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August 19, 2014

Rick D. Chandler, P.E.
Commissioner
NYC Department of Buildings
280 Broadway
New York, NY 10007

Dear Commissioner Chandler:

It's my understanding that the Department of Buildings (DOB) recently granted approval for the developer of 605 East 9th Street, which is located within my Senate District, to convert the ground floor of the existing structure to a mezzanine, and to convert the building to a dormitory with 174 units. I have significant concerns about this application, which were articulated by Council Member Rosie Mendez in the enclosed April 25, 2014 letter to DOB. To my knowledge a determination on these concerns has not yet been made. As such, I urge you not to allow this application to move forward.

Thank you for your attention to my request.

Sincerely,

A handwritten signature in blue ink that reads "Brad Hoylman".

Brad Hoylman
New York State Senate
27th District

cc: New York City Council Member Rosie Mendez

Enclosure



ROSIE MENDEZ

COUNCIL MEMBER, 2ND DISTRICT
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April 25, 2014

Thomas Fariello, R.A., Acting Commissioner
NYC Department of Buildings (DOB)
280 Broadway | 7th Floor
New York, New York 10007

RE: 605 East 9th Street owned by 9th & 10th Street L.L.C.—Gregg Singer, Principle

Dear Acting Commissioner Fariello:

I am writing to you to express my grave concerns regarding the Department of Buildings granting permits to 605 East 9th Street, and the proposed alteration plans contained therein. On April 30, 2013, I submitted a letter to the NYC Department of Buildings (attached), but my office never received a response. According to my understanding of the law, this project should not be advancing at this stage.

As discussed in my April 30, 2013 letter, I still have extensive concerns that the contractual "lease agreement" entered into by Cooper Union with 9th & 10th Street L.L.C. is: (1) overbroad; (2) speculative; (3) non-conforming to the requirements of 1 RCNY §51-01 (hereinafter, the Dorm Rule) and (4) potentially lacking certain legal elements of a binding contract. Back then, as both signatories to the contractual "lease agreement" individually cited a confidentiality clause to various parties and the DOB was not currently in receipt of a copy, there was no way of knowing if the agreement met the specific criteria of the Dorm Rule test or if the lease is even legally enforceable.

In addition to my concerns regarding the Cooper Union lease, I am also concerned with the contractual "lease agreement" entered into by The Joffrey Ballet Center with 9th and 10th Street L.L.C. I believe this lease agreement is also (1) overbroad; (2) speculative; (3) non-conforming to the requirements of the Dorm Rule and (4) potentially lacking certain legal elements of a binding contract.

Cooper Union Lease Agreement

i. Institutional Nexus

Since submitting my April 30, 2013 letter to DOB, I have had the opportunity to review the lease agreement between Cooper Union and with 9th & 10th Street L.L.C. Section 1)(c)

clarification of how this provision will operate and whether Cooper Union is, in fact, agreeing to allow their tenancy rights to be subordinated at any time within the purported fifteen (15) year lease-term.

ii. Bed Requirement

Article 2.7 of the lease requires, among other things, that Cooper Union will designate the number of required beds “for each school year on or before March 15 of the Spring school term for the following Fall term.” The number, however, has yet to be released. I would like to know how many beds Cooper Union expects to occupy. Assuming that this number has yet to be decided because the project is not yet complete, failure to comply with an express requirement deprives the public of the transparency necessary to assess the efficacy of this project, and the lack of clarity does not reflect well on either 9th & 10th Street L.L.C., Cooper Union, or Joffrey Ballet. It appears that once again, the parties to the contract are concealing their true intent.

Joffrey Ballet Center Lease Agreement

iii. Ambiguous Terms

Article 2.7 of the lease agreement between Joffrey Ballet Center and 9th & 10th Street L.L.C. includes ambiguous language not defined within the four corners of the document. Without defining overly broad terms, DOB should not make any decisions regarding the permit request until these terms are defined.

The lease agreement states that Joffrey Ballet shall use their “best efforts” and “due diligence” to rent the one hundred and thirty two (132) beds offered in the lease agreement to their students. I would like “best efforts” and “due diligence” to be defined so that both the community and I can know the exact methods Joffrey Ballet will be utilizing to rent their beds.

Article 2.7 further states that any beds not rented by Joffrey Ballet may be rented by the management company to “any other School.” Yet again, there are no clearly defined terms to explain what is meant by “any other School.” Without requiring further detail it is impossible to understand exactly who the management company is reserving the rights to rent these beds. This information is vital because the “other School” in the “school market” would be able to rent these beds for three years. As per the Dorm Rule, “any other School” must have representation on the non-profit entity overseeing the dorm in order to satisfy the institutional nexus requirement. This lease agreement does not evidence that the institutional nexus requirement will be met should any unoccupied beds by Joffrey Ballet revert back to the management company.

Moreover, Article 2.7 only requires Joffrey Ballet to rent a minimum of ten (10) beds out of one hundred thirty two (132) beds. My concern is that any and all remaining beds outside of the ten bed minimum requirement will be rented out as student hostel beds (as previously proposed by Gregg Singer), which will violate the permissible use of the premises. Therefore, I ask that DOB limit the scope of the permit application and demand further information.

Given the foregoing information, I once again reiterate my request that this application is reviewed with precise scrutiny to ensure that both lease agreements meet the requirements of the Dorm Rule. **I request that DOB refrain from approving this application until the owner clarifies all ambiguities and my office is granted a meeting with DOB to discuss the contract's adherence to the law.**

Thank you for your attention with this matter. If there are any questions regarding my concerns, please contact my office.

Respectfully yours,

A handwritten signature in black ink that reads "Rosie Mendez". The signature is written in a cursive style with a large, looped "R" and "M".

Rosie Mendez
City Councilwoman, District 2

Cc: Martin Rebholz, R.A., Manhattan Borough Commissioner
Byron Munoz, Deputy Director, Intergovernmental & Community Affairs
Susan Stetzer, District Manager, Community Board 3