required.

Zoning History

Historically, Two Bridges has been the subject of multiple zoning actions, the most controlling being a Large Scale Residential Development Plan (LSRD) issued in 1972. An LSRD provides for the coordinated development of a large area (minimum size of 1.5 acres) to be developed "as a unit." A LSRD modifies and supersedes the underlying zoning district, in this case C6-4. The Two Bridges LSRD mandates that building heights must stay within the proximity of neighborhood scale (16-26 floors). The LSRD has been modified 10 times since 1972, but the height cap has never been lifted.

The genesis of the current litigation occurred in 2018, when the developers at Two Bridges filed three applications at CPC to modify the LSRD and permit the development of four towers ranging from 63 to 80 floors. CPC ruled that the applications were not subject to ULURP and issued approvals pursuant to a limited non-ULURP approval process. In response, a collaboration of local community organizations, including the borough president and City Council, immediately filed three lawsuits in the Supreme Court, New York County, to block the modifications arguing that ULURP was required.

Supreme Court Decision

The lower Supreme Court ruled consistently in all three lawsuits and concluded that ULURP was required and voided the CPC approvals. The Court detailed the planning history of Two Bridges and concluded that the LSRD was purposely designed to only permit building heights that reflected neighborhood scale. Since the applications vastly exceeded that scale, the Court reasoned that the applications should have been subjected to ULURP, not the limited review process used by CPC.

Appellate Division Decision

The Appellate Division, 1st Dept. in reversing the lower Supreme Court (on one case, the other two are pending) reviewed a flurry of complex zoning regulations to reach its conclusion that ULURP was not required. However, in stark contrast to the lower Court, the Appellate Division analysis made little mention of the LSRD's neighborhood scale language and relied strictly on an interpretation of applicable zoning regulations.

Decision Comparison

The higher Appellate Court's analysis appears to be at odds with standard zoning practice. Typically, the applicability of a zoning regulation to a particular parcel cannot be determined without a detailed review of the parcel's urban context, particularly in the case of zoning applications seeking to modify existing regulations for a particular neighborhood. For example, zoning modification applications at the Board of Standards and Appeals require a legal finding of neighborhood compatibility. Land use applications at CPC and the Landmarks Preservation Commission include lengthy discussions of the surrounding urban landscape and how the proposed project is compatible with that landscape. In addition, every major chapter of the NYC Zoning Resolution starts with a preamble detailing the chapter's planning goals and purposes.

In this case, the LSRD planning language specifically stated: "The proposed redevelopment [of lower scale buildings] is consistent with and complementary to other developments within the neighborhood." For 50 years, the LSRD zoning regulations prohibited tall buildings. This was a legal ban, not a recommendation.

Nonetheless, the Appellate Division opined that although the towers are "twice the height of surrounding buildings…they do not violate any applicable zoning regulation" (emphasis added).

But if that were true, then why were applications filed at CPC? The answer is that the applications were filed because the zoning modifications imposed by the LSRD were an “applicable zoning regulation” that prohibited tall buildings. It is legally irrelevant if the towers complied with the C6-4 underlying zoning district if the towers did not comply with the LSRD zoning modifications. Hence, applications were filed to raise the height limit from 26 to 80 floors.

This raises another question. Why did CPC choose to by-pass ULURP and ignite extensive litigation? CPC did conduct a public review process, just not ULURP. Interestingly, the fundamental difference between ULURP and the process CPC utilized was that the non-ULURP process omitted the City Council’s veto power that would have existed under ULURP. This difference will be the subject of my next article. Meanwhile, there are still two pending lawsuits, so the saga continues.

Christopher Wright is a partner at Lasser Law, New York, N.Y.