



CITY OF NEW YORK

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April 7, 2008

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

Re: Hudson Yards Additional Text Amendments II: Application N080184 ZRM

Dear Chair Burden:

Your office has referred to us for comment this application for 13 additional changes in the zoning text that was approved in January 2005 as part of the Hudson Yards rezoning.

One of the proposed changes, Item 12 revising the language for the bonus for new theater in the 42nd Street Perimeter Area of the Special Clinton District, was held over, partly at our request, from the first set of Hudson Yards Zoning Text changes arising out of the agreements between the city and the City Council as the Hudson Yards ULURP process was completed. The other 12 changes in this application have been requested by the Department of City Planning as a result of its experience in working with the Hudson Yards zoning text over the last three years. Unfortunately, the application does not include any of the changes, arising out of our own experience in working with the Hudson Yards zoning text, which this board has discussed with DCP on several occasions while this application was being developed.

This letter provides our comments in the following order:

- Theater Bonus Text – Item 12
- The rest of the application - Items 1-11 and 13
- Additional items that should be included in the application

THEATER BONUS TEXT

12. Revising the language of the bonus for New Theater in the 42nd Street Perimeter Area of the Special Clinton District.

After the text change for the theater bonus provisions of Zoning Resolution Section 96-25 was withdrawn from the first set of Hudson Yards text changes in December 2005, you wrote to us inviting us to work with your office on further revision of that section. Our

suggestions were set out in our letter to you dated March 7, 2006. We are pleased that so many of our suggestions have been incorporated into the text change now being proposed, including:

- Clarifying that the bonus is two feet for each foot of theater or performing arts space with a total bonus of 3 FAR
- Limiting “accessory” floor area
- Establishing a maximum theater size of 299 seats, ensuring that the theaters will be the small Off-Broadway theaters that we all intended
- Clarifying what has to be built to get the bonus, including core, shell and building systems, with oversight by the Department of Cultural Affairs
- Prohibiting adult uses

Thank you for giving our initial comments such serious consideration and including them in this new text change.

However, the text that is now being proposed requires further changes shown on the attached mark-up and summarized as follows:

1. The portion of Subarea P2 of the 42nd Street Perimeter within which the bonus is available should be shown on Appendix A of the Special Clinton District text, to eliminate the frequent misimpression that the bonus is available throughout Subarea P2.
2. We continue to believe that the bonus should require a special permit, not certification, with required findings concerning the effect on the surrounding area (as now required for the theater rehabilitation bonus in ZR Section 81-745). Adding floor area that includes theater and performing arts uses requires considerations that are more complex than the mathematical calculation involved in a certification.
3. Non-profit performing arts space should qualify for the bonus only if the development also includes two theaters. This is consistent with the original intent of the theater bonus, which was, in part, to replace the two small theaters that were demolished to create Related’s development site.
4. The five-year inspection reports must be publicly available, by delivery of a copy to this board or some other means.
5. Various clarifying revisions, as shown on the attachment.

THE REST OF THE APPLICATION

Special Hudson Yards District

1. *Lots that abut the Mid-Block Park are also considered to abut Hudson Boulevard for purposes of all bulk controls.*

We have no objection to these amendments.

2. *The 100% retail requirement for the lots that abut the Mid-Block Park between West 38th and West 39th Streets is removed.*

Since this one-block section of the park will not have street frontage, DCP proposes to eliminate the requirement that buildings facing the park have 100% of their frontage devoted to retail.

Frontages along the park must be active and transparent; the park must not be surrounded by blank walls. We accept that ground-level activity need not be retail, but insist that the transparency requirement in the third paragraph of Section 93-14 must continue to apply along the park. The amendment as presently constructed (simply changing Map 2) would eliminate the transparency requirement along with the retail requirement, since, per the first sentence of Section 93-14, Map 2 shows both retail requirements and transparency requirements. We do not believe this was DCP's intention. The transparency requirement must remain.

- 3. Developments on lots with frontage on Hudson Boulevard & Park are permitted to temporarily waive the glazing requirements under certain circumstances.*

We have no objection to this amendment. However, this provision should include a requirement that the glazing requirements must be met as soon as possible. The proposed text in the application says only that buildings “shall be designed in a manner that will enable the glazing requirements . . . to be met.” The text should make it clear that compliance will be required.

- 4. The 90-foot streetwall requirement is waived for small existing buildings on 10th Avenue.*

We have no objection to this amendment.

- 5. Recesses are permitted along 9th & 10th Avenues and West 34th Street and the language of bulk regulations for developments along 10th Avenue is clarified.*

We strongly oppose these amendments. Continuity of street walls is something that this community negotiated for and achieved in the Hudson Yards rezoning. It was intended to encourage development consistent with the area's historic character, filling in the gaps created when the Lincoln Tunnel tore through the heart of the neighborhood. The “flexibility of design” sought by DCP with this amendment would make buildings stand out rather than fit in. We oppose.

- 6. Streetwall/sidewalk widening controls for the portion of Subdistrict E that fronts 8th Avenue is implemented. [Subdistrict E is the full block south of the Port Authority Bus Terminal.]*

We support this amendment.

7. *Correcting the text to permit perfect substitution in the D1 & D2 Subareas of transferable development rights transfers from the Phase II Hudson Boulevard & Park for the District Improvement Bonus.*

We support this amendment.

8. *Eliminating the required transit easements and subway entrances for the sites along the east side of 11th Avenue between West 34th and 36th Streets.*

As the engineering for the #7 Subway Extension has evolved since the Hudson Yards zoning was approved, the locations for the easements required for the West 34th Street Subway Station have changed, and the necessary easements have been secured by private agreement between the Hudson Yards Development Corporation and the property owners. We have no objection to eliminating the easements from the zoning text.

