



**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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October 12, 2006

Mayor Michael Bloomberg
City Hall
New York, NY 10007

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

Department of Buildings Commissioner Patricia Lancaster
280 Broadway, 3rd floor
New York, NY 10007

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

Dear Mayor Bloomberg, Chair Burden, and Commissioner Lancaster:

I write to follow up on the recent pair of meetings between my organization, several other community organizations and several elected officials, and the Department of City Planning and Department of Buildings, regarding the request by Donald Trump and other developers of 246 Spring Street, Manhattan, to allow condo-hotels in manufacturing zones.

I appreciate the willingness of all parties to meet with us, and especially appreciate the willingness of Commissioner Lancaster and several of her staff to sit down with us and engage in a thoughtful and productive dialogue. While we did not see eye-to-eye on several issues, that meeting was nevertheless a constructive exchange of ideas and information. It does, however, remain inexplicable and disappointing that in spite of promises to the contrary, neither agency was willing to participate in the other's meeting with us and other advocates; this was especially frustrating given that in each meeting the other agency often pointed to the absent agency as being responsible for the decision-making process being discussed, even as the other agency claimed the exact opposite in their meeting.

Moving beyond this, I come away from our meetings greatly concerned about the direction the City appears headed on this issue. In neither meeting nor in correspondences about this issue has the City seemed to fully grasp or acknowledge several of the key issues we have raised – there has been little recognition of the near-impossibility of preventing condo-hotels from violating the law in manufacturing zones; there has been no acknowledgement of the vastly different impact condo-hotels would have on manufacturing zones than that which true transient hotels have; there is yet to be an understanding of how allowing condo-hotels into manufacturing zones would deeply conflict with prior commitments the City has made regarding affordable housing development,

preservation of manufacturing zones, and encouraging contextual development; and there is yet to be a recognition of the fundamental and profound shift in use and development patterns in our City which could result from allowing condo-hotels in manufacturing zones.

It appears the City may make a decision on this matter quite soon. **I will therefore again urge you in the strongest of terms NOT to allow condo-hotels of any sort in manufacturing zones, as it would violate New York City zoning and substantially negatively impact the character of such districts in ways which are demonstrably different from the impact of true transient hotels, which are allowed in manufacturing zones.** I will again outline for you the arguments against allowing condo-hotels in M1 zones, and the concerns that have been raised about doing so:

- **Condo-hotels violate the zoning text and prior City rulings regarding hotel and residence uses in manufacturing zones.** The zoning code defines transient hotels as having rooms which are “rented on a daily basis,” and the Department of Building’s April 2004 ruling re: 848 Washington Street stated that “in order to develop a transient hotel in a manufacturing district, units may not be made subject to sale, lease, or other arrangements under which they would not be available for transient occupancy. This interpretation is final.” Condo-hotel units which are not available for daily rental at any time because their owner is occupying them are therefore by definition NOT functioning as transient hotel units, and therefore the City must not allow such uses in manufacturing zones.
- **Condo-hotel units are much more likely to generate conflict with and complaints about businesses legitimately located in manufacturing zones.** Even though they are a place where people expect to sleep, transient hotels rarely generate complaints about noise, odor, or traffic emanating from neighboring businesses in manufacturing zones; the fact that guests can be moved to or chose other rooms within a transient hotel that are less affected by such disturbances is undoubtedly one large reason for this, as is the fact that hotel guests generally spend a limited amount of time in their rooms. However, in a condo-hotel, unit owners will not have the option of simply switching rooms for themselves, and cannot do it for their guests without losing money; additionally, unit owners are much more likely to spend greater amounts of time in their units, thus making them more likely to be disturbed by neighboring legitimate businesses. Condo-hotel unit owners will have a vested interest in ensuring that their unit is not subject to impacts from noise, traffic, or odor that a neighboring M1 zone business might routinely generate, whereas a transient hotel operator or guest would not.
- **Allowing condo-hotels in manufacturing zones will increase the likelihood of non-contextual construction.** By City policy, manufacturing zones do not allow contextual controls to match new development to its surroundings in terms of height and building configuration; in fact, zoning in M1-5 and M1-6 districts (the two districts most likely to experience condo-hotel construction) encourages tall boxy towers surrounded by plazas. While this is an arguably problematic policy no matter what building type it applies to, the reality is that M1 zones generally do not see a great deal of new as-of-right construction due to the limited number of uses allowed in them. However, if the City allowed this new, lucrative, and rapidly proliferating building-type into M1 zones, it would likely result in a significant increase in new construction in these zones, most if not all of which would likely

