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August 24, 2022 / Calendar No. 11

C 220338 ZSM

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**IN THE MATTER OF** an application submitted by the NYC Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-112 of the Zoning Resolution to modify the height and setback requirements of Section 96-104 (Height and setback regulations) and the rear yard regulations of Section 23-532 (Required rear yard equivalents), on a zoning lot that has an area of greater than 40,000 square feet, occupies a frontage of a wide street, and contains existing public infrastructure, in connection with a proposed mixed-use development on property located at 705 10th Avenue (Block 1077, Lot 29), in R8 and R8/C2-5 Districts, within the Special Clinton District (Preservation Area and Western Subarea C2), Borough of Manhattan, Community District 4.

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This application for a special permit pursuant to Section 96-104 of the Zoning Resolution (ZR) was filed by the New York City Department of Housing Preservation and Development (HPD) on November 24, 2021. The special permit, along with the related actions, would facilitate the construction of an eight-story mixed-use development containing approximately 157 permanently affordable dwelling units along with approximately 6,128 square feet of community facility space and approximately 0.58 acres of publicly accessible open space to be operated by the New York City Department of Parks and Recreation (DPR) at 705 Tenth Avenue in the Clinton/Hell’s Kitchen neighborhood of Manhattan Community District 4.

On June 8<sup>th</sup>, 2022, the City Planning Commission approved the application for the Lirio (C 220221 (A) ZSM), the proposed development on an MTA-owned site at 806 Ninth Avenue at West 54<sup>th</sup> Street. The proposed text amendment action (N 220339 ZRM) of this application was the same as that for the Lirio. Subsequently, the text amendment action was withdrawn.

### **RELATED ACTIONS**

In addition to the special permit (C 220338 ZSM) that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission (CPC) on the following applications, which are being considered concurrently with this application:

- C 220337 ZSM**      Special permit to allow development over a railroad-right-of-way
- N 220339 ZRM**      Zoning text amendment to allow CPC to modify, by special permit, non-FAR bulk regulations (withdrawn)
- C 220340 HAM**      Urban Development Action Area Program (UDAAP) designation, project approval and disposition of City-owned property

**BACKGROUND**

The applicant, HPD, requests two special permits and UDAAP designation and project approval to facilitate the development of an eight-story mixed-use building containing 157 permanently affordable dwelling units, plus one superintendent unit, along with community facility space and a publicly accessible open space to be operated by the DPR at the development site (Block 1077, Lot 29). The development site is located on the west side of Tenth Avenue between West 48th and 49th streets. It contains 47,027 square feet of lot area with approximately 201 feet of frontage along Tenth Avenue, 225 feet of frontage along West 54th Street, and 243 feet of frontage on West 53rd Street. The western portion of the development site is occupied by a 50-foot-wide railroad cut used by Amtrak’s Empire Line that runs parallel to Tenth Avenue.

In 2009, HPD obtained disposition authority for two city-owned sites, including 705 Tenth Avenue as part of the Western Rail Yards (WRY) rezoning (C 090433 ZMM, *et al.*). This rezoning, intended to facilitate high-density, mixed-use developments in an underutilized area of Manhattan’s West Side, was the result of a years-long collaborative planning process between city agencies, the Metropolitan Transit Authority (MTA), the Hudson Yards Development Corporation, and the community. As part of the rezoning, the city committed to building affordable housing on the development site, which is owned by the Department of Environmental Protection (DEP), as well as on a site owned by the MTA at 806 Ninth Avenue at West 54<sup>th</sup> Street (Block 1044, Lot 3). These commitments were memorialized in a Points of Agreement (POA), which stipulated that units on the DEP-owned site would be affordable to those earning up to 165 percent of the area median income (AMI).

The development site was subject to two actions approved as part of the WRY rezoning: UDAAP designation, project approval, and disposition (C 090422 HAM), and a zoning text amendment (N 090429 ZRM) to extend Western Subarea C2 of the Special Clinton District across a portion of the development site starting 100 feet west of Tenth Avenue. These actions were intended to be a first step in facilitating the development of the vacant city-owned land, and the CPC noted that development on the site would require future land use actions and that the opportune time to consider those would be when the site's design and program was close to being finalized.

In November 1993, the CPC approved the site selection and acquisition of the development site (C 930159 PCM) for construction and use as a water tunnel shaft for City Water Tunnel No.3. At the time of the WRY rezoning, the eastern portion of the development site was being used as a staging area for the construction of Water Tunnel No. 3. The CPC noted that, upon completion of the construction of the water tunnel, the southern half of the Tenth Avenue blockfront of the development site would have a permanent easement and infrastructure associated with Water Tunnel No. 3 and continue to be controlled by DEP (C 090433 ZMM).

Land uses in the surrounding area are highly diverse and include four-to six-story, walk-up tenements, many with ground-floor retail along the avenues, and mid- to high-rise multi-family elevator buildings and hotels. There are also several schools, houses of worship, and supportive living services within the surrounding area. Open spaces in the surrounding area include Hell's Kitchen Park, located on the east side of Tenth Avenue between West 47th and West 48th streets, and Clinton Community Garden, located half a block east of Tenth Avenue between West 47th and West 48th streets. The surrounding area is well served by public transit. Subways stops approximately half a mile northeast of the site provide access to the 1/2, A/C/E, and N/Q/R/W trains.

The development site is located within an R8 zoning district with a C2-5 commercial overlay. The C2-5 commercial overlay is mapped to a depth of 125 feet from Tenth Avenue and north of the centerline of the block which fronts West 49<sup>th</sup> Street. The portion of the development site within

100 feet of Tenth Avenue is located within the Preservation Area of the Special Clinton District, and the remaining portion is located within Western Subarea C2 of the Special Clinton District. Zoning districts in the surrounding area include R8, R8A, R8/C2-5, and M2-4.

In November 1973, the CPC established the Special Interim Preservation District for Clinton (CP-22436). Developed in concert with neighborhood stakeholders, the Special Interim Preservation District imposed a series of temporary one-year controls. These controls were intended to allow the community and city representatives to collaboratively develop a plan to bolster and strengthen the community and protect it from development pressures generated by the new Javits Convention Center, slated to be built between West 45th and West 47th streets to the west. In October 1974, the CPC established the Special Clinton District to make permanent many of the interim regulations (CP-22758). The Preservation Area subdistrict was generally bounded by West 43<sup>rd</sup> Street and West 56<sup>th</sup> Street between Eighth and Tenth avenues. One of the primary goals of the Preservation Area subdistrict was to encourage the development of mid-rise residential buildings. As part of this action, the underlying zoning for a portion of the development site was changed from C6-3 to R8 with a C2-5 commercial overlay mapped to a depth of 100 feet from Tenth Avenue. Height limits were imposed along the midblocks of the Preservation Area and a CPC special permit was established to allow an increase in height up to 99 feet.

In June 1990, the CPC approved a zoning map amendment to change the southern portion of the development site from a M1-5 zoning district to an R8 zoning district (C 900613 ZMM) to bring the zoning into conformance with the predominantly residential character of the area. The Preservation Area subdistrict, and all applicable regulations, were extended approximately 450 feet west of Tenth Avenue to encompass the rezoned area.

In November 2004, a city-sponsored zoning text amendment (N 050030 ZRM) expanded height limitations to the Ninth and Tenth Avenue frontages within the Preservation Area and established street wall location requirements. Height and setbacks within 100 feet of wide streets were previously regulated by the underlying non-contextual R8 and C6-2 zoning district regulations. Most notably, this text amendment established the 85-foot height limit for buildings within 100

feet of wide streets. The text amendment also modified the CPC special permit to allow buildings to rise to a maximum height of 115 feet.

In March 2008, the CPC approved a zoning map amendment to change the northern portion of the development site from M1-5 to an R8/C2-5 zoning district (C 070289 ZMM) to facilitate the development of two new residential buildings and a public parking garage. The rezoned area is located within the Western Subarea C2 of the Special Clinton District, which includes nine tax lots on Block 1077 in addition to the northern portion of the development site.

In June 2022, the CPC approved a zoning text amendment (N 220219 ZRM) for zoning lots that meet certain conditions to waive bulk regulations except FAR. The text amendment includes four conditions: 1. the building is developed or enlarged using public funding, as defined in ZR Section 23-911, to support residences with rents restricted pursuant to a regulatory agreement with a City, State, or Federal agency; 2. the zoning lot has an area of at least 40,000 square feet; 3, the zoning lot fronts on a wide street; and 4. the zoning lot contains either a mass transit or water supply support facility.

In R8 zoning districts, permitted uses are limited to residential and community facility uses. C2-5 commercial overlays permit most commercial uses in Use Groups five through nine, including local retail and service uses, offices, and transient hotels by special permit, with a maximum floor area ratio (FAR) of 2.0. FAR, height, and certain other bulk regulations specified for the Preservation Area apply to R8 zoning districts within Western Subarea C2 and substantially modify the underlying zoning regulations. As modified by the Special Clinton District, the maximum FAR for residential and community facility uses is 4.2. The maximum base height is 66 feet and the maximum building height is 85 feet within 100 feet of a wide street; beyond 100 feet of a wide street, the maximum building height is seven stories or 66 feet, whichever is less. Within 100 feet of a wide street, buildings must be set back 10 feet from a wide street and 15 feet from a narrow street above the base height. For zoning lots with wide street frontage, street walls must be located on the street line and extend along the entire street frontage. For zoning lots with narrow street frontage, street walls must be located on the street line and extend along the entire street

frontage of the zoning lot beyond 50 feet of a wide street. No rear yard is required within 100 feet of a wide street; however, beyond 100 feet of a wide street, a 30-foot rear yard is required. The maximum permitted lot coverage is 70 percent. The proposed development would be built on the western portion of the development site occupied by a railroad cut used by the Amtrak Empire Line. The proposed development would be eight stories tall (77 feet) and contain approximately 157 affordable dwelling units (plus a superintendent's unit), including a mix of studios, one-, two-, and three-bedroom units. Approximately 71 units would be affordable to low- and very-low-income households earning between 50 and 80 percent of AMI, and approximately 73 units would be affordable to middle and moderate-income households earning between 120 and 130 percent AMI. About 23 units would be set aside for formerly unhoused individuals and families.

The proposed development would yield approximately 131,668 square feet of floor area (2.8 FAR), of which approximately 125,540 square feet would be residential and approximately 6,128 square feet would be ground-floor community facility space. The proposed development would include several residential amenities available to all building residents, including a gym and laundry facility on the ground floor. The ground floor would contain a publicly accessible DPR comfort station, which would front the adjacent publicly accessible open space. The proposed development would also include a 2,750-square-foot landscaped inner courtyard, approximately 67 feet long and 41 feet wide, on the western side of the building. Approximately 0.58 acres of publicly accessible open space would occupy the eastern portion of the development site. The space will remain under DEP jurisdiction and would be maintained and managed by DPR.

In order to facilitate the proposed project, the applicant requests UDAAP designation, project approval, and disposition of city-owned property, and approval and two special permits.

The requested UDAAP designation and approval would facilitate the improvement of the eastern portion of the development site as publicly accessible open space. While the 2009 UDAAP designation (C 090422 HAM) approved as part of the WRY rezoning covered the housing portion of the development site to enable the construction of affordable housing, the proposed UDAAP designation subject to this application covers the entire site. The proposed UDAAP designation

includes the disposition of a negative easement to allow approximately 39,590 square feet of development rights from the open space area to be used by the proposed building, and to restrict the City from constructing any permanent structures on the open space area within 30 feet of the proposed building to provide light and air.

The first requested special permit would modify Preservation Area height requirements of ZR Section 96-104(d) to permit a proposed maximum building height of 77 feet, currently limited to 66 feet pursuant to Preservation Area bulk regulations. The special permit would also modify Preservation Area street wall requirements of ZR Section 96-104(a) to permit an approximately one-foot setback above the sixth floor along both West 48<sup>th</sup> and West 49<sup>th</sup> Street facades, and modify rear yard regulations of ZR Sections 23-532 to waive the required 30-foot rear yard for all buildings or portions thereof located beyond 100 feet of a wide street.

The second requested special permit would permit the portion of the Amtrak Empire Line railroad right-of-way that will be completely covered by a permanent platform to be included in the lot area of the development site.

## **ENVIRONMENTAL REVIEW**

The application (C 220338 ZSM), in conjunction with the applications for the related actions (C 220337 ZSM, N 220339 ZRM, C 220340 HAM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQR), and the SEQR regulations set forth in Volume 6 of the New York Code of Rules and Regulations (NYCRR), 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 21HPD031M. The lead agency is HPD.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on March 23, 2022.

## **UNIFORM LAND USE REVIEW**

On March 28, 2022, the application (C 220338 ZSM), in conjunction with the applications for the related actions (C 220340 HAM, C 220337 ZSM), was certified as complete by the Department of City Planning and duly referred to Manhattan Community Board 4 and the Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related application for a zoning text amendment (N 220339 ZRM), which was referred for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Manhattan Community Board 4 held public hearings on this application and the related actions on June 1, 2022. On June 1, 2022, by a vote of 38 in favor, three opposed and five abstaining, Manhattan Community Board 4 adopted a resolution recommending disapproval of the application unless the following conditions are met:

1. Redistribute apartments at 50% of AMI (40 units) to apartments between 80% AMI and 130% AMI ranges and ensure no gaps between AMI bands.
2. Create extremely limited zoning text amendments to ZR 96-104 height and setback regulations with restrictive language, except for portions of publicly owned zoning lots adjacent to a mass transit or water supply support facility conveyed to private entity for a publicly financed affordable housing development.
3. Accomplish the height, setback, and rear yard waivers through the special permit pursuant to ZR 74-681.
4. Create a deed restriction limiting the use of the publicly accessible open space as a permanent DEP-owned and DPR-operated public open space and defining the maximum square footage and height for any DEP service structures anticipated in the future.
5. Set aside units for the formerly unhoused for family households.
6. Develop an on-site social service plan to provide essential services for the formerly unhoused.



### **Borough President Recommendation**

The application was considered by the Manhattan Borough President, who, on July 6, 2022, issued a recommendation approving the application with the following conditions:

- “1. Work with DCP and CB4 to modify the text amendment proposal in a manner that eliminates the need for a special permit provision for the Preservation Area.
2. Amend the memorandum of understanding between DEP and the Parks Department to mandate that any permanent changes to the proposed open space be accompanied by extensive community outreach, including a discussion of mitigations if public access would be affected.”

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

On July 13, 2022 (Calendar No. 10), the City Planning Commission scheduled July 27, 2022, for a public hearing on this application (C 220338 ZSM). The hearing was duly held on July 27, 2022 (Calendar No. 25). There were 11 speakers in favor of the application and three in opposition.

The applicant team, consisting of five representatives, testified in support of the application. The applicant team provided an overview of the land use actions and the building program. A representative of HPD explained the ownership and maintenance of the open space area, noting that the space will be owned by DEP but will be maintained and managed by the DPR and that the specific responsibilities undertaken by each agency will be outlined in a Memorandum of Understanding (MOU). They also testified about the proposed UDAAP approval, explaining that the 2009 approval only covered the western portion of the development site due to the ongoing construction of Water Tunnel No.3 on the eastern portion, and that the proposed UDAAP approval of this application covers the entire development site. The HPD representative noted that the proposed UDAAP approval would facilitate concurrent construction of the affordable housing and publicly accessible open space through developer sponsorship.

A representative from the developer noted the community board’s request to accomplish the rear yard waiver through the railroad right-of-way special permit pursuant to ZR Section 74-681 and explained that this special permit does not apply to the bulk waivers subject to this application. The

representative also explained that the affordability levels originally included units available to those earning up to 120 percent of AMI and that, as a response to community feedback, the AMI mix was increased to include units at 130 percent of AMI. Additionally, representatives from the developer and HPD described the critical need to generate low-income tax equity to make the proposed project financially feasible and explained that the proposed AMI mix serves to maximize the project's financial resources.

Three members of Manhattan Community Board 4 spoke in opposition to the application, reiterating the community's desire for more moderate- and middle-income units. The community board members expressed the need for preserving economic diversity through the creation of mixed-income housing informally negotiated as part of the 2009 WRV rezoning. One board member testified that Community Board 4 has supported the creation low-income affordable housing units since the 2009 WRV rezoning and noted that the creation of low-income housing needs to be balanced with the creation of moderate- and middle-income housing. Another board member highlighted the perceived lack of provisions for the preservation of the publicly accessible open space and requested the proposed negative easement to be further refined to limit the size of service structures that DEP can potentially construct on the open space.

A local resident testified in support of the application, expressing her belief that the proposed community facility space, which would be leased to an independent theatre organization, would help to promote art and culture in the neighborhood.

Five members of various local art organizations spoke in favor of the application, noting that the proposed community facility space would help to support the art community in the neighborhood and beyond.

There were no other speakers, and the hearing was closed.

## CONSIDERATION

The Commission believes that this application for a special permit to modify certain height, setback, street wall location, and rear yard requirements (C 220338 ZSM), in conjunction with the related applications for a UDAAP designation, project approval and disposition of City-owned property (C220340 HAM), and special permit to allow development over a railroad right of way (C 220337 ZSM), is appropriate.

The Commission believes that the UDAAP designation is appropriate. The Commission notes that while the 2009 UDAAP designation facilitates the development of the affordable housing building on the vacant City-owned zoning lot, the proposed UDAAP approval subject to this application will allow for the development of a publicly accessible open space in the remainder of the zoning lot, fulfilling the commitments made as part of the WRY rezoning. The commission also believes that the disposition of the 30-foot negative easement, measured from the proposed building's eastern façade, is necessary to ensure adequate access to light and air for the proposed building's occupants.

The Commission believes that the special permit to modify height and street wall regulations is appropriate. The Preservation Area regulations impose an 85-foot maximum building height within 100 feet of Tenth Avenue and a 66-foot maximum building height beyond 100 feet of Tenth Avenue. The regulations also require street walls to be located on the street line and extend along the entire street frontage. The waivers to height and street wall regulations will allow the proposed building to reach a height of 77 feet, and to have an approximately one-foot setback above the sixth floor as well as design articulations along both the West 48<sup>th</sup> Street and West 49<sup>th</sup> Street facades. The proposed building meets the conditions for modifications to height and setback regulations - the maximum height of the proposed building does not exceed 99 feet beyond 100 feet of a wide street nor 115 feet within 100 feet of a wide street. The Commission believes that the requested relief from height and setback rules is a modest increase in allowable height consistent with the existing character of adjacent buildings and the land use pattern of the surrounding neighborhood. The Commission notes that due to the limitations on buildable lot area attributed to presence of Water Tunnel No. 3, the increase in height will foster the creation of more affordable housing units

compared to development through existing regulations. In addition, the Commission is pleased with the design of the articulated façade and believes that the waiver for street wall regulations is appropriate as the proposed one-foot setback would help to create visual continuity with adjacent buildings.

The Commission believes that the special permit to modify rear yard regulations is appropriate. The proposed building cannot be constructed on the eastern portion of the site due to the presence of Water Tunnel No. 3, which requires ongoing DEP access and maintenance. Consequently, the proposed building's bulk must be concentrated on the western portion of the development site, where a rear yard with a minimum depth of 60 feet or its equivalent would ordinarily be required. The proposed development meets the requisite conditions to qualify for the requested bulk waivers- the building will be developed using public funding to support residences with rents restricted pursuant to a regulatory agreement with a city agency, and the zoning lot has an area of at least 40,000 square feet, occupies frontage on a wide street, and contains a water supply support facility. The Commission believes that in lieu of a rear yard, the 30-foot negative easement on the publicly accessible open space, the 2,750 square-foot inner courtyard on the ground level, and the 3,600 square-foot inner courtyard on the upper floors will enable adequate access to light and air for the building and the adjacent properties and streets.

Furthermore, the Commission notes that the proposed building is located on a through lot portion of the development site and will gain additional access to light and air through its frontages on West 48<sup>th</sup> and West 49<sup>th</sup> streets. The Commission believes that the rear yard waiver is necessary to maximize the number of affordable homes - strict adherence to rear yard requirements would result in a loss of units and create inefficient floorplates, thus making the proposed development financially infeasible. The Commission recognizes that Community Board 4 requested to accomplish the rear yard waiver through the special permit pursuant to ZR 74-681. However, the Commission believes that the proposed special permit pursuant to ZR 96-104 is the most appropriate way to accomplish the objectives of the proposed project because ZR 74-681 was not intended to modify bulk regulations and applies citywide.

The Commission believes that the special permit to allow development over a railroad right-of-way is appropriate. The railroad-right-of-way would be completely covered by a permanent platform at grade level and become incorporated into the lot area of the development site. The Commission notes that the special permit is necessary to enable the construction of the proposed development, which is otherwise constrained by the presence of Water Tunnel No. 3 on the eastern portion of the development site and cannot be built upon. Furthermore, the special permit will not lead to an excessive concentration of floor area on the development site. The development site is also bounded by three streets that can accommodate the additional usage the development will generate. Because the site is in a transit-rich area in the Manhattan core, it is anticipated that car ownership connected to the proposed development will be limited and that additional parking to accommodate the project is not necessary. Lastly, the Commission recognizes that the design of the proposed development is being coordinated with Amtrak to ensure the future use of the railroad-right-of-way.

The Commission is pleased that the eastern portion of the development site will provide approximately 0.58 acres of publicly accessible open space for the benefit of the proposed development and the wider community. The open space will remain under the jurisdiction of DEP and will be maintained and managed by DPR. The Commission is satisfied that the MOU between DEP and DPR outlines the responsibilities for the design, construction, maintenance, and operations of the open space. The Commission also notes the importance of this site to maintain the City's drinking water system, and the need may arise for additional infrastructure on the site relating to the water tunnel. Given the public benefits accruing to this project from the proposed affordable housing, the project may continue to meet the required findings for the bulk waivers if the open space was partially improved with supporting structures relating to the water tunnel to the extent that the thirty-foot light and air easement remained unobstructed.

While the Commission notes that the community board's recommendation regarding affordability levels is beyond the scope of this application, it is nonetheless important to discuss AMI mix in the context of affordable housing in the Hell's Kitchen neighborhood more broadly. HPD's original proposal for the development contemplated a building program with units available to

those earning up to 120 percent of AMI; the AMI mix was increased to include units at 130 percent of AMI as a response to the community board's feedback. The Commission notes that the proposed AMI mix aligns with the executed WRY POA which stipulates that units on the DEP site be affordable to those earning less than 165 percent of AMI. The Commission is aware of the apparent conflict between HPD's proposed building program and what the community believes they were pledged as part of the 2009 WRY negotiations: A 100 percent affordable development composed exclusively of moderate-income (81 percent to 120 percent of AMI) and middle-income (121 percent to 165 percent of AMI) units. The Commission notes, however, that in the years since the WRY POA was negotiated, median incomes in the New York metro area have changed dramatically - the neighborhood's median household income of approximately \$115,000 is on the lower end of HUD's 2022 income limits for moderate-income (\$106,720) and middle-income households (\$220,000), and is generally comparable with the median income for a four-person family in the New York City region (\$133,400). Therefore, the Commission believes that the proposed AMI mix is consistent with the makeup of the neighborhood.

Although beyond the scope of this application, the Commission appreciates that the development is being built to Enterprise Green Community standards and incorporates multiple environmental sustainability measures into the project's design.

## **RESOLUTION**

Therefore, the City Planning Commission, deeming the actions described herein to be appropriate, adopts the following resolution:

## **FINDINGS**

The City Planning Commission hereby finds pursuant to Section 96-104 of the Zoning Resolution for height modifications of paragraph 96-104(d) that the distribution of bulk permits adequate access to light and air to surrounding streets and properties.

The City Planning Commission hereby makes the following findings pursuant to Section 96-104(d)(1) through 96-104(d)(4) of the Zoning Resolution for other bulk modifications of paragraph 96-104(d):

1. There are physical conditions, including the presence of existing buildings or other structures, public infrastructure, or topographical features, that create practical difficulties in complying with the bulk regulations that would adversely affect the building configuration or site plan;
2. The proposed modifications will not unduly obstruct access to light and air to adjoining properties or streets;
3. The proposed scale and placement of the development or enlargement relates harmoniously with the surrounding area; and,
4. The requested modification is reasonable in relation to the practical difficulties on the site or the public benefit derived from the development or enlargement.

**RESOLVED,**

that having considered the Environmental Assessment Statement (EAS), for which a Negative Declaration was issued on March 23, 2022 with respect to this application (CEQR No. 21HPD031M), that the City Planning Commission finds that the actions described herein will have no significant impact on the environment; and be it further

**RESOLVED,** by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by the NYC Department of Housing Preservation and Development and the NYC Department of Citywide Administrative Services pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-104 of the Zoning Resolution to modify the height and setback requirements of 96-104 (Height and setback regulations) and the rear yard requirements of Section 23-532 (Required rear yard equivalents), on a zoning lot that has an area of at least 40,000 square feet, occupies the frontage of a wide street, and contains a mass transit or water supply support facility, in connection with a proposed mixed-use development on property located at 705

Tenth Avenue (Block 1077, Lot 29), in R8 and R8/C2-5 Districts, within the Special Clinton District, (Preservation Area and Western Subarea C2), Borough of Manhattan, Community District 4, is approved, subject to the following conditions:

(a) The property that is the subject of this application (C 220338 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by S9 Architecture filed with this application and incorporated in this resolution:

<b><u>Dwg. No.</u></b>	<b>Title</b>	<b>Last Date Revised</b>
U-002.00	ZONING SITE PLAN	08/22/2022
U-003.00	ZONING ANALYSIS, ZONING DIAGRAMS	08/22/2022
U-004.00	ZONING WAIVER PLAN	08/22/2022
U-006.00	ZONING WAIVER SECTIONS	08/22/2022

(b) Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

(c) Such development shall conform to all applicable laws and regulations relating to its construction, operation, and maintenance.

(d) In the event the property that is the subject of the application is developed, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.



(e) All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.

(f) Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

(g) Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the City's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 220338 ZSM), duly adopted by the City Planning Commission on August 24, 2022 (Calendar No.11 ) 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.

**KENNETH J. KNUCKLES, Esq., *Vice-Chairman***  
**DAVID J. BURNEY, ALFRED C. CERULLO, III, JOSEPH I. DOUEK, RICHARD EADDY,**  
**DAVID GOLD, LEAH GOODRIDGE, RASMIA KIRMANI-FRYE, ORLANDO MARÍN,**  
**JUAN CAMILO OSORIO, RAJ RAMPERSHAD, *Commissioners***



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> 705 Tenth Avenue (DEP Site)	
<b>Applicant:</b> HPD - NYC Dept of Housing Preservation & Development	<b>Applicant's Primary Contact:</b> Melissa Auton
<b>Application #</b> 220337ZSM	<b>Borough:</b> Manhattan
<b>CEQR Number:</b> 21HPD031M	<b>Validated Community Districts:</b> M04

**Docket Description:**

#  
705 Tenth Avenue  
CD 04 C 220337 ZSM

IN THE MATTER OF an application submitted by NYC Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681 of the Zoning Resolution to allow that portion of a railroad or transit right-of-way which will be completely covered over by a permanent platform to be included in the lot area, in connection with a proposed 8-story mixed-use building, on property located at 705 10th Avenue (Block 1077, Lot 29), in R8 and R8/C2-5 Districts, partially within the Preservation and partially within the Other Areas (C2), within the Special Clinton District.

Plans for this proposal are on file with the City Planning Commission and may be seen on the Zoning Application Portal at <https://zap.planning.nyc.gov/projects/2019M0374>, or the Department of City Planning, 120 Broadway, 31st Floor, New York, NY, 10271-0001.

