



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD No. 4

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J. LEE COMPTON
Chair

MICHELLE SOLOMON
Acting District Manager

April 11, 2006
Hon. Amanda M. Burden, AICP
Chair, City Planning Commission
22 Reade Street
New York, NY 10007-1216

Re: N 060393 ZCM, Application for transfer of development rights from 302 W. 45th St (Hirschfeld/Martin Beck Theater) to 750 Eighth Avenue

Dear Chair Burden:

Representatives of SJP Residential Properties, Fifth Street Holdings, LLC and Jujamcyn Theaters LLC attended the joint meeting of this Board's Clinton/Hell's Kitchen Land Use Committee and Community Board 5's Land Use and Zoning Committee on April 3, 2006 to present their application for certification by the City Planning Commission, pursuant to Section 81-744(a) of the Zoning Resolution, to allow the transfer of 29,104 square feet of floor area from the Hirschfeld (formerly Martin Beck) Theater at 302 West 45th Street to 750 Eighth Avenue at 46th Street in connection with a proposed mixed use building.

The applicants intend to follow the application now before us with subsequent applications (i) to amend the Zoning Resolution to allow the transfer of additional unused development rights associated with the Hirschfeld Theater to be transferred pursuant to section 81-744, (ii) for authorization to transfer additional unused development rights pursuant to Section 81-744(b), and (iii) for a special permit for a parking garage in the new building at 750 Eighth Avenue.

The application now before us would result in a 38-story building with 196 apartments and ground floor retail space. The subsequent applications would result in a 42-story building with 220 apartments.

Community Board 4 far prefers to consider all the applications for the proposed development at once. We believe this is the Commission's practice as well, and are somewhat puzzled at the fragmented and piecemeal approach in this case. We therefore offer below our preliminary comments on the present application, but request the opportunity to provide further comment in light of the subsequent applications.¹

This application represents a historic occasion, as it will be the first time that the provisions of Section 81-744 will have been used. These provisions are one of several incentives and controls that were

¹ We also note that the changes in the Board's calendar required by Passover have required us to consider this application on an unusually abbreviated schedule in order to comply with the 60-day deadline for comments.

added to the Zoning Resolution in 1998 to “preserve and protect the character of the Theater Subdistrict as a cultural, theatrical and entertainment showcase” (ZR Section 81-71). We heartily support this purpose, and are pleased to see Section 81-744 being used, at last, to support the preservation of the one “listed” Broadway theater in Community District 4 (all other listed theaters are in Community District 5).

Floor Area Transfer. We agree with the applicant’s statement of the technical findings about the amount of floor area to be transferred (findings (1), (2) and (3)), and further agree that the transfer to the proposed development site appears to be appropriate in light of the character of the surrounding area. However, since the development site is in Community District 5, we defer to Board 5’s judgment on this aspect of the application.

Continuance of legitimate theater use. Finding (4) requires assurances for continuance of legitimate theater use. These are to be provided by a Declaration of Restrictions, a draft of which is included in the application. The Declaration includes a definition of “legitimate theater” that is, at first reading, potentially broader and less restrictive than the definition included in similar declarations for other theaters. The Hirschfeld Theater is the only “listed” Broadway theater on a residential block. We wish to engage in further discussions with the Jujamcyn Theaters LLC to ensure that the definition precludes use of the theater in a manner inconsistent with its residential surrounds.

Theater Subdistrict Fund contribution. Finding (5) requires a contribution to the Theater Subdistrict Fund that was to have been established pursuant to Section 81-741.

The 1998 rezoning called for the creation of a Theater Subdistrict Council comprised of the Mayor, two representatives appointed by the Mayor from the performing arts, theatrical and related industries, the Director of the Department of City Planning, the Speaker of the City Council and his or her designee, and the Manhattan Borough President.

The Theater Subdistrict Council was to have established the Theater Subdistrict Fund for deposit and administration of the revenues generated by the payments required by Section 81-744. The Fund is supposed to be used to undertake the ongoing periodic theater inspection and maintenance report requirements of Section 81-743(c). The Fund may also be used “for activities chosen by the Theater Subdistrict Council furthering the purposes” set out in Section 81-71 (quoted above).

To date, neither the Theater Subdistrict Council nor the Theater Subdistrict Fund has been established. The applicants propose to deposit the \$291,040 payment required for the development rights transfer covered by this application in an escrow account, to be held by the applicants’ lawyers and paid to the Theater Subdistrict Council once the Theater Subdistrict Fund has been established. Understandably, the applicants wish to make the necessary payment and go on about the development process. This should not be allowed, because the past history of this Board suggests that this will only delay the time at which these funds can be used for their intended purpose. Instead, the time pressures created by this application should be used to bring about the creation of the Council and the establishment of the Fund.

In their discussion with the land use committees on April 3, representatives of the applicants suggested broadening the uses that could be made of the Fund to include programs in association with New York

City schools. Such a use may in fact already be allowed, since the stated goals of the Council include “developing new audiences for all types of theatrical productions.” (Section 81-71)

At the same meeting, the committees heard from representatives of New Perspectives Theater, one of the displaced tenants of the building at 750 Eighth Avenue that is being demolished to make way for the new project, which has yet to find a new home. Part of NPT’s mission is “to present theatre to under-served audiences – especially young people – to build life skills and promote participation in our society.” The Board finds an unfortunate irony in the possibility that NPT’s displacement may cause its disappearance while funds that could be used to support its survival cannot be spent because of bureaucratic inaction.

Jurisdiction. Many of the issues raised in the letter relate to implementation of the Theater Subdistrict regulations in the Zoning Resolution. Since all but a tiny portion of the Theater Subdistrict is in Community District 5, we defer to Board 5 for resolution of these issues. We remain available to help in whatever way Board 5 may request, but recognize that Eighth Avenue is a jurisdictional boundary that we do not presume to cross.

Sincerely,



J. Lee Compton
Chair
Manhattan Community Board No. 4



Anna Hayes Levin
Co-Chair
Clinton/Hell’s Kitchen Land Use Committee



Simone Sindin
Co-Chair
Clinton/Hell’s Kitchen Land Use Committee

Cc: Local Elected Officials
Manhattan Community Board No. 5
Applicants
Gerry Schoenfeld – The Shubert Organization
Adam Healey and Melody Brooks – New Perspectives Theatre Company