take the form of contextually inappropriate tall towers on plazas. In those C and possibly R zones where condo-hotels may not have zoning conflicts, there is at least the possibility of contextual controls to ensure that new development is suitable in height and form for its surroundings. By opening M1 zones to condo-hotels, which are not transient hotels and which therefore really only belong in C and possibly, in some cases, R zones, the City will be increasing non-contextual development in our neighborhoods and undermining the ability to shape new development to its context.

- **Allowing condo-hotels in manufacturing zones will increase competition for land use in these districts, increasing pressure to force out existing manufacturing businesses.** Condo-hotels are a new and different breed of development as compared to transient hotels, and apparently an increasingly lucrative and popular one. Both because they function differently than a transient hotel (by providing an opportunity to own a unit in which one can stay on a regular basis) and because they are financed differently than a transient hotel (with a significant up-front return on investment which transient hotels do not provide), allowing condo-hotels in manufacturing zones will clearly introduce a new and powerful stream of competition for land use in these areas, for which long-standing manufacturing businesses will likely suffer.
- **Enforcement of length of stay requirements (which ensure that hotels are not used as residences) in condo-hotels will be virtually impossible, and abuse much more likely than in transient hotels.** In a transient hotel, a hotel operator can simply tell a guest that they cannot stay longer than a certain amount of time in a unit, and not continue to rent them the room after a certain date. In a condo-hotel, the hotel operator would have to force an owner to leave the unit they own and regularly occupy after a certain amount of time. Violations will be virtually impossible to detect or enforce, though such violations could still have a demonstrably negative impact upon M1 districts.
- **Allowing condo-hotels in manufacturing zones will undermine commitments to protect existing businesses in M1 zones and to link the creation of new housing to incentives for affordable housing in recent rezonings in West Chelsea, Hudson Yards, and Williamsburg/Greenpoint.** When the City rezoned the aforementioned areas, precise choices were made about which areas would be changed to encourage residential development, and which areas would retain M1 zoning in order to protect long-standing businesses. The introduction of condo-hotels into these areas clearly contradicts that commitment, and threatens area businesses. Several West Chelsea galleries, industrial groups representing Brooklyn and Manhattan, and the Community Boards representing all three rezoned areas have written to the City opposing or raising concerns about condo-hotel development in manufacturing zones on these bases. Additionally, allowing condo-hotels in the manufacturing zones in these neighborhoods will undermine the commitment to make new residential development in former manufacturing zones contingent upon incentives for the creation of affordable housing. By allowing condo-hotels in manufacturing zones, it will allow new residential or semi-residential development in these areas with no affordable housing incentive attached, when all areas in these neighborhoods where residential development was introduced was supposed to include such incentives.

In short, there is ample basis within the zoning code and prior City rulings to prohibit condo-hotels in manufacturing zones. At the same time, there is clearly a great and urgent need to do so. Therefore I would strongly urge the City to do the following:

- **Prohibit any hotel with a condo-ownership structure from opening in a manufacturing zone.** This is the simplest and clearest way to prevent the impacts, abuses, and zoning conflicts described previously.

However, as the City has claimed that such a prohibition would not be legally possible (though no documentation has been provided to substantiate this), other alternatives exist. The City could:

- **Promulgate clear guidelines requiring that units in transient hotels must be available for daily rental and cannot be “off-market” due to owner occupancy, that all units must be under the control of a hotel operator who would make them available for daily rental, and that rentals be limited to the commonly understood term of 30 days as a maximum.** This could be done based upon the existing zoning text, using requirements the City has enacted for dormitories as a model for these guidelines. Short of the prohibition of condo-hotel ownership in manufacturing zones, this would at least make enforcement of the law relatively simple and clear, as the City could check to see if any unit is unavailable for daily rental, and if so, if the occupant is in fact an out-of-town guest, as would be allowed in a transient hotel, or the owner, occupying the unit in violation of transient hotel requirements.

