



IN THE MATTER OF an application submitted by Cort Theatre LLC and Clarity 47 LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 81-745 of the Zoning Resolution to allow a floor area bonus for the substantial rehabilitation or restoration of a listed theater, as set forth in Section 81-742 (Listed theaters), and to allow the bonus floor area to be utilized anywhere on the zoning lot, on property located at 138 West 48th Street a.k.a. 145 West 47th Street (Block 1000, Lots 7, 11, 49, 55, 56, 57, 58, and 59), in C6-5.5 and C6-7T Districts, within the Special Midtown District (Theater Subdistrict), Borough of Manhattan, Community District 5.

This application for a zoning special permit was filed by Cort Theatre LLC and Clarity 47 LLC on October 8, 2019 to allow for the addition of approximately 120,000 square feet of bonus floor area in exchange for the substantial rehabilitation of the Cort Theatre. The proposed action, in conjunction with the related application, would facilitate the renovation of the Cort Theatre, located at 138 West 48th Street (Block 1000, Lot 49), as well as the development of a new hotel on the same zoning lot, located at 145 West 47th Street (Block 1000, Lot 11, the “Hotel Site”) in the Theater District neighborhood of Manhattan Community District 5.

RELATED ACTIONS

In addition to the zoning special permit (C 200123 ZSM) that is the subject of this report, the proposed project also requires action by the City Planning Commission on the following application, which is being considered concurrently with this application:

N 200124 ZRM Text amendment to Zoning Resolution (ZR) Section 81-745 to permit the distribution of floor area across a zoning lot without regard to district boundaries.

BACKGROUND

The applicant, Cort Theatre LLC and Clarity 47 LLC, request a special permit pursuant to ZR Section 81-745 to authorize 119,268 square feet of bonus floor area in exchange for the

substantial rehabilitation of the Cort Theatre, as well as a text amendment to ZR Section 81-745 to allow the bonus floor area to be distributed across the zoning lot without regard to district boundaries. These actions would allow the 119,268 square feet generated by the special permit to be used for a new transient hotel development located on the Hotel Site. The Cort Theatre and the Hotel Site are part of a larger merged zoning lot that, in its entirety, constitutes the development site (Block 1000, Lots 7, 11, 49, 55, 56, 57, 58, and 59).

Originally designed as a playhouse, the Cort Theatre is one of the oldest operational theaters in the Theater Subdistrict of the Special Midtown District (MiD). It is categorized as a ‘Listed Theater,’ as defined in ZR Section 81-742. Listed Theaters are eligible for a variety of bonus and floor area transfer mechanisms. The Cort Theatre is located on the development site, which is a 47,699-square-foot, mid-block merged zoning lot. The block is bounded by West 48th Street to the north, Sixth Avenue to the east, West 47th Street to the south, and Seventh Avenue to the west. The Cort Theatre, built in 1912, was designated as an individual landmark (LP-1328) and an interior landmark (LP-1329) by the Landmarks Preservation Commission (LPC) on November 17, 1987. The City Planning Commission (CPC) issued reports in respect of these designations on December 30, 1987 (N 880407 HKM and N 880408 HKM).

The development site is located in the Broadway Theater District, and directly to the east of Times Square. Together, Times Square and the Broadway Theater District are one of New York’s major tourist attractions, drawing millions of tourists annually from around the world. Over the last 25 years, the Times Square area has seen the development of major new office buildings and many large retail establishments.

The area surrounding the development site is predominately composed of high-density commercial uses, however, there are still several low-rise buildings containing commercial ground floor uses and either commercial or residential uses on their upper stories, which are located primarily midblock. Along the avenues, buildings range from 2 to 54 stories in height, and along the midblock, buildings range from 3 to 14 stories, all

with active ground floor uses. Broadway and Seventh Avenue intersect at West 46th Street, one block south of the development site, where Broadway becomes a pedestrian plaza extending south to West 42nd Street. Broadway and Seventh Avenue are developed primarily with commercial buildings and a modest number of mixed-use residential buildings from 2 to 54 stories in height, with a high concentration of hotels, restaurants, and destination shopping. Seventh Avenue contains primarily large office and hotel buildings, with retail uses located on the lower floors. The side streets contain older buildings ranging from 3 to 14 stories in height. Sixth Avenue is developed with large office buildings ranging from 42 to 54 stories, with ground-floor retail. Three other Listed Theaters in the surrounding area include the Lunt-Fontanne Theater (Block 1018, Lot 20), the Lyceum Theater (Block 998, Lot 8), and the Palace Theater (Block 999, Lot 63).

The development site is well served by public transit, with two subway stations located within 600 feet of the development site. The 49th Street subway station, providing service to the N, R, and W train lines, is located at the intersection of Seventh Avenue and West 47th Street, and the 47th – 50th Street subway Station, providing service to the B, D, F, and M train lines, is located at the intersection of Sixth Avenue and West 48th Street. The 50th Street subway station, which is located at Broadway and West 50th Street, provides service to the 1 train line, and is located just outside of the 600-foot radius. The 42nd Street/Times Square subway station complex, which provides service to the N, Q, R, W, A, C, E, 1, 2, 3, 7 and 42nd Street Shuttle (S) train lines, is the most used station in the system. This station has entrances located within approximately 1,200 feet of the development site. Ten bus lines provide service to the neighborhood: the M20, M104, M7, M50 X1, X7, QM1, QM5, QM6, and the BxM2. Father Duffy Square, located at the southwest corner of Broadway and West 47th Street, is the only public park in the immediately surrounding area.

The MiD was created in 1982 to guide development within the Midtown central business district by establishing special use and bulk regulations, including within several

designated subdistricts. The original Special Theater District (CP-20000), approved in 1967, was the first special district added to the 1961 Zoning Resolution. It was created to preserve the unique character of the area as a cultural, theatrical and entertainment destination, and as an engine of tourism and economic development. When the MiD was created, the Special Theater District was incorporated as a subdistrict (N 820253(A) ZRM).

The Theater Subdistrict is bounded by West 57th Street to the north, West 40th Street to the south, Sixth Avenue to the east, and Eighth Avenue (from West 45th Street to West 57th Street) and a line 150 feet west of Eighth Avenue (from West 42nd Street to West 45th Street) to the west. The Theater Subdistrict consists solely of C6 underlying zoning districts, which permit a wide range of uses and high-bulk development, with a base floor area ratio (FAR) ranging from 10.0 to 15.0 and, in certain districts, as-of-right floor area bonuses for public plazas and affordable housing. The special provisions of the Theater Subdistrict encourage preservation and restrict the demolition of specific theaters listed in ZR Section 81-742. A floor area bonus is available by CPC special permit pursuant to ZR Section 81-745 for the substantial rehabilitation or restoration of a Listed Theater. Pursuant to ZR Section 81-746, the CPC Chairperson may allow floor area to be transferred on a zoning lot across a zoning district boundary provided that, among other things, the amount of floor area located on either side of the zoning district boundary does not exceed the base maximum FAR of the applicable zoning district by more than 20 percent.

The development site is located in the Theater Subdistrict within the MiD. The development site is a midblock lot with 200 feet of frontage on West 47th Street, 275 feet of frontage on West 48th Street and a total lot area of 47,699 square feet. The development site is split between two underlying zoning districts: the majority of the site is located within a C6-5.5 zoning district (35,648.67 square feet), which allows a base maximum FAR of 12.0, and the balance of the site (12,050.4 square feet) is located in a C6-7T zoning district, which allows a base maximum FAR

of 14.0.

