



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE R. BODINE
District Manager

November 13, 2015

Vincent G. Bradley
Chairman
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, New York 12210

**Re: An Entity To Be Formed Of Which Kurt Kalm Is A Principal
d/b/a Senor Grande (working title)
790 11th Avenue (West 54th/West 55th Streets)**

Dear Chairman Bradley:

Manhattan Community Board 4 (MCB4) requests that the State Liquor Authority **take no action** on the application for an On-Premise Liquor License by An Entity To Be Formed Of Which Kurt Kalm Is A Principal d/b/a Senor Grande (working title), pending a determination that the governing zoning would permit an eating and drinking establishment such as that proposed by the applicant to operate at this location. If the application were to be considered, MCB4 recommends **denial** of the application, which seeks to operate until 4:00 a.m. daily on the ground floor of a large residential housing development and which was opposed by all of the residents of that development who spoke at the MCB4 meeting on this application.

The applicant first appeared before the Business Licenses and Permits (BLP) Committee of MCB4 in July 2014, with a proposal for this location that included extensive outdoor seating. As outlined in the enclosed letter dated November 6, 2015 from MCB4 to the NYC Department of Housing Preservation and Development (DHPD), there were serious zoning and land use issues surrounding whether the applicant's proposed establishment was permitted by the relevant zoning, as well as whether the applicant could be permitted to use the outdoor space contemplated in its application. The applicant did not go forward with its application in 2014.

On October 13, 2015, the applicant presented a revised application to the BLP Committee for this location, which was limited to indoor space and which abandoned the previously-contemplated outdoor seating. Nonetheless, as set out in the enclosed letter, there are still zoning issues regarding the proposed establishment. The proposed establishment would be located on the ground floor of a 396-unit Mitchell-Lama rental housing development -- a space that, to the best of our knowledge, has never previously housed a licensed eating and drinking establishment. In brief, because this development is located in a Residence District with no commercial overlay, only accessory commercial uses that meet the strict criteria of NYC Zoning Resolution Section 78-22 are permitted in the space at issue. Among other requirements, any commercial use must be "primarily for the use of the residents" of the housing development, "provide more convenient shopping for such residents," and be "located as to minimize interference with residential or recreational areas" within the development. MCB4 believes that the proposed establishment, which seeks to serve alcohol from 11:00 a.m. to 4:00 a.m. daily, does not meet the standard.

The applicant's lease must be approved by the DHPD. As set out in the enclosed letter, MCB4 has renewed its request that the DHPD and the Department of City Planning determine whether the proposed establishment is permitted by the governing zoning and that the DHPD investigate the relationship between any proposed lessee for this space and any member of the Board of Directors of Clinton Towers Housing Co. to ensure that there is no conflict of interest. Pending those determinations, MCB4 requests that the SLA take no action on this application.

If the SLA were to consider this application, MCB4 would recommend denial of the application. As noted above, the applicant seeks to be open until 4:00 a.m. daily on the ground floor of a 396-unit residential development. At the October 13, 2015 BLP Committee meeting, numerous residents of the building presented their serious objections and concerns about the proposed establishment; no one (other than the applicant) spoke in favor of the application. The residents spoke of the serious negative effects that an all-day and late-night eating and drinking establishment would have on their quality of life, including noise from inside the establishment disturbing the residents living above this space; noise and disruption from patrons entering, leaving, and congregating outside the establishment disturbing an even greater number of residents; and smokers and other patrons occupying the plaza in front of the establishment -- space that is required to be reserved for the residents' use.

Given the concerns raised by the development's residents, MCB4 believes that any commercial use in this space must at minimum adhere to the following requirements in order to protect the reasonable quality of residential life. There should be absolutely

no use of any outdoor space. Any establishment should be closed and vacated no later than midnight on Fridays and Saturdays and 11:00 p.m. on the other nights of the week. The façade of the establishment should have no windows or French doors that can be opened. There should be no music other than background music. The recommendations of a licensed acoustical engineer should be implemented to ensure that no noise from the establishment disturbs the building's residents, taking into consideration how noise travels through the building given the building's unique construction. The establishment should employ security personnel to ensure that no patrons congregate, loiter, or smoke in front of the establishment or in the plaza in front of the development.

