

April 10, 2003

Hon. Patricia J. Lancaster  
Commissioner  
NYC Department of Buildings  
280 Broadway  
New York, New York 10007

Hon. Jerilyn Perine  
Commissioner  
Department of Housing Preservation and Development  
100 Gold Street  
New York, New York 10038

**Re: Special Clinton District Preservation Area - Certificates of No Harassment for Building Alterations**

Dear Commissioners Lancaster and Perine:

The recent experience of one of our residents seeking to make alterations in her own apartment has called to our attention a number of issues associated with the process for obtaining approvals for work in buildings in the Preservation Area of the Special Clinton District. Some of these issues relate to DoB procedures and some to HPD procedures, but the issues overlap and highlight the need for a coordinated response by both agencies. We write to identify the issues and request a meeting with representatives of DoB and HPD to establish procedures that will ensure that the important protective provisions of the Zoning Resolution applicable to the Special Clinton District are correctly and consistently enforced.

**Overview**

As you know, Section 96-109 of the Zoning Resolution provides:

“Prior to the issuance of an alteration permit by the Department of Buildings for an alteration other than an incidental alteration of a #building# containing #residential uses# within the Preservation Area [of the Special Clinton District], the Commissioner of Housing Preservation and Development shall certify to the Department of Buildings . . . that. . .no harassment has occurred or, if it has been determined by the applicable governmental agency that . . . harassment has occurred, that the owner has complied with

Section 96-110 (Harassment and cure).”

Section 96-108 similarly requires a Certificate of No Harassment (among other things) before a demolition permit may be issued.

These and related provisions of the Special Clinton District Chapter of the Zoning Resolution have been key to preventing building owners from resorting to tenant harassment in order to empty apartments for redevelopment, and remedying harassment that has taken place. As a result, they have been an effective tool for achieving the goals of the Special Clinton District, including “preserving and strengthening the residential character of the community” and “permitting rehabilitation and new construction within the area in character with the existing scale of the community and at rental levels which will not substantially alter the mixture of income groups presently residing in the area..”

### **Issues Related to Department of Buildings Procedures**

The need for a Certificate of No Harassment is often overlooked by the Department of Buildings when a Plan/Work Approval Application is filed, because the building is not identified as being located in the Preservation Area or because the work being applied for is considered too minor to trigger ZR Sec. 96-109 (or the applicant makes it appear that way).

#### Issue 1

*Buildings in the Preservation Area must be easily identifiable by plan examiners.* The application form requires an applicant to indicate whether a building is in a special district (Form PW-1, Item 10, Part A), but even if that item is incorrectly completed, DoB’s own system is supposed to identify addresses in the Preservation Area. Several years ago, this Board’s staff, with the assistance of Housing Conservation Coordinators, laboriously compiled and provided to DoB a list of all Preservation Area building addresses. We have been assured that this information was added to DoB’s computer system, but it apparently is not called to an examiner’s attention when an application is under consideration. Or, perhaps it is, but the examiner may not recognize the implication of the information. The application process should be adjusted so that Preservation Area buildings are clearly identified.

#### Issue 2

*Alterations must be correctly categorized so that a Certificate of No Harassment is required for all alterations resulting in a change in a building’s room count or number of dwelling units.* The Zoning Resolution requires a Certificate of No Harassment for an alteration other than an “incidental alteration,” but DoB’s procedures use a different vocabulary, speaking of “major alterations” (ALT 1 in which the use or occupancy of an existing property changes, and for which a Certificate of No Harassment should be required), “minor alterations” (ALT 3, that involves only one work type and for which a Certificate of No Harassment should not be required), and “alterations in which the use or occupancy of a facility does not change, but

includes multiple work types”(ALT 2). We understand that DoB’s policy is not to require a Certificate of No Harassment for ALT 2s. But we also understand that there is inconsistency, by DoB examiners and by applicants, in the characterization of work as an ALT 1 or an ALT 2. It should be DoB policy and practice that all work resulting in a change in a building’s room count or the number of its dwelling units be categorized as ALT 1. (Alternatively, the incentive for filing ALT 1 work as an ALT 2 could be removed by requiring a Certificate of No Harassment for both ALT 1s and ALT2s.)

