



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**CHRISTINE BERTHET**  
Chair

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District Manager

November 5, 2015

Ms. Julie Walpert,  
Assistant Commissioner  
NYC Department of Housing Preservation and Development  
100 Gold Street, 5<sup>th</sup> 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 6<sup>th</sup>, 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 11<sup>th</sup>, 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 54<sup>th</sup> Street) is in an R9 district. The eastern portion on West 55<sup>th</sup> 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 11<sup>th</sup> Avenue block between West 54<sup>th</sup> and West 55<sup>th</sup> 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 11<sup>th</sup> 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 11<sup>th</sup> 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 11<sup>th</sup> 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