



January 17, 2017

Honorable Bill de Blasio
Mayor
City of New York
City Hall
New York, NY 10007

Dear Mayor de Blasio:

We are deeply concerned about the fate of the Old PS 64, a New York City landmark located at 605 East 9th Street in Manhattan, formerly known as CHARAS/El Bohio Cultural Community Center. As you know, the Old PS 64 has played numerous important roles in the Loisaida community over the past century, and the local neighborhood has long desired to see the building utilized by the community, consistent with the “Community Facility Use” stipulated in its deed restriction.

In 1998, real estate developer Gregg Singer purchased the Old PS 64 building from the City of New York during then-Mayor Rudolph Giuliani’s Administration. The deed on the property contained a restriction, still in force today, that the “subject property is restricted and limited to a ‘Community Facility Use’...” Since that time, the building has been the subject of several conflicts, including disagreements with community members and multiple Department of Buildings (DOB) safety violations. In 2008, the building saw litigation regarding the applicability of the Dormitory Rule to a speculative proposal submitted by Mr. Singer that reached the New York Court of Appeals. On September 22, 2014, DOB issued a Stop Work Order for, among other things, failing to comply with prerequisites for a dormitory to be considered a “Community Facility Use” (1 RCNY §51-01, the “Dormitory Rule”)

The Old PS 64 has sat vacant for over eighteen years since Mr. Singer purchased the building. It has yet to be utilized for community benefit and past proposals for its use have not inspired confidence in the neighbors and residents who know the potential of the space. We have attached a detailed letter sent to DOB Commissioner Rick Chandler on September 3, 2014. It outlines some legal concerns at that time whereby Singer failed to comply with the Dormitory Rule and the deed restrictions in his negotiations with an educational institution and a trade school. As you will notice, some of the same issues and problems existed then as they do now, confirming a history of potential non-compliance.

Given the history here, we are seriously concerned that the owner could attempt to engage in construction at this site that is inconsistent with either the Dormitory Rule or the deed restriction and that the DOB might be complicit in allowing Singer to do so.

We believe the Construction Code Determination Form 1 (CCD1) issued by DOB on May 26, 2016 is in error to the extent that it would allow any construction on the building to proceed that is not necessary to

create a student dormitory pursuant to the Dormitory Rule, and that Mr. Singer's current proposal for the building is too speculative to satisfy the Rule's requirements. Specifically, Mr. Singer has not cured items 1 and 2 of the Audit Objections dated September 22, 2014 and Adelphi University now replaces Cooper Union with a lease that doesn't comply with the agency's Dormitory Rule, as discussed further below. More importantly, it raises concerns that Singer has no intention of complying with the Dormitory Rule and the deed restrictions. Councilwoman Mendez met with Jon Paul Lupo and Yume Kitasei of your City Legislative Affairs Office on July 12th and November 7th in 2016. The Councilwoman outlined the building's history and what we all believe to be DOB's error in issuing CCD1. She was assured that all rules and restrictions would be adhered to.

The Dormitory Rule itself is clear: the permit to create a student dormitory is to be issued for "the building or part of the building" which will meet the definition of "student dormitory." Significantly in this case, to qualify under the Dormitory Rule as a Community Facility Use, the space that is to be used as a dormitory must be for the benefit of an appropriate educational institution pursuant to a valid, executed lease for the space. Any conclusion that a permit to create a student dormitory could also authorize work on portions of the building unrelated to such dormitory use or not for the use of such an institution would render meaningless the rule's requirements.

We believe that the lease provided to DOB by Mr. Singer between "9th and 10th Street LLC" and Adelphi University in order to satisfy the "required documentation" portion of the Dormitory Rule is still merely a speculative plan. Although section 1.1 of the lease states the "Tenant hereby leases from the Landlord the entire second and third floors which shall include 196 beds," Section 2.3 of the lease states that Adelphi University is only required to guarantee payment for a minimum of 20 beds licensed to Adelphi students each school year. Section 13.1 of the lease designates the Landlord to act as the Tenant's agent to license beds to students from other educational institutions to the extent they are not licensed to Adelphi students. Furthermore, in the last paragraph of Section 13.1, Adelphi University "designates Landlord, during the summer months, to act as its agent to license beds for the summer term . . ." which reinforces the lack of a required and continuous institutional nexus. The functional result is that in any given year the Landlord may retain control over as many as 176 of the 196 beds for which Mr. Singer is seeking approval and as many as 196 beds for three months during the summer. Lastly, Section 2.5 of the lease states that the Landlord will be able to choose a name to "brand" the building.