*Please use the above application number on all correspondence concerning this application*

<b>RECOMMENDATION: Conditional Unfavorable</b>			
<b># In Favor:</b> 38	<b># Against:</b> 3	<b># Abstaining:</b> 5	<b>Total members appointed to the board:</b> 0
<b>Date of Vote:</b> 6/1/2022 4:00 AM		<b>Vote Location:</b> Virtual	

*Please attach any further explanation of the recommendation on additional sheets as necessary*

<b>Date of Public Hearing:</b> 6/1/2022 10:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	<a href="https://zoom.us/webinar/register/WN_IIRYDRNCR1Ox8VPHoJw6Gg">https://zoom.us/webinar/register/WN_IIRYDRNCR1Ox8VPHoJw6Gg</a>

**CONSIDERATION:** Respectfully submitted by Manhattan Community Board 4. Please see attached.

Recommendation submitted by	MN CB4	Date: 6/6/2022 6:42 PM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> 705 Tenth Avenue (DEP Site)	
<b>Applicant:</b> HPD - NYC Dept of Housing Preservation & Development	<b>Applicant's Primary Contact:</b> Melissa Auton
<b>Application #</b> 220338ZSM	<b>Borough:</b> Manhattan
<b>CEQR Number:</b> 21HPD031M	<b>Validated Community Districts:</b> M04

<b>Docket Description:</b>	
#	
705 Tenth Avenue	
CD 04	C 220338 ZSM
<p>IN THE MATTER OF an application submitted by NYC Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-112* of the Zoning Resolution to modify the height and setback requirements of Section 96-104* (Height and setback regulations) and the rear yard regulations of Section 23-532 (Required rear yard equivalents), on a zoning lot that has an area of greater than 40,000 square feet, occupies a frontage of a wide street, and contains existing public infrastructure, in connection with a proposed 8-story mixed-use building, on property located at 705 10th Avenue (Block 1077, Lot 29), in R8 and R8/C2-5 Districts, partially within the Preservation and partially within the Other Areas (C2), within the Special Clinton District.</p>	
<p>*Note: Section 96-104 is proposed to be changed and a new section 96-112 is proposed to be created under a concurrent related application for a Zoning Text Amendment (N 220339 ZRM).</p>	
<p>Plans for this proposal are on file with the City Planning Commission and may be seen on the Zoning Application Portal at <a href="https://zap.planning.nyc.gov/projects/2019M0374">https://zap.planning.nyc.gov/projects/2019M0374</a>, or the Department of City Planning, 120 Broadway, 31st Floor, New York, NY, 10271-0001.</p>	

Please use the above application number on all correspondence concerning this application

<b>RECOMMENDATION: Conditional Unfavorable</b>			
<b># In Favor:</b> 38	<b># Against:</b> 3	<b># Abstaining:</b> 5	<b>Total members appointed to the board:</b> 0
<b>Date of Vote:</b> 6/1/2022 4:00 AM		<b>Vote Location:</b> Virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

<b>Date of Public Hearing:</b> 6/1/2022 10:30 PM	
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<b>CONSIDERATION:</b> Respectfully submitted by Manhattan Community Board 4. Please see attached.		
Recommendation submitted by	MN CB4	Date: 6/6/2022 6:42 PM



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> 705 Tenth Avenue (DEP Site)	
<b>Applicant:</b> HPD - NYC Dept of Housing Preservation & Development	<b>Applicant's Primary Contact:</b> Melissa Auton
<b>Application #</b> 220340HAM	<b>Borough:</b>
<b>CEQR Number:</b> 21HPD031M	<b>Validated Community Districts:</b> M04

**Docket Description:**

IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD)

1) pursuant to Article 16 of the General Municipal Law of New York State for:

- a. the designation of property located at 705 10th Avenue (Block 1077, Lot 29) as an Urban Development Action Area; and
- b. an Urban Development Action Area Project for such area; and

2) pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer to be selected by HPD;

to facilitate the development of an eight-story building containing approximately 157 affordable housing units and an open space area, Borough of Manhattan, Community District 4.

*Please use the above application number on all correspondence concerning this application*

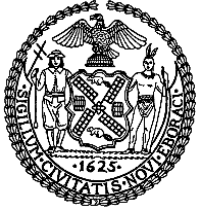
<b>RECOMMENDATION: Conditional Unfavorable</b>			
<b># In Favor:</b> 38	<b># Against:</b> 3	<b># Abstaining:</b> 5	<b>Total members appointed to the board:</b> 0
<b>Date of Vote:</b> 6/1/2022 4:00 AM		<b>Vote Location:</b> Virtual	

*Please attach any further explanation of the recommendation on additional sheets as necessary*

<b>Date of Public Hearing:</b> 6/1/2022 10:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	<a href="https://zoom.us/webinar/register/WN_IIRYDRNCR1Ox8VPHoJw6Gg">https://zoom.us/webinar/register/WN_IIRYDRNCR1Ox8VPHoJw6Gg</a>

**CONSIDERATION:** Respectfully submitted by Manhattan Community Board 4. Please see attached.

Recommendation submitted by	MN CB4	Date: 6/6/2022 6:42 PM
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CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

424 West West 33 Street, Suite #580  
New York, NY 10001

**JEFFREY LEFRANCOIS**  
Chair

tel: 212-736-4536  
[www.nyc.gov/mcb4](http://www.nyc.gov/mcb4)

**JESSE R. BODINE**  
District Manager

June 6, 2022

Adolfo Carrión Jr., Commissioner  
NYC Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10007

Dan Garodnick, Chair & Director  
City Planning Commission & Department of City Planning  
120 Broadway  
New York, NY 10271

**Re: DEP Site (705 10<sup>th</sup> Ave) Proposed Affordable Housing Development  
Under the Western Railyards Points of Agreement  
ULURP Numbers  
220337 ZSM  
220338 ZSM  
220339 ZRM  
220340 HAM**

Dear Commissioner Carrión and Chair Garodnick,

After referral on April 6<sup>th</sup>, 2022, from the NYC Department of City Planning to Manhattan Community Board 4, the Clinton / Hell's Kitchen Land Use (CHKLU) Committee held public meetings on the above referenced ULURPs on November 24<sup>th</sup>, 2020, April 13<sup>th</sup>, 2022, and May 11<sup>th</sup>, 2022. At its regularly scheduled Executive Committee meeting on May 23<sup>rd</sup>, 2022, the Officers and Committee Chairs of MCB4 reviewed the position of the CHKLU Committee and referred the full matter to the Board for review, discussion and vote.

The public actions through ULURP include:

- Zoning Special Permit, ULURP #C220337ZSM
- Zoning Special Permit, ULURP #C220338ZSM

- Zoning Text Amendment, ULURP #220339ZRM
- Urban Development Action Area, ULURP #C220340HAM

The proposed mixed-use, eight-story building would provide approximately 157 permanently affordable units, a community arts and culture facility, and a public comfort station accessible from the DEP Owned, Parks Department Operated, Public Open Space. The Development Team includes Douglaston, the Actor’s Fund, and New York City Department of Housing Preservation and Development (HPD).

HPD and the Development Team proposed the following unit breakdown:

AMI Tier	Income Range	Rent Range	Percentage of Units	Number of Units
Homeless Referrals	\$0 -\$32,211	\$215 -\$512	15%	23
50% AMI	\$28,834 -\$74,000	\$768 -\$1,322	25%	40
80% AMI	\$47,211 -118,400	\$1,305 -\$2,252	20%	31
120% AMI	\$61,337 -\$177,600	\$1,717 -\$2,966	30%	47
130% AMI	\$73,611 -\$192,400	\$2,075 -\$3,587	10%	16
			<b>Total*</b>	<b>157</b>

\*1 super’s unit not included in total

With that breakdown, only 40% of the units would be middle/moderate income housing, or less than half of what the Mayor and City Council agreed to after working with the Board and the Hell’s Kitchen community on the 2009 Western Railyard Points of Agreement (“WRY POA”).<sup>1</sup>

The Board at its June 1<sup>st</sup>, 2022, full Board meeting, voted 38 in favor, 3 opposed, 5 abstaining and 0 present but not eligible:

**To deny the ULURP applications unless modifications are made, in accordance with the conditions as noted in the broad principles below, and specifically detailed under each ULURP action, as noted in this letter.**

The broad principles are:

**Affordability Mix**

- **Redistribute the 25% of apartments, 40 units, currently at 50% AMI among the 80%, 120% and 130% AMI bands to make the income mix more consistent with the terms of WRY-POA.**
- **The revised AMI bands have no gaps from 80% to 165% income ranges.**
- **The homeless referral units are set aside for family households, not individuals.**

<sup>1</sup> Appendix A. Western Railyard Rezoning Points of Agreement- December 10, 2009

### **Special Permit Under Zoning Resolution (ZR) § 74-681**

- **Community supports the Special Permit pursuant to ZR § 74-681** (Development within or Over a Railroad or Transit Right-of-Way or Yard) to develop the Proposed Development over an Amtrak rail cut and right-of-way.
- **The required rear yard waiver can be accomplished under this Special Permit**, not the newly proposed 96-112.

### **Special Permit Under ZR § 96-104**

- **Community supports the Special Permit pursuant to ZR § 96-104 action in a modified version**, pursuant to ZR § 74-681. Given that the City Planning Commission has granted waivers in the past under this Special Permit for height, setback and street wall compliance for a building over a rail right of way, MCB4 would support a similar rear yard waiver under ZR § 74-681 for this development.

### **Special District Text Changes**

- **The current zoning text provisions of height and setback and for bulk modifications should not be modified.**
- **Create extremely limited zoning text amendments to ZR § 96-104 for height and setback** with restrictive language, except for portions of publicly owned zoning lots adjacent to a mass transit or water supply support facility conveyed to private entity for a publicly financed affordable housing development (Appendix F).

### **Disposition of Negative Easement on the DEP Owned, Parks Department Operated, Public Open Space Area and Light and Air for the Proposed Development**

- That easement is not enough to protect and preserve the DEP Owned, Parks Department Operated, Public Open Space in perpetuity. In addition to adequate building separation for light and air, the entire DEP Site, being developed as a 25,000 square foot public open space **must have a deed restriction to limit its use as permanent DEP Owned, Parks Department Operated, Public Open Space.**
- That deed restriction must also **define a maximum square footage and height for any DEP service structures anticipated or planned in the future.**

### **Public DEP Owned, Parks Department Operated, Public Open Space Amenities**

- MCB4 supports the inclusion of a Department of Parks and Recreation (DPR) Public Comfort Station and DPR maintenance room in the proposed project.

## **Social Services**

- MCB4 request the Actors Fund and the Development Team **develop and present a Social Service Plan to MCB4 to provide essential services to those households, including staffing, to ensure those families success in our community.**

MCB4 urges HPD and the Development Team to engage with the Board and the Hell’s Kitchen community to resolve these issues as the proposed development moves through the ULURP process.

## **PROPOSED PROJECT**

The proposed project is in an R8 zone (with a C2-5 ground floor overlay) and would be built primarily above the Amtrak railroad cut between West 48<sup>th</sup> and West 49<sup>th</sup> Streets just west of Tenth Avenue. It would face the proposed DEP Owned, Parks Department Operated, Public Open Space on the DEP site off Tenth Avenue between 48<sup>th</sup> and 49<sup>th</sup> Streets. The maximum building height in the Preservation Area part of the Special Clinton District is 66 feet. The 2009 WRY POA agreed to the grant of a Special Permit under ZR Section 96-104 (c), which would allow the building height to rise to 77 feet.

### **Unit Mix**

The 2009 WRY POA stated that 50% of the units would accommodate two- and three-bedroom units<sup>2</sup>. The Project’s proposed unit mix is consistent with that agreement:

<b>Unit Type</b>	<b>Percentage of Units</b>	<b>Number of Units</b>
Studio	23%	36
1-Bedroom	27%	42
2-Bedroom	41%	64
3-Bedroom	9%	15
	<b>Total*</b>	<b>157</b>

\*1 super’s unit not included in total

### **Homeless Set Aside**

The Mayor’s Office has mandated that 15% of new housing on City-owned sites be set aside for homeless referrals. The Board and the Hell’s Kitchen community fully understand the compelling need for such housing. Hell’s Kitchen is a community that prides itself on its acceptance, concern, and compassion for all New Yorkers.

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<sup>2</sup> Appendix A. Western Railyard Rezoning Points of Agreement- December 10, 2009, page 3: "HPD's RFPs will contain the following requirements: . . . 50% two or more bedroom units . . . "



## HISTORY

In 2009, as part of the Western Rail Yards Rezoning, the City committed to develop affordable housing on two City-owned sites: the Metropolitan Transportation Authority (MTA) site (Ninth Avenue at 54<sup>th</sup> Street) and the Department of Environmental Protection (DEP) site (Tenth Avenue, 48<sup>th</sup>-49<sup>th</sup> Streets).

This commitment was achieved through robust negotiations among the community, MCB4, the City Council, and the City.

### Vital Need for Moderate & Middle-Income Housing

The vast majority of the affordable units produced under the Hudson Yards Points of Agreement (“HY POA”)<sup>3</sup> through Inclusionary Housing, have been for low-income households. In the Hudson Yards and Western Railyard Rezoning, the community’s concern was to maintain economic integration. Therefore, both the HY POA and the WRY POA<sup>4</sup> contained commitments to produce affordable housing for a range of incomes: low, moderate, and middle. In fact, the Harborview NYCHA site, the Studio City site (now known as Gotham West), Site M (commitment now transferred to the Slaughterhouse site), and in the WRY POA, the DEP, MTA, and West 20<sup>th</sup> Street site (that commitment now transferred to the Slaughterhouse site), all note a range of incomes up to 60-165% AMI.

### Honoring the WRY POA Still Expected

The agreed upon AMI mix was stated in multiple MCB4 letters to HPD from 2015 – 2017<sup>5</sup>, as well as in MCB4’s Affordable Housing Plan.<sup>6</sup> MCB4 and HPD worked together to develop the provisions in HPD’s Requests for Proposals for the DEP and MTA sites. MCB4’s presentation regarding these sites was included as a link for all prospective developers to review.<sup>7</sup>

In 2019, HPD, with no notice or discussion with the Hell’s Kitchen community or MCB4, announced that the DEP site would include a majority of low- and very-low-income units, with a substantial homeless component. In March of 2020, the Speaker of the City Council was informed by Board leadership that this was unlikely to be acceptable to the community. The Board reiterated that it expected the City to honor its 2009 commitment.

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<sup>3</sup> [Hudson Yards Points of Agreement](#), pages 4-6.

<sup>4</sup> Appendix A. Western Railyard Rezoning Points of Agreement- December 10, 2009, pages 2-5

<sup>5</sup> [MCB4 Letter re: ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM. July 27, 2009;](#)  
[MCB4 Letter re: Affordable Housing RFPs. October 7, 2015;](#)  
[MCB4 Letter re: Affordable Housing RFPs. February 8, 2017;](#)  
[MCB4 Letter re: Affordable Housing RFPs. June 7, 2017.](#)

<sup>6</sup> [MCB4 Affordable Housing Plan, originally adopted in 2015 and revised annually through 2019, pages 57-58.](#)

<sup>7</sup> [MCB4 2018 Letter to HPD Re: DEP and MTA Affordable Housing Sites](#), for the MTA & DEP Sites: 806 9th Avenue & 705 10th Avenue, Permanent Affordable Housing & Open Space Presentation, see pages 7-22.

The community does not support the proposed AMI mix and requests modifications to better reflect the Western Railyards Points of Agreement and the community need for economic diversity.

As part of the Western Railyards rezoning, this development site was designated for affordable housing for moderate- and middle-income house households between 80% to 165% AMI. The Mayor and City Council memorialized this commitment in the WRY POA document executed between the Mayor and the City Council on December 10, 2009<sup>8</sup>. In a related ULURP Action in 2009, MCB4 supported<sup>9</sup> the UDAAP designation, #C090423HAM, project approval and disposition of City-owned block 1044 p/o lot 3, as part of the mitigation measures agreed to in the major upzoning of the 3-block Western Railyards.

During that ULURP action, MCB4 recognized the ongoing need for both low-income and supportive housing in negotiating the WRY POA.<sup>10</sup> Therefore, other sites in the WRY POA, called for low-income and supportive housing. Specifically:

- The preservation of 150 units of SRO housing
- The preservation of low-income housing, at three Section 8 buildings<sup>11</sup> owned by the Related Companies, on West 30<sup>th</sup>, West 47<sup>th</sup>, and West 48<sup>th</sup> Streets, for a total of 263 units
- The preservation of low-income housing, at two 80/20 buildings owned by the Related Companies, on West 23<sup>rd</sup> and West 55<sup>th</sup> Streets, for a total of 140 units
- The construction of 166 low-income apartments on the Eastern Railyards
- The construction of 265 low-income apartments on the Western Railyards

Those Section 8 buildings' affordability requirements have been extended for an additional 30 years, the 80/20 apartments have been made permanently affordable and the Eastern Railyard apartments have been built. 112 units of SRO preservation were completed through supportive housing at 330-332 West 51<sup>st</sup> Street in a development by the Lantern Group (of the 132 units produced, 67 were for homeless individuals). In total, 701 low-income apartments have been preserved or produced to date. However, **not** one unit of moderate- and middle-income housing has been built as part of the Western Railyards Rezoning Points of Agreement.

At the Clinton/Hell's Kitchen Land Use Committee meeting on November 24<sup>th</sup>, 2020, HPD proposed that the majority of the units would not provide housing for moderate/middle income levels as promised. At the CHKLU Meeting on April 13<sup>th</sup>, 2022, HPD presented their changes – decreasing the units at 120% AMI from 40% to 30% and adding 10% of units at 130% AMI.

This development site, reserved for moderate- and middle-income housing, is now proposed to contain 60% low-income housing, with 95 of the 158 apartments for households between 0% and 80% AMI and 24 apartments of 158 will be reserved for the formerly homeless. The goal of the

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<sup>8</sup> Appendix A. Western Railyards Rezoning Points of Agreement - December 10, 2009

<sup>9</sup> [MCB4 Letter to CPC re Western Rail Yard Offsite Affordable Housing Sites – July 27, 2009.](#)

<sup>10</sup> Appendix B. Western Railyards Affordable Housing Production (completed and in construction as of 2021)

<sup>11</sup> Appendix A. Western Railyards Rezoning Points of Agreement - December 10, 2009, page 27

WRY POA was to ensure an economically diverse community, not to favor one income group over another. The feedback from the community was clear: the revised AMIs were unacceptable.

Furthermore, well beyond the WRYPOA, MCB4 continues to encourage the development of both Low-Income and Supportive Housing in the District. From 2018 to 2021, MCB4:

- Initiated and supported the inclusion of 75 Supportive Housing apartments to be a component of the Slaughterhouse site redevelopment at 495 11<sup>th</sup> Avenue
- Supported inclusion of 23 Supportive Housing apartments (for LGBT homeless and seniors) as part of the preservation of the Hartley House settlement house at 413 West 46<sup>th</sup> Street
- Supported the preservation of 454 West 35<sup>th</sup> Street, (currently 55 Supportive Housing apartments) and an addition of 14 more units, for a total of 69 Supportive Housing apartments serving senior citizens including the homeless, the mentally ill and community residents.<sup>12</sup>
- Supported Inclusionary Housing at five sites containing 568 affordable apartments ranging from 40% to 125% AMI, the majority, 353 units or 62%, are at below 60% AMI.<sup>13</sup>

MCB4 continues to welcome a diversity of incomes and those with social service needs, as long as developments are thoughtfully and carefully sited in consultation with the community. The consensus of community feedback was that the City was not living up to either the letter or the spirit of the agreement to provide middle/moderate income housing for the community.

As HPD knows, MCB4 developed one of the most comprehensive, far-sighted, achievable, affordable housing plans in the entire city. The Board and the community on its own have identified affordable housing sites and worked with City agencies until they became a reality. For example, MCB4 and the community identified the Slaughterhouse site on West 39<sup>th</sup> Street and Eleventh Avenue and pressed for almost a decade for it to become a 100% affordable housing development with hundreds of low-, moderate-, and middle-income units.

HPD must also recognize that the Special Clinton District was created “to preserve and strengthen the residential character of a community bordering Midtown and maintain a broad mix of incomes.”<sup>14</sup> Development has produced market-rate housing and low-income housing through Inclusionary Bonuses. However, this community and this city needs to serve those New Yorkers in the middle who are left out, with the production of moderate- and middle-income housing.

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<sup>12</sup> Appendix C. New Supportive Housing Projects Supported by the MCB4—2019 to 2021

<sup>13</sup> Appendix D. Inclusionary Housing Sites in MCD4 from 2018-2021

<sup>14</sup> [Special Clinton District Zoning Resolution](#), 96-00 General Purposes section.

## **Modified AMI Mix and Homeless Set Asides**

### **AMI Mix**

The Board requests that the Development Team redistribute the 25% of apartments, 40 units, currently at 50% AMI among the 80%, 120% and 130% AMI bands. That action would make income mix more consistent with the terms of WRY POA. MCB4 understands that reallocation of income bands may require additional capital financing from HPD. To accomplish that aim, MCB4 asks the HPD and the Development Team to access a portion of the \$40 million cited and allocated in the City capital budget as part of the WRY POA.<sup>15</sup>

### **Homeless Set Asides and Unit Distribution**

HPD should be aware that Hell’s Kitchen has one of the densest concentrations of formerly homeless residents, homeless shelters, homeless temporary shelters, and supportive housing in the entire City. Within the immediate vicinity of the proposed development — on West 46<sup>th</sup>, West 47<sup>th</sup>, West 48<sup>th</sup>, West 49<sup>th</sup>, and West 50<sup>th</sup> Streets — there are several permanent residences (164 units) and social service facilities (80 units) for homeless individuals and families. Furthermore, the Skyline Hotel, on 49<sup>th</sup> and Tenth Ave, housed homeless families until the City precipitously moved out 63 families and replaced them with 300 single men from congregate shelters without adequate social service support. Nevertheless, MCB4 supports the inclusion of 23 homeless set asides for family households.

While the proposed project meets the mandated 15% homeless set aside, the initial homeless set aside apartment locations were presented as segregated in certain apartment lines and concentrated in studios and one-bedrooms. Furthermore, the majority of those apartments faced the interior courtyard, rather than the street or the 10<sup>th</sup> Avenue DEP Owned, Parks Department Operated, Public Open Space with views that allow for greater light and air.

For the homeless set aside, MCB4 requests that apartment be reserved for family households in one and two-bedroom apartments, instead of studios for individuals.

Further, MCB4 requests that Homeless apartments should be distributed throughout the building, on all street, courtyard and park exposures, instead of concentrated in a single apartment line to promote integration of those households into the new building’s community.

MCB4 requests that HPD and the Development Team to detail the referral protocol for homeless apartments.

### **DEP Site ULURP Actions**

The Land Use Actions needed to facilitate the proposed development will require approval of the following Proposed Land Use Actions:

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<sup>15</sup> Appendix A. Western Railyards Points of Agreement - December 10, 2009, page 2

- Special Permit Pursuant to ZR Section 74-681 (Development Within or Over a Railroad or Transit Right-Of-Way or Yard)
- Special Permit Pursuant to a new ZR Section 96-112
- Zoning Text Amendment to Establish a new City Planning Commission Special Permit
- Disposition of Negative Easement on the DEP Owned, Parks Department Operated, Public Open Space Area; and Disposition of City Owned Property (Light and Air Easement)

**ULURP #C220337ZSM– Zoning Special Permit, ZR §74-681**

Community supports this action in a modified version.

**City’s Proposal**

Special Permit pursuant to ZR § 74-681 (Development within or Over a Railroad or Transit Right-of-Way or Yard) to develop the Proposed Development over an Amtrak rail cut and right-of-way.

**City’s Stated Reason**

The City is proposing to completely cover an existing and operational below-grade railroad right-of-way on the site with a platform and to include the completely covered area in the lot area for the Proposed Development on the site. Amtrak has reviewed the schematic designs of the Proposed Development and takes no exception to the concept embodied by the Proposed Development.

**Community Response**

Community supports this action modified to include the needed rear yard waiver.

**ULURP #C220338ZSM– Zoning Special Permit, pursuant to ZR § 96-112**

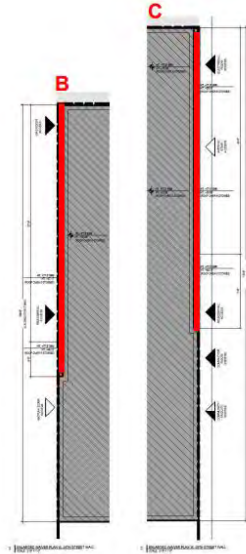
Community supports this action in a modified version.

**City’s Proposal**

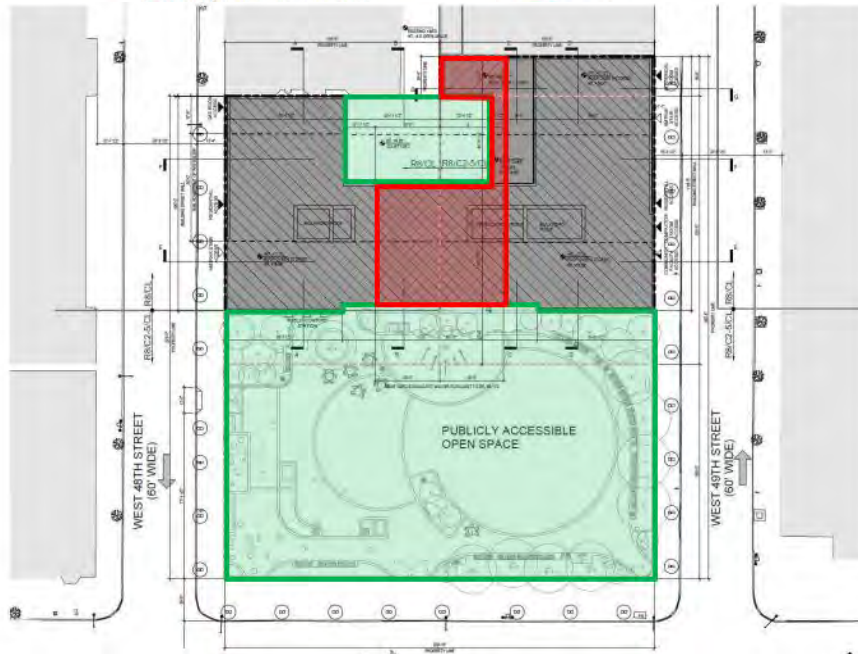
Height, Setback & Rear Yard Waivers

Special Permit pursuant to ZR § 96-112, as established by the proposed Text Amendment to:

- Modify height and setback regulations set forth in ZR § 96-104 (Height and Setback Regulations) on the Development Site; and
- Modify rear yard equivalents as set forth in ZR § 96-103 (Yard Regulations) on the Development Site.



█ Height & Setback Waiver      █ Waivers



█ Rear Yard Waiver      █ Proposed Inner Courtyard / Publicly Accessible Open Space

**City's Stated Reasons**

Height & Setback Waivers

To construct Rialto West as currently designed, ZR § 96-104 requires a maximum of 66 feet beyond 100 feet from a wide street in the Special Clinton District. The Proposed Development will be constructed to a height of 77 feet (eight stories) with an approximately one-foot setback above the sixth floor along both the West 48<sup>th</sup> Street and West 49<sup>th</sup> Street facades to create visual continuity with the adjacent buildings. The Proposed Development height modification adds 11 feet to the maximum building height permitted as-of-right and is below the maximum 99-foot

height permitted by the special permit. The proposed height aligns with the stated priorities of the Western Railyard Rezoning Points of Agreement.

### Rear Yard Waiver

The siting of the affordable housing is directly due to the presence of the existing public infrastructure, namely the maintenance shaft way for Water Tunnel No. 3, and the planned DEP Owned, Parks Department Operated, Public Open Space of approximately 25,000 SF on the eastern portion of the site. With that parameter, the proposed new building's bulk is concentrated on the western portion of the Project Area, where a rear yard equivalent would be required on the through-lot portion of the site.

Therefore, a waiver of rear yard equivalent requirements is needed due to the location of existing public infrastructure. Without the rear yard waiver, there would be a loss of approximately 35 units, making the proposed affordable housing project financially infeasible.

### **Community Response**

#### Height & Setback Waivers

MCB4 supports the height and setback waivers as proposed, however under the current text of 96-104, not the proposed newly created Section 96-112.

#### Rear Yard Waivers

This rear yard waiver can be accomplished under Special Permit pursuant to ZR § 74-681 (Development within or Over a Railroad or Transit Right-of-Way or Yard). MCB4 has reviewed and approved 505-513 West 43<sup>rd</sup> Street, PS51 Affordable Housing Site (W. 44<sup>th</sup> St & 11<sup>th</sup> Ave), 505 West 47<sup>th</sup> St, and Clinton Green (51-53<sup>rd</sup> Streets, West of Tenth Avenue at 500, 502, 506-510 West 53<sup>rd</sup> Street), under that Special Permit above the Amtrak cut west of Tenth Avenue from West 43<sup>rd</sup> to West 53<sup>rd</sup> Streets. Given that the City Planning Commission has granted waivers in the past under this Special Permit for height, setback and street wall compliance for building over a rail right of way, MCB4 would support a similar rear yard waiver under ZR § 74-681 for this development.

