



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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

CHRISTINE BERTHET
Chair

JESSE BODINE
District Manager

November 20, 2014

Ms. Vicki Been, Commissioner
Ms. Julie Walpert, Assistant Commissioner
NYC Department of Housing Preservation and Development
100 Gold Street, 5th floor
New York, NY 10038

Re: Clinton Towers, 790 Eleventh Avenue, New York, NY 10019

Dear Commissioner Been and Assistant Commissioner Walpert:

In a letter dated August 6, 2014 to Commissioner Been, Manhattan Community Board 4 (CB4) first addressed its concerns over the proposed use of the commercial space(s) in Clinton Towers, a Mitchell-Lama development, as an eating and drinking establishment in the context of a pending liquor license application before the NY State Liquor Authority. CB4 is in receipt of the reply from Assistant Commissioner Walpert dated October 21, 2014 in which you refer to a revised lease that has been submitted to HPD by Kurt Kalm to operate the commercial space(s) along Eleventh Avenue.

At its October 16, 2014 meeting of CB4's Housing, Health and Human Services (HH&HS) committee, residents of Clinton Towers attended to express their concerns about the proposed lease, as revised, for the commercial space(s) along Eleventh Avenue. CB4 was able to review the revised lease at that time and feels very strongly that the lease should **not** be approved by HPD. Specific concerns with the proposed lease, as well as the proposed use are set forth below.

Background

Clinton Towers is a 396 unit Mitchell-Lama rental housing development located on Site 3 of the Clinton Urban Renewal Area (CURA), an area which was condemned in 1969 in order to develop affordable housing on the site. Clinton Towers is located between West 54th and West 55th Streets and between Tenth and Eleventh Avenues and was constructed in 1975 as "*moderate-income tax-abated housing with day-care and convenience shopping*" pursuant to the 1972 Large Scale Residential Development (LSRD) Plan. Accompanying Special Permits and Special Permit Authorizations were approved by the City on October 11, 1972 and governed the development of Clinton Towers and the adjacent Harborview Terrace development (a NYCHA development situated immediately east and northeast of Clinton Towers). The LSRD plan set forth the required open space square footage designated for tenant and community uses,

community facilities and commercial uses on each development parcel of the LSRD site¹. According to the LSRD plan, Parcel 3, Clinton Towers, is located in a Residence District. The western portion of the site, along Eleventh Avenue, is located in a R9 district; while the eastern portion of the site is in an R8 district. There is no commercial overlay on the site.

1) Use of the outdoor space by a private entity is not permitted under the Large Scale Residential Plan.

Section 1.5 of the revised lease contemplates the use of the outdoor “plaza” space in front of the establishment by the operator for outdoor seating for his eating and drinking establishment. As discussed in our August 6, 2014 letter, the outdoor “plaza” is actually zoning-designated open space that is set aside for tenant recreation and cannot be used by private entities. Pursuant to the LSRD approved in 1972, Parcel 3 (the Clinton Towers development site) is required to reserve a total of 27,619 square feet of open space for tenant uses². The lot area for the entirety of Parcel 3 is measured at 52,719 square feet. The Clinton Towers building footprint is 25,100 square feet. The balance of square footage on the lot is 27,619, the exact amount of square footage set forth in the LSRD as open space on Parcel 3. Pursuant to the approved LSRD, all areas on the development site not occupied by the building are intended to serve as open space for the residential tenants.

At a meeting attended by Joe Restuccia, the Co-Chair of CB4’s Housing & Human Services committee and CB4 member Sarah Desmond, Karolina Hall of the Department of City Planning and Thehbia Walters of HPD Planning, all parties concurred that the open space that runs along Eleventh Avenue (the space referred to in the revised lease as the “plaza”) in which the operator seeks to locate outdoor seating, is unquestionably open space designated by the Large Scale Residential Plan and cannot be used by a commercial entity.

2) Proposed use is not appropriate – nor is it permitted under the Zoning Resolution (ZR) – in this dense residential development.

The proposed use under the “revised” lease as a restaurant/bar is not consistent with the uses permitted under NYC ZR 78-22, the section of the zoning text that governs permissible commercial uses on a Large Scale Residential Plan. We reiterate our comments made at length in our letter of August 6, 2014, as to why the proposed use should not be permitted, briefly, that the use as a bar/restaurant is inconsistent with the permitted uses strictly governed by ZR 78-22 and incompatible with the densely residential area.

The proposed use, even in its modified form, is quite large and is inconsistent with the commercial uses permitted under NYC ZR Section 78-22 which limits commercial uses to acceptable accessory uses, that is Commercial Uses listed in Use Group 6A or 6F, that also meet the following findings (emphasis added):

¹ Copies of the 1972 Large Scale Residential Development Plan and the Special Permits and Special Permit Authorizations dated October 11, 1972 are attached.

² Clinton Urban Renewal Area, Application for Large Scale Residential Development, August 1971, Table 2, “Proposed Development versus Capacity” Parcel 3 , p. 10.