In short, Adelphi is effectively contracting with Mr. Singer for 10% of the 196-bed dorm Mr. Singer proposes to build, with a no-obligation option to arrange for Adelphi students to occupy additional beds on a year-to-year basis. The lease leaves the future use of 90% of Mr. Singer's proposed dorm not much less speculative than it would be if Adelphi were not in the picture. The lease does not provide any assurances that a substantial portion of the building Mr. Singer is seeking to develop as a dormitory will be able to be utilized as such, and Mr. Singer's proposal should therefore be rejected outright.

Even if the City were to conclude that Mr. Singer's failure to obtain a commitment from an appropriate educational institution for any more than 20 of the 196 beds is not a basis for rejecting the entire proposal, the City should certainly not approve any more than the 20 beds that Adelphi is willing to contract for in the lease. Any other conclusion would allow developers to arrange for educational institutions to simply lend their names, with minimal financial obligations, to purported dormitory projects that are merely speculative. Educational institutions like Adelphi might make these agreements in good faith (and we are not suggesting anything but good faith on Adelphi's part in the present circumstances), but allowing a small commitment from an educational institution to permit construction of full-fledged dormitories by third party developers would have highly undesirable results from the perspective of the public interest in the wide range of circumstances that the Dormitory Rule may apply.


We ask that the City exercise extreme diligence and caution in the oversight of any permits sought for this building to ensure they meet the letter and the spirit of the deed restriction and the Dormitory Rule. Any plans submitted should be rejected unless they clearly demonstrate that all proposed construction on the premises would be in furtherance of a "Community Facility Use" that is not merely speculative. We would ask that our offices be notified upon DOB's receipt of any such plans or permit applications.

Considering that this community suffered the loss of Rivington House, a deed restricted community facility, while real estate developers lined their pockets, we believe it is imperative to be proactive in preventing a similar scenario, though of course the legal and policy issues are distinct. Meanwhile, the community is apprehensive about the fact that Capalino & Associates now represents Singer considering the perceived role it played in the Rivington House saga.


The City's decision in this case will have ramifications for numerous other future construction projects where developers are required to meet the requirements for a Community Facility Use or where they seek to take advantage of the benefits the law affords to such a use. We urge DOB and the Administration's attorneys to revisit DOB's approach to Mr. Singer's proposals and closely watch the use of the Old PS 64 building to ensure that it is in full compliance with the law.


Thank you in advance for your consideration of our concerns. If your office or DOB would like to arrange a meeting with us to discuss these issues, please contact any of us directly, or via Andrew Lombardi of the Manhattan Borough President's Office, at 212-669-8774.

Sincerely,


Gale Brewer
Manhattan Borough President


Rosie Mendez
City Council


Brian Kavanagh
New York State Assembly


Brad Hoylman
New York State Senate

cc: First Deputy Mayor Anthony Shorris
Deputy Mayor Alicia Glen
Commissioner Rick Chandler, Department of Buildings
Counsel to the Mayor
Assistant Commissioner Patrick Wehle, Department of Buildings
Jon Paul Lupo, Director, Mayor's Office of City Legislative Affairs
Yume Kitasei, Mayor's Office of City Legislative Affairs

ROSIE MENDEZ

COUNCIL MEMBER, 2ND DISTRICT

DISTRICT OFFICE

237 FIRST AVENUE, #504

NEW YORK, NY 10003

(212) 677-1077

FAX: (212) 677-1990

CITY HALL OFFICE

250 BROADWAY, ROOM 1734

NEW YORK, NY 10007

(212) 788-7366

FAX: (212) 442-2738



**THE COUNCIL
OF
THE CITY OF NEW YORK**

COMMITTEES

HEALTH

HOUSING & BUILDINGS

LAND USE

RECOVERY & RESILIENCY

SUB COMMITTEE

LANDMARKS, PUBLIC SITING &

MARITIME ISSUES

CO-CHAIR

THE BLACK, LATINO AND ASIAN CAUCUS

OF THE NEW YORK CITY COUNCIL

September 3, 2014

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

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

Dear Commissioner Chandler:

I am writing regarding the recent NYC Department of Buildings (hereinafter “DOB”) decision to grant a work permit to 9th & 10th Street L.L.C. (hereinafter “the Owner”) to commence work on the Ground Floor and First Floor of 605 East 9th Street. It is inconceivable that DOB has issued a work permit without responding to my letters dated April 30, 2013 and April 25, 2014 (copies attached) and ignoring my request to determine whether the Owner has complied with 1 RCNY §51-01 (hereinafter “the Dorm Rule”) as required by your agency.

