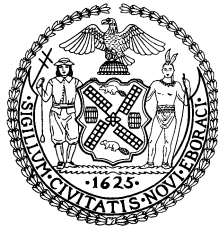


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The City of New York
Manhattan Community Board 8

Meeting of the Housing Committee
Lenox Hill Hospital
130 East 77th Street
Theatre Room
Tuesday, May 23, 2017, 6:30 p.m.

Minutes

CB8 members present: Loraine Brown*, Ed Hartzog*, Rita Popper*, Marco Tamayo

Members of the Public: Richard Almond, Patrick Bobilin, Lisa Davis, Jill Eisner, Brandon Hall, Eduardo Ibarrola, Lisa Klitses, Paula Lambert, Bob Menna, Jooyeol Oh, Leah Reiss, Alvin Schein, Kim Selway, Naomi Semeniuk, David Shamshovich, Roslyn Shapien

Excused Absence: Matt Bondy*, Barbara Chocky*, Ellen Polivy*

*Housing Committee member

The Meeting was called to order at 6:40 p.m.

1. The Section 421-a Affordable Housing Plan Application, pursuant to the Inclusionary Housing Program, for 505 East 86th Street, Block 1583 Lots 6, 7, 8 and 105 – an application for 35 inclusionary units in a newly constructed 139 unit 22-story residential building.

The applicant appeared through its attorneys, Seiden & Schein, P.C. – Alvin Schein, Esq. and David Shamshovich, Esq.; architects, Arquitectonica, Jooyeol Oh, AIA, LEED, AP and, coordinating agent, Brandon Hall, of JBS Project Management. David Shamshovich opened the meeting with a brief overview of the project and application, he was followed by Jooyeol Oh who gave the Committee a visual tour (slideshow) of the proposed building and apartments.

The applicant, Carrera RS, LLC, c/o Sky Management Corp. seeks to construct a new 22-story residential building at, 505-515 East 86th Street and 1642 York Avenue. The project site is located between York and East End Avenues and occupies approximately 9,050 square feet of land – the building will contain approximately 106,819 gross square feet.

The applicant has filed an inclusionary housing plan with the Department of Housing Preservation and Development (HPD) and will enter into a regulatory agreement that will provide for 35 of the 139 apartments to be set aside for households earning no more than 60% of AMI for so long as is required under the rules of the 421-a tax exemption program and no more than 80% in perpetuity thereafter. The inclusionary units will include: 18 studios (400 sq. ft.); 9 on-bedrooms (575 sq. ft.); 7 two-bedrooms (775 sq. ft.); and, 1 three-bedroom (975 sq. ft.).

The inclusionary units comprise 25% of the total 139 units (35/139) and they will be distributed throughout the building from the 3rd floor to the 21st floor, with only the 16th and 18th floors as exceptions. With respect to the inclusionary units, they will be sub-divided into three groups: those for families making 40% AMI – 14 apartments; those making 60% AMI – 14 apartments; and, those making 80% AMI – 7 apartments. The 2017 AMI for a family of four is \$85,400. With respect to rent, the rent will be 30% of the particular AMI – ie., 30% of the 40%, 30% of the 60% and 30% of the 80% AMI.

The building will have an amenity floor that includes: a kids playroom; pool; golf simulator; gym and yoga room – these will be located on the 2nd floor. There will be no “poor door,” but the fixtures and finishes of the inclusionary and market rate apartments may be different.

The applicant’s attorneys noted that the project was proceeding as part of the “new” 421-a program; however, they were not able to tell us what the “benefit” would be that the developer would receive as part of the program. They did note that the percentage of “affordable” housing under the new program was 25% and that the old program would have only been 20%. However, the 50% community preference under the old 421-a program was no longer in place. There will be a lottery for the affordable units.

In terms of the actual building and construction – the applicant’s attorneys told the committee that the permits had been filed but not yet approved by the Buildings Department. The construction is projected to take 24-30 months. While there will be a super on site, it has not yet been determined whether the building will be “smoke-free.” The public expressed interest about the long-term (“permanent”) nature of the affordable units and whether there could be more than 25% affordable units. The applicant’s attorneys were not able to address that particular issue, but did note that increasing the percentage of affordable units would require further economic analysis by the developer to determine economic viability (i.e., profitability).

Of particular concern to the public and the committee was the issue of “counting” – specifically, the 35 new units of inclusionary housing. Marco Tamayo produced a document indicating that the current parcel of land (i.e., 505-511 East 86th Street and 1642 York Avenue) have 34 apartments in the buildings on that land. While he was not able to determine if all of those units were “affordable” or market rate – he did raise the issue/question of 35 “new” units of housing. That is, if you knock down several buildings that already have 34 apartments and you building a new building with 35 “new” units of inclusionary housing – do you really have 35 “new” units?

