

CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

424 West West 33 Street, Suite #580
New York, NY 10001

JEFFREY LEFRANCOIS
Chair

tel: 212-736-4536
www.nyc.gov/mcb4

JESSE R. BODINE
District Manager

February 15, 2022

Adolfo Carrion
Commissioner
Department of Housing Preservation and Development
100 Gold Street
New York, New York 10038

Constadino Sirakis
First Deputy Commissioner
NYC Department of Buildings
280 Broadway, New York, NY 10007

Re: **412 West 46th Street**
Building Preservation and Compliance with Section 96-108
of the Clinton Special Zoning District

Dear Commissioners Carrion & Deputy Commissioner Sirakis,

At Manhattan Community Board 4 (MCB4) Full Board meeting on February 2, 2022, members discussed the preservation of 412 West 46th Street, which with its neighboring building, 410 West 46th Street, contains 30 rent-stabilized apartments. Due to conditions directly created by the owner, it is now subject to an inspection by the Department of Buildings (DOB) for safety. MCB4 is requesting the Department of Housing Preservation and Development (HPD) collaborate with DOB and MCB4 and intervene with its Emergency Repair Program to evaluate and accomplish any needed repairs to preserve the Rent Stabilized apartments in this troubled building.

Background

The 130-year-old, 15-unit tenement is located on West 46th Street between Ninth and Tenth Avenues, in the heart of Special Clinton District (SCD). Established in 1973, the SCD purpose was to preserve the residential character of Hell's Kitchen and prevent the displacement of long-

term residents. The core of the SCD is the Preservation Area where demolition of residential buildings is prohibited by zoning. Demolition is only possible if the building is determined to be structurally unsound by DOB. In the district's nearly 50-year history, DOB has found those conditions in less than 10 instances. However, in the past 5 years, the community has observed a new pattern. Owners have created conditions to create intentional structural problems leading to City approved demolition.

The current owners, Highpoint Associates XII, located on Ventura Boulevard in Sherman Oaks, California acquired 410-412 West 46th Street on 5/14/2002. At that time, the buildings were two fully-occupied 5-story tenements with long-term residents. Through a combination of illegal hotel use and illegal construction, all long-term tenants have left the buildings.

From 2012 to 2019, the buildings were used as illegal hotels and the site of ongoing illegal construction. The buildings were subject to multiple enforcement actions for that illegal use by Midtown Task Force resulting in 140 violations and penalties from 2003 to 2021, resulting in \$647,225 in fines¹. 412 West 46th Street was subject to fire in 2015, a partial vacate order on 4/12/2016 and a full vacate order on 5/7/2016. They were also subject to multiple Stop Work Orders and resultant fines. It must be noted, the owners after having received violations for illegal hotel occupancy and stop work orders over a period of 7 years and continued to both operate the property illegally and damage it continually with DOB unapproved and unpermitted construction.

Most egregiously, in 2016 the owner removed the roof of 412 West 46th Street for roof and structural repairs, without permits and received a stop work order.² Since 2016, they have never filed to make the urgent repairs and left the roof open to the elements and allowed further damage to the building.

On May 13th, 2021, MCB4 notified City agencies that the building was unsealed and unsecured at the street, allowing homeless individuals to enter the damaged building, creating further hazard for those persons and the surrounding neighbors. DOB then issued a declaration for seal up.

Based upon that action, on January 6th, 2022, DOB met with MCB4 and Councilmember Erik Bottcher's staff regarding the situation. DOB further stated it would inspect 412 West 46th Street to assess structural stability. MCB4 requested that HPD participate in that inspection, specifically to assess the conditions, for use of its Emergency Repair Program to preserve the building and its Rent Stabilized apartments.

Intent and History of Demolition Protections in the Special Clinton District (SCD)

Original 1973 Rezoning

The first Special District in MCB4 was the SCD, established in 1973 as a response to rapid real estate speculation that emerged from a proposed convention center on the west side,

¹ DOB Violations at [410 W46th St \(1 page\)](#) & [412 W46th St \(3 pages\)](#)

² [DOB Complaint #1423422: Roof was removed exposing structure to the elements](#)

which led to the demolition of existing residential buildings and displacement of their tenants. The SCD includes a core Preservation Area in which residential buildings cannot be demolished.

Preservation Area Demolition Prohibition (SCD 96-108)

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 Notices (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 was also removed. The sum of the building notices constituted a full demolition. However, in the absence of any zoning language that stated a clear policy on 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 of that building owner, 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 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 from the 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#.*

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 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.”

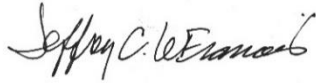
Westside Rezoning in 2005 & 2009

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.

Community Request

The Board requests that DOB and HPD work with MCB4 to develop and implement a scope of repair work through HPD's Emergency Repair Program to avoid demolition and preserve the 15 rent stabilized apartments in this building. The owner's record of illegal hotel use and construction should not be rewarded through the action of City agencies by granting demolition.

Sincerely,



Jeffrey LeFrancois
Chair
Manhattan Community Board 4



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

Enclosure

Cc: Dan Garodnick, Commissioner, City Planning Commission
Melanie La Rocca, Chief Efficiency Officer, Mayor's Office

Appendix: Building Conditions

November 2017



August 2018



June 2019



June 2021



January 2022

