



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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COREY JOHNSON
Chair

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District Manager

July 18, 2011

Hon. Amanda M. Burden, AICP
Chair, City Planning Commission
Calendar Information Office
22 Reade Street, Room 2-E
New York, New York 10007-1216

**Re: Application No. N 110360CMM
424 West 37th Street and 439 West 37th Street a.k.a. Hudson Mews
Renewal of Zoning Authorization Application Nos. 070435/070436 ZAM for a Special
Permit pursuant to Zoning Resolution Section 93-543 to allow for height and setback
modifications to create publicly accessible open space over the below grade sections of Dyer
Avenue and approaches to the Lincoln Tunnel**

Dear Chair Burden:

At the July 13, 2011 meeting of Manhattan Community Board 4's (CB4) Clinton/Hell's Kitchen Land Use (C/HKLU) Committee, the Committee discussed renewal of a zoning authorization for the Dermot Company's (the "Applicant") mixed use development at 424 West 37th Street and 439 West 37th Street, above the below grade sections of Dyer Avenue and approaches to the Lincoln Tunnel (the "Project"). The Executive Committee of CB4, at its July 18, 2011 meeting, voted unanimously to **recommend renewal** of the previous authorizations, which were supported by the Board in 2007 (See Attached Letter Dated June 6, 2007), **with the conditions enumerated below.**¹

THE PROJECT²

The Project involves the construction of two large residential buildings, each rising to a maximum height of 180 feet (18 stories) and the creation of almost 25,000 square feet of publicly accessible open space, including a small parcel of 3,660 square feet and a larger parcel of 21,080 square feet, on decks over the below grade sections of Dyer Avenue and approaches to the Lincoln Tunnel. Without the requested renewal of the zoning authorizations, the buildings would be limited to a maximum height of 120 feet (12 stories) and no publicly accessible open space would be created.

¹ Gretchen Minneman, member of the Board and Co-Chair of its Clinton/Hell's Kitchen Land Use Committee, works for the Port Authority of New York and New Jersey's Real Estate Division. Her interest has been disclosed and she did not vote on any matter concerning this proposal that come before the Board or the Committee, including approval of this letter.

² See attached June 6, 2007 letter for greater detail of the buildings and the open space.

The Project is being built on land owned by the Port Authority of New York and New Jersey (Port Authority). Both buildings will be 80/20 rental properties, and approximately 80% of the units will be studios and one-bedroom units and 20% will be two-bedroom units. We continue to regret this unit mix and believe that the buildings should include more two-bedroom or larger units, to accommodate families. The buildings encompass 809 residential units, of which 162 are affordable to those with low incomes. The affordable units will be integrated throughout all floors of the building. The platform and new construction will restore the streetscape continuity currently broken by the Lincoln Tunnel approaches and create 25,000 square feet of permanent, publicly accessible park space.

CONDITIONS FOR APPROVAL

1. Permanent Affordable Housing. While the Project remains substantively unchanged, the Board continues to grapple with the current circumstances of residential development both in the Hudson Yards area and in the larger Hell's Kitchen and Chelsea communities. There is an ongoing need to produce permanently affordable residential units in Community District 4. In the recent review of this Project the Board had a lengthy public discussion about the need for permanent affordability of the low income units. Therefore, the Board reiterates our previous request, in 2007, that the 20% of the apartments which are set aside to meet the 80/20 program requirements be affordable in perpetuity.

This request is consistent with the Board's letters to the NYS Housing Finance Agency (HFA) on April 2, 2007 and February 11, 2008 (See Attached Letters). Those letters, written at the request of the Applicant who sought our support for the bond cap, supported this Project but conditioned that support on HFA making the funding contingent on the affordable housing being permanent.

To that end, CB4 will actively work to ensure that the Port Authority understands how crucial permanently affordable housing is to this community. During the course of the discussions for this reauthorization, the Applicant indicated that the Port Authority was the main obstacle to permanent affordability due to their long-term business arrangement. This Project is being created on land owned by a public authority which is this not subject to NYC Real Estate Taxes but instead will have a land lease with the Applicant and Payment In Lieu of Taxes ("PILOT"). The PILOT is based on the income stream of the Project and thus CB4 understands why the Port Authority would desire a higher income stream after the 30 year life of the bond. However to balance the public interests of development of affordable housing with financial health of the bi-state public authority, CB4 will work to ensure that the Port Authority considers and establishes a land lease and PILOT formulas which are conducive to and ensure permanent affordability. The Board is pleased that the Applicant has agreed to make the affordable housing component of this project permanent subject to the agreement of the Port Authority. (See Attached Letter). The Board has also written to the Port Authority to request a meeting and discuss the pressing need for permanent affordability.

Further, the Board had a serious discussion about the precedent that would be set should a public agency seek to dispose of public land for residential development without imposing a permanent affordability requirement on part of the development. Land owned by a public agency or authority, being redeveloped for residential use, as a matter of public policy, should be required to have permanently affordable housing component. Given the history of these tracts of Dyer Avenue land, condemned by the Port Authority between the 1930's and the 1970's, which displaced thousands of Hell's Kitchen residents, it is especially important when land is returned to residential use the housing benefit not only the higher income residents but lower and moderate income families too.

