



## CITY PLANNING COMMISSION

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June 19, 2013/Calendar No. 23

N 130178 ZRM

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IN THE MATTER OF an application submitted by the Department of Cultural Affairs pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 3 (Special Hudson Yards District), Community District 4, Borough of Manhattan.

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This application (N 130178 ZRM) for an amendment of the Zoning Resolution relating to Article IX, Chapter 3 (Special Hudson Yards District) was filed by the Department of Cultural Affairs (DCA) on January 31, 2013. On June 14 2013, DCA filed a revised application which modified the definition of the ERY Culture Festival and Exhibit Facility so that the zoning definition better reflected the proposed program for the facility and removed the provision permitting events in the Culture Facility Plaza to extend into the adjacent Outdoor Plaza.

### **BACKGROUND**

DCA has proposed the amendment of certain provisions of Article IX, Chapter 3 of the Zoning Resolution, applicable to the Special Hudson Yards District, to facilitate the development of a cultural facility known as the “Culture Shed.” The Culture Shed is proposed to be developed on a portion of Subarea A1 of the Eastern Rail Yard, between West 30th and West 31st Streets, between Tenth and Eleventh Avenues (the “Culture Shed Site”). The Culture Shed Site would be conveyed by the City to the Culture Shed, Inc. (the “Culture Shed Developer”), a not-for-profit entity, which would develop the Culture Shed, acting as designated developer.

### Site History

In 2005, the City of New York adopted special provisions of the Zoning Resolution to enable the development of the Hudson Yards area to transform it into a high-density, mixed-use neighborhood, including the development of the Metropolitan Transportation Authority’s John D. Caemmerer Yard located between Tenth and Eleventh Avenues. The Hudson Yards zoning provisions identified certain subareas within the Hudson Yards area, including Subarea A1,

which is located on the southernmost portion (between West 30th Street and West 33rd Street between Tenth Avenue and Eleventh Avenue) of the new Hudson Yards neighborhood that extends from West 30th Street to West 41st Street generally west of Eighth Avenue. The Hudson Yards zoning provisions envisioned a large mixed-use development over and adjacent to the existing open rail yard (which would continue to operate) within Subarea A1, including the construction of buildings comprising up to 11.0 FAR of commercial, residential and community facility uses, of which up to 2 FAR could be used for community facility use. In 2007, the MTA, as the owner of the Eastern Rail Yard, issued a request for proposals to lease the airspace and a portion of land located within Subarea A1 for development pursuant to the Hudson Yards zoning provisions applicable to Subarea A1, and a developer was subsequently designated by the MTA.

Development of a cultural facility in the southern portion of Subarea A1 has been an element of the development plan for Hudson Yards since the initial proposal for the Hudson Yards area. The current Hudson Yards zoning provisions contain restrictions on the location of buildings in Subarea A1, and provide for the development of a community facility use located within 220 feet of West 30th Street, west of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard East, adjacent to the “connection to the High Line” (defined in ZR Section 93-71(f)), and “not closer than 50 feet east of the ‘southerly prolongation of the western sidewalk widening line of Hudson Boulevard West’” (the “Original Cultural Facility Location”). Pursuant to a Memorandum of Understanding signed in 2010 by the City of New York and the MTA, the MTA agreed to convey to the City an approximately 21,000 square foot lot at the Original Cultural Facility Location with 100,000 square feet of floor area for such cultural facility.

The Hudson Yards zoning provisions establish public access requirements for Subarea A1, which comprises a single zoning lot, including requirements for a public plaza, an outdoor plaza, and other public access areas, including a connection to the High Line. The public access areas must occupy at least 55 percent of the lot area of the zoning lot (comprising all of Subarea A1), with at least 40 percent of the lot area publicly accessible and open to the sky.

Since the adoption in 2005 of the Hudson Yards zoning provisions, there have been several

amendments to these regulations relating to Subarea A1, including an amendment in 2009 concerning the location of buildings and parking and the parking requirements (N 090211 ZRM). In 2012, amendments were adopted at the request of the designated developer, ERY Tenant LLC, relating to the design of the public access areas, sign regulations and retail requirements (N 120176 ZRM). In connection with the 2012 amendment requested by the ERY Tenant, an application by the Department of City Planning to amend the Hudson Yards zoning provisions to allow the use of the High Line as part of the required public access areas was also approved (N 120171 ZRM).

The designated developer for the ERY, ERY Tenant, is in the process of applying for a building permit for the first tower to be constructed in the ERY, an office building to be located on Tenth Avenue between West 30th and West 31st Streets east of the Culture Shed and labeled Tower C. ERY Tenant is also preparing plans for a retail building on Tenth Avenue north of the Tower C office building, and a primarily residential tower west of and abutting the Culture Shed Site labeled Tower D.

#### Organization Description

The mission of the Culture Shed is to present exhibits, performances and other events across the spectrum of arts and culture, including visual art, design, dance, theater, music and media. The facility's design both facilitates and embodies this mission: the Culture Shed is planned as a flexible structure that can expand and contract as necessary to create a multi-purpose venue intended to foster innovation, collaboration, and cross-pollination in the creative sector. Community programming, ranging from film screenings to green markets, is also an essential part of Culture Shed's mission. The Culture Shed Organization will produce and present a full calendar of events in its architecturally dynamic spaces that have been designed to museum standards, providing a new platform for artists and multiple audiences.

The Culture Shed will follow a 'Kunsthalle' model: without a permanent collection or affiliation with any one institution, the Culture Shed will operate as a venue for short-term exhibits, performances and special events. The ability to present multiple works or events simultaneously

in several spaces is intended to allow for unique forms of collaboration across artistic and design disciplines. For example, a theater or dance company may present performances in a space adjacent to an art exhibit, with the performance and exhibit organized around common or related artistic themes and motifs.

A unique feature of the Culture Shed will be its ability to house large scale exhibits and events not easily accommodated in other venues in New York City; as a result a number of New York City not-for-profit organizations have already expressed an interest in using the Culture Shed as a venue for presenting special programming. The Culture Shed will also provide an opportunity for major arts institutions around the globe to present traveling art exhibitions or performances. To that end, the Culture Shed will introduce a Cultural Timeshare program providing contributing global and national partners in the visual and performing arts with large contiguous spaces in which to present shows. The Cultural Timeshare will create a multi-year rotating pool of world-class innovative programming presented by leading national and international organizations.

The Culture Shed will host three main categories of activities relating to arts and cultural programming, including: activities produced and presented by the Culture Shed Organization; activities conceived and presented by the Culture Shed Organization in collaboration with local, national and international not-for-profit institutions; or activities presented at the Culture Shed by another not-for-profit organization (i.e. a traveling art exhibition or performances by a non-New York based dance troupe).

The majority of performing arts events and exhibits will be ticketed, charging moderate fees similar to those at other New York City not-for-profit cultural organizations and fully open to attendance by members of the public. It is anticipated that at least half of the programming calendar will be dedicated to this type of programming.

The facility would also house public and community programming that will offer free or low cost events and activities including concerts, theatrical and dance productions, seasonal markets,

film screenings, family festivals, etc. It is anticipated that one third of the programming calendar will be dedicated to this type of programming.

In addition, special event programming that includes not-for-profit and for profit large scale festivals, events and celebrations across the range of disciplines encompassed in Culture Shed's mission, including fashion, theater, visual art and music, would also occur. Fashion Week is expected to be presented at the Culture Shed, with revenues used to support the Culture Shed's other activities.

Culture Shed will be available for occasional rental by non-profit and commercial entities. Rentals will be made to organizations – non-profit and commercial – whose mission is aligned to that of the Culture Shed Organization.

The percentage of commercial rentals will be consistent with similar arrangements at other New York City cultural institutions (i.e. the Brooklyn Academy of Music; Carnegie Hall; the Metropolitan Museum of Art; the Museum of Natural History; the Park Avenue Armory). A sliding fee scale will be instituted, with favorable rates provided for not-for-profit institutions.

The Culture Facility Plaza, located directly to the east of the Culture Shed building, will be a public open space that may be used for Culture Shed-related events, such as open air exhibits or performances. These will be open to the public free of charge, sometimes on a time-ticketed basis due to limited event capacity. In addition, the Culture Facility Plaza may be closed up to 12 times a year for private events. At times when the moveable shed is deployed over the Culture Facility Plaza, the area of the Plaza will be used for Culture Shed Arts and Cultural, Public and Community, and Special Event programming, as described above.