### **ULURP #N220339ZRM – Zoning Text Amendment to establish a new City Planning Commission Special Permit ZR Section 96-112)**

The community does not support this action.

### **City's Proposal**

Zoning Text Amendment to establish a new City Planning Commission ("CPC") Special Permit section (ZR Section 96-112) to consolidate the existing special permit provision under 96-104 for height and setback and additional allowance for other bulk modifications applicable to the Development Site.

### **City's Stated Reason**

The City proposes to consolidate existing CL height and setback waiver into a single section (ZR § 96-112), in order to add a provision to allow CPC to modify, by Special Permit, bulk regulations (except FAR) for development subject to CL Preservation Area regulations.

Zoning lot must meet three conditions to qualify for bulk waivers:

1. Be at least 40,000 SF;
2. Front on a wide street; and
3. Contain existing public infrastructure.

Only two sites meet these conditions: the DEP site and the MTA site.

The text amendment creates four findings:

1. Difficulties in complying with bulk regulations;
2. Not obstructing access to light and air;
3. Scale and placement relates harmoniously with surrounding area; and
4. Reasonable in relation to difficulties on the site.

### **Background on Proposed Special District Rezoning & Text Changes**

After the New York City Convention Center<sup>16</sup> had been announced in 1972, the area was subject to major developer speculation, vacating of tenants from fully occupied residential buildings and demolition. As a result of those actions to protect and preserve the Clinton / Hell's Kitchen residential neighborhood, the City of New York established the Special Clinton District in 1973 to preserve existing housing and prevent the commercialization of the Clinton/Hell's Kitchen District. In the General Purposes section of the New York City Zoning Resolution, Section 96-00, Special Clinton District, one of the main goals stated is to: "(a) to preserve and strengthen the residential character of the community."<sup>17</sup>

In consideration that these proposed changes were under review for a minimum of 6-8 months in preparation for an Environmental Impact Assessment and the Uniform Land Use Review Procedure (ULURP) process, it is unconscionable that DCP and HPD would brief MCB4 in December, only weeks before a proposed ULURP Certification. That lack of briefing and collaboration, in itself, on proposed rezoning and Special Clinton District text changes, breaks precedent in the DCP's 48-year collaborative and working relationship with MCB4.

The Special Clinton District is a carefully crafted zoning document that has been the bulwark of neighborhood preservation of the Clinton/Hell's Kitchen area for decades. Private and public sector developers have always met in advance and discussed proposed changes to the Special Clinton District, 9-12 months prior to making actual proposals. The DCP, developers and the Community Board would then hash out the details of any proposed changes, working together to severely limit their applicability to enable development of a site without creating district-wide precedent.

When public sites have been involved, whether they be small-scale, such as a Fountain House residence, at 441 West 47<sup>th</sup> Street, requiring a text change for community facility use or large-

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<sup>16</sup> Originally sited for the West Side piers between West 43<sup>rd</sup> to West 47<sup>th</sup> Streets.

<sup>17</sup> [Chapter 6 - Special Clinton District \(CL\)](#)



scale, such as the development of the Gotham West project at 592-608 11<sup>th</sup> Avenue, 507-553 West 44<sup>th</sup> Street, and 508-558 West 45<sup>th</sup> Street, nearly an entire city block, creating 1,250 units DCP has always met with Board for months in advance. In those meetings, DCP has always worked with the Board to arrive at an agreement for the minimal changes needed for rezoning and/or text changes. MCB4 has always been exceptionally flexible with text changes needed to develop permanently affordable housing.

### **Proposed Clinton Special District Zoning Text Changes**

Since 1973, there have been only three types of Special Permits allowed in the Clinton Special District:

- Under Section 96-104 for height and setback in the Preservation Area
- Under Section 96-108 for demolition of buildings in the Preservation Area
- Under Section 96-23 for changes to height and setback in the Perimeter Area

The Special Permits under Section 96-104 and 108 have existed since the initial adoption in 1973, and Section 96-23 since 2011. In the District's 48-year history, there has been one application for demolition under Section 96-108, three applications under Section 96-104 for height and setback, and only two granted. There have been no applications under Section 96-23.

The application of a Special Permit under Section 96-104 for increase in height and setback, at both the DEP and MTA affordable housing sites was the subject of serious community controversy at the time of the WRY Rezoning and a compromise regarding limitations to those permits was reached and embodied in the WRY POA. MCB4 continues to support the use of those permits at the DEP and MTA Sites.

The proposed text changes seek to consolidate the existing special permit provision under 96-104 for height and setback and additional allowance for other bulk modifications applicable to the Development Site. These proposed changes would apply for the entire Preservation Area from West 43<sup>rd</sup> to West 56<sup>th</sup> Streets, 100 feet west of Eighth Avenue, to an irregular boundary west of Tenth Avenue. The proposed text changes are far reaching and create an ability for more density and less light and air on surrounding blocks.

### **Community Response**

MCB4 does not agree with the establishment of a Preservation Area-wide Special Permit provision, the result of which would be to undercut that long-stated zoning requirement to preserve light and air for residents. The current zoning text provisions of height and setback and for bulk modifications should not be modified.

### **Community Proposed Alternative Action**

Create extremely limited zoning text amendments to **ZR § 96-104 for height and setback** with restrictive language, except for portions of publicly owned zoning lots adjacent to a mass transit or water supply support facility conveyed to private entity for a publicly financed affordable

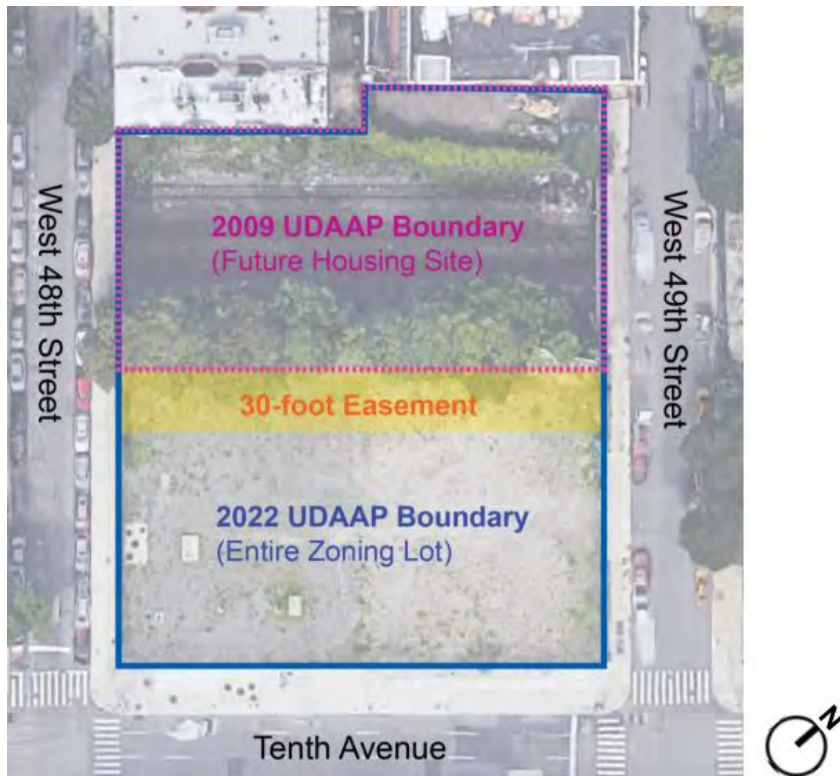
housing development (Appendix F).

**ULURP #C220340HAM – Urban Development Action Area designation of the Project Area and Urban Development Action Area Project approval of the Proposed Project**

Community supports this action.

**City’s Proposal**

Designation of an Urban Development Action Area and Approval of an Urban Development Action Area Project.



**City’s Stated Reason**

The Project Area consists of underutilized property, which tends to impair the development of the surrounding community, with or without tangible physical blight. The Project Area is therefore eligible to be an Urban Development Action Area and the Proposed Project is therefore eligible to be an Urban Development Action Area Project pursuant to Article 16 of the General Municipal Law.

**Community Response**

Community supports this action.

## **Disposition of Negative Easement on the DEP Owned, Parks Department Operated, Public Open Space Area and Light and Air for the Proposed Development**

Community supports this action in a modified version.

### **City's Proposal**

The disposition of a negative easement on the DEP Owned, Parks Department Operated, Public Open Space Area.

Disposition of a permanent easement on the DEP Owned, Parks Department Operated, Public Open Space Area for the benefit of the Development Site to for the purposes of light and air for the Proposed Development.

### **City's Stated Reason**

The City seeks to dispose of a negative easement to allow the approximately 39,590 square feet of unused development rights from the DEP Owned, Parks Department Operated, Public Open Space Area to be used by the Proposed Development on the Development Site, and to restrict the City from constructing any permanent structures on the Open Space Area within thirty (30) feet of the Development Site to provide light and air for the Proposed Development.

### **History--DEP Owned, Parks Department Operated, Public Open Space Commitment**

Since 1994, when the Third Water Tunnel West 48<sup>th</sup> Access Shaft site at 705 Tenth Avenue was announced, MCB4 has advocated for permanent use of the entire DEP Owned space as public open space. DEP vacated the Third Water Tunnel Access Shaft access site in October 2016 and since then has been working with MCB4 and Department of Parks to develop the site.

This site requires special consideration for the security of the City's water, including continuous access to the underground access shaft facility by DEP personnel. The 100 feet by 60 feet (0.58 acre) portion of block front on Tenth Avenue will be developed and will function as a public park, remaining DEP Owned and Parks Department Operated. The Public Open Space will not be mapped as a public park due to DEP's access requirements for water tunnel maintenance.

In June 2017, MCB4 requested a permanent easement for unobstructed light and air from the DEP water access tunnel site to the east of the affordable housing development, which is included by reference in the Clinton/Hell's Kitchen RFP at 806 9<sup>th</sup> Avenue and 705 10<sup>th</sup> Avenue for Permanent Affordable Housing and Open Space.<sup>18</sup> There is, however, still no current or proposed mechanism to ensure the entire DEP Owned, Parks Department Operated, Public Open Space is maintained in perpetuity as public open space.

### **Comfort Station & Maintenance Room**

Both Hell's Kitchen Park, diagonally southeast of the DEP Site, and the future DEP Owned, Parks Department Operated, Public Open Space lack the basic amenity of a comfort station. Due

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<sup>18</sup> [MCB4 Clinton/Hell's Kitchen RFP Requirements](#) and [HPD Clinton/Hell's Kitchen RFP \(April 2018\)](#)

to DEP water tunnel access requirements, no structures may be built on the site that typically service public open spaces.

### **Community Response**

That easement is not enough to protect and preserve the DEP Owned, Parks Department Operated, Public Open Space. The proposed easement action protects only light and air for the proposed building, not for the DEP Owned, Parks Department Operated, Public Open Space. It does not ensure permanent public open space protection.

In addition to adequate building separation for light and air, **the entire DEP Site, being developed as a 25,000 square foot DEP Owned, Parks Department Operated, Public Open Space must have deed restriction to limit its use as permanent public open space.**

Furthermore, that deed restriction must also define a maximum square footage and height for any DEP service structures anticipated or planned in the future.

### **Public DEP Owned, Parks Department Operated, Public Open Space Amenities**

MCB4 supports the proposed to include a public restroom as well as a small support space, including a janitor's sink and electricity, for NYC Parks Department staff in the proposed affordable housing building. That facility will be accessible from the DEP Owned, Parks Department Operated, Public Open Space.

**The full Public Open Space Easement must be settled and agreed as part of this ULURP.**

### **Non ULURP Development Matters**

#### **Facade Design**

MCB4 supports the façade design. The Board appreciates that the Development Team has sought to integrate the building into its surroundings, rather than making a design statement based on current trends. The developer has integrated surrounding Hell's Kitchen industrial vernacular of large, punched window openings and historic use of red brick found in many industrial and factory buildings west of Tenth Avenue.

#### **Ground Floor Community Facility Space**

The community facility space will be approximately 6,130 SF. The Actor's Fund will integrate arts and culture into the community by creating a long-term cultural asset. IndieSpace, will be the Community Facility tenant. Their mission is to create permanent real estate solutions for the independent theater community by delivering affordable creative space for diverse performing artists along with supportive programming.

## **Non ULURP Operational Matters**

### **Amenities**

The proposed Project's amenities include a laundry, fitness room, children's playroom, and bike room. A 2,750 SF landscaped inner courtyard will be accessible to all tenants. MCB4 supports these amenities.

### **Social Services—Homeless Households**

The community recognizes that the development will contain 23 apartments for homeless set aside. Households coming from DHS shelters need social services to reclaim their lives, integrate into the community and maintain stability. The Actor's Fund stated there are no on-site services planned. MCB4 request the Actors Fund and the Development Team develop and present a Social Service Plan to MCB4 to provide essential services to those households, including staffing, to ensure those families success in our community.<sup>19</sup>

### **Conclusion**

MCB4 notes the above recommendations and comments reflect the complex, detailed and long history of the proposed affordable housing development on the DEP Site. MCB4 yet again seeks compromise in bringing this project to fruition. Our positions are taken, not in isolation, but in the context of the entire community and reflect 13 years of negotiation to secure economically diverse affordable housing on a prominent site on our community's main street, Ninth Avenue. For decades, MCB4 has supported and will continue to support both Low-Income and Supportive Housing.

The DEP site is but one component of 11 affordable housing sites agreed to be preserved or constructed as part of the WRYPOA. In negotiating affordable housing mitigation for the Hell's Kitchen community as part of a major upzoning of the Western Railyards, MCB4 sought to preserve economic diversity in affordable housing throughout the District with both off and on-site preservation and construction. Those affordable housing sites range from West 23<sup>rd</sup> to West 56<sup>th</sup> Streets. The result of that negotiation was embodied in an enumerated, detailed letter dated December 10, 2009, to then City Council Speaker Quinn signed by then Deputy Mayor Robert Lieber and Jay Cross, Vice President of the Related Companies.

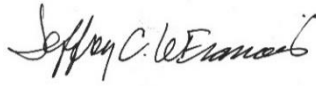
Commitments made cannot be commitments discarded. The residents of neighborhoods, such as Hell's Kitchen, have put their trust in City government, and their elected officials, working in good faith and seeking compromise, often painful, to balance the greater good of the City and the effect on the local neighborhood.

MCB4 asks the City of New York to uphold its written commitments in that 2009 letter and embody them in the final approval of these ULURPs.

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<sup>19</sup> The Actor's Fund stated a portion of the proposed community facility space could be used for on-site social service program needs; this matter needs to be agreed to in this ULURP process.

Sincerely,



Jeffrey LeFrancois  
Chair  
Manhattan Community Board



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



Paul Devlin  
Co-Chair  
Clinton/Hell's Kitchen Land Use Committee

Enclosures

CC: Hon. Brad Hoylman, New York State Senator  
Hon. Linda Rosenthal, New York State Assemblymember  
Hon. Richard Gottfried, New York State Assemblymember  
Hon. Brad Lander, New York City Comptroller  
Hon. Jumaane Williams, Public Advocate  
Hon. Adrienne Adams, New York City Council Speaker  
Hon. Mark Levine, Manhattan Borough President  
Hon. Erik Bottcher, New York City Councilmember, Council District 3  
Hon. Eric Adams, New York City Mayor  
Lorraine Grillo, First Deputy Mayor  
Sheena Wright, Deputy Mayor for Strategic Initiatives  
Meera Joshi, Deputy Mayor for Operations  
Anne Williams-Isom, Deputy Mayor for Health and Human Services  
Ahmed Tigani, Deputy Commissioner for Neighborhood Strategies, New York City  
Housing Preservation and Development  
Sylvia Li, Senior Planner, NYC Department of City Planning  
Andrew Cantu, Borough Planner, NYC Department of City Planning  
Steve Charno, Douglaston Development  
Barbara Davis, Actor's Fund

## **Appendices**

Appendix A. Western Railyards Points of Agreement - December 10, 2009

Appendix B. Western Railyards Affordable Housing Production (completed and in construction as of 2021)

Appendix C. New Supportive Housing Projects Supported by the MCB4—2018 to 2021

Appendix D. Inclusionary Housing Sites in MCD4 from 2018-2021

Appendix E. 2021 NYC Area AMI, Income Bands and Percent of AMI, and 2021 NYC Area Affordable Monthly rents

Appendix F. Proposed Alternate Zoning Text Amendments to SCD 96-104

Appendix G. Past MCB4 Letters Regarding DEP Site

## Appendix A. Western Railyards Points of Agreement - December 10, 2009



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

December 10, 2009

Honorable Christine Quinn  
Speaker  
New York City Council  
City Hall  
New York, N.Y. 10007

Re: Western Rail Yard Rezoning Plan- City Council ULURP Actions

Dear Speaker Quinn:

Please find attached to this letter a "Points of Agreement" reflecting recent discussions among the City Council, the Administration and the Related Companies, representing the interest of RGWRY LLC, regarding the City Council's review of the Western Rail Yard Rezoning, a project which encompasses both the rezoning of the Western Rail Yard site itself as well as the provision of off-site affordable housing at two locations.

In addition to items which reflect modifications made by the City Council with respect to the ULURP actions and the associated restrictive declaration, a number of the items set forth in the "Points of Agreement" reflect commitments to future action by the Administration, while others reflect commitments to future action by the Related Companies. The Administration and the Related Companies are each providing you with this letter in acknowledgment of their respective commitments.

With respect to certain of the items described in the "Points of Agreement", implementation is subject to further review under applicable procedures, including land use and environmental review, and the receipt of additional approvals. In other cases, implementation is contingent upon the availability of funding and financing support or determinations by State or federal agencies. In all such cases, the Administration and the Related Companies, with respect to their respective commitments, will work diligently with your cooperation to achieve the goals stated in this "Points of Agreement".

We look forward to continuing to work with you and your colleagues as this project progresses towards the transfer of the Western Rail Yard site from the MTA to the Related Companies, and implementation of all the items in the "Points of Agreement" associated therewith.

Sincerely,

Handwritten signature of Robert C. Lieber in black ink.

Robert C. Lieber for the City of New York  
(with respect to Points of Agreement  
Sections: 1, 3 (a) – (f), 4 (b), 6 (c) & (d),  
8, and 10)

Handwritten signature of Jay Cross in black ink.

Jay Cross for RGWRY LLC  
(with respect to Points of Agreement  
Sections: 2, 3 (g) & (h), 4 (a) & (b), 5,  
(a) & (b), and 7)



**POINTS OF AGREEMENT**  
**Western Rail Yard Rezoning**  
**December 10, 2009**

**I. ANTI-DEMOLITION COMMITMENTS**

- (a) Anti-demolition Language: The Administration and the City Council recognize that with the construction of the Number 7 Line Subway underway and scheduled for completion by 2014, and completion of the Hudson Yards Park and Boulevard, scheduled for completion by 2014, the conditions will be in place for the substantial development forecasted in the 2004 Hudson Yards FGEIS and the 2005 West Chelsea FEIS to occur. The Administration and the City Council acknowledge the community's concerns that the growth forecasted for the Hudson Yards and adjacent areas, should it occur, could result in development pressures that may affect tenement housing that has historically provided an affordable housing resource for residents. To address these concerns, additional measures are warranted to facilitate the preservation of existing housing stock. For this purpose, the Administration agrees to support a zoning text amendment for Subareas D4 and 5 of the Special Hudson Yards District, Preservation Area P-2 of the Special Garment Center, and the Special West Chelsea District ( the " Zoning Text Amendment"), in the form annexed hereto as Exhibit I.
- (b) Referral of Zoning Text Amendment: The Department of City Planning ("DCP") commits to refer the Zoning Text Amendment for public review by no later than July 1, 2010. Council Member Quinn agrees to support the Zoning Text Amendment in the form annexed hereto as Exhibit I.

**2. AFFORDABLE HOUSING COMMITMENTS: WESTERN RAIL YARD ("WRY") AND EASTERN RAIL YARD ("ERY")**

- (a) Related commits to build a minimum of 265 permanently affordable rental units ("Affordable Units") on the WRY and an additional minimum of 166 Affordable Units on either the WRY or ERY, in either rental or condominium buildings, for a total of 431 Affordable Units combined, contingent upon:
- (i) Availability of a tax abatement program comparable to existing tax abatement programs for either rental units or condominiums, including 20 year abatement for condominium with 20% Affordable Units;
  - (ii) Availability of tax-exempt bonds to fully finance the construction of the 80/20 rentals that Related chooses to develop to fulfill its commitment; and,
  - (iii) At the expiration of the initial real estate tax program, WRY & ERY Affordable Units will convert to permanent affordability to households at an average income of up to 90% AMI, not to exceed 125% AMI, provided that there are incentives, programs, exemptions, credits or abatements available

that will reduce the real estate taxes for the 80/20 buildings to a level consistent with real estate taxes paid prior to any phase out of the real estate tax abatement in the initial 421-a program for the building. No restrictions shall apply to the market rate units as rentals or as a conversion to condominiums after the initial 421-a real estate tax exemption period.

- (b) With respect to the distribution of Affordable Units within any 80/20 rental component of a building, Related commits to the following:
  - (i) A maximum of 50% Affordable Units on any floor; and,
  - (ii) At least one Affordable Unit on 80% of the floors included within the 80/20 rental components (assuming there are enough Affordable Units planned for at least one per floor, otherwise one per floor for as many floors as there are Affordable Units).

### **3. AFFORDABLE HOUSING OFF-SITE COMMITMENTS**

- (a) The Department of Housing Preservation and Development (“HPD”) commits to issuing Requests for Proposals (“RFPs”) for the development of affordable housing on the City-owned sites at West 54<sup>th</sup> Street and 9<sup>th</sup> Avenue, which is under the leasehold control of the Metropolitan Transportation Authority (“MTA”), and West 48<sup>th</sup> Street and 10<sup>th</sup> Avenue, currently occupied by the Department of Environmental Protection (“DEP”) in connection with the construction of Water Tunnel No. 3. The City reiterates its commitment to propose, and Council Member Quinn reiterates her commitment to support, the provision in the City capital budget of the sum of \$40 million to construct or otherwise create new affordable housing units off-site.

HPD’s RFPs will contain the following requirements:

- (i) A height cap restriction that the local Council Member and Community Board 4 (“CB4”) understand will result in the creation of an estimated 267 units. Without the height cap restrictions, these sites would generate 312 units. The height on the DEP site will not exceed 77 feet. The height on the MTA site will not exceed 85 feet on 9<sup>th</sup> Avenue, and 99 feet on the midblock;
  - (ii) An AMI mix of 165% or under;
  - (iii) 50% two or more bedroom units; and,
  - (iv) Permanent affordability.
- (b) HPD will share the program overview with CB4 before releasing the RFPs for the off-site housing developments.
  - (c) The Administration agrees that the MTA and DEP sites will not generate an Inclusionary Zoning bonus under NYC Zoning Resolution Section 23-90, and

acknowledges that they cannot serve as the Cure for Anti-Harassment under NYC Zoning Resolution Section 96-110.

- (d) The Administration, in the attached letter from Deputy Mayor Edward Skyler dated December 10, 2009 and annexed hereto as Exhibit 2, commits to make a best effort to vacate the Department of Sanitation (“DSNY”) facilities located at 136-140 West 20<sup>th</sup> Street with a goal of completing the relocation by December 31, 2011. If DSNY is relocated from its West 20<sup>th</sup> Street facilities, HPD commits to develop the site for affordable housing at a range of incomes up to 165% AMI. In the event that DSNY is not relocated, the local Council Member and CB4 acknowledge that HPD will not be expected to make up for those units anywhere else.
- (e) SRO Preservation: HPD will work with the local Council Member and CB4 to preserve up to 150 units of privately owned SRO housing. The Council Member and CB4 acknowledge the difficulties inherent in and lengthy timeframe needed to accomplish these private acquisitions. To the extent that such acquisition(s) can be negotiated, HPD will use its programs to acquire and rehabilitate these SRO units.
- (f) HPD commits to providing CB4 with quarterly updates on the affordable housing developments that were committed as a part of the Hudson Yards and West Chelsea rezonings.
- (g) Related commits that it will seek two extensions of federal rental subsidy to its existing Mark Up to Market Project Based Section 8 HUD Contracts (or a comparable successor program) for a period of no less than 40 years from City Council approval of the WRY rezoning, for its properties known as Terrific Tenements (at 525 West 47<sup>th</sup> Street and 425 West 48<sup>th</sup> Street) and the French Apartments (at 330 West 30<sup>th</sup> Street). Related will apply for the initial extension no later than March 31, 2010. The current maximum extension is a 20 year period, and if granted, will expire in 2030. Related will then seek additional extensions totaling an additional 20 year period. Related will diligently pursue all necessary approvals to seek such extensions, provided:
  - (i) All necessary Department of Housing and Urban Development (“HUD”) and investor approvals are obtained; and,
  - (ii) The relevant financing and tax programs, including applicable real estate tax abatement programs, currently available for Section 8 housing are made available to effectuate the extensions. Related will commit to pursue extending Section 8 benefits at these properties and will diligently pursue all necessary approvals. The period of each extension will be the maximum period allowed under the program.
- (h) Related Off-site 80/20s: Related commits to guaranteeing that all existing affordable rental units in the Westport (at 500 West 56<sup>th</sup> Street) and the Tate (at 535 West 23<sup>rd</sup> Street) in Community District 4 will remain permanently affordable to

households at an average income of up to 90% AMI, not to exceed 125% AMI, provided that there are incentives, programs, exemptions, credits or abatements available that will reduce the real estate taxes for the 80/20 buildings to a level consistent with real estate taxes paid prior to any phase out of the real estate tax abatement in the initial 421-a program. No restrictions shall apply to the market rate units as rentals or as a conversion to condominiums after the initial 421-a period. This commitment is contingent on obtaining lender and investor approvals, which Related will diligently pursue.

- (i) A summary chart of the affordable housing commitments is annexed hereto as Exhibit 3.

#### **4. WRY SCHOOL COMMITMENTS**

- (a) Community Notification: Related agrees that copies of an amended Letter of Intent with the School Construction Authority (“SCA”) regarding school site selection, modified to reflect the commitments in paragraph (b) will be provided to CB4, the local school district, the Manhattan Borough President, and the local Council Member.
- (b) School Site Selection: Related commits that it will offer SCA approximately 120,000 square feet of space at Site 6 for a public school and that Site 6 will be one of the first three buildings to be built. The SCA commits that it will initiate the site selection process for the public school at Site 6 no later than July 1, 2010. Related shall only be required to offer Site 6 to the SCA and no alternate sites. In the event that the SCA rejects Site 6, for whatever reason, Related's obligation to provide space for the public school under Section 3.04 of the Restrictive Declaration (“Declaration”) is terminated.

#### **5. COMMUNITY AND CULTURAL SPACE COMMITMENTS**

- (a) Related agrees to make available a minimum of 16,000 gross square feet of space for local cultural institutions or other local arts not-for-profits.
- (b) The cultural space will be provided in at least two facilities.
- (c) Related commits to constructing the core and shell of the cultural spaces, including the distribution of base building systems to the cultural spaces, in accordance with Section 2.04(d) of the Declaration, as modified by the City Council.

#### **6. OPEN SPACE COMMITMENTS**

- (a) Related agrees to replace the member appointed by the President of the Hudson Yards Development Corporation to serve on the Open Space Advisory Board established under Section 2.02(e) of the Declaration with a member appointed by the Manhattan Borough Commissioner of the Department of Parks and Recreation (“Parks Dept”).

(b) Related agrees to change the timing of the open space payments required under Section 3.04(b)(i) of the Declaration to two payments of \$1 million each, with the 1st payment triggered by the TCO for the 2nd residential building, provided that the 2nd residential building results in a total of 500 or more units, and the 2nd payment triggered by the TCO for the 4th residential building. In the event that the 1st and 2nd residential buildings produce less than 500 total units, then the 1st payment will be triggered by the TCO for the 3rd residential building and the 2nd payment will be triggered by the TCO for the 5th residential building.

(c) Greening and Neighborhood Opens Space Development:

(i) Street Tree Planting: The Administration agrees to work with the City Council to review and modify, as necessary, the Parks Dept's street tree planting program to ensure that the Hudson Yards area of CB4 has an appropriate allocation of street trees. In addition, the Administration will work with Con Edison on a master plan for the appropriate location of street trees and infrastructure vaults. The Parks Dept will seek to plant trees at all viable street tree locations.

