



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.nyc.gov/mcb4

Delores Rubin
Chair

Jesse Bodine
District Manager

February 18, 2016

Honorable Bill de Blasio
Mayor
City of New York
City Hall
250 Broadway
New York, New York, 10007

Dear Mayor de Blasio,

Manhattan Community Board 4 (MCB4) is greatly distressed by the failure of the Department of Buildings (DOB) to enforce the Anti-Harassment Provisions and Demolition Restrictions of the Hudson Yards, West Chelsea and Garment Center Special Zoning Districts in Manhattan Community District 4 (CD4). The key goals of these protections are to preserve existing residential buildings and protect the long term tenants who live in them. The majority of these buildings are rent regulated tenements. However, recently a number of buildings have been approved by DOB for alteration or demolition either as a result of intentional neglect or by the submission of false filings to DOB. Such actions have now resulted in demolition of protected buildings, loss of long term tenants or condo owners, and permanent loss of affordable housing.

At its February 3, 2016 Full Board meeting, MCB4 voted to request that DOB appoint an appropriate executive member of your staff to review the current application approval process to make institutional changes. These changes would prevent owners and professionals from evading both the requirements for obtaining a Certificate of No Harassment (CONH) and the demolition restrictions in the Special Hudson Yards District (SHYD), Special West Chelsea District (SWCD), Special Garment Center District, and the Special Clinton District (SCD).

Background

During the West Side rezonings of West Chelsea, Hudson Yards and the Western Railyards, MCB4 worked to preserve the affordable housing and community character in the neighborhoods of Chelsea and Clinton/Hell's Kitchen, seeking a balance between development and preservation. Specific language regarding anti-harassment (ZR § 93-90) and demolition restrictions (ZR § 93-91) were incorporated in the Special Hudson Yards District and incorporated into the Zoning texts for the Special West Chelsea (ZR § 98-70) and Special Garment Center Districts (ZR § 121-50). The demolition restriction has been in place in the Special Clinton District since its enactment in 1973.

Beginning in December 2015, MCB4 has identified three sites in which the owners have evaded these aforementioned requirements in the Zoning Resolution. One owner has evaded the requirements in the ZR by purposefully neglecting their buildings and then obtaining an Unsafe Building declaration from DOB.

The other owners and their hired professionals have submitted false statements in applications for alterations, demolitions, and new buildings. All of these actions were accepted by DOB. As a direct result of these actions, our District has lost affordable housing units in these locations.

485-497 9th Avenue

485-491 and 497 Ninth Avenue (between West 37th and West 38th Streets) is located within the SHYD, and as such the buildings are subject to both Anti-Harassment (ZR § 93-90) and Demolition Restriction (ZR § 93-91) zoning provisions. The past and current owners have been able to sidestep these protections by neglecting the building and performing unpermitted partial demolition of the buildings, forcing DOB to declare the buildings unsafe and exempt from the ZR regulations

Since 2013, MCB4 has written to DOB and the Department of Housing Preservation and Development (HPD) twice to request the city's intervention to require the owners to maintain these buildings¹. The owner began partial demolition without obtaining a CONH. The agencies issued ECB violation No. 35004281L on January 18, 2013, and on February 27, 2013 that violation was resolved. However, the underlying condition, partial demolition without permits, was not. Then, in August of 2015, the buildings were declared unsafe and a certificate for an emergency demolition was issued by DOB. As a result of long term neglect, the owner has now been empowered to demolish these buildings. Another one of the owner's buildings, 497 9th Avenue, which was not subject to the unpermitted demolition and is not adjacent to those buildings, was inspected by DOB and declared unsafe. This action by DOB further assisted the owner in evading the demolition restrictions in the ZR.

Demolition of 485 to 491 9th Avenue was approved on December 17th, 2015. However, a new Stop Work Order was served on January 4th, 2016, for removing more sections of the rear walls. It was partially rescinded by DOB on January 21st, 2016 to allow only for bracing and shoring. The Board does not want this poorly managed demolition to present a hazard and affect the fully occupied, rent regulated tenement buildings at 493-495 9th Avenue to the north. DOB and HPD must safeguard the welfare of the remaining tenants.

319-321 West 38th Street

319-321 West 38th Street (between 8th and 9th Avenues) consists of two four-story building and one three-story residential building that have been a condominium since 1983. These buildings are located in the Special Garment Center District (SGCD), within the P-2 Preservation Area in which both anti-harassment (ZR § 121-50, and by reference ZR § 93-90) and demolition restrictions (ZR § 121-50, and by reference ZR § 93-91) apply. All three buildings had been in excellent condition and had been continuously occupied until the last few months.

In December of 2015, a Board member observed construction workers erecting scaffolding around the buildings, in preparation for demolition. The current owners did not obtain a Certificate of No Harassment, nor were the buildings deemed structurally unsound. Furthermore, it was discovered that the owner and its representatives, who had filed a job application for interior demolition, and another one for the construction of a 22 story hotel, provided DOB with false filings. Among the untrue statements were that the buildings contained SRO units, and that the proposed demolition would not change the number of dwelling units or any public areas serving the units. DOB approved these falsified forms. MCB4, working with elected officials, contacted DOB, which then revoked the demolition permits and then denied the approval of the new building application.²

Based on photographs of the property taken in February of 2016, which were sent to DOB, the rear building has been fully demolished. 319 West 38th, front building, has had the roof membrane removed.

¹See Attachment A – MCB4 Letter to HPD and DOB, dated February 19, 2013 and Attachment B – MCB4 Letter to HPD and DOB, dated October 15, 2015

² See Attachment C – MCB4 Letter to DOB, dated January 13, 2016

At 321 West 38th Street, the roof membrane, the roof surface, and the majority of the roof joists have been removed. One building is gone, and the others are open to the elements, which will create further interior damage. All 16 condominium owners are gone.