Or, do you have 1 “new” unit of inclusionary housing? On this point the attorneys for the applicant appeared to be sympathetic and understanding of the counting dilemma; however, they were not able to speak on behalf of HPD and the policy that allows the applicant to couch their project as one that creates 35 “new” units of inclusionary housing.

Rita Popper addressed another issue regarding permanent affordability. Specifically, if an applicant qualifies for an “affordable” unit today, does that mean they can stay in the apartment in perpetuity, regardless of a change in economic circumstances? To wit, if the person makes 60% of AMI in 2017 and then takes a job in 2020 that is 200% of AMI, do they continue to pay the same rent as if they were still making 60% of AMI? The attorneys indicated that the tenant would continue to pay the rent as if they were making 60% of AMI – notwithstanding

their additional income (i.e., changed economic circumstances). Rita indicated that this seemed to undercut the permanent affordability of the units and raised an issue of “economic free riders.”

That is, the tenant would be living in apartment that they would no longer qualify for – based on their increased income – and, they would be depriving another person of the opportunity to move into an affordable unit. Again, the attorneys for the developer were sympathetic, but indicated that they did not have any control over the policies of HPD.

Because the presentation and discussion were exceeding an hour at this point, the committee agreed to move the agenda and return to this item later in the meeting.

After hearing and discussing the additional items on the agenda (see below), the committee returned to this matter and sought to formulate a plan for moving forward – i.e., possible resolution. Among the items and issues discussed were; “counting,” permanent affordability and the idea of having the applicant present to the Full Board, along with HPD.

There was consensus as to these things, but specific language for a resolution was not proposed. Instead, based upon the length of the meeting at that point – approximately 2 ½ hours – and the hour – 9 p.m. – it was suggested and agreed that language would be drafted and circulated encompassing these points.

ADDENDUM

In the ensuing weeks, the committee reached out to the applicant to obtain additional information about the project – i.e., the Powerpoint presentation and specifics regarding proposed rents for the inclusionary units. On June 20 the committee spoke with the attorneys for the applicant --- re: the aforementioned items – in the course of those discussions it was learned that the project has been dramatically changed by HPD.

Specifically, Alvin Schein directed the committee’s attention to a recent article in “The Real Deal” – dated June 9, entitled, “City plans to restrict inclusionary housing projects receiving 421-a.” In short, HPD has made a policy decision that alters the underlying economic assumptions and rules governing this and other inclusionary housing projects being built in R10 zoning districts. The impact on this project will be dramatic according to Mr. Schein. No longer will there be 25% inclusionary units – instead, it is possible that there will only be 6% inclusionary housing (with its attendant permanent affordability) and instead a combination of inclusionary and affordable housing (as defined under 421-a) which will comprise the 25% of units – i.e., 35 of 139 new units being built.

Indeed, Mr. Schein was not able to state definitively what the applicant would be doing going forward, except that the application will need to be amended to reflect the new policy from HPD, notwithstanding, he did indicate that the project would be altered because of these new developments. Because Mr. Schein was not able to point to any specific rule, regulation or law outlining these policy changes he was not able to provide the committee or the board with any written materials to review.

This information was disseminated among the committee members on the evening of June 20 and it was suggested by the Co-Chair, Ed Hartzog, that the committee hold off on presenting any kind of “resolution” regarding the application, in light of these new developments. In short, the new policy from HPD has ostensibly rendered the presentation moot, as it will no longer be reflective of the project going forward.

Instead, the minutes and questions and concerns from the meeting will and are being presented to the board and general public. However, the committee is reserving the right to re-call the applicant for another meeting and presentation, once the application has been amended. It has also been suggested that HPD be invited to the same

meeting – to address the new policy guidelines for 421-a, as well as the issues of “counting” and permanent affordability (i.e., economic “free-riding”).

The committee will meet in July and it is likely that a more definitive approach will be discussed and agreed to at that time.

2. A presentation by Council member Dan Garodnick’s office (Legislative Director and Community Liaison – Leah Reiss) on the current legislative platform to reform the Department of Buildings – “Stand for Tenant Safety” (12 Bills to comprehensively reform the DOB and put an end to Construction-as-Harassment (A Legislative Platform to Reform DOB)).”

