



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

JOHN WEIS
Chair

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

April 6, 2011

Mathew Wambua
Commissioner
Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

**Re: Clinton Commons
Mayoral Zoning Override
533-543 West 52nd Street
ULURP Application Nos. 110125 ZMM and 110126 HAM**

Dear Commissioner Wambua:

On December 1, 2010, Manhattan Community Board 4 (CB4) held a public hearing and adopted a resolution recommending approval of the Clinton Commons ULURP applications (nos. 110125 ZMM and 110126 HAM) (the "Applications") with conditions.

Since that time, due to the impact of litigation on the adjacent City-owned property at 549 West 52nd Street, changes to the design of Clinton Commons have needed to be made. However, when those changes were made, the building no longer met the requirements of the proposed R8A zoning. Due to these unique and extraordinary circumstances, and to reconcile the financial viability of the project and the zoning limitations, the Department of Housing Preservation and Development (HPD) proposed a Mayoral Zoning Override. Only after lengthy discussions and negotiations among CB4, HPD, the developer, and the local elected officials, does CB4 reluctantly support a Mayoral Zoning Override for Clinton Commons, but CB4 continues to have serious concerns over precedent.

Background

CB4's Clinton/Hell's Kitchen Land Use (C/HKLU) Committee has long been involved with Clinton Housing Association (CHA) and Monadnock Construction's (collectively referred to as "Developer") plans for Clinton Commons, a permanently affordable residential building at 533-543 West 52nd Street. When HPD submitted the Applications, CB4, HPD, and the Developer had been working closely for five years to fine tune the details of Clinton Commons and ensure a development project with permanently affordable units.

The project evolved, due to financing constraints, from an affordable rental to home ownership. Proposals were presented to CB4 and the Developer received letters of support from CB4 several times, beginning with a letter dated April 11, 2006. The Developer worked diligently with the Board to achieve a permanently affordable home ownership development. The Applications presented in 2010 detailed a new eleven (11) story residential development with 150 feet of frontage along West 52nd Street, between Ninth and Tenth Avenues in the Clinton Urban Renewal Area (CURA). The building was to contain 103 condominium units that were permanently affordable to those of low, moderate and middle income. Clinton Commons would produce apartments affordable

for individuals and families earning 80%, 125% and 165% of the Area Median Income (AMI) (household income ranging from \$38,016 to \$130,680 per year).

Affordability

As originally presented, the structure of Clinton Commons was to be a leasehold condominium with the land held by a non-profit Community Land Trust (CLT). In order to make this ownership structure financially viable, Clinton Commons needed a long-term Real Estate Tax Exemption. However, further research found that Article XI Tax Exemptions for leasehold condominiums were limited by location under the NYS Real Property Law.

After numerous meetings and discussions among the Developer, CB4, HPD, and various local elected officials, it was determined that an amendment to the Article XI law could not be enacted in time to meet the project's schedule, particularly because the project's subsidy commitments expire in June 2011 and funding during the next few years is unlikely given city and state budget cuts. Therefore, to meet the June 2011 closing date and still maintain permanent affordability, Clinton Commons was restructured as a housing cooperative which would meet the existing requirements for a 40 year Article XI Real Estate Tax Exemption.

Women's Interart Center (WIC) Proposed Development

The Women's Interart Center (WIC) rents four floors on a month to month basis at the adjacent city owned building at 549 West 52nd Street. In 1994, WIC proposed to buy that ten story building and the adjacent one story garage and parking lot to the east (543-551 West 52nd Street) to build a community facility with artist and theater space (the "WIC Project"). The WIC Project sought CB4 approval and had its ULURPs (C 940648 HUM, C 940649 ZSM, C 940650 HDM) approved in 1994 with CB4 support. Having secured City approval to purchase and renovate the building, the project was then stalled pending WIC securing financing. From 1994 to 2002, WIC was unable to provide evidence of secured financing to either HPD or the NYC Economic Development Corporation (EDC). WIC's contract with EDC was thus terminated by EDC in 2002. Since that time WIC has pursued various avenues of litigation and no development has taken place at the site.

In a letter dated January 5, 2011 the Board withdrew its support for the WIC Project as it has not moved forward and is no longer appropriate for the site (See attached letter).

WIC Litigation and Its Effects

With the WIC project's EDC contract terminated eight years prior to the Clinton Commons ULURP, the 25 foot wide parking lot at 543 West 52nd Street (the "543 Parcel") was made a part of the Clinton Commons development. The original use of the 543 Parcel was to be a side yard for WIC's never built community facility.

Since the Clinton Commons project is a cooperative, it will be subject not only to an underlying mortgage on the entire building, but also to individual share loans for each cooperative owner. WIC's pending litigation created a legal cloud on the title. If the project were a rental, that legal issue could have been resolved with a title insurance company via guarantees from the Developer. However, with multiple cooperative share loans to individual owners from many different banks, such an approach was not possible.

Therefore, WIC's ongoing litigation forced the removal of the 543 Parcel from the Clinton Commons development with drastic consequences. With the frontage of Clinton Commons reduced from 150 feet to 125 feet and given the parameters of the proposed R8A zoning currently in the ULURP process, the number of permanently affordable homeownership cooperative apartments was reduced from 103 to 78.

That reduction in units would have made the project financially unviable and forced its cancellation. In order to recover those permanently affordable units that were lost and make the project financially viable, the Developer, HPD, CB4, and the local elected officials considered numerous options.

Proposed Solutions and Resultant Precedents

To achieve the same number of affordable apartments, the Developer would have to redesign the building. However, redesign was severely limited by the proposed zoning. The effect of lesser frontage led to smaller floors which in turn led to fewer two bedroom family units, a priority of CB4. To achieve more units, especially two bedroom units, the base of the building would need to be higher, but with the base higher, the building would not meet the zoning requirement for rear setback.

