

CITY OF NEW YORK
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District Manager

December 10, 2021

Louise Carroll, Commissioner
NYC Department of Housing Preservation and Development
100 Gold Street
New York, NY 10007

Anita Laremont, Chair & Director
City Planning Commission & Department of City Planning
120 Broadway
New York, NY 10271

**Re: Proposed MTA (806 9th Ave) and DEP (705 10th Ave) Site Affordable Housing
Developments -- Proposed Zoning and Zoning Text Changes**

Dear Commissioner Carroll and Chair Laremont,

On November 19th, 2021, New York City Department of Housing Preservation and Development (HPD) and the Department of City Planning (DCP) briefed Manhattan Community Board 4 (MCB4) regarding the proposed underlying zoning and proposed Special Clinton District zoning text changes for the MTA Site, 806 9th Ave, located on the east side of Ninth Avenue between West 53rd and West 54th Streets, and the DEP Site, 705 10th Ave, located on the west side of Tenth Avenue between West 48th and West 49th Streets. This briefing was the first disclosure in detail of the proposed changes and the underlying rationale.

At its regularly scheduled Executive Committee meeting on November 22nd, 2021, the Chair and members of the Clinton/Hell's Kitchen Land Use Committee reported the details of that briefing to the full Executive Committee. After discussion and consideration, irrespective of the merits of the proposed affordable housing developments, the Executive Committee recommended to the Full Board that the changes in the underlying zoning and the proposed text changes were overly broad, inconsistent with the residential character of the community and not required to execute the proposed developments. Instead, the Board supports using the framework of the existing Special Permits for height and setback, and the use of Mayoral Zoning Overrides to accomplish

any other needed zoning requirements for the proposed developments. Therefore, the Board at its December 1, 2021 Full Board meeting, voted 41 in favor, 0 opposed, 0 abstaining, and 2 present but not eligible to vote, to firmly reject the proposed underlying zoning changes and Special Clinton District text amendments.

Background

MTA Site

The MTA Site, a former bus depot that was demolished in 1996, is currently a vacant lot used for MTA employee parking. The MTA Site is in the Preservation Area of the Special Clinton District subject to that Area's protective height and bulk zoning text restrictions. Its underlying zone is R8 with ground floor commercial overlay (C1-5).

DEP Site

The DEP Site, a Third Water Tunnel Access Shaft site, as of October of 2016, has been vacated and DEP has been working with the administration to transfer the property to both HPD and the Department of Parks to develop separate affordable housing and public open space projects. The DEP Site is in the Preservation Area of the Special Clinton District subject to that Area's protective height and bulk zoning text restrictions. Its underlying zoning is R8 with a ground floor commercial overlay (C2-5).

Western Railyards Points of Agreement (WRY POA) – MTA & DEP Site Requirements¹

- Height cap of 77 ft for DEP Site and 85 ft on Ninth Ave and 99 ft on midblock (via Special Permit)
- AMI mix of 165% or under
- 50% two or more bedroom units
- Permanent affordability
- HPD will share the program overview with MCB4 before releasing the RFPs for the off-site housing development

This letter does not address the issue of lack of compliance with the proposed income bands committed under the WRY POA or the introduction of a 100% supportive housing development at the MTA Site, which the Board has written to HPD about on November 23, 2021. This letter only speaks to the zoning and land use issues raised by the proposed rezoning and proposed Clinton Special District zoning text changes, and their effect on the future residential character of the Clinton/Hell's Kitchen community.

Background on Proposed Special District Rezoning & Text Changes

In consideration that these proposed changes were under review for a minimum of 6-8 months in preparation for an Environmental Impact Assessment and the Uniform Land Use Review Procedure (ULURP) process, it is unconscionable that DCP and HPD would brief the Board only weeks before a proposed ULURP Certification. That lack of briefing and collaboration on

¹ Page 3-4, [Western Railyards Rezoning Points of Agreement - executed December 10, 2009](#)

proposed rezoning and Special Clinton District text changes in itself breaks precedent in the DCP's 48-year collaborative and working relationship with MCB4.

The Special Clinton District is a carefully crafted zoning document that has been the bulwark of neighborhood preservation of the Clinton/Hell's Kitchen area for decades. Private and public sector developers have always met in advance and discussed proposed changes to the Clinton Special District, 9-12 months prior to making actual proposals. The DCP, developers and the Community Board would then hash out the details of any proposed changes, working together to severely limit their applicability to enable development of a site without creating district-wide precedent.