In both districts, the maximum FAR of a development may be increased if approved by the CPC. A CPC special permit pursuant to ZR Section 81-745 allows a floor area bonus for the rehabilitation of a Listed Theater, allowing an increase of up to 20 percent of the basic maximum floor area permitted on the zoning lot, with a maximum FAR of 14.4 in the C6-5.5 zoning district and 16.8 in the C6-7T zoning district. A CPC certification pursuant to ZR Section 81-744 allows a transfer of unused floor area from a Listed Theater, allowing an increase of up to 20 percent of the basic maximum floor area permitted on the zoning lot, with a maximum FAR of 14.4 in the C6-5.5 district and 16.8 in the C6-7T district. FAR may also be increased by a CPC special permit pursuant to ZR Section 74-79 to transfer unused floor area from an adjacent lot containing an individual landmark, which allows an increase of up to 20 percent FAR to 14.4 FAR in the C6-5.5 district and to an unlimited FAR in the C6-7T district.

The Cort Theatre is located on a merged zoning lot comprising several tax lots owned by separate entities. The Cort Theatre is located on Lot 49 (138 West 48th Street) and is owned by the Shubert Organization. Clarity LLC owns the Hotel Site, Lot 11, which is proposed to be developed with a transient hotel using the requested 119,268 square feet of bonus floor area. The remaining tax lots (Lots 7, 55, 56, 57, 58 and 59; collectively the McSam/Highgate Site) contain an existing Use Group 5 hotel building and a vacant development site. The vacant site is owned by the McSam Group. The existing Use Group 5 hotel on the McSam/Highgate Site is owned by Highgate Hotels, LP and is anticipated to remain in its current form and operate as a transient hotel. The two sites within the development site that would be developed in connection with the proposed project are the Cort Theatre Site, which contains the existing four-story Cort Theatre building; and the Hotel Site, which would be developed with a Use Group 5 hotel building that would use the 119,298 square feet of bonus floor area granted under the special permit.

The Cort Theatre Site fronts on West 48th Street, a narrow street, and has a lot area of approximately 12,050 square feet, located entirely in the C6-5.5 zoning district. The Cort Theatre

Site is located in the Theater Subdistrict, adjacent to the Theater Subdistrict's main commercial corridors and the concentration of theaters between Broadway and Eighth Avenue.

The Cort Theatre was constructed in 1912 and is among the oldest surviving theaters in New York. It was designed by architect Thomas Lamb to house the productions of John Cort, one of the country's major producers and theater owners at the time. The Cort Theatre was designated as an individual landmark and a landmark interior by LPC on November 17, 1987 (LP-1328), and is a Listed Theater, as set forth in ZR Section 81-742. The existing building contains approximately 16,407 square feet of floor area.

The Cort Theatre building is flanked by a 10-foot-wide alley with covered emergency egress stairs on its east side and by an approximately 35-foot-wide open area, proposed to be developed with a horizontal enlargement of the Cort Theatre, on its west side. Across the street from this open area is an open, midblock pedestrian passageway between West 48th Street and West 49th Street.

The building has a rectangular lobby with three doors on West 48th Street leading into the 1,092-seat auditorium. There is a box office with two ticket windows that faces the lobby. The auditorium is square in plan, with an orchestra level and two seating tiers (mezzanine and balcony levels) and an audience lounge at the rear of each seating level. The orchestra level floor slopes down to a proscenium flanked by two tiers of boxes, behind which is the stage opening. The auditorium's two seating tiers are accessed by a single stair at the northern end of the building, with separate stairs providing access to the theater boxes. Dressing rooms are located to the immediate west of the stage. Support spaces are generally located in the cellar and at interstitial levels.

The building contains decorative ornaments, including plasterwork in relief and painted murals, much of it original. Notable elements include the proscenium arch's perforated lattice-like plasterwork, behind which are the remains of original blue-green art glass, designed to be

illuminated from within; the auditorium's sounding board, which is decorated with painted murals framed by moldings; and ornamental railings, moldings, and friezes throughout. The Cort Theatre's historic components, with the exception of the proscenium arch's art glass, are in good condition. However, over the years, mechanical systems, including air-conditioning grilles and ductwork, have been integrated into the historic fabric, and an accretion of improvised accommodations for lighting and sound technology obscures certain historic features. The auditorium has also been repainted several times.

The applicant notes that the Cort Theatre's amenities are not built to modern standards, including restrooms that are small and inaccessible, an undersized lobby and lounge spaces, small and inconveniently located concession stands, uncomfortable seating and exposed ductwork in seating areas. There are no elevators, restricting ADA access to the orchestra level. A single access stair connects the orchestra level (with 502 seats) to the two balcony levels (with 547 seats in total). The cellar restrooms are accessed from the orchestra level by two sets of narrow, dead-end stairs. As the cellar restrooms are not ADA compliant, portable ADA-accessible restroom facilities have been placed in the adjacent alleyway and are accessible only by leaving the Cort Theatre building.

Front-of-house support spaces for staff are small, are not ADA-accessible and are mainly located on interstitial levels. There is a single, shared storage area on the cellar level for audience coats and concessions. No dedicated storage exists for staff or for programmatic items such as playbills, assistive listening devices or removable chairs.

The Cort Theatre's back of house spaces cannot accommodate large productions and musicals. Backstage dressing rooms are small and constrained by the size of the back-of-house footprint. In turn, the stage left wing is physically constrained by the adjacent dressing rooms and can store only limited scenic elements during performances. The stage right fly gallery (the vertical articulation of the stage right wing) cannot be used for productions, as it is occupied by the main air handler. The gridiron was improperly oriented and can only support a limited load. Below

grade, the stage trap does not extend to the front of the stage, limiting the complexity of stage scenery and props. There are no dedicated wardrobe and laundry facilities, relegating the placement of these functions to the stage trap area. The Cort Theatre's existing footprint and its back-of-house and front-of-house layouts serve to constrain its ability to accommodate modern theatrical and musical productions, making it more suitable for plays and smaller productions.

The Hotel Site (Lot 11) is a 120-foot-wide parcel fronting on West 47th Street, a narrow street, to the immediate south of the Cort Theatre Site. It has a lot area of 12,050 square feet. A seven-story parking garage on the Hotel Site was demolished in 2018, and construction is underway of a Use Group 5 hotel building that would use the 119,298 square feet (2.5 FAR) of bonus floor area from the special permit.

The remainder of the development site contains the McSam/Highgate Site, consisting of Lots 7, 55, 56, 57, 58, and 59, with a total lot area of 23,596 square feet. The McSam/Highgate Site contains an existing Use Group 5 hotel building and a vacant development site. The vacant site is approximately 15,556 square feet in area and is expected to be developed with a new, 273,439-square-foot hotel by its owner, the McSam Group. Lot 7 of the McSam/Highgate Site is approximately 8,040 square feet and is occupied by the existing 10-story Night Hotel, which is owned and operated by Highgate and contains 63,971 square feet of floor area.

Proposed Development

Cort Theatre Site – Proposed Rehabilitation and Annex

The applicant proposes a substantial rehabilitation and restoration of the Cort Theatre in accordance with the standards set forth in Section 81-745, as amended pursuant to the proposed text amendment. The proposed work would include major structural changes to improve its design and commercial viability. This would include the construction of the Cort Theatre Annex, which would be physically and functionally integrated with the existing Cort Theatre building, as well as modifications to the interior of the existing Cort Theatre building and the historic restoration of its interior, which is designated as an interior landmark by LPC.