In sum, MCB4 requests that the SLA take no action on this application unless and until the DHPD and the Department of City Planning determine that the proposed establishment is permitted by the governing zoning. If the application were to be considered, MCB4 recommends denial of the application. In the event the application were approved, MCB4 requests that the requirements in the preceding paragraph be included as terms of any license granted for these premises.

Thank you for your attention and cooperation with this application.

Sincerely,



Christine Berthet
Chair

[signed 11/13/15]

Burt Lazardin
Co-Chair
Business License & Permits
Committee



Frank Holozubiec
Co-Chair
Business License & Permits
Committee



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CHRISTINE BERTHET
Chair

JESSE BODINE
District Manager

November 5, 2015

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

**Re: Clinton Towers Moderate and Middle Income Housing
790 11th Avenue
Proposed Ground Floor Commercial Use**

Dear Assistant Commissioner Walpert:

Manhattan Community Board # 4 (MCB4) is writing to you as a follow-up to our letter of August 6th, 2014 regarding the above referenced matter (copy attached). There have been both determinations and changes in the proposed commercial use at the above site since our last communication and discussions. MCB4 finds it important to update you on these determinations and changes. MCB4 further requests your assistance in ensuring the proposed commercial lease is compliant with zoning and HPD regulatory requirements. Lastly, any such proposed use and tenant must be compatible with this residential building and provide market rate income to ensure the long term financial viability of this important community resource of affordable housing.

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 between Tenth to Eleventh Avenues that was condemned in 1969 to develop affordable housing. In 1975, Clinton Towers was constructed as *“moderate-income tax-abated housing with day-care and convenience shopping”* pursuant to the 1972 Large Scale Residential Development (LSRD) Plan. Its accompanying Special Permits and Special Permit Authorizations, which were approved on October 11th, 1972, governed the development of Clinton Towers and the adjacent Harborview Terrace development (a NYCHA development located immediately east and northeast of the Clinton Towers). The LSRD plan also set forth the square footage of required open space designated for tenant and community uses, community facilities and commercial uses on each development parcel of the LSRD site. According to the plan, Parcel 3—Clinton Towers—is located in a Residence District; the western portion of the site (at 11th Avenue and West 54th Street) is in an R9 district. The eastern portion on West 55th Street is in an R8 district. There is no commercial overlay on the site.

Clinton Towers was developed and is owned by Clinton Towers Housing Company, Inc. (CHTC), a not-for-profit corporation and an affiliate of the original CURA sponsor, the Clinton Housing Association. The original financing included HUD Section 236 mortgage interest reduction payments, and pursuant to a Section 236(e)(2) Use Agreement, existing affordability restrictions were extended through 2030. The building is currently managed by P&L Management and Consulting, Inc.

The Commercial Lease

2014

In 2014, CHTC submitted to the Department of Housing Preservation and Development (HPD) a proposed commercial lease for the two most southerly ground floor commercial spaces along 11th Avenue for an eating and drinking establishment called “Senor Mickey’s”. The proposed lease included outdoor seating in the Open Space in a plaza fronting 11th Avenue. The application originally filed with the State Liquor Authority called for a total indoor capacity of 120 persons and extensive outdoor seating in the Open Space. That proposed outdoor seating would run along the entire 11th Avenue block between West 54th and West 55th Streets. It included seating for an additional 248 patrons at 96 tables, bringing the total capacity for the entire establishment to 368 persons. The square footage of the proposed indoor and of the outdoor commercial use was not legible on the plans presented to CB4.

Clinton Towers is located in a Residence District with no commercial overlay, only *accessory commercial uses* that meet the strict criteria set forth in Section 78-22. “Accessory Uses in Large-Scale Residential Developments” of the zoning resolution are permitted pursuant to the Special Permit approved in 1972. The zoning text further conditioned such an approval on square footage limitations set forth in the LSRD plan and the Zoning Resolution (ZR).

