

**Testimony of Manhattan Community Board No. 4
before the City Planning Commission on
ULURP Application N 060046 ZRM - Hudson Yards Additional Text Amendments
November 16, 2005**

Remarks by J. Lee Compton, Chair

Good morning. My name is Lee Compton, and it is a pleasure to appear before you again. Two things have changed since I last addressed you.

First, I now am the Chair of Community Board 4.

Second, I am speaking on behalf of the Community Board as a co-applicant on this matter with Councilmember Quinn.

The latter is a special privilege for which we are grateful, both to the Councilmember and to City Planning. I haven't yet made up my mind about the former.

The Hudson Yards rezoning is an extraordinary plan that took a combination of intensive work, tough negotiation and a cooperative spirit over the course of more than two years.

As with anything of this magnitude, there are things in it that don't work, that aren't worded quite right or that were remembered too late to be included in the final document.

This follow-up application addresses many of the changes in the Zoning Resolution that were agreed to when the rezoning was approved by the City Council in January.

It includes several changes that are very important to the community, including the addition of a harassment and cure provision, the updating of a similar provision for the Special Clinton District, and the prohibition of conversion of ground floor residential uses on mid-blocks.

Community Board 4 strongly supports these changes. Furthermore, we expect to participate in a separate ULURP process to implement additional text amendments required to make central provisions of the Special Clinton District, Hudson Yards and the Special Garment Center District more consistent with the protection of existing residential buildings.

However, there is one provision in the current application that we oppose. That is the proposed text amendment to the 42nd street theater bonus. It is wrong for theaters. It is wrong for residents. We urge you to remove it.

I now would like to present my colleagues Anna Levin and Anthony Borelli to explain the Board's, and the community's, opposition to this text amendment.

Remarks by Anthony Borelli, District Manager

My name is Anthony Borelli. I am District Manager of Manhattan Community Board No. 4. I am also a resident of the district.

Of the 18 proposed text amendments, only the one concerning the 42nd street theater bonus has attracted strong negative reactions from our community.

Currently the bonus is available only to developments that include "new legitimate theater uses".

The amendment would also allow "non-profit performing arts uses" to qualify for the bonus.

The New York Times reported that The Related Companies, the owner of the entire block on 42nd Street between Dyer Avenue and Tenth Avenue, is considering a facility with 1,800 to 2,000 seats for Cirque du Soleil as a bonusable use at that development site. The message I am to deliver, and others that follow will express similar sentiments, is that real theaters are wanted in this community; a circus, to put it mildly, is not.

This possibility is very distressing to us and to members of our community on at least two levels.

First, Cirque du Soleil, and any other very large Times Square style entertainment venue, would be entirely inappropriate in this area.

42nd Street west of Eighth Avenue has become a solidly residential corridor all the way to the Hudson River. The commercial uses there are more or less limited to ground floor spaces of primarily residential buildings. These spaces are occupied by off-Broadway theaters or retail and service businesses that serve the local community.

The Hudson Yards rezoning and the Special Clinton District reinforce the residential character of 42nd Street and ensure that 10th Avenue to the south of the site will become a dense residential corridor as it is to the north. The Circus would be at a residential crossroads. This location is the heart of the Clinton/Hell's Kitchen neighborhood, not Times Square!

We must also object to notion that Cirque du Soleil, or any other very large Times Square style entertainment venue, deserves a public subsidy that is intended to restore the presence of off-Broadway theater on that block. Anna will describe this issue in more detail when it's her turn to speak.

At a public meeting held by our Clinton/Hell's Kitchen Land Use Committee, we heard from representative of the MCC Theater and The Orchestra of St. Luke's about their planned activities, their needs for space, and their interest in being part of the Related Company's development.

MCC Theater told us that they are seeking space for 199-seat theater, along with up to 5,000 SF of rehearsal and office space. The Orchestra of St. Luke's has proposed a classical music rehearsal space that would be open to the public. It's this idea that's behind the proposal to expand bonus-able uses to include "non-profit, performing arts uses".

We would like to see off-Broadway theaters return to the site and we are open to the idea using the bonus for other legitimate public amenities. That said, we agree St. Luke's and MCC Theater represent public amenities and should qualify for the bonus. They tell us they are ready, willing and able, but unfortunately, they seem to be left out of any meaningful discussion of their proposals.

Thank you.

Remarks by Anna Levin, Co-Chair, Clinton/Hell's kitchen Land Use Committee

The origins of the theater bonus in ZR Section 96-25 are a bit murky, at least to us.

