



Greenwich
Village
Society for
Historic
Preservation

452 East 11th Street
New York, New York 10003

(212) 475-9585
fax: (212) 475-9582
www.gvshp.org

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November 21, 2006

Hon. Christine C. Quinn
Speaker, New York City Council
224 West 30th Street, Suite 1206
New York, NY 10001

Re: Condo-Hotels in Manufacturing Zones/246 Spring Street

Dear Speaker Quinn,

I write in response to your recent letters regarding the project by Donald Trump and partners to construct a 45-story condo-hotel at 246 Spring Street. As you know, the Greenwich Village Society for Historic Preservation was outraged to learn of the City's recent decision to allow construction of this project, the first of its kind in a manufacturing zone in New York City. As you know, GVSHP, a host of local community organizations, and community and business groups and elected officials from across the city had urged that this development not be allowed because it would clearly violate the manufacturing zoning for this area, which prohibits residential and residential-hotel development.

We believe strongly that permitting a "condo-hotel" – where individuals own their units and can reside in them for much or all of the year, and guests may stay for long periods of time as well –will have a demonstrably different and more negative impact upon most manufacturing zones than the "transient" hotel this development is pretending to be and the City is considering it to be (transient hotels are allowed in these areas under the current zoning). Mr. Trump and his partners have publicly boasted that this development will be "more pied-a-terre than short-stay hotel...every unit will be sold to buyers who might live there year-round, from time-to-time, or seasonally," and advertising materials for the development still refer to the "residential amenities" which will be offered to buyers, thus showing their clear intention to develop something other than a "transient" hotel at this location.

With this decision, the City is also committing itself to allowing any similar condo-hotel into manufacturing zones where "transient" hotels are allowed, even when residences or residential hotels are prohibited. Thus the concern we have is not solely about this development (though our concerns about it are great), but also about the door it is opening to a previously prohibited development type in these neighborhoods zoned for manufacturing, which include much of Hudson Square, the Far West Village south of Barrow Street, the Meatpacking District, and parts of West Chelsea, western Hell's Kitchen, SoHo, NoHo, the Garment Center, the Flatiron, Tribeca, and Brooklyn and Queens. We believe that this will create a great deal of new development pressure in these neighborhoods.

What is perhaps most disturbing about this decision by the City is that it entirely circumvents the public approval process by which a decision such as this, which is in essence a citywide zoning change, should be made. There should be public hearings, with an opportunity for the public to comment, environmental reviews, measuring the impact this change will have, and a vote by local Community Boards, the City Planning Commission, and the City Council, where the various issues involved can be debated and representatives can go on record about their vote and be held accountable. With this closed door decision by the City, all of this, which the law requires, has been bypassed.

That is why we have condemned this decision and are calling upon the City not to issue the required permits, and we continue to urge you to do the same. Your office has been working with the City on the terms of a restrictive declaration which the City has indicated they will ask Mr. Trump and his partners to voluntarily sign regarding limitations on occupancy of the development. Your recent letters have said such a declaration is intended to “ensure that the...development operates only as a [transient] hotel,” the legally allowable use.

However, we have some very serious concerns about a restrictive declaration and its ability to “ensure” conformance with the zoning and to prevent development of illegal uses. First, as GVSHIP has previously expressed, we believe such an agreement will be difficult to enforce and its requirements very difficult to accurately monitor. Second, as you know, restrictive declarations between the City and private owners have been challenged and thrown out in court. Third, we are concerned that the City may be using this restrictive declaration in an attempt to inoculate its decision in this case against the legal challenges from neighbors which it may engender. Fourth, there are absolutely no guarantees that the City can or will get other developers to enter into similar restrictive declarations for the other condo-hotels in manufacturing zones which will inevitably follow from and be permitted by this decision, thus leaving future developments unfettered by even these modest restrictions of questionable enforceability.

But perhaps most critically, regardless of its enforceability, the restrictive declaration being considered for this site absolutely *does not* provide nearly the same protections that appropriate enforcement of the existing zoning would, and will still allow what we (and many others) contend are illegal uses.

