



BROOKLYN COMMUNITY BOARD 14
FLATBUSH–MIDWOOD COMMUNITY DISTRICT
810 East 16th Street
Brooklyn, New York 11230

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March 25, 2024

Paige Graves
General Counsel,
New York City Transit Authority
2 Broadway
New York, NY 10004

Dear Ms. Graves,

Since 2012, Community Board 14 members and the community at large have advocated for a settlement of the jurisdictional issues related to Newkirk Plaza (the “Plaza”) by urging its admission into the Department of Transportation’s (DOT’s) Pedestrian Plaza program. It is our current understanding that DOT has approached MTA/New York City Transit Authority (“MTA/NYCTA”) about this issue, but the matter has stalled in MTA’s real estate unit. If MTA/NYCTA cannot or will not settle on an agreement with DOT, NYCTA must nonetheless accept its responsibility to participate in the maintenance and security for the Plaza, whose open-air publicly accessible walkways provide, among other things, the only access to the Plaza subway station serving the B & Q trains.

As set forth herein, after exhaustive review of the underlying documentation, there is clear and convincing proof that NYCTA, as the long-term leaseholder of the portions of the Plaza nearest the center cut-out created for the subway station – and easement holder over additional property within the Plaza – bears responsibility, at a minimum, to participate in the preservation and security of the Plaza which our residents and your commuters utilize daily. In short, as a way to resolve the prolonged stalemate on this matter, we ask for NYCTA, as a shared party to the Plaza, to join with DOT and/or the Flatbush Development Corporation (“FDC”) and neighboring property owners to enter a joint maintenance and security agreement allowing for all affected parties to participate in a solution for the Plaza’s future.

By way of background, CB14 has strived for decades to resolve the issues plaguing the Plaza. (Attached hereto as **Exhibit A** is representative prior correspondence, including a 1992 letter from NYCTA to then-Congressman Schumer advising that a title search was to be completed to resolve the issue – this apparently was never done.) As a summary of CB14’s work, we set forth the following:

- In 1986, a coalition was formed to identify a mix of public and private funding for sanitation, maintenance, and lighting at the Plaza.
- In 1992, then-Borough President Howard Golden allocated \$500,000 to fix the sidewalks.
- In 1994, NYCTA repaired the surface of the Plaza in order to protect their station beneath.
- In 2011 and 2018, DOT agreed to paint the corrugated metal walls along Newkirk and Foster Avenues.
- In 2018, NYCTA agreed to repair the iron fencing inside the Plaza to protect their assets below.

Of note, none of these projects were improvements – they were necessary repairs.

Most recently, during the de Blasio administration, then-Borough President Eric Adams was a signatory to efforts to reach a resolution to these problems. (Attached hereto as **Exhibit B** is the letter to the de Blasio administration, dated January 29, 2020, which did not receive a further response.) Now that Eric Adams is Mayor, the timing seems propitious for reaching an acceptable solution to this decades-long wait.

With the aid of Lucy Phillips, CB14's 2022 Planning Fellow from the Fund for the City of New York, as well as years of work by a local researcher, Dr. Joseph Enright, CB14 has compiled the following evidence explaining why NYCTA is responsible for part of the maintenance of the Plaza. As set forth below, due to the apparent bifurcated control of the Plaza, and the prior and continued commitment from the FDC, it is clear that the most appropriate solution to ensure the future protection and vibrancy of the Plaza is to have NYCTA enter and fund a joint maintenance and security agreement for the Plaza.¹

History of the Plaza

The origin of the Plaza dates back to the creation of the two track Brooklyn, Flatbush and Coney Island Railroad in 1878, a surface line which transported primarily recreation-seeking passengers to a new Brighton Beach resort at the southern edge of Kings County.² Today's Newkirk Plaza stop was originally known as the "Parkville" station, which was situated on the north side of Newkirk Avenue, on the eastern side of the tracks.³ The original right-of-way was 50 feet wide. (Attached hereto as **Exhibit E** are the original granting documents from around 1878 which we obtained from the MTA. See, for instance, the middle of page 2 of same for a reference to the 50 ft. width – many contemporaneous publications reference the same dimension.) As development came to the area along this Brighton line, it became necessary to either elevate or depress the tracks below ground to avoid accidents and allow for a freer flow of traffic at roadway crossings. Thus, in 1903 New York State formed the Brooklyn Grade Crossing Commission (the

¹ It should be noted that most recently, in 2022 the FDC filed an application with the DOT for the Plaza to enter its Pedestrian Plaza Program. As with the other similar efforts since 2012, the DOT has not yet responded to this filing. Notwithstanding that it does not appear the DOT owns or controls any portion of the Plaza, it still appears that the best result would be, with the cooperation of NYCTA, that the Plaza be designated as a Pedestrian Plaza under this Program.