(ii) Port Authority Sites: The Administration will continue working with the City Council, the community and the Port Authority of NY & NJ ("Port Authority") toward creating open space on Port Authority sites within the blocks bounded by West 34<sup>th</sup> and West 41<sup>st</sup> Streets, between 9<sup>th</sup> and 10<sup>th</sup> Avenues.

(iii) The Administration agrees to establish an Open Space Task Force to review and advise on the creation of open space within the blocks described above. The Task Force will be comprised of representatives from the Department of Transportation ("DOT"), the Parks Dept, and the Hudson Yards Community Advisory Committee. The Administration will invite the Port Authority to participate on the Task Force.

a. The Administration, in coordination with the Port Authority, agrees to use the Greenstreets Program to green the "canoe" traffic island on the north side of West 36<sup>th</sup> Street, between 9<sup>th</sup> Avenue and the Lincoln Tunnel Expressway, subject to and in accordance with the following:

i. The Administration will allocate new funding to the Greenstreets Program for this greening;

ii. The Parks Dept, DOT and the Port Authority will work together to establish a plan to address greening, sidewalk and safety requirements;

iii. The nature and extent of the greening will depend upon subsurface conditions, including utilities, and infrastructure issues

at or adjacent to the canoe traffic island, which will be examined as part of the planning process;

- iv. DOT will relocate the NYPD vehicles currently parked on this island; and,
- v. The Administration will use all reasonable efforts to expedite the implementation of these plans.

(iv) Sidewalk ADA Compliance: The Administration agrees to work with the Port Authority to improve sidewalks along Dyer Avenue, between West 34<sup>th</sup> and West 36<sup>th</sup> Streets in order to upgrade to ADA standards, subject to any public safety concerns identified by either the Administration or the Port Authority with respect to any particular location. The Administration will use all reasonable efforts to achieve these upgrades.

(d) DEP Open Space Funding:

- (i) Provided that the open space proposed for the site currently occupied by DEP at 10<sup>th</sup> Avenue, between West 48<sup>th</sup> Street and West 49<sup>th</sup> Street is not mapped as park land, upon completion of Water Tunnel No. 3 DEP will fund the design of the open space and will make a capital contribution to the construction of the open space.
- (ii) DEP will not be responsible for making any contributions to the maintenance or operation of the proposed open space. A maintenance and operations plan will be created as part of the design process.

The proposed open space is identified on the map annexed hereto as Exhibit 4 as that area occupying the northeast corner of the DEP site, bounded to the north by West 49<sup>th</sup> Street, to the east by 10<sup>th</sup> Avenue, to the south by the horizontal line demarking the "Fenced Area For DEP Operations" and to the west by the solid black line identified in the map legend as an "Easement Line" and running in a north to south direction.

At an appropriate time following completion of Water Tunnel No. 3, a metes and bounds survey will be conducted to establish the boundaries of the proposed open space consistent with the description of the open space boundaries contained in the map annexed hereto as Exhibit 4.

## **7. DAY CARE COMMITMENTS**

Related agrees to provide the Administration for Children's Services ("ACS") with additional opportunities to exercise the option for 10,000 square feet of ground floor space suitable for use as a child care center. Under Section 3.04(c) of the Declaration, as modified by the City Council, ACS may trigger the requirement for Related to offer space following the issuance of a TCO or PCO for any new building on the WRY

containing residential rental units. In that event, Related shall offer space located either in a new building on the WRY or at a nearby off-site location, provided that Related shall have no obligation to offer space in new buildings on the WRY other than Sites 1, 2 and 4. In the event that ACS accepts a space at an off-site location, Related shall have no further obligations under Section 3.04 to offer space, whether on or off site.

#### **8. FIRE PROTECTION ASSESSMENT COMMITMENTS**

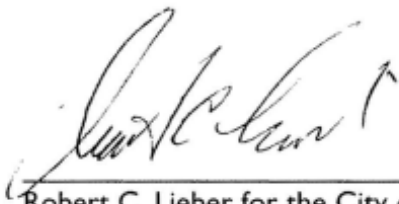
To address the potential need for new Fire Department (“FDNY”) facilities in the Hudson Yards district, if the City Council requests in 2014, the FDNY will commence a review of the fire protection needs of the district beginning January 1, 2015, and at the City Council’s request every five years thereafter, until such time as all projected development has been completed.

#### **9. ZR SECTION 93-06 AND RESTRICTIVE DECLARATION**

- (a) Modification of ZR Section 93-06: Under Section 93-06 of the Zoning Resolution, as modified by the City Council, the execution and recordation of a Restrictive Declaration including the modifications described in (b)- (e) below shall be required for any development or enlargement on the WRY pursuant to the zoning amendments.
- (b) City Council Approval of Modifications: Under Section 4.04 of the Declaration, as modified by the City Council, any future modifications to the provisions of the Declaration pertaining to Affordable Housing (Sec. 2.01); Public Access Areas (Sec. 2.02 (a)-(e) and (h); Arts and Cultural Space (Sec. 2.04); the Public School, Open Space, and Day Care Mitigations (Sec. 3.04 (a)-(c)), Modification and Amendment (Sec. 4.04(a)), and the Construction Consultation Process Committee and Liaison (Sec. 6.01), that would diminish or alter the obligations of Related, shall be subject to the approval of the City Council.
- (c) Independent Monitor: Under Sections 3.07(a) and 6.01 of the Declaration, as modified by the City Council, the Independent Monitor shall prepare a quarterly report summary of activities for distribution to any Construction Consultation Process Committee established under Section 6.01 of the Declaration.
- (d) Wind Analyses: Under Section 3.02(c) of the Declaration, as modified by the City Council, Related agrees to provide copies of all final Wind Conditions Reports to Manhattan Community Board 4, the local Council Member, the Manhattan Borough President, and any Construction Consultation Process Committee established pursuant to Section 6.01 of the Declaration.
- (e) Construction Consultation Process Committee: Under Section 6.01 of the Declaration, as modified by the City Council, Related agrees that, upon request of the Construction Consultation Process Committee, Related’s designated liaison shall address, on a regular basis, the questions and concerns of the Committee about construction related issues beginning at the time of issuance of the first Foundation Permit for a New Building on the WRY.

**10. LANDMARKS**

The Landmarks Preservation Commission (“LPC”) will conduct a preliminary review of the historic districts proposed by CB4 in their letter dated November 20, 2009 and annexed hereto as Exhibit 5, by the end of Fiscal Year 2010. During that period the LPC will also complete an evaluation of the 11 sites proposed for landmark designation by CB 4 in their letter dated November 20, 2009 and annexed hereto as Exhibit 6, to determine whether they should be considered further for landmark status.



Robert C. Lieber for the City of New York  
(with respect to Points of Agreement  
Sections: 1, 3 (a) – (f), 4 (b), 6 (c) & (d),  
8, and 10)



Jay Cross for RGWRY LLC  
(with respect to Points of Agreement  
Sections: 2, 3 (g) & (h), 4 (a) & (b), 5,  
6 (a) & (b), and 7)



**Appendix B. Western Railyards Affordable Housing Production (completed and in construction as of 2021)**

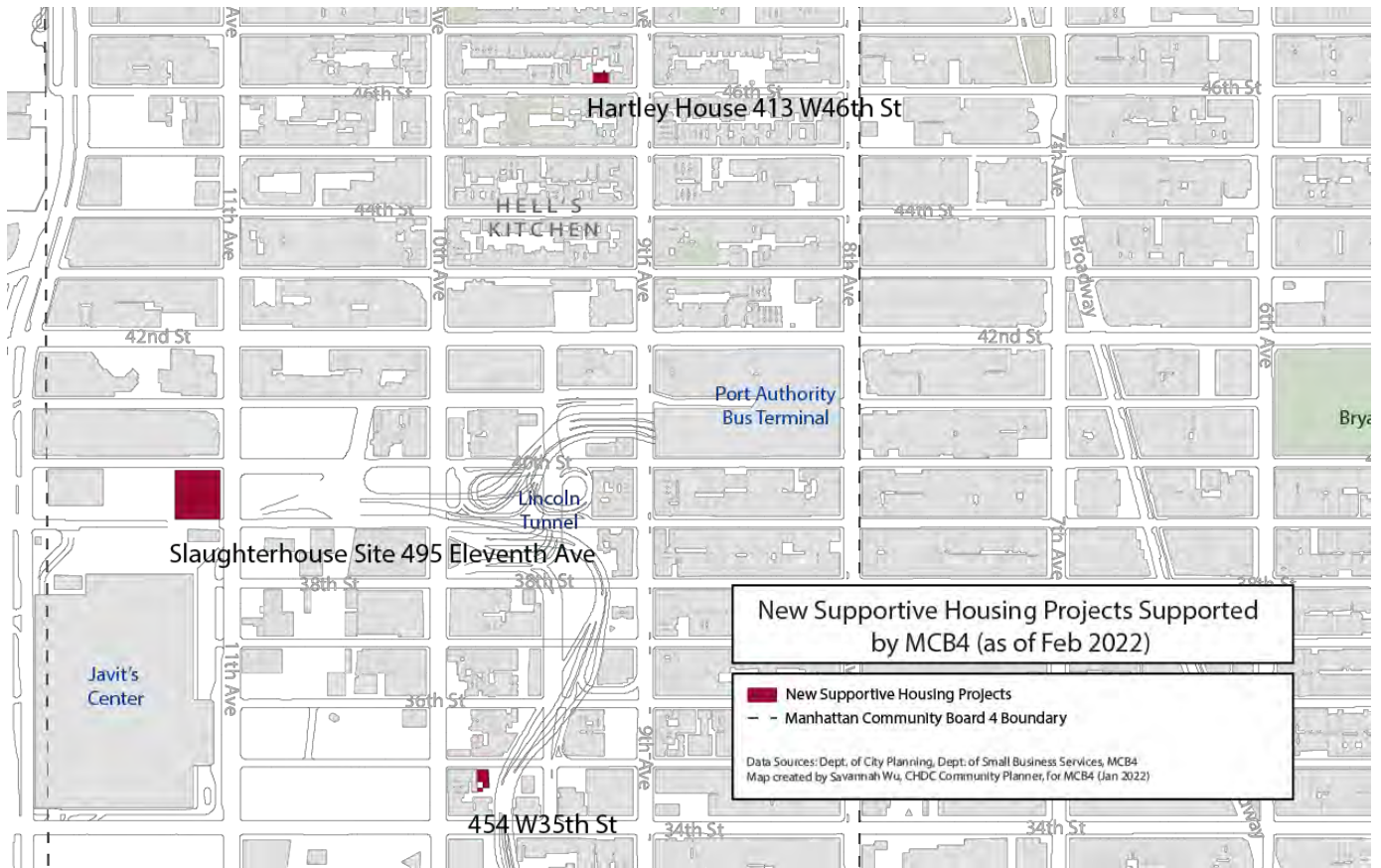
Point / Address	Summary / Project Name	Developer	Committed Dwelling Units	Affordable Units Built/Preserved	Status
Affordable Housing on ERY and WRY	Related to build a minimum of 265 permanently affordable rental units on WRY and an additional 166 on either WRY or ERY, for a total of 431 permanently affordable units	Related	431	107	Related has built 107 affordable units on the ERY.
Affordable Housing Off-Site	HPD to issue RFPs for affordable housing development on City-owned sites at 54th and 9th (MTA) and 48th and 10th (DEP).	MTA Site: Hudson Companies and Housing Works, Inc.  DEP Site: Douglaston Development and the Actors Fund	267		04/09/2018 - RFPs issued 02/13/2019 - Development teams designated MTA Site: Hudson Companies and Housing Works, Inc. DEP Site: Douglaston Development and the Actors Fund
	If DSNY is relocated from its 136-140 20th Street facilities, HPD commits to develop the site for a range of incomes up to 165% of AMI.		75	75	This site has been redeveloped as a park. The commitment of units is to be transferred to the Slaughterhouse Site (493 11th Avenue)
330-332 W51st Street	Stardom Hall - HPD to work with Council Member and CB4 to preserve up to 150 units of privately owned SRO housing.	Lantern Group, completed in 2017	150	112	Completed. Redevelopment of SRO units completed in Stardom Hall - 330 W 51st Street in 2017
	Related to seek two extensions of federal rental subsidy to its existing Mark Up to Market Project Based Section 8 HUD contracts -- Terrific Tenements (525-527 West 47th, and 421-425 West 48th St) and French Apartments (330 W30th St) -- for no less than 40 years from City Council approval of WRY rezoning	Related	263	263	The HAP contract for Terrific Tenements expires in 2023. At that time, Related plans to renew it for the longest term allowed by HUD, which is currently 20 years. The HAP contract French Apartments expires in 2036. At that time, Related plans to renew it for the longest term allowed by HUD, which is currently 20 years.

	Related to guarantee that all existing affordable housing units in the Westport and the Tate will remain permanently affordable to households averaging up to 90% of AMI, not to exceed 125% of AMI.				The 421a program expires on June 30, 2025, for Westport and June 30, 2023 for Tate. Extensions can only be done at the expiration of the current program
		<b>Total</b>	<b>923</b>	<b>750</b>	

[See full MCB4 Western Rail Yards Points of Agreement – Annual Tracking Report \(2022\)](#)

## Appendix C. New Supportive Housing Projects Supported by the MCB4—2018 to 2021

Supportive Housing Project	Targeted Tenants & Program	Type of Units	% of AMI	Total # of Supportive Housing Units	Public Actions	Rental Subsidy
Hartley House 413 W46th St	Single senior citizens, homeless & community residents with an LGBTQ preference	22 Studios & SRO units One (1) 2-br super's unit	14 units at 50% & 8 units at 60%	23	Mayoral override required for super's unit at Carriage House	Section 8 for all units with tenants paying 30% of income
454 W35th Street	Elderly, formerly homeless, mentally ill, and community residents	67 Studios, 1-brs, & SRO units Two (2) 2-br staff units	67 units at 50% AMI	69	None	RAD Section 8 and Project Based Vouchers, with tenants paying 30% of income
Slaughterhouse Site 495 Eleventh Avenue	350 permanently affordable housing units, 75 of which will be supportive housing, for formerly homeless individuals and families, and 2,000 SF of social service support space. All proposed dwelling units will be reserved for households that meet certain income restrictions for affordability, with approximately 71 units for households with incomes having an average not exceeding 80% of area medium income (AMI), pursuant to MIH Option 2.  The project also includes a supermarket, an NYPD Special vehicle parking facility, and a 680 room multi-flag hotel.	Studios, 1, 2, and 3 bedrooms.	98 at 90-110% AMI, 176 at 155-165% AMI, 75 15/15 units of supportive housing, and 114 MIH units.	75	ULURP #C 210324ZMM Zoning Map Amendment 1. To rezone the Proposed Development site from an M1-5 zoning district to a C64 (R10 equivalent). 2. To include the Proposed Development site within the Special Hudson Yards District as a new Subdistrict G.  ULURP #C 210325ZRM Zoning Text Amendment 1. To modify NYC Zoning Resolution (ZR) Section 93-00 to establish a new Subdistrict G within the SHYD. 2. To modify ZR Appendix F, the Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas Section, to designate the Proposed Development site as a Mandatory Inclusionary Housing area.	
			<b>Total # of Supportive Units</b>	<b>164</b>		



## Appendix D. Inclusionary Housing Sites in MCD4 from 2018-2021

	40% AMI	60% AMI	70% AMI	80% AMI	100% AMI	125% AMI	<b>Total</b>
<b>312 W43rd St<sup>20</sup></b>	33	33				17	<b>83</b>
<b>550 10<sup>th</sup> Ave<sup>21</sup></b>			47			90	<b>137</b>
<b>278 8<sup>th</sup> Ave<sup>22</sup></b>	11	35					<b>44</b>
<b>606 W30th St<sup>23</sup></b>	31	25			14		<b>70</b>
<b>601 W29th St<sup>24</sup></b>	93	94			47		<b>234</b>
<b>Total</b>	166	187	47		61	107	<b>568</b>

**353 units or 62% are below 60% AMI**

<sup>20</sup> [HHHS Letter Re 312 W43rd St](#)

<sup>21</sup> [HHHS Letter Re 550 10<sup>th</sup> Ave](#)

<sup>22</sup> [HHHS Letter Re 278 8<sup>th</sup> Ave Affordable Senior Housing](#)

<sup>23</sup> [HHHS Letter Re 606 W30th St](#)

<sup>24</sup> [HHHS Letter Re 601 W29th St](#)

**Appendix E. 2021 NYC Area AMI, Income Bands and Percent of AMI, and 2021 NYC Area Affordable Monthly rents (Source: [NYC HPD](#))**

**Income Bands and Percent of AMI**

Income Band	Percent of AMI
Extremely Low-Income	0-30%
Very Low-Income	31-50%
Low-Income	51-80%
Moderate-Income	81-120%

**2021 New York City Area AMI**

Family Size	30% AMI	40% AMI	50% AMI	60% AMI	70% AMI	80% AMI	90% AMI	100% AMI	110% AMI	120% AMI	130% AMI	165% AMI
1	\$25,080	\$33,440	\$41,800	\$50,160	\$58,520	\$66,880	\$75,240	\$83,600	\$91,960	\$100,320	\$108,680	\$137,940
2	\$28,650	\$38,200	\$47,750	\$57,300	\$66,850	\$76,400	\$85,950	\$95,500	\$105,050	\$114,600	\$124,150	\$157,575
3	\$32,220	\$42,960	\$53,700	\$64,440	\$75,180	\$85,920	\$96,600	\$107,400	\$118,140	\$128,880	\$139,620	\$177,210
4	\$35,790	\$47,720	\$59,650	\$71,580	\$83,510	\$95,440	\$107,370	\$119,300	\$131,230	\$143,160	\$155,090	\$196,845
5	\$38,670	\$51,560	\$64,450	\$77,340	\$90,230	\$103,120	\$116,010	\$128,900	\$141,790	\$154,680	\$167,570	\$212,685
6	\$41,520	\$55,360	\$69,200	\$83,040	\$96,880	\$110,720	\$124,560	\$138,400	\$152,240	\$166,080	\$179,920	\$228,360
7	\$44,400	\$59,200	\$74,000	\$88,800	\$103,600	\$118,400	\$133,200	\$148,000	\$162,800	\$177,600	\$192,400	\$244,200
8	\$47,250	\$63,000	\$78,750	\$94,500	\$110,250	\$126,000	\$141,750	\$157,500	\$173,250	\$189,000	\$204,750	\$259,875

**2021 New York City Area Affordable Monthly Rents**

Unit Size	30% AMI	40% AMI	50% AMI	60% AMI	70% AMI	80% AMI	90% AMI	100% AMI	110% AMI	120% AMI	130% AMI	165% AMI
Studio	\$419	\$598	\$777	\$956	\$1,135	\$1,314	\$1,547	\$1,726	\$1,905	\$2,084	\$2,263	\$2,889
One-bedroom	\$532	\$756	\$980	\$1,204	\$1,427	\$1,651	\$1,942	\$2,166	\$2,390	\$2,614	\$2,838	\$3,621
Two-bedroom	\$631	\$900	\$1,168	\$1,437	\$1,705	\$1,974	\$2,323	\$2,592	\$2,860	\$3,129	\$3,397	\$4,337
Three-bedroom	\$722	\$1,032	\$1,343	\$1,653	\$1,963	\$2,273	\$2,677	\$2,987	\$3,297	\$3,608	\$3,918	\$5,004

## Appendix F. Proposed Alternate Zoning Text Amendments to SCD 96-104

### 96-104 Height and setback regulations

LAST AMENDED 12/10/2013

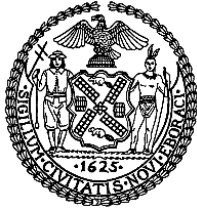
(c) ***Building*** height

Within 100 feet of a ***wide street***, the ***street wall*** of a ***building or other structure*** shall rise without setback to a minimum height of 50 feet or the height of the ***building***, whichever is less, and a maximum height of 66 feet. A setback shall be provided for all portions of ***buildings*** that exceed a height of 66 feet. Such setbacks shall be provided at a height not lower than 50 feet and not higher than 66 feet, and shall have a minimum depth of 10 feet, measured from any ***street wall*** facing a ***wide street***, and a minimum depth of 15 feet, measured from any ***street wall*** facing a ***narrow street***. No ***building or other structure*** shall exceed a height of 85 feet. Beyond 100 feet of a ***wide street***, no ***building or other structure*** shall exceed a height of seven ***stories*** or 66 feet, whichever is less.

However, the City Planning Commission, by special permit, may modify the special height and setback regulations set forth in this Section. In order to grant such special permit, the Commission shall find that the distribution of ***bulk*** permits adequate access of light and air to surrounding ***streets*** and properties and that the maximum height does not exceed 99 feet beyond 100 feet of a ***wide street***, and 115 feet within 100 feet of a ***wide street***, except for portions of publicly owned zoning lots adjacent to a mass transit or water supply support facility conveyed to private entity for a publicly financed affordable housing development.

**Appendix G. Past MCB4 Letters Regarding DEP Site**





CITY OF NEW YORK  
**MANHATTAN COMMUNITY BOARD FOUR**  
P.O. Box 2622 New York, NY 10108  
tel: 212-736-4536  
www.mcb4.nyc

**Lowell D. Kern**  
Chair

**Jesse Bodine**  
District Manager

March 11, 2021

Steve Simon  
Chief of Staff to Manhattan Borough Commissioner  
NYC Department of Parks & Recreation  
Arsenal West  
24 W. 61<sup>st</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10023

Leslie Peoples  
Director of Landscape Architecture  
NYC Department of Parks & Recreation  
Olmsted Center, Flushing Meadows-Corona Park  
Flushing, NY 11368

George Bloomer  
Senior Landscape Architect  
NYC Department of Parks & Recreation  
Olmsted Center, Flushing Meadows-Corona Park  
Flushing, NY 11368

Alicia West  
Director of Public Design Outreach  
NYC Department of Environmental Protection  
59-17 Junction Boulevard, 13<sup>th</sup> Floor  
Flushing, NY 11373

**Re: fence at 48<sup>th</sup> and 10<sup>th</sup> DEP Site recreation area**

To Whom It May Concern,

Manhattan Community Board 4 (MCB4) thanks you for the update about the design for this new recreation area at its February 11<sup>th</sup> Waterfront, Parks & Environment Committee meeting. You

have taken suggestions we have offered and the site design is coming along very nicely. We look forward to being able to use it.

We understand that some of the changes you presented were required because of the constraints the water tunnel site placed on possible uses of the above ground area. We believe the community will be well served by what will become a passive recreation area. Primarily we are pleased with the changes to the water feature, the tree planting, the storage box for gardeners' tools (better would be the ability to roll carts into the box rather than having to lift them to put them in from the top), and bathroom access (we'd prefer a five degree walkway rather than steps and a steeper ramp, but understand there may be constraints making that difficult).

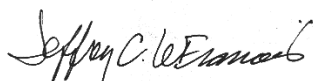
However, we remain incensed that both DEP and Parks are insisting on a fence that can easily be scaled permitting easy access to the space after hours. MCB4 has long insisted on minimum fence heights of seven feet to make those illegal entry and misuse of the park more difficult, and at its March 3<sup>rd</sup> Full Board meeting, voted by 41 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible to vote, to reiterate this request. The feedback the Waterfront, Parks and Environment Committee has received from local block associations, community groups, and park gardeners support fences around local parks that may be less user friendly but that serve the community better after hours by preventing inappropriate night time activities. We have made this strong suggestion before<sup>1</sup> and have the definite feeling that it has been ignored or worse, rejected by your agency.

We strongly request a change to the design that provides for a seven-foot fence.

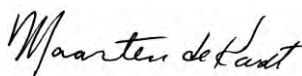
Sincerely,



Lowell Kern  
Chair  
Manhattan Community Board 4



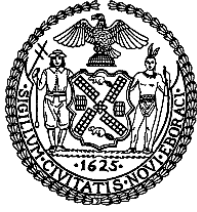
Jeffrey LeFrancois  
Co-Chair  
Waterfront, Parks, & Environment Committee



Maarten deKadt  
Co-Chair  
Waterfront, Parks & Environment Committee

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<sup>1</sup> <https://cbmanhattan.cityofnewyork.us/cb4/wp-content/uploads/sites/10/2020/02/18-WPE-Letter-to-DEP-DPR-re-Open-Space-DEP-Site-705-10th-Ave.pdf>  
<https://cbmanhattan.cityofnewyork.us/cb4/wp-content/uploads/sites/10/2020/02/29-WPE-Letter-to-Parks-re-705-10th-Ave-Design.pdf>



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

P.O. Box 2622 New York, NY 10108

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www.mcb4.nyc

**Lowell D. Kern**  
Chair

**Jesse Bodine**  
District Manager

January 14, 2021

Louise Carroll  
Commissioner  
NYC Housing Preservation & Development  
100 Gold Street  
New York, NY 10038

**Re: 705 Tenth Avenue, 48th to 49th Streets, aka the DEP Project**

Dear Commissioner Carroll,

On November 24, 2020, at Manhattan Community Board 4’s (MCB4) Clinton/Hell’s Kitchen Land Use Committee meeting, the Department of Housing Preservation and Development (HPD), Douglaston Development and the Actor’s Fund (the Development Team), presented a pre-ULURP review of its proposed development at 705 Tenth Avenue, also known as the DEP (Department of Environmental Protection) project (the “Project”). The presentation was given to solicit feedback from the community.

The proposed mixed-use, eight-story building would provide approximately 158 permanently affordable units, a community arts and culture facility, and a public comfort station accessible from the DEP Open Space/Park.

HPD and the Development Team proposed the following unit breakdown:

<b>AMI Tier</b>	<b>Income Range (family of four)</b>	<b>Percentage of Units</b>	<b>Number of Units</b>
Homeless Referrals	\$0 - \$45,480	15%	24
47-50% AMI	\$53,439 - \$56,850	25%	39
77-80% AMI	\$87,549 - \$90,960	20%	32
100-120% AMI	\$113,700 - \$136,440	40%	63
		<b>Total</b>	<b>158</b>

With that breakdown, only 40% of the units would be middle/moderate income housing, or less than half of what the Board and the Hell's Kitchen community had negotiated in the 2009 Western Railyard Points of Agreement ("WRY POA")<sup>1</sup> agreed to between the Mayor and the City Council.

At its December 2, 2020, regularly scheduled full board meeting, MCB4 with 36 in favor, 0 opposed, 2 abstaining, and 0 present but not eligible, voted to recommend the project **not go forward** unless:

- The Board and the Hell's Kitchen community, and HPD agree upon AMI levels to substantially reflect the WRY POA.
- The revised AMI bands have no gaps from 80% to 165%.
- The homeless referral units be set aside for families, not individuals
- That adequate funding for supportive services and a supportive service provider is identified for those families.

By coming to agreement on these matters, only then, can trust be restored between the City and the Hell's Kitchen community.

MCB4 urges HPD and the Development Team to engage with the Board and the Hell's Kitchen community to resolve these issues as soon as possible so the project can proceed.

## **PROPOSED PROJECT**

The proposed Project is in an R8 zone (with a C2-5 overlay) and would be built primarily above the Amtrak railroad cut between West 48<sup>th</sup> and West 49<sup>th</sup> Streets just west of Tenth Avenue. It would face the proposed Department of Parks and Recreation open space on the DEP site off Tenth Avenue between 48<sup>th</sup> and 49<sup>th</sup> Streets. The maximum building height in the Preservation Area part of the Special Clinton District is 66-feet. The 2009 WRY POA agreed to the grant of a Special Permit under ZR Section 96-104 (c), which would allow the building height to rise to 77 feet.

The Land Use Actions needed to facilitate the proposed development will require approval of four Proposed Land Use Actions:

- Special Permit Pursuant to ZR Section 74-681 (Development Within or Over a Railroad or Transit Right-Of-Way or Yard);
- Special Permit Pursuant to ZR Section 96-104 (c) (Height and Setback Regulations);
- Zoning Text Amendment to ZR Section 96-103 (Yard Regulations); and,
- Disposition of City Owned Property (Light and Air Easement).

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<sup>1</sup> [Western Railyard Rezoning Points of Agreement](#)

### Unit Mix

The 2009 WRY POA stated that 50% of the units would accommodate two- and three-bedroom units<sup>2</sup>. The Project's proposed unit mix is consistent with that agreement:

Unit Type	Percentage of Units	Number of Units
Studio	22%	35
1-Bedroom	27%	42
2-Bedroom	41%	65
3-Bedroom	10%	16
	<b>Total</b>	<b>158</b>

MCB4 supports the proposed unit mix.