Although the Culture Shed is still in the planning stages, several not-for-profit organizations have already expressed an interest in collaborating with the Culture Shed Organization or an interest in using the Culture Shed as a venue for presenting their not-for-profit programming. These include the Guggenheim, the Film Society of Lincoln Center, the Hirshhorn Museum,

TED Conferences LLC, the Whitney Museum, the Dia Art Foundation, and the Public Art Fund as well as academic organizations such as the Tisch School of the Arts and Columbia University School of the Arts.

### Description of Project

The Culture Shed will consist of a fixed building (the “Culture Shed Building”), with a retractable shed (the “Shed Portion”) that would be deployed from time to time to the east of the Culture Shed Building to provide additional space for exhibits and events. Portions of the Culture Shed, primarily back office and service facilities, would be located in the residential building (currently known as Tower D) to be developed by the ERY Tenant to the immediate west of the Culture Shed Site, on the east side of Eleventh Avenue between West 30th and West 31st Streets. The City would acquire the lot area needed for the development of the Culture Shed from the MTA and lease it to the Culture Shed Developer. The 2005 Hudson Yards actions included an acquisition and a disposition action for the Eastern Rail Yard Site (040505 PQM, 040506 PPM).

The Cultural Facility Plaza, with a lot area of approximately 17,758 square feet, would be developed to the east of the Culture Shed Building as part of the required public access areas. This plaza will be covered by the Shed Portion from time to time, in connection with Culture Shed events. When the Shed Portion is not deployed, the Culture Facility Plaza would be used for a variety of activities that would be open to the public.

### Proposed Action

As set forth in the original application, the following changes to the provisions of the Zoning Resolution would be needed to enable the construction of Culture Shed:

- Establish a definition for the ERY Culture Festival and Exhibit Facility that would permit all of the activities proposed by Culture Shed and, since no existing zoning use designation fits the wide variety of programs expected in the facility, allow them to be treated as community facility uses or uses in Use Groups 3 and 4.

- Modify the applicable sign regulations to allow signs on three sides of the Culture Shed, with a maximum total surface area of 2,700 square feet, with not more than 200 square feet of signs facing the outdoor plaza or the connection to the High Line, and allow the use of banners, similar to other community facility uses.
- Revise the existing text with respect to the location of the cultural facility so that the Culture Shed Building may abut, and include support space within, Tower D.
- Allow certain portions of the Culture Shed, including floor area in portions of elevator shafts and stairwells in the abutting residential tower that pass through floors occupied by Culture Shed, to be excluded from the definition of floor area in the Zoning Resolution, so as to permit a facility of appropriate size.
- Provide that in the event that Tower D includes floor area for the Culture Shed, it is not required to have retail continuity facing the outdoor plaza.
- Reduce the width of the defined “connection to the High Line” (ZR Section 93-71(e)) from 80 feet to a minimum of 60 feet, to accommodate the new Culture Facility Plaza. Require that any portion of the cultural facility that cantilevers over the connection to the High Line must not project beyond a defined limiting plane or distance over such connection.
- Create a new open space, the Culture Facility Plaza, that would be considered open space and open to the sky for purposes of meeting the minimum required open space standards in Subarea A1. The Culture Facility Plaza would be treated as public access area for purposes of the Hudson Yards Zoning Provisions notwithstanding that at times the Culture Facility Plaza would be covered by the deployed Shed.
- Permit portions of the outdoor plaza (as defined in Section 93-71(b)) to be used in

connection with events in the Culture Facility Plaza and to be subject to time-ticketed access for such events, as well as allow roadways within the outdoor plaza adjacent to the Culture Facility Plaza to be temporarily closed to vehicular traffic during such events.

- Require that the Culture Facility Plaza be constructed prior to a TCO for the Culture Shed Building. Clarify that the construction of the Culture Facility Plaza is not a condition to a building permit or certificate of occupancy for any building other than the cultural facility.
- Allow the Culture Facility Plaza (and adjacent portions of the outdoor plaza when used in conjunction with events in the Culture Facility Plaza) to be closed to the public up to 12 days each year in connection with Culture Shed events.
- Facilitate the use of space within Tower D (the residential tower to the west of the Culture Shed Site), to provide storage, restrooms, maintenance facilities or other support space for the ERY High Line by excluding the floor space of such support facilities from the definition of floor area.

## **ENVIRONMENTAL REVIEW**

The application (N 130178 ZRM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 13DCP083M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed action, a Negative Declaration was issued on February 4, 2013. On June 17, 2013, a Revised Negative Declaration was issued which reflects the revised application.

## **PUBLIC REVIEW**

On February 4, 2013, this application (N 130178 ZRM) was duly referred to Community Board 4 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Review**

Community Board 4 held a public hearing on the application on April 3, 2013, and on that date, by a vote of 44 in favor to 1 opposed and 0 abstaining, adopted a resolution recommending disapproval of the application subject to the following conditions:

1. The City provides 20,000 square feet of publicly accessible park space in another location acceptable to CB4 to compensate for the loss of public access and openness to the sky on the 20,000-square foot proposed Culture Facility Plaza.

If and only if 20,000 square feet of publicly accessible park space is provided as described above, the Board recommends denial of the proposal unless:

2. There is no encroachment of Culture Shed uses on the ERY central public square to the north of the Culture Facility Plaza.
3. The number of days that the Culture Facility Plaza would be closed to the public is limited to 34, primarily in the winter and spread out over time.
4. The catchall phrase at the end of the Culture Shed definition – “or any similar activity” – be deleted and a more precise delineation of cultural events or exhibits which might be considered under the categories of "broadcasting, technology, and fashion and design."
5. CB4 be given a seat and a vote on any decision-making board(s) for Culture Shed programming.
6. An Open Space Task Force is formed and includes a seat for CB4.
7. A minimum of 80% of events (regardless of their type) be open to the public for free or at nominal cost.
8. For those major events that occupy the Culture Shed for more than three months, either the entire event or a meaningful portion of it is open to the public at no charge.
9. For private events that occupy the Culture Shed for longer than two weeks, interested community residents should have some type of access.
10. Children’s programming is included in the Culture Shed’s activities.
11. Confirm that the Culture Shed bathrooms in the ground floor lobby in Tower D would not be closed to the public at any time.
12. The City and Related work to secure support space for the High Line’s operational support needs at the northern end of the High Line.
13. Lights on signs are required to be off after 1:00 a. m.
14. A timeline with critical milestones for the construction of the Culture Shed and the construction of other key buildings and features in ERY is provided to CB4.

15. At least 40% of the total expected cost of the construction of the Culture Shed be raised before construction starts, and that once construction commences it shall be continuous until the Culture Shed is complete.

16. Confirm that “Culture Shed, Inc.” is a non-profit developer.

17. Applicant uses its best efforts to hire employees from within CD4 and agrees to place a link to Culture Shed job openings on the CB4 website.

### **Borough President Review**

This application was considered by the Borough President, who issued a recommendation in support of the application on April 5, 2013 saying that the proposed zoning rules allow a variety of events to occur in the space and thus give much-needed flexibility. The recommendation also noted an agreement between the Office of the Mayor and the Borough President’s Office regarding the creation of an advisory committee to help oversee the use of the Culture Facility Plaza.

### **City Planning Commission Public Hearing**

On March 20, 2013 (Supplemental Calendar No. 3), the City Planning Commission scheduled April 10, 2013 for a public hearing on this application (N 130178 ZRM). The hearing was duly held on April 10, 2013 (Calendar No. 23).

Those speaking in support of the Culture Shed included the Commissioner of the Department of Cultural Affairs, the building’s architects, as well as representatives from a number of cultural institutions in the City. They described the concept for the facility and organization, the building’s design, as well as how the building would provide numerous benefits for the cultural scene in the City.

Members of Community Board 4 described the concerns raised in their recommendation regarding the proposed facility, particularly that the building would remain in its extended position for most of the year, limiting public access to the space of the Cultural Facility Plaza. In addition, they also expressed concern that events in the Culture Facility Plaza would spill out into the larger Outdoor Plaza, limiting public use of and access to that space. Concerns were also raised about the proposed zoning definition for the use, in particular on whether the building

could become used for commercial convention and trade show events similar to those found at the nearby Javits Convention Center. A number of other concerns relating to the management and operation of the facility were also expressed.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that the zoning text amendment (N 130178 ZRM), as revised by the applicant, is appropriate.