² "History of the Work of Eliminated Grade Crossings by the Brooklyn Grade Crossing Commission," Brooklyn Grade Crossing Commission, April 30, 1918, at 9. (Attached hereto as **Exhibit C**.) A video based largely on contemporaneous photos and documents has been created by CB14 to illustrate the unique history discussed herein and can be accessed at https://www.youtube.com/watch?v=8LT_tLQP73s.

³ Sanborn Map from 1890, Map 499. (Attached hereto as **Exhibit D**.)

“Commission”), which inter alia mediated issues involving the newly re-named South Midwood station.⁴ By this point, the rail line had been acquired by a subsidiary of Brooklyn Rapid Transit (“BRT”), who now operated it as a busy electrified daily commuter line for the increasingly developed areas of southern Brooklyn.⁵

The Commission approved a plan to depress a four-track railroad 15 feet below grade and create an express station at South Midwood, between Newkirk and Foster Avenues. This meant that the existing 50 ft. right-of-way would need to be expanded to allow for two island platforms accommodating local and express trains, and thick retaining walls to ensure structural stability for the station.⁶ (Attached hereto as **Exhibit F** is the current tax map showing the dimensions of Newkirk Plaza as an unmapped lot, which is greater than 50 ft. in width.) To accomplish this, the BRT negotiated easements with property owners: a 2-foot easement for each retaining wall and, in exchange for an additional 12.5-foot easement on each side of the right-of-way, it would deck over the entire length and width of the extra easement. (Attached hereto as **Exhibit G** is the original easement-granting documentation we obtained from the MTA.) These original granting documents provided to the neighboring property owners, among other things, “. . . the right to use as a yard, all that part of the roof over the station platform to be erected by [the BRT] . . .”⁷ Most telling is the grant by Henry F. Newbury and his wife Anna E. Newbury (*see* Exhibit G at page 13), which provides in relevant part that the easement shall be:

“. . . conditioned upon the faithful performance by [the BRT] of the following covenants, I. That [the BRT] shall and will ***establish and forever maintain*** . . . a suitable platform or walk not less than ten (10) feet in width at all points of the length, except at its end portions adjacent to Foster and Newkirk Avenues, where such walk or platform shall be widened to a line parallel to and distant not less than twenty-two (22) feet, nine (9) inches westerly from the easterly line of the end portions of the strip of land herein described, for the use of passengers and others in entering and leaving said building, and such platform or walk shall be located ***and forever maintained*** at for about the level of the surface of the strip of land described herein . . . and such platform or walk shall at its most westerly portion be provided with a guard railing or fence, not less than four (4) feet, six (6) inches in height, ***which shall be forever maintained*** . . .”.

(Emphasis added.)

These same easement rights carried through subsequent deeds for the neighboring properties. (Attached hereto as **Exhibit H** is a compendium of deeds compiled by Dr. Enright which reference the easement grants, and in particular the Newbury easement.)⁸

⁴ See note 2, at 5. See also, “Improvement of the Brighton Beach Line of the Brooklyn Heights Railroad Company,” *Electric Railway Review*, December 1906, at 968. The station’s name would be changed again in 1907 to Newkirk Avenue, and to Newkirk Plaza in 2011.

⁵ See note 2.

⁶ “Improvement of the Brighton Beach Line of the Brooklyn Heights Railroad Company,” note 4, at 969.

⁷ See Exhibit G at the top of page 3 and the middle of page 8. See also, “Improvement of the Brighton Beach Line of the Brooklyn Heights Railroad Company,” note 4, at 969.

⁸ Accompanying documentation is available upon request.