### Homeless Set Aside

The Mayor's Office has mandated that 15% of new housing on City-owned sites be set aside for homeless referrals. The Board and the Hell's Kitchen community fully understand the compelling need for such housing. Hell's Kitchen is a community that prides itself on its acceptance, concern, and compassion for all New Yorkers.

While the Mayor's Office may be oblivious to the facts on the ground, HPD should be aware that Hell's Kitchen has one of the densest concentrations of formerly homeless residents, homeless shelters, homeless temporary shelters, and supportive housing in the entire City. *Within the immediate vicinity* of the proposed development — on West 46<sup>th</sup>, West 47<sup>th</sup>, West 48<sup>th</sup>, West 49<sup>th</sup>, and West 50<sup>th</sup> Streets, there are several permanent residences (164 units) and social service facilities (80 units) for homeless individuals and families.<sup>3</sup>

In fact, the Skyline Hotel, on 49<sup>th</sup> and Tenth Ave, housed homeless families until the City in its ill-managed response to Covid-19, precipitously moved out 63 families and replaced them with 300 single men from congregate shelters without adequate social service support.

### Amenities

The proposed Project's amenities include a laundry, fitness room, children's playroom, and bike room. MCB4 supports those amenities.

### Ground Floor Community Facility Space

The Actor's Fund informed the Board it is committed to integrating arts and culture into community and deliver a long-term asset. Spaceworks, its original choice, was forced to close down in the early months of the Pandemic. The Actor's Fund is now in the process of identifying and securing a new cultural tenant.

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<sup>2</sup> [Western Railyard Rezoning Points of Agreement](#), page 3: "HPD's RFPs will contain the following requirements: . . . 50% two or more bedroom units . . ."

<sup>3</sup> See Appendix A. MCD4 - Homelessness and Social Services Summary and Appendix B. Map of Homeless Social Service Facilities and Homeless Supportive Housing

The Actor’s Fund stated it will welcome recommendations from the community and from MCB4 regarding arts and cultural organizations in need of space. Further, the Actor’s Fund agrees to consult with the Board prior to selecting a new tenant.

## HISTORY

In 2009, as part of the Western Rail Yards Rezoning, the City committed to develop affordable housing on two city-owned sites: the Metropolitan Transportation Authority (MTA) site (Ninth Avenue at 54<sup>th</sup> Street) and the Department of Environmental Protection (DEP) site (Tenth Avenue, 48<sup>th</sup>-49<sup>th</sup> Streets).

This commitment was achieved through robust negotiations among the community, MCB4, the City Council, and the City.

### Vital Need for Moderate & Middle-Income Housing

The vast majority of the affordable units produced under the Hudson Yards Points of Agreement (“HY POA”)<sup>4</sup>, through Inclusionary Housing, have been for low-income households.<sup>5</sup> In the Hudson Yards and Western Railyard Rezoning<sup>6</sup>, the community’s concern was to maintain economic integration. Therefore, both the HY POA and the WRY POA<sup>7</sup> contained commitments to produce affordable housing for a range of incomes: low, moderate, and middle. In fact, the Harborview NYCHA site, the Studio City site (now known as Gotham West), Site M (commitment now transferred to the Slaughterhouse site), and in the WRY POA, the DEP, MTA, and West 20<sup>th</sup> Street site (commitment now transferred to the Slaughterhouse site), all note a range of incomes up to 60-165% AMI.

Under those agreements, and through discussion with HPD during the development of the RFP for the DEP and MTA sites, MCB4 held public meetings and adopted recommendations for the income mix at both sites. MCB4’s presentation regarding these sites was included as a link for all prospective developers to review.<sup>8</sup>

AMI Tier	Income Range (family of four)	Percentage of Units	Number of Units
77% - 80% AMI	\$87,549 - \$90,960	20%	32
81% - 125% AMI	\$90,961 - \$136,440	40%	63
126% - 165% AMI	\$136,441 - \$187,605	40%	63
		<b>Total</b>	<b>158</b>

<sup>4</sup> [Hudson Yards Points of Agreement](#), pages 4-6.

<sup>5</sup> See Appendix C. Special Hudson Yards District Affordable Housing Production AMI Bands Distribution

<sup>6</sup> [MCB4 2020 Hudson Yards Points of Agreement Annual Tracking Report](#) and [2019 Western Railyard Points of Agreement Annual Tracking Report](#)

<sup>7</sup> [Western Railyard Rezoning Points of Agreement](#), pages 2-5

<sup>8</sup> [MCB4 2018 Letter to HPD Re: DEP and MTA Affordable Housing Sites](#), for the MTA & DEP Sites: 806 9th Avenue & 705 10th Avenue, Permanent Affordable Housing & Open Space Presentation, see pages 7-22.

## **Honoring the WRY POA Still Expected**

The agreed upon AMI mix was stated and re-stated in multiple MCB4 letters to HPD from 2015 – 2017<sup>9</sup>, as well as in MCB4's Affordable Housing Plan.<sup>10</sup> MCB4 and HPD worked together to develop the provisions in HPD's Requests For Proposals for the DEP and MTA sites. MCB4's presentation regarding these sites was included as a link for all prospective developers to review.<sup>11</sup>

Approximately a year ago, HPD, with no notice or discussion with the Hell's Kitchen community or MCB4, breached the agreement, announcing the DEP site would include a majority of low- and very-low-income units, with a substantial homeless component. In March of 2020, the Speaker of the City Council was informed by Board leadership that this was unlikely to be acceptable to the community. The Board reiterated that it expected the City to honor its 2009 commitment.

## **FEEDBACK**

At the Clinton/Hell's Kitchen Land Use Committee meeting on November 24, 2020, HPD proposed that the majority of the units would not provide housing for moderate/middle income levels as promised. The feedback from the community was clear: the revised AMIs were unacceptable.

### **"Disingenuous, Opportunistic, Condescending, Insulting, Insincere, Deceitful"**

The consensus of the community was that the City was not living up to either the letter or the spirit of the agreement to provide middle/moderate income housing for the community. There was considerable dismay, about not only breaking the agreement, but also violating the trust between the community and the City. One long-term community resident characterized HPD's volte-face as "disingenuous, opportunistic, condescending, insulting, insincere, and deceitful."

Umbrage was also taken to what appeared to be a condescending lecture from HPD on the necessity of developing more low-income housing in the community. This community and MCB4, has been in the forefront of developing affordable housing for very-low, low-, moderate-, and middle-income housing for decades. We have identified, fought for, and secured low-income housing throughout our District and we welcome with open arms New Yorkers of all incomes. We do not need a sermon on its vital importance.

As HPD knows, MCB4 developed one of the most comprehensive, far-sighted, achievable, affordable housing plans in the entire city. The Board and the community on its own have identified affordable housing sites and pushed and pushed City agencies until they became a

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<sup>9</sup> [MCB4 Letter re: ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM. July 27, 2009;](#)  
[MCB4 Letter re: Affordable Housing RFPs. October 7, 2015;](#)  
[MCB4 Letter re: Affordable Housing RFPs. February 8, 2017;](#)  
[MCB4 Letter re: Affordable Housing RFPs. June 7, 2017.](#)

<sup>10</sup> [MCB4 Affordable Housing Plan, originally adopted in 2015 and revised annually through 2019, pages 57-58.](#)

<sup>11</sup> [MCB4 2018 Letter to HPD Re: DEP and MTA Affordable Housing Sites](#), for the MTA & DEP Sites: 806 9th Avenue & 705 10th Avenue, Permanent Affordable Housing & Open Space Presentation, see pages 7-22.

reality. For example, MCB4 and the community identified the Slaughterhouse site on West 39<sup>th</sup> Street and Eleventh Avenue and fought for almost a decade for it to become a 100% affordable housing development with hundreds of low-, moderate-, and middle-income units.

HPD must also recognize that the Special Clinton District was created “to preserve and strengthen the residential character of a community bordering Midtown and maintain a broad mix of incomes.”<sup>12</sup> Development has produced market-rate housing and low-income housing through Inclusionary Bonuses. However, this community and this city needs to serve those New Yorkers in the middle who are left out, with the production of moderate- and middle-income housing.

### **Conclusion**

MCB4 is cognizant of the exemplary work your agency has done for the City of New York and appreciative of HPD’s partnership with the Hell’s Kitchen community and MCB4. We want that successful partnership to continue. But it can only continue if the community has the confidence that agreements will be kept, that efforts are made to develop housing for all income levels, and that a level of respect is paid to the local community’s deep understanding of what it needs to thrive. We look forward to working with you to make this project succeed.

Sincerely,



Lowell D. Kern  
Chair  
Manhattan Community Board 4



Jean-Daniel Noland  
Chair  
Clinton/Hell’s Kitchen Land Use Committee

### Enclosure

Cc: Hon. Brad Hoylman, New York State Senator  
Hon. Robert Jackson, New York State Senator  
Hon. Richard Gottfried, New York State Assemblymember  
Hon. Linda Rosenthal, New York State Assemblymember  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Corey Johnson, Speaker, New York City Council  
Hon. Scott Stringer, New York City Comptroller  
Hon. Jumaane Williams, Public Advocate  
Douglaston Development  
Actors Fund

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<sup>12</sup> [Special Clinton District Zoning Resolution](#), 96-00 General Purposes section.



## Appendices

### Appendix A. MCD4 - Homelessness and Social Services Summary

MCD4, comprised of Chelsea, Hudson Yards and Clinton/Hell's Kitchen, is an area that has long welcomed both social services, homeless facilities, and supportive housing. We have never taken a NIMBY approach to such needs. MCD4 has however, been probing and thorough with social service agencies to ensure the proposed facilities or housing sites are well designed, managed and integrated successfully into the community. These permanent facilities and housing include:

#### Homeless Shelters & Facilities

Name	Address	Provider	# of Beds
Jack Ryan	127 West 25 <sup>th</sup> Street	BRC	200
Barbour House	330 West 36 <sup>th</sup> Street	Praxis	100
Holiday Inn	343 West 39 <sup>th</sup> Street	Acacia	30
Candlewood Suites	339 West 39 <sup>th</sup> Street	Acacia	48
The Dwelling Place	409 West 40 <sup>th</sup> Street	The Franciscan Sisters of Allegany	15
Covenant House	460 West 41 <sup>st</sup> Street	Covenant House	120
Travel Inn Hotel	515 West 42 <sup>nd</sup> Street	Acacia	81
Safe Haven	301 West 48 <sup>th</sup> Street	Urban Pathways	10
Alexander Abraham Residence	341 West 51 <sup>st</sup> Street	Women In Need	70
52 <sup>nd</sup> Street Women's Center	427 West 52 <sup>nd</sup> Street	Care For the Homeless	120
Trinity Presbyterian Church	422 West 57 <sup>th</sup> Street	Partnership for the Homeless	10
Skyline Hotel	725 10 <sup>th</sup> Avenue	Acacia	63
Aladdin Hotel	317 West 45 Street	Urban Pathways	143
<b>Total Beds</b>			<b>1,010</b>

#### Homeless Supportive Housing

Name	Address	Provider	# of Beds/Apartments
	105 West 17 <sup>th</sup> Street		18
Volunteers of America	226 West 26 <sup>th</sup> Street		52
Flemister House	527 West 22 <sup>nd</sup> Street	American Baptist Churches	50
St. Francis III	148 8 <sup>th</sup> Avenue	Franciscans	79
St. Francis II	151 West 22 <sup>nd</sup> Street	Franciscans	115
The Christopher Residence	202 West 24 <sup>th</sup> Street	Common Ground & Good Shepard	62
	353 West 30 <sup>th</sup> Street	CHDC	32

	454 West 35 <sup>th</sup> Street	CHDC	53
	347 West 37 <sup>th</sup> Street	Fountain House	30
Geffner House	351 West 42 <sup>nd</sup> Street	Project Renewal	313
	500 West 42 <sup>nd</sup> Street	CHDC	66
	327 West 43 <sup>rd</sup> Street	Project Return	6
	300 West 46 <sup>th</sup> Street	CHDC	68
	424 West 47 <sup>th</sup> Street	Fountain House	15
	441 West 47 <sup>th</sup> Street	Fountain House	20
	448 West 48 <sup>th</sup> Street	Project Renewal	41
Postgraduate Center Community Residence I	516 West 50 <sup>th</sup> Street		20
Stardom Hall	330-332 West 51 <sup>st</sup> Street	Lantern Group	112
The Flats/Old School	554 West 53 <sup>rd</sup> Street	CHDC	52
The Friedman	475 West 57 <sup>th</sup> Street	Common Ground, The Actors Fund	98

**Total Beds/Apts 1,302**

Between May and June, DHS relocated 2,142 shelter beds for single individuals (many of whom suffer from mental illness, alcohol, and chemical addiction) to Manhattan Community District 4 (MCD4). These shelters were temporarily relocated to protect individuals in congregate shelters from the spread of COVID-19. The temporary shelters were relocated into hotels and include:

### Temporary Shelter Relocations

Hotel	Address	DHS Contracted Shelter Provider	# of Beds
The Watson	440 West 57 <sup>th</sup> Street	Black Veterans for Social Justice (BVSJ)	369
Skyline Hotel <sup>13</sup>	725 10 <sup>th</sup> Avenue	Acacia	300
The Washington Jefferson <sup>14</sup>	318 West 51 <sup>st</sup> Street	Project Renewal	182
The Comfort Inn	548 West 48 <sup>th</sup> Street	Bronx Parent Housing Network	65
Comfort Inn	343 West 44 <sup>th</sup> Street	Help USA	284
The Cachet <sup>15</sup>	510 West 42 <sup>nd</sup> Street	BRC	130
Hilton Garden	326 West 37 <sup>th</sup> Street	ICL	294
Springhill Inn	338 West 36 <sup>th</sup> Street	BVSJ	200
Double Tree	341 West 36 <sup>th</sup> Street	NAICA	318

**Total Beds 2, 142**

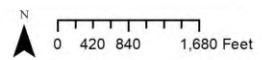
<sup>13</sup> The Skyline Hotel, with family shelter rooms, became a single adult men relocation site.

<sup>14</sup> This shelter was subsequently relocated to the Lucerne on West 79<sup>th</sup> Street in July 2020

<sup>15</sup> This shelter was subsequently relocated due the discovery of Legionnaire's Disease in the HVAC equipment

# Appendix B. Map of Homeless Social Service Facilities and Homeless Supportive Housing (Updated October 2020)

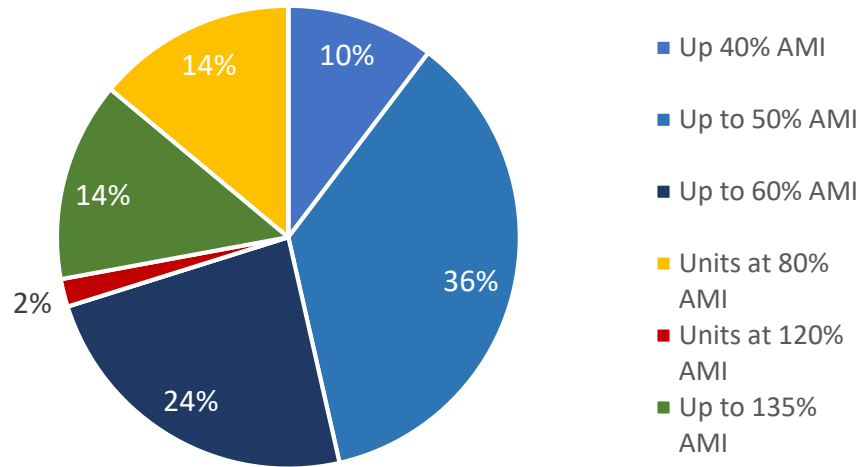
- Manhattan Community District #4
- Temporary Homeless Shelter Relocations (labeled)
- Homeless Supportive Housing
- Homeless Shelters & Facilities
- Parks/Open Space



Data Source: CHDC (2020), NYC Department of City Planning (2020)  
 Map by Savannah Wu (2020)

**Appendix C. Special Hudson Yards District Affordable Housing Production AMI Bands Distribution**

Special Hudson Yards District  
Affordable Housing Production  
AMI Bands Distribution



**There are 1,086 units below 60% AMI, or 68% of total affordable housing production.**



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**Lowell D. Kern**  
Chair

**Jesse R. Bodine**  
District Manager

January 8, 2020

Steve Simon  
Chief of Staff, Manhattan Borough Commissioner  
NYC Department of Parks & Recreation  
Arsenal West  
24 W. 61<sup>st</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10023

Leslie Peoples  
Director of Landscape Architecture  
NYC Department of Parks & Recreation  
Olmsted Center, Flushing Meadows-Corona Park  
Flushing, NY 11368

Allan Scholl  
Landscape Architect  
NYC Department of Parks & Recreation  
Olmsted Center, Flushing Meadows-Corona Park  
Flushing, NY 11368

Alisha West  
Director of Public Design Outreach  
NYC Department of Environmental Protection  
59-17 Junction Boulevard, 13<sup>th</sup> Fl.  
Flushing, NY 11373

George Bloomer  
Senior Landscape Architect  
NYC Department of Parks & Recreation  
Olmsted Center, Flushing Meadows-Corona Park  
Flushing, NY 11368

**Re: Open Space at DEP Site – 705 10<sup>th</sup> Avenue (48/49)**

To Whom It May Concern,

Manhattan Community Board 4 (MCB4) appreciates your comprehensive presentation of the new design for the Department of Environmental Protection (DEP)/Parks Open Space site at 48<sup>th</sup> Street and Tenth Avenue at the Waterfront, Parks and Environment Committee meeting on December 12, 2019. The Waterfront, Parks and Environment Committee was very pleased with the changes made to the design that was first presented in September 2019. MCB4, at its January 2<sup>nd</sup> Full Board meeting, by a vote of 37 in favor, 0 against, 0 abstaining, and 0 present but not eligible to vote, voted to support the new open space design with the following comments:

- We appreciate your elimination of the gravel and its replacement with a unified permeable paving pattern. We are concerned as damage to the pavers occur that they be replaced by new pavers and ask that shortcuts to repair damaged pavers, like the use of cement or asphalt, will not be used.
- Thank you for softening the above ground infrastructure by using planting beds. We ask that you consider raising the plantings nearest to the south east corner on Tenth Avenue to permit trees at that location.

- We appreciate you taking into consideration the water feature that was requested in our previous discussion in the form of a spray shower. We would like its installation to conform as much as possible to a passive recreation design.
- The new design shows an increase in the fence height from 4' to 5'. Manhattan Community Board 4 continues to recommend a 7' fence.
- Thank you for including signage about the city's water supply system, a feature we have asked for. We look forward to your maintaining and updating those signs as they age.
- Thank you for informing us that events may be held in this open space. We appreciate that DEP must consent to events at this location. However, in addition, we would like MCB4 and the block association to be included in vetting potential events.
- We hope you will consider including solar wind features to this site to demonstrate the advantages of this form of energy production.

In addition:

- We appreciate the additional planting and benches on the south side as well as carrying the curvilinear forms to the south side
- Thank you for adding a gardeners' storage box and designating the location of public restrooms.
- We believe you showed us lighting that is directed downward so as not to disturb nearby residents.
- We also believe you indicated that local volunteers would be welcomed to participate in planting and maintenance of the plantings.

We look forward to continued coordination of the operation of this open space between Parks, DEP, HPD and MCB4 with a focus on assuring the community that the site remain open as future nearby construction occurs.

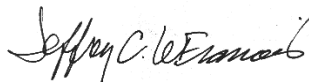
Sincerely,



Lowell D. Kern  
Chair  
Manhattan Community Board 4

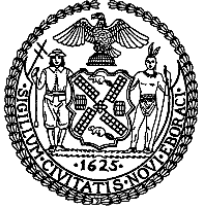


Maarten de Kadt  
Co-Chair  
Waterfront, Parks & Environment  
Committee



Jeffrey LeFrancois  
Co-Chair  
Waterfront, Parks & Environment  
Committee

Cc: Hon. Corey Johnson, Speaker, NYC Council  
Hon. Gale A. Brewer, Manhattan Borough President  
Elke Fears, West 47th/48th Streets Block Association



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**Burt Lazarin**  
Chair

**Jesse R. Bodine**  
District Manager

September 11, 2019

Mitchell J. Silver  
Commissioner  
NYC Department of Parks & Recreation  
830 Fifth Avenue  
New York, NY 10065

**Re: Proposed Park Design for 705 Tenth Avenue “DEP Site”**

Dear Commissioner Silver,

Manhattan Community Board 4 (MCB4) appreciates your staff’s July 11<sup>th</sup> presentation to the Waterfront, Parks, and Environment Committee (WPE) at which plans for the park to be built on the Department of Environmental Protection’s (DEP) Third Water Tunnel Site between 48<sup>th</sup> and 49<sup>th</sup> Streets on Tenth Avenue were described. A park on this approximately one-half acre site has long been promised to the Hell’s Kitchen Community. MCB4 would like to particularly commend Steve Simon, Chief of Staff to the Manhattan Borough Commissioner, Allan Scholl, Landscape Architect, and George Bloomer, Senior Landscape Architect.

We object to the current design and ask the Parks Department to continue to work with the community on a revised design. At its July 24<sup>th</sup> Full Board meeting, MCB4 voted by 35 in favor, 0 against, 0 abstaining and 0 present but not eligible to vote, to oppose the design presented at the WPE meeting.

DEP has left a practically unobstructed surface at ground level now that the work on the water tunnel at this location has been completed. We understand that the Department of Parks and Recreation (Parks) was charged with creating a park catering to passive recreation. This is an ideal use as the site is just across Tenth Avenue from the already existing Hell’s Kitchen Park and playground.

The design shared with us shows a large open circular right-of-center space covered with an artificial grass-like cover. The left-of-center space is to be covered with concrete, permeable pavers. The reason for this unattractive choice, we were told, is DEP requires 24/7 access and that there will be periodic trucks moving among the water tunnel access points in this section of the proposed park. The site is to be surrounded with trees and a year-round pallet of vegetation. It is to be a dog free site. The proposed lighting seemed adequate. The entire site is to be

surrounded with Park's standard 4-foot fence on the three street sides and an 8-foot steel fence between the site and a building yet to be constructed.

The site immediately west of the proposed park is scheduled to be developed into an affordable housing development and a DEP facilities management building. As such, there is the opportunity to provide a public restroom facility into this project and immediately adjacent to the proposed park. Such a restroom would serve the DEP Park as well as Hell's Kitchen Park. We are pleased that the restroom, a welcome addition, is promised. We hope there will be coordination between the building of the park and its adjacent DEP building.

We understand that with the assistance of Speaker Corey Johnson approximately \$3.7 million has been allocated for the construction of this facility. As explained by your staff it is not likely that the current design would cost that much. We appreciate the hard work that has gone into the design of the proposed park and the difficulties of interagency coordination that the design encountered.

Not only did we find the proposed park esthetically unpleasing, we were distressed to learn about the restrictions being placed on inclusion of innovative elements this park should have.

This is a site like no other as it requires consideration for the security of the City's water, of the site itself and it requires continuous access to the underground facility by DEP personnel. These constrictions present an opportunity for both agencies to exercise design originality. The plan we saw does not come close to this potential. On several occasions in our discussion the Committee was told a particular request could not be accomplished because DEP would not permit it. Frankly, the Committee was unable to discern whether the resistance to our suggestions (some that your staff acknowledged it had heard before) was coming from DEP or Parks or both.

We were told that there could be no superstructures on this park including: no sheds for storage of gardeners' equipment, no water facilities, and no electricity for events. We also learned small and large scale events will not be permitted.

The restriction on superstructure items led Parks to reject any storage shed for gardeners' tools. The same restriction was the reason there could be no water elements on the surface of this space. We find it difficult to believe the construction of the DEP facility below ground is so flimsy as to necessitate prohibition of elements like these on the surface. MCB4 would ask that Parks investigate whether a use such as composting station can be added to the design.

We found the cement pavers on the left side of the park particularly unattractive. They do not invite passive use of this section of the space. It would be much better if this section of the space were also covered by a green cover that could be used for lounging, thus promoting the passive use of the entire park. Your staff offered two objections to our requests: 1. DEP would not permit it (no reason given) and 2. Infrequent truck traffic would destroy any type of cover other than pavers. We find it difficult to believe DEP has a valid reason for objecting to a green cover over this section of the park. We also find it difficult to believe that there is no eco-friendly green cover that would both be comfortable to lounge on and that would withstand periodic vehicle crossings.

The conversation about the use of the section of the park requiring truck access led us to understand a serious safety defect in the plans for the park whether the left element is green or



not. There seems to be no in-place protocol for the safety of park users when DEP trucks need to enter and leave. There also seems to be a lack of an overall security design for this park focusing on the safety of users and of the facility below.

We understand the underground facility is an important element of the Third Water Tunnel and as such any breach jeopardizes the City's drinking water supply. We therefore agree that no large scale events should occur on this site. However, we do not understand why small parties would be inappropriate. To help facilitate small events, Parks should overcome its prohibition of usable electricity and include it in its design.

The site contains several structures that jet above the surface. Both as a protection for them and to enhance the esthetics of the site, we'd like to see some design mitigation of their starkness.

Parks is proposing its standard 4-foot fence along the street sides of the park. MCB4 has long argued for 7-foot fences in other parks in our district to discourage after hours misuse of parks. While MCB4 understands the 4-foot fence is Parks current policy we strongly believe the 4-foot fences do not discourage these often disruptive uses and should not be used here.

This park has the potential to be a wonderful addition for our community, yet the apparent design restrictions placed on this park limits its potential. In addition, DEP is missing an opportunity to educate the public in the build out and operation of this park by including water elements along with appropriate signage describing the breadth and complexity of the City's drinking water delivery system. Furthermore, this park provides the City's environmental watch dog the opportunity to offer education about solar energy by including small windmills or solar collectors in the park's design.

Thank you again for the presentation. We look forward to continuing this conversation with you.

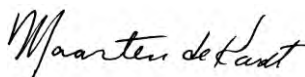
Sincerely,



Burt Lazarin  
Chair  
Manhattan Community Board 4



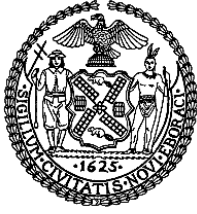
Lowell Kern  
Co-Chair  
Waterfront, Parks & Environment  
Committee



Maarten de Kadt  
Co-Chair  
Waterfront, Parks & Environment  
Committee

Cc: Hon. Jerrold Nadler, U.S. Congress  
Hon. Brad Hoylman, New York State Senate

Hon. Richard Gottfried, New York State Assembly  
Hon. Corey Johnson, New York City Council Speaker  
Hon. Gale Brewer, Manhattan Borough President  
Steve Simon, Chief of Staff, Manhattan Borough Commissioner's Office, NYC DPR  
Vincent Sapienza, Commissioner, NYC DEP  
Elke Fears, West 47<sup>th</sup>/48<sup>th</sup> Street Block Association



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**Burt Lazarin**  
Chair

**Jesse Bodine**  
District Manager

March 15, 2018

Maria Torres-Springer  
Commissioner  
NYC Department of Housing Preservation & Development  
100 Gold Street  
New York, NY 10038

**Re: DEP (705 10th Avenue ) and MTA (806 9th Avenue)  
Affordable Housing Sites**

Dear Commissioner Torres-Springer,

On February 14, 2018, the Clinton/Hell's Kitchen Land Use Committee was presented with an update by the Department of Housing and Preservation (HPD) on the forthcoming Request For Proposal (RFP) for two future affordable housing development projects ("Projects") on two publicly-owned parcels — the Metropolitan Transportation Authority site at 806 Ninth Avenue between West 53rd and West 54th Streets ("MTA Site") and the Department of Environmental Protection site at 705 Tenth Avenue between West 48th and West 49th Streets ("DEP Site") — which the City committed to develop as affordable housing as part of the Western Rail Yards Points of Agreement (WRY POA) on December 10, 2009.

On March 7, 2018, following the counsel of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board 4 (MCB4) by 35 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible, voted that the recommendations in this letter and the attached Power Point Presentation (Attachment A) be included with the RFP in order to inform responding applicants of the community's and the Board's requirements for developing these Projects.

**MCB4 RECOMMENDATIONS**

Through MCB4's substantial engagement with the community and sustained consultation with HPD, the following recommendations have been developed. They must be implemented to insure optimal development on both the MTA and the DEP Sites.

## **1. One Developer**

There should be one developer for both Sites.