I respectfully request a final determination on DOB’s ZRD1: Zoning Resolution Determination Form dated July 25, 2014 concluding that the Joffrey Ballet Concert Group Program (hereinafter “CGP”) qualifies under Use Group 3 of the Zoning Resolution as a “non-profit institution with sleeping accommodations” (ZR22-13). Based upon the Use Group 3 zoning approval, I continue to have grave concerns regarding the proposed alteration plans since CGP’s housing accommodation is not an integral to the

program for the reasons to be discussed in this letter. Additionally, if DOB concludes that it erred in determining that CGP is a not-for-profit with sleeping accommodations, then a final determination must be issued on whether the owner complied with the Dorm Rule with regards to The Joffrey Ballet Center, Inc.

Lastly, I request a final determination concluding whether the Owner has complied with the Dorm Rule with regards to The Cooper Union for the Advancement of Science and Art.

I. Joffrey Ballet Lease Agreement

- i. If DOB determines that CGP is not a non-profit but rather a college or university, CGP's use of the premises is not as of right because it is a trade school.

Under § 22-13 of the Zoning Resolution, trade schools are excluded from colleges or universities as of right in a Use Group 3. The Joffrey Ballet School website states that, “the Joffrey Ballet School is an accredited institutional member of the National Association of Schools of Dance and meets the US Department of Education standards for a school of *vocational training*” (emphasis added). Because a vocational school and trade school are synonymous, CGP, as a branch of Joffrey Ballet cannot use the premises as of right under college or university status.

Therefore, DOB should rescind the permits for the proposed alteration plans of 605 East 9th Street because, as a vocational school which is synonymous to a trade school, CGP does not qualify as of right under Use Group 3.

- ii. No reasonable nexus exists to demonstrate a clear and necessary relationship between CGP purpose and its provision of sleeping accommodations because CGP's non-profit use is de minimus.

The standards for a Use Group 3 are governed under §22-13 of the Zoning Resolution. DOB, in its July 25, 2014 Use Group 3 zoning approval as a non-profit, states that, “the NYC Board of Standards and Appeals (“BSA”) interprets ZR 22-13 so as to require a reasonable nexus between the non-profit and its provision of sleeping accommodations.” (*Matter of Forest Hills Student Residences*, Bulletin of the New York City Bd. of Stds. & Appeals, vol. 92, No. 24, at 482-86 (adopted June 19, 2007, published June 28, 2007)). Under the reasonable nexus requirement, the applicant must

provide evidence that residents are required to participate in activities on the premises. *Id.* at 483.

DOB's approval states that Joffrey Ballet has demonstrated, "both a reasonable nexus and clear and necessary relationship between the CGP purpose and its provision of sleeping accommodations." This reasonable nexus and clear and necessary relationship is based upon mandatory sleeping accommodations that are an integral part of CGP's mission and purpose. While mandating members who are like-minded aspiring dancers to live and train together in order to be monitored by professional staff and to participate in advanced classes only taught at 605 East 9th Street does create a reasonable nexus, CGP has failed to demonstrate the nexus established in their application actually exists. DOB's zoning approval states that, "the facility will be used solely for CGP," yet Article 2.7 of the Joffrey Ballet lease agreement only requires Joffrey Ballet to rent a minimum of ten (10) beds out of one hundred thirty two (132) beds available to them. An article by DanceTeacher Magazine dated June 1, 2014, states that thirty (30) members are enrolled in CGP.¹ If the sleeping accommodations are so integral to CGP's mission and purpose as to create a reasonable nexus, CGP should be using more than the de minimus amount of ten (10) beds out of the one hundred thirty two (132). Even if CGP were to fill beds for all thirty (30) program members, 80% of the beds to be created under the proposed alteration plans would be made available to students or individuals outside of CGP's program, terminating any reasonable nexus that may exist because the facility will not be used solely by CGP as stated in the zoning approval. Any unique experience of training and living together with like-minded aspiring dancers is facially invalid if most residents who will share the same living space and have access to the same facilities as CGP members have no connection with the non-profit institution with sleeping accommodations.

