



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD No. 4

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January 4, 2007

Ms. Arden Sokolow
Director, Inclusionary Housing/421-a Affordable Housing Program
Division of Housing Incentives
Department of Housing Preservation and Development
100 Gold Street, Room 9-P17
New York, NY 10038

Re: Lower Income Housing Plan Application by Midtown West A LLC/Rockrose Development Corp. – 453 W. 37th Street

Dear Ms. Sokolow:

Thank you for attending the meeting of the Board's Clinton/Hell's Kitchen Land Use Committee on December 14, 2006, at which this application was considered, along with the River Place II application, as the first Inclusionary Housing applications since the Hudson Yards rezoning in 2005. We are pleased that the first new residential building to be constructed in the rezoned area will include permanently affordable units under the Inclusionary Housing program, and are grateful for your personal attention to the progress of these applications.

However, for the reasons discussed in this letter, at the recommendation of the Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board No. 4, recommends disapproval of this Lower Income Housing Plan Application unless it is resubmitted with changes. The vote was 34 in favor, 0 opposed, 0 abstentions, and 1 present but not eligible to vote.

The applicant is constructing a new residential building on the west side of Tenth Avenue, between 37th and 38th Streets, on a site that is partially in Subarea D2 and partially in Subarea D3 of the Hell's Kitchen Subdistrict of the Special Hudson Yards District. The basic maximum FAR for the D2 portion of the site is 6.5, which the applicant seeks to increase with the District Improvement Fund Bonus (total DIB bonus is 3.5 FAR) and the Inclusionary Housing Bonus (3.0 FAR), per Section 93-22 of the Special Hudson Yards text of the Zoning Resolution.

The building will consist of a 10 story base with a tower rising to a total of 23 stories. It will contain 394 units (126 studios, 218 one bedroom units, 49 two bedroom units, and 1 three bedroom unit), financed under the NYS Housing Finance Agency's (HFA) Tax Exempt 80/20 program¹. Thus, 80 units, or 20%, will be set aside for families whose incomes are at or below 50% of adjusted median

¹ These numbers are taken from the plans submitted with the application and differ from the numbers in the application. The applicant's representative confirmed at the Board meeting that the numbers should be determined from the plans instead of the application.

income for the metropolitan area. Of these 80 units, 12 units (15%) will be set aside for families at or below 40% of adjusted median income.

According to the plans submitted with the application, 59% of the lower income units will be on floors 2 through 5, while only 25% of the market rate units will be on those floors. There will be no low-income units in the tower (floors 11 through 23), except for 2 low-income units on the 11th floor.

The following changes must be made before the application is approved:

I. The low-income units must be distributed throughout the building.

The applicant seeks to distribute the lower income units throughout the first 11 residential floors only, or the lower 50% of the building's floors, and to concentrate those units on the first 4 residential floors. The cover letter to the application states that the applicant is requesting a waiver of the applicable distribution requirements, which would otherwise require distribution of the units throughout the first 18 residential floors. Such a waiver is not required and should not be allowed.

We note that the cover letter erroneously requests a waiver of the size and distribution requirements of ZR Section 23-941(b), pursuant to ZR Section 98-263(e), and provides an analysis of text applicable to the West Chelsea Inclusionary Housing Program. In fact, this site is in Hudson Yards. The correct references are to ZR Sections 23-951(b) and 93-233(e), which is different from the corresponding West Chelsea provision.

The distribution requirement for the Hudson Yards Inclusionary Housing Program, in Section 23-951(b) of the Zoning Resolution, provides that:

“#d]welling units# designated as #lower income housing# shall be distributed throughout the #development# [emphasis added]. No #story# shall contain more than two such units unless at least 80 percent of all #stories# contains two such units.”

