



**Greenwich
Village
Society for
Historic
Preservation**

232 East 11th Street
New York, New York 10003

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

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July 13, 2006

Hon. Michael Bloomberg
Mayor, City of New York
City Hall
New York NY 10007

Hon. Amanda Burden
Chair, New York City Planning Commission
22 Reade Street
New York, NY 10007

Hon. Patricia Lancaster
Commissioner, Department of Buildings
280 Broadway
New York, NY 10007

**Re: Donald Trump Plan for 45-story hotel/condo at 246 Spring
Street, Manhattan**

Dear Mayor Bloomberg, Chair Burden, and Commissioner Lancaster:

I am heartened that the Department of Buildings has not, as of today, issued permits for Mr. Trump's planned condo-hotel at 246 Spring Street, stating that the presence of kitchenettes indicates a prohibited residential use in a light manufacturing (M1) zone. **However, even without kitchenettes, a "condo-hotel" of the type described by Mr. Trump and his partners, where individual owners of units would still be free to live permanently or semi-permanently in the building, would still allow residential or residential hotel uses, thus violating the zoning for the area.** I therefore strongly urge the City to not simply condition approval for permits for this building upon the elimination of the kitchenettes, but to disallow any "condo-hotel" use which could potentially allow residential or residential hotel uses which violate the zoning.

No case may better illustrate the adage about an ounce of prevention being worth a pound of cure. Should the Department issue permits in this case and simply expect to enforce prohibitions against illegal uses if and when they arise, we will no doubt see such illegal uses in this case and in other cases which will follow, which will in fact be difficult to detect and difficult to enforce. But the negative results in terms of undermining the integrity and intended protections of the zoning code will be the same – legal businesses and jobs will be forced out due to increased land values and due to complaints regarding the everyday noise and traffic generated by businesses which are supposed to be located in M1 zones. Development of an entirely unanticipated building type – high-rise "condo-hotels" – will proceed, guided only by the inadequate regulations of an M1 zone, which envisioned only light industrial and commercial development.

Instead, the City should not issue permits without appropriate guarantees in place that reasonably ensure that these “hotel” units will not simply be used as primary or secondary residences. In addition to the fact that Mr. Trump’s business partners have very publicly stated that they expect these units to be bought and used in this manner, **by its very nature, a “condo-hotel” facilitates and encourages residential usage, and thus should not be allowed in zones where residential or residential hotel uses are prohibited.** Even without kitchenettes, the development’s facilities, which will include access to food service on a regular basis, mean that permanent or semi-permanent residence will certainly be possible, while the ownership structure in fact makes permanent or semi-permanent residence more than likely.

The Department of Buildings has taken steps in the right direction to ensure that building permits are not granted for residential developments that claim to be dormitories. In these cases, after having learned the hard way that after-the-fact enforcement is a difficult route to go, the Department promulgated regulations requiring assurances that purported dormitories will actually function solely as dormitories, specifically for cases where building permits are sought in zones where dormitories are treated differently than residences.

The same should be done for hotels. In the Trump case, as in all cases where permits are sought for transient hotels in zoning districts where residences and residential hotels are not permitted, **proof of a physical, ownership, and operational structure that only lends itself to transient hotel operation should be required,** or such permits should be rejected. In the case of the Trump “condo-hotel,” such a structure, and such assurances, simply do not exist.

The Department of Buildings’ regulations making the issuance of building permits for dormitory construction contingent upon proof that these developments are not simply a disguise for residential development were recently upheld in a Board of Standards and Appeals case. Similar regulations to prevent abuses by “Trojan horse” hotels would likely withstand similar challenges, and are necessary to respond proactively to the changing landscape of development in New York.

The Department of Buildings has taken an initial step in the right direction. However, the Department must go further. The issuance of transient hotel building permits in M1 zones must be conditioned upon proof that such development will only be used for transient hotel purposes. Without such proof, the integrity of the zoning code, and the protections it affords our neighborhoods and businesses, will be severely compromised.

Sincerely,



Andrew Berman
Executive Director

Cc: City Council Speaker Quinn
Manhattan Borough President Scott Stringer
State Senator Tom Duane
City Council Member Alan Gerson
City Council Zoning Sub-Committee Chair Tony Avella

Assemblymember Deborah Glick
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