



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**CHRISTINE BERTHET**  
Chair

**ROBERT J. BENFATTO, JR., ESQ.**  
District Manager

August 6, 2014

Vicki Been  
Commissioner  
NYC Department of Housing Preservation and Development  
100 Gold Street, 5<sup>th</sup> floor  
New York, NY 10038

Carl Weisbrod  
Director  
Department of City Planning  
22 Reade Street, 2<sup>nd</sup> Floor  
New York, NY 10007

**Re: Clinton Towers  
790 Eleventh Avenue  
Proposed Commercial Lease and Open Space Compliance**

Dear Commissioner Been and Director Weisbrod:

The July 21, 2014 meeting of Manhattan Community Board 4's (CB4) Housing, Health and Human Services (HH&HS) Committee was attended by a number of tenants living in Clinton Towers, a 396 unit Mitchell-Lama rental development, who were requesting assistance with a proposed commercial lease for a 368 person restaurant and bar. The proposed lease is currently under review by Gary Sloman, Director of Operations, Division of Housing, NYC Department of Housing Preservation and Development (HPD). The tenant group also requested CB4's assistance in resolving larger concerns with the management of the building, deteriorating physical conditions and proposed rent increases.

**Background**

Clinton Towers is a 396 unit Mitchell-Lama rental housing development located on Site 3 of the Clinton Urban Renewal Area (CURA), an area which was condemned in 1969 in order to develop affordable housing on the site. Clinton Towers is located between West 54<sup>th</sup> and West 55<sup>th</sup> Streets and between Tenth and Eleventh Avenues and was constructed in 1975 as ***“moderate-income tax-abated housing with day-care and convenience shopping”*** pursuant to the 1972 Large Scale Residential Development (LSRD) Plan. Accompanying Special Permits and Special Permit Authorizations were approved by the City on October 11, 1972 and governed the development of Clinton Towers and the adjacent Harborview Terrace development (a NYCHA development situated immediately east and northeast of Clinton Towers). The LSRD plan set forth the required open space square footage designated for tenant and community uses,

community facilities and commercial uses on each development parcel of the LSRD site<sup>1</sup>. According to the LSRD plan, Parcel 3, Clinton Towers, is located in a Residence District. The western portion of the site, along Eleventh Avenue, is located in a R9 district; while the eastern portion of the site is in an R8 district. There is no commercial overlay on the site.

Clinton Towers was developed by and is owned by Clinton Towers Housing Company, Inc., a not-for-profit corporation, which is an affiliate of the original CURA sponsor, the Clinton Housing Association. The original financing included a HUD Section 236 mortgage interest reduction payments, and pursuant to a Section 236(e)(2) Use Agreement, existing affordability restrictions were extended through 2030. The building is currently managed by P&L Management and Consulting, Inc.

### **The Proposed Commercial Lease**

A proposed commercial lease for the two most southerly ground floor commercial spaces along Eleventh Avenue is currently pending before HPD. This proposed lease is for an eating and drinking establishment called “Senor Mickey’s” and includes outdoor seating in the existing open space plaza fronting Eleventh Avenue. The application filed with the State Liquor Authority (SLA) calls for a total indoor capacity of 120 persons and extensive outdoor seating in the area designated by the LSRD for open space. That proposed outdoor seating would run along the entire Eleventh Avenue blockfront between West 54<sup>th</sup> and West 55<sup>th</sup> Streets and would include seating for an additional 248 patrons at 96 tables, bringing the total capacity for the establishment to 368 persons. Unfortunately, the square footage of the proposed indoor and outdoor commercial use is not legible on the plans presented to CB4.

The proposed outdoor seating area for the bar/restaurant would be located on a plaza designated as open space for the development’s tenants under the LSRD approved in 1972. Pursuant to that plan, Parcel 3 (the Clinton Towers development site) is required to reserve a total of 27,619 square feet of open space for tenant uses<sup>2</sup>. The lot area for the entirety of Parcel 3 is measured at 52,719 square feet. The Clinton Towers building footprint is 25,100 square feet. The balance of square footage on the lot is 27,619, the exact amount of square footage set forth in the LSRD as open space on Parcel 3. Pursuant to the approved LSRD, all areas on the development site not occupied by the building are intended to serve as open space for the residential tenants.

Further, as Clinton Towers is located in a Residence District with no commercial overlay, only ***accessory commercial uses*** that meet the strict criteria set forth in NYC Zoning Resolution Section 78-22 “Accessory Uses in Large-Scale Residential Developments” are permitted pursuant to the Special Permit approved in 1972. The Zoning Resolution further conditions such an approval on the square footage limitations set forth in the LSRD plan.

NYC ZR Section 78-22 clearly sets forth the criteria by which the City Planning Commission (CPC) may approve commercial uses in a Residence District under an LSRD plan and includes

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<sup>1</sup> Copies of the 1972 Large Scale Residential Development Plan and the Special Permits and Special Permit Authorizations dated October 11, 1972 are attached.

<sup>2</sup> Clinton Urban Renewal Area, Application for Large Scale Residential Development, August 1971, Table 2, “Proposed Development versus Capacity” Parcel 3 , p. 10.

only accessory uses, that is Commercial Uses listed in Use Group 6A or 6F, that also meet the following findings (emphasis added):

*(a) will be primarily for the use of the residents of the #large-scale residential development# and will provide more convenient shopping for such residents;*

*(b) are so located as to minimize interference with #residential# or recreational areas within the #large-scale residential development# and to avoid creation of traffic congestion or other objectionable influences affecting #residences# outside the #large-scale residential development#;*<sup>3</sup>

The proposed establishment, Senor Mickey's, does not meet the above criteria as:

- it is not primarily for the use of the residents; and
- it does not provide “more convenient shopping for such residents.”