The Commission believes that the Culture Shed facility represents an exciting and innovative plan to bring a cultural facility to the Eastern Rail Yard, a long-standing goal of the Hudson Yards plan. The mix of uses and programs which can be accommodated in the facility will fill a unique niche in the cultural scene of the City. Further, the Commission believes the Culture Shed's unique design will bring an iconic architectural building to the area.

The various text amendments are appropriate to facilitate this use. The proposed signage controls are in keeping with signage found on other similar cultural facilities in the City and the proposed site plan modifications effectively integrate the facility in relation to the High Line and the surrounding development on the Eastern Rail Yard site. In addition, the modifications to the adjacent Connection to High Line public area allow the Culture Shed to cantilever over the space but continue to permit a broad visual and pedestrian connection between the Outdoor Plaza and the High Line.

With the regard to the concerns raised by Community Board 4 that the building's movable portion would limit the use of the Culture Facility Plaza when it is in the extended position, is the Commission is pleased that an understanding has been reached regarding development of a new open space of at least equivalent size in the Hudson Yards area. Pursuant to this understanding, early funding for the block of Hudson Park and Boulevard between West 36<sup>th</sup> and West 37<sup>th</sup> streets will be provided, increasing the open space network of the area.

The Commission is also pleased that DCA has revised its application on June 14, 2013 to respond to other community concerns regarding the proposal, ensuring that the zoning definition of the use better reflects the proposed program for the facility and that events in the adjacent Culture Facility Plaza cannot extend into the adjacent Outdoor Plaza. The Commission also notes that other community concerns not pertinent to the zoning amendment itself are being addressed, including an understanding that the Speaker of the Council will be represented on the organization's board of directors.

The Commission looks forward to the development of the Culture Shed as an important and integral part of the Hudson Yards neighborhood, and as a major new cultural asset for the City.

**RESOLUTION**

**RESOLVED**, that the City Planning Commission has determined that the action described herein will have no significant adverse impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution

**ARTICLE IX  
SPECIAL PURPOSE DISTRICTS**

**Chapter 3  
Special Hudson Yards District**

\* \* \*

**93-00  
GENERAL PURPOSES**

\* \* \*

**93-01**

**Definitions**

**ERY Culture, Festival and Exhibit Facility**

An “ERY Culture, Festival and Exhibit Facility” is a #use#, operated by a not for profit entity, that comprises changing, non-permanent exhibits, events, expositions, presentations, festivals and fairs related to any or all of the following: visual arts, performing arts, culinary arts, literature, journalism, crafts, fashion and design, or any similar artistic activity. No trade shows shall be permitted unless they are related to one of the activities listed in the preceding sentence. Any #building# in which an #ERY Culture, Festival and Exhibit Facility# is located may include a moveable portion that may be extended and retracted to cover all or a portion of the Culture Facility Plaza described in Section 93-71(i).

\* \* \*

**93-10**

**USE REGULATIONS**

**93-101**

**ERY Culture, Festival and Exhibit Facility**

For purposes of this Chapter, all references to #community facility#, #community facility use# or #uses# in Use Groups 3 or 4 in connection with Eastern Rail Yard Subarea A1 shall be deemed to include an #ERY Culture, Festival and Exhibit Facility#.

\* \* \*

**93-17**

**Modification of Sign Regulations**

- (a) Subdistricts A, B, C, D and E

Within Subdistricts A, B, C, D and E, the underlying #sign# regulations shall apply, except that #flashing signs# shall not be allowed within 100 feet of Hudson Boulevard, its northerly prolongation to West 39th Street and its southerly prolongation to West 33rd Street. The following modifications to the underlying #sign# regulations shall apply in the Eastern Rail Yard Subarea A1:

\* \* \*

- (4) For an #ERY Culture, Festival and Exhibit Facility#, the total #surface area# of all permitted #signs# and banners shall be as set forth in this subsection. The maximum aggregate #surface area# of all #signs# shall not exceed 2,700 square

feet. #Signs# (other than banners) facing the outdoor plaza, as described in Section 93-71(b), shall not exceed a maximum aggregate #surface area# of 200 square feet; #signs# facing the Connection to the High Line, as described in Section 93-71(f), shall not exceed a maximum aggregate #surface area# of 200 square feet; and #signs# facing West 30<sup>th</sup> Street shall not exceed a maximum aggregate #surface area# of 1,700 square feet. A maximum of 600 square feet of #signs# in the form of banners are permitted facing or within the outdoor plaza. No #sign# shall exceed a height of 30 feet above the level of the Culture Facility Plaza, as described in Section 93-71(i) and no #signs# facing West 30<sup>th</sup> Street shall be located at a height above the #High Line#. Banners located within the outdoor plaza may be installed on one or two poles located not less than 13 feet from an #ERY Culture, Festival and Exhibit Facility#. The bottom of any such banner shall be located at least 10 feet above the bottom of the pole. Any #sign# that exceeds 300 square feet of #surface area# shall be non-#illuminated# or a #sign with indirect illumination#.

\* \* \*

### 93-20

#### FLOOR AREA REGULATIONS

The #floor area# regulations of this Section, inclusive, shall apply to #zoning lots#.

### 93-21

#### Floor Area Regulations in the Large-Scale Plan Subdistrict A

In the Large-Scale Plan Subdistrict A, the #floor area# provisions of this Section shall apply.

\* \* \*

#### (b) Eastern Rail Yard Subarea A1

- (1) The maximum #floor area ratio# for any #zoning lot# in the subarea shall be 11.0. The maximum #floor area ratio# for #commercial use# shall be 9.0, the maximum #floor area ratio# for #community facility use#, shall be 2.0, and the maximum #floor area ratio# for #residential use# shall be 3.0. #Residential use# shall only be permitted on a #zoning lot# with a non-#residential floor area ratio# of 8.0 or more, or as provided for phased developments pursuant to Section 93-122 (Certification for residential use in Subdistricts A, B and E).

Any floor space occupied by an #ERY Culture, Festival and Exhibit Facility#, including any floor space #accessory# thereto, that is located:

- (i) below the elevation of the Culture Shed Plaza described in Section 93-71(i),

(ii) within the moveable portion that may be extended and retracted to cover and enclose all or any portion of the Culture Facility Plaza, or

(iii) within a portion of a #building# that contains #residential use# and is not designed to house the moveable portion described above,

shall be exempt from the definition of #floor area# for the purposes of calculating the permitted #floor area ratio# for #community facility uses# and the total maximum #floor area ratio# of the #zoning lot#. In addition, in a #building# containing both #residential use# and an #ERY Culture, Festival and Exhibit Facility#, any floor space occupied by elevator shafts, structural systems or stairwells serving the #residential use# that is either located on any #story# occupied entirely by the #ERY Culture, Festival and Exhibit Facility# except for such elevator shafts, structural systems, and stairwells, or is located on a #story# occupied in part by the #ERY Culture, Festival and Exhibit Facility# where such elevator shaft or stairwell is not accessible for #residential use# on such #story# except for emergency egress, shall be exempt from the definition of #floor area# for the purposes of calculating the permitted #floor area ratio# for #residential uses# and the total maximum #floor area ratio# of the #zoning lot#.

For a #building# or portion of a #building# containing #residential use# that is located adjacent to the #ERY High Line#, any floor space used for storage, restrooms, maintenance facilities or other support space for the #ERY High Line# shall be exempt from the definition of #floor area# for the purposes of calculating the permitted #floor area ratio# for #residential or community facility uses# and the total maximum #floor area ratio# of the #zoning lot#.

\* \* \*

## 93-514

### Eastern Rail Yard Subarea A1

(a) Location of #buildings#

#Buildings# shall be located only in the following areas:

- (1) east of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East;
- (2) west of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West and within 220 feet of West 33rd Street; and
- (3) west of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East and within 220 feet of West 30th Street, provided that either:

(i) such area contains only #uses# in Use Groups 3 and 4; or

(ii) where such area includes #residential use#, ~~(a) such #residential use# is permitted~~ shall be located only in a #building# or portion of a #building# located west of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West, and such #building# may also include uses in Use Groups 3, 4, 6A and 6C. ~~and (b) a #building# containing only #uses# in Use Groups 3 or 4 may be located not closer than 50 feet east of such prolongation.~~ In addition, #uses# in Use Group 3 or 4 may be located in a #building# separate from any #building# containing #residential use#, provided that any such separate #building# may not be located closer than 50 feet east of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West.

