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September 22, 2016

Louise Carroll
Associate Commissioner, Housing Incentives
Department of Housing Development and Preservation
100 Gold Street
New York, NY 10038

Re: 517-525 West 45th Street Harassment Cure Application

Dear Commissioner Carroll:

Manhattan Community Board 4 (MCB4) would like to thank you for your attention to the proposed plans for 517-525 West 45th Street, which were presented to the Housing, Health, and Human Services Committee on March 24, 2016 and May 24, 2016. The Board has reviewed plans for the proposed work and after discussing some of our concerns with the owner, we look forward to resolving key remaining issues regarding the Cure application and the legalization of IMD units in the building.

Background

517-525 West 45th Street is a loft building consisting of five adjacent portions of differing heights. All portions are on a single zoning lot (Block 1074, Lot 18) between Tenth and Eleventh Avenues¹. The 517 portion of the building located on West 45th Street is four stories tall. Immediately to the west, the 525 portion of the building is five stories tall. Behind 517 and 525, off an interior courtyard, is a two-story portion called 525 Rear, as well as the 523 portion of the building, which is also a five-story structure. The building is located in the Preservation Area of the Special Clinton District (SCD).

The building was first residentially occupied in 1963 under the Artist in Residence (AIR) Law, and became an IMD in 1986 (IMD #10516). The building contains a total of 18 apartments, of which 10 are Interim Multiple Dwelling (IMD) units. The IMD tenants of this building went through a series of tenant harassment tactics from 2004 through 2005, including withdrawal of services and threatened use of force, aimed at forcing them out of their units.

In 2008, per requirements of Section 96-110 of the Zoning Resolution for the Special Clinton District, former owner Shabbat LLC applied for a Certificate of No Harassment (CONH) prior to

¹ See Appendix A – Tax Lot Diagram

beginning construction work on the building. However, after an investigation, the Department of Housing Preservation and Development (HPD) determined that there was reasonable cause to believe that the building’s tenants had in fact been harassed. Shabbat LLC requested a hearing and on April 7, 2010, the New York City Office of Administrative Trials and Hearings found that there has been tenant harassment on the site.

Because of the finding of harassment under the Special Clinton District, the owner is required to provide a Cure for Harassment (Cure) if he or she applies for a building alteration through the Department of Buildings (DOB).

The owner would be required to dedicate the greater of the following:

- 28% of the total residential floor area of the existing building; or
- 20% of the total floor area of the newly proposed building

517-525 West 45th Street is a unique circumstance in which a Cure for Harassment is also undergoing IMD unit legalization.

Throughout this building’s long history as a harassment site, MCB4 has remained engaged and has sought solutions to the problems that have arisen as previous owners have attempted to develop the building. Most recently, the Board wrote a series of letters to DOB and HPD regarding the Owner’s efforts to secure a Cure for Harassment:

Date	Recipient	Issue/s
12/7/15	V. Been, HPD	IMD tenants should be incorporated into owner’s Cure requirement.
12/9/15	M. Rebholz, DOB	Building height misrepresented in application for vertical additions to the 517 West 45 th Street and 525 West 45 th Street portions of the building; proposed heights were not in compliance with the Special Clinton District Zoning.
3/15/16	M. Rebholz, DOB & L. Carroll, HPD	Zoning noncompliance regarding provision of light and air for proposed vertical additions; false information on PW1 forms; No Tenant Protection Plan submitted.

Regardless of the issues raised above, the Board is pleased to work with an owner who is willing to find solutions to legalize the residential units through the IMD process and comply with the Special Clinton District Zoning Requirements of the Cure for Harassment. MCB4’s goal is to work with the owner and HPD to resolve a beneficial conclusion for the IMD tenants.

The following is a summary of the issues raised by the owner’s plans, the Board’s and DOB’s responses, and the owner’s commitment as part of the Cure process. MCB4’s goal is to resolve the remaining open items among the Owner, HPD, and MCB4 and to bring this Cure proposal to a successful and beneficial conclusion.

DOB Issues

In its March 15, 2016 letter², the Board listed concerns regarding the proposed work in 517-525 West 45th Street. The owner addressed these concerns during our March 24th and May 24th meetings.