The following is a brief synopsis of each bill:

Int 0918-2015: Professionally certified applications for construction document approval and final inspections of permitted work

Chin & Menchaca

Self-Certification, also known as Professional Certification, is a process by which licensed professionals may bypass a full review of a building project by the NYC Department of Buildings (DOB). [1] For buildings where more than 10% of units are occupied and buildings that are owned by a person who has been found guilty of tenant harassment, DOB must conduct its own inspection or investigation before issuing any permits for construction work.

[1]In 2007 the City council passed legislation to sanction professional engineers and registered architects who knowingly or negligently professionally certify a false or noncompliant building permit (309-A 2007). However, seven years later, abuses at the DOB persist. In 2013, only 13 architects had any of their self-certification privileges limited or surrendered (http://www.nyc.gov/html/dob/html/safety/voluntary_surrender.shtml). We propose that the law limit Self-Certification to only activities that relate to the code, such as wiring and fireproofing and not the current expanded view put in place under Mayor Guiliani (<http://www.nytimes.com/2000/12/03/realestate/when-builders-are-inspectors.html>).

Int 0924-2015: Vacate Orders

Espinal

Currently when DOB judges a building unsafe or unfit for habitation, it issues vacate orders to help maintain tenants’ safety while the underlying problem is solved. While vacate orders are helpful in protecting tenants’ safety, if they are not issued concurrently with orders to correct, landlords can use these vacate orders as a way to displace tenants and never improve building conditions. This creates a perverse incentive for landlords to make buildings unsafe or unfit for habitation as a tactic to remove tenants. By issuing orders to correct simultaneously with full or partial vacate orders, we correct the incentive system: the orders to correct would require building owners to correct the underlying problems within a certain period of time, to be determined by DOB but not to be longer than 10 days, and therefore would put pressure on landlords to improve building conditions in a timely manner and return tenants to their apartments. Along with the order to correct, DOB would notify building owners that failure to correct the underlying building conditions could result in significant consequences, including penalties and fines.

Int 0926-2015: Creating a task force on construction work in occupied multiple dwellings

Garodnick

Because various city and state agencies have jurisdiction and mandates to oversee the types of issues that routinely arise for tenants during residential rehabilitation and renovation construction work, these agencies should communicate clearly. This bill mandates that DOB, HPD, DOH, and DEP create an interagency taskforce with 13 standing members. Four of the members will be the commissioners for the aforementioned city agencies, four members will be city councilmembers appointed by the Mayor, and five members will be city councilmembers appointed by the Speaker. This Taskforce will meet at least once a month, do annual reports, and facilitate oversight hearings. The Taskforce will disband 3 years after its establishment.

Int 0930-2015: Distressed buildings subject to foreclosure by action in rem

Kallos

Part of the reason we want to expand the category of buildings for which ECB fines can be made lien collectable is that we want the city to have the power to commence foreclosure proceedings on buildings that have accrued a lot of violations and fines. The abovementioned expansion to the buildings that can have ECB fines made lien collectable means that this expanded category of buildings will be included in the group of properties of “distressed buildings” that the city can commence foreclosure proceedings against. The threat of foreclosure proceedings will help push landlords to actually pay their fines before they become at risk of the city beginning their foreclosure proceeding.

Int 0931-2015: Building violations adjudicated before the office of administrative trials and hearings

Kallos

After a violation, penalty, or fine is issued on a building, there is no enforcement for the collection of these penalties. As such, some landlords ignore the penalties and let them accrue on their property. Currently the City has the power to put liens on certain properties if they fail to pay their ECB fines, but we want to make it possible for the city to put liens on apartment buildings (buildings with 20 units or more with at least \$60,000 of ECB fine judgements against them, or buildings with six to nineteen units with at least \$15,000 of ECB fine judgements against them) if they fail to pay their ECB fines.

Int 0934-2015: Creation of a real time enforcement unit in the department of buildings

Levin

One of the biggest issues tenants encounter is the inadequate response time for DOB to tenants’ complaints. By creating a Real Time Enforcement unit (RTE), DOB will be able to respond in a timelier manner to complaints, and they will have a unit to help measure and track complaints and violators. The RTE is mandated to conduct inspections for complaints about work being done without a permit within two hours of the receipt of the complaint; must inspect buildings doing significant amounts of construction (buildings with construction plans that will alter more than 10% of the existing floor surface area of the building or construction permits for making an addition to the building) within five days of the start of construction work and make periodic unannounced inspections afterwards; and has the ability to issue violations or stop work orders. The DOB must also publish an online annual report outlining the number of complaints received, the average time taken to respond to complaints, the number of buildings with significant construction, the number of periodic inspections conducted on buildings with significant construction, and the number and type of violations issued.