559 West 22nd Street

559 West 22nd Street (at 11th Avenue) is a four story building located in Subarea D of the SWCD and has been a single room occupancy (SRO) building since 1943. The building is subject to the COHN and demolition restrictions of ZR § 98-70 (and through reference ZR § 93-90 and § 93-91). In January 2016, a member of the community notified the Board of ongoing interior demolition in the building. After thorough research, MCB4 discovered that the owners and their representatives filed applications that falsely stated that the work, which included partial demolition and a two-and-a-half story addition, would not change the number of dwelling units, layout, or occupancy in the building. Furthermore, the building had not met the criteria for exemption under demolition, which require that the building be:

- under an active government-funded program; or
- a hotel; or
- a school dormitory; or
- a clubhouse

The building was therefore not exempt from the demolition restrictions. MCB4 has sent a letter to DOB requesting the agency revoke the job applications and meet with the Board to discuss protocols for ensuring the demolition restrictions within the Zoning Resolutions are strictly adhered to.³

During the course of this unpermitted construction, the building condition deteriorated. Of the 13 tenants living in the SRO units, 9 left as a result of these conditions. The remaining 4 made a relocation settlement with the owners. All affordable SRO units are gone.

Conclusion

MCB4 notes that these three cases present a pattern in which owners seek to evade the Special District Requirements of ZR § 93-90, ZR § 98-70, and ZR § 121-50 for obtaining a CONH and demolition restrictions. These sites were found by chance, by Board members and community residents. The Board is extremely concerned about ongoing falsification of documents by owners and professionals and erroneous granting of alteration, demolition, and new building applications by DOB within CD4—especially for buildings within our Special Zoning Districts.

Each of these examples exhibits a lack of oversight and enforcement of the Zoning Resolution by DOB and a lack of consultation with the Department of Housing Preservation and Development. For over four decades, MCB4 has worked with community groups, elected officials, and city agencies to preserve affordable housing, which is often located in rent regulated tenement buildings and SROs in our district. Through these efforts, our Board has sought to create a balanced approach between development and preservation on the West side. The Board is seriously concerned that there seems to be an apparent lack of proper protocol to ensure that DOB alteration, demolition, and new building job applications adhere to the Zoning Resolution. MCB4 requests that the city recognize the need for additional oversight in order to fulfill the requirements of ZR § 93-90 for the Special Hudson Yards District, ZR § 98-70 for the Special West Chelsea District, ZR § 121-50 for the Special Garment Center District and ZR § 96-108 for the Special Clinton District.

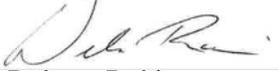
Your administration has set a goal to the preserve and create 200,000 units of affordable housing in one decade. Ensuring that our neighborhoods retain the rent-regulated affordable housing that has served longtime residents is an achievable and essential step towards achieving that goal. Your administration is

³ See Attachment D – MCB4 Letter to DOB, dated February 17, 2016

devoting resources to build additional affordable housing. But when a lack of enforcement and oversight threatens the city's existing affordable housing, that goal will never be achieved.

The Board thanks you for your attention to this issue. We look forward to working with City agencies to ensure that our communities see ongoing housing development, while maintaining their existing affordable housing stock.

Sincerely,



Delores Rubin
Chair
Manhattan Community Board 4



Dee Compton
Co-Chair
Chelsea Land Use Committee

[Signed 2/18/16]

Barbara Davis
Co-Chair
Housing, Health and Human
Services Committee



Jean Daniel Noland
Chair
Clinton/Hell's Kitchen Land Use Committee



Betty Mackintosh
Co-Chair
Chelsea Land Use Committee



Joe Restuccia
Co-Chair
Housing, Health and Human
Services Committee

Enclosure

cc: Rick D. Chandler, Commissioner, NYC DOB
Vicky Been, Commissioner, NYC HPD
Hon. Gale A. Brewer
Hon. Brad Hoylman, State Senate
Hon. Adriano Espaillat, New York State Senate
Hon. Richard Gottfried, State Assembly
Hon. Corey Johnson, City Council
Hon. Helen Rosenthal, City Council



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COREY JOHNSON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

February 19, 2013

Mathew Wambua
Commissioner
NYC Dept. of Housing Preservation and
Development
100 Gold Street
New York, NY 10038

Robert D. LiMandri
Manhattan Borough Commissioner
NYC Dept. of Buildings
280 Broadway
New York, NY 10007

**Re: 485-497 Ninth Avenue
DOB Violations and Orders to Correct
Certificate of No Harassment & Demolition Restriction**

Dear Commissioners Wambua and LiMandri:

485-497 Ninth Avenue is a blockfront of tenements on the west side of 9th Avenue, between West 37th and West 38th Streets, in Subarea D5 of the Special Hudson Yards District (SHYD). These buildings, under the prior ownership of Martin Fine and the current ownership of David Israeli, have been the subject of long-term tenant harassment, lack of services, and Department of Housing Preservation and Development (HPD) enforcement actions. Housing Conservation Coordinators (HCC), a not-for-profit housing advocate in Clinton/Hell's Kitchen, has worked with the tenants of these buildings from the early 1980's to the present. During this time, the tenants have been in court with the owners over 300 times with various legal actions. For years, the long-term owner, Martin Fine, who was regularly named by the Village Voice as one of the City's top 10 worst landlords, tried to vacate all of the buildings, but was unable to do so.