It applies on the south side of 42nd Street between Dyer and Eleventh Avenues. As a practical matter, the bonus will be available for only two sites - the southeast corner of 42nd Street and Eleventh Avenue, and the site for which it was really intended, which is the large site now being developed by The Related Companies at the southeast corner of 42nd Street and Tenth Avenue.

These sites have a base FAR of 10, which may be increased to 12 using the inclusionary housing bonus. The theater bonus allows, by certification by the Chair, additional floor area up to 15 FAR. The text provides that "three additional square feet of floor area may be provided for each square foot of new legitimate theater use." [The Related site is large - 70,000 square feet. 3 FAR times 70,000 square feet is a valuable bonus.]

96-25 first appeared in the public eye when the Hudson Yards "A text" was released on September 2, 2004. There had been no discussion with this community about the desirability of the bonus, and, if asked, we would have told you it was a bad idea: there is plenty of off-Broadway theater space in the area already, and they are struggling to find users, and 15 FAR buildings are too big for the 42nd Street residential corridor. But we couldn't have told you that - at least not formally - because our review period on the Hudson Yards ULURPs had expired the week before the A text was released.

We also note, parenthetically, that the A text first appeared weeks after Related had acquired its site from the City, which had owned the property for years.

On November 12, 2004, days before the Commission was to act on the Hudson Yards zoning actions, the "B text" was released. The B text reduced the number of seats required in theaters qualifying for the bonus from 150 to 99. Vishaan Chakrabarti's memo

to you explained that the change was being made "in order to provide greater flexibility for the location of off-Broadway theaters."

This bonus was intended to provide small theaters. It is also something entirely new. In the Special Midtown District zoning there is a theater redevelopment bonus, for rehabilitation of existing listed theaters provided they continue to be used as "legitimate theaters." But a bonus for a brand-new theater exists no place else in the Zoning Resolution.

In addition, this bonus lacks definition. "Legitimate theater" is not a defined term, and the provision lacks the protection that is normally included in bonus text - that there be "appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area." [That's from ZR 81-745, in the Special Midtown District text.]

Shortly after the Hudson Yards rezoning went into effect, we began to hear rumors about allowing a "classical music rehearsal space" to qualify for the bonus. We understand that the language before you today - adding "performing arts use" to the uses that would qualify for the bonus - was worked out in discussions amongst the various City agencies involved, The Related Companies, and the Orchestra of St. Luke's, and was intended to apply specifically to the classical music rehearsal space. No sooner had that language been worked out than we began to hear that the developer was considering other "performing arts" uses. The House of Blues, perhaps. The draft amendment was further changed to require performing arts uses to be "non-profit." The House of Blues idea was dropped and now, apparently, the developer is claiming that the Cirque de Soleil, with audiences of up to 2,000, would qualify for the bonus as a legitimate theater.

This is a complete perversion of what was intended by Section 96-25. It provides a substantial financial reward to the developer, and a subsidy to a mature corporate enterprise that doesn't need this kind of help. And it brings a Times Square entertainment use to a residential area. 42nd and 10th may be west of Times Square, but it's a long way from Las Vegas.

This is a mess. It's not what you intended when you created the bonus. And it's certainly not what this community will accept. We need a time-out.

It makes no sense to allow this bonus mechanism - in its current or amended form - until the developer's intentions are fixed and the corresponding benefit to the public is clear. Such caution is particularly required since the developer has chosen to take no part in the public consideration of the application, though it is the principal beneficiary of the bonus provision.

We are concerned that loose language such as "legitimate theater" and "performing arts uses" will invite uses that are inappropriate for this location.

This Board has a demonstrated history of working with property owners and the Department of City Planning to adapt zoning text to specific situations that meet the

needs of all parties. We urge the Related Companies to work with this community to identify a use and a tenant that will satisfy the developer's legitimate financial and marketing needs and provide a public amenity that is appropriate for the scale of this bonus and appropriate for this residential area. Small theaters would be appropriate. A classical music rehearsal space could be appropriate. There might be other uses that would be appropriate.

We commit ourselves to working quickly with all concerned to approve an appropriate text modification, written with a specific user in mind and with appropriate protections concerning future users.

However, in the absence of a specific proposal, we cannot recommend approval of the proposed modification, and we further recommend suspension or removal of the theater bonus provision altogether pending additional amendments to ensure that the original intention of providing small off-Broadway theaters is achieved.

To summarize, then, Manhattan Community Board No 4 recommends:

That you disapprove Item 16 in the application - the amendment of the theater bonus text;

That you approve the 17 other items in the application - and quickly because development pressures make the anti-harassment provisions urgently needed; and

That you remove or otherwise suspend effectiveness of the existing theater bonus mechanism so that its defects can be addressed.

Thank you.