However, we note that the new location of the southern entrance, in the middle of the park, between 33rd and 34th Streets seems odd. An entrance next to a street would be more convenient for pedestrians and less intrusive to the park, and we request that such a change implemented in the confirmation if the station allows.

9. *The text that describes the aspects of procedure for obtaining the Transferable Development Rights (TDRs) generated by the MTA's Eastern Rail Yards is amended.*

The description of this change in the application does not match the text, and the difference between the current text and the proposed change is not clear. We therefore oppose this amendment.

The description says that the amendment would remove the requirement of recording a restrictive declaration describing the TDR transaction before any building permit could be issued for construction.

The current text says that recording the declaration is “a precondition to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the receiving site.”

The proposed text would say that recording the declaration is “a precondition to issuance of any building permit for any #development# or #enlargement# utilizing #floor area# distributed pursuant to this Section, including foundations with respect thereto.”

The difference between these two passages is not clear.

If a development uses TDRs from the Eastern Rail Yards, the formalities must be completed before a building permit for the foundation is issued. (See also our comments in 10 below.)

Special Hudson Yards District and Special Garment Center District

10. The text that describes the aspects of procedure for obtaining the District Improvement Bonus (DIB) is amended and clarified.

We comment only on the amendment that would remove the limitation that a building permit cannot be issued for construction of a development for which the DIB is obtained until the deposit into the District Improvement Fund is made.¹ We oppose this amendment. The DIB has been created to realize the city's development goals throughout the Special Hudson Yards District. The bonus is now so generous that no rational developer would build an as-of-right building and leave the bonus unused. DIB payments are an essential part of the Hudson Yards Financing Plan; if DIB payments don't come in, the amount the city has to pay to service the bonds increases.

Developers should not be allowed to start construction of a smaller building and subsequently obtain the bonus for a larger building. The larger building will involve complexities that should be thought through before any work begins. If a developer is not ready to complete the DIB formalities, it's a sign that the project is not ready to move forward.

We have no objection to the other portions of this amendment. However we note that the contribution amount for the DIB is now just \$109.36 per square foot of floor area, while development rights are being sold in the area in private transactions for \$250 per square foot and more. The DIB price is therefore significantly discounted against the market price for development rights, and represents a hidden public subsidy for development in Hudson Yards and a lost opportunity for the financing plan.

This situation has arisen because the DIB contribution amount is adjusted annually based on the Consumer Price Index, which really bears no relation to price fluctuations in the real estate market. We regret that there is no independent index for real estate prices to propose as an alternative, and request that efforts be made to identify or create an appropriate index for this purpose.

Special Clinton District

11. Remove from the calculation of zoning floor area future transit floor area in the assembled site between West 41st and 42nd Streets and Dyer to 10th Avenue.

A small portion of this site (5223 sq. ft.) is to be constructed so that it can be converted into subway station space when the 10th Avenue Station is constructed. Until the Station is completed the developer would like to use the space for retail space, without having it count as zoning floor area.

We agree that it is desirable to allow the space to be used temporarily, so that the streetwall is activated. But since the space is part of the transit easement, it is essentially

¹ We note that the proposed text fails to mark one small bit as new: at the end of the first paragraph of Section 93-31 the words "allowing more than the basic maximum #floor area#" should be underlined.

public space, and should only be used for a non-profit or non-market rate use that meets a public or community need for the area. It should not become “free floor area” for the developer.

We support this amendment only if use of the space is restricted to a non-profit or non-market rate tenant selected in consultation with this Board. A similar restriction should be added to the parallel provision in the Special Hudson Yards District text, ZR Section 93-65.

Special Midtown District

12. Correct a reference to the Special Clinton District.

We support this amendment.

ADDITIONAL ITEMS THAT SHOULD BE INCLUDED IN THE APPLICATION [Note to CB4 colleagues – this section is a little rough and will be revised, but here are the main points. AHL]

1. The public facilities bulk transfer provision in Section 93-223(c) should be removed. It was included to benefit the Rockrose development now nearing completion on Tenth Avenue between 37th and 38th Streets. It has no further applicability and should be removed.
2. The mid-block commercial overlay between 9th and 10th Avenues, 35th to 40th Streets should be removed. Bars and restaurants are incompatible uses on residential side streets.
3. Limit non-residential uses on 9th Avenue between 35th and 40th Streets to ground floor uses serving area residents. This stretch of 9th Avenue is the neighborhood’s “Main Street” lined with low-rise walk-up tenement buildings. The Hudson Yards rezoning was intended to “encourage predominantly residential development” in this area and reinforce its distinctive built character. To our dismay, one of the few development sites in the area, at the SW corner of 39th Street and 9th Avenue, is being used for construction of a mixed-use building with a luxury boutique 90-key hotel and 96 residential Condo units. A similar fate should be prevented on the area’s few remaining development sites.
4. The commitment during the Hudson Yards rezoning to make the central provisions of the Special Clinton District, Special Hudson Yards District and the P2 portion of the Special Garment Center District more consistent concerning protection of existing residential buildings remains unfulfilled.
5. Where Dyer Avenue functions as a street (between 34th and 36th Streets and 41st and 42nd Streets), it should not generate development sites or transferable development rights.

6. Changes are needed in the Special Clinton District text to allow the relocation of the residents of 544 West 35th Street. That building has been condemned to make way for the Hudson Boulevard and Park and its tenants are being relocated to the Special Clinton District by the Department of Housing Preservation and Development. Minor changes are needed in the Special Clinton District text to allow this to occur.

As always, thank you for considering our comments.

Sincerely,



Jean-Daniel Noland
Chair
Manhattan Community Board 4



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

cc: Department of City Planning
Erika Sellke
Dominick Answini
Manhattan Borough President
Anthony Borelli, Director, Land Use Division
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