



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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BURT LAZARIN
Chair

JESSE R. BODINE
District Manager

May 23, 2019

Corey Johnson
Speaker, City Council
224 W. 30th Street, Suite 1206
New York, NY 10001

Louise Carroll
Commissioner
NYC Department of Housing Preservation & Development
100 Gold Street New York, NY 10038

**Re: 500 West 28th Street
Penalty and Remedy for Illegal Demolition
Provision of Permanent Affordable Housing**

Dear Speaker Johnson and Commissioner Torres-Springer,

The affordable housing proposal (“the Application”) by Related for the demolition remediation of 500 West 28th Street was discussed at the March 18th, 2019 meeting of Manhattan Community Board 4 (MCB4)’s Housing, Health, and Human Services (HHHS) and Chelsea Land Use (CLU) Committees. By vote of 32 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible to vote, MCB4 voted to recommend approval of the application with the following conditions as follows in this letter.

Background

500 West 28th Street was a four story, six unit residential building on the southwest corner of Tenth Avenue and West 28th Street. The site is located in Subarea C of the Special West Chelsea District (SWCD) and is adjacent to the Related building at 520 West 28th Street¹. Related purchased the vacant building in 2013. Notwithstanding the demolition restrictions provided in the Special West Chelsea Zoning Resolution ZR 98-

¹ Also known as the Zaha Hadid condos: [Dezeen article](#)

70, Related filed an application for demolition which was then approved by the Department of Buildings (DOB) with a permit issued on March 29, 2016. Within a matter of weeks, the building was fully demolished, without any public notice to the Board or issuance of a required Certificate of No Harassment (CONH) from the NYC Department of Housing Preservation and Development (HPD) per ZR 98-70 (b).

Special rules adopted by the City Planning Commission and City Council in 2012 provide that, in the Special District, DOB shall not issue a demolition permit for a pre-1974 multiple dwelling (a “Multiple Dwelling”), or an alteration permit for the partial demolition of a Multiple Dwelling, where such demolition would decrease the amount of residential floor area in the Multiple Dwelling by 20 percent or more, unless specified conditions are met. The Commissioner of HPD may, after providing 60 days’ notice to the affected Community Board, allow demolition of more than 20 percent of a Multiple Dwelling by certifying:

- If the Multiple Dwelling is to be substantially preserved, that an alteration permit is required to allow the removal and replacement of 20 percent or more of the residential floor area of the Multiple Dwelling (a “Substantial Preservation Certification”);
- If the Multiple Dwelling is not to be substantially preserved, that HPD has determined that the rehabilitation of the Multiple Dwelling is not feasible under any active governmentally-funded program (a “New Building Certification”); and
- That HPD has issued a Certification of No Harassment pursuant to ZR Sec. 93-90, paragraph (d) that no harassment of the lawful occupants of the Multiple Dwelling(s) has occurred during the inquiry period beginning on December 20, 2004 (ZR 93-90(c) and 121-50).

When this error was brought to Related’s attention, Related responded to MCB4 stating that they were not familiar with the zoning regulations within SWCD. Related is one of the most sophisticated and experienced developers in Manhattan Community District 4 (MCD4), New York City, and the nation. Related’s ongoing Hudson Yards development is the largest real estate development in the country with over 18 million square feet of mixed-use development and approximately 4,000 new residential apartments planned, of which 60% of the residential apartments have been completed. MCB4 finds strange credulity that Related claims it is not familiar with the zoning regulations within SWCD.

Related has over 20 projects within MCD4 alone.

As a portion of that real estate development work, it has multiple projects within the SWCD as follows:

- The Caledonia – 450 West 17th Street
- 515 West 18th Street
- 555 West 22nd Street
- The Tate – 535 West 23rd Street
- 520 West 28th Street

In addition to its market-rate development, Related has been a developer of affordable housing, utilizing Real Estate Tax Incentives² such as the 421a program, Tax Exempt Bonds, Low Income Housing Tax Credits (LITHC) and Section 8 rental subsidies creating affordable apartments.

In the January 9th 2017 MCB4letter³, MCB4 had stated that the demolished building should be rebuilt to replace the 6 lost affordable apartments. Related had proposed designating their currently market-rate apartments in their 80/20 building at 535 West 23rd Street (known as The Tate) as permanently affordable apartments. MCB4 was not in support of this proposal.