Both of these issues should be addressed by:

- clarifying the DoB’s practices and policies;
- assigning all applications for work in the Preservation Area to an examiner familiar with the area’s special requirements; and
- posting information about the area’s special requirements on the DoB website, and otherwise making it readily available to applicants. This should include clear instructions about how to get a Certificate of No Harassment if one is required (to be coordinated with HPD; see below).

### **Issues Related to Department of Housing Preservation and Development Procedures**

The Zoning Resolution is not as clear as it might be about the requirements for a Certificate of No Harassment under Zoning Resolution Sections 96-108 and 96-109. As a result, the requirements have, on occasion, been incorrectly or inconsistently applied.

#### Issue 1

*The correct “Inquiry Period” for all applications and certificates is “September 5, 1973 to Present.”* This is clearly stated in HPD’s filing instructions (copy attached), but HPD staff has recently advised some applicants that the inquiry period is limited to 15 years, and at least one Certificate of No Harassment has been issued with that limited inquiry period.

“Harassment” for these purposes is defined in Section 96-110(d) of the Zoning Resolution. The definition covers any act of harassment that occurred on September 5, 1973 or later (see the last sentence of Sec. 96-110(d)). The definition also includes a presumption that any alleged act of harassment that took place within 15 years of the date of filing an application for a building permit was indeed harassment, and it’s up to the building owner to prove otherwise. For alleged acts of harassment beyond the 15 years of the presumption, it’s up to the person claiming harassment to prove that harassment occurred. But inquiry must in all cases be made from September 5, 1973 to the present.

Issue 2

*When a building is owned by a partnership or a corporation, the application should be filed in the name of the partnership or corporation and signed by a general partner or corporate officer, as the case may be.* HPD's filing instructions are confusing and incorrect on this point, and should be clarified. In particular, when a shareholder in a cooperative seeks to obtain a building permit for alterations to his or her own apartment, the Certificate of No Harassment should be applied for by and issued to the cooperative as owner of the building, and not any individual shareholder as HPD staff required in one recent case, or the building manager, as HPD staff recently advised a caller.

**Joint DoB/HPD Procedural Questions:**

Issue 1

*There is confusion about the period that a Certificate of No Harassment is valid.* The certificates we have seen simply state that no harassment occurred from September 5, 1973 to the date of the certificate; they have no expiration date. But we have been told DoB generally considers them valid for a period of 2 years. We believe this notion of validity is misplaced and should be corrected. We believe that the Zoning Resolution provides that a building permit may not be issued if harassment has occurred before the date of the filing of the application for the building permit. There should not be a gap between the end of the inquiry period and the date of the building application.

Issue 2

*Does a Certificate of No Harassment permit only the alterations described in the original building permit application, or may it also permit alterations described in a subsequent building permit application?* For example, in a cooperative, what happens if two shareholders separately apply to alter their apartments? Can they both use the same Certificate of No Harassment? Similarly, what happens if a building owner renovates one vacant apartment, and subsequently renovates a second apartment? It has always been this Board's understanding that a Certificate of No Harassment was valid only for the work described in the building permit application for which it was obtained. But HPD staff recently advised a caller that a Certificate of No Harassment would be valid for any work done in a building in the years following the original application and even for the building's demolition. This certainly should not be the case.

Many of the matters raised in this letter have no clear answers under the Zoning Resolution or under current agency policy available to the public. We would like to meet with appropriate representatives of both agencies to consider and understand the correct policies on these matters. And, once clarity is established, we would welcome an opportunity to work with both agencies and building owners in the Special Clinton District to ensure that the correct policies and procedures are easily available to the public and correctly applied by the agencies and by building owners.

**Lancaster & Perine**  
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An inter-agency meeting could be organized at your convenience through our District Manager, Anthony Borelli. We look forward to hearing from you.



Simone Sindin  
Chair  
Manhattan Community Board No. 4



Anna Hayes Levin  
Chair  
Clinton Land Use & Zoning Committee

This letter was approved at Manhattan Community Board No. 4's April 2, 2003 full board meeting.

Attachment.

cc: Hon. Michael Bloomberg, Mayor  
Hon. C. Virginia Fields, Manhattan Borough President  
Local Elected Officials  
B. Feldt  
Laura Osorio, DoB  
Joseph Rosenberg, HPD  
Elizabeth Bolden, HPD