



**DELORES RUBIN**  
Chair

**JESSE R. BODINE**  
District Manager

CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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January 9, 2017

Hon. Carl Weisbrod, Chair  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

**Re: Zoning Text Amendment No. N160396ZRM**  
**536-552 West 23<sup>rd</sup> Street**

Dear Chair Weisbrod:

On the recommendation of its Chelsea Land Use Committee, following a duly noticed public hearing at the committee's meeting on December 19, 2016, Manhattan Community Board 4 (CB4), by a vote of 36 in favor, 0 opposed, 2 abstaining and 0 present but not eligible to vote, recommended denial of an application for a zoning text amendment (ZR Section 98-24) to facilitate a mixed residential and commercial development unless the developer fulfills the conditions outlined in the attached letter to the Department of Housing Preservation and Development (HPD) regarding the substitution of affordable housing units for those lost with the demolition of 500 West 28<sup>th</sup> Street.

**Background**

The applicant's project site is located in the Special West Chelsea District (SWCD). The site is on the eastern side of Eleventh Avenue and the southern side of West 23<sup>rd</sup> Street with a small portion that fronts on West 22<sup>nd</sup> Street (on Block 694, lots 5, 58, 60, 61 and 65). U-Haul, owns the site, and operates a truck rental and storage unit business there. The site is governed by three zoning districts:

*Area #1:* The western portion (lots 65 and p/o 5), primarily along Eleventh Avenue and the West 23<sup>rd</sup> Street corner is in SWCD Subarea D with a C6-3 district which has an FAR of 7.5 and a height limit of 250.

*Area #2:* The eastern portion fronting on the mid-block West 23<sup>rd</sup> Street (lots 58, 60 and 61) is in a C6-3A district with an FAR of 7.52 and a height limit of 145.

*Area #3:* A small portion of the site which fronts on West 22<sup>nd</sup> Street (p/o lots 5, 61 and 65) is in SWCD and governed by an M1-5 district with an FAR of 5.0 and a maximum height of 135 feet; most commercial uses are permitted; residential use is not permitted.

Before the project site was rezoned in 2005, the portions of the site on Eleventh Avenue (Area #1 above) and mid-block on West 23<sup>rd</sup> Street (Area #2) were mapped M1-5/R9A . The floor area in these portions could be distributed across the site as-of-right. However when the SWCD was created, different FARs were established for these two portions of the site. Area #1 was changed to a C6-3 district which has an R9 equivalent with an FAR of 7.5 (SWCD Subarea D). Area #2 (midblock) was changed to a C6-3A district with an R9A equivalent with an FAR of 7.52, the same FAR before the 2005 rezoning.

Floor area is not allowed to be transferred between zoning lots divided by zoning district boundaries if these districts do not have the same FARs (Zoning Resolution, Article VII, Chapter 7). Because U-Haul intends to keep Lot 58 (eastern-most lot on the site with an existing three story building with 41,130 square feet) for its business and because that lot would have 70,000 square feet of unused floor area, it would be beneficial for the applicant to transfer that unused FAR to other lots in the project site to facilitate the proposed mixed commercial and residential development. However, the Zoning Resolution does not permit that transfer as-of-right.

### **Description of Proposal**

The applicant proposes an amendment to the Zoning Resolution that would permit the distribution of floor area across zoning districts on the project site so that other portions of the site could utilize the 70,000 square feet of unused floor area from Lot 58 where U-Haul intends to remain. U-haul would keep its retail and truck rental operation but not its storage unit business. The applicant plans to distribute 59,000 square feet of unused floor area from Lot 58 to Lot 65 and the remaining 11,000 square feet to other portions of the Project within the C6-3A district.

The proposed text amendment would be ZR Section 98-243 “Located partially within Subareas D and C6-3A Districts” and would read as follows:

For a #zoning lot# fronting on West 23<sup>rd</sup> Street and 11<sup>th</sup> Avenue, located partially within Subarea D and partially within a C6-3A District, #floor area# may be transferred from the portion of the #zoning lot# in the C6-3A District to the portion of the #zoning lot# in the C6-3A District to the portion in Subarea D.

If the proposed text amendment permitting the transfer of unused FAR from Lot 58 is approved, the applicant’s project would consist of a 22-story, 288,000 square foot mixed residential and commercial use building. Approximately 140 residential units would be on the upper floors. Retail and gallery uses would be located on the ground floor along West 23<sup>rd</sup> Street and Eleventh Avenue. The height of the building on Eleventh Avenue would be 250 feet as permitted by the existing Subarea D zoning regulations and would be consistent with other buildings north and south of the site.

The proposed development in the C6-3A portion would rise to a height of 145 feet. The M1-5 portion of the site fronting along West 22<sup>nd</sup> Street would be occupied with permitted commercial uses. Except for the transfer permitted by the proposed text amendment the proposed development would be as-of-right under the existing zoning.

