



CITY OF NEW YORK

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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: Application for certification of theater bonus for Related Back-Up Plan – N090155 ZCM

Dear Chair Burden:

We are pleased to provide our comments on this application.

Introduction

As part of the Hudson Yards rezoning in 2005, a zoning bonus was created for a portion of the 42nd 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. 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. 42nd 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
- 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.

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 42nd 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

1. Why is a back-up plan needed now? We really don't understand why certification of a back-up plan is needed at this time. The application for certification does not explain why a back-up plan is needed or how certification of this plan would relate to certification of the Signature Theater Plan. Apparently, Related is concerned that the related application for the text amendment providing TCO relief [required for the Signature Theater Plan] might not be adopted. In fact, there is very little chance that the text amendments will not be adopted. We are recommending approval of the text amendments, subject to two further modifications that we trust can be resolved. Similar assurances could be sought from the local Council Member. The text amendment relates entirely to local issues and should be of no concern to other Council Members. The risk of non-passage is entirely theoretical, and not sufficient to require a back-up plan.

2. Make clear it's a back-up plan. If certified, the Back-up Plan must only become effective in the event that the City does not adopt the text amendment by a date early next year, March 15 according to DCP's presentation to us. This is not reflected in the application, but was confirmed by DCP and Related in their presentation. It must be a condition of the certification.

3. Much more work is required to make the Back-Up Plan real.

- The proposed theater space is appropriate to qualify for the bonus, but the application is internally inconsistent about the operating plan and program. First, the idea behind the design is to “provide a full-service facility for small theater groups when performing in residence.” Later, the curatorial vision of the Theater Center is stated as programming with “closed-end runs” of various projects – New York City theater companies without permanent homes, annual festivals, and regional theater companies looking for New York venues. Any of these could be appropriate uses for the theater space, but the application lacks the market and cost information necessary for assessing the financial viability of the plan.
- The application lists, under Finding (d), the substantial work that will be required to implement the Back-Up Plan. The main elements of this work, including formation of the Theater Company, financing of Start-Up Costs, the purchase and sale agreement and the operating deficit guarantee must be reflected in the declaration of restrictions, and must be conditions to the temporary certificate of occupancy (as the application says they will be).
- The proposed Theater Company does not yet exist. We are pleased that Related proposes to form the Theater Company as a not-for-profit corporation whose Board of Directors would be composed of membership representing a variety of stakeholders including members of the theater and arts professions and “at least one local representative of the community that can ensure that the theaters become active members of the area and are woven into the very fabric of the neighborhood.” The local representative should be selected by CB4.
- The Theater Company should have as an artistic mission working with companies that have a producing background related to the development of new theatrical work.

4. Require transfer of ownership for TCO. Transfer of the deed to the Theater Unit to the Theater Company should also be a condition to the TCO. The application says that it will be costly to release the Theater Unit from the construction mortgage prior to completion, yet this is apparently not an impediment to transfer of the theater unit under the Signature Theater Plan. The same should be required for the Related Back-Up Plan.

5. Why does the Related Back-Up Plan provide a 4th theater in place of one of the rehearsal studios in the Signature Theater Plan? Our understanding from some in the neighborhood is that affordable rehearsal space may be in as much demand as theater space. There is not enough information in the application to understand whether or not this is an appropriate change.

Thank you for considering our comments.

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