## **2. No Inclusionary Housing Bonus**

A restrictive declaration must be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the Special Clinton District Harassment Cure requirements pursuant to ZR 96-110.

## **3. Height Restrictions**

*DEP Site:* The maximum height is 77 feet.

*MTA Site:* The maximum height along the Ninth Avenue frontage is 85 feet. Along West 54th Street, beginning 50 feet east of Ninth Avenue and through the mid block and backing against the existing MTA Control Center, the maximum height is 99 feet.

## **4. Income Bands**

MCB4 requests that a restrictive deck establish that HPD Financing for both Projects will follow HPD's M<sup>2</sup> (Mixed-Middle-Income Program) to achieve MCB4's required income band mix: 20% of units will be affordable at 80% Area Median Income (AMI); 40% will be affordable at 125% AMI, and 40% will be affordable at 165% AMI. (HPD's M<sup>2</sup> Program funds the new construction of multi-family rental housing affordable to low-, moderate-, and middle-income families up to 165% of Area Median Income.)

## **5. Size and Number of Units**

Both Projects combined should generate an estimated total of 267 permanently affordable units. At least 50% of the residential units in both Projects must contain two bedrooms or more.

*For the DEP Site,* MCB4's Affordable Housing Plan preliminary analysis proposed the following breakdown: 38 units at 80% AMI; 46 units at 125%; and, 59 units at 165%.

*For the MTA Site,* the Affordable Housing Plan proposed: 38 units at 80% AMI; 40 units at 125%; and 46 units at 165%.

## **6. Permanent Affordability**

All units in both Projects must be permanently affordable.

## **7. No Commercial Space at the DEP Site**

No retail or commercial use should be allowed on either the West 48th Street or the West 49th Street portion of the DEP Site. Twelve liquor-serving establishments already exist within 75 feet of the Site. Any additional establishment would exacerbate the problems of bars and clubs on residential blocks. And eliminating the need for commercial space on the ground level, hence reducing the ground floor-to-floor height, allows for more affordable units in the building.

## **8. Public Restroom and Parks Support Space on DEP Site**

The block front on Tenth Avenue will be developed as public open space ("Open Space") with the function of a public park. (The Open Space will not be mapped as a public park due to DEP's

access requirements for water tunnel maintenance, but will be maintained by the New York City Parks Department.) Both Hell's Kitchen Park, diagonally southeast of the DEP Site, and the future Open Space lack the basic amenity of a comfort station. An ADA accessible public restroom must be included in the affordable housing development and accessible from the Open Space.

The building must also have a small support space, including a janitor's sink and electricity, for NYC Parks Department staff. It will be accessible from the Open Space. Parks or open spaces with comfort stations should have fixed post staff to address constituents' concerns, provide security, and perform routine maintenance.

### **9. Supermarket Instead of Office Space on MTA Site**

Two decades ago, Ninth Avenue had three supermarkets between West 43rd and West 54th Streets. Today, there are none. With its large enough footprint, this publicly owned site is the district's sole opportunity for a supermarket which could serve the Ninth Avenue core of the Hell's Kitchen neighborhood. Allowing MTA office space in the development precludes that possibility. MCB4 will continue to work with the MTA and HPD to relieve the Project of burden to create 30,000 square feet of MTA office space.

### **10. No Garage on MTA Site**

The site has been used by the MTA for surface parking for its employees for nearly two decades without any permit or Certificate of Occupancy. The MTA request for a garage for 15 MTA parking spaces for the site must be reconsidered. The Board notes that there is already a garage in the MTA building (directly across the street from 351 West 54th) with a "24-Hour, Active Driveway."

### **11. Design Recommendations**

Both the MTA and DEP sites are in the Clinton Special District (CSD) in the historic Hell's Kitchen neighborhood. The majority of the buildings in the CSD are tenements, built between 1880 and 1920, often in groupings with some design variations, with facades comprised of brick and masonry. In keeping with the context of the district, the facades of the proposed buildings on the DEP and the MTA Sites should include predominantly brick and masonry with punched windows and avoid glass and panel systems.

*MTA Site:* The building at the MTA site should have landscaped tenant open space at the roof and the setback levels.

*DEP Site:* The building on the DEP Site should have windows facing north, south, and east. On the east, the building should relate to the Open Space but also provide privacy for ground floor units. The windows facing the Open Space should be noise attenuating. Balconies are not recommended.

Both ends of the building, on West 48th and West 49th Streets, should be enlivened by street trees and substantial tree beds. And the building at the DEP site should have landscaped tenant open space at the roof and the setback levels.

## **12. Feral Cats, DEP Site**

A small population of feral cats lives on the rail cut on West 48th Street. The cats are cared for by a coalition of volunteers from the New York City Feral Cat Initiative, a program overseen by the Mayor's Alliance for NYC Animals. The volunteers trap, neuter, vaccinate, and return the cats to their territory of origin (TNR (Trap, Neuter, Return) Program). Before construction begins on platforming over the rail cut at the DEP Site, HPD must coordinate with the NYC Feral Cat Initiative to safely remove the cats.

The Board would like both Projects to have a pet-friendly policy.

## **13. Construction Task Force**

MCB4 will form a Task Force to resolve complaints or issues arising from the construction of the buildings. The Task Force will include representatives from the local block association, business owners, the developer, City Councilmember, and MCB4.

## **BACKGROUND**

The MTA Site, located at 806 Ninth Avenue between West 53rd Street and West 54th Street, was formerly a bus depot built in 1906. It was demolished in 1996. The site is currently a vacant lot.

The DEP site, at 705 Tenth Avenue, between West 48th Street and West 49th Street, is a Third Water Tunnel Access Shaft site. As of October 2016, the site has been vacated. DEP is now working with the City to allow for the development of affordable housing by HPD and public open space to be designed and maintained by the New York City Department of Parks and Recreation on the site.

Both sites are located within the Special Clinton District — a special district created to preserve and strengthen the residential character of a community bordering Midtown, maintain a broad mix of incomes, and insure the community is not adversely affected by new development. The community and MCB4 has long worked toward the goal of preserving affordability through restrictions on residential demolitions as well as planning for the development of new affordable units.

## **Western Rail Yards Points of Agreement**

Executed in 2009, the Western Railyards Points of Agreement (WRY POA) specifically outline the MTA and DEP sites as affordable housing commitments from the City. The WRY POA stated that HPD would issue Requests for Proposals (RFPs) for the development of both sites. And such RFPs would be reviewed by MCB4 before being released (see Attachment B)

## **ULURP**

As part of the development process, both sites went through the Uniform Land Use Review Process (ULURP) with the New York City Planning Commission. In its July 2009 letter to the Department of City Planning, MCB4 took a number of positions on ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM. (Attachment C)

## **MCB4 Affordable Housing Plan**

The development of both sites was contingent upon Related's closing title on the Western Railyards, which would allow the MTA site to be transferred to HPD. The site transferred on October 13, 2016. At that point, MCB4 began requesting that an RFP be issued for the two sites.

In 2015, MCB4 released an Affordable Housing Plan, which outlines the development of affordable housing units within our district. That Plan includes both the MTA and DEP sites. Under the plan, the proposed AMI distribution was consistent with the 2009 MCB4 letter regarding the ULURP.

## CONCLUSION

HPD plans to release the RFP this month (March 2018) and to begin receiving submissions this June. Proposals will be selected in the winter of 2018/2019.

MCB4 thanks HPD for its long and productive engagement with MCB4 on these important affordable housing developments. We look forward to working with HPD and with the developer to ensure that these Projects honor the commitments made in the Western Rail Yards Points of Agreement.

Sincerely,



Burt Lazarin  
Chair  
Manhattan Community Board 4



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

Cc: Hon. Jerry Nadler, U.S. Congress  
Hon. Brad Hoylman, New York State Senate  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Richard Gottfried, New York State Assembly  
Hon. Linda Rosenthal, New York State Assembly  
Hon. Corey Johnson, Speaker, New York City Council  
Hon. Helen Rosenthal, City Council

### Enclosures:

Attachment A: Power Point Presentation

Attachment B: Western Railyards Points of Agreement dated December 10, 2009

Attachment C: Letter to Commissioner Burden, dated July 27, 2009

ATTACHMENT A

POWER POINT PRESENTATION



# Clinton/Hell's Kitchen RFP

806 9<sup>th</sup> Avenue & 705 10<sup>th</sup> Avenue

Permanent Affordable Housing & Open Space



Manhattan Community Board 4

# Clinton/Hell's Kitchen RFP

The Clinton/Hell's Kitchen RFP is comprised of two permanent affordable housing sites:

- MTA Site – located at 806 9<sup>th</sup> Avenue
- DEP Site – located at 705 10<sup>th</sup> Avenue

Both sites were commitments in the Western Rail Yards Points of Agreement, an agreement between the New York City Council and the Mayor's Office regarding the Hudson Railyards rezoning, which was executed on December 10, 2009.

# Western Rail Yards Points of Agreement

## **POINTS OF AGREEMENT** **Western Rail Yard Rezoning** **December 10, 2009**

### **3. AFFORDABLE HOUSING OFF-SITE COMMITMENTS**

- (a) The Department of Housing Preservation and Development ("HPD") commits to issuing Requests for Proposals ("RFPs") for the development of affordable housing on the City-owned sites at West 54<sup>th</sup> Street and 9<sup>th</sup> Avenue, which is under the leasehold control of the Metropolitan Transportation Authority ("MTA"), and West 48<sup>th</sup> Street and 10<sup>th</sup> Avenue, currently occupied by the Department of Environmental Protection ("DEP") in connection with the construction of Water Tunnel No. 3. The City reiterates its commitment to propose, and Council Member Quinn reiterates her commitment to support, the provision in the City capital budget of the sum of \$40 million to construct or otherwise create new affordable housing units off-site.

HPD's RFPs will contain the following requirements:

- (i) A height cap restriction that the local Council Member and Community Board 4 ("CB4") understand will result in the creation of an estimated 267 units. Without the height cap restrictions, these sites would generate 312 units. The height on the DEP site will not exceed 77 feet. The height on the MTA site will not exceed 85 feet on 9<sup>th</sup> Avenue, and 99 feet on the midblock;
  - (ii) An AMI mix of 165% or under;
  - (iii) 50% two or more bedroom units; and,
  - (iv) Permanent affordability.
- (b) HPD will share the program overview with CB4 before releasing the RFPs for the off-site housing developments.
- (c) The Administration agrees that the MTA and DEP sites will not generate an Inclusionary Zoning bonus under NYC Zoning Resolution Section 23-90, and

## Western Rail Yards Points of Agreement

### Requirements for RFP

- Height cap of 77 feet for the DEP site and 85 feet on 9<sup>th</sup> Avenue and 99 feet on the midblock for the MTA site
- 267 permanently affordable units
- An AMI mix of 165% or under
- 50% two or more bedroom units

### Process

- HPD to share program overview with MCB4 before releasing RFPs

# MCB4 Revised Approval Conditions—June 2017

## MTA Site

### Height, Bulk, and Use

- Setting a height limit of 85 feet along the 9<sup>th</sup> Avenue frontage and of 99 feet on West 54<sup>th</sup> Street, beginning 50 feet east of 9<sup>th</sup> Avenue and through the midblock backing against the existing MTA Control Center.

### Affordability Bands

- A restrictive declaration that 20% of units will be affordable at 80% AMI; 40% will be affordable at 125% AMI, and 40% will be affordable at 165% AMI
- At least 50% of the residential units contain two bedrooms or more

### MTA Use

- The elimination of the 30,000 square feet reserved for the MTA office/training space
- The elimination the 15 MTA parking spaces planned for the site
- The RFPs to select a developer for this site must be developed in consultation with MCB4

### Other Considerations

- A restrictive declaration that the site cannot generate an Inclusionary Housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110

# MCB4 Revised Approval Conditions—June 2017

## DEP Site

### **Height, Bulk, and Use**

- Setting the height limit for the site at 77 feet
- No retail and/or commercial use allowed on the West 49<sup>th</sup> Street portion of the DEP site, as such an addition would exacerbate the problems of bars and clubs on residential blocks

### **Affordability Bands**

- A restrictive declaration that 20% of units will be affordable at 80% AMI; 40% will be affordable at 125% AMI, and 40% will be affordable at 165% AMI
- At least 50% of the residential units contain two bedrooms or more

### **Relationship to DEP/Parks Open Space**

- A permanent easement for unobstructed light and air from the DEP water access tunnel site to the east
- Comfort stations for public use in conjunction with the DEP open space must be included in the affordable housing development
- Parks Department has agreed to a landscape architect to design the open space

### **Other Considerations**

- The RFPs to select a developer for this site must be developed in consultation with MCB4
- A restrictive declaration that the site cannot generate an Inclusionary Housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110

# MTA Site – 806 9<sup>th</sup> Avenue





 Residential

# MTA Site – 806 9<sup>th</sup> Avenue



# DEP Site – 705 10<sup>th</sup> Avenue



-  Residential
-  Open Space



# DEP Site – 705 10<sup>th</sup> Avenue



View from 10<sup>th</sup> Avenue facing west

# MCB4 Approval Conditions– MTA Site

## March 7, 2018

### Building Design & Program

- Height not to exceed 85 feet on 9<sup>th</sup> Avenue and 99 feet in the midblock (50 feet east of 9<sup>th</sup> Avenue)
- Façade to be predominantly brick and masonry with punched windows
- Architecture should relate to surrounding context of 4 to 6 story brick and masonry tenements
- Landscaped tenant open space to be developed at roof and setback levels
- Commercial space to be a supermarket for the community
- MCB4 will continue to work with MTA to relieve project of burden to create 30,000 square feet of MTA office space

# Neighborhood Context – MTA Site



# MCB4 Approval Conditions – DEP Site

## March 7, 2018

### Building Design & Program

- Height not to exceed 77 feet
- Façade to include predominantly brick and masonry with punched windows
- Architecture should relate to surrounding context of 4 and 5 story brick and masonry tenements
- Building to have windows facing south, north, and east
- No commercial space at first floor<sup>1</sup>
- HPD Design Guidelines be modified to create both a lower ground floor and slightly lower floor to floor heights to create another floor within height limit
- With an additional floor, the unit count can be increased
- Landscaped tenant open space to be developed at roof and setback levels

<sup>1</sup> Current zoning includes C1-5 commercial overlay at first floor. However, midblock commercial use is not compatible with context of block

# MCB4 Approval Conditions – DEP Site

## March 7, 2018

### Building's Relation to Open Space

- Public open space to include an ADA Accessible public restroom and support space for Park staff
- Building design to relate to open space on 10<sup>th</sup> Avenue but also provide privacy to ground floor apartments along east façade facing open space

# Neighborhood Context – DEP Site



# MCB4 Unit Affordability and Size Approval Conditions

## Clinton/Hell's Kitchen RFP

### AMI Distribution

AMI	Percent
80% AMI	20%
125% AMI	40%
165% AMI	40%

### Affordability Mix

- Production of between 200 and 230 permanently affordable apartments
- AMI mix of 80 %, 125% & 165% with no income eligibility gaps
- The HPD M<sup>2</sup> program funding be used to achieve community desired AMI mix

### Apartment Distribution

- 50% of the units to be two or more bedroom units

### WRYP OA Commitments

- Neither site to generate an Inclusionary Housing bonus
- Neither site to satisfy a Cure for Harassment

# Appendix

## MCB4 Documents Pertaining to MTA & DEP Sites

MCB4 requests that all respondents to the Clinton/Hell's Kitchen RFP, in order to better understand background, context, and project sites, please review the following documents and MCB4 letters:

- [Western Rail Yards Points of Agreement. \*December 10, 2009\*](#)
- [MCB4 Letter re: ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM. \*July 27, 2009.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*October 7, 2015.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*February 8, 2017.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*June 7, 2017.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*March 15, 2018.\*](#)



ATTACHMENT B

WESTERN RAIL YARDS  
POINTS OF AGREEMENT



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

December 10, 2009

Honorable Christine Quinn  
Speaker  
New York City Council  
City Hall  
New York, N.Y. 10007

Re: Western Rail Yard Rezoning Plan- City Council ULURP Actions

Dear Speaker Quinn:

Please find attached to this letter a "Points of Agreement" reflecting recent discussions among the City Council, the Administration and the Related Companies, representing the interest of RGWRY LLC, regarding the City Council's review of the Western Rail Yard Rezoning, a project which encompasses both the rezoning of the Western Rail Yard site itself as well as the provision of off-site affordable housing at two locations.

In addition to items which reflect modifications made by the City Council with respect to the ULURP actions and the associated restrictive declaration, a number of the items set forth in the "Points of Agreement" reflect commitments to future action by the Administration, while others reflect commitments to future action by the Related Companies. The Administration and the Related Companies are each providing you with this letter in acknowledgment of their respective commitments.

With respect to certain of the items described in the "Points of Agreement", implementation is subject to further review under applicable procedures, including land use and environmental review, and the receipt of additional approvals. In other cases, implementation is contingent upon the availability of funding and financing support or determinations by State or federal agencies. In all such cases, the Administration and the Related Companies, with respect to their respective commitments, will work diligently with your cooperation to achieve the goals stated in this "Points of Agreement".

We look forward to continuing to work with you and your colleagues as this project progresses towards the transfer of the Western Rail Yard site from the MTA to the Related Companies, and implementation of all the items in the "Points of Agreement" associated therewith.

Sincerely,

Handwritten signature of Robert C. Lieber in black ink.

Robert C. Lieber for the City of New York  
(with respect to Points of Agreement  
Sections: 1, 3 (a) – (f), 4 (b), 6 (c) & (d),  
8, and 10)

Handwritten signature of Jay Cross in black ink.

Jay Cross for RGWRY LLC  
(with respect to Points of Agreement  
Sections: 2, 3 (g) & (h), 4 (a) & (b), 5,  
(a) & (b), and 7)

**POINTS OF AGREEMENT**  
**Western Rail Yard Rezoning**  
**December 10, 2009**

**I. ANTI-DEMOLITION COMMITMENTS**

- (a) Anti-demolition Language: The Administration and the City Council recognize that with the construction of the Number 7 Line Subway underway and scheduled for completion by 2014, and completion of the Hudson Yards Park and Boulevard, scheduled for completion by 2014, the conditions will be in place for the substantial development forecasted in the 2004 Hudson Yards FGEIS and the 2005 West Chelsea FEIS to occur. The Administration and the City Council acknowledge the community's concerns that the growth forecasted for the Hudson Yards and adjacent areas, should it occur, could result in development pressures that may affect tenement housing that has historically provided an affordable housing resource for residents. To address these concerns, additional measures are warranted to facilitate the preservation of existing housing stock. For this purpose, the Administration agrees to support a zoning text amendment for Subareas D4 and 5 of the Special Hudson Yards District, Preservation Area P-2 of the Special Garment Center, and the Special West Chelsea District ( the " Zoning Text Amendment"), in the form annexed hereto as Exhibit I.
- (b) Referral of Zoning Text Amendment: The Department of City Planning ("DCP") commits to refer the Zoning Text Amendment for public review by no later than July 1, 2010. Council Member Quinn agrees to support the Zoning Text Amendment in the form annexed hereto as Exhibit I.

**2. AFFORDABLE HOUSING COMMITMENTS: WESTERN RAIL YARD ("WRY") AND EASTERN RAIL YARD ("ERY")**

- (a) Related commits to build a minimum of 265 permanently affordable rental units ("Affordable Units") on the WRY and an additional minimum of 166 Affordable Units on either the WRY or ERY, in either rental or condominium buildings, for a total of 431 Affordable Units combined, contingent upon:
- (i) Availability of a tax abatement program comparable to existing tax abatement programs for either rental units or condominiums, including 20 year abatement for condominium with 20% Affordable Units;
  - (ii) Availability of tax-exempt bonds to fully finance the construction of the 80/20 rentals that Related chooses to develop to fulfill its commitment; and,
  - (iii) At the expiration of the initial real estate tax program, WRY & ERY Affordable Units will convert to permanent affordability to households at an average income of up to 90% AMI, not to exceed 125% AMI, provided that there are incentives, programs, exemptions, credits or abatements available

that will reduce the real estate taxes for the 80/20 buildings to a level consistent with real estate taxes paid prior to any phase out of the real estate tax abatement in the initial 421-a program for the building. No restrictions shall apply to the market rate units as rentals or as a conversion to condominiums after the initial 421-a real estate tax exemption period.

- (b) With respect to the distribution of Affordable Units within any 80/20 rental component of a building, Related commits to the following:
  - (i) A maximum of 50% Affordable Units on any floor; and,
  - (ii) At least one Affordable Unit on 80% of the floors included within the 80/20 rental components (assuming there are enough Affordable Units planned for at least one per floor, otherwise one per floor for as many floors as there are Affordable Units).

### **3. AFFORDABLE HOUSING OFF-SITE COMMITMENTS**

- (a) The Department of Housing Preservation and Development (“HPD”) commits to issuing Requests for Proposals (“RFPs”) for the development of affordable housing on the City-owned sites at West 54<sup>th</sup> Street and 9<sup>th</sup> Avenue, which is under the leasehold control of the Metropolitan Transportation Authority (“MTA”), and West 48<sup>th</sup> Street and 10<sup>th</sup> Avenue, currently occupied by the Department of Environmental Protection (“DEP”) in connection with the construction of Water Tunnel No. 3. The City reiterates its commitment to propose, and Council Member Quinn reiterates her commitment to support, the provision in the City capital budget of the sum of \$40 million to construct or otherwise create new affordable housing units off-site.

HPD’s RFPs will contain the following requirements:

- (i) A height cap restriction that the local Council Member and Community Board 4 (“CB4”) understand will result in the creation of an estimated 267 units. Without the height cap restrictions, these sites would generate 312 units. The height on the DEP site will not exceed 77 feet. The height on the MTA site will not exceed 85 feet on 9<sup>th</sup> Avenue, and 99 feet on the midblock;
  - (ii) An AMI mix of 165% or under;
  - (iii) 50% two or more bedroom units; and,
  - (iv) Permanent affordability.
- (b) HPD will share the program overview with CB4 before releasing the RFPs for the off-site housing developments.
  - (c) The Administration agrees that the MTA and DEP sites will not generate an Inclusionary Zoning bonus under NYC Zoning Resolution Section 23-90, and

acknowledges that they cannot serve as the Cure for Anti-Harassment under NYC Zoning Resolution Section 96-110.

- (d) The Administration, in the attached letter from Deputy Mayor Edward Skyler dated December 10, 2009 and annexed hereto as Exhibit 2, commits to make a best effort to vacate the Department of Sanitation (“DSNY”) facilities located at 136-140 West 20<sup>th</sup> Street with a goal of completing the relocation by December 31, 2011. If DSNY is relocated from its West 20<sup>th</sup> Street facilities, HPD commits to develop the site for affordable housing at a range of incomes up to 165% AMI. In the event that DSNY is not relocated, the local Council Member and CB4 acknowledge that HPD will not be expected to make up for those units anywhere else.
- (e) SRO Preservation: HPD will work with the local Council Member and CB4 to preserve up to 150 units of privately owned SRO housing. The Council Member and CB4 acknowledge the difficulties inherent in and lengthy timeframe needed to accomplish these private acquisitions. To the extent that such acquisition(s) can be negotiated, HPD will use its programs to acquire and rehabilitate these SRO units.
- (f) HPD commits to providing CB4 with quarterly updates on the affordable housing developments that were committed as a part of the Hudson Yards and West Chelsea rezonings.
- (g) Related commits that it will seek two extensions of federal rental subsidy to its existing Mark Up to Market Project Based Section 8 HUD Contracts (or a comparable successor program) for a period of no less than 40 years from City Council approval of the WRY rezoning, for its properties known as Terrific Tenements (at 525 West 47<sup>th</sup> Street and 425 West 48<sup>th</sup> Street) and the French Apartments (at 330 West 30<sup>th</sup> Street). Related will apply for the initial extension no later than March 31, 2010. The current maximum extension is a 20 year period, and if granted, will expire in 2030. Related will then seek additional extensions totaling an additional 20 year period. Related will diligently pursue all necessary approvals to seek such extensions, provided:
  - (i) All necessary Department of Housing and Urban Development (“HUD”) and investor approvals are obtained; and,
  - (ii) The relevant financing and tax programs, including applicable real estate tax abatement programs, currently available for Section 8 housing are made available to effectuate the extensions. Related will commit to pursue extending Section 8 benefits at these properties and will diligently pursue all necessary approvals. The period of each extension will be the maximum period allowed under the program.
- (h) Related Off-site 80/20s: Related commits to guaranteeing that all existing affordable rental units in the Westport (at 500 West 56<sup>th</sup> Street) and the Tate (at 535 West 23<sup>rd</sup> Street) in Community District 4 will remain permanently affordable to

households at an average income of up to 90% AMI, not to exceed 125% AMI, provided that there are incentives, programs, exemptions, credits or abatements available that will reduce the real estate taxes for the 80/20 buildings to a level consistent with real estate taxes paid prior to any phase out of the real estate tax abatement in the initial 421-a program. No restrictions shall apply to the market rate units as rentals or as a conversion to condominiums after the initial 421-a period. This commitment is contingent on obtaining lender and investor approvals, which Related will diligently pursue.

- (i) A summary chart of the affordable housing commitments is annexed hereto as Exhibit 3.

#### **4. WRY SCHOOL COMMITMENTS**

- (a) Community Notification: Related agrees that copies of an amended Letter of Intent with the School Construction Authority (“SCA”) regarding school site selection, modified to reflect the commitments in paragraph (b) will be provided to CB4, the local school district, the Manhattan Borough President, and the local Council Member.
- (b) School Site Selection: Related commits that it will offer SCA approximately 120,000 square feet of space at Site 6 for a public school and that Site 6 will be one of the first three buildings to be built. The SCA commits that it will initiate the site selection process for the public school at Site 6 no later than July 1, 2010. Related shall only be required to offer Site 6 to the SCA and no alternate sites. In the event that the SCA rejects Site 6, for whatever reason, Related's obligation to provide space for the public school under Section 3.04 of the Restrictive Declaration (“Declaration”) is terminated.

#### **5. COMMUNITY AND CULTURAL SPACE COMMITMENTS**

- (a) Related agrees to make available a minimum of 16,000 gross square feet of space for local cultural institutions or other local arts not-for-profits.
- (b) The cultural space will be provided in at least two facilities.
- (c) Related commits to constructing the core and shell of the cultural spaces, including the distribution of base building systems to the cultural spaces, in accordance with Section 2.04(d) of the Declaration, as modified by the City Council.

#### **6. OPEN SPACE COMMITMENTS**

- (a) Related agrees to replace the member appointed by the President of the Hudson Yards Development Corporation to serve on the Open Space Advisory Board established under Section 2.02(e) of the Declaration with a member appointed by the Manhattan Borough Commissioner of the Department of Parks and Recreation (“Parks Dept”).

(b) Related agrees to change the timing of the open space payments required under Section 3.04(b)(i) of the Declaration to two payments of \$1 million each, with the 1st payment triggered by the TCO for the 2nd residential building, provided that the 2nd residential building results in a total of 500 or more units, and the 2nd payment triggered by the TCO for the 4th residential building. In the event that the 1st and 2nd residential buildings produce less than 500 total units, then the 1st payment will be triggered by the TCO for the 3rd residential building and the 2nd payment will be triggered by the TCO for the 5th residential building.

(c) Greening and Neighborhood Opens Space Development:

(i) Street Tree Planting: The Administration agrees to work with the City Council to review and modify, as necessary, the Parks Dept's street tree planting program to ensure that the Hudson Yards area of CB4 has an appropriate allocation of street trees. In addition, the Administration will work with Con Edison on a master plan for the appropriate location of street trees and infrastructure vaults. The Parks Dept will seek to plant trees at all viable street tree locations.

(ii) Port Authority Sites: The Administration will continue working with the City Council, the community and the Port Authority of NY & NJ ("Port Authority") toward creating open space on Port Authority sites within the blocks bounded by West 34<sup>th</sup> and West 41<sup>st</sup> Streets, between 9<sup>th</sup> and 10<sup>th</sup> Avenues.