The Cort Theatre Annex would encompass a 35-foot-wide, five-story (not including cellar and bulkhead) westward enlargement of the existing Cort Theatre building, occupying a 3,163-square-foot footprint and containing 14,807 square feet of floor area (approximately 19,000 gross square feet). The Annex would be connected to the existing Cort Theatre building by interior doors at the cellar level and first through fifth floors, and by interior stair connections at the first floor, second floor, and the second-floor mezzanine. Vertical circulation would be provided by a staircase at the north end of the Annex, visible from the street through glazed portions of the façade; and an additional circulation core at the rear of the building, containing a stair and ADA-accessible elevator.

The Annex would have projecting, modern signage, and is proposed to contain audience lounges, concession areas, ADA-accessible restrooms, dressing rooms, chorus rooms, rehearsal space, and back-of-house support space.

No alterations, other than construction of the Annex, restoration of the exterior façade, and introduction of rooftop mechanical equipment, would be made to the exterior of the existing Cort Theatre building in connection with the proposed rehabilitation. The proposed maximum envelope of 74.39 feet around the existing Cort Theatre building would represent an increase of approximately five to 25 feet above the existing building. This would allow for the potential introduction of additional rooftop equipment, structural modifications to the auditorium or stage house, or other alterations that may be needed to allow the Cort Theatre to adapt to emerging theater technologies and trends. Any such rooftop alterations would require approval by the LPC.

These structural changes to the Cort Theatre would be designed to address the building's operational challenges. The proposed improvements include enhanced audience amenities, namely an expanded lobby, new and expanded lounge spaces and concession stands, new and expanded ADA-accessible restrooms, additional ADA-accessible amenities and upgraded seating. New circulation cores would be provided in the Annex, including the provision of an

ADA-compliant elevator.

The Annex would facilitate new and expanded front-of-house space and storage for staff, and would expand the back-of-house footprint. Back-of-house improvements would include new and enlarged dressing rooms, new dedicated chorus and rehearsal rooms, a larger stage-left wing to accommodate the storage of more complex scenery, an expanded stage trap, refurbished mechanical bridges and fly floors, a new reconfigured gridiron and modern rigging system, and upgraded lighting and mechanical equipment. The stage right fly gallery would be recovered by removing the existing air handler and ductwork, functionally enlarging the usable stage-right wing.

Clarity Hotel Site – Proposed Development

The bonus floor area authorized by the proposed special permit would be used in a new 48- story development containing Use Group 5 transient hotel use on the Hotel Site. The hotel development would contain approximately 263,903 square feet of floor area, inclusive of 119,298 square feet (2.5 FAR) of bonus floor area generated by the proposed rehabilitation work pursuant to the special permit. The base of the building would be built to the street and rise to a height of approximately 78 feet, and would contain a street-level hotel lobby and retail space, served by two entrances on West 47th Street. The applicant proposes a 100-space accessory, as-of-right, automated parking garage on portions of the ground, second, third, and fourth floors, which would be accessible from a curb cut on West 47th Street.

Above the base height, the building would contain a total of approximately 660 hotel rooms and would be set back by at least 26 feet from the street line, with additional setbacks introduced as the building rises to its maximum height of 530 feet. The applicant contends that the hotel development would comply with all applicable use and building envelope controls of the Zoning Resolution.

The applicant seeks a Chairperson certification pursuant to ZR Section 13-432, under a separate

application, to allow floor space in an accessory automated parking facility in the proposed hotel development, up to a height of 40 feet above curb level, to be excluded from floor area. The parking garage would be located above grade, as the building's two cellar levels would accommodate back-of-house support spaces for the proposed hotel use.

McSam/Highgate Site

All of the bonus floor area generated pursuant to the proposed special permit would be used on the Hotel Site, and none would be used on the McSam/Highgate Site. Base floor area attributable to the McSam/Highgate Site, totaling 337,411 square feet of floor area, would be used on-site, pursuant to private zoning lot development agreements among the Cort Theatre owner, the hotel owner, and the owners of the McSam/Highgate Site. Of this amount, 273,439 square feet would be allocated to the McSam portion of the site (Lots 55, 56, 57, 58 and 59), which is currently vacant and would be developed with a hotel that uses all 273,439 square feet of floor area. The remaining 63,971 square feet would be allocated to the existing Use Group 5 hotel building owned by Highgate (the Night Hotel), which fronts on West 47th Street (Lot 7). The 63,971 square feet of base floor area allocated to the existing Night Hotel represents the amount of existing floor area in the current building, plus an additional 100 square feet for use in potential future alterations.

The applicant included a note on their filed drawings that would allow the McSam/Highgate Site to be developed with a building form that complies with the provisions of ZR Section 81-26, Section 81-27, and/or any other applicable provisions. ZR Sections 81-26 and 81-27 govern as-of-right height and setback regulations within the MiD, and provide two alternative methods for determining a compliant envelope. As noted, the McSam Group has indicated that it intends to use the 273,439 square feet of base floor area allocated to the McSam/Highgate Site to develop a 37-story hotel building with retail use on the ground floor. This building is expected to be built to a height of approximately 20 feet at West 48th Street's street line, above which it would set back approximately 22 feet to 30 feet, and then rise to a full height of approximately 358 feet. The Night Hotel is expected to remain in its current condition for the foreseeable future and continue

to operate as a transient hotel.

Unused Base Floor Area

Approximately 82,259.88 square feet of base floor area attributable to the development site would not be used on-site. This floor area is currently owned by the Rockefeller Group, the former owners of the McSam/Highgate Site. It is intended that this floor area would be transferred off-site in the future to an eligible receiving site pursuant to a ZR Section 81-744 certification in the event that the proposed floor area bonus is granted.

Zoning Text Amendment (N 200124 ZRM)

The proposed amendment to ZR Section 81-745 would facilitate the proposal by modifying two provisions of the text. First, it would modify subdivision (a)(2) of ZR Section 81-745 (Floor Area Bonus for Rehabilitation for Existing Listed Theaters) to allow portions of the proposed scope of work to be more clearly eligible for a floor area bonus. Second, provision (b) would be amended to authorize the CPC to allow, under specified conditions, bonus floor area generated on a split zoning lot to be used anywhere on the zoning lot.

Subdivision (a)(2) of ZR Section 81-745 would be amended to eliminate language that restricts qualifying major structural changes to the interior of a Listed Theater (thereby allowing exterior-related, structural and/or expansionary improvements to qualify) and to expand the non-exhaustive list of examples of qualifying substantial rehabilitation work to include work that increases spaces ancillary to dressing rooms and lobbies, and work that improves ADA accessibility beyond applicable legal requirements. These changes would clarify the scope of qualifying substantial rehabilitation work under ZR Section 81-745. However, in both cases, the CPC would continue to be able to exercise discretion regarding whether the proposed rehabilitation work under any application for a special permit is eligible for a floor area bonus.

The first of these changes to ZR Section 81-745(a)(2) —consisting of the deletion of the word “interior” from the phrase “major interior structural changes”—would clarify that structural

changes that create new interior space by enlarging a theater beyond its existing envelope may qualify for a floor area bonus, provided that such changes are for the purpose of improving a theater's design and commercial viability. The existing text is subject to the possible interpretation that such changes are not eligible for a floor area bonus.