Section 78-22 clearly set forth the criteria by which the City Planning Commission may approve commercial uses in a Residence District in a Large Scale Residential Development Plan and includes only accessory uses (those are Commercial Uses listed in Use Group 6A or 6F) that also meet the following findings (emphasis added):

- (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#*

That proposed establishment, Senor Mickey’s, did not meet the above criteria:

- it was not primarily for the use of the residents
- it did not provide “more convenient shopping for such residents.”

Furthermore, the proposed outdoor seating area for the bar/restaurant was to be located on a plaza designated as Open Space that the development’s tenants under the LSRD approved in

1972. Pursuant to that plan, Parcel 3 (the Clinton Towers development site) is required to reserve a total of 27,619 square feet of Open Space for tenant uses. 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 LSRD, all areas on the development site not occupied by the building are intended to serve as Open Space for the residential tenants.

Not only did the proposed commercial use fail to meet the findings of Section 78-22 of the ZR, in that it is not primarily for the benefit of the tenants, and will interfere with pedestrian traffic and cause congestion along the 11th Avenue frontage, but it also directly utilizes zoning-required tenant Open Space for Commercial Use.

In a review of the proposed use, the Department of City Planning determined that Open Space in the LSRD could not be used for commercial uses. Subsequently, CHTC withdrew the lease from HPD's review and approval

2015

On October 13, 2015, the applicant presented a revised application to the MCB4's Business License and Permits Committee (BLP) now using the working title "Senor Grande" for this location. The revised proposal is now limited to indoor space only, with no outdoor seating.

However as detailed in the zoning issues above, only accessory commercial uses that meet the strict criteria of NYC Zoning Resolution Section 78-22 are permitted. Any commercial use must be "primarily for the use of the residents" of the housing and "located as to minimize interference with residential or recreational areas".

The proposed establishment would be located on the ground floor of this 396-unit Mitchell-Lama rental housing development -- a space that, to the best of our knowledge, has never previously housed a licensed eating and drinking establishment. MCB4 believes that the proposed establishment, which seeks to serve alcohol from 11:00 am to 4:00 am daily, does not meet this standard.

Since the applicant's lease must be approved by the HPD, MCB4 renews its August 6, 2014 request that the HPD and the Department of City Planning work with the New York City Department of Buildings to determine whether the proposed establishment is permitted by the governing zoning.

Additional Considerations

In addition, MCB4 asks that HPD consider the following conditions when reviewing any future proposed commercial leases for uses that are compatible with the criteria set forth in Section 78-22 of the Zoning Resolution:

Fair Market Commercial Rent

The commercial income from the ground floor commercial spaces in Clinton Towers directly subsidizes the 396 apartments of moderate and middle income affordable housing in the tower above. Market value commercial rents must be required for any proposed commercial leases, to ensure an income stream to offset ongoing building operating expenses and capital improvements. The spaces have been vacant for at least 8 years as CHTC and its proposed tenant have sought State Liquor Authority approval, resulting in a serious loss of commercial income. In the past, renting commercial spaces on 11th Avenue in the West 50's was difficult. Given the development in the area and dramatic increase in market rents, commercial tenants are now seeking to locate on 11th Avenue. MCB4 requests that HPD work with CHTC to seek other commercial uses, more compatible with the residential use above, which can afford market rents.

Conflicts of Interest

MCB4 requests that HPD fully investigate the relationship between any proposed lessee and any member of Board of Directors of Clinton Towers Housing Company to ensure that there is no conflict of interest or a financial interest by any Clinton Towers Housing Company Board Member in a proposed commercial lease. MCB4 wants to ensure any potential lessee is fully vetted as to its financial relationships to avoid any conflict of interest and,

MCB4 looks forward to working with HPD in order to bring this matter to a successful conclusion that benefits Clinton Towers residents and our community.

Sincerely,

[signed 11/5/2015]

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