In 1995, demolition work was being done at 404 West 38th Street. During the demolition preparation, the building partially collapsed and a construction worker fell off of the scaffolding and onto adjacent roadway. As a result, the City found that building and two buildings at 501-505 Ninth Avenue, which were occupied with residential tenants, structurally unsound, issued an emergency vacate order, and demolished the buildings. What the owner had attempted to do, remove the long term tenants of these buildings (some with 50 year tenancies), the Department of Buildings (DOB) accomplished with the vacate order. The owner's very actions led to the City's demolition order. Today the site of those buildings remains a vacant lot.

As part of the HPD enforcement actions, an Article 7A Proceeding was brought to appoint a 7A Administrator. Martin Fine stymied that proceeding for years by putting the buildings into bankruptcy. In 1996, he sold the buildings to David Israeli, the son of well-known merchants. Martin Fine then sold the adjacent parking lot and all of the development rights from the

buildings to Dermot Companies. After multiple legal actions against the long term tenants, David Israeli offered to settle the 7A Proceeding. As part of that settlement, 493-495 Ninth Avenue was gut renovated and all nine of the remaining tenants were consolidated into those buildings. David Israeli has repeatedly committed to renovate the existing vacant buildings and has never done so.

On January 24, 2013 a sidewalk shed went up at the tenements on Ninth Avenue. Due to the location of these buildings within the SHYD, the tenements are subject to both anti-Harassment and Demolition Restriction zoning provisions. ZR § 93-90 states that before there can be any material alteration to the building, the owner must obtain a Certificate of No Harassment (CONH) or, if they are not able to obtain one, must comply with the Cure Requirements. No application for a CONH has been submitted for these buildings. Additionally, according to ZR § 93-91, no multiple dwellings in Subarea D5 the Special Hudson Yards District can be either partially or fully demolished.

According to DOB, the sidewalk shed went up because there were Immediate Emergency Demolition (IED) and Environmental Control Board (ECB) notices sent to the building owner. DOB stated that these notices were issued due to the poor state of the row of buildings, which at the time of the inspection, appeared to have experienced substantial deterioration, due to exposure to the elements and an overall lack of maintenance. This deterioration is the direct result of 17 years of owner neglect. The buildings have not been properly sealed, nor have the facades been properly maintained, since David Israeli became owner. Manhattan Community Board 4 (CB4) needs both DOB and HPD to ensure the events that occurred in 1995 do not occur again.

CB4 requests that:

- No action is taken by DOB that encourages or permits any interior or exterior demolition at these buildings. These buildings have both a long history of tenant harassment and are subject to the zoning required Demolition Restriction.
- Since these buildings were intentionally neglected, the owner should be issued Orders to Correct the structural and façade issues.
- If issues are found with the structural stability of any or all of the buildings and the owner does not correct these issues, HPD should move to safely correct the issues and seal the buildings.
- Liens should then be placed on the property for the City to recoup full cost of the repairs.

Thank you for your prompt attention to this important matter.

Sincerely,



Corey Johnson
Chair

cc: Ruthanne Visnauskas, Deborah Rand, Bea de la Torre - HPD
NYC Council Speaker Quinn



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CHRISTINE BERTHET
Chair

Jesse R. Bodine
District Manager

October 15, 2015

Vicki Been
Commissioner
NYC Dept. of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Martin Rebholz
Manhattan Borough Commissioner
NYC Dept. of Buildings
280 Broadway
New York, NY 10007

Re: **485-491 and 497 Ninth Avenue Declaration of Unsafe Buildings and Proposed Demolition**

Dear Commissioners Been and Borough Commissioner Rebholz:

At the Clinton-Hell's Kitchen Land Use Committee meeting on September 9, 2015 a discussion took place regarding the declaration of unsafe buildings and proposed demolition of 485-491 and 497 Ninth Avenue. On February 19, 2013, Manhattan Community Board 4 (MCB4) wrote a request for assistance to the Department of Housing Preservation and Development (HPD) and the Department of Buildings (DOB) for preservation of these buildings and avoidance of any further demolition. Despite this request, the buildings were allowed to deteriorate further due to the owner's continued neglect and HPD's and DOB's lack of action, which has led to DOB's proposed demolition.

MCB4 requests to work with DOB and HPD to reach a compromise that will ensure public safety while preserving the 9th Avenue buildings, in particular 497 9th Avenue building. CB4 further requests to work with the Department of Housing Preservation and Development as well as the Department of City Planning to amend the zoning text to close the zoning text loophole which allows for these demolitions to occur.

Background

485-497 Ninth Avenue is a block-front of 7 tenements on the west side of 9th Avenue, between West 37th and West 38th Streets, in Subarea D5 of the Special Hudson Yards District (SHYD). These buildings, under the prior ownership of Martin Fine and the current ownership of David

Israeli since 1996, have been the subject of long-term tenant harassment, lack of services, HPD enforcement actions, and numerous legal actions since the early 1980s. Between 1968 and 1996, the long-term owner, Martin Fine, who was regularly named by the Village Voice as one of the City's top 10 worst landlords, tried to vacate all of the buildings, but was unable to do so.

485-497 Ninth Avenue is located within the SHYD, and as such the tenements are subject to both anti-Harassment (ZR § 93-90) and Demolition Restriction (ZR § 93-91) zoning provisions. ZR § 93-90 states that before there can be any material alteration to the building, the owner must obtain a Certificate of No Harassment (CONH) or, if they are not able to obtain one, must comply with the Harassment Cure Requirements. No application for a CONH has been submitted for these buildings. Additionally, according to ZR § 93-91, no multiple dwellings in Subarea D5 the Special Hudson Yards District can be either partially or fully demolished without a CONH unless found structurally unsound.

