



## **CITY PLANNING COMMISSION**

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September 8, 2004/Calendar No. 37

N 040467 ZRM

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**IN THE MATTER OF** an application submitted by the West 37<sup>th</sup> Group LLC pursuant to Section 201 of the New York City Charter, for an amendment to Section 42-451 of the Zoning Resolution of the City of New York relating to Article IV, Chapter 2 concerning sign regulations for Theaters, Community District 4, 5, and 7, Borough of Manhattan.

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The application for amendment of the Zoning Resolution was filed by West 37<sup>th</sup> Group LLC on May 19, 2004, to amend the permitted projection of signs to allow projection up to four feet six inches across the street line on zoning lots in manufacturing zones within one-half mile of the Theater Subdistrict and containing more than two theaters arranged and designed for live performances.

### **BACKGROUND**

The proposed text amendment would modify the provisions of Section 42-541 (Permitted Projection) to allow additional projection for permitted signs on zoning lots occupied by more than two theaters designed, arranged, and used for live performances in M1, M2 or M3 zones and located within one-half mile of the Theater Subdistrict of the Special Midtown District. The proposal would allow signs to project across a street line no more than four feet six inches, provided the height of any such sign shall not exceed 55 feet above curb level.

The current regulations governing projection of signs in Section 42-541 allow permitted signs to project across a street line no more than 18 inches for double-or multi-faceted signs or 12 inches for all other signs, with exceptions for specified manufacturing districts. The proposed text would not change these

regulations for most theaters in manufacturing districts. It would only affect zoning lots that are occupied by more than two theaters designed, arranged, and used for live performances and located within one-half mile of the Theater Subdistrict. It would not alter the total amount of signage (6 times the street frontage) permitted in these districts.

The applicant is currently constructing a building at 450 West 37<sup>th</sup> Street in Manhattan that will contain three theaters, rehearsal and office space. The building is located on the south side of West 37<sup>th</sup> Street between Ninth and Tenth Avenues within an M1-5 district. It is located within one-half mile of the Theater Subdistrict. The text amendment would facilitate signage that projects four feet across the street line for the theater.

The proposed text amendment represents an increase in projection of signage and would be applicable in a limited geographic area to zoning lots with more than two theaters. Areas affected by the proposed text amendment include the Special Garment Center District, a portion of the Special Midtown District between Fifth and Sixth Avenues, a small portion of the Special Clinton District generally west of Tenth Avenue, and the area where the Theater building is located, between Ninth and Eleventh Avenues. The M districts in these areas permit a wide range of commercial and manufacturing uses, including theaters.

The proposed text amendment would improve the visibility of signage for theaters located adjacent to but outside of the Theater District. The areas of the Special Garment Center District and the Special Midtown District in which the text would be applicable are characterized by parking lots, hotels,

printing facilities, wholesale retailers, restaurants, as well as a variety of clothing manufacturers. The area of the Special Clinton District where the proposed text amendment would be applicable contains primarily commercial, industrial and manufacturing uses including automotive sales dealerships, storage facilities, restaurants and retail establishments along Eleventh Avenue. Existing signage in these areas is varied and includes many signs that extend more than 18 inches beyond the street line. There are no theaters located within the affected area of the Special Clinton District.

Currently, there are three lots with theaters located within an M1-5 district within the Special Garment Center District. The Belt and Zipper Theater is located on the south side of West 37<sup>th</sup> Street between Eighth and Ninth Avenues; the Abingdon Theater located on the south side of West 36<sup>th</sup> Street between Eighth and Ninth Avenues; and the Revelation Theater located on the south side of West 39<sup>th</sup> Street between Eighth and Ninth Avenues. None of these zoning lots contain more than two theaters, and therefore could not utilize the proposed text amendment.

