



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**JEAN-DANIEL NOLAND**

Chair

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

District Manager

October 7, 2008

Shaun Donovan  
Commissioner  
Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038

**Re: Lower Income Housing Plan Application by Eighth & 46<sup>th</sup> LLC (Tribeach Holdings LLC) – 301 West 46<sup>th</sup> Street (Block 1037/Lot 30)**

Dear Commissioner Donovan:

At the recommendation of its Housing, Health and Human Services Committee, Manhattan Community Board No. 4 recommends disapproval of the Lower Income Housing Plan Application by Eighth & 46<sup>th</sup> LLC (a wholly controlled subsidiary of Tribeach Holdings LLC) for its project at 301 West 46<sup>th</sup> Street.

The proposed project site, 301 West 46 Street, is part of a larger development site that encompasses 5 building lots and the transfer of development rights from 3 adjacent lots, and extends almost the full length of the 8<sup>th</sup> Avenue frontage between 46<sup>th</sup>-47<sup>th</sup> Streets. The development plan for the entire site includes four separate buildings, including two independently operated hotels, one residential townhouse, and one residential “cure” building.

Of particular note, 301 West 46<sup>th</sup> Street has a documented history of severe tenant harassment. In fact, HPD formally denied a certificate of no harassment on May 21, 2007 thereby making it subject to Section 96-110(3), the Harassment Cure provision of the Special Clinton District zoning regulations, which requires that any development on a site with a finding of harassment dedicate i) 28% of the square footage (s.f.) of the building as affordable housing in perpetuity, or, ii) 20% of the s.f. entire development site, whichever is greater.

The Board is dismayed that the larger project design was clearly designed to circumvent Section 96-110(3)ii that requires that 20% of the *entire* development site be restricted for affordable housing. However, the developer has very carefully crafted a project that separates the zoning lots and limits the effect of the cure to only the existing Lot 30 (which includes both the newly proposed Lots 29 & 30). The resulting project has two

independent hotels situated side-by-side, which according to the developer, will be operated with separate services and building systems by different hotel operators. In its presentation before the HHHS committee, the developer stated that the separation of the building lots to create two separate hotels run independently was specifically designed as a legal mechanism to isolate the Finding of Harassment to Lot 30, so not to not taint the remainder of the parcel. While this subdivision may meet the legal threshold to separate the development sites, the resultant project site plan creates four poorly massed and designed buildings. It is clearly a development crafted for legal reasons rather than one which creates a feasible project that benefits the community and the developer.

### **THE PROJECT – Lot 30 “Cure” and Inclusionary” Building**

The project site, 301 West 46<sup>th</sup> Street (Lot 30) will subsequently be divided into two separate lots -- the proposed new Lot 29 will be a 21-story hotel of 59,723 s.f.; the proposed Lot 30 will be a 6-story, 25 residential unit Harassment Cure and Inclusionary building, of which 21 units (17 studios, 4 one bedroom units) will satisfy the Cure Requirement and 4 units (3 studio, 1 one bedroom) will be developed under the Inclusionary Housing Program. All units will be deed restricted to be affordable to those earning less than 80% AMI.

The applicant, Eighth & 46<sup>th</sup> LLC, has proposed Catholic Charities as the not-for-profit Administering Agent for the Cure/Inclusionary Project on Lot 30. Catholic Charities proposes to operate the proposed project as housing for teens aging out to the foster care system. Further, Catholic Charities proposes to tenant the building by referral with no community or public access to application for the new apartments.

### **OUR COMMENTS**

CB4 recommends denial of the application for the following reasons:

**1. Does not comply with 96-105 of the Special Clinton District.** Section 96-105(a) of the Special Clinton District requires that *“the number of two-bedroom units on a zoning lot shall not be less than 20 percent”* for any development within the boundaries of the Special Clinton District. The proposed project contains *zero* two bedroom or larger units in the proposed project and eighty percent of the units are in fact studios. Section 96-105 was specifically designed to create affordable family-size units so as families grow, they can afford to remain in our community. This provision is even more critical today, as every new development in our community because of market-driven needs, is overwhelmingly comprised of studio and one bedroom units.

**2. Cure and Inclusionary Housing should not be restricted to specific populations.**

Community Board 4 supports a well-sited housing model dedicated to provide support for those teens emerging from the foster care system. However, we cannot support the restriction of Cure and Inclusionary Housing Program units to specific populations. Cure and Inclusionary units must be for general low income families. CB4 codified its

position in an Inclusionary Housing Policy that was adopted on July 23, 2008. The full text of CB 4's Inclusionary Housing Policy is attached.

On this site in particular, where tenants were displaced due to harassment, there should be no additional restrictions on eligibility for those families with incomes below 80% AMI and the families who were forced out of this neighborhood should have a chance to return.

The representative from Catholic Charities presented a very compelling description of the proposed project and the need for housing for youth aging out of foster care. We welcome them to return to our Board with a well-sited project elsewhere in our community that does not involve utilizing Cure or Inclusionary housing units.

**3. Application is incomplete.** The LIHP application presented to the Housing, Health and Human Services committee failed to include building elevations and both operating and development budgets for the proposed project. A full review of the project is not possible without these documents. We request the missing documentation be submitted to the Board.

**4. HPD must independently verify that the one remaining tenant has reached an agreement regarding their tenancy without undue pressure.** The developer indicated that one tenant remains in occupancy at this time. HPD must verify, prior to acting on any LIHP, that tenancy and relocation issues have been resolved to the tenant's satisfaction, and that in fact no additional harassment has occurred as a result of this application.

**5. HPD must require a deed restriction to ensure on the new lots 28 and 29 that the proposed developments are not combined in the future to function as one hotel, unless section 96-110 (3)(ii) requirements are met, and 20% of the entire development site is restricted for affordable housing.**

Thank you for your consideration.

Sincerely,



Jean-Daniel Noland  
Chair  
Manhattan Community  
Board No. 4

[signed 10/7/08]

Sarah Desmond  
Co-Chair  
Housing, Health & Human  
Services Committee



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

Cc: Tribeach Holdings LLC  
James Harris, EDC  
NYC Council Speaker Christine Quinn  
Manhattan Borough President Scott Stringer