In 1995, demolition work was being done at 404 West 38th Street. During the demolition preparation, the building partially collapsed and a construction worker fell off of the scaffolding and onto the adjacent below grade Lincoln Tunnel roadway. As a result, the City found that building as well as the two adjacent buildings at 501-505 Ninth Avenue to be structurally unsound, issued an emergency vacate order, and had HPD demolish the buildings. *What the owner had attempted to do, remove the long term tenants of these buildings (some with 50 year tenancies), DOB accomplished with the vacate order.* The owner's very actions led to the City's demolition order. Today the site of those buildings remains a vacant lot.

As part of the HPD enforcement actions, an Article 7A Proceeding was brought to appoint a 7A Administrator. Martin Fine stymied that proceeding for years by putting the buildings into bankruptcy. In 1996, he sold the buildings to David Israeli, the son of diamond merchants. Martin Fine then sold the adjacent parking lot and all of the development rights from the buildings to Dermot Companies. After multiple legal actions against the long term tenants, David Israeli offered to settle the 7A Proceeding. As part of that settlement, 493-495 Ninth Avenue was gut renovated and the remaining tenants were consolidated into those buildings, any vacant units were rented, and the two buildings were fully occupied. David Israeli has repeatedly committed to renovate the existing vacant buildings but has never done so.

January – February 2013

On January 17, 2013, DOB issued an immediate emergency violation for failure to maintain the building in a code compliant manner, namely the presence of partial collapses and water damage throughout the structure.

On February 19, 2013, Manhattan Community Board 4 (CB4) sent a letter to the Commissioner of HPD and the Manhattan Borough Commissioner of DOB. This letter made several requests for action to preserve the buildings and avoid demolition required for an unsafe structure. These requests outlined a plan-of-action to preserve the structures. Despite their explicit nature, no requests were satisfied, save for first which has not been applicable. These requests were:

- No action be taken by DOB that encourages or permits any interior or exterior demolition at these buildings. These buildings have both a long history of tenant harassment and are

- subject to the zoning required Demolition Restriction.
- Since these buildings were intentionally neglected, the owner should be issued Orders to Correct the structural and façade issues.
 - If issues are found with the structural stability of any or all of the buildings and the owner does not correct these issues, HPD should move to safely correct the issues and seal the buildings.
 - Liens should then be placed on the property for the City to recoup full cost of the repairs.

On February 27, 2013, the Environmental Control Board accepted a Certificate of Cure for the January 17, 2013 violation despite minimal action being taken to restore the decaying buildings. At that time the rear of the structure was covered with a tarp, providing the building interior some protection from the elements.

April 2015

In early April 2015 the coverings of the rear building façade became unsecured exposing the true condition of the structure. At that time it became apparent that the buildings had undergone demolition work without the required DOB permits and accompanying CONH, exposing wooden structural members. This situation is analogous to the partial collapse that occurred in 1995, which ultimately led to the death of a construction worker as well as the demolition of a 100 year old structure.

At the request of CB4, DOB inspected the property on April 14, 2015 and issued a Stop Work Order under DOB Violation #041415BS04JM01.

On April 22, 2015, Jesse Bodine, District Manager of Manhattan Community Board 4 sent an email to John Waldman, Government and Community Affairs Liaison at DOB, and Vito Mustaciuolo, Deputy Commissioner for the Office of Enforcement and Neighborhood Services at HPD, requesting Orders to Correct the structural issues, or in absence of action by the property owner, HPD to make the corrections. No action was taken.

August – September 2015

FDNY conducted an inspection of the property and found the structural condition of the building to be alarming and referred the case to DOB. On August 4, 2015, DOB found the buildings structurally unsound and proposed demolition of the 485, 487, 489, 491, and 497 9th Avenue buildings. The excluded buildings from this range, 493 and 495 9th Avenue, are both occupied by long term and existing tenants. On August 17, 2015, a conference call was held between Byron Munoz, John Waldman, and Martin Rebholz of DOB, Amy Marcus, Michael Barios, and Jordan Press of HPD, Jesse Bodine, Patty Gouris, Sarah Desmond and Joe Restuccia of CB4, Manhattan Borough President Gale Brewer, Eli Szenes-Strauss representing NY State Senator Brad Hoyleman, and Gabby Dann-Allel representing NY State Assembly Member Dick Gottfried.

The Manhattan Borough President proposed taking the buildings through eminent domain. CB4 noted that there are 5 rent regulated tenants in the 493 building, there are 4 rent regulated tenants in the 495 building, and these buildings are Demolition Restricted by the zoning. DOB

expressed their concern for safety, particularly the ease of which a fire could spread from the unsond to the occupied buildings. It was agreed that if the southern buildings (485-491 9th Avenue) could not be saved, the organizations on the call would work jointly to require structural shoring to preserve the 497 9th Avenue building as it was fully sealed from the elements and shares a façade with the occupied buildings.

A follow-up call was scheduled for August 27th, 2015 but was rescheduled for September 1st, 2015, pending a meeting between DOB, the owner, and his engineers. The call for September 1st, 2015 was delayed since the meeting with the owner and his engineers was scheduled for the same time. When the call started, DOB stated that its previous meeting was successful. The owner had agreed to submit plans for demolition of southern buildings and preservation of the northern building. He had also proposed that he would undertake the demolition using his own contractors to avoid the added expense of HPD undertaking the demolition.

Additionally, it was explained that the proposed demolition will require the existing tenants with units on the southern side of the 493 building to vacate their units during the day. Clinton Housing Development Company offered to provide accommodations during these times. It was agreed the group on the call would reconvene in 2 weeks to discuss the progress.

On September 14, 2015, the owner filed full demolition plans with the department of buildings. On September 21, 2015 DOB reviewed the plans and determined that the plans are inadequate, and will refer the case to HPD to proceed with demolition of all 5 structures.