(iii) The Administration agrees to establish an Open Space Task Force to review and advise on the creation of open space within the blocks described above. The Task Force will be comprised of representatives from the Department of Transportation ("DOT"), the Parks Dept, and the Hudson Yards Community Advisory Committee. The Administration will invite the Port Authority to participate on the Task Force.

a. The Administration, in coordination with the Port Authority, agrees to use the Greenstreets Program to green the "canoe" traffic island on the north side of West 36<sup>th</sup> Street, between 9<sup>th</sup> Avenue and the Lincoln Tunnel Expressway, subject to and in accordance with the following:

i. The Administration will allocate new funding to the Greenstreets Program for this greening;

ii. The Parks Dept, DOT and the Port Authority will work together to establish a plan to address greening, sidewalk and safety requirements;

iii. The nature and extent of the greening will depend upon subsurface conditions, including utilities, and infrastructure issues

at or adjacent to the canoe traffic island, which will be examined as part of the planning process;

- iv. DOT will relocate the NYPD vehicles currently parked on this island; and,
- v. The Administration will use all reasonable efforts to expedite the implementation of these plans.

(iv) Sidewalk ADA Compliance: The Administration agrees to work with the Port Authority to improve sidewalks along Dyer Avenue, between West 34<sup>th</sup> and West 36<sup>th</sup> Streets in order to upgrade to ADA standards, subject to any public safety concerns identified by either the Administration or the Port Authority with respect to any particular location. The Administration will use all reasonable efforts to achieve these upgrades.

(d) DEP Open Space Funding:

- (i) Provided that the open space proposed for the site currently occupied by DEP at 10<sup>th</sup> Avenue, between West 48<sup>th</sup> Street and West 49<sup>th</sup> Street is not mapped as park land, upon completion of Water Tunnel No. 3 DEP will fund the design of the open space and will make a capital contribution to the construction of the open space.
- (ii) DEP will not be responsible for making any contributions to the maintenance or operation of the proposed open space. A maintenance and operations plan will be created as part of the design process.

The proposed open space is identified on the map annexed hereto as Exhibit 4 as that area occupying the northeast corner of the DEP site, bounded to the north by West 49<sup>th</sup> Street, to the east by 10<sup>th</sup> Avenue, to the south by the horizontal line demarking the "Fenced Area For DEP Operations" and to the west by the solid black line identified in the map legend as an "Easement Line" and running in a north to south direction.

At an appropriate time following completion of Water Tunnel No. 3, a metes and bounds survey will be conducted to establish the boundaries of the proposed open space consistent with the description of the open space boundaries contained in the map annexed hereto as Exhibit 4.

## **7. DAY CARE COMMITMENTS**

Related agrees to provide the Administration for Children's Services ("ACS") with additional opportunities to exercise the option for 10,000 square feet of ground floor space suitable for use as a child care center. Under Section 3.04(c) of the Declaration, as modified by the City Council, ACS may trigger the requirement for Related to offer space following the issuance of a TCO or PCO for any new building on the WRY



containing residential rental units. In that event, Related shall offer space located either in a new building on the WRY or at a nearby off-site location, provided that Related shall have no obligation to offer space in new buildings on the WRY other than Sites 1, 2 and 4. In the event that ACS accepts a space at an off-site location, Related shall have no further obligations under Section 3.04 to offer space, whether on or off site.

## **8. FIRE PROTECTION ASSESSMENT COMMITMENTS**

To address the potential need for new Fire Department (“FDNY”) facilities in the Hudson Yards district, if the City Council requests in 2014, the FDNY will commence a review of the fire protection needs of the district beginning January 1, 2015, and at the City Council's request every five years thereafter, until such time as all projected development has been completed.

## **9. ZR SECTION 93-06 AND RESTRICTIVE DECLARATION**

(a) Modification of ZR Section 93-06: Under Section 93-06 of the Zoning Resolution, as modified by the City Council, the execution and recordation of a Restrictive Declaration including the modifications described in (b)- (e) below shall be required for any development or enlargement on the WRY pursuant to the zoning amendments.

(b) City Council Approval of Modifications: Under Section 4.04 of the Declaration, as modified by the City Council, any future modifications to the provisions of the Declaration pertaining to Affordable Housing (Sec. 2.01); Public Access Areas (Sec. 2.02 (a)-(e) and (h)); Arts and Cultural Space (Sec. 2.04); the Public School, Open Space, and Day Care Mitigations (Sec. 3.04 (a)-(c)), Modification and Amendment (Sec. 4.04(a)), and the Construction Consultation Process Committee and Liaison (Sec. 6.01), that would diminish or alter the obligations of Related, shall be subject to the approval of the City Council.

(c) Independent Monitor: Under Sections 3.07(a) and 6.01 of the Declaration, as modified by the City Council, the Independent Monitor shall prepare a quarterly report summary of activities for distribution to any Construction Consultation Process Committee established under Section 6.01 of the Declaration.

(d) Wind Analyses: Under Section 3.02(c) of the Declaration, as modified by the City Council, Related agrees to provide copies of all final Wind Conditions Reports to Manhattan Community Board 4, the local Council Member, the Manhattan Borough President, and any Construction Consultation Process Committee established pursuant to Section 6.01 of the Declaration.

(e) Construction Consultation Process Committee: Under Section 6.01 of the Declaration, as modified by the City Council, Related agrees that, upon request of the Construction Consultation Process Committee, Related's designated liaison shall address, on a regular basis, the questions and concerns of the Committee about construction related issues beginning at the time of issuance of the first Foundation Permit for a New Building on the WRY.

**10. LANDMARKS**

The Landmarks Preservation Commission (“LPC”) will conduct a preliminary review of the historic districts proposed by CB4 in their letter dated November 20, 2009 and annexed hereto as Exhibit 5, by the end of Fiscal Year 2010. During that period the LPC will also complete an evaluation of the 11 sites proposed for landmark designation by CB 4 in their letter dated November 20, 2009 and annexed hereto as Exhibit 6, to determine whether they should be considered further for landmark status.



Robert C. Lieber for the City of New York  
(with respect to Points of Agreement  
Sections: 1, 3 (a) – (f), 4 (b), 6 (c) & (d),  
8, and 10)



Jay Cross for RGWRY LLC  
(with respect to Points of Agreement  
Sections: 2, 3 (g) & (h), 4 (a) & (b), 5,  
6 (a) & (b), and 7)

ATTACHMENT C

LETTER TO COMMISSIONER BURDEN



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
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John Weis  
Chair

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

July 27, 2009

Director Amanda M. Burden  
Department of City Planning  
22 Reade Street  
New York, New York 10007

**Re: ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM  
West 48<sup>th</sup> and 49<sup>th</sup> Streets, west of 10<sup>th</sup> Avenue and 806 Ninth Avenue  
Off-site Affordable Housing sites a/k/a DEP site and MTA site, respectively**

Dear Director Burden:

At the recommendation of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board 4 (CB4), having held a duly noticed public hearing on ULURP application numbers 090422HAM, N090429ZRM, 090423HAM and 090430ZMM adopted the following resolution by roll call vote at its meeting on July 22, 2009 with 23 in favor, 10 opposed, 0 abstaining and 1 present but not eligible to vote). The resolution recommends **denial** of each Application **unless certain conditions are met**.

**OVERVIEW**

The above applications contemplate the disposition, zoning text and map changes, and zoning map changes relating to two off-site affordable housing developments, at 806 Ninth Avenue and West 48<sup>th</sup> Street and West 49<sup>th</sup> Street, west of Tenth Avenue. These Off-site Actions ("Off-site Actions") are related actions to the larger proposed redevelopment ("Proposed Actions") of the Western Rail Yards ("WRY"), located from West 30<sup>th</sup> Street to West 33<sup>rd</sup> Street between 11<sup>th</sup> and 12<sup>th</sup> Avenues.

Both sites are located in the Special Clinton District ("SCD") and are publicly-controlled by the Department of Environment Protection ("DEP") and the Metropolitan Transit Authority ("MTA") respectively. The off-site affordable housing development sites were identified in a Memorandum of Understanding ("MTA MOU") between the Metropolitan Transportation Authority ("MTA") and the Mayor of the City of New York dated July 11<sup>th</sup>, 2007. The goals of MTA MOU were acknowledged in a letter from Councilmember Quinn to the Deputy Mayor Dan Doctoroff also dated July 11<sup>th</sup>, 2007 (Attachments A and B).

The Proposed Actions include the adoption of zoning map and text amendments to the New York City Zoning Resolution ("ZR") and related land use action to permit the

development of the WRY as a mixed-use community with new commercial, residential and open space, including approximately:

- 5.7 million square feet of total development;
- 1.14 million square feet of commercial space;
- 4.56 million square feet of residential;

The resultant changes will encompass, *inter alia*, zoning map and text amendments and accessory parking special permits pursuant to ULURP; the leasing of, with option to purchase, development rights over the WRY, establishment of new legal grades on West 33<sup>rd</sup> Street between 11<sup>th</sup> and 12<sup>th</sup> Avenues; site selection by NYC School Construction Authority (“SCA”) for an elementary/intermediate public school; and the disposition and construction of two off-site affordable housing buildings, the subject of the above referenced ULURP applications.

### **GENERAL COMMENTS**

At the outset, Manhattan Community Board 4 (“CB4”) celebrates its economic diversity and welcomes development of affordable housing for all income levels. However, the development of the two off-site affordable projects has been the subject of an ongoing spirited debate within the community with widespread community consensus against that part of the special permit seeking height increases beyond what is now permitted within the SCD.

The applications for these two publicly owned sites, located between West 48<sup>th</sup> and West 49<sup>th</sup> Street west of Tenth Avenue (“DEP Site”) and 806 Ninth Avenue (“MTA Site”), contemplate the construction of a combined 312 affordable units. While the Off-site Actions are currently limited to a zoning text and district map amendment and a zoning map amendment, the ultimate development of these sites is predicated upon future land use actions.

#### **DEP Site**

##### Current Actions

- 1) Disposition of City Owned Property and UDAAP designation for Manhattan Block 1077, Lot 29 for development as affordable housing.
- 2) Text Amendment to the Special Clinton District Map to map Other Area on Block 1077, Lot 29 to facilitate the development of the site as affordable housing.

##### Future Actions

- 3) The request for the grant of a Special Permit pursuant to ZR § 96-104 to increase the height from 66 feet to 99 feet.
- 4) The request for the grant of a Special Permit pursuant to ZR § 74-681 to build over the below grade Amtrak railroad right of way.

## **MTA Site**

### **Current Actions**

- 5) Disposition of City Owned Property and UDAAP designation for Manhattan Block 1044, Lot 3 for development as affordable housing.
- 6) Zoning Map Amendment on Block 1044, Lot 3, to include a C1-5 overlay to facilitate the development of the site as affordable housing.

### **Future Actions**

- 7) The request for the grant of a Special Permit pursuant to ZR § 96-104 to increase the height from 85 feet (as-of-right) to 115 feet along Ninth Avenue at the MTA site.
- 8) The request for the grant of a Special Permit for General Large Scale Development on the MTA site to facilitate the development of the site as affordable housing.

Community members were outspoken against granting any Special Permits pursuant to ZR § 96-104 in the Preservation Area of the SCD. Such a Special Permit would allow developments in the midblock a maximum height of 99 feet from the as of right height of 66 feet, and developments on the avenues up to 115 feet from the as of right height of 85 feet. Community members were very wary of granting such permits given the strong commitment to preserve both the existing fabric of the community and overall quality of life. In the 38-year history of the SCD, only two such applications have been approved in the Preservation Area.<sup>1</sup> Both of these applications were opposed by CB4 as neither successfully argued that the public benefit outweighed the goals of the SCD in preserving its unique residential character.

At the same time however, the community supports the proposed housing programs for each site and welcomes securing affordable housing for the hard-to-reach 80%/125%/165% AMI (moderate and middle income) bands (Attachment C). However, many residents believe that these projects should proceed at the as-of-right heights of 66 feet and 85 feet respectively. Instead of granting the Special Permit pursuant to ZR § 96-104 to allow the requested increased height on these buildings as proposed, the community would like to see more affordable housing incorporated on-site at the WRY.

Although CB4 has previously taken a position to support Special Permits at these sites (Attachment D), our current position has now been modified to reflect the goal to balance the community's need to maximize affordable housing while at the same time preserve the residential and low-rise character of our neighborhood.

The off-site development of affordable units as mitigation for the WRY cannot take the place of a realistic plan to develop affordable units as part of the on-site development. CB4 is emphatic in its desire to see that this project integrates units affordable to those of low, moderate, and middle incomes. The WRY on-site plan must also include a firm commitment that at least 20% of all on-site residential units be developed as affordable, in perpetuity.

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<sup>1</sup> 360 West 43<sup>rd</sup> Street and 404 West 54<sup>th</sup> Street

## AFFORDABLE HOUSING

### *The Need for a Commitment to a Comprehensive Affordable Housing Plan.*

CB4 has strongly articulated a policy for future housing growth affordable to a full range of incomes. We cannot and will not support any WRY development plan that does not provide the amount and type of permanent affordable housing the community needs to retain its diversity. We disagree with the DEIS conclusion that “*the Proposed Actions would not significantly alter or substantially accelerate the study area’s long-term trend toward increasing residential development, affluence and residential desirability.*” The City should be mitigating the market trend through public policy initiatives and commitment of resources to ensure affordability for all New Yorkers, not just those with the highest incomes. The Proposed Actions present an opportunity to mitigate and balance that trend to promote inclusiveness for all New Yorkers, not to rationalize creating a high income exclusive community on the Westside. The construction of a great number of market-rate housing units balanced only by the small number of low-income housing that may be created under existing programs, e.g., 80/20 and inclusionary bonuses, does not achieve the community’s goal and is unacceptable.

CB4 has consistently advocated that 30% of the residential development on this public site known as the WRY must be allocated to permanent affordable housing for low-, moderate- and middle-income families. This message was strongly reinforced by the community’s comments in reviewing each of the proposals by the respondents to the Request for Proposal’s (“RFP”). The New York Times concurs with this position and ran an editorial in March 2008 identifying the need for more affordable housing on the Far West Side. (Attachment E) Yet the RFPs required only that any rental housing be built using New York State Housing Finance Agency’s (“HFA”) 80/20 program. Condominium or cooperative units are exempt from any affordable housing requirement, and none of the rental units are required to be permanently affordable.

Public land is one of the few places where government can require that development address the housing needs of a broad range of New Yorkers. ***The WRY is the largest publicly owned development site left in Manhattan.*** While the MTA has a corporate responsibility to maximize the value it gets for the property, it is also a public entity; it is appropriate that the MTA’s drive for financial gain be tempered by standards of public responsibility that would not apply to either a privately held corporation or a private land owner.

It is astounding that between 6,000,000 to 7,000,000 square feet will be developed for market-rate and commercial interest in the WRY, yet a just and adequate plan has not yet been fully developed to provide permanent affordable housing for New Yorkers of all incomes, particularly at a time when the need for affordable housing is so critical. CB4 cannot support the Proposed Actions in the absence of a permanent and realistic affordable housing program.

The DEIS states that only 379-390 units out of a total of 4,624 to 5,762 residential units will be affordable. How can this number be considered inclusive? It is simply unacceptable. Furthermore, the temporarily affordable units will only be for those households earning <60% AMI, with no provisions for moderate and middle income families. Such a mix will create a polarized household income range on the WRY and exclude moderate and middle income households, the backbone of our city.

After many productive discussions during the 2005 Hudson Yards rezoning process, the City and CB4 were able to achieve 28% permanent affordability that included provisions for production of moderate income housing through both a modified Inclusionary Housing Bonus and development of off-site publicly-owned land. Although the WRY proposal includes a special on-site Inclusionary Bonus, given the inherent difficult site conditions - with the extreme density proposed on such a limited lot area, CB4 is doubtful the development team will be able to access that housing bonus. CB4 appreciates and welcomes the proposed off-site moderate and middle income developments with a projected 312 affordable apartments. ***However, the plan for the WRY, even including those moderate and middle income off-site affordable developments, falls far short of the commitment achieved in the Hudson Yards rezoning with less than 4.5% of the square feet dedicated for the development of permanently affordable apartments.***

Moreover, this new neighborhood will not be a healthy neighborhood unless it includes the broadly diverse population that is this City's hallmark. CB4's response and comments to the proposed off-site housing at the DEP site, 505 West 48<sup>th</sup> Street, and the MTA site, 806 Ninth Avenue, are in our related letter.

#### REQUESTS FOR AFFORDABLE HOUSING MITIGATION

1. *Not less than 20% of all residential units constructed on-site in the WRY must be permanently affordable.*<sup>2</sup>
2. *Identify additional publicly owned off-site affordable housing sites in CB4 for either construction or preservation of permanently affordable housing to achieve an overall goal of 30% affordability in the WRY development. Commit the use of this existing publicly owned land to develop and construct affordable housing (Attachments F and G). In particular, CB4 recommends the sites below for consideration:*
  - 136 West 20th Street (DSNY)
  - 415 West 40th Street (PANY/NJ)
3. *Preserve existing affordable housing within CB4 subject to subsidy expiration. (Attachment H) Specifically, those properties currently owned by the applicant, RG WRY LLC, an affiliate of The Related Companies:*

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<sup>2</sup> Permanently affordable shall mean that apartments are so designated by deed restriction, regulatory agreement or other legal instrument and may not be converted to market rate units after a given expiration date of a mortgage, tax incentive or any other government program. These specific units shall remain affordable in perpetuity.



- 425 West 48<sup>th</sup> Street
  - 525 West 47th Street
4. *Establish a dedicated fund within existing resources to preserve Single Room Occupancy units in CB4 as mitigation of the anticipated loss of SRO units as a result of the Proposed Actions.* (Attachment I) There are over 1000 SRO units noted to be at risk in the WRY study area, CB4 requests preservation of existing SRO housing with at least a 60% community resident requirement.
  5. *Implement the 2005 commitments to apply the Demolition Restrictions of the SCD in both the Hudson Yards Special District and West Chelsea Special District to preserve existing housing.*
  6. *Conversion over time of on-site low income units to moderate and middle income units.* At the expiration of affordability restrictions for the on-site affordable units built under the 80/20 financing program and upon the vacancy of the tenant and legal successor(s), make those units permanently affordable to households tenants with a range of moderate and middle incomes as follows:
    - 20% of the affordable units shall be available to people with incomes up to 80% of the Area Median Income (AMI);
    - 50% of the affordable units shall be available to people with incomes up to 125% of AMI; and
    - 30% of affordable units shall be available to people with incomes up to 165% of AMI.

Accomplish this conversion overtime through deed restriction and regulatory agreement to supplement the bond covenants, similar to the extended use restrictions on Low Income Housing Tax Credit developments.

7. *Affordable housing distribution within mixed income developments.* Eighty% of the floors of any mixed income building should have at least one affordable unit and there should be no more than 33% affordable units on any floor.
8. *Affordable housing must become available to the real estate market at a similar rate to the market rate housing.* The Restrictive Declaration should model such language from the existing Restrictive Declaration used in the Riverside South development in the West 60's.
9. *Developments of affordable housing on- or off-site units should require of at least 50% two-bedroom or greater units.*
10. *The administering agent should be an independent non-profit organization.*

## **THE ULURP APPLICATIONS**

In light of the above enumerated concerns, CB4 has carefully reviewed these ULURP applications; our comments and recommendations follow.

### **1) ULURP No. 090422HAM--Disposition of City Owned Property and UDAAP designation for Manhattan Block 1077, Lot 29 for development as affordable housing (DEP Site)**

CB4 recommends denial of the City Owned Property and UDAAP designation for Manhattan Block 1077, Lot 29 for development as affordable housing (DEP Site) ULURP No. 090422HAM, unless the following conditions are met:

#### **The Affordable Housing Component**

- A restrictive declaration be filed that restricts development of the site for affordable housing in perpetuity as follows:
  - 20% of the units be affordable to those earning 80% Area Median Income;
  - 40% of the units be affordable to those earning 125% Area Median Income; and
  - 40% of the units be affordable to those earning 165% Area Median Income.
- At least 50% of the developed units must be family-sized i.e. two bedrooms or larger.
- A permanent easement is granted for unobstructed light and air from the DEP water access tunnel site to the east. Because of the peculiarities of this development site, fronted by a park and/or undeveloped DEP water tunnel access along its eastern border and being situated over the railroad cut, CB4 is not opposed to a future special permit to reduce the lot coverage requirement and to reduce the rear yard depth. However, light and air, including operational windows along the eastern façade cannot be obstructed by the DEP water tunnel structures or subsequent security measures.
- Any future action at this site for a Special Permit pursuant to ZR § 96-104, seeking to increase building height, must not exceed a proposed 76 feet total in height. CB4 arrived at the 76 foot height limitation as a compromise between the City and the strongly held principles of community residents who care deeply about both maximizing affordable housing opportunities while preserving the residential, low-rise character of the neighborhood (Attachment J).
- No retail and/or commercial use shall be included in the development. The community strongly opposes the proposed use to include street level retail on West 49<sup>th</sup> Street. Retail commercial uses on the residential side streets are a growing problem now exacerbating an already problematic bar/club use on residential blocks, which is negatively impacting the character of the neighborhood.
- DEP release the portion of the site not being used by DEP (that portion over the rail cut and a strip of terra firma to the west) by 2010 in order to allow affordable housing development to proceed prior to 2013.

- The City’s prior commitment to use public funds to develop this project must be codified in a Follow-Up Corrective Actions (“FUCA”) memorandum of understanding that is executed simultaneously with the rezoning action for the WRY.
- A restrictive declaration be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110.
- Comfort stations for public use in conjunction with the DEP open space be included in the affordable housing development. and
- The RFPs to select a developer for this site be developed in consultation with CB4.

### **The Open Space Component**

Finally, as part of a negotiated agreement between the City, DEP and CB4, the area immediately east of the affordable housing site shall be developed as open space and shall be used as a park with programming for young children. Currently, CB4 ranks 58<sup>th</sup> among 59 Community Districts throughout the city.

More than a decade ago, the use of the land fronting Tenth Avenue between West 48<sup>th</sup> and 49<sup>th</sup> Streets was committed for public open space. In the Negative Declaration dated May 25, 1993, DEP assured CB4 that the site was “to be used for occasional tunnel maintenance and that shaft would be 5 feet by 3 feet with a 14 inch diameter” (Attachment K). By letters dated February 28, 2005 from Adrian Benepe of the New York City Department of Parks (“NYCDP”) and dated September 7, 2006 by Deputy Commissioner Alfonso R. Lopez from DEP to Manhattan Borough President Scott Stringer (Attachments L and M), both city agencies restated their commitment for public open space on the balance of this site. At that point, even the area that DEP needed for access was intended to be accessible to the public as a park extension. ***We learned only late last week , on July 16<sup>th</sup>, 2009, that the West 49<sup>th</sup> Street site is now intended to serve as the main west side access point to the water tunnel and that security and maintenance needs will result in the full half-block being paved and fenced and that ownership will remain with DEP; therefore:***

- Resolution of the exact dimensions of the publicly-accessible open space in relation to the portion of the site needed by DEP for access to the water tunnel, **must be codified in writing by DEP.**
- A clear written timeline for acquisition and development of this open space must be included in the overall WRY development plan and **be codified in writing by DEP.**
- The identification by the Mayor’s office of a DEP or other agency controlled site for replacement open space to be located within a sub-area of CB4 (West 34th to West 57th Streets and West of 8th Avenue), equal to that open space lost due to

DEP's expanded site usage for water tunnel maintenance ((currently approximated at 120 by 200 feet in dimension).

- A written commitment from DEP for the hiring of a landscape architect to plan the landscaping and use of both the undisputed northern portion of open space and the southern portion maintenance area. A further written commitment for the funding of such open space improvements with the agreement to continue to include CB4 and the surrounding community in its development process.

**2) ULURP No. N090429ZRM--Text Amendment to the Special Clinton District Map to map Other Area on Block 1077, Lot 29 to facilitate the development of the site as affordable housing**

The proposed Zoning Text Amendment seeks to move the boundaries of the Preservation Area of the SCD to the east so that the proposed development falls within the Other Area, which has less stringent rear yard requirements and overall greater lot coverage. This proposed action, reducing the Preservation Area, is in direct contravention with CB4's longstanding policy to expand the Preservation Area. It is also inconsistent with the Department of City Planning's ("DCP") own framework for the 11<sup>th</sup> Avenue Rezoning that will extend the boundaries of the Preservation Area westward to within 100 feet of 11<sup>th</sup> Avenue.

This site is unique. It is situated over a rail cut with open space and the DEP access for the water tunnel extends the full length of its eastern façade. The proposed building form makes best use of the site, maximizes the number of affordable units, and has adequate light and air, given the open space to the east. However, we strongly believe that the regulations are best modified through text amendments governing rear yard requirements and permitting greater lot coverage.

CB4 recommends denial of the Zoning Text Amendment for Manhattan Block 1077, Lot 29 (DEP Site) for development as affordable housing), ULURP No. N090429ZRM, unless the following conditions are met:

- The boundaries of the Preservation Area are not changed and that modifications as necessary to expand both rear yard requirements and lot coverage are accomplished through subsequent text amendments.

**3) ULURP No. 090423HAM, Disposition of City Owned Property and UDAAP designation for Manhattan Block 1044, Lot 3 for development as affordable housing (MTA Site)**

CB4 recommends denial of the City Owned Property and UDAAP designation for Manhattan Block 1044, Lot 3 for development as affordable housing (MTA Site) ULURP No. 090423HAM, unless the following conditions are met:

- A restrictive declaration be filed that restricts development of the site for affordable housing, in perpetuity, as follows:
  - 20% of the units be affordable to those earning 80% Area Median Income;
  - 40% of the units be affordable to those earning 125% Area Median Income; and
  - 40% of the units be affordable to those earning 165% Area Median Income;
- At least 50% of the units developed must be family-sized i.e. two bedrooms or larger.
- The elimination of the 30,000 square feet reserved for the MTA office/training space; additional MTA needs can be accommodated at the existing MTA Control Center (“Control Center”) to the east or on the 7,000,000 square feet to be developed on-site at the WRY. It is outrageous to expect MTA needs to be accommodated within the small lot area dedicated to affordable housing.
- Any future action at this site for a Special Permit pursuant to ZR § 96-104, seeking to increase building height, must maintain a building height of 85 feet along Ninth Avenue frontage, and on West 54<sup>th</sup> Street, beginning 50 feet east of Ninth Avenue and through the midblock backing against the existing MTA Control Center, the building height must be no greater than 99 feet. CB4 arrived at the 85 and 99 foot height limits at this site as a compromise between the City and strongly held principles of community residents who care deeply about both maximizing affordable housing opportunities while preserving the residential, low-rise character of the neighborhood (Attachment N).
- Eliminate the 15 MTA parking spaces planned for the site.
- ***MTA release the city owned site from the NYCTA master lease upon approval of the WRY ULURP by the City Council, not a release contingent upon construction start at the WRY.*** The off-site housing is mitigation under the DEIS for the Proposed Actions, namely the rezoning from an FAR of 2.0 to an FAR of 10.0. Therefore, when the zoning is approved the mitigation is required.
- The RFP to select a developer for this site be developed in consultation with CB4.
- The City’s prior commitment of public financing to develop this project be codified in a FUCA memorandum of understanding that is executed simultaneously with the rezoning action for the WRY.
- A restrictive declaration be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the CSD District Harassment Cure requirements pursuant to ZR § 96-110.
- The designation of two potential landmarks identified in the WRY DEIS: (Attachments O, P and Q)
  - *St. Benedict the Moor Church, 342 West 53<sup>rd</sup> Street* – NYCL- and S/NR-eligible: Erected in 1869 and designed by R.C. McLane & Sons, the church has seen various congregations and parishioners over its more than 100-year history, yet most famously served as the first black Roman Catholic Church north of the Mason Dixon line. In 1921, due to African American migration to the north, the congregation moved to Harlem and the church was reassigned to the Spanish Order of Franciscans in 1954 who have occupied the site ever since. The church stands as a vestige of

the days when the neighborhood of Clinton/Hell's Kitchen was a thriving African-American neighborhood.

- *Tenement Blockfront (781-795 9th Avenue)* – S/NR-eligible

This collection of Hell's Kitchen tenements serves as a reminder of the late 19<sup>th</sup> century residential character of Ninth Avenue. The Renaissance-inspired stone, brick, terra cotta, and metal ornamentation and largely extant cornices present a valuable collection of tenement architecture.

**4) ULURP No. 090430ZMM—Zoning Map Amendment to Block 1044, Lot 3, to include a C1-5 overlay to facilitate the development of the site as affordable housing**

This requested Zoning Map change seeks to cover the entire zoning lot with a C1-5 overlay thus permitting a future action that will include a Large Scale Development Plan reducing rear yard requirements and relaxing lot coverage restrictions. Similar to the DEP site, we believe that the proposed building form makes best use of the site, maximizes the number of affordable units and has adequate light and air. However, we are concerned by the wider latitude granted to a developer in a Large Scale Development Plan and the unforeseen consequences. In the history of the SCD, a Large Scale Development plan has never been used. To permit one now on this site would set a precedent for the entire Special District. Similar to the DEP site, we strongly believe that the rear yard and lot coverage regulations are best modified through text amendments.

