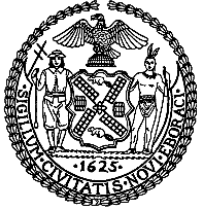


CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**Burt Lazarin**  
Chair

**Jesse Bodine**  
District Manager

February 26, 2019

Marisa Lago, Chair  
New York City Planning Commission  
120 Broadway  
31st Floor  
New York, NY 10271

Maria Torres-Springer  
Commissioner  
NYC Department of Housing Preservation & Development  
100 Gold Street  
New York, NY 10038

Thomas Fariello  
Acting Commissioner  
NYC Department of Buildings  
280 Broadway  
New York, NY 10007

**Re: 319-321 West 38<sup>th</sup> Street  
Proposed Building Preservation  
Hotel Use & Permanent Affordable Housing**

Dear Chair Lago, Commissioner Torres-Springer, and Acting-Commissioner Fariello:

At Manhattan Community Board 4's (MCB4) Clinton/Hell's Kitchen Land Use meeting, on January 9, 2019, members once again discussed 319-321 West 38<sup>th</sup> Street, a site containing 16 residential units which were partially demolished illegally in 2015.

This site is one of the 12 sites on which MCB4 has seen the attempt of illegal demolition since December 2015. **These 12 sites encompass 24 buildings and 170 units and span through the Garment Center, West Chelsea, Hudson Yards, and Clinton Special Zoning Districts.** This

affordable stock is now under threat. The Special District Zoning text prohibits demolition of residential buildings, as a means of preserving affordable housing for the long-term community residents of those buildings.

By a vote of 33 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible, Manhattan Community Board 4 (MCB4/“The Board”) voted to reaffirm support of this project.

## **Background**

319-321 West 38<sup>th</sup> Street consisted of two four-story and one three-story residential building of 9,575 square feet with 16 dwelling units. The buildings were renovated Old Law Tenements 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 issued 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 late 2015. The buildings are located in the Garment Center Subdistrict A-2, formerly known as Preservation Area P-2, of the Garment Center Special District, where residential buildings cannot be demolished.

In December 2015, an MCB4 Board member observed construction workers erecting scaffolding around both buildings, in preparation for a demolition. The Board wrote a letter to the NYC Department of Buildings (DOB) on January 13, 2016<sup>1</sup> to request that DOB rescind its approval for the job applications submitted by the Owner.

In the Spring of 2018, the Owner approached MCB4 to develop a plan to restore the residential units while still allowing further development of the site to proceed. The Owner and the Board continued to meet several times to arrive at a zoning compliant plan for both hotel use and permanently affordable housing. This proposed development was presented on July 11, 2018, which resulted in the August 7, 2018 MCB4 support letter<sup>2</sup>.

Following that request, and as part of the Special Garment Center District Rezoning, MCB4 had requested the development of an “A-Text” to provide a zoning solution for illegal demolition sites in which proposed hotel developments would also create permanent affordable housing<sup>3</sup>.

## **Garment Center Rezoning**

In March 2017, the City proposed a package of changes to the SGCD. During the review of this rezoning, among other requests, MCB4 had also specifically requested the development of language in an “A-Text” to allow:

- “Sandwiching” of residential use below commercial use
- Grandfathering the site to secure affordable housing

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<sup>1</sup> [MCB4 CHKLU January 13th, 2016 Letter](#)

<sup>2</sup> [MCB4 CHKLU August 7th, 2018 Letter](#)

<sup>3</sup> [MCB4 CHKLU August 20th, 2018 Letter](#)

- MCB4 has been working with the Department of City Planning (DCP) to establish a Special Permit requirement for any new hotels in the Special Garment Center District. However, the building has been vacant since before the referral date of June 11<sup>th</sup>, thus grandfathering the site.