\* \* \*

### 93-70

#### **PUBLIC ACCESS REQUIREMENTS FOR SPECIAL SITES**

Public access shall be provided for special sites as specified in this Section, inclusive. In the event of a conflict between the provisions of this Section, inclusive, and any underlying regulation, the provisions of this Section shall govern.

No building permit shall be issued for any #development# or #enlargement# on such sites other than for an #ERY Culture, Festival and Exhibit Facility# until the Chairperson of the City Planning Commission certifies to the Department of Buildings that the provisions of this Section have been met.

An application for such certification shall be filed with the Chairperson showing the plan of the #zoning lot#; a site plan indicating the area and dimensions of all required public access areas and the location of all proposed #buildings#, and a detailed plan or plans demonstrating compliance with the provisions of this Section. For certifications relating to the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, as set forth in 93-71, paragraph (h), the requirements set forth in such Section shall apply.

Plans for public access areas shall be set forth in an instrument in a form acceptable to the City, and setting forth such provisions as necessary to ensure compliance with the provisions of this Section. Such instrument shall be filed and duly recorded in the Borough Office of the City Register of the City of New York and indexed against the property. Such filing and recording of the instrument shall be a precondition for the Chairperson's certification under this Section. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

The Chairperson shall allow for the phased development of public access areas upon certification to the Commissioner of Buildings that a plan has been submitted that provides for the completion of any public access area that is integral to the #development# of a #building# or #buildings# within each phase. Such plan may provide for the outdoor plaza described in Section 93-71, paragraph (b), to be constructed in phases. The completion of the Cultural Facility Plaza shall be deemed integral only to an #ERY Culture, Festival and Exhibit Facility# and to no other #use# or #development# in

the Eastern Rail Yard Subarea A1. Where the public use and enjoyment of a public access area is contingent upon #development# on an adjacent #zoning lot# that has not yet occurred, the Chairperson may allow for the future development of such public access area at the time that the adjacent #zoning lot# is #developed#.

For any portion of any #development# or #enlargement# other than an #ERY Culture, Festival and Exhibit Facility#, No temporary certificate of occupancy from the Department of Buildings may be issued for any portion of any #development# or #enlargement# with a #floor area ratio# of 10.0 or more until the Chairperson certifies to the Department of Buildings that the public access area is substantially complete, and the public access area is open to and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# or #enlargement# with a #floor area ratio# of 10.0 or more until the Chairperson certifies to the Department of Buildings that the public access area is complete and that all public access requirements of this Section have been met in accordance with the plans for such public access areas. Notwithstanding the foregoing, for #zoning lots# with multiple #buildings# for which the Chairperson has certified that a plan has been submitted that provides for the phased development of public access areas through completion of any public access area that is integral to the #development# of a #building# or #buildings# within each phase, such certifications shall be made with respect to substantial completion or completion of the public access areas integral to each such phase, except as provided in Section 93-71, paragraph (h). Issuance of a temporary or permanent certificate of occupancy for any #building# or portion of a #building# not occupied by an #ERY Culture, Festival and Exhibit facility# shall not be conditioned upon the completion, substantial completion or improvement of the Culture Facility Plaza.

For an #ERY Culture, Festival and Exhibit Facility#, no temporary certificate of occupancy from the Department of Buildings may be issued for such #ERY Culture, Festival and Exhibit Facility# until the Chairperson certifies to the Department of Buildings that the Culture Facility Plaza described in paragraph (i) of Section 93-71 is substantially complete and open to and useable by the public and no permanent certificate of occupancy from the Department of Buildings may be issued for the #ERY Culture, Festival and Exhibit Facility# until the Chairperson certifies to the Department of Buildings that the Culture Facility Plaza is complete. If a moveable portion of the #ERY Culture, Festival and Exhibit Facility# is not initially constructed as part of the #ERY Culture, Festival and Exhibit Facility# but is constructed at a later date, any closure of the Culture Facility Plaza necessary for such construction shall not affect the validity of any certificate of occupancy previously issued for the #ERY Culture, Festival and Exhibit Facility#. No temporary certificate of occupancy for the moveable portion that is thereafter constructed, or an amended temporary certificate of occupancy for the #ERY Culture, Festival and Exhibit Facility# that includes the moveable portion, may be issued by the Department of Buildings until the Chairperson certifies to the Department of Buildings that the reconstructed Culture Facility Plaza is substantially complete and open to and useable by the public and no permanent certificate of occupancy for the moveable portion that is thereafter constructed, or an amended permanent certificate of occupancy for the #ERY Culture, Festival and Exhibit Facility# that includes the moveable portion, may be issued by the Department of Buildings until the Chairperson certifies to the Department of Buildings that the reconstructed Culture Facility Plaza is complete.

**93-71**

**Public Access Areas in the Eastern Rail Yard Subarea A1**

Any #development# in the Eastern Rail Yard Subarea A1 shall provide public access areas in accordance with the following requirements:

- (a) Amount of public access areas

Public access areas shall be provided in an amount not less than 55 percent of the #lot area# of the #zoning lot#. At least 40 percent of the #lot area# of the #zoning lot# shall be publicly accessible and open to the sky. At least an additional 15 percent of the #lot area# of the #zoning lot# shall be publicly accessible and may be either open or enclosed. Such open or enclosed areas shall be comprised of the types of public access areas listed in paragraphs (b) through (f), and paragraphs (h) and (i), of this Section. For purposes of determining compliance with such 55% and 40% requirements, the Culture Facility Plaza, any portion of the Connection to the High Line allowed to be covered by the moveable portion of an #ERY Culture, Festival and Exhibit Facility# pursuant to paragraph (f) of this Section, and any portion of the Connection to the High Line that is not required to have a clear height of 60 feet pursuant to paragraph (f) of this Section shall be deemed publicly accessible and open to the sky at all times, including any time when a moveable portion of an #ERY Culture, Festival and Exhibit Facility# extends over the Culture Facility Plaza or the Connection to the High Line. Open areas may also include the area of the sidewalk widening along Eleventh Avenue required pursuant to Section 93-61 and, at the option of the owner, the #Tenth Avenue Spur#. If the Cultural Facility Plaza is closed during the construction of the moveable portion of the #ERY Culture, Festival and Exhibit Facility#, the amount of publicly accessible open space shall not be considered reduced during such period.

All public access areas listed in this Section, other than the #ERY High Line# and the #Tenth Avenue Spur#, shall be accessible to the public, as follows:

- (1) unenclosed public access areas shall be accessible between the hours of 6:00 am and 1:00 am, except that any portions of the outdoor plaza, as described in paragraph (b) of this Section, designed and constructed for purposes of vehicular use, shall be accessible at all times except as necessary to perform maintenance and repairs or address hazardous or emergency conditions;
- (2) enclosed portions of the through block connection and connection to the public plaza, described in paragraphs (d) and (e) of this Section, shall be accessible to the public between the hours of 8:00 am and 10:00 pm; and

- (3) upon completion of the Tenth Avenue bridge, described in paragraph (g) of this Section, access between the bridge and the outdoor plaza shall be provided by means of the through block connection between the hours of 6:00 am and 1:00 am.

All public access areas, other than the #ERY High Line# and the #Tenth Avenue Spur#, shall include public space signage erected at conspicuous locations. Such signs shall include the statement “Open to the Public,” followed by the hours of operation specified in this paragraph, (a). The public space signage for the Culture Facility Plaza may include additional information, consistent with the provisions of paragraph (i) of this Section.

(b) Outdoor plaza

A publicly accessible space, open to the sky (hereinafter referred to as the “outdoor plaza”), shall be located within the area bounded by West 33rd Street, the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East, a line 250 feet north of and parallel to West 30th Street, Eleventh Avenue, a line 220 feet south of and parallel to West 33rd Street, and the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West. Such open area may extend beyond such boundaries and have necessary grade changes, and up to ten percent of the area of such outdoor plaza may be covered by a #building or other structure#. In addition, a #building# containing eating or drinking places and #uses# listed in Use Groups 6A and 6C may be located within the outdoor plaza (but shall not be included as public access area pursuant to paragraph (a) of Section 93-71), provided that any such #building#:

- (1) is located within the area west of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West and within 400 feet of West 30<sup>th</sup> Street;
- (2) covers no more than 3,600 square feet of the #zoning lot# at the level of the outdoor plaza and above;
- (3) contains no more than 7,200 square feet of #floor area# at the level of the outdoor plaza and above, and no more than 3,600 square feet of #floor area# below the level of the outdoor plaza;
- (4) has a maximum north-south dimension of 85 feet at the level of the outdoor plaza and above;
- (5) is located such that the maximum east/west dimension measured along a line 355 feet from West 30th Street is 40 feet at the level of the outdoor plaza and above. For portions of the #building# located north or south of such line, the maximum east/west dimension shall increase at a rate of one foot in the east/west dimension for every four feet in the north/south dimension from such line, up to a maximum east/west dimension of 60 feet; and
- (6) has a maximum perimeter wall height of 24 feet, and a maximum #building# height of 30 feet. Above a height of 24 feet, no portion of a building may penetrate a #sky exposure plane# that begins at a height of 24 feet above the

perimeter walls and rises over the #building# at a slope of 2.5 feet of horizontal distance for each foot of vertical distance. Such heights shall be measured from the highest level of the adjoining portions of the outdoor plaza.