The second of the amendments to ZR Section 81-745(a)(2) would clarify that rehabilitation work that increases spaces ancillary to dressing rooms and lobbies, or that improves accessibility beyond applicable legal requirements, would be eligible for a floor area bonus under ZR Section 81-745. This clarification would not expand the substantive scope of ZR Section 81-745. However, it would acknowledge important design and operational considerations for theaters that are more relevant today than when ZR Section 81-745 was adopted, such as providing modern amenities for patrons and cast members, and ensuring that patrons of all ages and levels of mobility are fairly accommodated.

The proposed new language in subdivision (b) would authorize the CPC to allow, for zoning lots located partially in a C6-5.5 zoning district, bonus floor area granted for the substantial rehabilitation of a Listed Theater to be used anywhere on the zoning lot, without regard to the location of zoning district boundaries. Under existing split zoning lot regulations, set forth in ZR Article VII, Chapter 7, bonus floor area generated by the C6-7(MiD) portion of the development site may not be reallocated to the C6-5.5(MiD) district, limiting the amount of bonus floor area that may be used on the Hotel Site to the approximately 85,556.8 square feet generated by the C5-5(MiD) portion. The current text would leave 33,741 square feet of bonus floor area attributable to the C6-7T(MiD) portion that could not be used. The proposed amendment to subdivision (b) would remedy this issue by authorizing the CPC to allow, as part of the proposed special permit, the entire floor area bonus of 119,298 square feet (2.5 FAR) to be used on the Hotel Site.

ENVIRONMENTAL REVIEW

This application (C 200123 ZSM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 20DCP003M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on August 3, 2020. The Negative Declaration included an (E) designation (E-572) related to air quality and noise to avoid the potential for significant adverse impacts. The requirements of the (E) designation are described in the Environmental Assessment Statement and Negative Declaration.

UNIFORM LAND USE REVIEW

This application (C 200123 ZSM) was certified as complete by the Department of City Planning on September 14, 2020, and was duly referred to Manhattan Community Board 5 and the Manhattan 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 200124 ZRM), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Review

Manhattan Community Board 5 held a public hearing on this application (C 200123 ZSM) on October 9, 2020, and on that date, by a vote of 39 in favor, none opposed and two abstentions, adopted a resolution recommending approval of the application with three conditions:

1. That in their text amendment, the applicant change *except that in the case of a #zoning lot# located wholly or partially in a C6-5.5 District* to *except that in the case of a #zoning lot# split between a C6-7T and a C6-5.5 District* in order to apply more specifically to the Cort Theatre Site;
2. That in the applicant's text amendment, the word "interior" not be stricken in ZR Section 81-745(a)(2) under the Qualification of Substantial Rehabilitation; and
3. That Clarity 47 LLC agrees to use union labor for the construction and operation of the new hotel.

Borough President Review

This application (C 200123 ZSM) was considered by the Manhattan Borough President, who, on November 12, 2020, issued a letter recommending approval of the application with the condition that the applicant incorporate the Community Board's recommendations.

City Planning Commission Public Hearing

On November 4, 2020 (Calendar No. 1), the CPC scheduled November 18, 2020 for a public hearing on the application (C 200123 ZSM). The hearing was duly held on November 18, 2020 (Calendar No. 12). Six speakers testified in favor of the application and none in opposition.

The Manhattan Borough President spoke in favor of the application, reiterating the points outlined in her resolution recommending conditional approval. She spoke at length about the economic hardships and disruptions brought about by the ongoing COVID-19 pandemic, citing a report from New York and Company that indicated that the tourism economy may not fully recover until 2025. She noted that the application represented an important opportunity to invest in and contribute to the theater industry, tourism economy and construction industry. She noted that the proposed improvements would enhance the Cort Theatre's financial viability.

The applicant team, composed of three speakers, provided a summary of the proposed development and improvements to the Cort Theatre. They discussed the existing conditions and

proposed suite of upgrades, highlighting the necessity of these improvements. They cited that many of their patrons are older or aging, and that the need for expanded ADA-accessible facilities and amenities was paramount to accommodating their audiences. They also noted the dramatic expansion in production capabilities that the improvements would facilitate and discussed the proposed historic restoration of the Cort Theatre's exterior and interior. In response to questions from the CPC, the applicant team noted that construction on the rehabilitation is anticipated to start in January 2021, and that the improvements would create eight to ten additional theater jobs. They also noted that, while the rehabilitation had been planned and designed prior to the COVID-19 pandemic, the additional space and upgraded air filtration systems would provide an opportunity to address safety issues for patrons in the post-pandemic world. In response to additional questions from the CPC, the applicant team also noted that access easements and coordination agreements are in place to ensure that the proposed rehabilitation and construction of the Annex building would not conflict with the other ongoing construction projects.

The applicant team noted that they had no major objections to Community Board's recommendations. They noted that, as analyzed under CEQR, the proposed text amendment would only apply to the Cort Theatre. Though there are other Listed Theaters that are partly located within a C6-5.5 district (or are partly within a C6-5.5 district and C6-7T district), none would be able to use the Section 81-745 bonus. Regarding whether or not to strike the word "interior", the applicant team explained that their intention was to clarify for the CPC that the physical expansion of the Cort Theater would be part of the bonusable scope of work. The applicant team noted that they would accept the word "interior" remaining in the zoning text, provided that the CPC would consider the Annex (and its associated enlargement of the Theater's usable space) as part of the substantial rehabilitation. The applicant team reiterated the land use rationale for the portion of the text amendment related to movement of bonus floor area across district boundaries. They confirmed for the CPC that the amount of bonus floor area requested complies with the maximum permitted in the zoning text.

In response to questions from the CPC regarding the calculation of bonus floor area and how it relates to the cost of rehabilitation, the applicant team noted that this process is both complex and discretionary. Rather than cost, they recommended that the proposed amount of bonus floor area be considered based upon the two precedent applications pursuant to ZR Section 81-745, and the degree to which the project is transformative for the Cort Theatre, enhances its commercial viability and advances the goals of the Theater Subdistrict.

A principle from Fisher Dachs Associates, a theater consulting firm and one of the two firms that the applicant team retained to jointly compile a third-party report regarding the rehabilitation, testified in support of the project and re-iterated the findings of the report. He noted the extent of the improvements and the degree to which they would streamline daily operations and commercial viability by dramatically expanding its production capabilities. He noted how the improvements would be transformative for Cort Theatre's infrastructure, as well as the audience, staff, crew and performers.

A senior advisor at HR&A Advisors, the other firm behind the preparation of the aforementioned third-party report, stated his belief that the application met the criteria and findings for the floor area bonus. He noted that the Cort Theater has a unique opportunity to expand to provide more space for amenities, enhancing its commercial viability. He also noted the discretionary basis for the meeting the findings outlined in ZR Section 81-745, highlighting the importance of flexibility in allocating floor area bonuses. He highlighted the importance of the Theater District in light of the ongoing COVID-19 pandemic.

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

Third Party Report

The applicant team retained a third-party theater design expert and a third-party development consulting expert to jointly prepare a report evaluating the proposed suite of upgrades (the "Third

Party Report”) to assist the CPC in their review. A copy of this report was submitted to the CPC following the CPC public hearing.

CONSIDERATION

The City Planning Commission (the Commission) believes that this application for a special permit (C 200123 ZSM), in conjunction with the related application for a zoning text amendment (N 200124 ZRM), is appropriate.

