



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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January 14, 2025

Adolfo Carrión, Jr.
Commissioner
Dept. of Housing Preservation and Development
100 Gold Street
New York, NY 10007

**Re: 441 West 48th Street
Voluntary Cure for Harassment
under Special Clinton District ZR section 96-109**

Dear Commissioner Carrión,

At Manhattan Community Board 4's (MCB4) Clinton/Hell's Kitchen Land Use (CHKLU) Committee meeting on December 11th, 2024, Stuart Boesky, the CEO of Pembrook Capital Management, made a presentation on behalf of Churchill Real Estate Holdings to the committee regarding the proposed Cure for Harassment, pursuant to NYC Zoning Resolution (ZR) Special Clinton District (SCD) Section 96-109, for 441 West 48th Street. The request is for a voluntary Cure for Harassment as part of a solution to preserve the existing affordable housing at 441 West 48th Street.

At its regularly scheduled Full Board meeting on January 6th, 2025, MCB4 voted, with a vote of 40 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible to vote, to support the concept for the Cure for Harassment to create 3 permanently affordable apartments. These apartments are currently part of an existing affordable housing regime under a lender's requirement. That lender, Pembrook Capital Management made a loan to the owner, Churchill Real Estate Holdings, under provisions of the Community Reinvestment Act, with a provision that 50.1% of the apartments be affordable to those with incomes no greater than 80% AMI. As part of that Cure process, the

Board and the owner understand they will have to return to MCB4 with a full plan as part of the standard HPD review and approval process.

Background

Building Description

441 West 48th Street is a 5-story walk-up apartment building located between 9th and 10th Avenues in the Preservation Area of the Special Clinton District. The building is one of three contiguous walk-up apartment buildings, along with 439 West 48th Street and 443 West 48th Street¹. The three buildings contain a total of 34 apartments, of which 14 are market rate apartments, 18 are rent-stabilized, and 2 are rent-controlled.

Pembroke Capital Management

Pembroke Capital Management is an SEC² registered fund manager that sponsors Community Reinvestment Act (CRA) funds. The funding provides financing for the construction, acquisition and preservation of existing affordable housing. Per CRA rules, the borrower of the funds must set aside at least 50.1% of each property's units for tenants at 80% or less of Area Median Income (AMI), and rents must be no more than 30% of 80% of AMI. Since their inception, Pembroke has financed almost \$2 billion worth of affordable housing through CRA funds.

Pembroke CRA Loan – Churchill Real Estate Holdings

On April 16th, 2018, Pembroke made a loan to Churchill, to acquire 439, 441, and 443 West 48th Street. The conditions of the loan required that 50.1% of the units, or 18 units, be affordable to 80% of AMI and rented at no more than 30% of 80% of AMI. Affordability extends for the term of the loan. The balance is a combination of market rate and rent-regulated units. To meet the loan covenants, the owners reduced rent on one of the market rate units to be affordable to 80% AMI households.

Lack of Certificate of Occupancy

As part of assuming management of the building, Churchill evaluated rent payments and began non-payment proceedings on any tenants who were in arrears. One tenant at 441 West 48th Street was represented by an attorney who is also a tenant in the building. During that case, the attorney raised the defense that the building did not have a Certificate of Occupancy (C of O). Upon investigation, Churchill found that the prior owner had never closed a building alteration application to secure an amended C of O. Subsequently, the Housing Court judge ruled that the tenant need not pay rent until a new amended C of O was secured for the building.

¹ Although in the same ownership, those buildings are not subject to same Housing Court action as 441 West 48th.

² Security and Exchange Commission

Department of Building's Filing and Error in DOB Approval

In 2001, the previous owner filed an application with the New York City Department of Buildings (DOB) under Job #102982630 to convert two (2) apartments into four (4) apartments. Section 96-108 of the SCD states:

“prior to the issuance of an alteration permit by the Department of Buildings for a material alteration of a multiple dwelling within the Preservation Area, the Department of Housing Preservation and Development shall certify to the Department of Buildings that:

- a. Prior to evicting or otherwise terminating the occupancy of any tenant preparatory to alteration, the owner shall have notified the Commissioner of his or her intention to alter the building; and
- b. The Department of Housing Preservation and Development has issued a certification of no harassment.”

DOB erroneously issued the alteration permit without the New York City Department of Housing Preservation and Development (HPD) issuing a Certificate of No Harassment (CONH). Further, the previous owner completed the alteration but failed to close the application and secure an amended C of O.

Preserving Financial Viability

As a result of the court's ruling, 8 tenants in the building have not paid rent in several years and the building has incurred a \$700,000 loss, resulting in Churchill risking a default on the loan. Default will result in the loss of these income restricted affordable housing units.

Proposed Solution

Churchill has been trying to resolve the problem created by the previous owner for years with DOB and HPD. To close the DOB application and obtain a C of O, Churchill proposed to revert the converted 4 apartments back into prior existing configuration of 2 apartments under the 2002 DOB permit. Please note this building has had 2 apartments per floor since it was built in the 1880's.

However, despite DOB previously issuing an alteration permit in error, DOB determined that a CONH was now required to restore the apartment to their original configuration.

Churchill and Pembroke then began to start the CONH process, but their attorneys advised, given the ongoing dispute in Housing Court, they would not be successful.

SCD Cure for Harassment

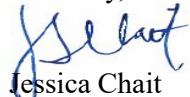
To resolve the problem, Churchill and Pembroke propose to elect and complete a voluntary Cure for Harassment for the property:

- NYC ZR 96-109(d) states that the Cure for Harassment is the designation of 28% of the total residential floor area of the multiple dwelling as permanently affordable housing. Therefore, the owner will permanently restrict 28% of the total residential floor area, or 3 apartments, at 441 West 48th Street to be set aside for tenants at 80% or less of AMI and rents no more than 30% of 80% of AMI, pursuant to an HPD Regulatory Agreement.
- After HPD reviews and approves the proposed voluntary Cure for Harassment, the Owner will seek to have DOB reissue an alteration permit under an amendment to the 2001 application. Churchill will reconfigure the building back to its original layout and seek a new C of O.
- Churchill will then work with HPD to tenant the permanently affordable Cure apartments.

Conclusion

This proposed action will create three permanently affordable apartments at no cost to HPD. MCB4 supports the concept of moving to voluntary Cure, without a CONH investigation. Given the prior errors of DOB approvals, MCB4 asks all parties to work together to resolve the tangle of regulatory issues at this affordable housing site to deliver much needed permanently affordable housing in Hell's Kitchen.

Sincerely,



Jessica Chait
Chair

Manhattan Community Board 4



Jean Daniel Noland
Co-Chair

Clinton/Hell's Kitchen Land Use Committee



Paul Devlin
Co-Chair

Clinton/Hell's Kitchen Land Use

CC: Ahmed Tigani, First Deputy Commissioner, NYC HPD
 Trisha Dietz, Assistant Commissioner, Housing Incentives. NYC HPD
 David Knight, Director of Special Projects and Policy, NYC HPD
 Hon. Erik Bottcher, NYC Council Member
 Hon. Mark Levine, Manhattan Borough President
 S. Maheswari, Churchill Real Estate Holdings
 J. Ehrlich, Churchill Real Estate Holdings
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