Impacts

With no action taken, as requested by the 2013 letter from Community Board 4 and again requested in April 2015 by the District Manager, 5 residential buildings over a century old are proposed to be demolished, directly against the intent of the Demolition Restriction in Special Hudson Yards District. When the Demolition Restriction to SHYD was adopted in 2010, it preserved 1144 affordable housing units. The buildings proposed for demolition were counted as 20 of these units. Further, the tenants residing in 493 9th Avenue will likely have to be temporarily vacated during portions of demolition.

Additional Impacts

There are two other Demolition Restricted sites in SHYD which have given CB4 concerns. Both 414 and 452 West 36th Street were fully occupied a year ago and now have only a handful of tenants. Today 414 West 36th Street, an existing 21 unit tenement, has plans for a 3 story expansion and is listed as unoccupied in its DOB filing (Application 122525641). 452 West 36th Street, a 20 unit tenement, now has very few remaining tenants. These buildings are at risk. Community Board 4 would like to work with HPD to ensure enforcement of SHYD's Demolition Restriction and avoid a repeat of the events that occurred at the 485-491 and 497 9th Avenue buildings.

Conclusions

The property owner of 485-491 9th Avenue has exploited a loophole in Zoning Resolution in order to increase the land values despite a 2010 zoning text amendment restricting demolition. ***Fines levied by DOB against the property owner for creating a structural condition that allows him to demolish the buildings only amount to \$1,600 for work without a permit.*** The penalty imposed is not a sufficient deterrent to prevent the loss of more buildings. Due the owner's willful neglect and lack of enforcement from DOB and HPD, the City government can deliver a site clear of rent regulations and zoning restrictions, now permitting the construction of a 12 story luxury rental or condo building. This loophole must be closed to prevent additional buildings from being demolished in the Special Hudson Yards, Special West Chelsea, and Special Clinton Districts.

CB4 and HPD need to prevent property owners, who through willful neglect, create conditions rendering a building structurally unsound, therefore permitting them or the City avoid the Demolition Restriction.

Sincerely,



Christine Berthet
Chair



Jean-Daniel Noland
Chair, Clinton / Hell's Kitchen Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Brad Hoylman, New York State Senate
Hon. Richard Gottfried, New York State Assembly
Hon. Corey Johnson, City Council
Sarah Desmond, Housing Conservation Coo



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Jesse R. Bodine
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January 13, 2016

Martin Rebholz
Manhattan Borough Commissioner
NYC Dept. of Buildings
280 Broadway
New York, New York 10007

**Re: Non-Zoning Compliant Demolition
319-321 West 38th Street (Block 762, Lot 23)
DOB Applications No. 122412629, 122412264 and 121192271**

Dear Borough Commissioner Rebholz:

At Manhattan Community Board 4 (MCB4) Executive Committee meeting on December 28, 2015, members discussed the demolition of buildings located in 319-321 West 38th Street. The buildings are located in the Garment Center Special District (SGCD), Subarea P-2 (between West 40th and West 35th, 8th to 9th Avenues) and as such they are subject to Section 121-50 of the Zoning Resolution¹.

DOB applications No. 122412629, 122412264 were approved contrary to the requirements of Section 121-50 (and by reference 93-91) of the Zoning Resolution. At its January 6, 2016 meeting, by a vote of 42 for, 0 against, 0 abstaining, and 0 present but not eligible to vote, MCB4 voted to request that the plan approval be rescinded and that an audit of DOB applications No. 122412629, 122412264 and 121192271 be immediately initiated. MCB4 further requests to meet with DOB to clarify the system it uses to track protected residential buildings subject to Section 121-50 in the Special Garment Center District, Section 93-90 in the Special Hudson Yards District, and Section 98-70 in the Special West Chelsea District.

Background

319-321 West 38th Street consists of two four-story and one three-story residential building of 9,575 square feet with 16 dwelling units. The buildings are all renovated Old Law Tenements² located midblock between Eighth and Ninth Avenues. They were renovated by students of the Berk Trade School in 1982, with a new Certificate of Occupancy on September 28, 1983, and have been a condominium since 1983. All three buildings are in good condition and have been continuously occupied since that time until the last few months. 319 West 38th Street LLC

¹ See Appendix B – Section 121-50

² See Appendix C- I Cards of 319-321 West 38th Street

purchased all the condominium units from the long-term owners between January and February of 2015. These buildings are located in the Special Garment Center District (SGCD), within the P-2 Preservation Area.

Under provisions of that Special Zoning District, the buildings are subject to demolition restrictions, per Section 121-50 of the City's Zoning Resolution³. These restrictions were agreed to as part of the Hudson Yards Rezoning in 2005, were resolved as part of the Western Rail Yards negotiations in 2009, certified for ULURP in 2010, and adopted on October 27, 2010.

As per those regulations, buildings exempt from this requirement must be:

- under an active government-funded program **or**
- a hotel **or**
- a school dormitory **or**
- a clubhouse

319-321 West 38th Street, being in none of the above categories, would not be considered exempt buildings.

Buildings can also be demolished if they:

- have received a Certificate of No Harassment, **and**
- have been deemed unsafe **or**
- cannot feasibly be rehabilitated through any government funding program

The owners did not obtain a Certificate of No Harassment. Nor were the buildings deemed structurally unsound. Additionally, there are multiple HPD Programs available in the event that rehabilitation is needed, such as the Multifamily Preservation Loan Program, the Participation Loan Program, and 8A.

Demolition and Planned Work

On the afternoon of December 18, 2015, an MCB4 Board member observed construction workers erecting scaffolding around both buildings, in preparation for a demolition.

Upon consulting the DOB BIS (Building Information System) it was found that:

- Under Application No. 122412264, the demolition of 321 West 38th Street was approved on May 22, 2015.
- Under Application No. 122412629, the demolition of 319 West 38th Street was approved on May 26, 2015.