Allowing condo-hotels, or any kind of hotel in manufacturing zones that do not follow the commonly-understood definition of transient hotels, will have an enormous impact upon manufacturing zones throughout the City. Businesses will be affected, the physical landscape of the City will be substantially altered, and hard-fought-for agreements between the City and local communities regarding development will be undermined. At the same time, no one is arguing that condo-hotels should not be allowed at all, or that they cannot continue to operate or be developed in the zoning districts in which they are currently located, where there are no apparent zoning conflicts.

Given that condo-hotels have been located in New York for at least eight years, the City has had ample time to prepare for the inevitability we face now, an application for a condo-hotel in a manufacturing zone. Therefore one has to believe that whatever decision the City makes in this case reflects its attitude toward the preservation of businesses in manufacturing zones, changes in the built environment in New York City, and honoring its prior commitments regarding development and rezonings. If the City does not feel that the current zoning text allows it to adequately address these issues, I would strongly urge that it not compound prior mistakes by continuing to leave the text as is, but instead change it as quickly as possible in order to address these deficiencies. However, the argument seems quite clear as to how and why the City can and should act now with the existing zoning text to get ahead of the curve, and appropriately apply existing zoning protections to this building type.

It is rare that a single zoning interpretation decision has so many potentially profound impacts upon our city's physical and economic landscape. I urge the City to do the right thing, and not allow condo-hotels into manufacturing zones.

Sincerely,



Andrew Berman
Executive Director

Cc: Public Advocate Betsey Gotbaum
Comptroller William Thompson
Assembly Speaker Sheldon Silver
City Council Speaker Christine Quinn
Congressman Jerrold Nadler
Congressmember Carolyn Maloney
Congressmember Nydia Velazquez
Congressmember Anthony Weiner
Manhattan Borough President Scott Stringer
Brooklyn Borough President Marty Markowitz
Queens Borough President Helen Marshall
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State Senator Tom Duane
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State Senator Eric Schneiderman
State Senator Liz Kruger
State Senator Velmanette Montgomery
State Senator Diane Savino
City Council Land Use Committee Chair Melinda Katz
City Council Zoning Subcommittee Chair Tony Avella
City Councilmember Alan Gerson
City Councilmember Rosie Mendez
City Councilmember David Yassky
City Councilmember Gale Brewer
City Councilmember Miguel Martinez
City Councilmember Michael McMahon
City Councilmember Eric Goia
City Councilmember Diana Reyna
City Councilmember Bill DeBlasio
City Councilmember Sara Gonzalez
City Councilmember Letitia James
Assemblymember Deborah Glick
Assemblymember Richard Gottfried
Assemblymember Daniel O'Donnell

Assemblymember James Brennan
Assemblymember Adele Cohen
Assemblymember Joseph Lentol
Assemblymember Vito Lopez
Assemblymember Brian McLaughlin
Assemblymember Joan Millman
Assemblymember Catherine Nolan
Assemblymember Felix Ortiz
Assemblymember Linda Rosenthal
Community Boards 1-10, Manhattan
Community Boards 1-7, Brooklyn
Community Boards 1-5, Queens
Community Boards 1-4, Bronx
Community Board 1, Staten Island
New York Industrial Retention Network
Pratt Center for Community Development
Zoning for Jobs
Brooklyn Economic Development Corporation
Garment industry Development Corp.
Southwest Brooklyn Industrial Development Corp.
Greenpoint Manufacturing Development Corp.
Waterfront Preservation Alliance of Williamsburg/Greenpoint
Hell's Kitchen Neighborhood Association
SoHo Alliance
Tribeca Community Association
Village Independent Democrats
Greenwich Village Community Task Force
Federation to Preserve the Greenwich Village Waterfront and Great Port
SoHo Arts Council
NoHo Neighborhood Association
The People's Firehouse