When public sites have been involved, whether they be small-scale, such as a Fountain House residence, at 441 West 47th Street, requiring a text change for community facility use or large-scale, such as the development of the Gotham West project at 592-608 Eleventh Ave, 507-553 West 44th Street, and 508-558 West 45th Street, nearly an entire city block, creating 1,250 units. The Department of City Planning has always worked with the Board to arrive at an agreement for the minimal changes needed for rezoning and/or text changes. MCB4 has always been exceptionally flexible with text changes needed to develop permanently affordable housing.

After the New York City Convention Center² had been announced in 1972, the area was subject to major developer speculation, vacating of tenants from fully occupied residential buildings and demolition. As a result of those actions to protect and preserve the Clinton/Hell's Kitchen residential neighborhood, the City of New York established the Special Clinton District in 1973 to preserve existing housing and prevent the commercialization of the Clinton/Hell's Kitchen District. In the General Purposes section of the New York City Zoning Resolution, Section 96-00, Special Clinton District, one of the main goals stated is to: "(a) to preserve and strengthen the residential character of the community."³

Proposed Zoning Map Changes

The MTA Site is on a 150-foot by 150-foot (22,500 square foot) lot. However, the proposed rezoning covers not only the site of the affordable housing, but extends further to the east by 500 feet, to 150 feet west of Eighth Avenue and covers the full 200-foot block width of the MTA Control Center, between West 54th to West 53rd Streets on Ninth Avenue. The proposed rezoning is from an R8 residential zone, in the heart of the Preservation Area, to a C6-2 commercial zone. The proposed rezoning area was slightly modified from the September 30th, 2021, presentation to remove tenements along West 53rd Street between Eighth and Ninth Avenues from the proposed rezoning.

The DCP offered that the rezoning accommodates not only the requirements to build 30,000 square feet of office and garage space for the MTA on the MTA Site, but also to clean up the

² Originally sited for the West Side piers between West 43rd to West 46th Streets.

³ [Chapter 6 - Special Clinton District \(CL\)](#)

institutional use of the MTA Control Center under residential zoning. This action is not needed for feasibility of the affordable housing project. The entire MTA Control Center must be removed from the proposed rezoning.

To MCB4's knowledge, the MTA has not requested for their property to be rezoned. If and when there is a request, that should be managed in a separate, publicly transparent ULURP process. Only actions needed to develop the proposed affordable housing on the MTA Site should be included in any ULURP Certification regarding 806 Ninth Avenue.

Since 1973, MCB4 and DCP have worked together to extend the residential underlying zoning both in the preservation area and in the excluded areas. Residential zoning was extended west of Tenth Avenue to Eleventh Avenue between 1990 and 2009, and the excluded areas, such as the Gotham West site and the former Clinton Urban Renewal Area, was rezoned from manufacturing to residential zones. Since the District's inception, there has never been a rezoning in the sub-district known as the Preservation Area, the community's residential core from residential to commercial. This rezoning precedent must not be set.

Proposed Clinton Special District Zoning Text Changes

Since 1973, there has only been three Special Permits allowed in the Clinton Special District:

- Under Section 96-104 for height and setback in the Preservation Area
- Under Section 96-108 for demolition of buildings in the Preservation Area
- Under Section 96-23 for height and setback in the Perimeter Area

The Special Permits under Section 96-104 and 108 have existed since the initial adoption in 1973, and Section 96-23 since 2011. In the District's 48-year history, there has been one application for demolition under Section 96-108, three applications under Section 96-104 for height and setback, and only two granted. There have been no applications under Section 96-23.

The application of Section 96-104 for increase in height and setback, at both the DEP and MTA affordable housing sites was the subject of serious controversy at the time of the WRY Rezoning and a compromise regarding limitations to those permits was reached and embodied in the WRY POA. MCB4 continues to support the use of those permits at the DEP and MTA Sites.

The proposed text changes seek to modify the Section 96-104 height and setback permit and for the first time, to include the ability to vary rear yard and lot coverage requirements. These proposed changes would apply for the entire Preservation Area from West 43rd to West 53rd Streets, 100 feet west of Eighth Avenue, to an irregular boundary west of Tenth Avenue. The proposed text changes are far reaching and create an ability for higher lot coverage and lesser rear yard requirements.

The building typology in the Clinton community is predominantly old law tenements on 25 by 100-foot lots. Many buildings are between 80-90 feet deep with rear yards of only 10 to 15 feet.

The provisions governing Section 96-102 on Lot coverage regulations and Section 96-103 on Yard regulations, were established to ensure new construction would not further compromise the light and air of the adjacent historically overbuilt tenements. MCB4 does not agree with the establishment of a Preservation Area-wide Special Permit, the result of which would be to undercut that long-stated zoning requirement to preserve light and air for adjacent residents. The current zoning provisions of height and setback should not be modified.