HPD proposed a Mayoral Zoning Override. This little used zoning provision allows the Mayor's office to override existing zoning provisions. *Since the inception of the Clinton Special District in 1973, 38 years ago, there has not been a Mayoral Zoning Override in Community District #4.* This action would create a serious and troubling precedent.

Alternative Solutions—Environmental, Financial and Time Constraints

With the Developer and HPD, the Board explored several solutions to resolve the matter, including:

- Amending the existing zoning action currently in ULURP;
- Pursuing a follow up Text Amendment to the Clinton Special District;
- Expanding the tax lot to the north; and
- Postponing the Clinton Commons development to later in the year.

Each proposed solution was diligently reviewed and considered by all parties. Each considered action either substantially added financing, cost or completion risk.

The discussions then shifted on mechanisms to limit the precedent of a Mayoral Zoning Override.

Modified Mayoral Zoning Override

Precedents that open the door in an incremental fashion allow the sum of a series of small actions over time to effect major changes. In order to reduce the risk of setting a small precedent and therefore setting the stage for future multiple changes, the solution was to seek multiple Mayoral Zoning Overrides. Such Mayoral Zoning Overrides would be unique to this project and likely could not be replicated in the future.

To restore the greatest number of affordable apartments, it was determined that a Mayoral Zoning Override would be necessary within the proposed R8A zoning to override:

- Rear setback requirements: the requirement for a rear setback above a base height of 85 feet would be overridden, permitting a building wall of 116 feet, 6 inches with no setback;
- Front setback requirements: the requirement for a front setback above a base height of 85 feet would be overridden, allowing Clinton Commons to rise to 87'-6" feet before setting back; and
- Bulk requirements: the cap on bulk would be overridden and allow the Developer to build an additional 14,458 square feet.

The building height requirement and rear yard requirement for the base of the building will be met within the proposed R8A zoning district. This override will mark the first time that HPD has done an override for increased bulk.

In all, this drastic action will produce a permanently affordable cooperative building of 96 units, a reduction of only 7 units from the original plan. With this action, the project can proceed on time and without further financial or completion risk.

The unusually complicated set of circumstances at this site, including the on-going WIC litigation, required a unique solution. The Board would not expect HPD to pursue Mayoral Zoning Overrides for any future HPD funded project.

Plans for the Modified Development

- The façade will be composed of seven bays framed by red brick piers to create an industrial look that reinforces the existing context and vernacular of the surrounding blocks.
- A two-story base will anchor the building with brick piers capped by a precast cornice with metal banding below. The two upper cornices shall be one color.
- Fenestration shall be double-hung or sliders which will be grouped in sets of two and separated by a wide-paneled mullion, with a narrow mullion in the bay above the entrance. Mullions shall be in equal divisions, not set off center.
- Lot line windows will be included in a portion of the western façade.
- Air conditioning shall be provided via an architectural louver beneath the windows.

(See attached modified site rendering).

	Original Plans	As Modified
Lot Size	Approx. 15,052 sq. ft.	Approx. 12,552 sq. ft.
Height	111 ft., 4 in.	116 ft., 6 in.
Rear Setback	Complied with Zoning	Mayoral Zoning Override
Front Setback	Complied with Zoning	Mayoral Zoning Override
Bulk	Complied with Zoning	Mayoral Zoning Override

CB4’s Continued Concerns regarding the Mayoral Zoning Override and CURA Developments

CB4 is, at best, a reluctant partner in approving a Mayoral Zoning Override for Clinton Commons. However, CB4 appreciates the diligence of the Developer and HPD, when faced with an untenable situation in the middle of a ULURP process, in seeking to achieve a balanced and thoughtful outcome. However, in the future, the Board must state the following as a policy matter:

“Manhattan Community Board #4 contains three Special Zoning Districts (Clinton Special District (CSD), Hudson Yards Special District (HYSD) and Special West Chelsea District (SWCD)) which cover the majority of the Board’s geographic area. These Special Districts contain 294 pages of zoning text specific to the intents, purposes and locations embodied in those districts. Their form and content represent 38 years of difficult and protracted negotiations and compromises forged by the Clinton, Hell’s Kitchen and Chelsea communities with many Mayoral Administrations to balance citywide development and community preservation of the Westside of Manhattan. Mayoral Zoning Overrides are not an appropriate tool to modify those texts. Proposed developments seeking modification to any text should be subject to full public debate and processed through the City’s Uniform Land Use Review Procedure.”

Given the above policy statement, combined with the unique and singular nature of the proposed Mayoral Zoning Override and deep need to produce permanently affordable housing for low, moderate and middle income residents of Clinton, Hell's Kitchen and Chelsea, CB4 reluctantly approves the proposed Mayoral Zoning Override for Clinton Commons located at 533-541 West 52nd Street.

Sincerely,



John Weis, Chair
Manhattan Community Board 4



Elisa Gerontianos, Co-Chair
Clinton/Hell's Kitchen Land Use Committee



Joe Restuccia, Co-Chair
Clinton/Hell's Kitchen Land Use Committee

cc: R. Steel, Deputy Mayor for Economic Development
M. Shafit, General Counsel – HPD
R. Visnauskas, Acting Deputy Commissioner for Development – HPD
B. De La Torre, Assistant Commissioner for Planning – HPD
T. Walters, Manhattan Director for Planning – HPD
S. Levenson, Project Manager – HPD
NYC Council Speaker Christine Quinn
NYS Senator Thomas K. Duane
NYS Assemblyman Richard Gottfried
Congressman Jerrold Nadler
Manhattan Borough President Scott Stringer