2. The Open Space. The open space must be completed before certificates of occupancy for the buildings may be issued, and it must be operated and maintained by the Applicant as required by the Zoning Resolution §§ 93-543 and 37-04(q).

3. **Public Safety.** We recognize that a nighttime closing may be authorized by the City Planning Commission (CPC) under ZR Section 37-06 only if “such a closing is necessary for public safety and maintenance of the public open areas as documented by the Applicant.” Department of City Planning (DCP) staff has maintained that an authorization for nighttime closing under ZR Section 37-06 is not appropriate until the park has been open for a period of time and a pattern of public safety and maintenance issues has arisen. We disagree and find this attitude to be short-sighted, and only invite trouble. There is already a well-established public safety need for nighttime closings of open space in this District and many of our most successful parks and open spaces are in fact closed at night. With the site’s proximity to Port Authority Bus Terminal and Penn Station, and their nighttime transient populations, the need for a nighttime closing is clear. The Applicant openly shares our view and we urge CPC to provide the necessary authorization now rather than later.

4. **Street Trees.** Pursuant to ZR Section 93-62, street trees are required on West 37th and West 38th Streets. Where the streets are actually bridges, street trees should be planted in movable planters. We thank the Applicant for agreeing to pursue this route with the Department of Transportation (DOT) and the Port Authority.

5. **Retail Uses.** While CB4 does not oppose responsible nightlife uses, we do not want to see bars, clubs, adult uses or banks, the latter because they are a dead zone at night, on this site. The Applicant has agreed to not open a club or an adult use at this site. However, the Applicant has not agreed to not open a bank or a bar. With so many small rental apartments, these buildings will most likely house a transient just-out-of-school population, making a bar an understandably appealing for the Applicant. But the site is surrounded by longer-term residences, and we are seeking to reinforce the residential character of the neighborhood. We fear that a lively bar will inevitably create conflicts and we urge the Applicant to reconsider. Further, we ask CPC to condition renewal of this zoning authorization and Applicant agreeing to not open a bank or a bar on the site.

6. **Park must be well – maintained and open in perpetuity.** The legal mechanism for ensuring this must be in place before the Project is completed, in compliance with the requirements of ZR Section 93-543.

7. **Limited construction at night.** The construction impacts of this project will be overwhelming. Building a steel deck over the Lincoln Tunnel approaches and Dyer Avenue will take approximately 12 months and will be complicated and noisy. It will require partial and full shutdowns of these roadways, with likely traffic impacts far beyond the area. The Applicant is working with the Port Authority to reconcile their operational needs with the needs of the Applicant. Apparently, the Port Authority believes that its operational needs require that much of the work be done at night, between the hours of Midnight and 6 AM. This will be unacceptable to the residents of the surrounding area, and will be opposed by this Board. The needs of the surrounding community must be considered and nighttime work must be extremely limited.

8. **A Construction Task Force.** The Applicant has agreed to form a construction task force with representatives from the Applicant, the Port Authority, all involved public agencies and local residents and businesses must be established to plan and manage the construction impacts, which must be mitigated to the greatest extent possible.

9. **Greening of the Adjacent Properties.**

- The Applicant also owns a parcel of land at the southwest corner of West 38th Street and Ninth Avenue which is currently vacant. The Board requests and the Applicant has agreed to greening of the sidewalk adjacent to the lot. Specifically, the Board would like to see the planting of five trees (per the Parks Department’s guidelines) and the installation of five tree guards that match the Ninth Avenue Renaissance design along the south side of West 38th Street.
- Along Ramp C of the Lincoln Tunnel, there is a traffic island which is owned by DOT and the Port Authority which creates a wide sidewalk along the north side of West 36th Street between Dyer Avenue and Ninth Avenue. That traffic island, known as the canoe, is scheduled for greening as part of the commitments made between the City Council and the Mayor as part of the Western Railyards Points of

Agreement. The Board requests and Applicant has agreed to consult with the community in a timely manner about designing the Project's open space in a way that permits connection of the canoe with the open space.

CONCLUSION

Given the time constraints created by the need to send a response to DCP by July 18, 2011, the Executive Committee approved the renewal of these applications at its meeting on July 18, 2011. This letter was ratified unanimously with two (2) present not eligible by the Full Board at its meeting on July 27, 2011. We look forward to working with the Applicant to ensure the success of the project and the provision of much needed open space and affordable housing in our community.

Sincerely,

A handwritten signature in blue ink, appearing to be 'CJ', written over a horizontal line.

Corey Johnson
Chair

cc: NYC Council Speaker Christine Quinn
Manhattan Borough President Scott Stringer
NYS Senator Thomas Duane
Assembly Member Richard Gottfried
Representative Jerrold Nadler
Stephen Benjamin, Drew Spitler - Dermot Company, Applicant
Melanie Meyers, Zachary Bernstein – Fried Frank, Applicant's representative