



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
tel: 212-736-4536 fax: 212-947-9512  
www.nyc.gov/mcb4.org

**DELORES RUBIN**  
Chair

**JESSE R. BODINE**  
District Manager

January 18, 2016

Rick Chandler Commissioner  
NYC Department of Buildings  
280 Broadway  
New York, NY 10007 January 4, 2017

**Re: 355-357 West 39<sup>th</sup> Street (Block 763 Lot 6)**  
Illegal Demolition of Residential Buildings

Dear Commissioner Chandler:

At the December 14th, 2016, meeting of Manhattan Community Board 4's (MCB4) Clinton/Hell's Kitchen Land Use Committee meeting, members were informed of the Department of Building's (DOB) *zoning approval* for 355 and 357 West 39<sup>th</sup> Street, two four-story and one two-story residential buildings located in the Special Hudson Yards District at the time the owner also filed for *demolition* of the buildings under DOB job applications 122953161, 122953152, and 12295317.

The Committee questioned how zoning approval can be compliant with Section 93-91 of the Zoning Resolution, which states, essentially, that multiple dwelling buildings in sound structural condition in a special district cannot be demolished. The buildings at 355 and 357 West 39th Street are in sound condition. And, apparently, inhabited.

On January 4th, 2017, with 37 in favor, 0 opposed, 0 abstaining and 0 present but not eligible to vote, Manhattan Community Board 4 voted to request that DOB immediately rescind zoning approval for all demolition and new building applications for 355, 357, and 355 Rear West 39<sup>th</sup> Street; revoke any permits issued by DOB, and issue zoning non-compliance objections under ZR Section 93-91 for new building application #121189819 and demolitions applications 122953161, 122953152, and 12295317.

**An Ongoing Malfunction in BIS**

CB4 alerted the Department of Buildings on Friday, December 9, 2016, of the above submissions. The Department of Buildings responded that this was a malfunction of their online Building Information System (BIS), and these permits had not been approved, only submitted. While the Board is grateful for DOB's quick response to our alert, we feel it is critically important to again highlight an ongoing malfunction with DOB's online Building Information System regarding the demolition permits in Special Districts in Manhattan Community District 4

(MCD4) — in this case, with *BIS displaying approved demolition permits* for the above listed addresses when the sites are protected from demolitions, had not gone through the city process described in the Zoning Resolution (ZR), and, in fact, *had not been approved*.

MCB4 was encouraged by the update provided by DOB to the Board on November 3rd, 2016, regarding the new policies DOB plan examiners are undertaking. And, as always we greatly appreciate the quick response DOB’s John Waldman provides to the Board. We are greatly concerned, however, that misinformation continues to occur on the BIS system. And we urge you to quickly find and implement ways to prevent its occurrence.

## **BACKGROUND**

On Friday, December 9, 2016, MCB4 held a meeting to discuss the issues of illegal demolitions in the district. At this meeting, MCB4 staff and a Board member reviewed a list of the most recent Alt 1, new building, and demolition filings and discovered that among them were three separate filings for the demolition of 355, 355 Rear, and 357 West 39<sup>th</sup> Street. All of these applications were shown as having been approved according to DOB’s Building Information System (BIS). Additionally, a job filing for a new building received approval on December 6, 2016.

355 and 357 West 39<sup>th</sup> Street are both four-story buildings, with an additional building, 355 Rear, being two-stories, and contain a total of eight units<sup>1</sup>. All three buildings are located in Subarea D5 of the Special Hudson Yards District (SHYD), where the demolition of multiple dwelling buildings is, except for special circumstances, prohibited.

In February 2015, all three buildings were purchased by 355 39<sup>th</sup> St. LLC. A real estate posting advertising the buildings contained the following line:

*All of the units are free market and have leases expiring within one year, thus providing income with imminent development potential in what will be the new epicenter of New York as the Hudson Yards reshapes the city’s skyline<sup>2</sup>.*

An MCB4 Board member visited the site on December 9, 2016, and identified blinds and curtains in several windows, name labels in an intercom panel, and a note for FedEx at the door —all signs that the building contained occupied units<sup>3</sup>.

### **Protections against Demolition of Residential Buildings**

Under provisions of the Special Hudson Yards District, 355 and 357 West 39<sup>th</sup> Street are subject to demolition restrictions, per Section 93-91 of the City’s Zoning Resolution. These restrictions

---

<sup>2</sup> See APPENDIX A – Massey Knakal Posting

<sup>3</sup> See APPENDIX B – Photographs of building, dated December 9, 2016

were agreed to as part of the Hudson Yards Rezoning in 2005, were resolved as part of the Western Rail Yards negotiations in 2009, certified for ULURP in 2010, and adopted on October 27, 2010.

As per those regulations, a building **can only be demolished** if it:

- has been deemed unsafe by DOB or HPD or an emergency exists pursuant to NYC Administrative Code **or**

The HPD Commissioner has certified, after providing 60 days' notice and opportunity to comment to local community Board, that the building:

- is to be substantially preserved and requires the removal and replacement of 20% or more of the floor area
- cannot feasibly be rehabilitated through any government funding program
- has been issued a Certificate of No Harassment by HPD

A Certificate of No Harassment could not be found for the property. Furthermore, the buildings were not deemed structurally unsound, nor was there an emergency that would have allowed for their demolition.