Ownership of the Plaza

These easement agreements outline the understood operation and ownership of the Plaza. Specifically, the portion of the Plaza deck closest to the center cut-out, and within the original 50 ft. right-of-way, appears to be controlled by Transit (as successor to the BRT), and the balance of the Plaza, while part of the easement grant to the BRT, was controlled by the adjacent property owners.⁹ In addition, within the easement documents, the adjacent property owners were granted “a right of way over so much of the land belonging to the [BRT], . . . as lies west of a line drawn parallel to and distance six feet westerly from the easterly boundary line of the land . . . for the benefit only of the owners of the premises herein described, their employees, tenants or persons doing business with them, or either of them”.¹⁰

It should be noted that for the westerly side of the Plaza, a large multi-state realty corporation, Wood, Harmon & Company, operating as Greater New York Development Company, had purchased a large section of the vacant land adjoining that right-of-way and conveyed a portion thereof to the railroad in March, 1906, in exchange for easements, the nature of which could not be located other than by citations in subsequent deeds to “Liber 50, Page 316, dated 3/9/1906.” [Note: Contemporaneous litigation revealed Wood, Harmon – and the east side property owners as well – were all eager recipients of thousands of pounds of dirt excavated from the Cut in order to bring their vacant land up to the grade level of the new decks.] The only other property on the west side was a long-standing hotel abutting the railroad’s right-of-way at the northwest end, at the corner of Marlborough Road and Newkirk Avenue. A reference in litigation related to construction of the retaining walls indicates the railroad via the Commission obtained control of at least part of the property by condemnation, also in March 1906.¹¹ The lack of an easement with the recalcitrant hotel owner explains why the deck on the west side ends at precisely where that hotel sat.

Simply put, the BRT and the adjacent parcel owners appear to have created a mutual access agreement across each other’s portions of the Plaza. Further, the Newbury grant outlines how the BRT, and now NYCTA, bear the responsibility for maintenance of the Plaza.

In 1915, the aforementioned Henry Fitch Newbury tested this designation of respective control by building a “spite” fence around his portion of the Plaza, leaving the remaining eight feet nearest the portion of the Station open to the sky as an accessway to the subway station.¹² The magistrate court’s dismissal of the charge against Newbury, prompted by disgruntled community members, demonstrates the original parties’ understanding of the easement agreements. In short, aside from maintenance of the retaining wall below the Plaza, the portion of the Plaza on the adjacent property owners’ side would be controlled by the respective owners, while the portion within the original 50 ft. right-of-way would remain under the control and operation of the BRT and its successors.

⁹ See generally Exhibits G and H.

¹⁰ See id.

¹¹ See id. The lack of development on the five lots south of the corner hotel that comprise the west side of the Plaza until 1916 to 1921 might have been attributable to the absence of a Newbury-like easement with Wood, Harmon. It also might explain why it was agreeable to the demands of Newbury et alia – who developed the east side in 1910 – that no entrance to the Station be built on the east side so as to grant them a “retail monopoly,” and why that west entrance was not built until November 1915.

¹² “Talk of Spite Fence Arouses Flatbush,” Brooklyn Eagle, August 24, 1915. (Attached hereto as Exhibit I.)

Moreover, the development of the Plaza supports the view that the BRT and its successors have never relinquished control over the portion of the Plaza within the original 50 ft. right-of-way. In 1953, the City and NYCTA entered a long-term lease to set forth the control that NYCTA has held ever since. (Attached hereto as **Exhibit J** is a copy of the lease.) Therein, the “Leased Property” is defined as, in relevant part, “. . . the transit facilities and any other materials, supplies and **property incidental to or necessary for the operation of such transit facilities . . .**” (Emphasis added.) As the walkway leading to the Newkirk Plaza subway station is indeed necessary for the operation of the transit stop, it is part of the property still under control of NYCTA. This conclusion is supported by the subsequent behavior by NYCTA. In 1977, NYCTA entered an agreement with FDC and the Newkirk Plaza Merchants Association to repave the entire Plaza. (Attached hereto as **Exhibit K** is the Agreement.) While the Merchants Association was designated as having sole responsibility over repairs to the pavers, NYCTA still “. . . **agrees that it shall continue to be responsible for those portions of Newkirk Plaza which are in any way subject to its jurisdiction.**” (Emphasis added.) This would include that portion of the Plaza within the original 50 ft. right-of-way. The issue of maintenance of the sidewalk outside of the Newkirk Plaza station came up again in 1991, as evidenced by a *Daily News* article. It does not appear a solution was reached until 1994 (discussed above), as NYCTA advised at the time that they were going to “review” the deeds. (Attached hereto as **Exhibit L** is a portion of this article.)

The same continued responsibility appears to be applicable to the western side of the Plaza – from the very beginning. In February 1916, Henry Fitch Newbury sued the BRT, requesting a temporary injunction to prohibit it from using the entrance on the western side of the station which had opened in November 1915. Newbury lost this case, presumably (there is no published opinion – Newbury died 18 months after his filing) because the court determined that the BRT retained control over the portion of the Plaza still within the 50 ft. right-of-way.¹³

Through the ensuing decades of the original easement grants, the BRT passed control of what became known as the Brighton Line to various subsidiaries, until, in 1940, the City of New York took control of the BRT’s successor, the BMT. (Attached hereto is **Exhibit M** which is the grant of same.) In 1953, NYCTA was created to manage the overall subway system and became a subsidiary of the MTA when that agency was created in 1968. This has been the ownership structure ever since. **Exhibit N** provides a timeline outlining the various owners, 1878-Present.

As such, the portion of the Plaza within the original 50 ft. right-of-way (approximately six to ten feet on either side) appears to be currently controlled by, and quite clearly the responsibility of NYCTA, as owner of the long-term leasehold over same. As NYCTA appears to control, and the city owns, at least a portion of the Plaza (something which would need to be surveyed to confirm the exact location of same), the duty falls partially on them to maintain and allow for proper policing of same. Arguably, maintenance responsibility for at least 10’ of the Plaza (and wider at the northerly and southerly ends) would fall under NYCTA, based on the original Newbury grant. In general, liability for sidewalks within the City falls on abutting property owners.¹⁴ Here, however, the sidewalk is partially located upon the property controlled by NYCTA. As such, general premises liability rules would apply. This fact alone should motivate NYCTA to arrive at a suitable solution.

¹³ “Would Close Entrance at Newkirk Station,” Brooklyn Standard Union, February 14, 1916. (Attached hereto as **Exhibit N.**)

¹⁴ See New York City Administrative Code § 7-210 and § 19-152

Conclusion

Taken together, the above information and analysis points to no other conclusion but that NYCTA retains certain responsibilities over the maintenance and security of at least a portion of the Plaza. Notwithstanding the method, with NYCTA, FDC and the neighboring property owners' cooperation, it would appear that the clear solution is to have participation by all representative parties in achieving a future maintenance and security plan for the Plaza. If MTA/NYCTA has not found a way to accept DOT's stewardship via the Pedestrian Plaza program, clearly the second-best path forward is to negotiate and fund a joint maintenance and security agreement to ensure the future vitality of the Plaza and the surrounding community.

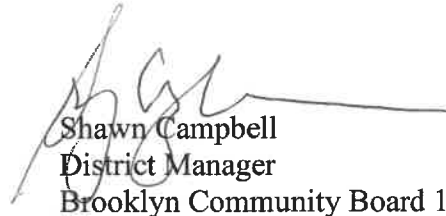
Just last month, CB14 rejected an OCM application for a new cannabis dispensary in the Plaza due to the uncertainties involved in the continued policing and maintenance of this important public space within our District. As the urgency in solving this issue remains strong, given the ongoing and constantly emerging issues at the Plaza, we respectfully request your response without delay to schedule a meeting to discuss further.

Thank you for your consideration of the foregoing, and we look forward to your response.

Best regards,



Karl-Henry Cesar
Chair
Brooklyn Community Board 14



Shawn Campbell
District Manager
Brooklyn Community Board 14

cc: Janno Lieber, President and CEO, MTA
Richard Davey, President, NYCT
Ydonis Rodriguez, Commissioner, DOT
Hon. Kevin Parker, NYS Senate, 21st District
Hon. Rodneyse Bichotte Hermelyn, NYS Assembly, 42nd District
Hon. Farah Louis, NYC Council, 45th CD
Robin Redmond, Executive Director, FDC
Gregory Alvarez, Co-Chair, CB14 Housing and Land Use Committee