



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

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October 15, 2015

Vicki Been
Commissioner
NYC Dept. of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Martin Rebholz
Manhattan Borough Commissioner
NYC Dept. of Buildings
280 Broadway
New York, NY 10007

Re: **485-491 and 497 Ninth Avenue Declaration of Unsafe Buildings and Proposed Demolition**

Dear Commissioners Been and Borough Commissioner Rebholz:

At the Clinton-Hell's Kitchen Land Use Committee meeting on September 9, 2015 a discussion took place regarding the declaration of unsafe buildings and proposed demolition of 485-491 and 497 Ninth Avenue. On February 19, 2013, Manhattan Community Board 4 (MCB4) wrote a request for assistance to the Department of Housing Preservation and Development (HPD) and the Department of Buildings (DOB) for preservation of these buildings and avoidance of any further demolition. Despite this request, the buildings were allowed to deteriorate further due to the owner's continued neglect and HPD's and DOB's lack of action, which has led to DOB's proposed demolition.

MCB4 requests to work with DOB and HPD to reach a compromise that will ensure public safety while preserving the 9th Avenue buildings, in particular 497 9th Avenue building. CB4 further requests to work with the Department of Housing Preservation and Development as well as the Department of City Planning to amend the zoning text to close the zoning text loophole which allows for these demolitions to occur.

Background

485-497 Ninth Avenue is a block-front of 7 tenements on the west side of 9th Avenue, between West 37th and West 38th Streets, in Subarea D5 of the Special Hudson Yards District (SHYD). These buildings, under the prior ownership of Martin Fine and the current ownership of David

Israeli since 1996, have been the subject of long-term tenant harassment, lack of services, HPD enforcement actions, and numerous legal actions since the early 1980s. Between 1968 and 1996, the long-term owner, Martin Fine, who was regularly named by the Village Voice as one of the City's top 10 worst landlords, tried to vacate all of the buildings, but was unable to do so.

485-497 Ninth Avenue is located within the SHYD, and as such the tenements are subject to both anti-Harassment (ZR § 93-90) and Demolition Restriction (ZR § 93-91) zoning provisions. ZR § 93-90 states that before there can be any material alteration to the building, the owner must obtain a Certificate of No Harassment (CONH) or, if they are not able to obtain one, must comply with the Harassment Cure Requirements. No application for a CONH has been submitted for these buildings. Additionally, according to ZR § 93-91, no multiple dwellings in Subarea D5 the Special Hudson Yards District can be either partially or fully demolished without a CONH unless found structurally unsound.

In 1995, demolition work was being done at 404 West 38th Street. During the demolition preparation, the building partially collapsed and a construction worker fell off of the scaffolding and onto the adjacent below grade Lincoln Tunnel roadway. As a result, the City found that building as well as the two adjacent buildings at 501-505 Ninth Avenue to be structurally unsound, issued an emergency vacate order, and had HPD demolish the buildings. *What the owner had attempted to do, remove the long term tenants of these buildings (some with 50 year tenancies), DOB accomplished with the vacate order.* The owner's very actions led to the City's demolition order. Today the site of those buildings remains a vacant lot.

As part of the HPD enforcement actions, an Article 7A Proceeding was brought to appoint a 7A Administrator. Martin Fine stymied that proceeding for years by putting the buildings into bankruptcy. In 1996, he sold the buildings to David Israeli, the son of diamond merchants. Martin Fine then sold the adjacent parking lot and all of the development rights from the buildings to Dermot Companies. After multiple legal actions against the long term tenants, David Israeli offered to settle the 7A Proceeding. As part of that settlement, 493-495 Ninth Avenue was gut renovated and the remaining tenants were consolidated into those buildings, any vacant units were rented, and the two buildings were fully occupied. David Israeli has repeatedly committed to renovate the existing vacant buildings but has never done so.

January – February 2013

On January 17, 2013, DOB issued an immediate emergency violation for failure to maintain the building in a code compliant manner, namely the presence of partial collapses and water damage throughout the structure.

On February 19, 2013, Manhattan Community Board 4 (CB4) sent a letter to the Commissioner of HPD and the Manhattan Borough Commissioner of DOB. This letter made several requests for action to preserve the buildings and avoid demolition required for an unsafe structure. These requests outlined a plan-of-action to preserve the structures. Despite their explicit nature, no requests were satisfied, save for first which has not been applicable. These requests were:

- No action be taken by DOB that encourages or permits any interior or exterior demolition at these buildings. These buildings have both a long history of tenant harassment and are

- subject to the zoning required Demolition Restriction.
- Since these buildings were intentionally neglected, the owner should be issued Orders to Correct the structural and façade issues.
 - If issues are found with the structural stability of any or all of the buildings and the owner does not correct these issues, HPD should move to safely correct the issues and seal the buildings.
 - Liens should then be placed on the property for the City to recoup full cost of the repairs.

On February 27, 2013, the Environmental Control Board accepted a Certificate of Cure for the January 17, 2013 violation despite minimal action being taken to restore the decaying buildings. At that time the rear of the structure was covered with a tarp, providing the building interior some protection from the elements.

April 2015

In early April 2015 the coverings of the rear building façade became unsecured exposing the true condition of the structure. At that time it became apparent that the buildings had undergone demolition work without the required DOB permits and accompanying CONH, exposing wooden structural members. This situation is analogous to the partial collapse that occurred in 1995, which ultimately led to the death of a construction worker as well as the demolition of a 100 year old structure.