No #building# location or setback requirements shall apply to any #building# walls facing the northern, eastern or southern boundaries of the outdoor plaza.

#Building# walls fronting upon the western boundary of the outdoor plaza shall extend along at least 70 percent of the length of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West and shall rise to a minimum height of 90 feet and a maximum height of 120 feet. Above a height of 120 feet, a setback at least 20 feet in depth is required from such prolongation line. However, such #building# wall may rise without setback at such prolongation line, provided the aggregate width of such #building# wall does not exceed 50 percent of the width of such line and provided all other portions of the #building# that exceed a height of 120 feet are set back at least 20 feet from such prolongation line at a height not lower than 90 feet.

The retail and glazing requirements of Section 93-14 (Ground Floor Level Requirements) shall apply to at least 70 percent of the length of all #building# walls facing each side of the outdoor plaza, except that such retail requirements shall not apply to any #building# or portion of a #building# located west of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East and within 220 feet of West 30<sup>th</sup> Street containing ~~only~~ #uses# in Use Group 3 or 4 or an #ERY Culture, Festival and Exhibit Facility#. ~~located west of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East and within 220 feet of West 30th Street.~~

\* \* \*

(f) Connection to the High Line

A publicly accessible connection between the High Line and the outdoor plaza (hereinafter referred to as the “connection”) shall be provided that has a minimum width, measured parallel to the High Line, of ~~80~~ 60 feet, and is located east of the Culture Facility Plaza. ~~If any portion is covered~~ For a width of 60 feet measured parallel to the High Line, the clear height of ~~such~~ the connection shall be at least 60 feet. Above such height, overhangs of the 60 foot width dimension of the connection shall be permitted by the movable portion of the #ERY Culture, Festival and Exhibit Facility#, provided that the angle of such overhang is a maximum of 14 degrees east of the vertical extension of the western edge of such 60 foot width, as measured from the intersection of such vertical extension with the 60 foot clear height of the connection. Additionally, such overhang shall project over no more than 16 feet of the 60 foot width dimension. Any portion of the connection east of the minimum 60 foot width shall, if covered, have a minimum clear height of 60 feet. The movable portion of the #ERY Culture, Festival and Exhibit Facility# shall be permitted to overhang any portion of the connection west of such minimum 60 foot width, provided that the angle of such overhanging portion is a maximum of 14 degrees measured at the western edge of the connection at its ground

level. The glazing requirements of Section 93-14, paragraph (c), shall apply to at least 50 percent of the length of all #building# walls facing such the connection.

\* \* \*

(i) Culture Facility Plaza

A publicly accessible space located east of and abutting the non-moveable portion of an #ERY Culture, Festival and Exhibit Facility#, and bounded to the north by the outdoor plaza and to the south by the #ERY High Line# shall be provided. During times when the Culture Facility Plaza is not covered by the moveable portion of an #ERY Culture, Festival and Exhibit Facility#, the Culture Facility Plaza may be used for purposes of outdoor events related to an #ERY Culture, Festival and Exhibit Facility#. Outdoor installations for such events, including seating, shall be restricted to the Culture Facility Plaza. All such events shall be open and accessible to the general public free of admission charge, provided that ticketed events with tickets available on a first come first served or timed basis shall be permitted. During all times when the Culture Facility Plaza is not used for an #ERY Culture, Festival and Exhibit Facility# event or covered by the moveable portion of an #ERY Culture, Festival and Exhibit Facility#, the Culture Facility Plaza shall be open and accessible to the public between the hours of 6:00 am and 1:00 am. Notwithstanding any other provision, the Culture Facility Plaza may be closed to the public not more than 12 days each calendar year for an event related to the #ERY Culture, Festival and Exhibit Facility#, provided that not less than five days prior to any such closing, notice is given to the applicable community board and is posted at conspicuous locations at such plaza. No #building# or portion of a #building# that is not used for an #ERY Culture, Festival and Exhibit Facility# shall have any obligation to comply with the requirements of this subparagraph or paragraph (a) of Section 93-71 related to the Culture Facility Plaza.

\* \* \*

The above resolution (N 130178 ZRM), duly adopted by the City Planning Commission on May June 19, 2013 (Calendar No. 23), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, MICHELLE R. DE LA UZ,**

**MARIA M. DEL TORO, JOSEPH DOUEK, RICHARD W. EADDY,  
ANNA HAYES LEVIN, ORLANDO MARÍN, Commissioners**

**BETTY Y. CHEN, Commissioner, Recused**



CITY OF NEW YORK

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**COREY JOHNSON**  
Chair

**ROBERT J. BENFATTO, JR., ESQ.**  
District Manager

April 5, 2013

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

**Re: N130178ZRM Culture Shed Proposal  
Hudson Yards Special District  
Proposed Text Amendments to Article IX, Chapter 3**

Dear Chair Burden:

At its regularly scheduled Full Board meeting on April 3, 2013, Manhattan Community Board 4 ("CB4"), based on the recommendation of its Chelsea Land Use and Clinton/Hell's Kitchen Land Use committees, voted by roll call 44 for, 1 against, 0 abstaining and 0 present not eligible:

- To recommend **denial** of the proposed text amendments **unless** the City of New York provides 20,000 square feet of unencumbered publicly-accessible park space in another location in Manhattan Community District 4 (CD4) to compensate for the loss of unencumbered publicly-accessible open space on the Eastern Rail Yards (ERY) that was agreed to by the City as a part of the 2005 Hudson Yards rezoning.

If the City agrees to provide this unencumbered publicly-accessible park space in another location in CD4, the Board then recommends **denial** of the proposed text amendments **unless** the City:

- Revises its proposal to ensure that the proposed Culture Shed uses do not encroach on the ERY public plaza and new streets to the north of the Culture Shed and Culture Facility Plaza;
- Forms an Eastern Rail Yards Open Space Task Force to ensure broader public input for the development and programming of this major new public open space; and
- Agrees to other conditions as enumerated below.

In addition, CB4 recommends three follow-up measures for the Special Hudson Yards District (SHYD) (see page 8).

## **The Application**

On February 13, 2013 and March 18, 2013, CB4's Chelsea Land Use and Clinton/Hell's Kitchen Land Use committees reviewed application N30178ZRM for text amendments to certain provisions of Article IX, Chapter 3 of the New York City Zoning Resolution ("Application").<sup>1</sup> The Application relates to a proposal by the New York City Department of Cultural Affairs (DCA) to facilitate the development of a cultural facility known as the "Culture Shed". CB4 is grateful to the representatives of DCA who graciously explained the proposed text amendments and the Culture Shed's mission in great detail in three public presentations with clear illustrations.

## **Background**

As adopted in 2005, the Special Hudson Yards District provided for a large mixed-use development on the Eastern Rail Yards ("ERY") between Tenth and Eleventh Avenues, West 30<sup>th</sup> to West 34<sup>th</sup> Streets, in SHYD Subarea A1. The proposed community facility was allocated 200,000 square feet of floor area.

Based on responses to a 2007 Request for Proposals (RFP), DCA was designated by the Metropolitan Transit Authority (MTA) as the developer for this community facility, now known as the Culture Shed. In 2010, as part of the MTA's negotiation with the designated developer for ERY, the Related Companies (Related), the floor area of the community facility was reduced from the 200,000 square feet mandated in the zoning to only 100,000 square feet. The result of that negotiation was that the MTA, not Related, retained the rights to the remaining 100,000 square feet of floor area.

