



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JOHN WEIS
Chair

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

November 12, 2009

Rafael E. Cestero
Commissioner
Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Re: Lower Income Housing Plan Application by Avalon West Chelsea, LLC (AvalonBay Communities, Inc.), 517-525 West 28th Street (Block 700/Lots 1, 9, & 18)

Dear Commissioner Cestero:

At the recommendation of its Housing, Health and Human Services Committee, Manhattan Community Board 4 recommends approval of the Lower Income Housing Plan Application by Avalon West Chelsea LLC for its project at 517-525 West 28th Street with conditions. The vote was unanimous.

THE PROJECT

The applicant, Avalon West Chelsea, LLC, is proposing a 691-unit 80/20 project to be located at 517-525 West 28th Street. This new construction 27-story multiple dwelling will include approximately 672,000 gross square feet of space (551,179 s.f. of residential space, 57,221 square feet of commercial space, 29,266 square feet of accessory parking space, 34,447 square feet of tenant amenity space below ground, and 3,840 s.f. of tenant amenity space above ground). The building will be constructed in two phases and is expected to include 138 affordable units (49 studio units, 68 one bedroom units and 21 two bedroom units).

The applicant is seeking financing consisting of Tax Exempt Bonds ("80/20 bonds") and Low Income Housing Tax Credits under Section 42 of the Internal Revenue Service Code. The project will also be eligible for a 421-a Real Estate Tax Exemption.

The site is located in the Special West Chelsea District. The proposed building will be constructed solely upon the footprint of the above referenced tax lots, but utilizes additional development rights from:

- adjacent tax lot combination
- the High Line Transfer Corridor, ZR § 98-30

- the Inclusionary Housing Program, ZR § 23-90 and ZR § 98-26

Under the Inclusionary Housing Bonus the development is required to produce 75,957 square feet of onsite permanent affordable housing (for households earning less than 60% of Area Median Income) to invoke the Inclusionary Housing Bonus for the site itself. Additionally, the site will contain approximately 26,000 square feet of Inclusionary Housing, again permanently affordable, the development rights of which will be available for sale to other future proposed developments in Community District 4.

In summation, in this proposed development, the 138 affordable income units are used to meet the requirements of 4 programs or regulations:

- 80/20 financing
- Low Income Housing Tax Credits
- Inclusionary Housing
- 421-a Real Estate Exemption

OUR COMMENTS

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

A healthy neighborhood needs families and larger households need larger apartments. Yet, 85% of the low-income units in this project are planned to be studios and one-bedroom units, which attract a more transient population. The applicant informs us that they did propose an option, pursuant to new 421-a requirements¹, to provide 50% two or three bedroom units. The proposal would have required the remainder of units to be studios, but the Department of Housing Preservation and Development (HPD) Division of Architecture, Construction and Engineering would not grant a waiver for not meeting the one bedroom unit requirement. We ask HPD to reconsider this request from the applicant, grant the waiver to enable more family-size apartments to be built, in order to meet the overarching community goals noted above.

2. Affordable units must be equally distributed throughout the building

These apartments will be permanently affordable and must therefore not only be equal in quality, but must be equally distributed throughout the building to encourage inclusion and integration. The future tenants of the affordable units are not second class citizens.

The construction of additional market units is predicated on account of the Inclusionary Housing Bonus. Inclusionary Apartments must be:

- built to the same construction standard as market units in the building, and

¹ 421-a(7) of the Real Property Tax Law and section 6-08(1)(ii) of the rules requires that (A) All Affordable Units in the Geographic Exclusion Area must have a comparable number of bedrooms as market rate units and a unit mix proportional to the market rate units contained in the new multiple dwelling; or (B) at least 50% of the Affordable Units must have two or more bedrooms and more than 50% of the remaining Affordable Units can be smaller than one bedroom; or (C) the floor area of affordable units must be no less than 20% of the total floor area of all dwelling units in the new multiple dwelling.

incorporated and distributed equally throughout the building.