(a) will be primarily for the use of the residents of the #large-scale residential development# and will provide more convenient shopping for such residents;

*(b) are so located as to minimize interference with #residential# or recreational areas within the #large-scale residential development# and to avoid creation of traffic congestion or other objectionable influences affecting #residences# outside the #large-scale residential development#;*³

3) The proposed lease does not indicate the square footage of the commercial space to be leased. In the copy of the lease provided to Community Board 4, the square footage of the commercial space(s) to be occupied is not specified in the body of the lease, nor were the plans referenced to as Schedule C attached. CB4 was therefore unable to determine whether or not the price per square foot is comparable to the going market rent and if in fact the plans are revised. Article 36 also permits the operator to lease the “contiguous” store when it becomes vacant, but similarly, fails to specify the square footage of the “contiguous” space to be let. We are unclear what commercial space(s) are actually contemplated in the proposed lease as it lacks square foot measurements and drawings/plans and therefore cannot determine what the contemplated price/s.f. will be.

4) The term of the lease is too long

The 15 year term contemplated for the premises is extraordinarily long, particularly as it only includes a roughly 3.5% increase annually in rent and provides for an automatic five year extension at the operator’s sole decision at a similar rent. For an area that is rapidly gentrifying, the twenty year lease term is extraordinarily long for such a large space in a prime location at such a small escalation. At the very least, the provision of the lease that permits the five year extension should include a clause that protects Clinton Towers with respect to the commercial rent, as follows: “The greater of \$xxx,xxx or 95% of the Prevailing Market Rate as determined below.”

5) Examine the relationship between the Operator and members of the Clinton Tower Housing Association Board to ensure that there is no conflict of interest

As discussed in our August letter, HPD must fully investigate the relationship between any proposed lessee and any member of the Board of Directors of Clinton Towers Housing Co. to ensure that there is no conflict of interest or financial interest by any Clinton Towers Housing Co. Board Member in a proposed commercial lease.⁴ This is of particular concern this year, given the changes that went into effect on July 1, 2014 under the Not-for-Profit Revitalization Act, especially with respect to Conflict of Interest Disclosure requirements.

³ Zoning Resolution of the City of New York, Article 7, Chapter 8, Sections 78-22(a) and 78-22(b).

⁴ At a meeting held on June 5, 2014 at the offices of Assemblymember Linda Rosenthal, Gary Sloman, Director of Operations, Division of Housing, NYC Department of Housing Preservation and Development stated that HPD was investigating the proposed lease with respect to lease price, structure and whether any potential conflicts of interest existed between member(s) of the Clinton Towers Housing Company Board and the operator, as the proposed venue, “Senor Mickey’s”, is named after Mickey Spillane, a Clinton Towers Housing Co. Board Member. Mr. Spillane stated at CB4’s Business, Licenses and Permits Committee that while the operator is using his name, he has no financial interest in the business.

In addition, as Section 11.2 permits subletting of the lease with the approval of the landlord, any proposed sublease must also be subject to review and approval by HPD as the entity charged with oversight and be vetted for possible conflicts of interest. Similarly, Article 37 permits the operator to assign the lease to a limited liability company. Any proposed assignment must likewise be approved by HPD and fully vetted for possible conflicts of interest.

6) Additional Concerns:

In addition, CB4 has the following concerns with the revised lease:

- Section 1.1 refers to the Premises as “the retail store space along *Ninth* Avenue [sic] ...” is an obvious error.
- Section 1.1 references drawings annexed as Exhibit C; said drawings were not provided to CB4.
- Section 34.1: CB4 is concerned that illuminated signage is not suitable in such a densely residential area.

7) Undue delay

To the best of our knowledge P&L Management Co., the managing agent for the property and the Board of Directors have failed to identify or to seek more compatible users for the space or to otherwise engage in renting the premises, except to the proposed lessee. Long term commercial tenants have been forced to vacate and no alternative plans have been presented. We are concerned that this failure to act will compromise the financial solvency of the development.

For the reasons set forth above, CB4 respectfully requests that you **not** approve the proposed lease, as modified for the commercial space(s) at Clinton Towers. CB4 remains committed to working with HPD and the Clinton Towers Tenant Association to ensure that this Mitchell-Lama remains a viable affordable housing alternative in our community that is financially stable, and responsive to the tenants’ concerns and those of its neighbors.

Thank you and we look forward to working with you to resolve the pending matters.

Sincerely,

[signed 11/19/2014]

Barbara Davis, Co-Chair
Housing, Health &
Human Services Committee



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



Christine Berthet
Chair
Community Board 4

CC: Adriano Espaillat, NYS Senator
Richard Gottfried, NYS Assemblymember
Linda Rosenthal, NYS Assemblymember
Jerrold Nadler, Congressman
Gale Brewer, Manhattan Borough President
Helen Rosenthal, NYC Councilmember