Both approvals were contrary to the Zoning Resolution requirements of SGCD P-2 Section 121-50.

³ See Appendix D – Section 93-91; Emphasis added.

Further research on BIS indicated that an HPD3 form had been submitted to DOB on May 20, 2015 as part of the filing for the demolition of 319 West 38th Street. The form stated that the units in the building were single room occupancy (SRO) units and that the **proposed demolition** would⁴:

- Neither increase nor decrease the number of dwelling units
- Neither increase nor decrease the number of kitchens or bathrooms
- Not alter the layout, configuration, or location of any portion of a dwelling unit
- Not alter the layout, configuration, or location of any portion of a kitchen or bathroom
- Neither demolish any dwelling unit nor demolish any portion of the building serving dwelling units
- Neither change the use or occupancy of any dwelling units nor change the use or occupancy of any portion of the building serving dwelling units

The buildings in 319-321 West 38th Street have never been SRO buildings, and as such the HPD3 Form is not applicable. Moreover, HPD1, an Anti- Harassment HPD form that does apply to the buildings, was not submitted by the applicant⁵.

An additional application, No. 121192271, which was filed on December 12, 2014, called for the construction of a 22 story hotel on the site. Peter Poon, principal of Peter F. Poon Architects, the prolific budget hotel developer, was the applicant on file.

MCB4 Intervention and Results

Immediately upon learning of the planned work at 319-321 West 38th Street, MCB4 notified local elected officials, including State Senator Brad Hoylman, State Assembly member Richard Gottfried, Manhattan Borough President Gale Brewer, and Councilmember Corey Johnson. The message was sent on the evening of Friday, December 18th. By the following Monday morning, Senator Hoylman's office, working with Assembly member Gottfried's office, had successfully collaborated to bring the matter to DOB's attention. DOB subsequently took action and placed a Stop Work Order on the Building. A notice for the revocation Application No. 122412629, pertaining to 319 West 38th Street, had also been issued on December 21, 2015. However, Application No. 122412264, pertaining to 321 West 38th Street, still remains approved. The NB for the 22 story hotel, Application No. 121192271, also remains approved.

Conclusion

In the West side rezonings of Hudson Yards, West Chelsea and the Western Railyards MCB4 has worked to preserve the affordable housing and community character in neighborhoods of Chelsea and Clinton/Hells communities, creating a balance between development and preservation. The City's Zoning Resolution has been a main tool to achieve that goal.

However, the approval by DOB of demolition of 319-321 West 38th Street, a building protected from such demolition by the Zoning Resolution, has demonstrated that without proper systems to ensure that job applications adhere to the Zoning Resolution, these efforts are negated. The

⁴ See Appendix E – HPD3 Form

⁵ See Appendix F – HPD1 Form

Board has serious questions about how a demolition application claiming to have no effect on the number of units in a building, can receive approval from DOB.

MCB4 requests immediate action with regard to the proposed work at 319-321 West 38th Street. We request that Application No. 122412264 approval for demolition be revoked and that no approvals be granted for Application No. 121192271 for a 22 story hotel.

MCB4 also requests to meet with DOB regarding its process for approving job applications be clarified pertaining to residential buildings in the West Chelsea, Hudson Yards, and Garment Center Special Districts protected from demolition under Sections 121-50, 93-90, and 98-70 of the Zoning Resolution.

Sincerely,



Delores Rubin
MCB4 Chair



Jean Daniel Noland, Chair
Clinton Hell's Kitchen Land Use
and Zoning Committee

[Signed 1/13/16]

Barbara Davis, Co-Chair
Housing, Health &
Human Services Committee



Joe Restuccia, Co-Chair
Housing, Health &
Human Services Committee

Cc: Hon. Brad Hoylman, State Senate
Hon. Richard Gottfried, State Assembly
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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Delores Rubin
Chair

JESSE R. BODINE
District Manager

February 11, 2016

Martin Rebholz
Manhattan Borough Commissioner
NYC Dept. of Buildings
280 Broadway
New York, New York 10007

**Re: Non-Zoning Compliant Demolition
559 West 22nd Street – AKA 162 Eleventh Avenue (Block 694, Lot 1)
DOB Applications No. 121574536, 121498370**

Dear Borough Commissioner Rebholz:

On the recommendation of its Chelsea Land Use Committee, acting in consultation with its Housing, Health and Human Services Committee, Manhattan Community Board No. 4 (CB4), by a vote of 38 in favor, 0 opposed, 0 abstaining and 0 present but not eligible to vote, voted to request that the New York City Department of Buildings (DOB) revoke application No. 121574536 for the interior demolition of 559 West 22nd Street and rescind application No. 121498370 for the addition of two-and-a-half floors to the property. CB4 bases its requests on the belief that applications regarding this property contain false and materially misleading statements and do not meet the requirements for demolition.

Furthermore, in light of recent DOB approval of another demolition application that was not in compliance with the Zoning Resolution, CB4 requests a meeting with you to clarify the system it uses to track protected residential buildings subject to ZR 98-70 for the Special West Chelsea District (SWCD), ZR 121-50 for the Special Garment Center District and ZR 93-90 for the Special Hudson Yards District.

I. Background

559 West 22nd Street is a four story building located between Tenth and Eleventh Avenues, in Subarea D of the Special West Chelsea District (SWCD). It therefore is subject to ZR 98-70, which subjects the property to the modified harassment provisions of paragraphs (a) through (d) of ZR 93-90, and to the demolition provisions of 93-91.

The building has been a single room occupancy (SRO) building since 1943. Beginning in March 2013, a series of job applications relating to the partial demolition of the building (DOB No.