Therefore, because no reasonable nexus has been established to support a clear and necessary relationship between the CGP purpose and its mandatory provision of sleeping accommodations, DOB should deny the permits for the proposed alteration plans of 605 East 9th Street.

¹ <http://www.dance-teacher.com/2014/06/the-fall-and-rise-of-the-joffrey-ballet-school/>

- iii. The CGP of the Joffrey Ballet Center Concert Group Inc. fails to qualify as a Use Group 3 non-profit institution with sleeping accommodations under ZR 22-13 because its primary purpose is for providing sleeping accommodations and not philanthropic purposes.

The primary purpose of a non-profit institution with sleeping accommodations classified within Use Group 3 cannot be the provision of sleeping accommodations. Any contrary result would allow for student dormitories operated by non-profits lacking the sufficient nexus to a college or university as is required by DOB. (*Matter of Forest Hills Student Residences, Id.* at 484-85).

DOB's approval of CGP's non-profit status under Use Group 3 states that the facility housing CGP is supposed to provide space for CGP dancers to rehearse choreography, stretching and physical therapy with the unique experience of studying, training and living together while being monitored by professionals for physical and mental well-being that is central to CGP's program. This space is further meant to provide specialized classes required solely for CGP students to be exclusively taught at 605 East 9th Street. However, the floor plans available through the DOB website do not illustrate where the institutional spaces will be located or how the current plans will incorporate a non-profit institution with sleeping accommodations integral to CGP's purpose.² As evidenced in the Joffrey Ballet lease agreement, the proposed floor plan shows that CGP's facility will be located on the ground floor and first floor of 605 East 9th Street. Unless there are more recent floor plans that have yet to be made public, the only space on the ground floor not designated as sleeping rooms are a conference room, two (2) offices, two (2) television lounges, a study/computer room, game room, student health center, media/data room, storage room, restrooms, laundry facilities, and a water pump room. The proposed plan for the first floor offers nothing but sleeping rooms. Here, there is no documentation to specify that CGP has created a training facility with a living program to further its mission and purpose. Rather, the floor plans solely indicate that the primary purpose of the facility is for sleeping accommodations, which is inconsistent with the plain language of a non-profit facility under Use Group 3. If the primary

² <http://a810-bisweb.nyc.gov/bisweb/BScanJobDocumentServlet?requestid=4&passjobnumber=121329801&passdocnumber=01&allbin=1079685&scancode=ES771890133>.

purposes of the proposed alteration plans are to create sleeping accommodations, the facility is essentially operating as a student dormitory.

Therefore, DOB should rescind the permits for the proposed alteration plans of 605 East 9th Street because the current floor plans do not indicate that the facility will be utilized as a non-profit institution with training facilities for CGP members and an approval would allow the impermissible use of a student dormitory operated by a non-profit lacking a relationship to a college or university as required by DOB.

- iv. If the Joffrey Ballet School will use their “best efforts” and “due diligence” to fill the remaining unoccupied beds, the only students to fill the beds are Joffrey Ballet students who are not associated with CGP and are enrolled in a for-profit institution.

While CGP is a non-profit branch of the Joffrey Ballet School, Joffrey Ballet is a for-profit institution.³ If Joffrey is mandated to use their “best efforts” and “due diligence” to fill any remaining beds outside of the ten (10) required within their lease and the thirty (30) members enrolled in CGP, the only students who would be able to fill those beds are students of Joffrey Ballet. Because the Joffrey Ballet School is a private, for-profit 2-year institution, and because of the terms in the lease, 80% of the premises could potentially be used for for-profit purposes. This means that the premises would not fall within the non-profit status that has been granted under Use Group 3.

Therefore, because Joffrey Ballet can use a majority of their beds for for-profit purposes, which goes against the non-profit status issued to CGP, DOB should not only rescind the permits for the proposed alteration plans of 605 East 9th Street but also rescind the non-profit status under Use Group 3.

- v. Alternatively, if DOB determines that CGP is not a non-profit, Joffrey Ballet Center’s lease agreement as written is invalid due to the reasons expressed in my letter to DOB dated April 24, 2014.