Related has started construction on a 47-story office building (Tower B) at the corner of West 30<sup>th</sup> and Tenth Avenues to the east of the Culture Shed site; occupancy is expected in 2015. The ERY also includes an 80-story office building (Tower A) at West 33<sup>rd</sup> Street and Tenth Avenue and a 60-story residential building (Tower E) at West 33<sup>rd</sup> Street and Eleventh Avenue. Additionally, the site plan includes retail buildings, a centrally-located publicly-accessible open space (ERY Plaza) and new public streets. The Culture Shed is to be adjacent to, and would utilize space in, a new 72-story residential building (Tower D) at West 30<sup>th</sup> Street and Eleventh Avenue.

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<sup>1</sup> CB4 is granted the opportunity to comment to the Department of City Planning on a proposed text amendment under the City Charter, Chapter 8, §200(1). In addition, CB4 anticipates that the City will be contributing substantial funds to the Culture Shed, making the facility a public project. This gives CB4 further legal "standing" under the City Charter, Chapter 70, §2800(d)(14) which says Community Boards "assist in the planning of individual capital projects funded in the capital budget to be located in the community district...". CB4 believes this strengthens our position recommending publicly-accessible open space, mitigation for the loss of such space, and the establishment of a community advisory committee for event programming and open space planning.

## **Culture Shed Proposal**

The proposed Culture Shed will provide space for a wide range of arts and cultural activities including theatre, music, dance, visual art and design. The Culture Shed proposal includes:

- The “Culture Shed Building” - A fixed building located to the east of, and partially within, Tower D.
- The “Shed Portion” - A deployable 20,000 square foot building extension which would cover the Culture Shed Building when not covering the adjacent plaza.
- The “Culture Facility Plaza” - An approximately 20,000 square foot outdoor space immediately to the east of the Culture Shed Building which will be covered by the Shed Portion when it is deployed.

The programming of the Culture Shed, as currently proposed, includes:

- Public Events - Performing arts events, films and exhibits open to the public, both ticketed and unticketed, for free or at moderate cost;
- Special Events - Events by for-profit entities, events such as Fashion Week, not open to the public with the revenues from these events dedicated to the support of the cultural programming; and
- Private Events - Events run by private entities where the facility can be closed to the public a maximum of 12 days per year.

The Culture Facility Plaza will be physically encumbered multiple times throughout the year by both the deployable Shed Portion and Culture Shed programming. Despite this encumbrance, the Application defines the Culture Facility Plaza as open space and maintains that it will be part of the Public Access Area. The SHYD zoning text requires that Public Access Areas for the ERY (SHYD Subarea A1) must occupy at least 55 percent of the Subarea A1 lot area and at least 40 percent of that public open space must be both “publicly accessible and open to the sky.”

## **Requested Actions**

The Application includes the following amendments to the Zoning Resolution to facilitate the Culture Shed:

1. Establish a definition for the Culture Shed that would permit the proposed cultural activities and allow them to be treated as community facility uses or uses in Use Groups 3 and 4 (thereby creating a broad definition for what culture will be programmed into the Culture Shed).
2. Allow certain portions of the Culture Shed to be excluded from the calculation of floor area.
3. Consider the Culture Facility Plaza to be public open space and open to the sky, thus meeting the Hudson Yards public open space requirements (even though the plaza would at times be covered by the deployed shed).
4. Permit portions of the central outdoor plaza to the north of the Culture Facility Plaza to be used for Culture Shed events in the Culture Facility Plaza, be subject to time-ticketed access

for such events and allow roadways within the central plaza to be temporarily closed to vehicular traffic during such events.

5. Allow the Culture Facility Plaza and portions of the central plaza to be closed to the public up to 12 days each year in connection with Culture Shed events.
6. Permit the use of space within Tower D to provide storage, restrooms, maintenance facilities or other support space for the High Line by excluding the floor space of such support facilities from the definition of floor area.
7. Modify sign regulations to allow signs on three sides of the Culture Shed, with a maximum total surface area of 2,700 square feet, with not more than 200 square feet facing the outdoor plaza or the connection to the High Line.
8. Revise the existing text for the location of the community facility building so it may abut, and include support space within, Tower D.
9. If Tower D includes floor area for the Culture Shed, remove the requirement that it have retail continuity facing the outdoor plaza.
10. Reduce the width of the “connection to the High Line” from 80 feet to a minimum of 60 feet to accommodate the new plaza.
11. Require that the Culture Facility Plaza be constructed prior to a Temporary Certificate of Occupancy (TCO) for the Culture Shed Building and clarify that the construction of the plaza is not a condition for a building permit or Certificate of Occupancy (CO) for any building other than the cultural facility.

#### **CB4 Recommendations**

CB4 looks forward to the Culture Shed as a significant new cultural facility for the City of New York. A flexible cultural facility could provide space for a wide range of creative organizations, both not-for-profit and for-profit. CB4 supports the intent of the proposed Application but cannot support the expansive definition of culture, the loss of publicly-accessible open space or the restricted use of the ERY Plaza. Further, CB4 recommends several text amendments that are a Follow Up Corrective Action (FUCA) for the 2005 Hudson Yards rezoning. As such, the Board would seek for this FUCA to resolve other open zoning and Hudson Yards Points of Agreement matters that have been discussed over the past year.

#### ***Loss of Publicly-Accessible Open Space***

CD4 suffers from a serious lack of public open space – CD4 is ranked 57 out of 59 in open space for NYC Community Districts. The SHYD will result in over 13 million square feet of commercial and residential development which will sharply increase the demand for public open space. For these reasons, the SHYD rezoning required the development of additional of public open space.

#### ***Culture Facility Plaza***

The introduction of the Culture Shed and its components presents a major change in both the uses of the previously agreed on ERY Open Space, the Public Access Areas and the definition of Open Space itself in the New York City Zoning Resolution.

Public open space is especially important since the recently mapped Hudson Yards zoning has the greatest density of any area in the City of New York. CB4 seeks to welcome and accommodate the proposed Culture Shed and its programs, but only within the context of previously negotiated agreements, and by balancing the overwhelming need for public open space in Hudson Yards with the need to create a new citywide cultural facility.

Since the proposed Culture Facility Plaza will not be open to the sky and will not be publicly-accessible at all times, it does not meet the definition of Section ZR 93-71 which, regarding Public Access Areas in the Eastern Rail Yard Subarea A1, states *At least 40 percent of the lot area of the zoning lot shall be publicly accessible and open to the sky.* The proposed text amendment would change the definition of “publicly accessible” and “open to the sky.”

The Application proposes text stating that the Culture Facility Plaza *shall be deemed publicly accessible and open to the sky at all times*, including any time when a moveable portion *extends over the Culture Facility Plaza.*” Thus, contrary to common sense, when the extension is deployed and the plaza covered, and perhaps closed to the public, it will be deemed to be both open to the sky and publicly accessible.

Further, the Application includes no restriction on the number of days that the plaza could be covered and/or closed to the public while remaining "publicly accessible and open to the sky at all times. It also provides that the Culture Facility Plaza could be closed to the public up to 12 days each year in connection with Culture Shed events and that there would be additional ticketed events which would further limit public access to the plaza. In addition, representatives for DCA stated at the March 18, 2013 CB4 joint committee meeting that they anticipate that Fashion Week activities would require the Culture Facility Plaza to be closed to the public for two 14-day periods and would include one or two days additional for set-up and break-down for each period, resulting in a possible closure to the public of at least 40 days per year. We note that 40 days is significantly more than the 12 days included in the Application.

We believe that the proposed Culture Shed will make a significant contribution to the cultural life of the City of New York. However, the Application attempts to mask the true impact of the Culture Shed use on the Culture Facility Plaza and that the Culture Facility Plaza will no longer meet the Zoning Resolution definition of Public Open Space.

Public open space means open to the public, not by timed ticket or roped off for Fashion Week. Similarly, open to the sky does not mean a sky above a pavilion, no matter how well designed. This portion of the Application should be deleted and revised to reflect the use of the Culture Facility Plaza as an accessory use to the Culture Shed Building. The City must work with CB4 and the Clinton/Hell’s Kitchen community to replace the 20,000 square feet of public open space now dedicated for a well-deserved cultural use with 20,000 square feet in another location within CD4 acceptable to CB4.

### ***Other Culture Facility Plaza Recommendations***

- Deployment of the Shed Portion over the Culture Facility Plaza -should primarily take place during the winter months (November through March) to allow as much public use and enjoyment of the Culture Facility Plaza as possible during spring, summer and fall; and
- Limit the number of days of full closure to the public of the Culture Facility Plaza for private use to a maximum of 34 days per year, again, primarily in the winter, and not continuous but spread over time.