## Community Board 4 Considerations and Recommendation

CB4 believes that the difference in FARs (.02) for Subarea D (7.5) and the adjacent C6-3A district (7.52) is an unintended consequence of the 2005 SWCD mapping. The New York City Department of City Planning staff agree that creation of the two different FARs was not planned and that the proposed text amendment is appropriate. This text amendment would only pertain to the applicant's location and no other site. No new floor area would be created as a result of the proposed text amendment.

CB4 is in favor of the proposed text amendment permitting the transfer of FAR across zoning districts at 536-552 West 23<sup>rd</sup> Street, but we recommend to the City Council that the application be denied unless the applicant fulfills the conditions outlined in the attached letter to HPD.

Sincerely,



Delores Rubin  
Chair  
Manhattan Community Board 4



John Lee Compton, Co-Chair  
Chelsea Land Use Committee



Betty Mackintosh, Co-Chair  
Chelsea Land Use Committee

### Enclosure

cc: Vicky Been, Commissioner, NYC Department of Housing Preservation and Development  
Rick Chandler, Commissioner, NYC Department of Buildings  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Corey Johnson, City Council  
Hon. Brad Hoylman, State Senate  
Hon. Richard Gottfried, State Assembly  
Greg Gushee, Senior Vice President, Related Companies



January 3, 2017

Manhattan Community Board 4  
330 West 42nd Street, 26th Floor  
New York, New York 10036

RE: 500 West 28<sup>th</sup> Street and U-Haul site

Ladies and Gentlemen:

Related is pleased to work with CB4 once again in the creation and preservation of affordable housing. To address your request for additional affordable housing in CB4 in conjunction with our conversations on 500 West 28<sup>th</sup> Street, and in acknowledgement of your agreement that the zoning text amendment for the U-Haul site should be approved with no other condition other than resolving the 500 West 28<sup>th</sup> Street concern, we are pleased to do one of the following per our agreement:

- 1) Increase the affordability of 9 units at the Tate from 130% AMI to 90% AMI as follows: In the likely event (and Related's current intention) that Related extends the 421a program at the Tate (a 313-unit existing 80/20 rental building in West Chelsea on West 23<sup>rd</sup> Street between 10<sup>th</sup> and 11<sup>th</sup> Avenues), Related would increase the affordability of 9 units of the 16 units that would otherwise be income restricted to 130% AMI under the existing Chapter 47 421a Extended Affordability Program Rules, to 90% AMI. CB4 can determine what income level (AMI%) for each of the 9 units (between 50% AMI and 130% AMI, averaging 90% AMI), or
- 2) Provide a substitute plan for contributing to affordable housing in Chelsea (CB4 below 34<sup>th</sup> Street) of similar value to the increased affordability of the 9 units to be approved by CB4 and HPD (not to be unreasonably withheld, delayed or conditioned), or
- 3) In the event neither of these has occurred within 12 months after the expiration of the existing 421a program at the Tate on June 30, 2023, then CB4, HPD, or designee, can take title to the property at 500 West 28<sup>th</sup> Street.

Related will record a restrictive declaration or similar document on 500 West 28<sup>th</sup> Street asap to provide CB4 and HPD the collateral for this agreement.

It has been a pleasure working with you on this and we look forward to drafting the final documents on this.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Greg Gushee', with a long, sweeping underline.

Greg Gushee  
Executive Vice President



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**DELORES RUBIN**  
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**JESSE R. BODINE**  
District Manager

January 9, 2017

Vicki Been  
Commissioner  
NYC Dept. of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038

**RE: 500 West 28<sup>th</sup> Street**

Dear Commissioner Been:

On the recommendation of its Chelsea Land Use Committee, Manhattan Community Board 4 (CB4) voted, by a vote of 38 in favor, 0 opposed, 0 abstaining and 0 present but not eligible to vote, to recommend that the Department of Housing Preservation and Development (HPD) enter into agreements with Related and its subsidiary 311 Tenth Avenue Associates, LLC (Related) regarding the providing of affordable housing units in connection with those lost when 508 West 28<sup>th</sup> Street was demolished.

In conjunction with an application for a zoning text amendment for 536-552 West 23<sup>rd</sup> Street (N160396 ZRM; see attached CB4 letter dated January 9, 2017), Related has agreed to enter into an agreement with HPD on behalf of CB4 to formalize and secure a commitment to provide additional affordable housing in the Chelsea portion of Manhattan Community District 4 (CD4). Related has provided the Board with a letter committing to such an agreement (attached), and has agreed to have executed an agreement with HPD by the time of the City Council vote on the application.

**Background**

500 West 28<sup>th</sup> Street was a four story, six unit residential building on the southwest corner of Tenth Avenue and West 28<sup>th</sup> Street. The site is located in Subarea C of the Special West Chelsea District (SWCD) and is adjacent to the Related building under construction at 520 West 28<sup>th</sup> Street. Related purchased the building vacant in 2013 and determined that it was in serious disrepair and unsafe. As a result of an error made by Related on the initial filing forms and by the Department of Buildings (DOB) during review of the application, DOB issued a demolition permit on March 29, 2016 despite SWCD demolition restrictions; the building was removed in its entirety. Related believes that the work required to bring the building up to code would have taken the building out of rent regulation and thus believes that there has been no loss of affordable housing units. Related has sold all but 1 FAR of the site's floor area and plans to build a one-story structure for a gallery or similar use through this mechanism.