The Commission finds that the proposed rehabilitation will significantly improve the Cort Theatre's suitability for use as a legitimate theater by transforming it into a first-class facility with the capability to host musical theater and modern productions. Due to its age, the Cort Theatre has many spatial and programmatic constraints that hinder its ability to host a contemporary array of performance types. The Commission also recognizes that the Cort Theatre is inadequate for patrons requiring ADA accessibility, precluding many from using its facilities. Additionally, the Cort Theatre's mechanical systems, air handlers and ductwork are outdated and obstruct sightlines and backstage spaces. Its wing space, backstage support facilities, and dressing room facilities are physically constrained, precluding productions with demanding scenic installations, extensive props, or large casts.

The Commission finds that the building's dated design and physical condition create significant challenges in serving modern audiences. Visitors regularly experience out-of-date amenities and uncomfortable conditions, such as a small lobby and lounges, poor circulation, long lines for restrooms, and a lack of accessibility. The applicant notes that dedicated spaces for theater employees and production staff are similarly challenged.

The Commission believes that the construction of the Cort Theatre Annex will alleviate the limitations of the existing Theatre building by providing a substantial amount of new programmable space that will be fully integrated with the existing theater. The expansion and relocating of facilities into the Annex will allow for major alterations to the interior of the

existing theater building, including the expansion and reorganization of front-of-house and back-of-house support spaces and upgrades to lighting, electrical, and mechanical systems.

The Commission believes that the proposed theater rehabilitation is substantial and consists of major structural changes for the purpose of improving the Cort Theatre's design, commercial viability and continued use as a legitimate theater use. The Commission notes that the proposed rehabilitation will dramatically improve the back of house spaces, the front of house, audience amenities, vertical circulation and ADA accessibility, and will provide more comfortable, ergonomic seating and an improved viewing experience. The Commission recognizes that the creation of a new annex is central to the provision of these upgrades, and that this westward exterior enlargement facilitates the expansion of the Cort's interior spaces and usable floorplate.

The proposed back-of-house improvements, including the expansion of stage wings and dressing rooms, the creation of dedicated wardrobe and hair/wig spaces, the creation of dedicated chorus and rehearsal rooms, the enlargement of the stage trap and the re-opening of the obsolete orchestra pit all serve to expand the Cort Theatre's production capabilities and enhance its commercial viability. The Commission recognizes that contemporary productions, including musical theater, require complex scenery and mechanical equipment and believes that upgrades to the fly gallery, gridiron, rigging system and stage load-in door will help expand the range of productions that the Cort Theatre can host.

The Commission notes that the upgrades to front-of-house office, storage and staff support spaces will improve the Cort Theatre's operations, and enhance its commercial viability. The improvements to vertical circulation will facilitate audience movement and significantly reduce congestion. The provision of an elevator core is a critical improvement, as it allows patrons requiring a wheelchair or mobility-related assistance to access the two balcony levels and the basement level, which is not possible under the existing conditions. In addition, the elevator core allows for easier back-stage load-in of mechanical, lighting and production equipment and scenic elements. The Commission believes that the expansion and redistribution of restrooms, including

the provision of expanded ADA-accessible fixtures, will dramatically improve the Cort's continued use as a legitimate theater and its commercial viability.

Moreover, the Commission recognizes that the proposed improvements to audience amenities are significant, including the expansion of lobby areas and patron lounges, enlarged and redistributed bar/concession areas, improved seating and expanded coat storage. The Commission believes that these upgrades will provide patrons with a more comfortable, modernized theatergoing experience, and will improve the Cort Theatre's commercial viability and enhance its continued use as a Listed Theater. The Commission recognizes that, as outlined in the Third Party Report, the proposed improvements go above and beyond routine theater maintenance, painting or improvements to mechanical systems alone. In addition, the Commission notes that the proposed upgrades to the Cort Theater's lighting, electrical and mechanical equipment qualify as substantial rehabilitation and contribute to the enhancement of both the audience experience and production capabilities.

The Commission also notes that the historic restoration of the Cort Theatre will enhance its continued use as a legitimate theater. The Cort is one of the oldest surviving theaters in New York, and, according to its LPC landmark designation report "has served as home to countless numbers of the plays through which the Broadway theater has come to personify American theater", and it "continues to help define the Broadway Theater District." As such, the Commission recognizes the significance of the proposed historic restoration of the theater and its programmatic modernization, and believes that it will allow the Cort Theatre to continue to be a prominent venue for premier Broadway theater productions and destination for both tourists and theatergoers.

The Commission believes that the proposed rehabilitation will enhance and contribute to the Theater Subdistrict. The Commission notes that the Broadway Theater District is home to over 40 Broadway theaters and numerous hotels, restaurants and entertainment venues. The Broadway Theater District is one of the region's top tourist attractions and economic generators, and it is

central to New York City's role as the nation's cultural center. The Theater District and Broadway theater industry have been acutely impacted by the ongoing COVID-19 crisis, threatening its continued viability. The Commission recognizes that any long-term damage to the industry will be an irreparable blow to the city's economy, labor force, arts and cultural community, and to the city's unique identity. The Commission therefore believes that the proposed rehabilitation is appropriate, substantial and will greatly bolster the needs and objectives of the Theater Subdistrict. More importantly, the Commission believes that the Cort Theatre's rehabilitation represents a vital investment in the Theater District's continued success, and sends an important message that the City treasures its theater industry and views its success as an inextricable part of New York City's economy, cultural fabric and identity. The Commission believes that the rehabilitation signals the City's faith that the Broadway theater industry will rebound to full strength and continue to be a rich thread in New York City's cultural tapestry.

In order to qualify for the issuance of a ZR Section 81-745 theater rehabilitation bonus special permit, the applicant must satisfy the requirements of ZR Section 81-743 (Required assurances for continuance of legitimate theater use). The Commission notes that a Restrictive Declaration has been executed regarding specific requirements for continued legitimate theater use, timely completion of the proposed rehabilitation program, and continued maintenance of the Cort Theatre. The Restrictive Declaration requires a commitment by current and future owners to use the Cort Theatre for legitimate theater use. In addition, the Restrictive Declaration requires the applicant to provide the City with a report every five years that describes the Cort Theatre's condition, identifies any necessary maintenance or repair work, and establishes a plan and program for such work, including providing that adequate resources be made available to ensure timely completion of such maintenance and repair work. The Commission believes that, with these commitments, the Cort Theatre will be continue to serve legitimate theater uses, contributing to the vitality of the world-famous theater district.

The Commission has carefully considered the amount of the requested floor area bonus, and the size and form of the proposed hotel building and its effect on the surrounding area. The Commission notes that the special permit application requests a 20 percent floor area bonus on the entire zoning lot (119,268 square feet), resulting in an approximately 263,903 square foot hotel on the Clarity Site with a height of 48 stories (530 feet). The Commission believes that this development is appropriate and meets the findings and conditions of ZR Section 81-745.

The Commission has considered and notes that a new hotel will be developed on the McSam-Highgate site within the subject zoning lot with an approximate floor area of up to 273,439 square feet. The Commission recognizes that the lots comprising the McSam-Highgate site (Lots 7, 55, 56, 57, 58 and 59 on Block 1000) may be developed with a massing that complies with the provisions of ZR Section 81-26, inclusive, ZR Section 81-27, inclusive, and/or any other applicable provisions of the ZR. Given the proposed configuration of buildings on the zoning lot, the Commission believes that any development on the McSam-Highgate site that complies with the bulk regulations of the underlying district will be consistent with the required findings of the special permit.