Int 0936-2015: Tenant Protection Plans

Levine

Currently, landlords are already required to file a tenant protection plan (TPP) whenever they file construction documents for an occupied building. [2] We hope to strengthen the content, accessibility, and enforceability of these tenant protection plans. With this bill, the TPP will include information about the maintenance of essential services during construction, will be made publicly available to tenants by the DOB on their website, and must be posted in public places in the building. Within 7 days of the commencement of any work, DOB must inspect buildings to ensure that the landlord is complying with the TPP. If work is not being done in compliance with the TPP, then DOB must issue a stop work order.

[2]The New York City Administrative Code requires landlords to file a tenant protection plan whenever they file construction documents for occupied buildings. This plan is required to contain information about the means and methods to be employed to safeguard the health and safety of occupants. The plan is also required to contain specific provisions for egress, fire safety, health requirements, compliance with housing standards, structural safety, and noise restrictions. However, this provision of the Code is rarely enforced and tenants are routinely deprived of the protections that it entitles them to. (New York City Administrative Code, Title 28, Section 104.8-4).

Int 0938-2015: Requiring increased oversight of construction contractors who have engaged in work without a required permit

Reynoso

Too many bad contractors get the opportunity to continue to commit aggressive, negligent, dangerous construction without the proper permits. This bill will create a watch list for contractors who have performed work without a required permit within the proceeding two years. On any occupied site where a contractor on the watch list is doing work, the DOB will perform one or more inspections to ensure that the contractor is not breaking the laws, rules, regulations, and permitting requirements. There will be an opportunity to get off the watch list if the contractor has a clean slate for 2 years.

Int 0939-2015: Increasing the penalties for work without a permit

Reynoso

We don't want penalties to just be a "cost of doing business" in the minds of New York City developers and contractors. We want penalties to be actual deterrents for doing unscrupulous construction. This bill will increase the penalty for doing work without a permit in one or two-family dwellings to eight times (previously four times) the amount of the fee payable for the permit and even when only part of the work has been performed without a permit, the penalty will not be less than \$1,000 (up from \$500). For buildings other than one to two-family homes, the penalties will be even bigger – it will be 28 times the fee payable for the needed permit (up from 14 times), and the penalty for doing partial work without a permit will be no less than \$10,000 (up from \$5,000).

Int 0940-2015: Increasing the penalties for a violation of a stop work order

Reynoso

Violating a stop work order is one of the worst offenses a negligent contractor or landlord can commit. Fines for working while a stop work order is in effect will increase from \$5,000 to \$10,000 for the first violation and then from \$10,000 to \$20,000 for each subsequent violation with the passage of this bill.

Int 0944-2015: Construction work permits

Rosenthal & Johnson

Landlords who want to expedite construction will falsify their permits to say that the building is unoccupied, and sometimes tenants have no idea that the landlord has lied. In order to make it easier for tenants and DOB investigators to see when landlords have falsified permits, the DOB commissioner must post on the DOB website the occupancy status of the building for any building where a construction permit has been issued. Also, all on-site permits must disclose the occupancy status of the building. Another loop-hole in the permitting process is that even when landlords are fined and found guilty of doing construction work without proper permits, DOB makes it too easy for these bad actors to file for construction documents again. As such, this bill requires that for landlords who have done work without a permit within the past year of filing construction documents, they cannot self-certify their construction documents; DOB must provide written notice of the construction plans to the borough president, local Council Member, and the local community board; penalties will be doubled for other violations; and DOB can charge an inspection fee for each complaint-based inspection conducted at that building that results in the issuance of a violation.

Int 0960-2015: Creating a safe construction bill of rights

Mendez

In addition to posting the Department of Buildings Permits and the tenant protection plan, landlords must post a “Safe Construction Bill of rights” at least 14 days prior to the start of construction work. This Bill of Rights should provide tenants information that is easy to read about what is happening in their building and must be posted on every floor of the building. On that bill of rights, the landlord must list in simple English, Spanish, and other languages as determined by the Department of Buildings.

1. Description of the work being performed and its potential impact on tenants;
2. Hours of construction;
3. Timeline for the completion of the work;
4. What services offered to the tenants might be affected (e.g. loss of hot water) and mitigation measurements the landlord is using to protect the tenants;
5. Who to contact at the landlord’s office if there is a problem, (24 hours a day); and,
6. Who to call to complain to in the City if the tenant is concerned about the work being performed.