A living unit which an individual owns and resides in for 100-150 days per year is not a “transient hotel” – it is a second home. However, that is exactly what is currently being considered to be allowed under the restrictive declaration. A transient hotel is, by common understanding and by the existing zoning definition, a place where rooms are “rented on a daily basis” and are used “primarily for transient occupancy.” An April 2004 ruling by the Department of Buildings in which the Department blocked a somewhat similar scheme for a condo/hotel in the Meatpacking District (a scheme which GVSHIP contended violated the zoning restrictions for transient hotels – a contention you supported) said “in order to develop a transient hotel in a manufacturing district, units may not be made subject to lease, sale, or other arrangement under which they would not be available for transient occupancy. This interpretation is final.”

In light of these facts, we contend that in “transient” hotels in manufacturing zones, owners should not be able to take hotel units “off-market” for personal occupancy during which they are not available for daily rental, and renters should only be able to stay for limited and clearly defined periods of time. To allow otherwise undermines zoning protections citywide, and introduces a new and lucrative development type into these manufacturing districts which had not been allowed there before. This will likely have the effect of changing neighborhood character, pushing out existing uses and businesses, and encouraging a much greater volume of high-rise, non-contextual development.

There can be no real substitute for the City simply enforcing the law and not allowing these sorts of condo-hotels where the zoning clearly intended to prohibit them. If Mr. Trump or any other developer feels these rules prohibiting such development at these locations should be changed, they can go through the public process and seek a variance or a zoning change, thus giving feedback from the public an opportunity to be considered, appointed and elected officials a chance to vote, and an environmental impacts a chance to be taken into account. Instead, with this decision, the City has shifted the burden upon neighbors to fund a private challenge to this decision, and seek redress in the courts.

I understand from your office that the City has justified its decision to allow this and other condo-hotels in manufacturing zones by claiming that the prohibitions in the zoning text against residential and residential hotel development in manufacturing zones, written years before the advent of condo-hotels, is not explicitly applicable to condo-hotels, even though countless elected officials, community and business groups, and planning organizations disagree. There would be more reason to believe this justification for their decision if, in the eight years since condo-hotels first appeared in New York City, making this question inevitable, the City had actually changed the zoning text to include the explicit restrictions against condo-hotels in manufacturing zones that they claim are lacking. Unfortunately, they did not.

Thus should the City’s decision come to pass and remain in effect, I strongly urge you to initiate a change in the zoning which would make prohibitions against condo-hotels (or any “hotel” which allows owner-occupancy of units and long-term stays) undeniably explicit, eliminating the City’s ability to allow such uses by claiming the zoning is “not clear” and does not “explicitly” prohibit them. Ensuring proper enforcement of zoning restrictions against hotels which are not truly transient in manufacturing zones (or any districts where residences or residential hotels are prohibited) will help protect neighborhood character and businesses, and significantly reduce the likelihood of out-of-context, high-rise development in these neighborhoods.

As we have previously communicated to both your office and the City, we also believe that the zoning for the Hudson Square area in which the Trump condo-hotel will be allowed should be changed to prevent out-of-scale development of this or any other type (though excluding condo-hotel uses would significantly reduce the likelihood of such out-of-scale development in this area). We thus strongly urge you to work with local community groups, businesses and residents, the Community Board, other elected officials, and other interested parties to initiate a zoning change for this area to introduce contextual zoning that would explicitly restrict the size and/or height of allowable new development. However, we feel very strongly that adoption of

contextual zoning for this area must not be made contingent upon allowing additional uses and types of development in this area. While all aspects of the zoning should be kept on the table for any discussion of a possible zoning change, we strongly believe that it would be extremely counterproductive for the City to insist that the contextual controls necessary to maintain the special built character of this neighborhood could only be granted by introducing development into the area which we have been fighting against. Unfortunately, historically this has been the City's position.

Thank you for your attention to this matter. I look forward to continuing to work with you and your office on this and other issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Berman", followed by a horizontal line extending to the right.

Andrew Berman
Executive Director