



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JEAN-DANIEL NOLAND
Chair 4

5
ROBERT J. BENFATTO, JR., ESQ.
District Manager 6

Item # 3

7
8 February 26, 2009

9
10 Mr. Robert LiMandri, Commissioner
11 NYC Department of Buildings
12 280 Broadway, 7th floor
13 New York, NY 10007

14
15 **Re: 346-364 West 37th Street, BIN 1013606**

16
17 Dear Commissioner LiMandri:

18
19 On February 19 DOB at last issued a stop work order for construction at Tower 37, a 27-
20 story, 208 unit residential building at 346-364 West 37th Street for “failure to comply
21 with Zoning Resolution for setbacks.” Thank you for taking action on our many and
22 various complaints about this project, which is being built without a street wall that
23 complies with the street wall requirements established by the 2005 Hudson Yards Special
24 District rezoning.

25
26 That zoning requires a street wall at the street line to 90 feet; the building is being built
27 with street wall setbacks above the second floor (at approximately 25ft). Please do not
28 allow the construction to proceed without this condition being corrected.¹

29
30 The site is in the P-2 area of the Special Garment Center District, where Section 121-32
31 of the Zoning Resolution provides:

32
33 *The #street wall# of any #development# or #enlargement# shall be located on the*
34 *#street line# and extend along the entire #street# frontage of the #zoning lot#. . . .*
35 *Such #street wall# shall rise without setback to a maximum height of 90 feet or*
36 *the height of the #building#, whichever is less.*

¹ Since one issue for you is the reliance of the owner on a permit issued by DOB, we thought we would point out the July 29, 2008 decision by the Court of Appeals *GRA V, LLC v. Srinivasan*. DOB granted a permit based on the architect’s seal on plans and her assurances to the plan examiner – in this case that a Sanborn map accurately represented the conditions at the site. When it was confirmed by survey that the map was inaccurate and that the new structure actually would extend one foot nine inches rather than being flush with the adjacent building as required, DOB denied a request to vacate a stop work order, and BSA denied an application for a determination that the owner had acquired a common-law vested right to continue. The court found that no vested rights are acquired even where DOB failed to notice that plans did not comply with code provisions and erroneously issued a permit *because the permit could not have been validly granted in the first place*. The cited case reaffirms your right to revoke their permit and compel them to conform, and we hope this is the resolution you are working towards.

1
2 This provision was intended, as was noted in the Hudson Yards ULURP applications and
3 the City Planning Commission's report on those applications, "to ensure consistency with
4 the Garment Center's distinctive built form of high street wall loft buildings."
5

6 We reviewed plans for the Tower 37 project in late 2007, in connection with the
7 developer's application to the Department of Housing Preservation and Development
8 (HPD) for approval of its Lower Income Housing Plan under Inclusionary Housing
9 Zoning. Those plans showed a 15-foot setback at the 3rd floor and an additional 4-1/2-
10 foot setback at the 11th floor. During our land use committee review session, we brought
11 the lack of streetwall compliance to the attention of Tower 37 LLC, requesting zoning
12 compliance in its final submittal to HPD. We then pointed out this violation of ZR
13 Section 121-32 in our November 13, 2007 letter to HPD, and called it to the attention of
14 the Department of City Planning and the Department of Buildings at that time. As a
15 standard part of the Inclusionary Housing process, the plans were reviewed by HPD's
16 Division of Architecture, Construction and Engineering (DACE) for housing program
17 and zoning compliance. We also raised this matter in subsequent meetings with HPD on
18 December 5, 2007 and September 30, 2008.
19

20 This matter was brought up twice to the Department of City Planning on June 3, 2008
21 and September 30, 2008, at the District Service Cabinet meeting on November 19, 2008,
22 in a 311 complaint #1246531, in a letter to you on January 16, 2009, and with several
23 follow-ups with your agency after that. No action was taken on our complaints until
24 February 19, 2009.
25

26 At the same time, Glenwood Management, a well-established residential developer, was
27 making plans for its project on the block to the north, at 333-345 West 37th Street and
28 310-328 West 38th Street. Glenwood wanted to provide 15-foot entry recesses that
29 weren't permitted by ZR Section 121-32. Glenwood was required to apply to the
30 Department of City Planning for a zoning text amendment to allow the requested recesses
31 on lots with frontage over 250 feet, a very limited circumstance (this would not apply to
32 Tower 37 due to the 100 foot frontage). That text change, which CB4 supported, did not
33 become effective until June 29, 2008.
34

35 Meanwhile, across the street, construction of Tower 37 was allowed to begin. Once
36 construction rose above the second floor and set back 20 feet, it was obvious that the
37 building was a flagrant violation of the street wall requirement. Why was the Glenwood
38 project required to comply with the Zoning Resolution, when Tower 37 was not?
39

40 The integrity of the Zoning Resolution is compromised if it is not consistently enforced.
41 The street wall requirement in the Special Garment Center was a feature of the Hudson
42 Yards rezoning that was specifically negotiated to maintain the architectural character of
43 the area. A failure to enforce the requirement will undermine the planning on which it
44 was based and encourage future developers to be cavalier about the rules established for
45 the area.
46

1 We therefore applaud the stop work order. Construction should not be allowed to resume
2 until the project is redesigned to provide the continuous street wall at the street line that
3 ZR Section 121-32 requires.

4
5 Sincerely,

A handwritten signature in black ink, appearing to read 'Jd', with a long horizontal stroke extending to the left.

6
7 Jean-Daniel Noland
8 Chair
9 Manhattan
10 Community Board 4

11
12 cc: Tower 37, LLC
13 DCP – Amanda Burden, Edith Hsu-Chen, Dominick Answini
City Council Land Use Division – Danielle DeCerbo
MBPO – Anthony Borelli
Speaker Quinn’s District Office – Melanie Larocca
HPD – Rafael Cestero, Holly Leicht