Zoning Text Amendment

Finally, the Commission believes that the application to amend ZR Section 81-745 is appropriate. The Commission believes that the proposed text amendment will further the objectives of the Theater Subdistrict by allowing greater flexibility in the use of bonus floor area generated by a theater rehabilitation, thereby increasing the incentive to undertake qualifying theater rehabilitation work to preserve legitimate theater uses. The Commission notes that the text amendment will limit such increased flexibility to zoning lots that are located partially in an underlying C6-5.5 district. C6-5.5 districts are subject to a base maximum FAR of 12.0. There is one C6-5.5 district within the Theater Subdistrict, and it is adjacent to an underlying C6-7T district, in which the base maximum FAR is 14.0, and an underlying C6-7 district, in which the base maximum FAR is 15.0. The relatively high maximum FARs of the C6-5.5 district and its neighboring districts, and the relatively small differences among them, ensure that the flexibility

afforded by the amendment will not facilitate development that is inappropriate in scale to the surrounding area. Additionally, the Commission recognizes that the proposed text amendment will not affect or be able to be used by any Listed Theaters other than the Cort Theatre.

The Commission notes the requested changes from Manhattan Community Board 5 and the Manhattan Borough President to the proposed text amendment. However, the Commission believes that the proposed text amendment, as certified, is appropriate, and that there is no substantive difference between the two formulations of the text. With respect to the deletion of the word ‘interior’, the Commission believes that the construction of the Annex is an essential and central component of the proposed rehabilitation. The Commission believes that with future applications made pursuant to ZR Section 81-745, the discretionary nature of the special permit will allow the Commission to appropriately determine whether an improvement qualifies as a substantial rehabilitation. The Commission also notes that the added language to subdivision (a)(2) will provide clarity that certain critical portions of the rehabilitation scope are eligible for bonuses, such as the provision of ADA accessibility beyond legal requirements.

The Commission believes that the amendment to ZR Section 81-745(b) is appropriate. The amendment will authorize the Commission to allow, under specified conditions, bonus floor area generated on a split zoning lot to be used anywhere on the zoning lot. This will permit the full 119,268-square-foot bonus generated by the substantial rehabilitation to be incorporated in the Clarity Hotel Site. In addition to the Cort Theatre, there are five zoning lots containing Listed Theaters that are located partially within a C6-5.5 district. However, none of them are able to use the provisions of 81-745, as they are either substantially overbuilt or have already undertaken a substantial rehabilitation as part of an Empire State Development project. The Commission notes that the addition of the Community Board’s recommended language will not narrow the text amendment’s applicability. There are three additional zoning lots with Listed Theaters that are split between a C6-5.5 and C6-7T district, and none of them are able to use the subject provision of ZR Section 81-745. Therefore, the Commission believes that the proposed text amendment is appropriate.

The Commission also recognizes the preference stated by Manhattan Community Board 5 to use union labor in the construction and operation of the hotel but notes that such matters are outside of the Commission's purview.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 81-745 of the Zoning Resolution:

- (1) The proposed rehabilitation will improve the theater's suitability for use as a legitimate theater;
- (2) That the proposed rehabilitation will contribute toward satisfying the needs of the Theater Subdistrict;
- (3) That the bonus floor area will not unduly increase the bulk of any development or enlargement, density of population or intensity of use on any block to the detriment of occupants of buildings on the block or the surrounding area; and
- (4) That the distribution and location of such floor area bonus will not adversely affect the surrounding area by restricting light and air or otherwise impair the essential character or future development of the surrounding area.

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 81-745 of the Zoning Resolution to allow a floor area bonus for the substantial rehabilitation or restoration of a listed theater, as set forth in Section 81-742 (Listed theaters), and to allow the bonus floor area to be utilized anywhere on the zoning lot, on property located at 138 West 48th Street a.k.a. 145 West

47th Street (Block 1000, Lots 7, 11, 49, 55, 56, 57, 58, and 59), in C6-5.5 and C6-7T Districts, within the Special Midtown District (Theater Subdistrict), Borough of Manhattan, Community District 5 is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 200123 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 Hill West Architects and Berg + Moss Architects PC, filed with this application and incorporated in this resolution:

<u>Dwg No.</u>	<u>Title</u>	<u>Last Revised Date</u>
Z-001	Zoning Calculations	02/12/2020
Z-002	Zoning Lot Site Plan	02/12/2020
Z-201	Section- Hotel Development/Cort Theatre	02/12/2020
Z-202.00	Section- Hotel Development/Cort Annex	02/12/2020
Z-203.00	Section- Hotel Development/As- of-Right Site	02/12/2020
Z-204	Section- As-of-Right Site	02/12/2020
Z-205	Section- As-of-Right Site	02/12/2020

2. 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.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register of the City of New York, County of New York.

Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

5. 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, sub-lessee or occupant.
6. 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.
7. 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 200123 ZSM), duly adopted by the City Planning Commission on January 4, 2021 (Calendar No. 1), 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.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, Esq., *Vice-Chairman*

DAVID J. BURNEY, ALLEN P. CAPPELLI, ALFRED C. CERULLO, III, MICHELLE R. de la UZ, JOSEPH I. DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD,
Commissioners



Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #:	Project Name:
CEQR Number:	Borough(s): Community District Number(s):

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

SUBMISSION INSTRUCTIONS

- Complete this form and return to the Department of City Planning by one of the following options:
 - ZAP Land Use Participant Portal (Recommended)** - Sign in to the Portal at <https://zap.planning.nyc.gov/projects>.
 - EMAIL:** Send email to CalendarOffice@planning.nyc.gov and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ" ~~XXXXXXXXXX~~
 - MAIL:** Calendar Information Office, City Planning Commission, 120 Broadway, 31st Floor, New York, NY 10271
 - FAX:** to (212) 720-3488 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

Applicant(s):	Applicant's Representative:
Recommendation submitted by:	
Date of public hearing:	Location:
Was a quorum present? YES <input type="checkbox"/> NO <input type="checkbox"/>	<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>
Date of Vote:	Location:
RECOMMENDATION <input type="checkbox"/> Approve <input type="checkbox"/> Approve With Modifications/Conditions <input type="checkbox"/> Disapprove <input type="checkbox"/> Disapprove With Modifications/Conditions	
<u>Please attach any further explanation of the recommendation on additional sheets, as necessary.</u>	
Voting	
# In Favor:	# Against:
# Abstaining:	Total members appointed to the board:
Name of CB/BB officer completing this form	Title
	Date

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

October 9, 2020

Marisa Lago
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Cort Theatre - Application for a special permit pursuant to Section 81-745 of the Zoning Resolution, and for a text amendment to Section 81-745, to grant a floor area bonus in connection with the substantial rehabilitation and restoration

Dear Chair Lago:

At the regularly scheduled monthly Community Board Five meeting on Thursday, October 8, 2020, the following resolution passed with a vote of 39 in favor; 0 opposed; 2 abstaining:

WHEREAS, the applicants **Cort Theatre and Clarity 47 Hotel** are requesting the following actions: (1) Special permit pursuant to ZR Section 81-745 to authorize bonus floor area for the substantial rehabilitation of a listed theater and (2) Zoning text amendment to ZR section 81-745 to (a) clarify description of qualifying rehabilitation work and (b) allow, for zoning lots located partially in an underlying C6-5.5 district, bonus floor area to be utilized anywhere on the zoning lot; and