3. Building amenities must be available to all lower income tenants at affordable rates

The applicant presented to the Housing, Health and Human Services Committee that the project would include a health club, laundry room, bike room, resident lounge, roof deck and storage space, which would be available to all tenants. If there is to be an annual charge for these amenities they must be made available to low-income tenants at an affordable rate. Creating a rate structure not affordable to all building tenants is exclusionary and discriminatory. The applicant has agreed to make the amenities available at affordable rates similar to its recent completed development at Morningside Gardens on Cathedral Parkway.

4. 2nd Floor Units available to the affordable applicants

It was noted that the second floor includes outdoor open space. The Board requests that some affordable units also be included on the second floor outdoor open space.

5. Apartment finishes must be the same for both lower income and market rate units

The applicant explained at the Housing, Health and Human Services Committee meeting they have not finalized the finishes and apartment interior specifications. The applicant said in their previous 80/20 housing developments projects, there was variation in finishes between the market rate and the affordable units.

CB4 strongly believes that the public policy followed by the developer and the government agency should be “equality of treatment”. Meaning all persons are treated the same by the organization of interest. No two people are treated differently. Impartiality and fairness are both accepted by all parties, because preference is neither given to nor taken from. Such a policy is often a feature of a democratic government.

Multiple development teams have justified this approach with the following response: “That is the normal practice in 80/20 financing”. Please note the response is “practice” not requirement or financing guideline. This Board cannot approve of such differences in quality and seriously questions the reasoning behind them. The effect such differences can have, especially on children within the apartment complex, who will go from one unit to another based on relationships formed, would seem to far out way any minimal cost to furnishing all units the same – as have many other inclusionary developers.

The Committee’s concerns have been responded to. The applicant has said there would be a range of finishes within the market rate units. The finishes for the affordable units would be the same as the range of finishes for the market rate units.

Unit and Bedroom Mix--Policy Conflict between 421-a and 80/20

The Board requests HPD seek to resolve the policy conflict between the newly revised 421-a regulations and 80/20 financing. In order to meet the demand for affordable two-bedroom

apartments, the 421-a Real Estate Exemption regulations were revised by HPD through the New York State Legislature in 2006. One of the outcomes of those revisions addressed the production of a unit and bedroom mix weighted in favor of two-bedroom units. According to Chapter 6 of Title 28 of the Rules of the City of New York, affordable units in the geographic exclusion area must have a proportionate number and mix of bedrooms as market units or at least 50% of affordable units must be two-bedroom or larger, unless preempted by federal requirements. Given that 80/20 financing does not provide for the inclusion of larger units, CB4 requests that this issue be addressed on the federal level to make requirements consistent with 421-a provisions.

CONCLUSION

CB4 has had extensive experience with Inclusionary Housing in the last five years. Where applicants have initially been unable to satisfy affordability requirements, mutually beneficial agreements regarding improved affordable unit distribution and equivalent finishes have been subsequently reached. While we are pleased that this development will produce so many additional units of permanently affordable housing, HPD must insist that the policies underlying the Inclusionary Housing Program are not compromised, and that quality affordable housing of which we can all be proud is produced.

Manhattan Community Board 4, therefore, recommends approval of the Lower Income Housing Plan Application by Avalon West Chelsea LLC for its project at 517-525 West 28th Street with the following conditions:

1. Some of the low-income units should be combined to create larger units;
2. Affordable units must be equally distributed throughout the building;
3. Building amenities must be available to all lower income tenants at affordable rates;
4. 2nd Floor Units available to the affordable applicants; and
5. Apartment finishes must be the same for both lower income and market rate units.

Sincerely,



John Weis, Chair
Manhattan Community Board 4



Joe Restuccia
Co-Chair, Housing, Health and
Human Services Committee

[signed 11/12/09]

Dave Hanzel
Co- Chair, Housing, Health and
Human Services Committee

cc: Applicant
NYC Council Speaker Christine Quinn
Sara Levenson, Miriam Colon – HPD