121574536) and for the addition of two-and-a-half floors (DOB No. 121498370) was submitted to DOB. The demolition application was approved on the day the application was filed, while the application for the vertical addition was not approved until February 5, 2015, nearly two years after it was filed.

Under the provisions of ZR 98-70, buildings in the SWCD, including 559 West 22nd Street, are subject to demolition restrictions contained in ZR 93-91, as approved by the City Council in 2005 and adopted in October 2011.

In order to be exempt from these demolition restrictions, a building must be:

- under an active government-funded program; or
- a hotel; or
- a school dormitory; or
- a clubhouse

559 West 22nd Street is in none of these categories and thus is not exempt from the SWCD demolition restrictions.

A building can also be demolished if it:

- has received a Certificate of No Harassment (CONH); and
- has been deemed unsafe; or
- cannot feasibly be rehabilitated through any government funding program

HPD first issued a CONH to the owners of 559 West 22nd Street in June of 2014. Based on information from an inspection conducted by the Department of Housing Preservation and Development (HPD) in that building, there was a determination to suspend the CONH on April 7, 2015. That suspension was lifted on August 24, 2015. Additionally, 559 West 22nd Street has not been deemed unsafe by DOB nor has the owner sought funding from any of the multiple HPD programs available for building rehabilitation, including the Multifamily Preservation Loan Program, the Participation Loan Program, and 8A.

559 West 22nd thus does not meet the criteria and is not a candidate for legal demolition.

II. False DOB Filings - Demolition and Planned Work

Beginning in March 2013, thirteen job applications were submitted to DOB for 559 West 22nd Street:

DOB Applications Filed Between March 2013 and October 2015

Application No.	Date Filed	Description on Application ¹
121498370	3/4/2013	Zoning filing for addition of 2.5 floors
121574536	3/26/2013	Interior demolition and construction throughout; <u>no change in egress or occupancy</u>
121570834	5/10/13	Installation of plywood enclosure fence; no change in egress or occupancy
121523672	7/8/2013	Interior structural and foundation work throughout; no change in egress or occupancy
121767338	9/9/2013	Interior sprinkler work throughout; no change in egress or occupancy
121767329	9/9/2013	Interior plumbing work throughout; no change in egress or occupancy
121767347	9/9/2013	Mechanical duct work throughout; no change in egress or occupancy
121756439	10/11/2013	Interior renovation throughout; <u>no change in egress or occupancy</u>
122029875	6/4/2014	Installation of temporary bracing in conjunction with <u>partial demolition of existing building</u>
122029866	06/04/2014	Excavation, temporary bracing and underpinning
121756439	6/8/2015	Post-Approval Amendment
121756439	7/1/2015	Post-Approval Amendment
121767338	10/23/15	Post-Approval Amendment

Application No. 121498370, dated March 4, 2013, for the addition of two-and-a-half floors at 559 West 22nd Street, and application No. 121574536, dated March 26, 2013, for the interior demolition of the building, predate all other related applications noted above.

Therefore, the first two applications and all subsequent applications should have included forms indicating that the proposed work would:

- Change the number of dwelling units in the building
- Change the number of kitchens *and* bathrooms in the building
- Change the layout, configuration, *and* location of any portion of a dwelling unit
- Change the layout, configuration *and* location of any portion of a kitchen or bathroom

¹ Emphasis added.

- Demolish dwelling units *and* portions of the building serving dwelling units
- Change the use *and* occupancy of dwelling units

Over the course of two years, several professionals submitted false statements in response to questions contained in the first two job applications and in multiple subsequent applications. All of the forms with false statements were accepted by DOB.

CB4 believes that these false DOB filings were made in order to avoid compliance with SWCD zoning requirements regarding a Certificate of No Harassment and demolition restrictions.

III. False HPD Filings

The DOB applications were accompanied by corresponding HPD1 Anti-Harassment Area Checklist forms and HPD3 Single Room Occupancy Multiple Dwelling forms that contained false statements.²

Some of the submitted HPD1 forms state that 559 West 22nd Street is an exempt building, or that the proposed work is exempt, contradicting statements made in other HPD1 forms. The false statement that the building is not a multiple dwelling has been made nine times since March 2013. This statement is inconsistent with statements on other forms, but more importantly it is an incorrect statement that should have been noted by any professional reviewing the application.

Furthermore, within the Special West Chelsea District, residential buildings cannot be demolished, nor can they undergo a Material Alteration without first obtaining a Certificate of no Harassment. In Section 93-90 of the Zoning Resolution, a Material Alteration is defined as follows:

(13) Material alteration³

“Material alteration” shall mean any alteration to a #multiple dwelling# or other #building#, including, but not limited to, **an alteration which reduces or increases the #floor area# of the #multiple dwelling# or other #building#**, #converts floor area# from #residential# to non-#residential use#, changes the number or layout of #dwelling units# or #rooming units#, or adds or removes kitchens or bathrooms; provided, however, that #material alteration# shall not include:

(i) an #incidental alteration# which does not change the layout of #dwelling units# or #rooming units#, or

² See Appendix A

³ Emphasis added.

- (ii) a repair or replacement of existing elements of such #multiple dwelling# or other #building# without materially modifying such elements.

Approval for the material alteration of 559 West 22nd Street was received before an application for a Certificate of No Harassment was in place and thus was invalid.

IV. Non-Compliance with SWCD Zoning Requirements

CB4 believes that in submitting forms containing false statements, the applicants actively sought to avoid complying with the SWCD zoning requirements. We also believe that the applications and their corresponding forms with false and inconsistent statements shroud the full intent of the proposed work.

CB4 believes that the developer intends a complete interior demolition and a vertical addition, both contrary to the Zoning Resolution.