This requirement may be waived by the Commissioner of Housing Preservation and development pursuant to Section 93-233(e)(ii) of the Zoning Resolution “to facilitate the development of lower income housing”

“if the #lower income housing# is subject to the requirements of city, state or federal programs assisting the lower income housing that have size and distribution requirements conflicting with the size and distribution requirements of Section 23-941(b.)[sic; should be 23-951(b)]”

The applicant asserts that since the development is being financed in part by the New York State Housing Finance Agency (“HFA”), applicable HFA policy (which applicant acknowledges has not been formally adopted as an agency regulation) requires different standards. HFA’s Proportionality and Distribution Policy is indeed different; it requires that “the affordable rental units must be distributed evenly throughout at least the lower 60% of the project.” [emphasis added.] This policy clearly does not prevent a broader distribution and therefore does not conflict with the Inclusionary Housing standards. Indeed, a more inclusive building will serve HFA’s policy even better than a building that only meets the requirements. HFA’s financing for this project will not in jeopardy if the units are distributed as required by the Zoning Resolution, and thus no waiver is needed to facilitate construction. The truth, acknowledged by the applicant at the committee meeting, is that the building

will be more profitable for the developer if the top half of the building can be offered at market rates. But maximizing profit is not a basis for the requested waiver.

No waiver should be granted, and HPD should examine the plans in detail to confirm that the requirements of the Hudson Yards Inclusionary Housing Program are satisfied.

We note that the Hudson Yards Inclusionary Housing Program requires, in ZR Section 93-232(b)(i) that 20% of the residential floor area on the zoning lot of the bonused development be occupied by lower income households, while the application is based on HFA's requirement that 20% of the units be set aside for lower income households. This added complication makes our collective head hurt, and we leave it to HPD to confirm that the Zoning Resolution has been complied with. HPD's application form should be revised to elicit this additional and necessary information.

We add here a plea that the building contain more larger units, both lower-income and market rate. Only 50 of the building's 389 units will be bigger than 1 bedroom. A healthy neighborhood needs families and families need bigger apartments.

II. The Administering Agent must be a not-for-profit organization at the earliest opportunity, and this requirement must be included in the restrictive declaration.

The applicant proposes that the applicant, the for-profit developer of the building, will be the Administering Agent responsible for ensuring compliance with the lower income housing plan. Here again, the cover letter erroneously cites and analyzes the definition of #administering agent# from the West Chelsea Inclusionary Housing Program (ZR Section 98-261). The corresponding, yet markedly different, definition in the Hudson Yards Inclusionary Housing Program is in ZR Section 93-231.

Section 93-231 of the Zoning Resolution provides:

“The #administering agent# shall be a not-for-profit organization . . . However, the Commissioner may approve an entity that is responsible for compliance monitoring pursuant to City, State or federal funding sources, to serve as the “administering agent# during such compliance period.”

There is no information in the application about the applicant's ability to serve as Administering Agent or the compliance monitoring that it may be responsible for. The applicant must not be approved as the Administering Agent unless this case is made. This Board believes that only an independent not-for-profit organization unmotivated by the owner's interest in maximizing profitability can adequately ensure compliance with the lower income housing plan, but accepts that the Hudson Yards Inclusionary Program currently reflects a different conclusion, based on the assumption that compliance is assured so long as the project's tax credits are at risk.

If the applicant is approved as the Administering Agent, that approval must only last as long as the 20-year compliance period. To ensure that this provision is enforced, we suggest including it in the restrictive declaration required by Section 23-95(e) of the Zoning Resolution.

III. Budgets must include reserve funds. The application provides no information about the operating or replacement reserves required by HPD practice. The application should not be approved without the inclusion of these reserves.

In short, this application is symptomatic of the difficulties we all will encounter in the transition of the Hudson Yards Inclusionary Housing program from negotiated zoning text to practical application in actual developments. Developers will seek to bend the rules to their own advantage. This community will seek to enforce what we negotiated during the Hudson Yards rezoning. We hope HPD will help us.

Sincerely,



J. Lee Compton
Chair
Manhattan Community Board 4



Anna Hayes Levin
Chair
Clinton/Hell's Kitchen Land Use

cc: Applicant/Representative
Assistant Commissioner Colon, HPD
Electeds