



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD No. 4**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
tel: 212-736-4536 fax: 212-947-9512  
www.ManhattanCB4.org

**WALTER MANKOFF**  
Chair

**ANTHONY M. BORELLI**  
District Manager

February 11, 2005

Laura Osario  
Manhattan Borough Commissioner  
Department of Buildings  
280 Broadway  
New York, NY 10007-1801

**Re: Construction at 428 West 49<sup>th</sup> Street, Block 1058 Lot 47**

Dear Commissioner Osario,

Manhattan Community Board No. 4 has learned that a new development that is currently under construction, although nearly complete, at 428 West 49<sup>th</sup> Street, which is in an R8 zoning district in the Preservation Area of the Special Clinton District, violates the lot coverage requirements of Section 96-102 of the Zoning Resolution. The development consists of a new six-story building on a lot that is 25 feet wide and 100 feet deep. Six residential condominium units are being constructed above ground, and a theater is being constructed as community facility space in the cellar. The zoning violation is the result of a 10-foot high extension at the rear of the building that was designed to provide for the theater's basement performance space with a floor-to-ceiling height of 18.5 feet. The extension results in a lot coverage of 70 percent. Section 96-102 limits maximum lot coverage at this site to 60 percent.

The developer of the project is Hiam Josephs; The Living Theater, a not-for-profit performance theater company, is the intended occupant of the community facility space.

It is unfortunate that this illegal construction was not prevented as part of Department of Building's (DOB) standard permitting and inspection process. Although DOB was aware of the problems months ago, it was not until after this board requested an inspection in early December 2004 that the DOB conducted an inspection of the construction site (on January 3, 2005) which resulted in an Environmental Control Board (ECB) stop work order for work contrary to approved plans. In fact, prior to the inspection, DOB staff explained to the developer, that because the construction did not conform to zoning, a variance from the Board of Standards and Appeals (BSA) would be required in order to obtain a Certificate of Occupancy (C of O) for any part of the building.

Given that the economic hardship findings required for a BSA variance are unlikely to be met, the developer instead revised plans to minimize the physical extension and is now seeking a "reconsideration" from your office to allow work to be completed and allow the owner to obtain

**L. Osario**  
**February 11, 2005**  
**Page 2 of 2**

a C of O. The revised plans, as presented in concept to the Clinton/Hell's Kitchen Land Use Committee, would reduce the length of and height of the extension by at least half each. As revised, the extension would not exceed 5 feet above grade and would extend the length of the building to 70 feet.

The neighboring buildings to the east and to the west – all classic Clinton tenement buildings – are unusually deep. The building immediately to the east extends 78 feet; the three buildings immediately to the west extend 70 feet. Under these unique physical circumstances, the developer's revised plans offer a reasonable physical solution, and represent an improvement over the original plans.

Still, this Board finds it extremely difficult to consider a plan that violates the zoning provisions of the Special Clinton District, particularly those provisions that are central to the preservation of light and air and the District's small-scale character, and we must protest the process by which this matter has come to our attention and how the problem may eventually be resolved. At this point, we must leave the decision to reconsider the revised plans in your hands.

Should you allow this work to be completed as revised, we insist that it be documented in a manner that will not allow others to point to it as a precedent for future developments that may seek to override the zoning provisions of the Special Clinton District. We therefore insist that a memorandum explaining the special circumstances of this development be filed in the land records relating to this block and lot. This was a series of professional errors that should not have happened; it should not be allowed to happen again.

Sincerely,



Walter Mankoff  
Chair  
Manhattan Community Board No. 4



Anna Hayes Levin  
Co-Chair  
Clinton/Hell's Kitchen Land Use Committee



Simone Sindin  
Co-Chair  
Clinton/Hell's Kitchen Land Use Committee

cc: The Living Theater  
Frederick Becker  
47/48 Street Block Association