### ***ERY Plaza and New Streets***

DCA proposes to have portions of the ERY directly to the north of the Culture Facility Plaza used for Culture Shed events that would expand beyond the Culture Facility Plaza. These areas would be subject to time-ticketed access for such events, and the new streets in the ERY could be closed temporarily to vehicular traffic. CB4 cannot support this portion of the Application. CB4 strenuously objects to the closing of the ERY Plaza and new streets for private and/or time-ticketed events.

The ERY Plaza and streets are required in the 2005 Hudson Yards zoning text, *to be open at all times to pedestrians and closed at certain times and in certain incidences to vehicles*. The 2012 ERY Text Amendment states that *public access areas that are open to the sky on the Eastern Rail Yard would be required to be open between 6:00 am and 1:00 am, and enclosed portions of the through block connection and connection to public plaza would be required to be open from 8:00 am to 10:00 pm*. Because the new streets will be one way, closure will result in all traffic being stopped through ERY. CB4 does not accept the DCA's claim that the loss of public access to the Culture Facility Plaza and to parts of the ERY plaza and streets is justified by the cultural benefits that the Culture Shed will provide to the local community.

The ERY Plaza and the new ERY streets are central elements in the Hudson Yards planning, intended to integrate the Hudson Yards development into the surrounding Clinton/Hell's Kitchen community. Closure of the new streets, for any reason, promotes a sense of a private, exclusive enclave. Encroachment of Culture Shed uses onto the ERY Plaza unacceptably removes the plaza from the public realm.

CB4 recommends this portion of the Application be deleted and that there be no permitted encroachment for Culture Shed uses on the ERY Plaza and new street north of the Culture Facility Plaza.

### ***Definition of Culture Shed***

The proposed text amendment states that *An 'ERY Culture, Festival and Exhibit Facility' is a use that comprises changing, non-permanent exhibits, events, expositions, presentations, festivals and fairs related to any or all of the following: visual arts, performing arts, culinary arts, literature, journalism, broadcasting, crafts, technology, fashion and design, or any similar*

*activity*. CB4 is concerned that this definition is so broad that it could include many activities that the current applicant does not intend but that future decision-makers might promote. CB4 wishes to ensure that the Culture Shed does not turn into an extension of the Javits Center, hosting conventions and trade shows such as car and boat shows.

CB4 recommends that the catchall phrase at the end of the definition – “or any similar activity” – be deleted from the proposed text amendment and requests a more precise delineation of cultural events or exhibits which might be considered under the categories of "broadcasting, technology, and fashion and design."

### ***The Culture Shed Event Programming Access and Local Culture and Affordability***

CB4 has major concerns about the Culture Shed programming and decision-making. The organization(s) that makes policy for the Culture Shed events must have adequate representation from the local community, including CB4. CB4 is home to many not-for-profit theatres, dance companies and other cultural organizations. These smaller, accomplished and well known groups should have access to this newly developed cultural facility at no or nominal cost. CB4 recommends that CB4 have a seat and a vote on any decision-making board for Culture Shed programming.

To ensure broad community access to Culture Shed activities and space for residents with a range of incomes, CB4 recommends:

- A minimum of 80% of events (regardless of their type) be open to the public at no or nominal cost;
- For events that occupy the Culture Shed for more than three months, that either the entire event or a meaningful portion of it be open to the public at no charge;
- For private events that occupy the Culture Shed for longer than two weeks, that the interested, non-paying public have some type of access. For example, Fashion Week could accommodate backstage visits: and
- Children’s programming should be included in the Culture Shed’s activities. Such programming would enliven the site during the day and weekends.

### ***Open Space Planning and Operation***

CB4 is concerned about the overall use of *all* public spaces in ERY including the ERY Plaza, the Cultural Facility Plaza, and the Hudson Yards Park and Boulevard to the north. To the average citizen park user in the future, there will be no recognition that these three different types of open space are areas that are separately run by the Culture Shed, Inc. , Related and the Hudson Yards BID. There is a risk that these spaces could end up being run in contradictory and self-defeating ways. Given the grand scale of these areas, CB4 believes that the community needs to be involved in the decision-making process on their uses.

CB4 recommends the creation of an “Eastern Rail Yards Open Space Task Force” modeled after the Open Space Task Force in the Western Rail Yards which is to advise Related on programming of events in the open space. In this case, a board could be comprised of eleven members; six appointed by Related and one each from the Culture Shed, Hudson Yards BID, CB4, the local Councilmember, and the Manhattan Borough President. The Board would meet quarterly and approve by a majority vote use of the space for more than four hours a day or eight hours in any seven day period. An Open Space Task Force could also deal with noise issues arising from outdoor events. We also recommend that there be an evaluation of the event programming and open space use after six months in order to assess community concerns.

### ***Public Access to Ground Floor Space in Tower D***

CB4 is concerned that the Culture Shed spaces located in the ground floor lobby in Tower D be publicly-accessible at all times when the building is open. It is especially important that the bathrooms remain open for people who use the High Line; the only High Line bathrooms available to High Line users are at West 16<sup>th</sup> Street, one mile away from West 30<sup>th</sup> Street. DCA has said that the bathrooms in the ground floor lobby would not be closed. CB4 would like to confirm this and clarify which spaces would be closed to the public for special events such as Fashion Week.

### ***High Line Support Space in Tower D***

CB4 appreciates that the Application allows for the possibility of creating High Line support space as part of the Hudson Yards development. The High Line has a critical need for support space at its northern end. CB4 requests the City and Related work to secure support space for the High Line’s operational support needs at the northern end of the High Line.

### **Other CB4 Recommendations and Requested Clarifications**

- **Sign Illumination**

The proposed text change states: *Any sign that exceeds 300 square feet of surface area shall be non-illuminated, or a sign with indirect illumination.* CB4 is concerned about the times that signs would be illuminated, either directly or indirectly, because there have been many complaints from residents in CD4 about intrusive sign illumination at night. CB4 recommends that illuminated signs be turned off at 1:00 a.m., the time the streets are required to close by zoning regulations.

- **Timeline and Milestones**

CB4 requests that it be provided with a timeline with critical milestones in order to better understand the relationships among the construction of the Culture Shed and the construction of other key buildings and features in ERY. For example, is the Culture Shed construction start dependent on securing an anchor tenant for the North Office Tower (Tower A) at Tenth Avenue and West 33<sup>rd</sup> Street?

- In order to prevent an undue construction period, CB4 recommends that:

- At least 40% of the total expected cost of the construction of the Culture Shed be raised and in the bank before construction may commence; and
  - Once construction commences, it shall be continuous until the Culture Shed is complete.
- CB4 recommends that the “Culture Shed Developer” be a not-for-profit organization; we have been informed that the “Culture Shed, Inc. ” is this entity and seek confirmation.

- **Local Jobs**

CB4 also recommends that the Applicant use its best efforts to hire employees from within CD4 and agrees to place a link to Culture Shed job openings on the CB4 website.

**If all other conditions are met, CB4 approves the following text amendments:**

- Revise the existing text for the location of the building so it may abut, and include support space within, Tower D.
- Allow certain portions of the Culture Shed to be excluded from the definition of floor area.
- If Tower D includes floor area for the Culture Shed, it not be required to have retail continuity facing the outdoor plaza.
- Reduce the width of the “connection to the High Line” from 80 feet to a minimum of 60 feet to accommodate the new plaza.
- Require that the Culture Shed Plaza be constructed prior to a TCO for the Culture Shed Building. Clarify that the construction of the plaza is not a condition to a building permit or CO for any building other than the cultural facility.
- Facilitate the use of space within Tower D to provide storage, restrooms, maintenance facilities or other support space for the High Line by excluding the floor space of such support facilities from the definition of floor area.

**CB4’s Recommendations for other Hudson Yard FUCAs**

1. Hell’s Kitchen Subarea D - Modify zoning from C1-7A to R8A to prevent hotel development in the residential area.
2. Hell’s Kitchen Subarea D - Remove the mid-block C2-5 commercial overlay from West 35<sup>th</sup> to West 41<sup>st</sup> Streets to prevent commercial intrusion in the midblock residential area.
3. Hudson Yards Points of Agreement - Secure a replacement site for Site M (west side of Tenth Avenue, West 40<sup>th</sup> and 41<sup>st</sup> Streets), 155 units of affordable housing of for moderate and middle income. The site has not been acquired by HYDC as originally planned.