Related met with HPD and MCB4 on June and July 2017 to discuss how to proceed with remedy of this illegal demolition. During these meetings, Related acknowledged that the building had been demolished contrary to SWCD zoning requirements. Shortly thereafter, HPD stated that Related would need to restore the building and provide permanently affordable housing apartments in the new building, subject to a Regulatory Agreement with HPD.

In July 2017, Related also noted that they had transferred all but 1 FAR of the development rights from 500 W 28th Street to 520 West 28th Street (the Zaha Hadid condo site to the west). Related had planned to build a one-story gallery structure on the 500 West 28th Street site. Since that transfer had happened, any new construction would require purchase of development rights from the High Line or the West Chelsea Affordable Housing Fund (WCAHF⁴) equal to approximately \$1.3 million. Since July 2017, the Board had not received any further communication regarding Related's plan until February 2019. MCB4 was contacted by the City Council Speaker Corey Johnson's staff regarding Related's request for an Article XI Real Estate Tax Exemption. In response to that request, the Board asked Related to brief the HHHS and CLU Committee Chairs on their new proposed illegal demolition remedy.

This initial presentation was of a schematic design not yet fully fleshed out. Related presented a commercial space on the entire ground floor, 2 permanently affordable studio apartments on each of the 2nd and 3rd floor, and a market-rate unit on the top 4th floor. They noted that the proposed design included an elevator that would reach the 2nd floor, stating that the building met ADA-requirements. The Board members rejected that

² e.g. 421a program now known as Affordable Housing New York

³ [MCB4 January 9th, 2017 Letter](#)

⁴ The WCHAF is a provision of the Special West Chelsea District established in 2005. Its effectivity was triggered when 90% of the Highline development rights were purchased. That event occurred in 2017. From that time, developers could now purchase WCAHF development rights, not just Highline development rights. The per-square-foot price for WCHAF development rights was established by the City Planning Commission in September 2017 at \$625. The WCHAF was established at HPD in March 2019. Currently two developers are seeking to purchase WCHAF development rights.

assertion regarding ADA-requirements. The Board requested Related make a full presentation to the March 2019 joint HHHS & CLU Committee meeting.

Proposed Demolition Remedy

On MCB4’s March 18th 2019 joint CLU & HHHS Committee meeting, Related presented its proposed remedy. The proposal is a residential building with ground floor commercial use of the same square footage as the previously demolished 500 W 28th Street building.

Apartment Layout

The proposed remedy will have 5 apartments— 4 permanently affordable one-bedrooms and 1 market-rate two-bedroom apartment. The affordable one-bedroom apartments are located on the 2nd and 3rd floors. These two floors have 2 apartments each; one is 535 sq ft and the other, 529 sq ft. The market-rate two-bedroom apartment is 1,065 sqft. The apartment distribution is as follows:

Floor	1-Bedroom	2-Bedroom
Ground Floor	-	-
2 nd Floor	2	-
3 rd Floor	2	-
4 th Floor	-	1
Total	4	1

The affordable apartments will be fully accessible, supported by elevator access, with the same finishes to the market-rate apartment. However, the top floor market-rate unit will only have stair access.

Commercial Space

The proposed remedy will have full ground floor retail space, with an additional outdoor terrace. There will also be a 2nd floor outdoor space adjacent to one of the affordable apartments. Related stated that this space would be inaccessible and the ground floor retail would have an exhaust at this location.

Building Design

Related presented a brick façade building with a full cornice that wraps around the top of the building and above the ground floor storefronts. The building has full height windows with lintels on the residential portions. The space between windows on the residential floors is also accented by vertical depressions of the brick façade. Ventilation on the roof is screened with brick which creates the appearance of a brick chimney.

Related proposed that roof access be locked. The proposed remedy will comply with the new NYC Energy Conservation Code⁵, which MCB4 acknowledges to be stronger than the Enterprise Green Communities Criteria⁶. This proposed remedy is to be filed with DOB as an alteration to build a new building.

⁵ [NYC Energy Conservation Code](#)

⁶ [HPD Enterprise Green Communities Criteria](#)

Housing Program

The proposed affordable apartments will be permanently affordable with rents restricted at 130% AMI and incomes restricted at 165% AMI.

Article XI Real Estate Tax Exemption

To ensure permanent affordability of this proposed remedy, Related has filed for an Article XI Real Estate Tax Exemption for the entire proposed remedy.