This proposed action also anticipates a future action for a Special Permit to increase the building height along Ninth Avenue to 115 feet. At the conclusion of the well attended and very engaged public debates on the two off-site developments, we delicately balanced the concerns of the community and arrived at an overall compromise to maximize the affordable units and to preserve community character.

Accordingly, CB4 recommends denial of Zoning Map Amendment ULURP No. 090430 ZMM, unless the following conditions are met:

- C1-5 map amendment covering the entire zoning lot be denied; the City and/or future developers commit to not filing a Large Scale Residential Plan for the site and instead accomplish desired modifications as necessary to rear yard requirements and lot coverage through subsequent text amendments. If a C1-5 map amendment is approved against our objections then the commercial FAR be limited to one (1) FAR.

**NOW, THEREFORE, BE IT RESOLVED** that Manhattan Community Board 4 recommends denial of **ULURP Nos. N 090429ZRM, 090430ZMM, N090423HAM, 090422HAM** unless the above enumerated conditions are met.

Sincerely,



John Weis, Chair  
Manhattan Community Board 4

Elisa Gerontianos, Chair  
Clinton/Hell's Kitchen Land Use Committee



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

Sarah Desmond  
Housing Health and Human  
Services Committee

## **ATTACHMENTS**

- A. MTA Memorandum of Understanding, dated July 11, 2007
- B. July 11<sup>th</sup>, 2007 letter from Councilmember Quinn to the Deputy Mayor Dan Doctoroff
- C. AMI Income Chart
- D. October 14, 2008 letter from CB4 to the New York City Planning Commission
- E. New York Times, "Finally, A Vision for the West Side", March 28, 2008
- F. Map of Publicly Owned Land in CB4: Potential Affordable Housing Sites North of 35<sup>th</sup> Street
- G. Map of Publicly Owned Land in CB4: Potential Affordable Housing Sites South of 35<sup>th</sup> Street
- H. Map of Existing Affordable Housing in CB4 Subject to Expiration
- I. Table of SROs in CB4
- J. CB4 recommended massing of DEP Site
- K. May 25, 1993 DEP Negative Declaration
- L. February 28, 2005 letter New York City Department of Parks to CB4
- M. September 7, 2006 letter from DEP to Manhattan Borough President Scott Stringer
- N. CB4 recommended massing of MTA Site
- O. Proposed Individual Landmarks Map
- P. Proposed Individual Landmarks Table
- Q. Proposed Individual Landmarks Photos



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**Delores Rubin**  
Chair

**Jesse R. Bodine**  
District Manager

February 8, 2017

Maria Torres-Springer  
Commissioner  
NYC Dept. of Housing Preservation & Development  
100 Gold Street  
New York, NY 10038

**Re: Affordable Housing RFP's  
MTA & DEP Sites (806 9<sup>th</sup> Avenue & 705 10<sup>th</sup> Avenue)  
Western Railyards Points of Agreement**

Dear Commissioner Torres-Springer,

Manhattan Community Board 4's (CB4) would like to welcome and congratulate you to your new role as Commissioner of Department of Housing and Preservation (HPD). We look forward to working with you and your exceptional staff on advancing the development and preservation of affordable housing with in Community District 4.

With that goal in mind CB4 writes to follow up on it's 2015 request to Department of Housing Preservation and Development (HPD) to move ahead with a singular RFP for both the **806 9<sup>th</sup> Avenue** at West 54<sup>th</sup> Street (Block 1044, Lot 3) MTA owned site and the **705 10<sup>th</sup> Avenue** at West 48<sup>th</sup> Street (Block 1077, Lot 29) DEP owned site<sup>1</sup>.

These two publicly-owned sites were committed by the City to be developed as affordable housing as part of the Western Railyards Points of Agreement (WRYPOA)<sup>2</sup>. The Western Railyards closing with Related Companies occurred on April 10, 2013. Furthermore, both sites

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<sup>1</sup>[CB4 Letter to HPD re MTA & DEP Site Status](#)

<sup>2</sup>[Western Railyards Points of Agreement](#)



are priorities in CB4' Affordable Housing Plan<sup>3</sup> and have the full support of Council Member Corey Johnson.

**The MTA Site**, a former bus depot that was demolished in 1996, is currently a vacant lot used for MTA parking. The proposed building will contain approximately 124 affordable units, its height not exceeding 85 feet. The permanently affordable units will be a mix of 165% AMI or under, with 20% of the units being 80% AMI, 40% being 125% AMI, and 40% being 165% AMI. Additionally, 50% of the building's units will have 2 or more bedrooms. Under the New York City Zoning Resolution Section 23-90, the site will not generate an Inclusionary Zoning bonus.

**The DEP site**, a Third Water Tunnel Access Shaft site, as of October of 2016 has been vacated and DEP is now working with the administration to transfer the property to both HPD and the Department of Parks to develop separate affordable housing and public open space projects.

The proposed building will contain approximately 143 affordable units, its height not exceeding 77 feet. The permanently affordable units will be a mix of 165% AMI or under, with 20% of the units being 80% AMI, 40% being 125% AMI, and 40% being 165% AMI. Additionally, 50% of the building's units will have 2 or more bedrooms. Under the New York City Zoning Resolution Section 23-90, the site will not generate an Inclusionary Zoning bonus.

The Community Board requests to meet and begin the issuance of the Affordable Housing RFP for these two sites.

Sincerely,



Delores Rubin  
Chair

cc: Hon. Gale Brewer, Manhattan Borough President  
Hon. Corey Johnson, Councilmember  
Daniel Hernandez, Deputy Commissioner, NYC HPD

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<sup>3</sup> [CB4 Affordable Housing Plan](#)



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
tel: 212-736-4536 fax: 212-947-9512  
www.nyc.gov/mcb4

**CHRISTINE BERTHET**  
Chair

**Jesse R. Bodine**  
District Manager

October 7, 2015

Vicki Been  
Commissioner  
NYC Dept. of Housing Preservation & Development  
100 Gold Street  
New York, NY 10038

**Re: Affordable Housing RFP's  
MTA & DEP Sites (806 9<sup>th</sup> Avenue & 705 10<sup>th</sup> Avenue)  
Western Railyards Points of Agreement**

Dear Commissioner Been,

At the September 17, 2015 meeting of Manhattan Community Board 4's (CB4) Housing, Health and Human Services Committee reviewed the Board's Affordable Housing Plan. In its review, the Committee extensively discussed the following affordable housing sites:

**806 9<sup>th</sup> Avenue** (Block 1044, Lot 3) -- MTA Site, East side of 9<sup>th</sup> Avenue and West 54<sup>th</sup> Street

**705 10<sup>th</sup> Avenue** (Block 1077, Lot 29) --DEP Site, West side of 10<sup>th</sup> Avenue between West 48<sup>th</sup> & West 49<sup>th</sup> Street

These two publicly-owned sites were committed by the City to be developed as affordable housing as part of the Western Railyards Points of Agreement (WRYPOA), copy attached. The Western Railyards closing with Related Companies occurred on April 10, 2013. CB4 requests HPD now move ahead with RFP process for these sites. The Board further requests one RFP be issued for both sites, similar to the Elliot-Chelsea/Fulton Houses NYCHA/HPD RFP in 2006.

**The MTA Site**, a former bus depot that was demolished in 1996, is currently a vacant lot used for MTA parking.

The proposed building will contain approximately 124 affordable units, its height not exceeding 85 feet. The permanently affordable units will be a mix of 165% AMI or under, with 20% of the units being 80% AMI, 40% being 125% AMI, and 40% being 165% AMI. Additionally, 50% of the building's units will have 2 or more bedrooms. Under the New York City Zoning Resolution Section 23-90, the site will not generate an Inclusionary Zoning bonus.

**The DEP site**, a Third Water Tunnel Access Shaft site, comprises:

- The Access Shaft Site

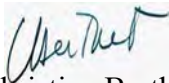
- Vacant land currently used for construction staging and parking for contractors working on accompanying distribution water mains
- Air rights over the Amtrak rail cut (the majority of the footprint of the entire site)
- Vacant land used for DEP parking

While the DEP work will continue for another 2 to 3 years, the RFP and development process can move ahead concurrently with the completion of the DEP water main work and the transfer of a portion of the land to become a park.

The proposed building will contain approximately 143 affordable units, its height not exceeding 77 feet. The permanently affordable units will be a mix of 165% AMI or under, with 20% of the units being 80% AMI, 40% being 125% AMI, and 40% being 165% AMI. Additionally, 50% of the building's units will have 2 or more bedrooms. Under the New York City Zoning Resolution Section 23-90, the site will not generate an Inclusionary Zoning bonus.

The Community Board requests to meet and begin discussions with HPD regarding the issuance of the Affordable Housing RFP's for these two sites.

Sincerely,



Christine Berthet  
Chair



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

[Signed 10/7/15]

Barbara Davis  
Co-Chair  
Housing, Health and  
Human Services Committee

Cc: D. Hernandez, Deputy Commissioner, HPD  
E. Enderlin, Deputy Commissioner, HPD  
V. Simmons, Manhattan Planning, HPD  
All Electeds



# BOROUGH PRESIDENT RECOMMENDATION

<b>Project Name:</b> 705 Tenth Avenue (DEP Site)	
<b>Applicant:</b> HPD - NYC Dept of Housing Preservation & Development	<b>Applicant's Administrator:</b> Melissa Auton
<b>Application #</b> 220337ZSM	<b>Borough:</b> Manhattan
<b>CEQR Number:</b> 21HPD031M	<b>Validated Community Districts:</b> M04

**Docket Description:**  
#  
705 Tenth Avenue  
CD 04 C 220337 ZSM

IN THE MATTER OF an application submitted by NYC Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-681 of the Zoning Resolution to allow that portion of a railroad or transit right right-of-way which will be completely covered over by a permanent platform to be included in the lot area, in connection with a proposed 8-story mixed-use building, on property located at 705 10th Avenue (Block 1077, Lot 29), in R8 and R8/C2-5 Districts, partially within the Preservation and partially within the Other Areas (C2), within the Special Clinton District.

Plans for this proposal are on file with the City Planning Commission and may be seen on the Zoning Application Portal at <https://zap.planning.nyc.gov/projects/2019M0374>, or the Department of City Planning, 120 Broadway, 31st Floor, New York, NY, 10271-0001.

*Please use the above application number on all correspondence concerning this application*

**RECOMMENDATION:** Conditional Favorable

*Please attach any further explanation of the recommendation on additional sheets as necessary*

**CONSIDERATION:**

Recommendation submitted by	MN BP	Date: 7/6/2022 10:18 PM
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# BOROUGH PRESIDENT RECOMMENDATION

<b>Project Name:</b> 705 Tenth Avenue (DEP Site)	
<b>Applicant:</b> HPD - NYC Dept of Housing Preservation & Development	<b>Applicant's Administrator:</b> Melissa Auton
<b>Application #</b> 220338ZSM	<b>Borough:</b> Manhattan
<b>CEQR Number:</b> 21HPD031M	<b>Validated Community Districts:</b> M04

**Docket Description:**  
#  
705 Tenth Avenue  
CD 04 C 220338 ZSM

IN THE MATTER OF an application submitted by NYC Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 96-112\* of the Zoning Resolution to modify the height and setback requirements of Section 96-104\* (Height and setback regulations) and the rear yard regulations of Section 23-532 (Required rear yard equivalents), on a zoning lot that has an area of greater than 40,000 square feet, occupies a frontage of a wide street, and contains existing public infrastructure, in connection with a proposed 8-story mixed-use building, on property located at 705 10th Avenue (Block 1077, Lot 29), in R8 and R8/C2-5 Districts, partially within the Preservation and partially within the Other Areas (C2), within the Special Clinton District.

\*Note: Section 96-104 is proposed to be changed and a new section 96-112 is proposed to be created under a concurrent related application for a Zoning Text Amendment (N 220339 ZRM).

Plans for this proposal are on file with the City Planning Commission and may be seen on the Zoning Application Portal at <https://zap.planning.nyc.gov/projects/2019M0374>, or the Department of City Planning, 120 Broadway, 31st Floor, New York, NY, 10271-0001.

*Please use the above application number on all correspondence concerning this application*

**RECOMMENDATION:** Conditional Favorable

*Please attach any further explanation of the recommendation on additional sheets as necessary*

**CONSIDERATION:**

Recommendation submitted by	MN BP	Date: 7/6/2022 10:18 PM
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# BOROUGH PRESIDENT RECOMMENDATION

<b>Project Name:</b> 705 Tenth Avenue (DEP Site)	
<b>Applicant:</b> HPD - NYC Dept of Housing Preservation & Development	<b>Applicant's Administrator:</b> Melissa Auton
<b>Application #</b> 220340HAM	<b>Borough:</b> Manhattan
<b>CEQR Number:</b> 21HPD031M	<b>Validated Community Districts:</b> M04

**Docket Description:**

IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD)

1) pursuant to Article 16 of the General Municipal Law of New York State for:

a. the designation of property located at 705 10th Avenue (Block 1077, Lot 29) as an Urban Development Action Area; and

b. an Urban Development Action Area Project for such area; and

2) pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer to be selected by HPD;

to facilitate the development of an eight-story building containing approximately 157 affordable housing units and an open space area, Borough of Manhattan, Community District 4.

*Please use the above application number on all correspondence concerning this application*

**RECOMMENDATION:** Conditional Favorable

*Please attach any further explanation of the recommendation on additional sheets as necessary*

**CONSIDERATION:**

Recommendation submitted by

MN BP

Date: 7/6/2022 10:18 PM



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

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Mark D. Levine, Borough President

July 6, 2022

## **Recommendation on The DEP Site – 705 10<sup>th</sup> Avenue ULURP Application By NYCHPD and NYCDCAS**

### **PROPOSED ACTIONS**

The New York City Department of Housing Preservation and Development (“HPD”, or the “Applicant”) on behalf of HK LLC (the “developer”) is proposing several land use actions to facilitate the construction of a new, eight-story, mixed-use building that would include 157 affordable and supportive housing units, a landscaped inner courtyard, a Public Comfort Station operated by the Parks Department, and ground-floor community facility space, at 705 10<sup>th</sup> Avenue (the “Proposed Building” to be built on the “Development Site”). The proposed actions would impact a portion of Manhattan Block 1077, Lot 29 approximately 125 feet west of 10th Avenue in Manhattan Community District 4.

The Applicant is requesting approval for the following actions:

1. Designation of the area as an Urban Development Action Area (UDAA) and approval of the Urban Development Action Area Project (UDAAP).
2. Disposition by the City of a negative easement to provide development rights and light and air for the Proposed Building;
3. Zoning text amendment to add a new ZR section 96-112 to consolidate special permit provisions available within the Special Clinton District and add allowances for bulk modifications; and
4. CPC Special Permit pursuant to that newly established ZR Section 96-112 to:
  - a. Modify height and setback requirements as set forth in ZR 94-04 for the Proposed Building; and
  - b. Modify rear yard equivalents as set forth in ZR 96-103 for the Proposed Building.
5. CPC special permit pursuant to ZR Section 74-681 to facilitate development over an Amtrak right of way.

### **Findings and Criteria for Proposed Actions**

City-owned properties that are no longer in use or are in deteriorated or deteriorating condition are eligible to be designated as UDAA's and UDAAP's, pursuant to the Urban Development Area Act (Article 16 of the State General Municipal Law). UDAA and UDAAP provide incentives for private entities to correct substandard, unsanitary and/or blighted conditions. According to New York State General Municipal Law § 694(4), to receive a UDAA and/or UDAAP designation, the City Planning Commission and the City Council must find that:

- a) The present status of the area tends to impair or arrest the sound growth and development of the municipality;

- b) The financial aid in the form of tax incentives, if any, to be provided by the municipality pursuant to [the tax incentives provisions of the Urban Development Action Area Act] ... is necessary to enable the project to be undertaken; and
- c) The area designation is consistent with the policy and purposes [of the Urban Development Action Area Act].

Section 197-c of the New York City Charter mandates that the disposition of all City-owned real property, other than the lease of office space, be subject to the Uniform Land Use Review Procedure (“ULURP”). While no specific findings must be met to make a property eligible for disposition under Section 197-c, Section 1802(6)(j) of the City Charter tasks HPD with the disposition of residential real property.

In order to grant the Proposed Building a special permit under ZR 74-681, the City Planning Commission must find that:

- 1. The streets surrounding the Proposed Building can adequately handle traffic;
- 2. The character of the surrounding area is not adversely affected by the Proposed Building;
- 3. The uses on the zoning lot or below the platform that would be required to deck over the right-of-way do not adversely affect each other; and
- 4. The Proposed Building would not preclude any future transportation use or improvements to the right-of-way.

## **BACKGROUND**

### **Area Context**

The Development Site is located within Manhattan Community District 4 in the Clinton/Hell’s Kitchen neighborhood. The site is on the northeast corner of 10<sup>th</sup> Avenue and West 48<sup>th</sup> Street. This site lies within the markedly residential Clinton/Hell’s Kitchen neighborhood, which includes old and new law tenement buildings along the avenues and side streets.

The Development Site is within walking distance to multiple open spaces, including Oasis Garden to the north, Gutenberg Playground to the east, Lorraine Hansberry Park and Clinton Community Garden to the south, and DeWitt Clinton Park to the west. The Development Site is within walking distance to numerous transit lines, including the C and E trains at the 50<sup>th</sup> Street Station and the E, N, R and W trains at the 49<sup>th</sup> Street Station. Nearby bus lines include the M11, which runs along 9<sup>th</sup> and 10<sup>th</sup> Avenues, the M50 that runs along 50<sup>th</sup> Street, and the M12 that runs along 12<sup>th</sup> and 11<sup>th</sup> Avenues.

The median household income in Manhattan Community District 4 in 2019 was \$122,300 – about 73% more than the citywide median household income. The median gross rent in the same geographic area in 2019 was \$2,040. That year, about 20% of renter households were severely rent burdened, meaning they spent more than half of their income on rent. Of those, nearly half, or 46%, were low-income residents, while 19% were moderate-income. The Furman Center estimates that about 23% of the rental units in the district are affordable at 80% AMI. Less than



7% of the rental units are affordable at 30% AMI, while 44% of rental units are affordable at 120% AMI.<sup>1</sup>

### **Clinton Special District**

The Clinton Special District was first established in 1973 as a temporary preservation area under the City’s Neighborhood Preservation Program. The area received its permanent status the following year, with a stated mission to preserve the residential character of the community. As part of this action, the underlying zoning was changed from C6-2 to R8 and R8/C1-5. Height limits of 66 feet, or seven stories, were imposed on the midblocks of the Preservation Area, a subarea of the Special District intended to preserve the strong residential character of the area.

### **Hudson Yards and Western Rail Yards Rezonings**

In January 2005, the New York City Council approved a comprehensive rezoning of the Hudson Yards area that would transform the western edge of Manhattan into a high-density extension of the Midtown business district and include residential, cultural, and retail uses as well as open space. The rezoning permitted 24 million square feet of new office space, one million square feet of new retail space, two million square feet of new hotels, including a new headquarters hotel for the Javits Convention Center, and 13,500 new residential units – 4,000 of which would be affordable.

In December 2009, the City Council’s Land Use Committee approved a proposal to develop the Western Rail Yards Site, which is a 13-acre site directly to the west of Hudson Yards. The area is bounded by West 30<sup>th</sup> Street and West 33<sup>rd</sup> Street between 11<sup>th</sup> and 12<sup>th</sup> Avenues. The area is still under development and will contain eight mixed-use towers and encompass 5.7 million square feet, including 4,600 to 5,700 residential units, a new public school, and 5.4 acres of open space. Twenty percent of the project’s rental units will be affordable.

As part of the Western Rail Yards rezoning, a Points of Agreement document was signed in 2009. That document outlined various commitments, including a Request for Proposal (“RFP”) to redevelop the Development Site. The parameters outlined in the document specified that the new building on the site would include permanently affordable units with an AMI mix of 165% or under, and that 50% of the units contain two or more bedrooms. The building would be capped at 77 feet. In addition, the site would not be able to generate an Inclusionary Housing bonus.

### **RFP Process**

HPD issued the RFP for this site and another site at 806 9<sup>th</sup> Avenue in April 2018. Responses were submitted in July 2018, and in February 2019 the agency awarded the project on the Development Site to Douglaston Development and the Entertainment Community Fund (previously named the Actors’ Fund). In November 2020, the Proposed Building was slated to

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<sup>1</sup> [Clinton/Chelsea Neighborhood Profiles](#)

have units affordable to households earning 50% AMI to 100% AMI. This AMI mix was lower than what Manhattan Community Board 4 had advocated for from the time of the Western Rail Yards rezoning.

Prior to the certification of this application in March 2022, the Applicant adjusted the affordability bands for the Proposed Building to include a higher AMI income band at 130%.

**PROPOSED DEVELOPMENT**

The Proposed Building is an eight-story mixed-use building that would include 158 affordable units, a ground-floor community facility, and an outdoor area that would be operated by the New York City Department of Parks and Recreation (DPR). This open space would include a comfort station and a separate section for maintenance equipment storage.

Amenities in the building would include an on-site laundry room, a fitness room, and a bike room. Half of the units would be two- and- three-bedrooms, and the other half would be studios and one-bedrooms. The building would contain 140,249 square feet, which would include 133,862 square feet of residential floor area and 6,377 square feet of community facility use. A new public restroom would serve the open space and would be maintained by DPR. The community facility space would be occupied and operated by IndieSpace, a nonprofit that provides advocacy and technical and real estate assistance to artists, theatre groups, and independent/arts venues. The applicants also propose a 3,600 square foot landscaped courtyard. The Proposed Building would meet Passive Housing Standards.

The chart below outlines the proposed AMI bands and bedroom distribution.

**Proposed Affordability and Bedroom Distribution<sup>2</sup>**

	<b>Formerly Homeless</b>	<b>50 % AMI</b>	<b>80 % AMI</b>	<b>120% AMI</b>	<b>130% AMI</b>	<b>Super</b>	<b>Total</b>	<b>%</b>
<b>Studio</b>	5	9	8	11	3	0	36	23%
<b>1-Bed</b>	6	11	8	13	4	0	42	27%
<b>2-Bed</b>	10	816	12	19	7	1	64	41%
<b>3-Bed</b>	0	4	3	4	2	0	15	9%
<b>TOTAL</b>	<b>23</b>	<b>40</b>	<b>31</b>	<b>47</b>	<b>16</b>	<b>1</b>	<b>158</b>	<b>100%</b>
	<b>15%</b>	<b>25%</b>	<b>20%</b>	<b>30%</b>	<b>10%</b>		<b>100%</b>	<b>100%</b>

<sup>2</sup> [Community Board 4 CHKLU Meeting](#)

## **Site Description**

The Development Site is in the Clinton/Hell’s Kitchen neighborhood in Manhattan Community District 4. It is located on Block 1077, Lot 29 and extends west from West 48<sup>th</sup> Street to 10<sup>th</sup> Avenue. Land uses in the surrounding area include a mix of multifamily residential, commercial, and institutional facilities. The site is currently vacant and is owned by the New York City Department of Environmental Protection (NYCDEP). The 57,025 square foot lot runs 200 feet along 10<sup>th</sup> Avenue and 225 feet along the side streets. It is currently zoned C2-5 and R8.

The neighborhood around the site is zoned R8 with C2-5 commercial overlays along 10<sup>th</sup> Avenue and along the southern side of West 49<sup>th</sup> Street. Commercial corridors also exist to the west of the Development Site, with C2-5 overlays along 9<sup>th</sup> and 11<sup>th</sup> Avenues and C6-3 overlays along 10<sup>th</sup> Avenue between West 50<sup>th</sup> and West 53<sup>rd</sup> Streets.

To the north of the Development Site are multifamily apartment buildings ranging from six to seven stories. Additional uses along the northern edge of the site are commercial and office buildings, like hotel use, local retail stores, and restaurants. To the east of the site, along 10<sup>th</sup> Avenue there are mixed-use residential buildings with ground-floor retail or office use. A large educational building containing the High School of Graphic Communication Arts, the Business of Sports School, and the Urban Assembly Gateway School for Technology is northeast of the Development Site, at West 50<sup>th</sup> Street and 10<sup>th</sup> Avenue. In addition, Beacon High School is four blocks south of the site. The area to the south of the Development Site includes three-to-six-story walk-up apartment buildings with ground-floor retail spaces, some multifamily elevator buildings, and several mixed residential and commercial office buildings ranging from two to 11 stories. The area to the west of the site is more diverse in terms of height and use. Commercial and office building heights in this area range from two to 16 stories. This area also includes a mix of two to seven story walk-up and elevator buildings, some of which include ground-floor retail.

## **COMMUNITY BOARD RESOLUTION**

Manhattan Community Board 4 (“CB4”) held a public hearing on the application on June 1, 2022. During the hearing, Board members voiced concerns about the Proposed Building’s AMI mix, community facility usage, and the proposed DPR comfort station. Members from the community shared concerns about the lack of residential units affordable to middle- and moderate-income households and the distribution of homeless supportive housing.

On June 1, 2022, CB4 voted to recommend denial of the application unless the Applicant meets the following conditions<sup>3</sup>:

1. Eliminate the 50% AMI band and redistribute the 40 units currently proposed under that AMI band to the 80%, 120%, and 130% AMI bands;

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<sup>3</sup> [Community Board 4 CHKLU Meeting](#)

2. Ensure that all 23 units that will be reserved for homeless referrals be family-sized units, as opposed to units for formerly homeless individuals;
3. Seek the proposed rear yard waiver under ZR Section 74-681 and the height and setback waivers under an amended version of the provision outlined in ZR Section 96-104 instead of the new, proposed ZR Section 96-112;
4. Agree to a deed restriction that ensures that the proposed open space remains a DEP-owned and DPR-operated space; and
5. Provide a social service plan to the Community Board.

## **BOROUGH PRESIDENT’S COMMENTS**

We are in the midst of a housing crisis in New York City, and development sites like 705 10<sup>th</sup> Avenue present a rare opportunity to confront that crisis head on by providing tremendous potential for new affordable units. We must take full advantage of this opportunity.

The Applicant has taken important steps to respond to concerns raised by Community Board 4, including eliminating the proposed special permit that could have applied to the entire Preservation Area and working with the City Council’s Land Use Division to ensure that a new text amendment would only apply to the Development Site and the MTA site at 806 9<sup>th</sup> Avenue. Though DEP has no plans to build a structure over the proposed park in the future, it is our understanding that a restrictive declaration would limit DEP’s ability to make any necessary improvements should they be required in the future, and the agency has agreed to a memorandum of understanding with the Parks Department that outlines the maintenance and operations for the open space. Furthermore, DEP has allocated \$1.3 million toward the construction of the park and has committed to working with the community to ensure that their maintenance and operations of the below-ground infrastructure create as little disruption to the park as possible.

I applaud CB4’s hard work to ensure that the Proposed Building is contextual and that a significant number of the affordable units are reserved for families. This achievement is even more notable considering that the construction costs for the Proposed Building are significantly higher due to the required decking over the Amtrak rail cut, and that the Applicant has already agreed to a height limit of 77 feet rather than the maximum allowed height of 99 feet. The applicant has also secured additional City subsidy to meet CB 4’s Points of Agreement and ensure that 50% of the units are 2- and 3- bedroom. I encourage the Applicant to continue the close coordination with the surrounding community and the Board to arrive at an acceptable AMI mix so that this essential affordable housing is built as soon as possible.

## **BOROUGH PRESIDENT’S RECOMMENDATION**

Therefore, the Manhattan Borough President recommends **approval** of the DEP Site – 705 10<sup>th</sup> Avenue application **with the condition that the applicants agree to meet the following conditions:**

1. Work with DCP and CB4 to modify the text amendment proposal in a manner that eliminates the need for a special permit provision for the Preservation Area; and
2. Amend the memorandum of understanding between DEP and the Parks Department to mandate that any permanent changes to the proposed open space be accompanied by extensive community outreach, including a discussion of mitigations if public access would be affected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Levine". The signature is fluid and cursive, with the first name "Mark" and the last name "Levine" clearly distinguishable.

Mark Levine  
Manhattan Borough President