## Summary of CB4 Recommendations

CB4 is enthusiastic about the Culture Shed promise to bring a variety of cultural activities to CD4. The Board supports much of the proposed text amendment but recommends denial of the proposal unless:

1. The City provides 20,000 square feet of publicly accessible park space in another location acceptable to CB4 to compensate for the loss of public access and openness to the sky on the 20,000-square foot proposed Culture Facility Plaza.

If and only if 20,000 square feet of publicly accessible park space is provided as described above, the Board recommends denial of the proposal unless:

2. There is no encroachment of Culture Shed uses on the ERY central public square to the north of the Culture Facility Plaza.
3. The number of days that the Culture Facility Plaza would be closed to the public is limited to 34, primarily in the winter and spread out over time.
4. The catchall phrase at the end of the Culture Shed definition – “or any similar activity” – be deleted and a more precise delineation of cultural events or exhibits which might be considered under the categories of "broadcasting, technology, and fashion and design."
5. CB4 be given a seat and a vote on any decision-making board(s) for Culture Shed programming.
6. An Open Space Task Force is formed and includes a seat for CB4.
7. A minimum of 80% of events (regardless of their type) be open to the public for free or at nominal cost.
8. For those major events that occupy the Culture Shed for more than three months, either the entire event or a meaningful portion of it is open to the public at no charge.
9. For private events that occupy the Culture Shed for longer than two weeks, interested community residents should have some type of access.
10. Children’s programming is included in the Culture Shed’s activities.
11. Confirm that the Culture Shed bathrooms in the ground floor lobby in Tower D would not be closed to the public at any time.
12. The City and Related work to secure support space for the High Line’s operational support needs at the northern end of the High Line.
13. Lights on signs are required to be off after 1:00 a. m.
14. A timeline with critical milestones for the construction of the Culture Shed and the construction of other key buildings and features in ERY is provided to CB4.
15. At least 40% of the total expected cost of the construction of the Culture Shed be raised before construction starts, and that once construction commences it shall be continuous until the Culture Shed is complete.
16. Confirm that “Culture Shed, Inc.” is a non-profit developer.
17. Applicant uses its best efforts to hire employees from within CD4 and agrees to place a link to Culture Shed job openings on the CB4 website.

Sincerely,



Corey Johnson, Chair  
Manhattan Community Board 4



Jean-Daniel Noland, Co-Chair  
Clinton/Hell's Kitchen Land Use Committee



J. Lee Compton, Co-Chair  
Chelsea Preservation & Planning



Betty Mackintosh, Co-Chair  
Chelsea Preservation and Planning

cc : Commissioner Kate Levin, Department of Cultural Affairs  
Elise Wagner, Robin A. Kramer – Kramer Levin Naftalis & Frankel LLP  
Laurie Beckelman - Beckelman+Capalino  
Angela Cavaluzzi – Mayor's Office of Capital Project Development  
Pauline Yu, Mayor's Office of Community Affairs  
Wayne Kawadler, Deputy Chief of Staff, NYC Council  
Gale Benjamin, Danielle DeCerbo – NYC Council Land Use Division  
Melanie LaRocca, Harriett Sedgwick - NYC Council Speaker Christine Quinn's Office  
Brian Cook, Michael Sandler – Manhattan Borough President's Office  
NYS Assemblyman Richard Gottfried  
NYS Senator Thomas Duane  
U.S. Congressman Jerrold Nadler  
Michael Samuelian – Related Cos.  
Peter Mullan, Friends of the High Line



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

April 5, 2013

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

**Re: N 130178 ZRM – Culture Shed**

Dear Chair Burden:

I write in support of the New York City Department of Cultural Affairs' ("DCA") application for a text amendment to facilitate the development of the Culture Shed located on the north side of West 30<sup>th</sup> Street between 10<sup>th</sup> and 11<sup>th</sup> Avenues, in Manhattan's Community District 4. The Culture Shed is a visual and performing arts institution that will anchor the southern end of the Eastern Rail Yards ("ERY") development site. The proposed Culture Shed will be managed by a new, independent non-profit organization, Culture Shed, Inc. The facility will accommodate a wide range of activities including traditional museum-style galleries, performance arts events and large New York City events such as Fashion Week. In effect, it will function as a type of "cultural time share" for organizations who do not have permanent spaces in New York to accommodate large, citywide exhibitions. The Culture Shed building includes an innovative design solution with a movable glass atrium that could be "deployed" to cover the plaza or "nested" over the fixed building, which allows the plaza to be open to the sky. This new facility will be an iconic space that will fill an important need in the city.

While the ERY is being developed by Related Companies, the development of a cultural facility at the site has been an element of the Hudson Yards development plan since its inception in 2004. A 2010 Memorandum of Understanding between the City and the Metropolitan Transportation Authority ("MTA") stipulated that the MTA would convey to the City an approximately 21,000 square foot lot at this location for the development of the Culture

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Shed with 100,000 zoning square feet of floor area.

Generally, DCA (or “the applicant”) seeks a text amendment to Article IX, Chapter 3 of the Zoning Resolution to allow the Culture Shed’s unique use and to create regulations related to the facility’s density, footprint, location and signage. The proposed text amendment also creates a 17,758 square foot, public open space, the Culture Facility Plaza, which can be programmed by Culture Shed, Inc. and is allowed to be covered by the movable atrium. When not covered by the atrium the text amendment would allow the Culture Facility Plaza and adjacent portions of the ERY open space to be closed to the public up to 12 days a year. Finally, the zoning action would reduce the required width of the outdoor connection to the High Line from 80 to 60 feet.


Community Board 4 (“CB4”), on April 5, 2013, submitted a conditional disapproval of this project based on a number of concerns, mostly regarding the shed’s encroachment on public open space when it is deployed. The original Hudson Yards plan, which was negotiated in the ULURP process approved in January, 2005, resulted in significant open space and a cultural facility on the ERY lot. The community expressed concern that there are currently insufficient controls in this proposed text to ensure continued public accessibility of the Culture Facility Plaza. More specifically, when the shed is deployed, the plaza can be used for ticketed or private events, and there are no limitations on how often the shed could be deployed. Since this plaza can be closed to the sky and the public, CB4 has requested that additional open space of approximately 20,000 square feet be provided by the City. Further, CB4 opposes the use of any public space outside of the Culture Facility Plaza for Culture Shed events, free or ticketed. CB4 additionally requested the formation of an advisory committee to help oversee the Culture Facility Plaza.

As memorialized in a April 5, 2013 letter from the Mayor’s office, the Borough President’s Office obtained an agreement to create such an advisory committee. The “Culture Shed Open Space Advisory Board” will be modeled after the Open Space Advisory Board in the Western Rail Yards which advises the Related Companies, who have exclusive development rights on both the Eastern and Western Rail Yards, and will be responsible for creating and maintaining the open spaces in both development areas. In this case, the Advisory Board will be comprised of the Borough President, the local Council Member, the Department of Parks and Recreation Commissioner, the Department of Cultural Affairs Commissioner, and one representative each from CB4, Culture Shed, Inc., Related Companies/Eastern Rail Yards Tenant Association, Hudson Yards Business Improvement District, and the Friends of the High Line. The Board will meet quarterly or at the request of a majority of its members, but no more than four times a year, and will evaluate at each meeting the quality of the programming on the Culture Facility Plaza, the amount of time that the plaza has been open and closed to the public, and any impacts that the use of the plaza has had on the surrounding open space and the High Line. In addition to the Culture Facility Plaza itself, the Board will consider any use by the Culture Shed of the public space north of the Cultural Facility Plaza, closings of West 31<sup>st</sup> Street, and the connection to the High Line, which sits directly east of the plaza. Culture Shed, Inc. will convene the Advisory Board and be responsible for the scheduling of meetings.

The Community Board has also proposed a number of rules to be included in the zoning resolution regarding the type and frequency of certain activities that could take place in the public access area and inside the building. However, the proposed development is a new type of facility and its exact operation cannot be known. The proposed zoning rules allow a variety of events to occur in the space and thus give much-needed flexibility. In order to allow for a range of programming while still addressing the concerns of the community, the Borough President's Office has secured a commitment from the DCA that Culture Shed, Inc. will meet with CB4 on an ongoing basis to evaluate event programming and open space and to address community concerns.

Based on these commitments from the DCA and the Mayor's Office, I offer my support to this project and the proposed text amendments that are necessary for its completion. I commend the DCA for taking this project on and for putting together a plan that offers a new and important facility to the city's arts landscape.

Sincerely,



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Scott M. Stringer  
Manhattan Borough President