MCB4 proposed to include a provision in the SGCD zoning for cases in which a demolition permit was granted in error by DOB:

- In a case where an owner is providing permanent affordable housing on the site, to allow residential use below commercial use
- Grandfather the sites from the proposed SGCD Hotel Special Permit requirement
- To make the base FAR similar for both commercial and residential developments in which permanent affordable housing is included
- Create a text reference to the Inclusionary Housing zoning to allow a broader range of income bands
- Create a text reference to the Inclusionary Housing zoning to allow the use of both District Improvement Bonus and Inclusionary Housing Bonus in a pari passu manner

During the next several months, the Owner continued to work vigorously together with the Board to strive for a zoning compliant solution which would allow for development of both hotel use and permanently affordable housing. However, DCP had declined to develop an A-Text. During the course of negotiations of the SGCD Rezoning, the Owner continued to meet with the Board, the Council Speaker Staff, and DOB to propose an alternative solution.

### **Proposed Solution**

The Owner had proposed a solution, in which DOB has reviewed and considered as reasonable, to the “sandwiching” of residential use below commercial use. The solution proposes all of the floor area in the building to be initially converted to commercial use and then converted back to residential use pursuant to Article 1, Chapter 5 of the Zoning Resolution. This would allow the proposed project to exceed the base maximum floor area ratio for zoning lots in the Special Garment Center District containing residential uses and would allow the proposed project to have residential uses located on floors below transient hotel commercial uses. Accordingly, a Substantial Preservation Certification from the NYC Department of Housing Preservation and Development (HPD) would be required to implement this development strategy.

As part of the adoption of the SGCD Rezoning on December 20, 2018, this proposed project site was also grandfathered from the requirement of a Hotel Special Permit for transient hotels.

### **Proposed Project**

Given the solution now in place, on January 9, 2019, the Clinton/Hell’s Kitchen Land Use Committee was presented with the following plan in which the owner has agreed to:

- Preserve both building facades
- One to one replacement of residential floor area

- Permanently affordable housing units to be subject to a Regulatory Agreement executed by HPD and the Owner
- Continue further development of the unit type breakdown as well as unit layouts of the affordable housing units, taking into consideration MCB4 has a preference for larger units that will accommodate families<sup>4</sup>.

Proposed Development	: Residential and hotel rooms
Proposed Stories	: To be determined
Proposed Total Residential Units	: Approximately 11
Proposed Permanently Affordable Housing Units	: Approximately 11
Proposed Hotel Rooms	: 143

**MCB4 reiterates its support for the above proposed development under the following conditions:**

- **The Owner will continue to work with MCB4 to develop and present the final apartment distribution, layout, and unit breakdown of the permanently affordable housing units.**

### **Conclusion**

MCB4 has seen demolition applications filed and/or approved for these 12 sites which encompass 24 buildings and 170 residential units in our district. Owners of these locations have sought to evade the zoning requirements of each of our four Special Zoning Districts that are meant to preserve affordable, rent stabilized housing. In some of these cases, owners have sought other methods to demolish this housing.

319-321 West 38<sup>th</sup> Street is among those sites. In this case, however, MCB4 and the Owner worked together to develop an innovative solution that both preserves the housing and allows development of a hotel use to proceed, while also ensuring permanent affordability. MCB4 requests that the Owner continue working with the Board to ensure that both goals are met.

The next steps in this process are to meet with HPD to develop and secure a Regulatory Agreement for the permanently affordable housing units. Secondly, to meet with DOB to proceed with the proper zoning and code compliant solution to continue development on this site. The Board will continue to assist ongoing negotiations with HPD and DOB.

The Board is pleased with the great efforts that the City Council Speaker and the Mayor’s office have dedicated to arrive at a solution to reconcile development of new hotel use to proceed while still preserving and creating the permanently affordable housing units that would continue to meet the needs of the existing community. MCB4 looks forward to meeting with city agencies to implement changes that will allow this and other demolition sites in our district proceed with construction.

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<sup>4</sup> This request to accommodate families will result in an affordable unit count less than the 16 original apartments in the 3 buildings

Sincerely,



Burt Lazarin  
Chair  
Manhattan Community Board 4



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

Cc: Hon. Jerry Nadler, U.S. Congress  
Hon. Brad Hoylman, New York State Senate  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Richard Gottfried, New York State Assembly  
Hon. Linda Rosenthal, New York State Assembly  
Hon. Corey Johnson, Speaker, New York City Council  
Hon. Helen Rosenthal, City Council  
Jay Segal, Attorney for Owner