The series of claims and counter-claims surrounding the demolition are detailed in the attached letters from CB4's Housing, Health and Human Services committee and Related. In this letter we wish only to note that this is one instance in a pattern of errors and false or misleading statements by applicants and

errors by DOB regarding demolition restrictions in special districts that have led to the loss of nearly one hundred units of affordable housing in our special districts.

Related is one of the most prolific developers in the city and in CD4: its ongoing Hudson Yards development is one of the largest developments in the country; it has multiple projects in Subarea A of the SWCD; and the penthouse at the 39-unit Zaha Hadid-designed building at 520 West 28<sup>th</sup> Street, adjacent to 500 West 28<sup>th</sup> Street, is being offered at \$50 million.

In addition to its luxury development, Related is a major provider of affordable housing, utilizing tax incentives such as the 421a program to build buildings with large numbers of affordable units. Despite differences over the years with the implementation of the affordable programs, CB4 recognizes and appreciates the contributions Related has made to the affordable housing stock in CD4.

### **Related Proposal**

Related expects to continue to produce affordable housing in CD4 as part of its future development projects, but the Board is seeking additional affordable units above and beyond those produced during the normal course of development to offset the loss of the six units at 500 West 28<sup>th</sup> Street. Related has proposed a solution involving currently market rate units in the Tate at 535 West 23<sup>rd</sup> Street, which it owns. Related also will continue to seek acceptable alternatives that could be implemented more quickly.

The Tate has a total of 313 units, of which 63 are affordable under the 421a tax incentive program. Related intends to apply to extend the Tate's 421a program when it expires in 2023. If the extension is granted, sixteen of the currently market rate units would become income restricted at 130% of Area Median Income (AMI). Related proposes to increase the affordability of nine of these sixteen units to levels between 50% and 130% of AMI as determined by CB4 as long as the average income restriction is 90% of AMI.

As security for their proposal, Related proposes to place a restrictive covenant or other legal device on 500 West 28<sup>th</sup> Street deeding the property to HPD, or another suitable entity, if they have not complied with the terms of this proposal, or the terms of a substitute proposal acceptable to CB4 and HPD, by a date to be determined.

### **Analysis and Recommendation**

The Board's preference would be the rebuilding of the six lost affordable units at 500 West 28<sup>th</sup> Street. We believe this would send a powerful message to the development community that errors during planning and implementation, willful or not, have significant consequences that warrant careful attention to the regulations designed to protect affordable housing.

While not our preference, Related's Tate proposal would increase the CD4 affordable housing stock in income bands that are difficult to produce under current incentive programs. The principal deficiency of the proposal is its timing and length of affordability; we would greatly prefer that the replacement units be provided immediately. In discussing its proposal with the Board, Related has cited the timing of the expiration of the current 421a tax exemption in 2023 and financing agreements with investors and partners as obstacles to the rapid implementation of the Tate proposal.

While the 421a program provides valuable tax incentives to developers, the housing units that are provided in exchange for the incentives are only transiently affordable to people unable to afford market-rate units. Under the proposed 421-a extension program, the additional affordable units to be made available at the Tate would only be restricted for a 15 year period. CB4 is a strong advocate for

permanently affordable units and therefore requests that any affordable replacement units created be affordable in perpetuity.

CB4 requests the following actions on the part of HPD and Related:

- HPD will create whatever legal documents are necessary to secure an interest in 500 West 28<sup>th</sup> Street as security for Related's performance on its proposal.
- HPD will work with Related to create additional permanently affordable housing units in Chelsea. The specific manner of their creation may be the Tate proposal or an alternative that achieves CB4's goal of affordable units substituting for those lost at 500 West 28<sup>th</sup> Street, but the Board requires that the units be permanently affordable.
- HPD will seek a means to accelerate the extension of the Tate's 421a tax exemption, thus permitting the conversion of the sixteen market rate units to affordable units more quickly.
- Related will seek agreements with its investors and partners that would allow it to take advantage of such an accelerated extension in order to create the new affordable units quickly.

CB4 is committed to preserving existing affordable housing in CD4 and to pursuing opportunities to increase it further. We appreciate Related's creative plan to offset the loss of the 500 West 28<sup>th</sup> Street units, as well as their ongoing efforts to produce new affordable units in CD4.

Sincerely,



Delores Rubin  
Chair  
Manhattan Community Board 4



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Chelsea Land Use Committee



Betty Mackintosh, Co-Chair  
Chelsea Land Use Committee

**Enclosure**

cc: Carl Weisbrod, Chair, City Planning Commission  
Rick Chandler, Commissioner, NYC Department of Buildings  
Karolina Hall, NYC Department of City Planning  
Annie White, NYC Department of City Planning  
Hon. Corey Johnson, City Council  
Greg Gushee, Senior Vice President, Related Companies