WHEREAS, to be eligible for a bonus FAR under this section of the Zoning Resolution, the Cort theatre will undergo a very extensive rehabilitation, significantly improving handicap accessibility, constructing new bathrooms for patrons, expanding backstage areas, as well as an exquisite restoration of the historic portions of the theater; and

WHEREAS, in addition to the upgrades to the existing theater, the Cort would construct a 35' wide annex comprising five stories with rehearsal rooms, patron bars as well as ancillary spaces for the production of theater performances (costumes, stage sets, etc.); and

WHEREAS, the restoration, upgrades and new construction have all been reviewed by Community Board Five and the Landmarks Preservation Commission in 2018 and have been deemed harmonious with the existing landmark, and have been deemed substantial as they would improve the theater's suitability for use as a legitimate theater; and

WHEREAS, the Cort Theatre and Clarity 47 hotel application is seeking a bonus FAR special permit for theatre rehabilitation and Zoning Text Amendments that would allow for a 530 ft tall, 264,000 SF hotel to be built on a lot that is 12,050.40 SF; and

WHEREAS, the two applicants merged their respective lots with six other adjacent lots to form a single zoning lot that totals 47,050 sf; and

WHEREAS, the merged lot is split between two zoning district, C6-7T and C6-5.5; and

WHEREAS, the C6-7T side of the zoning lot has a maximum permitted FAR of 14, and a 20% bonus would be 2.8 for a total maximum bonusable FAR of 16.8 permitted on this side of the lot; and

WHEREAS, the C6-5.5 side of the zoning lot has a maximum permitted FAR of 12, and a 20% bonus would be 2.4 for a total maximum bonusable FAR of 14.4 permitted on this side of the lot; and

WHEREAS, this bulk increase and massing is being proposed through the following mechanisms: substantial rehabilitation of the Cort theater, a zoning lot merger of 8 lots that would receive a theatre rehabilitation bonus that is within 20% of the merged zoning lot's permitted FAR (per ZR section 81-745b), and shifting bulk generated from the high density zoning district (C6-7T) to the low density side (C6-5.5) on a split lot; and

WHEREAS, this equals a bonus of 33,741.23 sf for the C6-7T side of the zoning lot and 85,556.71 sf for the C6-5.5 side, which equals a total bonus of 117,625 sf generated by the substantial rehabilitation of the Cort theatre; and

WHEREAS, the applicants would like to mass the entire bonus floor area on only one lot out of the eight merged lots, which is lot 11, the 12,050.40 sf hotel lot, which is in a C6-5.5 zoning district, on the lower permitted density side of the merged zoning lot; and

WHEREAS, the applicants are seeking a Zoning Text Amendment that would allow bonus floor area granted for the substantial rehabilitation of a listed theater to be utilized anywhere on the zoning lot, without regard to the location of zoning district boundaries on a split lot; and

WHEREAS, the applicants are asking for the 33,741.23 sf bonus generated on the C6-7T side to be used on the C6-5.5 side because the existing buildings in the C6-7T district do not have any use for bonus FAR; and

WHEREAS, Community Board Five is weary of lot mergers that receive a bonus based on the total zoning lot size and then shifting bulk generated by the higher density side to the lower density side on a split lot, and believes this type of development goes against the purpose of the Zoning Resolution; and

WHEREAS, the C6-5.5 zoning district is located mid-block for the purpose of lower bulk and density along the streets and C6-7T zoning district is located at the ends of the block because higher bulk and density is deemed more appropriate for the avenues that are significantly wider than the streets; and

WHEREAS, Community Board Five is concerned that a large number of recent developments in our district have severely impacted the available light on our street, casting shadows and blocking sunlight; and

WHEREAS, the proposed Zoning Text Amendment, would add the following language (Matter in underline is new, to be added.):

Such bonus #floor area# shall not exceed 20 percent of the basic maximum #floor area# permitted on the #zoning lot# containing the #development# or #enlargement# by the regulations of the underlying district, except that in the case of an underlying C6-4, C6-5 or M1-6 District, the bonus #floor area# shall not exceed 44 percent of the basic maximum #floor area# permitted in such underlying district, and except that in the case

of a #zoning lot# located wholly or partially in a C6-5.5 District, the Commission may allow #bonus floor area# to be utilized anywhere on the #zoning lot#., and

WHEREAS, the Zoning Text Amendment, as written, would only apply to this specific merged lot and would not permit any density shift along split lots lines on other lots, in the Theater subdistrict or elsewhere in New York City; and

WHEREAS, to make it even more specific, the language of the Zoning Text Amendment should specifically refer to C6-7T District as being the only instance where such exception can be made; and

WHEREAS, Community Board Five recognizes that the theater industry, a cultural institution with great public benefit, has been tremendously impacted by COVID-19, and has suffered tremendous financial loss; and in regards to the exceptional circumstances, and given the extensive upgrades done to the theater as part of this application, is willing to grant an exception to the split lot rule for this application due to the extreme circumstance faced by theater operators; and

WHEREAS, Community Board Five does not want bulk shifting from one district to the other to be a precedent for future developments and is only considering this application because of the exceptional and dire times caused by COVID-19 pandemic; and

WHEREAS, the Times Square Alliance, The New York Landmarks Conservancy, the Partnership for New York City, and The Broadway League, have all written letters expressing support for this initiative including affirming that "The COVID-19 pandemic has devastated the New York City's Theater industry. It is most helpful that Shubert is making a private investment in the future of theater with the Cort project" and "The Cort Theatre currently faces a variety of challenges that make it difficult to accommodate audiences such as lack of accessibility for the mobility impaired" and "the expansion and rehabilitation project is necessary for the Cort Theatre to remain viable" and "Last year, Broadway contributed \$14.8 Billion to New York City's economy and fueled local restaurants, parking garages, and retail shops"; and

WHEREAS, the Hotel Trades Council is opposed to this application because the Clarity Hotel 47 is part of a hotel group that does not use union labor for its operations as well as for the construction of its hotels, and this permit should only be granted if Clarity Hotel 47 agrees to use union labor; and

Therefore, be it Resolved, Community Board Five approves the Cort Theatre application with the following conditions:

- The proposed Zoning Text Amendment “and except that in the case of a #zoning lot# located wholly or partially in a C6-5.5 District, the Commission may allow #bonus floor area# to be utilized anywhere on the #zoning lot#” to be more restrictive and to read “and except that in the case of a #zoning lot# split between a C6-7T and a C6-5.5 District, the Commission may allow #bonus floor area# to be utilized anywhere on the #zoning lot#”
- The following language shall be left unaltered: “Substantial rehabilitation work qualifying for a #floor area# bonus shall consist of major interior structural changes for the purpose of improving a theater’s design and its commercial viability for legitimate theater #use#, or historic restoration of the interior of a theater designated as an interior landmark.” The word “Interior” shall not be stricken in ZR Section 81-745(a)(2) under the Qualification of Substantial Rehabilitation as

Community Board Five believes that the interior work of the new annex applies to the existing text for the qualification for the rehabilitation bonus.

