



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

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

February 26, 2019

**Re: 435 West 48th Street (Block 1058 Lot 113)
Illegal Demolition of Residential Building**

Dear Acting-Commissioner Fariello:

At Manhattan Community Board 4’s (MCB4) Clinton/Hell’s Kitchen Land Use meeting, on January 9, 2019, members discussed 435 West 48th Street, a four story residential building located in the Special Clinton District (SCD).

This is the 12th site 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 to vote, MCB4 voted to request that Department of Buildings (DOB) deny New Building applications on 435 West 48th Street and conduct an audit of these building.

Background

435 West 48th Street is a 4-story Old Law tenement building in the Special Clinton District containing four residential units. Community residents had been made aware of plans for a new residential building on this site through a New York YIMBY article on December 31, 2018¹. The Board conducted research on DOB’s Building Information System (BIS) and found that starting December 20, 2018, 435 West 48th Street had multiple filings in relation to plans of new residential building under job number 121189383².

¹ [New York YIMBY December 31st, 2018 Article](#)

² [BIS Job No: 121189383](#)

Job Number	File Date	Job Type	Job Description
121189383	12/20/2018	NB	<ul style="list-style-type: none"> • Erect a new residential building
121189383	12/21/2018	NB	<ul style="list-style-type: none"> • Excavation for new building • Installation of foundation, footing and columns • Installation of mechanical ductwork and plumbing fixtures • Installation of superstructure and columns for new building
140825034	01/03/2019	A2	<ul style="list-style-type: none"> • Installation of sprinkler system for new residential building

This building is located in the heart of Preservation Area A of the Special Clinton District, where residential buildings cannot be demolished, per Section 96-108 of the City’s Zoning Resolution.

Intent and History of Demolition Protections in SCD

Original 1973 Rezoning

The first Special District in MCB4 was the SCD, which was established in 1973 as a response to rapid real estate speculation that emerged from a proposed convention center on the west side, which led to the demolition of existing residential buildings. The SCD included a core Preservation Area in which no residential buildings could be demolished.

Preservation Area Demolition Prohibition (SCD 96-108)

Within this zoning regulation, demolition permits were only permissible if the building was deemed as an unsafe building by the New York City Administrative Code or obtained a special permit through the City Planning Commission, provided that the Commission made certain findings as noted in the text. From 1973 until the late 1980’s, no buildings were demolished in the Preservation Area. In 1987, the Durst Organization, the owner of 427-429-431-433 West 43rd Street, filed a series of Building Notices³ (BN’s) for alterations. Those alterations included removing beams in the rear of the building, removing beams in the middle portion of the building, and removing beams in the front of the building. After beams were removed, the façade was not properly supported and also removed. The sum of the building notices constituted a full demolition. However, in the absence of any clear text regarding the removal of the structural elements in a building for an alteration, even DOB stop work orders could not prevent an illegal demolition.

20% Threshold for Structural Removal Established by DOB

In response to the actions at this building site, DOB issued an internal policy memo stating that an alteration which removed 20% or more of the structure in a residential building in the SCD

³ Building Notices are now known as Alt 2’s

would constitute a partial demolition and would therefore be subject to Special Permit requirements.

1990 Rezoning

In June 1990, as part of ULURP N 900614 ZRM, zoning text incorporating that language of that DOB internal policy memo was incorporated into 96-108, making clear that for a building being subject to alteration:

96-108 (a) 2

(2) is to be substantially preserved and requires an alteration permit to allow the removal and replacement of 20 percent or more of the #floor area#. ⁴

The City Planning Commission issued a report on the proposed zoning text amendments to reinforce the anti-demolition language for the SCD. As a result of this ULURP, the twenty percent threshold became codified in the Zoning Resolution, which noted that a special permit is required not only for full demolition of residential buildings in the SCD, **but also for removal and replacement**, of more than 20% of a building.

In its report, the CPC report cited testimony from community residents as well as representatives from local organizations and block associations, who believed that “to allow [residential] demolition would undermine the SCD's goal to maintain rent levels in the area for a mixture of income groups.”⁵

Westside Rezonings in 2005 & 2009

The demolition restriction for residential buildings was extended to the other three Special Zoning Districts in MCD4: Garment Center, Hudson Yards, and West Chelsea. That action protected 1,382 units in 122 buildings.

Trend of Illegal Demolitions in MCD4

The chart on the following page outlines **12** sites in Manhattan Community District 4 on which owners have attempted to illegally demolish residential units. These **12 sites encompass 24 buildings and 170 units.**

⁴ Emphasis added

⁵ [City Planning Commission Report N 900614 ZRM, dated June 20, 1990.](#)

Table 5: Illegal Residential Demolitions in MCB4

Building Address	Buildings	Units	Special District	Status
485-491, 497 9 th Avenue	5	20	Hudson Yards	Demolition work started without permits, creating structural problems; DOB then found buildings structurally unsound; demolished
319-321 West 38 th Street	2	18	Garment Center	Tenants vacated; building partially demolished
559 West 22 nd Street AKA 162 11 th Ave	1	21	West Chelsea	Tenants vacated; stop work order issued
500 West 22 nd Street AKA 197 10 th Ave	3	12	West Chelsea	Tenants vacated; permits revoked
821 9 th Ave	1	6	Clinton	Tenants vacated; building demolished and new building built in its place
317-319 West 35 th Street	2	28	Garment Center	Tenants vacated; permits revoked
500 West 28 th Street	1	6	West Chelsea	Tenants vacated; Owner did not obtain CONH from HPD; demolished
355-357 West 39 th Street	3	8	Hudson Yards	Some tenants still occupy building; demolition and new building applications approved on 11/22/16 and 12/6/16, respectively
253 10 th Avenue ⁶	1	6	Chelsea	Tenants vacated; building demolished
335-337 West 55 th Street	2	28	Clinton	Tenants vacated; building demolished and new building under construction
412 West 46 th Street	1	15	Clinton	Tenants vacated; building interior demolished
435 West 48 th Street	1	4	Clinton	Plan examination disapproved 01/02/19

24 170

DOB’s lack of enforcement of a central provision of these Special District Requirements, which preserves existing housing, has allowed these owners to vacate tenants from all of these buildings and succeed in demolishing some of these protected buildings.

In every one of these instances, DOB action was taken only as a result of the efforts from MCB4 and local elected officials. However, many of these buildings were discovered late in the

⁶ DOB erroneously issued a permit for the demolition of 253 Tenth Avenue on April 24, 2017. The building was later declared structurally unsound by DOB and was fully demolished by the owner. However, the structural issues were caused exclusively by the illegal demolition work that received improper DOB approval.

demolition process. The agency must take action to stop these illegal demolitions and prevent the loss of MCB4's housing stock.

SCD Zoning Text Provisions

Demolition Prohibition in the Preservation Area of the SCD

Demolition of residential buildings located in the Preservation Area of the SCD is prohibited under Section 96-108 of the New York City Zoning Resolution, which states:

96-108 Demolition of buildings

No demolition permit *or alteration permit for partial demolition involving a decrease of more than 20 percent in the amount of #residential floor area# in a #building#* shall be issued by the Department of Buildings for any #building# containing #dwelling units# within the Preservation Area, unless it is an unsafe #building#

However, the City Planning Commission, by a special permit⁷, may allow demolition of #buildings# containing #dwelling units# or #rooming units# other than unsafe #buildings# within the Preservation Area, provided that the Commission makes the following findings:

(a) that the existing #building#:

(1) is not eligible for rehabilitation under any active publicly-aided program under which funds are available;
or

(2) *is to be substantially preserved and requires an alteration permit to allow the removal and replacement of 20 percent or more of the #floor area#.*

Conclusion

This building sits in the heart of the Preservation Area of the Special Clinton District, where demolition undermines the SCD's stated goal to maintain rent levels in the area for a mixture of income groups. Filing for a New Building should in no way be permitted to enter the DOB system, specifically one which entails erecting a new building that would subsequently require the demolition of a protected residential building. The goal of maintaining a wide range of affordability should be a guiding principle under which DOB enforces the SCD in the NYC Zoning Resolution. The protections in these Special Districts have been the cornerstone of

⁷ Underlined text are added text amendments from the original zoning text

neighborhood preservation efforts and have kept thousands of New Yorkers on the west side of Manhattan their homes.

The Board understands that although the status of the job application is currently on hold and has received disapproval from the plan examination, however, The Board requests that DOB deny the application in its entirety.

MCB4 has written to DOB every time another protected residential building that has come under threat by an owner attempting to circumvent the requirements of the Zoning Resolution that prohibit demolition. We ask that DOB support, not undercut, this 46 year effort, by enforcing the demolition restriction.

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. Linda Rosenthal, New York State Assembly
Hon. Richard Gottfried, New York State Assembly
Hon. Letitia James, New York State Attorney General
Hon. Corey Johnson, Speaker of the City Council
Hon. Helen Rosenthal, City Council
Hon. Gale A. Brewer, Manhattan Borough President
Maria Torres-Springer, Commissioner, HPD
Beatrice Thuo, General Counsel, HPD
Marti Weithman, Assistant Commissioner, HPD
Martin Rebholz, Borough Commissioner, DOB
Patrick Wehle, Assistant Commissioner, DOB