Committee Discussion

The Committees had robust discussions regarding the proposed remedy. The committees were pleased with the overall exterior design as presented. However, the committees are troubled by certain aspects of this proposed remedy:

- It is a remedy for illegal demolition, having taken place with neither the required Certificate of No Harassment nor HPD Demolition Certification, not a proposed affordable housing development, and must be viewed through that lens
- The FAR for 500 West 28th Street was transferred to the Zaha Hadid condo at 520 West 28th, to create exceptional market value⁷ at a site with an already exceptional market value
- The need for the Board to negotiate ADA accessibility, a basic requirement, especially in the case of a remedy for illegal demolition
- The statement that the 2nd floor outdoor space was not suitable for affordable tenant use, under the guise of kitchen exhaust venting, which is not legally permitted in such close proximity to a residential window
- When asked regarding the requirement for a 2nd means of egress, Related responded that they are unclear at best
- Seeking an exemption for street tree planting.

Related has unprecedented investment in our district in both commercial and residential properties. In March it opened the first phase of Hudson Yards. That development contains a multistory shopping mall covered with expensive finishes: many different types of marble, granite, stainless steel and brass, and bespoke glass. The outdoor plaza has a Thomas Heatherwick sculpture, “Vessel (TKA)”, which Related reported cost \$200 million to fabricate and install.

Why for this small scale project are we discussing ADA access, outdoor space for tenants, and the inclusion of street trees? The budget for Related’s Hudson Yards Opening Event well exceeded the cost of an elevator installation in this 4-story building. MCB4 requests Related to provide adequate funding to treat this small project, an illegal

⁷ [Curbed NY article: "Crowning \\$50M penthouse at Zaha Hadid's High Line condo reappears"](#)

demolition remedy, in the same manner as it has in all other Related developments throughout our community.

These concerns resulted in the decision to approve this application with the following conditions, which were also responded to by Related in the attached commitment letter⁸:

Housing Program

MCB4 Request

Revise the affordable housing program to include 2 apartments up to 130% of AMI and 2 apartments at 165% of AMI. All apartments will be marketed no higher than each band. This change will increase the range of affordability.

Related Response

The marketing band for two of the affordable units will be up to 165% of AMI, and for the other two units Related will drop the band to up to 150% of AMI. The rents will be set at 130% of AMI.

MCB4 Response

MCB4 reiterates its request to revise the affordable housing program to include 2 apartments up to 130% of AMI and 2 apartments at 165% of AMI. All apartments will be marketed no higher than each band. This change will increase the range of affordability.

Commercial Space

MCB4 Request

- Relocate any kitchen exhaust to the high roof, to prevent any cooking odors entering residential apartments.
- Comply with MCB4 Business and License Committee's Policy on liquor licenses in residential buildings⁹ including outdoor spaces.

Related Response

- Related will comply with locating any kitchen exhaust to the high roof.
- Related will operate the outdoor ground floor terrace in compliance with MCB4 Business and License Committee's Policy on liquor licenses in residential buildings.

MCB4 Response

MCB4 recognizes and appreciates Related's commitment in complying with these requests.

⁸ See Attachment A – Related May 1, 2019 Response Letter

⁹ [MCB4 Policy Regarding Concentration and Location of Alcohol-Serving Establishments](#)

Building Design

MCB4 Request

- Install an elevator to serve all 4 floors, including the top floor market rate unit, to provide equal accessibility to all units.
- Make the 2nd floor roof accessible to the 2nd floor permanently-affordable studio tenant to use as outdoor space.
- Adequately respond to why no second means of egress for fire is permitted in the proposed building. Since it is filed as an alteration, MCB4 supports the use of fire escapes.
- Comply with mandatory street tree planting requirements per ZR 26-41

Related Response

- Related would like to comply with the MCB4 request of installing an elevator to serve all 4 floors, and is currently studying this.
- Related will make the 2nd floor roof accessible to the 2nd floor permanently-affordable studio tenant to use as outdoor space subject to any required mechanical equipment.
- Related has responded that this building is not required to have a second means of egress for fire due to the building height and footprint as per Building Code Sect. 28.2 -1021.2.
- Related will comply with mandatory street tree planting requirements.

MCB4 Response

MCB4 recognizes and appreciates Related's commitment in complying with most of these requests.