Development Process

This process continues to be non-transparent, with no community consultation as to the means and methods to facilitate the zoning needs of both developments. The Board wants to further note that the proposed changes are independent of the Board's stated position on lack of compliance with the proposed AMI bands, which are not consistent with the Western Railyards Points of Agreement.

It has been past practice for both DCP and HPD to meet with, and consult with, Manhattan Community Board 4 regarding any zoning text changes needed to facilitate an affordable housing development. The Board has not been provided any proposed text as of the briefing on November 19, 2021.

Further, the Board has worked with multiple administrations regarding Mayoral Zoning Overrides when text changes were not sufficient to facilitate affordable housing. This wholesale approach to district-wide or subdistrict-wide zoning text changes is not acceptable. Further, it has become viewed by many members of the community as a Trojan Horse, changes being made to the district in the name of an affordable housing development. After deliberation at the Executive Committee on November 22, 2021, MCB4 has taken the following position.

MCB4 Position

MTA Site

The Board does not agree with any proposed rezoning from R8 to C6-2 at the heart of the Preservation Area of the Special Clinton District, no such action has been taken since 1973. The MTA is not the applicant and has not requested a rezoning for its control center. If and when it requires a rezoning, it should go through the standard ULURP process and not benefit from this affordable housing project through a dramatic change in use from residential to commercial. Any changes to accommodate the proposed 30,000 SF of commercial use for the MTA should be handled via Mayoral Zoning Override.

Secondly, the proposed zoning text creates new Special Permits for lot coverage and rear yard, and the consolidation of those permits with the existing Special Permits for height and setback. The Board does not agree with this action. The Special Permit for height in the Preservation Area has not been touched since 1973 and should not be further modified to include variances from lot

coverage or rear yard as stated in the Zoning Resolution, Chapter 6, Section 96-102 Lot coverage regulations⁴ and Section 96-103 Yard regulations.⁵

Any changes to accommodate the proposed MTA Site project should be handled through Mayoral Zoning Override, not zoning text change, affecting the entire Preservation Area.

Further, given that the driving factor in these proposed rezoning and zoning text changes derives from the MTA's need for 30,000 SF of office space, the Board now questions that need. Recently, the MTA has a current pending sale of its headquarters at 341-347 Madison Ave. It has received over a \$1,000,000,000 from the sale of the Eastern and Western Railyards. Yet this proposed affordable housing project must deliver 30,000 square feet of office and garage space? A reduction of that space would reduce the scope of a Mayoral Zoning Override and provide more affordable housing at this location.

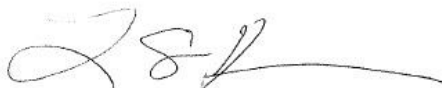
DEP Site

It was stated that rear yard zoning text was also needed. Given the development is over a rail right of way, in the Zoning Resolution Chapter 4 Section 74-681, Development within or over a railroad or transit right-of-way or yard⁶, any needed change in lot coverage or rear yard can be managed through that Special Permit, which has been managed in the past through that Special Permit for 11 overbuilds between West 43rd and West 56th Streets.

Conclusion

One affordable housing site and the MTA's office needs should not set precedent in the Special Clinton Zoning District. The proposed rezoning should be managed through Mayoral Zoning Override. The Special Clinton District Special Permit under Section 96-104 should not be amended and needed lot coverage and rear yard requirements should be managed through Mayoral Zoning Override.

Sincerely,



Lowell D. Kern
Chair
Manhattan Community Board 4



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

⁴ [Chapter 6 - Special Clinton District \(CL\), 96-102 Lot coverage regulations](#)

⁵ [Chapter 6 - Special Clinton District \(CL\), 96-103 Yard regulations](#)

⁶ [Chapter 4 Special Permits by the City Planning Commission, Section 74-681 Development within or over a railroad or transit right-of-way or yard](#)

Cc: Hon. Brad Hoylman, State Senator
Hon. Robert Jackson, State Senator
|Hon. Linda Rosenthal, NYS Assemblymember
Hon. Richard Gottfried, NYS Assemblymember
Hon. Bill DeBlasio, Mayor
Hon. Vicki Been, Deputy Mayor,
Hon. Corey Johnson, NYC Council Speaker
Hon. Scott Stringer, NYC Comptroller
Hon. Gale Brewer, Manhattan Borough President
Hon. Jumaane Williams, Public Advocate
HPD Team
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