The neighborhood surrounding 450 West 37<sup>th</sup> Street contains a variety of building types and uses. A number of automotive repair shops, parking lots, residential buildings, a community center and a restaurant are located within 100 feet of the theater building. A new residential building and its parking garage are located on the Southwest corner of Ninth Avenue and West 37<sup>th</sup> Street. A limited number of residential buildings are also located near the theater building: a twelve-story mixed use, commercial and residential building is located immediately east of the theater building, a five story brick residential walk-up apartment building is located immediately west of the theater building, and three 5-story

residential buildings are located opposite the theater building on the northern side of West 37<sup>th</sup> Street. Other than the theater building, no theaters are located in the M1-5 zone bounded by West 34<sup>th</sup> and West 41<sup>st</sup> Streets and Ninth and Eleventh Avenues.

## **ENVIRONMENTAL REVIEW**

This application (N 040467 ZRM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 04DCP055N. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on May 24, 2004.

## **PUBLIC REVIEW**

On May 24, 2004, this text change application was duly referred to Community Board 4, 5, and 7 and the Borough President and Borough Board for information and review in accordance with the procedure for referring non-ULURP matters.

### **Community Boards**

Community Board 5 held a public hearing on this application on June 10, 2004, and on June 10, 2004,

by a vote of 26 to 1 with 1 abstention, adopted a resolution recommending disapproval of the application with conditions:

WHEREAS, Community Board Five is concerned that:

- the Department of City Planning is making a sweeping change in zoning to accommodate one specific venue; and
- there is a possibility that light emitted from the new signage could be intrusive to neighboring residential tenants in nearby buildings; and
- the proposal may lead to undesirable signs for adult use establishments near residential buildings; and

WHEREAS, these concerns could be addressed by additional language added to the text amendment; therefore be it

RESOLVED, that based on the above concerns, Community Board Five recommends denial of the proposed application; and be it further

RESOLVED, that Community Board Five recommends that changes be made to the text amendment, including a requirement for a special permit where the signage would be within 100 feet of a residence.

Community Board 4 held a public hearing on this application on July 7, 2004, and on July 7, 2004, by a vote of 26 to 8 with no abstentions, adopted a resolution recommending:

approval of the applicant's proposed signage as displayed to the Board at its meeting on July 7, 2004, subject to the following conditions:

1. Lighting will not be any brighter than the lighting described in the application, and will comply with all applicable city regulations on lighting, including, in particular, Zoning Resolution Section 42-53.
2. Lighting in the poster boxes must be turned off one hour after the evening's last show has started but no later than 11 p.m.

and further

Resolved that the Board recommends denial of the proposed text change unless the following additional limitations are included:

- The text change should be applicable only in the area bounded by Eighth Avenue on the east, 34<sup>th</sup> Street on the south, Tenth Avenue on the west and 42<sup>nd</sup> Street on the north.
- The text change should expressly prohibit its application on theaters associated with adult uses.
- Signs within 100 feet of a residential use shall be permitted by special permit only,

requiring consideration of the design of the proposed sign and permitting appropriate conditions and safeguards to minimize any adverse effects on affected residents.

Community Board 7 did not submit a recommendation on this application.

### **Borough President**

This application was considered by the Borough President who issued a recommendation approving the application on August 3, 2004 with the following comments:

We understand the concerns express by the Community Boards regarding the geographic scope of the text amendment and would support a reduction in the area in which the text amendment is located. We also recommend that there be assurances that this text amendment cannot be used by adult use establishments.

### **Borough Board**

The Manhattan Borough Board did not submit a recommendation on this application.

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

On July 28, 2004 (Calendar No. 12), the City Planning Commission scheduled August 11, 2004, for a public hearing on this application (N 040467 ZRM). The hearing was duly held on August 11, 2004 (Calendar No. 17). There were two speakers in favor and no speakers in opposition.

Speakers in favor of the proposal included a representative of the applicant and the applicant. The representative for the applicant provided a brief overview of the proposed text amendment and rationale for the text amendment. The representative stated that the applicant does not object to the

more limited geographic area proposed by Community Board 4. The representative described that it was unlikely that adult use establishments could utilize the text, as such uses typically are not theaters but rather eating and drinking establishments. Furthermore, adult uses are restricted to a small portion of the geographic area recommended by Community Board 4. The representative also indicated that except for the projection, the proposed sign complies with all aspects of the Zoning Resolution including lighting standards and requirements. The representative also indicated that the applicant sent the Councilwoman a letter indicating a willingness to meet with the community regarding the lighting concerns and any other concerns. The applicant spoke about his extensive experience managing nonprofit theaters and that when he began this project the proposed sign was as-of-right, but by the time a building permit was secured the zoning had changed and no longer allowed the proposed sign.