The previous illegally demolished building had 2 means of egress, with 6 apartments. For tenant safety purposes, MCB4 request 2 means of egress. Since Related has stated the building is considered an alteration, a reinstallation of fire escape may be possible. MCB4 requests to further discuss with Related as to why this building is not required to have a second means of egress.

Article XI Real Estate Tax Exemption

MCB4 Request

MCB4 supports an Article XI tax exemption only for the affordable portion of the building, not the commercial space nor the market rate apartment. Such an action will ensure long term affordability of those apartments.

Related Response

Related stated an Article XI tax exemption only requires that 66.7% of the units be restricted to rents and incomes at or below 165% of AMI. Related is providing four affordable units (out of five total units) or 80% of the units, exceeding that requirement.

MCB4 Response

MCB4 would like to reiterate its support for an Article XI tax exemption only for the affordable portion of the building, not the commercial space nor the market rate apartment. MCB4 will not support a tax exemption for a market rate apartment, especially when it is in the context of an illegal demolition remedy.

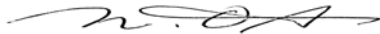
Conclusion

MCB4 thanks Related for their efforts to create a model remedy for an illegal demolition. The Board believes all parties are working in the same direction, but it has taken over 2 years to come this far. The Board requests further discussions with Related to resolve outstanding matters, in order to give full support for the proposed Regulatory Agreement for permanent affordability and Article XI Real Estate Tax Exemption. We are sure both Related and the Board has a common interest in having regulatory matters settled so construction can begin.

Sincerely,



Burt Lazarin
MCB4 Chair



Maria Ortiz, Co-Chair
Housing, Health &
Human Services Committee



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



Betty Mackintosh, Co-Chair
Chelsea Land Use Committee



Lee Compton, Co-Chair
Chelsea Land Use Committee

cc: Hon. Gale Brewer, Manhattan Borough President
Hon. Brad Hoylman, New York State Senator
Hon. Richard Gottfried, New York State Assembly
Related

May 1, 2019

Burt Lazarin, Chair
Community Board 4 / Manhattan
330 West 42nd Street, 26th Floor
New York, New York 10036

Re: 500 West 28th Street

Dear Mr. Lazarin,

On March 18, 2019 at the joint meeting of the Chelsea Land Use and Housing, Health and Human Services Committees of Manhattan Community Board 4, Related presented its plans for 500 West 28th Street. The project is a replacement in kind of a formerly-existing mixed-use commercial/residential building located on the southwest corner of 28th Street and 10th Avenue. At the meeting, members of the Board raised some questions/concerns which are outlined below, along with Related's response.

1. Apartment Layout
 - Elevator – CB4 wants the elevator to service all of the residential floors.
 - i. Response: Related is studying this and intends to comply with the request, pending approval of the changes by HPD's BLDS group.
 - Second means of egress – How is this provided?
 - i. Response: This is not required due to the building height and footprint (see NYC BC §28.2-1021.2).
2. Housing Program
 - AMI – CB4 wants increased affordability.
 - i. Response: The marketing band for two of the affordable units will be up to 165% of AMI, and for the other two units Related will drop the band to up to 150% of AMI. The rents will be set at 130% of AMI.
3. Commercial Space
 - Kitchen exhaust – CB4 wants any kitchen exhaust to be relocated to the high roof.
 - i. Response: Related will comply.
 - Outdoor rules and regulations – CB4 wants confirmation that Related will be in compliance.
 - i. Response: Related confirms it will operate the outdoor ground floor terrace in compliance with these rules and regulations.
4. Apartment & Building Design
 - Elevator – see above
 - Second Floor Terrace – CB4 wants the second floor terrace to be accessible to the adjacent unit.
 - i. Response: Related will make this accessible subject to any required mechanical equipment.
 - Second Means of Egress – see above
 - Street trees – CB4 would like there to be street trees.
 - i. Response: Related will provide them.



5. Article XI – CB4 supports the tax abatement only for the four affordable units.
 - Response: An Article XI tax abatement only requires that 66.7% of the units covered by the abatement are restricted to rents and incomes at or below 165% of AMI. Related is providing four affordable units (out of five total units) or 80% of the units, exceeding the requirements.

We look forward to beginning construction in the upcoming months.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G Gushee'.

Greg Gushee
Executive Vice President

Cc:

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

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

Betty Mackintosh, Co-Chair
Chelsea Land Use Committee

Lee Compton, Co-Chair
Chelsea Land Use Committee