V. Conclusion and Requests

During the West Side rezonings of West Chelsea, Hudson Yards and the Western Railyards, CB4 worked to preserve the affordable housing and community character in the neighborhoods of Chelsea and Clinton/Hells Kitchen, creating a balance between development and preservation. The City's Zoning Resolution has been a key tool in achieving that goal.

However, by approving the demolition of 559 West 22nd Street, a building protected from such demolition by the Zoning Resolution, DOB has negated the Board's efforts and demonstrated the need for proper systems to ensure that job applications adhere to the Zoning Resolution.

Based on the series of false statements in every job filing and the lack of compliance with the Zoning Resolution, CB4 requests the following immediate actions with regard to the proposed work at 559 West 22nd Street:

- An audit of DOB applications No. 121574536, 121498370, 121570834, 121523672, 121767338, 121767329, 121767347, 121756439, 122029875, 122029866, 121756439, 121756439, and 121767338.
- The complete revocation of DOB application No. 121574536.
- The rescinding of the plan approval for DOB application No. 121498370.

The Board has serious concerns regarding DOB approval of demolition applications claiming to have no effect on the number of units in a building. We therefore request a meeting with you in order to clarify DOB's protocol for residential buildings in the West Chelsea, Hudson Yards, and Garment Center Special Districts protected from demolition under Sections 98-70, 93-90 and 121-50 of the Zoning Resolution.

Sincerely,



Delores Rubin
MCB4 Chair



John Lee Compton, Co-Chair
Chelsea Land Use Committee



Betty Mackintosh, Co-Chair
Chelsea Land Use Committee

Cc: Hon. Gale A. Brewer
Hon. Brad Hoylman, State Senate
Hon. Richard Gottfried, State Assembly
Hon. Corey Johnson, City Council

HPD1 Anti-Harassment Area Checklist Responses¹

Application Number: Date Filed: Applicant:	121498370 3/4/2013 Glasgow ²	121574536 3/26/2013 Glasgow	121570834 5/10/2013 Glasgow	121523672 7/8/2013 Hughes ⁸	121767338 9/9/2013 Tucci	121767329 9/9/2013 Tucci	121767347 9/9/2013 Tucci	121756439 10/11/2013 Glasgow	122029875 6/4/2014 Bronzino	122029866 6/4/2014 Bronzino	121756439 6/8/2015 Glasgow	121756439 7/1/2015 Glasgow	121767338 10/23/2015 Ryan
Structure is on a cure requirement or cure compliance lot		No	No		No	No	No	No	No	No	No	No	No
Proposed work is exempt from alteration/demolition, or structure is exempt		Yes	Yes		No	No	No	Yes	No	No	Yes	Yes	No
Work does not include a material alteration		No	No		No	No	No	No	Yes	Yes	No	No	No
Alteration is to provide accessibility		No	No		No	No	No	No	No	No	No	No	No
Work does not include the full or partial demolition of a multiple dwelling		No	No		No	No	No	No	No	No	No	No	No
Not a multiple dwelling		Yes	Yes		Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Multiple dwelling initially occupied for residential purposes after 1/1/1974		No	No		No	No	No	No	No	No	No	No	No
City-owned multiple dwelling		No	No		No	No	No	No	No	No	No	No	No
Exempt hotel		No	No		No	No	No	No	No	No	No	No	No
Multiple dwelling restricted for clubhouse of school dormitory		No	No		No	No	No	No	No	No	No	No	No
Exempt institutional residence		No	No		No	No	No	No	No	No	No	No	No
Multiple dwelling that is subject of an HPD program		No	No		No	No	No	No	No	No	No	No	No

¹ False statements noted in grey.

² Although required to do so, the applicant did not complete an HPD3 Form.

HPD3 Single Room Occupancy Multiple Dwelling Responses³

Application Number: Date Filed: Applicant:	121498370 3/4/2013 Glasgow	121574536 3/26/2013 Glasgow	121570834 5/10/2013 Glasgow	121523672 7/8/2013 Hughes	121767338 9/9/2013 Tucci	121767329 9/9/2013 Tucci	121767347 9/9/2013 Tucci	121756439 10/11/2013 Glasgow	122029875 6/4/2014 Bronzino	122029866 6/4/2014 Bronzino	121756439 6/8/2015 Glasgow	121756439 7/1/2015 Glasgow	121767338 10/23/2015 Ryan
Change in number of units		No	No	Yes	No	No	No	No	No	No	No	No	No
Change in number of kitchens or bathrooms		No	No	Yes	No	No	No	No	No	No	No	No	No
Change in layout, configuration or location of any portion of a dwelling unit		No	No	Yes	No	No	No	No	No	No	No	No	No
Change in layout, configuration or location of any portion of a kitchen or bathroom		No	No	Yes	No	No	No	No	No	No	No	No	No
Demolishes any dwelling unit and/or demolishes any portion of the building serving dwelling units		No	No	Yes	No	No	No	No	No	No	No	No	No
Change in use or occupancy of any dwelling unit or occupancy of any portion of the building		No	No	Yes	No	No	No	No	No	No	No	No	No
Purpose of work is to make public areas accessible without altering any dwelling unit		Yes	Yes	Yes	Yes	Yes	Yes	Yes	No answer	No answer	Yes	Yes	Yes
Purpose of work is to make a dwelling unit accessible		Yes	Yes	Yes	Yes	Yes	Yes	Yes	No answer	No answer	Yes	Yes	Yes
Work will be performed by a city agency or by a contractor pursuant to a contract with a city agency		Yes	Yes	Yes	Yes	Yes	Yes	Yes	No answer	No answer	Yes	Yes	Yes

³ False statements noted in grey .