3. **Review of the developer’s answers to those questions submitted by the committee and public after the March 20 meeting, regarding the Section 421-a Application for 200 East 95th Street, Block 1540 Lot 2 (formerly Lots 2, 3, 4, 45, 46, 47, 48 & 49)**

This item was originally part of the April 24 agenda, as a follow-up to the first time the application was before the Committee on March 20. However, the developer's attorneys were not able to provide the committee the applicant's answers in time for the April 24 meeting and the matter was tabled and re-scheduled as part of the agenda for the May 23 meeting. The following are the questions and answers (in **bold**):

- * Are the affordable units subject to any kind of "flip tax" should the owners sell the units? **Yes, 60% of the net proceeds.**
- * If the affordable units are sold by the original owners – are any of the profits set aside for building improvement(s) or use? **No.**
- * Are there any restrictions on amenities – i.e., "door doors"? **All affordable and market-rate unit owners enter the building through a shared lobby, and pay for access to amenities other than the lounge, children's playroom and roof terrace on the third floor – which are provided free of charge to all. The affordable unit owners can opt to pay a reduced rate of \$250.00 per month to use the building's remaining amenities, while the market-rate unit owners are required to pay for amenity access as part of building common charges.**
- * From a review of the application it appears that all of the affordable units are on the 3rd and 4th floors – any change to that? **No.**
- * Are the affordable units part of a lottery system? **Yes.**
- * If so, who or what agency/entity will be administering the lottery? **HPD.**
- * If a gov't entity – will it be HPD? **Yes.**
- * Are the affordable units affordable in perpetuity? **The affordability duration is for a period of 25 years.**
- * In terms of fixtures/finishes – are there any differences between market rate and affordable units? **The fixtures/finishes in the affordable units are different than those in the market-rate units.**
- * What, if any, are the salary/income requirements for families of 1, 2, 3 or 4 persons? **1 person - \$79,375.; 2 persons - \$90,625.; 3 persons - \$102,000.; 4 persons - \$113,250**
- * How do people qualify for units? **Their annual household incomes cannot exceed 125% of the Area Median Income and they apply to the lottery through HPD.**
- * How long is the tax abatement? **20 years. The exemption benefits both affordable and market-rate unit owners.**
- * Will there be any other improvements for the block besides the building? **The project will bring newly-constructed retail amenities to the block frontages along Third Avenue and East 95th Street.**
- * How much are the common charges? **See attached schedule (set forth below)**
- * Is there a difference between the affordable and market rate units? **The unit mix for both affordable and market residences vary but are based on HPD's requirements for overall unit count and mix.**

SCHEDULE A-1 – RESIDENTIAL UNITS
 THE KENT CONDOMINIUM – COMMON CHARGES*

*(Note – all of the “affordable” [i.e., 125% AMI] units are on the 3rd and 4th floors)

<u>UNIT</u>	<u>PROJECTED MONTHLY COMMON CHARGES</u>
3A	\$725.70
3B	\$740.32
3C	\$393.80
3D	\$680.99
3E	\$689.59
3F	\$462.59
3G	\$767.83
3H	\$387.79
3I	\$557.17

<u>UNIT</u>	<u>PROJECTED MONTHLY COMMON CHARGES</u>
3J	\$817.70
4A	\$729.33
4B	\$744.02
4C	\$395.77
4D	\$684.39
4E	\$693.04
4F	\$464.90
4G	\$771.67
4H	\$389.72
4I	\$559.96
4J	\$499.47
4K	\$449.35
*5A**	\$0.00
5B	\$1,492.79
5C	\$1,557.14
5D	\$1,559.44
5E	\$2,027.16
5F	\$1,845.59
5G	\$2,140.93
6A	\$1,695.35
6B	\$1,500.18
6C	\$1,564.85
6D	\$1,567.16
6E	\$2,037.19

<u>UNIT</u>	<u>PROJECTED MONTHLY COMMON CHARGES</u>
6F	\$1,951.73
6G	\$2,151.53
7A	\$1,637.55
7B	\$4,703.45
7C	\$1,632.91
7D	\$1,492.48
7E	\$2,083.21
7F	\$4,150.16
8A	\$6,602.14
8B	\$4,954.23

26A	-----	\$4,448.16
26B	-----	\$3,499.67
26C	-----	\$2,474.14
27A	-----	\$4,379.39
27B	-----	\$3,468.49
27C	-----	\$2,485.29
28A	-----	\$4,399.03
28B	-----	\$3,484.05
28C	-----	\$2,496.43
PHA	-----	\$4,910.20
PHB	-----	\$5,438.85
PHC	-----	\$8,105.17
DR UNIT	-----	\$0.00

As the underlying project is already under construction and its units are being advertised for sale in weekly news magazines, the Committee did not take a position on the project.

Old Business.

There was no old business.

New Business.

There was no new business.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Ed Hartzog and Loraine Brown, Co-Chairs, Housing Committee