



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**COREY JOHNSON**  
Chair

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

August 1, 2011

Amanda Burden  
Chair  
City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: Request for Follow-Up-Corrective-Action (FUCA)  
Special Hudson Yards District  
Midblock Building Heights**

Dear Chair Burden:

At the June 8, 2011 meeting of Manhattan Community Board 4's (CB4) Clinton/Hell's Kitchen Land Use Committee, issues came to light surrounding the zoning in the Hudson Yards Special District now that development is proceeding in the area. Specifically, CB4 was informed of problems with buildings on the midblock rising to heights out of scale with the neighborhood. CB4 would like clarification on this zoning issue from the Department of City Planning (DCP) and, if required, to request a Follow Up Corrective Action (FUCA) be undertaken to ensure midblock height limits are enforced, thereby ensuring the already agreed upon lower scale of the midblocks.

**Introduction**

During the course of the Hudson Yards Rezoning, CB4 negotiated extensively with DCP in order to protect Community District 4's existing residential character from the high density commercial and office uses for which the area was proposed to be rezoned. The Clinton/Hell's Kitchen neighborhood is typified by its low-rise residential character, economic diversity, and small-scale retail use.

The zoning issue that has come to light centers on streetwall heights in Subarea D4 of the Hell's Kitchen Subdistrict of the Special Hudson Yards District (SHYD). This particular problem with the text of the Zoning Resolution was brought to the attention of CB4 when neighborhood residents began to complain about a new residential condominium building that is being constructed on West 37<sup>th</sup> Street, between Ninth and Tenth Avenues. The construction of this building had seemingly exceeded the base height limits of Subarea D4 of the SHYD.

## **Midblock Base Heights**

### **Dormers**

In the past weeks, the superstructure for a new residential building at 433-439 West 37<sup>th</sup> Street began to rise. This development is located on the midblock between Ninth and Tenth Avenues in Subarea D4 of the SHYD. CB4 has consistently advocated for keeping development on the midblocks at specific heights via height and setback limits. The underlying zoning for this site is R8A, which requires a base height with a minimum of 60 feet and a maximum of 85 feet. The total building height in an R8A district can be no higher than 120 feet. However, the building at 433-439 West 37<sup>th</sup> Street rises to a height of 120 feet without full setback.

This is possible because the developer has characterized that additional 30 feet of height as a dormer under ZR § 93-41 (a) (1) which incorporates by reference ZR § 23-621 (c) “Permitted Obstructions”. ZR § 23-621 (c) states that “a dormer may be allowed as a permitted obstruction ... Such dormer may exceed a maximum base height specified ...” This additional 35 feet of base height from the street which is being classified a dormer does not represent the agreements for maximum base heights and building heights agreed to by CB4 over the course of the 2005 Hudson Yards Rezoning. CB4 requests that this provision of the Zoning Resolution be modified to have a maximum base height of 60-85 feet as originally agreed to by CB4.

### **Commercial District Zoning Reference**

Additionally, ZR § 93-40 governs Height and Setback in the SHYD. 433-439 West 37<sup>th</sup> Street is located in Subarea D4 of the Hell’s Kitchen Subdistrict D of the SHYD. ZR § 93-41 deals with Rooftop Regulations. § 93-41 (1) states that the “provisions of Section 33-42 (Permitted Obstructions) shall apply to all #buildings# within Subdistricts A through E...” However, § 33-42 governs Commercial Districts. This area is zoned R8A with a C2-5 overlay, meaning that it is a residential district, not a commercial district, and those provisions would thus not apply. CB4 requests clarification as to whether the commercial district regulations apply to the residential Hell’s Kitchen Subdistrict D.

CB4 looks forward to working with DCP to find an appropriate method to ensure base heights are kept at 60-85 feet and language which incorporates dormers, and violates the agreements made between DCP and CB4, will no longer be applied. We appreciate your help in enforcing the original intention of the SHYD as applied to the midblocks in the Clinton/Hell’s Kitchen Neighborhood.

Sincerely,

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

Corey Johnson  
Chair



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



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

cc: Christine Quinn, Speaker, New York City Council  
Scott Stringer, Manhattan Borough President  
Jerrold Nadler, Member of United States Congress  
Tom Duane, New York State Senator  
Richard N. Gottfried, Member, New York State Assembly  
Edith Hsu-Chen, Erika Sellke, Dominick Answini – DCP