



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.ManhattanCB4.org

JEAN-DANIEL NOLAND
Chair

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

October 4, 2007

Ms. Laura Lazarus
Deputy Commissioner for Development
Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Re: Lower Income Housing Plan Applications by TRM 42 Associates, LLC – 440 West 42nd Street

Dear Ms. Lazarus:

At the recommendation of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board No. 4 recommends disapproval of the Lower Income Housing Plan Applications by TRM 42 Associates, LLC for its project at 440 W. 42nd Street unless they are resubmitted with changes. The vote was unanimous.

THE PROJECT

The applicant, an affiliate of the Related Companies in partnership with Twining Properties and MacFarlane Partners, is planning a mixed-use development with a 4-story commercial base and a residential tower of approximately 53 stories above the base. Total height of the building will be approximately 640 feet. The residential tower will include two components: a residential rental component with approximately 614 rental units on floors 5 to 45 and a residential condominium component with approximately 149 condominium units on floors 46 to 57. These applications concern the residential rental portion of the project.

Approximately 31 of the rental units will be permanently reserved for families earning no more than 60% of median income in order to qualify for a portion of the 2 FAR inclusionary bonus in accordance with Sections 23-90 and 96-21(b)(1) of the Zoning Resolution (the "Clinton Bonus")¹. Approximately 132 of the rental units will be permanently reserved for families earning no more than 50% of median income in order to qualify for an offsite inclusionary bonus in another (and as yet unidentified) development project in Community District 4. Thus, a total of 163 units (31 plus 132) will be permanently reserved for low-income families. These low-income units will consist of 95 studios, 45 one bedroom units and 23 two bedroom units.

¹ According to the applicant's statement at the Clinton/Hell's Kitchen Land Use Committee, the balance of the bonus requirement is being provided by offsite units recently constructed at 521 W. 42nd Street.

OUR COMMENTS

1. The low-income units must be more widely distributed throughout the rental floors.

The Zoning Resolution requires that “[d]welling units# designated as #lower income housing# shall be distributed throughout the #development# [emphasis added]. No #story# shall contain more than two such units unless at least 80 percent of all #stories# contains two such units.” (ZR 23-951(b))

The applicant is to be commended for including at least two low-income units on each rental floor. However, the applicant seeks to concentrate the low-income units in the bottom half of the residential portion of the building. According to the Board’s analysis, 70% of the low-income units are on floors 5 to 22, while only 38% of the market rate units are on those floors. In order to be truly inclusive, the low-income units must be more widely distributed throughout the rental floors.

In addition, the low-income units are unduly concentrated on the south side of each floor, overlooking the exhaust and noise of traffic entering the Lincoln Tunnel. For example, on floors 6 to 10, there are 9 units on the south side of the floor of which 5 are low-income units, and 7 units on the north side of each floor of which 2 are low-income units. This is particularly problematic on the lower floors.

2. Some of the low-income units should be combined to create larger units.

A healthy neighborhood needs families and families need bigger apartments. Yet, almost 60% of the low-income units in this project are planned to be studios, attracting a more transient population than this community desires. We urge you to explore with the developer and with the New York State Housing Finance Agency ways in which some of the proposed studios could be combined to create larger units.

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

The applicant proposes that the applicant itself, the for-profit developer of the building, will be the Administering Agent responsible for ensuring compliance with the lower income housing plan. The applicable definition of “Administering Agent” in Section 23-93 of the Zoning Resolution allows this to happen only in “Inclusionary Housing designated areas,” which are identified in Section 23-922. The project site is in an R10 zoning district in the Special Clinton District, but is not in an “Inclusionary Housing designated area.”

Section 23-93 of the Zoning Resolution provides:

“The #administering agent# shall be a not-for-profit organization . . . However, in #Inclusionary Housing designated areas#, the Commissioner may approve an entity that

is responsible for compliance monitoring pursuant to City, State or federal funding sources, to serve as the #administering agent# during such compliance period.”

Thus, the applicant is not eligible to act as its own Administering Agent.

Only an independent not-for-profit organization unmotivated by the owner's interest in maximizing profitability can adequately ensure compliance with the lower income housing plan.

These applications demonstrate once again the aggressive use developers will seek to make of the Inclusionary Housing Program in this still over-heated development environment. While we are pleased that they will produce so many additional units of permanent affordable housing, HPD must be similarly aggressive in insisting that the policies underlying the Inclusionary Housing Program are not compromised, and that quality affordable housing is produced of which we can all be proud.

Many thanks for your attention.

Sincerely,



Jean-Daniel Noland
Chair



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

Cc: Greg Gushee, The Related Companies LP
TRM 42 Associates, LLC, c/o David S. Boccio, Esq.
electeds