



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**JEAN-DANIEL NOLAND**  
Chair

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

November 6, 2008

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

**Re: Special Clinton District Theater Bonus Amendments – N 080184(B) ZRM**

Dear Chair Burden:

Your office has referred this application to us for such action we deem appropriate. We are pleased to provide our comments.

Introduction

As part of the Hudson Yards rezoning in 2005, a zoning bonus was created for a portion of the 42<sup>nd</sup> Street Perimeter Area of the Special Clinton District. The bonus allows the floor area ratio of a development to be increased from 12.0 (achieved through the inclusionary housing bonus) to 15.0 if it includes legitimate theater use.<sup>1</sup> The zoning text for the bonus, Section 96-25 of the Zoning Resolution, was initially proposed to be tightened and clarified in an amendment that was part of the first two sets of Hudson Yards Follow-Up Corrective Actions, in December 2005 and September 2008. We provided our comments on each of those FUCAs, but each time the theater bonus text was held back for further consideration.

Related Companies now proposes to take advantage of the theater bonus for its development at 440 W. 42<sup>nd</sup> Street, between Dyer and Tenth Avenues. To achieve the bonus, the text amendment must now be completed, and the zoning bonus must be certified by the Chairperson of the City Planning Commission. This involves three applications:

- Clinton Dist. Theater Bonus Text Amendments - N 080184(B) ZRM

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<sup>1</sup> Many in our community continue to be dismayed that this bonus, which we opposed when it was first proposed in September 2004, was approved. An FAR of 15.0 is too much for the area and too much for the theater “benefit” provided, the “Clinton Bonus” for inclusionary housing should be the only available zoning bonus, and other means should have been used to encourage the replacement of the two small theaters that were on the Related site.

- Application for certification of theater bonus for Signature Theater Plan – N 090156 ZCM
- Application for certification of theater bonus for Related Back-Up Plan – N 090155 ZCM

### The Proposed Development

The proposed development consists of a 58 story residential tower and a 24 story hotel tower, above a 4 story base containing entrances and lobbies for the residential and hotel towers, a health club, retail space and the theater use that is the subject of these applications. We provided comments on the affordable housing program for the residential tower in our letter to HPD dated October 4, 2007.<sup>2</sup>

The theater space is proposed to be a new home for Signature Theater Company, containing a box office and common lobby on the ground floor, an additional common lobby and box office on the second floor, 3 theaters (2 with 199 seats and one with 299 seats), 2 rehearsal studios, and related back of house and administrative space. Signature has been based in Hell's Kitchen for 10 years. It has outgrown its current theater, the Peter Norton Space at 42<sup>nd</sup> Street and Eleventh Avenue, for which the lease expires in 2011.

The Signature Theater Plan is based on the zoning text as it is proposed to be amended. Related is also proposing a "Back-Up Plan," which, according to information presented by DCP and Related to the Clinton/Hell's Kitchen Land Use Committee, would become effective only if the zoning text amendments are not approved. The theater space in the Back-Up Plan would be essentially the same as the Signature Theater Plan, except that one of the rehearsal studios would become a fourth theater, with 199 seats. The space would be owned and operated by a new not-for-profit corporation to be formed by Related if the Back-Up Plan becomes effective.

### Comments on the Application

The application includes 5 amendments that were not heard by the Commission at the hearing on FUCA II in May 2008. Our comments relate to those 5 amendments. In addition, we request one further amendment.

**1. Thank you for responding to our previous comments.** Three of the five newly proposed amendments (Amendments 7, 9 and 10) reflect comments made by CB4 on FUCA II in April 2008. The proposed text now includes almost all of our requested changes. We are grateful.

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<sup>2</sup> We recommended disapproval of the lower income housing plans for the project unless the low-income units were more widely distributed throughout the building; we received no reply from HPD, and were discouraged to learn only in connection with these applications that the housing plans were approved by HPD in December 2007.

**2. TCO relief should require completion of mechanical systems with core and shell.**

Amendment #8, the changes relating to eligibility for the temporary certificate of occupancy, provide an elegant solution to the project's timing constraints. Requiring completion of core and shell and transfer of ownership of the theater space are appropriate protections to ensure final completion. However, the proposed text does not provide sufficient detail about what is required for core and shell; it must include all mechanical systems that are fundamental to operation of the theater – a complete HVAC system, boiler, elevators, etc. Alternatively, the modified declaration of restrictions must commit the owner to provide these systems at the owner's expense.

**3. Community consultation should be required for change in operator.** Amendment #11, concerning the process for changing the operator, is a desirable change, provided the Commissioner of the Department of Cultural Affairs is required to consult Manhattan Community Board 4 before issuing the letter of certification (just as the Signature and Related Back-Up Plans have been referred to CB4 for comment before certification).

**4. Bonus applications should be referred for community comment before certification.** The only one of our previous comments that is not now reflected in the text is that the bonus should require a special permit, which involves public review through ULURP. We are disappointed though not surprised that this comment has not been accepted. We continue to feel strongly that the CB4 community should be consulted before a theater bonus is approved. The bonus involves significant additional density and theater activity, both of which must be considered from the local perspective. In the case of Related's applications, effective community consultation has in fact taken place. DCP required the applicant to send copies of the applications and any amendments to CB4, and allowed a sufficient period of time for us to prepare written comments. We have been assured that our comments must be received and considered before the Chairperson's certification of the bonus. This process should be required for future bonus applications, as it normally is for certifications involving matters of significant local concern. We therefore request that the text be further modified to include this community referral process.

The proposed text for the Special Clinton District theater bonus is a significant improvement over the original text. It reflects careful attention by DCP staff to the interests and requirements of the various stakeholders, including CB4. Subject to the comments above, we are pleased to recommend approval.

Sincerely,



Jean-Daniel Noland  
Chair



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

Cc: DCP – David Karnovsky, Dominick Answini  
Department of Cultural Affairs – Andrew Burmeister

Related Companies – Jay Kriegel, Greg Gushee, Jerry Johnson (Wachtel & Masyr)

Signature Theater Company – Jim Houghton, Erica Mallin

MBPO – Anthony Borelli, Mike Kent

Speaker Quinn’s District Office – Kate Seely-Kirk, Danielle Porcaro

City Council Land Use Division – Danielle Decerbo