At the request of CB4, DOB inspected the property on April 14, 2015 and issued a Stop Work Order under DOB Violation #041415BS04JM01.

On April 22, 2015, Jesse Bodine, District Manager of Manhattan Community Board 4 sent an email to John Waldman, Government and Community Affairs Liaison at DOB, and Vito Mustaciuolo, Deputy Commissioner for the Office of Enforcement and Neighborhood Services at HPD, requesting Orders to Correct the structural issues, or in absence of action by the property owner, HPD to make the corrections. No action was taken.

August – September 2015

FDNY conducted an inspection of the property and found the structural condition of the building to be alarming and referred the case to DOB. On August 4, 2015, DOB found the buildings structurally unsound and proposed demolition of the 485, 487, 489, 491, and 497 9th Avenue buildings. The excluded buildings from this range, 493 and 495 9th Avenue, are both occupied by long term and existing tenants. On August 17, 2015, a conference call was held between Byron Munoz, John Waldman, and Martin Rebholz of DOB, Amy Marcus, Michael Barios, and Jordan Press of HPD, Jesse Bodine, Patty Gouris, Sarah Desmond and Joe Restuccia of CB4, Manhattan Borough President Gale Brewer, Eli Szenes-Strauss representing NY State Senator Brad Hoyleman, and Gabby Dann-Allel representing NY State Assembly Member Dick Gottfried.

The Manhattan Borough President proposed taking the buildings through eminent domain. CB4 noted that there are 5 rent regulated tenants in the 493 building, there are 4 rent regulated tenants in the 495 building, and these buildings are Demolition Restricted by the zoning. DOB

expressed their concern for safety, particularly the ease of which a fire could spread from the unsond to the occupied buildings. It was agreed that if the southern buildings (485-491 9th Avenue) could not be saved, the organizations on the call would work jointly to require structural shoring to preserve the 497 9th Avenue building as it was fully sealed from the elements and shares a façade with the occupied buildings.

A follow-up call was scheduled for August 27th, 2015 but was rescheduled for September 1st, 2015, pending a meeting between DOB, the owner, and his engineers. The call for September 1st, 2015 was delayed since the meeting with the owner and his engineers was scheduled for the same time. When the call started, DOB stated that its previous meeting was successful. The owner had agreed to submit plans for demolition of southern buildings and preservation of the northern building. He had also proposed that he would undertake the demolition using his own contractors to avoid the added expense of HPD undertaking the demolition.

Additionally, it was explained that the proposed demolition will require the existing tenants with units on the southern side of the 493 building to vacate their units during the day. Clinton Housing Development Company offered to provide accommodations during these times. It was agreed the group on the call would reconvene in 2 weeks to discuss the progress.

On September 14, 2015, the owner filed full demolition plans with the department of buildings. On September 21, 2015 DOB reviewed the plans and determined that the plans are inadequate, and will refer the case to HPD to proceed with demolition of all 5 structures.

Impacts

With no action taken, as requested by the 2013 letter from Community Board 4 and again requested in April 2015 by the District Manager, 5 residential buildings over a century old are proposed to be demolished, directly against the intent of the Demolition Restriction in Special Hudson Yards District. When the Demolition Restriction to SHYD was adopted in 2010, it preserved 1144 affordable housing units. The buildings proposed for demolition were counted as 20 of these units. Further, the tenants residing in 493 9th Avenue will likely have to be temporarily vacated during portions of demolition.

Additional Impacts

There are two other Demolition Restricted sites in SHYD which have given CB4 concerns. Both 414 and 452 West 36th Street were fully occupied a year ago and now have only a handful of tenants. Today 414 West 36th Street, an existing 21 unit tenement, has plans for a 3 story expansion and is listed as unoccupied in its DOB filing (Application 122525641). 452 West 36th Street, a 20 unit tenement, now has very few remaining tenants. These buildings are at risk. Community Board 4 would like to work with HPD to ensure enforcement of SHYD's Demolition Restriction and avoid a repeat of the events that occurred at the 485-491 and 497 9th Avenue buildings.

Conclusions

The property owner of 485-491 9th Avenue has exploited a loophole in Zoning Resolution in order to increase the land values despite a 2010 zoning text amendment restricting demolition. ***Fines levied by DOB against the property owner for creating a structural condition that allows him to demolish the buildings only amount to \$1,600 for work without a permit.*** The penalty imposed is not a sufficient deterrent to prevent the loss of more buildings. Due the owner's willful neglect and lack of enforcement from DOB and HPD, the City government can deliver a site clear of rent regulations and zoning restrictions, now permitting the construction of a 12 story luxury rental or condo building. This loophole must be closed to prevent additional buildings from being demolished in the Special Hudson Yards, Special West Chelsea, and Special Clinton Districts.

CB4 and HPD need to prevent property owners, who through willful neglect, create conditions rendering a building structurally unsound, therefore permitting them or the City avoid the Demolition Restriction.

Sincerely,



Christine Berthet
Chair



Jean-Daniel Noland
Chair, Clinton / Hell's Kitchen Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Brad Hoylman, New York State Senate
Hon. Richard Gottfried, New York State Assembly
Hon. Corey Johnson, City Council
Sarah Desmond, Housing Conservation Coo