1. Zoning Resolution Requirement – Minimum Distance between Buildings

ZR § 23-711 states that any two buildings on the same tax lot must maintain a minimum of 60 feet between windows. The proposed additions for the 517 and 525 portion of the building did not provide the minimum distance between the portions of the buildings. Any addition should have provided a minimum of 60 feet between windows in two adjacent portions on the same lot.

The owner indicated in plans submitted to DOB that there will be no vertical additions on either the 517 or 525 portion of the building.

2. False and Incomplete Forms

MCB4 also noted PW1 forms under DOB Application No. 122204462 that contained falsified and misleading information:

- Stating that the building was a Single Room Occupancy (SRO)
- Not answering questions regarding the impact of the proposed work on:
 - Exits in the building
 - Number of dwelling units
 - Occupancy / use of the building
 - Current certificate of occupancy
 - Number of stories

The project architect informed the Board that he would correct any incorrect or misleading information in the forms submitted to DOB by March 30, 2016.

On April 7, 2016, the owner submitted an additional PW1 to DOB under Application No. 122204462. This form properly classified the building and acknowledged the proposed work would entail a change in the number of dwelling units, the occupancy of the building, and the number of stories.

The owner represented that he would submit a subsequent PW1 form to reflect that there will be no additional stories under the proposed plans.

3. Asbestos Removal

At the March 24th presentation, the owner stated that the 517 portion and the 525 portion had both been tested for asbestos. However, he could not confirm that the other buildings had been tested and could not recall whether or not the testing at the 517 portion and the 525 portion included the dwelling units, or whether it only took place in the common areas.

² See Appendix B – Letter to M. Rebholz, L. Carroll, dated March 15, 2016

At the follow-up meeting on May 24th, the owner committed to testing for asbestos in all areas of the building as part of the plan approval process.

4. Requirements for Horizontal Multiple Dwelling

MCB4 would like to note that because the 517-525 West 45 Street complex (front and rear buildings) share mechanical systems, entrances, and fire egress, they are collectively considered a single horizontal multiple dwelling. Between the IMD units, the Cure units, and the market rate units, the owner proposed 29 units over the entire complex. Given that number of units, building code requirements that are based on the number of units (such as trash chutes) must be complied with.

Further, a multiple dwelling of more than 50,000 square feet must be in compliance with Local Law 87. LL87 requires the benchmarking of energy and water consumption and the implementation of retro-commissioning strategies in order to lower energy and water consumption.

In light of this requirement, the Board was also surprised to hear that the owner planned to keep the building's current steam heating system. Such a system is significantly less efficient than more modern options and the Board questions whether a steam system would meet the LL87 retro-commissioning requirements.

5. Tenant Protection Plan Requirement

The DOB requires that any building undergoing an alteration with one or more unit that will remain occupied during the alteration must provide a stand-alone Tenant Protection Plan in the form of a TPP1 Form. MCB4 understands that all of the current tenants will remain in place while the building undergoes renovation and requests that the owner provide a copy of the plans to the Board.

At the May 24th meeting, the owner stated that protection plans had been submitted for the following portions of the building:

- 517 portion
- 525 portion
- 523 portion

These plans have not yet been approved by DOB. However, the Tenant Protection Plan must be on DOB's Building Information Search system prior to the issuing of any permits. Additionally, the owner has agreed to provide a copy of the Tenant Protection Plan to the Board prior to commencing any work.

Cure Housing Inclusionary Housing Program and Design Guidelines

Cure housing is subject to design guidelines as defined by HPD, but must also take into consideration the IMD legalization process. MCB4 wishes to work with HPD and the Loft Board to reconcile the two separate sets of requirements. The Board has long been diligent in ensuring that the design requirements of the Inclusionary Housing Program are met by owners and expects that the owner will comply with those design guidelines as defined by HPD.

1. Square Footage of Cure Units

Based on the Residential Square Footage, as defined in Section 96-110 of the Zoning Resolution, the Cure requirement should be 28% of the floor area of the residential portion of the building (gross floor area), as defined in Section 96-110 of the Zoning Resolution. However, to meet that requirement, the HPD BLDS Department employs a method of measuring in which the only the area inside partition walls within the Cure units is considered.

The owner indicated that he received some contradictory information from HPD regarding how to calculate square footage. Housing Committee Co-Chair Joe Restuccia spoke to HPD's Inclusionary Housing Department, which has ultimately agreed to participate in a call to discuss means and methods for calculations and measurements. The owner has agreed to comply with the method that is ultimately agreed to by Inclusionary Housing.

