



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD No. 4

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.ManhattanCB4.org

J. LEE COMPTON
Chair

June 12, 2006

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

**Re: N 060433 ZRM, application for zoning text amendment, and N 060435 ZAM,
application for zoning authorization, to permit 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 Jujamecyn Theaters LLC attended the meeting of this Board's Clinton/Hell's Kitchen Land Use Committee on May 10, 2006 to present their applications for a zoning text amendment and authorization by the City Planning Commission, pursuant to Section 81-744(b) of the Zoning Resolution, to allow the transfer of 28,901 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 42-story mixed use building.

These applications are the last 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.¹ 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).

Text Amendment. A zoning district boundary runs through the middle of the Hirschfeld Theater. The eastern portion of the theater is in a C6-4 zoning district that is simultaneously in the Theater Subdistrict of the Special Midtown District and in the Special Clinton District. The western portion of the theater is in a C6-2 zoning district in the Preservation Area of the Special Clinton District. Unused development rights associated with the western/C6-2 portion of the theater are currently not eligible for transfer, and are calculated on the basis of a maximum floor area ratio of 4.2 as a result of the density limitations in the Preservation Area. The application proposes to

¹ The other applications are N 060393 ZCM, which was the subject of our letter dated April 11, 2006, and N 060414 ZCM, which was the subject of our letter dated May 26, 2006. 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.

amend the Zoning Resolution in several respects, to allow the transfer of unused development rights from the western/C6-2 portion of the theater pursuant to Section 81-744, calculated on the basis of a maximum floor area ratio of 6.02, which is the maximum floor area ratio in C6-2 zoning districts outside the Preservation Area.

The result of this amendment would be to increase the unused development rights available for transfer from the western/C6-2 portion of the theater from 22,155 square feet to 37,384 square feet, an increase of 15,229 square feet. Those unused rights may only be transferred to a "receiving site" that is in the Theater Subdistrict.

Community Board 5, in which the vast majority of "receiving sites" are located, has recommended approval of the text amendment.

Community Board 4 is, therefore, also willing to recommend approval of the text amendment, provided the text is further amended to exclude "receiving sites" that are simultaneously in the Special Clinton District and the Theater Subdistrict. There are very few such sites; they are limited to the area 150 feet west of Eighth Avenue, between 42nd Street and 45th Street.

Floor Area Transfer. Section 84-744(b) of the Zoning Resolution permits the additional transfer, by authorization, of development rights beyond the amount permitted by certification, to a receiving site within the Eighth Avenue Corridor of the Theater Subdistrict, so long as two findings are made by the City Planning Commission (in addition to the findings required for a transfer by certification; our conclusion on those findings was stated in our letter dated April 11, 2006 concerning the previous application for transfer by certification):

1. that the new development "relates harmoniously to all structures and open space in its vicinity in terms of scale, location and access to light and air in the area", and
2. the new development "serves to enhance or reinforce the general purposes of the Theater Subdistrict" (emphasis added)

Community Board 5 found that "while the new building is of no particular architectural distinction, it is no bulkier than other buildings on the east side of Eighth Avenue." We agree.

However, Community Board 5 found that nothing about the new building serves to enhance or reinforce the general purposes of the Theater Subdistrict. No space has been allocated to theater-related uses, and the applicant does not propose limiting use of the retail space for anything particularly appropriate for the theater district. This is a wasted opportunity. We join Community Board 5 in recommending denial of the authorization.

Please see our letter dated May 26, 2006 on the related application no. N 060414 ZCM for comments concerning the assurances for continuance of legitimate theater use and the Theater Subdistrict Fund contribution; those comments apply to this application as well.

It is therefore

RESOLVED, that the Board recommends approval of Application N 060433 ZRM, on the condition that the zoning text is further amended to exclude "receiving sites" that are simultaneously in the Special Clinton District and the Theater Subdistrict, and

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May 26, 2006

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FURTHER RESOLVED, that the Board recommends denial of Application N 060435 ZAM because the proposed development does not serve to enhance or reinforce the general purposes of the Theater Subdistrict.

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