In my April 24, 2014 letter to DOB, I expressed my concern that the lease agreement between Joffrey Ballet and 9th & 10th Street L.L.C. included ambiguous language not defined within the four corners of the lease. The lease agreement states that

³ http://webcache.googleusercontent.com/search?q=cache:izvSQiG-pCIJ:www.universities.com/edu/Joffrey_Ballet_School_American_Ballet_Center.html+&cd=3&hl=en&ct=clnk&gl=us

Joffrey Ballet shall use their “*best efforts*” and “*due diligence*” to rent any remaining unoccupied beds offered in the lease agreement to their students, yet “*best efforts*” and “*due diligence*” have not been defined, nor has my request for these terms to be defined been acknowledged. Further, because the lease agreement states that any beds not rented by Joffrey Ballet may be rented by the management company to “*any other School,*” without defining “*any other School,*” there is a strong possibility that any remaining beds will be rented out as student hostel beds (as previously proposed by Gregg Singer) which will be a violation of the permissible use of the premises as per the 1 RCNY §51-01, (hereinafter, the Dorm Rule).

DOB, therefore, should rescind the permit requests because without a clear definition of the ambiguous terminology within the lease agreement, unoccupied beds will revert back to the management company and will likely be rented out in a manner that will violate the permissible use of the premises as per the letter of the law.

II. Cooper Union Lease Agreement

The Cooper Union lease agreement is invalid for the reasons expressed in my letter dated April 30, 2013 and my follow-up letter dated April 24, 2014.

When I submitted my first letter in April 2013, my concerns were that the contractual “lease agreement” entered into by Cooper Union with Gregg Singer directly and/or a corporeal legal entity representing his interests was: (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. At the time, no lease had been made available to the public and the only sources of information to shed any light on the use of the premises were two reports, “Scaled-down dorm pitched for embattled CHARAS site” (the Ferguson article)⁴ and a statement from Cooper entitled “A Message from VP TC Westcott (attached). Because these two sources revealed a difference of understanding between Mr. Singer and Cooper Union with respect to the nature of the contractual “lease agreement,” it called into question whether there was a meeting of the minds between the parties on essential terms of the contract.

⁴ <http://thevillager.com/2013/04/25/scaled-down-dorm-pitched-for-embattled-charas-site/>

In March 2014, the lease agreement between both Cooper Union and 9th & 10th Street L.L.C. and Joffrey Ballet and 9th & 10th Street L.L.C. became available. Because my office had not received a response from DOB to my April 2013 letter, I submitted a follow-up letter, which called into question ambiguities in clauses within each lease agreement. In particular, I questioned whether an institutional nexus existed as per the Dorm Rule, citing the language of the law. Even if a nexus does exist, I said this nexus is not continuous because Cooper Union is not entitled to use and occupy the premises from June 1 to August 31 each year. Rather, the management company, 9th & 10th Street L.L.C. reserves the right to rent the premises to “*other colleges or universities*” without specifying the names of the “*other colleges or universities*” that the premises could be rented to, in order to ensure that there will be a continuous institutional nexus.

Further, I raised that the language of the lease was more analogous to a licensing agreement rather than a lease because a lease grants an exclusive and absolute right to use and occupy land for the duration of the leasehold whereas a license creates a revocable privilege to someone with no interest in the land whose use of the land is temporary in nature, meaning the lessor retains the right to use and occupy the land during the period of the licensing agreement.⁵ As the lessee, because Cooper Union’s use of the premises is temporary in nature in that their lease only permits use and occupancy from September 1 to June 30 each year and the management company, the lessor, retains the right to enter and use the premises for the remaining months of each calendar year. Additionally, in the lease agreement, Cooper Union authorizes 9th & 10th Street L.L.C. to subordinate their rights as tenants, meaning that the management company could revoke the rights created within the terms of the lease, yet there was no clarification on how this provision would operate and whether Cooper Union did, in fact, agree to allow their tenancy rights to be subordinated. Lastly, I asked for a number to be released on how many beds Cooper Union expected to occupy because failure to provide this number not only deprived the public of the transparency necessary to assess the efficacy of this project, it also created the appearance that the parties to the contract were concealing their true intent as to the use of the premises.

⁵ Union Square Park Cmty. Coal., Inc. v. N.Y.C. Dept. of Parks & Recreation, 17 N.Y.L.J. 1 (N.Y. 2014).

Based upon all of the forgoing information, I once again reiterate my request that DOB (1) issue a final determination on any and all aforementioned matters, and (2) rescind the permit application for the proposed alteration plans of 605 East 9th Street.

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, flowing style.

Rosie Mendez

City Councilwoman, District 2

Cc: Martin Rebholz, R.A., Manhattan Borough Commissioner
Steven A. Figuerido, Deputy Director, Intergovernmental & Community Affairs