2. ADA Accessibility

MCB4 is particularly concerned about the accessibility of the proposed units. While the owner reported that some tenants were reluctant to provide access for these improvements, the Board has offered to assist in working with these tenants to accomplish the scope of work as required by HPD. MCB4's priority in this regard is to facilitate the creation of quality affordable housing that will not only serve current tenants, but also remain as a resource for many future tenants.

MCB4's initial review of the Cure plans found that in Cure units, kitchens and bathrooms had steps between the main portion of the apartments and those rooms. Bathrooms did not have the required radius for accessibility, and doors to some rooms swung in the wrong direction for ADA compliance. One bathroom drawn in the plans had no partitions to separate it from the rest of the unit and included a ramp as well as a door that opened onto a public path of egress. The owner reported that HPD stated that the ADA requirements would be waived. MCB4 has worked with HPD regarding ADA compliance and has not found that to be possible. To that end, the Board has made arrangements with the owner to take photos of the proposed Cure units in order to help HPD better understand the existing conditions and ensure ADA compliance.

3. Equality in Apartment finishes

MCB4 believes strongly that all units, regardless of their designation as market rate or Cure units should have the same finishes throughout.

The Board was pleased to learn, during the May 24th presentation, that the owner has committed to having the same finishes and appliances in all of the building's Cure and market rate units. The Board expects that this equality will extend to the units in which tenants have not yet agreed to renovation plans.

4. Building Amenities

The proposed alterations to the building do not include the addition of any amenities. Therefore, MCB4 does not have any comments regarding equal access for all tenants.

5. Open Floor Plans and Rent Calculations

MCB4 would like to note that the units in the building are unusually large and therefore may exceed the minimum square footage requirements for affordable housing units undergoing substantial rehabilitation, as set forth in Section 23-96 of the Zoning Resolution:

Bedrooms	Minimum Square Footage
0	400
1	575
2	775
3	950

The Board requests that the owner work with HPD and MCB4 to make rental rates conform to HPD's square footage standards based on the number of bedrooms.

6. Utilities and Rent Calculations

MCB4 would also like to note that the manner in which utilities are charged is not consistent throughout the building. The following is a breakdown for the proposed Cure units:

Unit	Electric	Gas
2A	Paid to ConEd	Tenant pays
5B	Paid to ConEd	Cost included in rent
2C	No information available	No information available
2D	Paid to ConEd	Cost included in rent

HPD sets rents based on whether or not electric and/or gas is included in the tenant's rent. MCB4 requests that the owner work with HPD to tailor rent levels given these circumstances.

7. Preferential Rents

The building includes several long-term tenants who are paying rents that are well below market rate. *The Board was pleased to learn that the owner has agreed to maintain the current rent rates as the preferential rents for all of the Cure units occupied by existing tenants.*

8. Income Qualifications--IMD Cure Tenants

At the March 24, 2016 meeting, a tenant at 517-525 West 45th Street reported submitting income documentation to see if he qualified as a Cure tenant. This tenant was informed by the New York City Housing Partnership, the owner's proposed Administering Agent that he qualified. However, the owner declined to consider his unit as part of the Cure.

The Board is aware that this tenant became an IMD tenant under the 2010 amendments to the IMD law as opposed to rest of the IMD tenants, who are covered under the original 1982 IMD law. If this tenant were granted a Cure unit, the rent for his unit would be based on Cure rent levels and would significantly decrease.

MCB4 has questions about the criteria used to determine which IMD tenants will be considered as Cure tenants and requests that HPD review this criteria and process.

Conclusion

The Board's revision of this Cure for Harassment application had been difficult. From the owner, we have received information in a piecemeal manner and been presented multiple versions of the proposed plans, many of which have not been in compliance with Multiple Dwelling or Building Code requirements. Notwithstanding these missteps, the owner has continually tried to resolve matters. The Board is committed to working with the owner and will continue to work with HPD to bring this matter to a successful conclusion.

The Board looks forward to working with the owner, HPD, DOB, and Tenants in order to ensure that the proposed work in the building meets both DOB requirements and the guidelines of the Inclusionary Housing Program, and that our community benefits from the creation of quality affordable housing.

Sincerely,



Delores Rubin
MCB4 Chair

cc: R. Chandler, DOB
M. Lostocco, HPD
S. Bernstein