Not only does the proposed commercial use fail to meet the findings of ZR Section 78-22, in that it is not primarily for the benefit of the tenants and will interfere with pedestrian traffic and cause congestion along the Eleventh Avenue frontage, but it also directly utilizes zoning required tenant open space for commercial use. In addition, the square footage of both the indoor and outdoor commercial uses for the proposed establishment when combined with already existing independent commercial uses on the property, is likely in excess of the maximum of 6,500 square feet for commercial use set forth in the 1972 LSRD plan<sup>4</sup>. CB4 was unable to verify this as the measurements and square footage of the proposed floor plans was not legible on the drawings presented to CB4.

The proposed location of the outdoor seating area, situated squarely in the entry to the building from Eleventh Avenue, directly conflicts with the criteria set forth in NYC ZR 78-22(b) as noted above. The location of the outdoor seating will interfere with both residential and recreational uses within the development by obstructing the entrance and occupying the required open space under the LSRD. Overall, given the sheer size of the establishment, its intended use, proposed outdoor seating, and the considerable opposition voiced by the tenants, the bar/restaurant will be considered a nuisance at best and will likely be viewed as objectionable by most.

**For the reasons stated above, CB4 requests that HPD not approve the proposed lease as it:**

- **does not meet the criteria set forth under NYC ZR Section 78-22 (Accessory Uses in Large-Scale Residential Developments);**
- **proposes to use designated tenant open space as outlines in the approved 1972 LSRD plan for commercial use; and**
- **exceeds the permissible square footage as set forth in the 1972 LSRD plan for the entirety of Parcel 3.**

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<sup>3</sup> Zoning Resolution of the City of New York, Article 7, Chapter 8, Sections 78-22(a) and 78-22(b).

<sup>4</sup> Clinton Urban Renewal Area, Application for Large Scale Residential Development, August 1971, Table 2, “Proposed Development versus Capacity” Parcel 3, p. 10

### **Additional Considerations**

Additionally, CB4 requests that HPD consider the following conditions in the future when reviewing any proposed commercial leases for compatibility with the criteria set forth in ZR Section 78-22:

- HPD fully investigate the relationship between any proposed lessee and any member of the Board of Directors of Clinton Towers Housing Co. to ensure that there is no conflict of interest or financial interest by any Clinton Towers Housing Co. Board Member in a proposed commercial lease.<sup>5</sup> CB4 wants to ensure any potential lessee is fully vetted as to its financial relationships to avoid any conflict of interest.<sup>5</sup>
- Fair Market Value Commercial Rent be required for any proposed commercial leases to ensure the market value of the commercial rentals can be used to offset ongoing building operating expenses and capital improvements.

### **Ongoing Management, Financial and Maintenance Concerns**

CB4 requests the assistance and intervention of HPD, in its regulatory role, in the ongoing management for this Mitchell-Lama rental development. The tenants attending CB4's HH&HS meeting on July 21<sup>st</sup> raised a number of detailed and serious concerns with respect to the management of the property. Those concerns included:

- poor building conditions;
- failure to track or complete repairs to individual apartments;
- prolonged disruption of elevator service;
- compromised building security;
- lack of building cleanliness;
- closure of the interior courtyard, playground and community room; and
- allegations of property and financial mismanagement.

The property management history for this building is long and troubled, including, while managed by Phipps Housing, the removal of a Manager and Director of Security from the premises in handcuffs. Communication between tenants, P&L Management and the Clinton Towers Housing Co. Board of Directors is currently non-existent.

Clinton Towers, as a 396 unit affordable housing development, has long been an important resource in our community for desperately needed low- and moderate-income housing. As a community we have a vested interest in ensuring that it is properly maintained and financially

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<sup>5</sup>At a meeting held on June 5, 2014 at the offices of Assemblymember Linda Rosenthal, Gary Sloman, Director of Operations, Division of Housing, NYC Department of Housing Preservation and Development stated that HPD was investigating the proposed lease with respect to lease price, structure and whether any potential conflicts of interest existed between member(s) of the Clinton Towers Housing Company Board and the operator, as the proposed venue, "Senor Mickey's", is named after Mickey Spillane, a Clinton Towers Housing Co. Board Member. Mr. Spillane stated at CB4's Business, Licenses and Permits Committee, that while the operator is using his name, he has no financial interest in the business..

viable. We are therefore requesting HPD's assistance and intervention to ensure that this valuable asset in our community remains a viable resource for low- and moderate-income residents in the years to come.

Sincerely,

[signed 8/5/2014]

Barbara Davis, Co-Chair  
Housing, Health &  
Human Services Committee



Joe Restuccia, Co-Chair  
Housing, Health &  
Human Services Committee



Christine Berthet  
Chair  
Community Board 4

CC:

Brad Hoylman, NYS Senator  
Richard Gottfried, NYS Assemblymember  
Linda Rosenthal, NYS Assemblymember  
Jerrold Nadler, Congressman  
Gale Brewer, Manhattan Borough President  
Corey Johnson, NYC Councilmember  
Helen Rosenthal, NYC Councilmember