



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD No. 4**

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**J. LEE COMPTON**  
Chair

May 26, 2006

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

**Re: N 060414 ZCM, Application for transfer of development rights from 302 W. 45<sup>th</sup> St (Hirschfeld/Martin Beck Theater) to 231 W. 54<sup>th</sup> Street/1709-1717 Broadway**

Dear Chair Burden:

Representatives of Granite Broadway Development LLC, Fifth Street Holdings, LLC and Jujamcyn Theaters LLC attended the meeting of this Board's Clinton/Hell's Kitchen Land Use Committee on May 10, 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 7,438 square feet of floor area from the Hirschfeld (formerly Martin Beck) Theater at 302 West 45<sup>th</sup> Street to 231 W. 54<sup>th</sup> Street/1709-1717 Broadway at 46<sup>th</sup> Street in connection with a proposed mixed use building. These comments are subject to ratification by the full Board at its next meeting on June 7, 2006, but are being submitted today in order to meet the May 30 deadline for comments.

The proposed building has not yet been designed, but the applicant estimates that the application would result in a slender tower approximately 45 stories tall.

This application is the second in a series of four applications that together represent a historic occasion, as it will be the first time that the provisions of Section 81-744 will have been used.<sup>1</sup> These provisions are one of several incentives and controls that were 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 Community Board 5's judgment on this aspect of the application.

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<sup>1</sup> The other applications are N 060393 ZCM, which was the subject of our letter dated April 11, 2006, and N 060433 ZRM and N 060435, which will be the subject of a separate letter. Community Board No. 5 approved resolutions on all four applications at its meeting on May 11, 2006. These comments are intended to be consistent with, and supportive of, CB5's resolutions.

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 continue to discuss the definition with the Jujamcyn Theaters LLC and the Department of City Planning to ensure that it precludes use of the theater in a manner inconsistent with its residential surroundings.

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.

a. The Fund. 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 \$852,780 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, or an alternate oversight board and funding mechanism that is acceptable to all of the stakeholders who participated in the negotiations that resulted in the 1998 rezoning. Those stakeholders include those who were to have been members of the Theater Subdistrict Council (the Mayor, the Director of the Department of City Planning, the Speaker of the City Council, and the Manhattan Borough President) as well as Community Board 5, and entire theater community, including theater owners, theatrical unions, and other theater organizations such as the Alliance of Resident Theatres/New York (A.R.T./New York).

b. The contribution. The amount of the contribution is fixed in Section 81-744(a)(5) at \$10 per square foot of transferred floor area, subject to review and adjustment by the City Planning Commission every three to five years. No such review or adjustment has taken place since 1998, though property values and the costs of the uses to which the Fund is to be put have all increased significantly since 1998. We join with Community Board 5 in asking that the adequacy of this amount be reviewed and adjusted.

Hon. A. Burden

May 26, 2006

Page 3 of 3

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