Additionally, owners who will be removing 20% or more of the floor area in a residential building are required to submit an HPD1 form, per Section 93-90 of the Zoning Resolution. This form requires the owner to provide a Certificate of No Harassment or declare exemption from the demolition provisions of the Zoning Text.

### **False DOB Filings**

Over the course of 9 months, the owner submitted the following job applications<sup>4</sup>:

<b>Building and Job Application Number</b>	<b>First PW1 Submitted</b>	<b>Work Description</b>	<b>Issues</b>
--	----------------------------	-------------------------	---------------

---

<sup>4</sup> See APPENDIX C- PW1 forms dated February 17, 2016 and November 22, 2016

355 West 39 <sup>th</sup> Street <u>121189819</u>	2/17/16	New 10 story building	<ul style="list-style-type: none"> <li>· HPD1 form states owner received a Certificate of No Harassment</li> <li>· Does not state change in number of units, occupancy/use, number of stories, or inconsistency with Certificate of Occupancy</li> <li>· States the building has no occupied units</li> </ul>
355 West 39 <sup>th</sup> Street <u>122953161</u>	11/22/16	Demolition of building	<ul style="list-style-type: none"> <li>· No HPD1 form submitted</li> <li>· Does not state change in number of units, occupancy/use, number of stories, or inconsistency with Certificate of Occupancy</li> <li>· States the building has no occupied units</li> </ul>
357 West 39 <sup>th</sup> Street <u>122953152</u>	11/22/16	Demolition of building	<ul style="list-style-type: none"> <li>· No HPD1 form submitted</li> <li>· Does not state change in number of units, occupancy/use, number of stories, or inconsistency with Certificate of Occupancy</li> <li>· States the building has no occupied units</li> </ul>
355 West 39 <sup>th</sup> Rear <u>122953170</u>	11/22/16	Demolition of building	<ul style="list-style-type: none"> <li>· No HPD1 form submitted</li> <li>· Does not state change in number of units, occupancy/use, number of stories, or inconsistency with Certificate of Occupancy</li> <li>· States the building has no occupied units</li> </ul>

It should be noted that for every demolition filing, although the owner did not answer questions about changes in the number of units, occupancy/use, number of stories, or inconsistencies with Certificate of Occupancy, the DOB's BIS registered all of these non-responses as "No".

As we stated at the beginning of this letter, on December 9, 2016, DOB responded that the agency would fully examine and review the demolition applications submitted by the owner. MCB4 does not believe that a demolition application for a building, in a Special Zoning District which prohibits such demolition, needs further review.

DOB has not enforced the Demolition Prohibition in the Special Hudson Yards, West Chelsea, Garment Center, and Clinton Districts in spite of the fact that *demolition in protected subdistricts of these Special District is not zoning compliant*. This Board is very concerned that such reticence to enforce zoning provisions encourages owners to attempt to demolish protected buildings.

**Thirteen Illegal Demolitions Filed in a Year**

Over the past year, MCB4 has written to DOB each time a new illegal demolition filing is found in our District. The chart below outlines these sites, which encompass 10 buildings and 96 units:

Address	Letter Date	# Buildings	# Units
319-321 West 38 <sup>th</sup> Street	1/13/2016	2	23
559 West 22 <sup>nd</sup> Street	2/11/2016	1	21
500 West 22 <sup>nd</sup> Street	3/17/2016	3	12
821 9 <sup>th</sup> Avenue	6/21/2016	1	6
317-319 West 35 <sup>th</sup> Street	6/21/2016	2	28
500 West 28 <sup>th</sup> Street	12/9/16	1	6
		<b>10</b>	<b>96</b>

This new finding (355 and 357 West 39<sup>th</sup> Street) brings these totals to 13 buildings and 104 units. MCB4’s concern over the protection of our buildings, long-time residents, and affordable housing has been mounting for nearly a year. As we are sure you will agree, effective and swift DOB action is critical to ensuring that this trend comes to an immediate end.

**Tagging Residential Buildings in Special Districts**

As is apparent from the recent letters the Board has written on illegal demolition of residential buildings in Special Districts, we are frustrated that issues such as these continue to persist. And we continue to advocate that adequate resources be applied to resolve these types of malfunctions and curb applicants from false filing on applications within the Special Districts.

We urgently request a meeting with your office to update the Board on both how DOB plans to resolve these malfunctions and how it can address MCB4’s original request to tag the residential buildings within the Special Districts and upgrade the BIS system to better monitor Demolition and Alteration applications for residential buildings within the Special District. We also hope to learn about measures which are being implemented to identify and address false filings for work that is not permitted in these protected Special Districts.

Again, we thank you for your quick response to our calls and we look forward to meeting with you as soon as possible to find a resolution of this matter.

Sincerely,



Delores Rubin  
MCB4 Chair



Jean Daniel Noland, Chair  
Clinton Hell's Kitchen Land Use  
and Zoning Committee

CC Hon. Jerrold Nadler, Congressman  
Hon. Gale Brewer, Manhattan Borough President's Office  
Hon. Marisol Alcantara, Senator  
Hon. Richard Gottfried, Assembly member  
Hon. Corey Johnson, Council member