There were no speakers who spoke in opposition to the proposed text amendment.

## **CONSIDERATION**

The Commission believes that the proposed text amendment, as modified herein is appropriate.

The Commission believes that allowing an increase in sign projection in manufacturing districts on zoning lots with multiple live performance theaters is appropriate. The Commission believes that the additional projection addresses the visibility needs for such performing arts located outside of the Theater Subdistrict without disrupting neighborhood character.

The Commission notes the community boards' concerns regarding the broad geographic area in which the proposed text amendment would apply. The Commission agrees that the text amendment should apply to a more limited area adjacent to the Theater Subdistrict. The Commission therefore is modifying the text to limit the area of applicability to West 34<sup>th</sup> Street to West 42<sup>nd</sup> Street from Eighth Avenue to Tenth Avenue.

The Commission notes the concerns raised by the community boards and Borough President regarding the possibility of adult uses utilizing such a text amendment. The Commission notes that the locations for adult uses are limited to a small portion of the area on Eighth Avenue. The Commission does not believe that expressly prohibiting the use of this amendment by adult uses is necessary. The Commission is, however, modifying the text to further clarify live performances as drama, music or dance in response to these concerns.

The Commission notes the community boards' concern of the impact of the signage on neighboring residential buildings. The Commission notes that the text amendment applies only to M zones that do not allow residential use. The Commission notes that the text amendment does not change the lighting or size restrictions on signage, but only the projection of the signage. The Commission also notes that the New York City Zoning Resolution addresses the impacts of signage lighting on residential uses. Section 42-53 states that illumination shall "not project or reflect on residences". The Commission believes that the existing provisions on illumination are appropriate.



**RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action, as modified, described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in Underline is new, to be added;

Matter in ~~Strikeout~~ is old, to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicate where unchanged text appears in the Zoning Resolution

\* \* \*

42-541

Permitted projection

M1 M2 M3

In all districts, as indicated, except as otherwise provided in Section 42-542 (Additional regulations for

projecting signs), no permitted #sign# shall project across a #street line# more than 18 inches for double- or multi-faceted #signs# or 12 inches for all other #signs#, except as provided below:

(a) In M1-5A, M1-5B, M1-5M and M1-6M Districts and in #Manufacturing Districts# mapped within the #Special Tribeca Mixed Use District#, for each establishment located on the ground floor, #non-illuminated signs# other than #advertising signs# may project no more than 40 inches across a #street line#, provided that along each #street# on which such establishment fronts, the number of such #signs# for each establishment shall not exceed two two-sided #signs# separated at least 25 feet apart, and further provided that any such #sign# shall not exceed a #surface area# of 24 by 36 inches and shall not be located above the level of the first #story# ceiling.

(b) For #zoning lots# occupied by more than two theaters designed, arranged and used for live performance of drama, music or dance and located within the area bounded by West 34<sup>th</sup> Street, Eighth Avenue, West 42<sup>nd</sup> Street, and Tenth Avenue, permitted #signs# may project across a #street line# no more than four feet six inches, provided the height of any such #signs# shall not exceed 55 feet above #curb level#.

\* \* \*

The above resolution (N040467 ZRM) duly adopted by the City Planning Commission on September 8, 2004 (Calendar No. 37), 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.

**AMANDA M. BURDEN, AICP, Chair**  
**KENNETH J. KNUCKLES, Esq., Vice-Chairman**  
**ANGELA M. BATTAGLIA, IRWIN CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,**  
**RICHARD W. EADDY, JANE D. GOL, CHRISTOPHER KUI, JOHN MEROLO,**  
**KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners**