



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.ManhattanCB4.org

JEAN-DANIEL NOLAND
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

January 8, 2009

Meenakshi Srinivasan, Chair
NYC Board of Standards and Appeals
40 Rector Street - 9th Floor
New York, NY 10006

RE: BSA Cal. No. 885-78-BZ; 120-122 West 25th Street, Block 800, Lot 53

Dear Ms. Srinivasan:

On the recommendation of its Chelsea Preservation and Planning Committee, Manhattan Community Board No. 4 voted at its January 7, 2009 meeting not to approve the transfer of development rights from 120-122 West 25th St. (Block 800, Lot 53) to 112-118 West 25th St. (Block 800, Lot 49). While the applicant may have satisfied the legal requirements for the transfer, the board believes it has received too little information regarding the ultimate use of the development rights to make a decision as to whether or not the transfer is in the community's best interests. Thus, while not recommending denial, CB4 withholds its support.

Manhattan Block 800 Lots 49 and 53 are located on the south side of 25th Street, midblock between Sixth and Seventh Avenues in an M1-6 district. The surrounding buildings generally are ten to twelve stories, though there are two four story and one two story buildings on the block in addition to the existing building on Lot 49. Applicant plans to combine Lots 49 and 53, and seeks to transfer excess development rights from Lot 53 to Lot 49. This transfer is complicated by a residential use variance granted for Lot 53 in 1979.

In response to concerns over a property owner applying for a variance on a commercial site and then transferring the more valuable residential rights, the Court of Appeals found (*Bella Vista v. Bennet* - 89 N.Y.2d 465 - 1997) that excess residential development rights from a property benefiting from a commercial use variance may not be transferred to an adjoining property without discrete BSA approval. On October 21, 2008 the Board of Standards and Appeals issued a Letter of No Objection to the combining of Lot 49 with Lot 53 with the condition that the Department of Buildings not accept any application or filing asking for, or issue any permit allowing, use of Lot 49's excess floor area anywhere on the merged zoning lot unless and until BSA approves an application for the transfer of the excess floor area.

Applicant seeks to transfer approximately 24,000 sq. ft. of development rights from Lot 53 to Lot 49. Applicant's attorney stated that the existing building on Lot 53, and its tenants, will not be affected, and that it was the intention of the owner of Lot 49, whom he also represents, to build a hotel, a conforming use in an M1-6 district. He also stated that additional rights might be sought from other lots but declined to provide any more information about the planned development other than a Site Plan for 112-118 West 25th Street dated October 14, 2008.

It is unfortunate that the applicant has not been more forthcoming about its development plans, forcing us to estimate what potentially could be built on Lot 49 and to imagine the worst. The board notes the following: i) In an M1-6 district a developer is allowed up to two FAR for providing a public plaza – assuming a plaza covering 20% of Lot 49 this would be an additional 20,094 sq. ft.; ii) a tower on a lot this size covering no more than 43% of the lot is allowed to penetrate the sky exposure plane; and iii) the site plan provided by the applicant shows eight lots to the west of Lot 49, in addition to Lot 53, and one lot to the east. If the developer succeeds in combining these zoning lots and transferring unused development rights, based on our analysis of publicly available information, the transferred development rights could total as much as 166,726 sq. ft., or seven times as much as is sought to be transferred from Lot 53.

There are many forms a building on Lot 49 could take, but assuming greater value for a taller building one possible form would be a 50 story building consisting of a 45 story tower with 6,900 sq. ft. floors on a five story, 13,396 sq. ft. base. A 50 story building in a neighborhood of four to twelve story buildings is outrageous and inappropriate and is certain to provoke strenuous opposition from the Chelsea community.

CB4 is concerned about the incursion of inappropriately tall buildings, especially into midblocks, and about buildings, notably hotels that set back from the lot line, breaking the street wall and creating small, unattractive “plazas” that serve only to increase the permissible height of the building. More generally, the board believes that its remaining manufacturing districts are vulnerable to inappropriate development and notes that the current application is reminiscent of a building farther west on the same street in an M1-5 district. Built just before the Special West Chelsea District set a height limit of 135 feet, 543 West 25th Street is a twenty story, 11.4 FAR building that towers over the neighborhood. And although they are not in our neighborhood, 26 East 23rd Street and the Trump Spring Street tower provide stark examples of just how damaging such developments can be.

The applicant has demonstrated convincingly that the abuses of the development rights transfer process addressed in *Bella Vista v. Bennet* are not relevant to the current application. CB4 believes, however, that it has received too little information about the intended use of the rights that would be transferred to make an informed decision about the effect of the transfer on the community. Accordingly, the board withholds its approval of the proposed transfer. Moreover, the board intends to ask the Department of City Planning to study the M1-6 districts on either side of Sixth Avenue between 23rd

and 31st Streets and to consider the development of appropriate zoning that would allow either the preservation of the current uses or their planned, orderly transition.

Sincerely,



Jean-Daniel Noland, Chair
Manhattan Community Board 4



J. Lee Compton, Chair
Chelsea Preservation and Planning

CC: Paul Selver, Kramer Levin (for Applicant)
DCP - Amanda Burden, Edith Hsu-Chen, Erika Sellke
NYC Speaker Christine Quinn
Manhattan Borough President Scott Stringer
NYS Senate Tom Duane
NYS Assemblyman Dick Gottfried