- Clarity Hotel 47 must agree to use union labor for the construction of the new hotel as well as the operation of the new hotel.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Layla Law-Gisiko
Acting Chair, Land Use, Housing and Zoning Committee



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

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

November 12, 2020

**Recommendation on ULURP Application No. N200124ZRM
Cort Theater
By Cort Theater LLC and Clarity Hotel LLC**

PROPOSED ACTIONS

Cort Theatre LLC (the “Applicant”) is seeking approval for the following land use actions:

- Special permit pursuant to Section 81-745 of the Zoning Resolution (ZR § 81-745) to allow a floor area bonus in exchange for a substantial rehabilitation of a listed theater; and
- Amendment to ZR § 81-745 that will:
 - Allow the bonus floor area to be used within the boundaries of a zoning lot, if that zoning lot is partially located in a C6-5.5 zoning district; and
 - Allow exterior work to qualify as rehabilitation work.

The applicant proposes to renovate the Cort Theatre, a 107-year-old theater located at 138 West 48th Street. The floor area bonus generated by the rehabilitation work would be used by a development site located at 145 West 47th Street, a proposed 49 story, 650 key hotel.

Section 81-745 of the Zoning Resolution outlines a list of requirements that must be met in accordance with the floor area bonus special permit¹:

(1) Location of development

The development or enlargement for which a theater rehabilitation bonus is granted is located on the same zoning lot as the “listed theater.”

(2) Qualification of substantial rehabilitation

Substantial rehabilitation work qualifying for a floor area bonus shall consist of major interior structural changes for the purpose of improving a theater’s design and its commercial viability for legitimate theater use, or historic restoration of the interior of a theater designated as an interior landmark.

¹ [ZR 81-745](#). Last amended February 2, 2011.

Substantial rehabilitation may include, without limitations, such work as expanding stage wings, re-raking the orchestra, increasing rehearsal, dressing room or lobby space, or historic restoration. It may also include reconversion to legitimate theater use of an original legitimate theater currently in other use. Substantial rehabilitation does not mean normal theater maintenance, painting or improvements to mechanical systems alone.

(3) Timing and commitment

(i) there shall be a contractual commitment or commitments for the construction work involved in the substantial rehabilitation;

(ii) the requirements of Section 81-743 (Required assurances for continuance of legitimate theater use) shall be satisfied; and

(iii) a rehabilitation bonus shall not be granted for a substantial rehabilitation completed before May 13, 1982.

BACKGROUND

Special Midtown District (1982)

The Special Midtown District was created in 1982 “to encourage the growth of Midtown to the west and south, and to ease development pressures on its congested, highly-developed East Side core.”²

The District generally extends from East/West 31st Street to East/West 60th Street between Third and Eighth Avenues. It includes a Preservation Area located in the midblock from West 53rd Street to West 57th Street between Fifth Avenue and Avenue of the Americas.

Theater Subdistrict (1967)

In 1967, the Theater Subdistrict was established with the goal of supporting the entertainment industry in the area—particularly as midtown office development loomed westward. The Subdistrict was created to ensure “long term preservation of Broadway theaters and... development that would support Broadway theaters and complement the scale and character of the Subdistrict ...[and] provide a framework for the orderly growth and development of Eighth Avenue between 42nd and 56th Streets.”³ In 1982 the Theater Subdistrict was included within the Special Midtown District.

The Theater Subdistrict is mapped between West 57th and 40th Streets, between Avenue of the Americas and 150 feet west of Eighth Avenue. In 1998, a zoning text amendment introduced a provision for “listed” theaters to transfer their development rights within the subdistrict in

² [City Planning Commission. N 820253 ZRM. March 16, 1982.](#)

³ [City Planning Commission. N 980271 ZRM. June 3, 1998.](#)

exchange for preserving their theater building. Today, the Subdistrict offers the following provisions for “listed” and landmarked theaters:

- ZR § 81-744, which allows listed theaters to transfer development rights across the Subdistrict in exchange for preservation a theater, “continuance of legitimate theater use” and a contribution to the Theater Subdistrict Fund.
- ZR § 81-745, which allows listed theaters to generate a floor area bonus in exchange for “substantial rehabilitation” of the theater; and
- ZR § 81-747, which allows landmarked theaters to transfer development rights in exchange for preserving the theater and adoption of a continuing maintenance plan.

Theater Subdistrict Fund was established in 1998 with the goal of preserving and promoting the theaters in the area. There are currently 46 listed theaters in the subdistrict.⁴ To date, 13 theaters transferred development rights pursuant to ZR § 81-744 and have transferred their development right to 13 different development sites. These transactions total 596,698 square feet and have resulted in \$9,616,801 for the Theater Subdistrict Fund.⁵ Additionally, there have been two theaters that have generated floor area bonuses pursuant to ZR § 81-745.

Certificate of Appropriateness

In 2018, the Cort Theatre received a Certificate for Appropriateness for its proposed rehabilitation, including a five story annex.

Other Zoning Controls

The Zoning Resolution does not allow floor area bonuses to be transferred across zoning district boundaries.

PROPOSED DEVELOPMENT

Area Context

The Midtown Special District is characterized by high rise office development. The area, which sees millions of tourists every year, plays an integral role in the economy of the New York metropolitan area. The Theater Subdistrict is distinct with its many theater buildings, which in the 2018-2019 season attracted over 14 million audience members—the majority of whom went to musicals.⁶ Broadway theaters have been closed since March 2020 due to the COVID-19 pandemic.

The area is well served by public transit. The site is less than a block away from the 47-50 Streets Rockefeller Center Subway station, which offers service to the B, D, F, and M lines. The 49th Street Subway station, also less than a block away, offers service to the N, Q, R, and W lines, while an entrance to the Times Square – 42nd Street Subway station is four blocks to the

⁴ <https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/theater-subdistrict/presentation-032816.pdf>

⁵ [NYC DCP: Completed Theater Subdistrict Transfers](#)

⁶ [The Broadway League.](#)

south and offers service to the A, C, E, N, Q, R, W, 1, 2, 3, 7, and the crosstown shuttle train. Bus service is also available, including north and south bound service via the M5 and M7 buses. Crosstown bus service is available via the M50 and M42 buses.

Site Description

The Cort Theater and the proposed hotel that will benefit from the floor area bonus are located between West 47th and West 48th Streets and 6th and 7th Avenues. The two are located on a single zoning lot that also includes a proposed 34 story, 974 key hotel that is being built as-of-right at 150 West 48th Street and an existing nine story, 200 key hotel at 157 West 47th Street.

The zoning lot as it exists today was merged in 2019. It is located in two different zoning districts: a C6-7T district which allows base FAR of 14.0 and a bonused FAR of 16.8; and a C6-5.5 district, which allows a base FAR of 12.0 and a bonused FAR of 14.4. The proposed hotel that would receive the floor area bonus that is the subject of this application is located solely within the C6-5.5 district.

Cort Theatre Improvements

The theater rehabilitation will include improvement to the front of house as well as back of house. These improvements will allow the theater, which was initially constructed only to show plays, to properly accommodate music productions. A five story annex is proposed to the west of the theater and will increase the amount of space, allowing for better circulation and improved amenities for audiences. The renovated theater will also include ADA restrooms, which are not currently available to audience members.

Proposed Hotel

The proposed hotel at 145 West 47th Street will contain approximately 263,903 square feet of zoning floor area. Approximately 119,298 of those square feet will be generated from the rehabilitation of Cort Theater. The hotel will include 650 rooms and will rise to 49 stories and approximately 530 feet. The base of the building will be approximately 78 feet in height.

COMMUNITY BOARD RESOLUTION

Manhattan Community Board 5 held two hearings on the application. The first hearing took place on September 2, 2020, and the second on September 30, 2020. During the hearings, Board members expressed overall support for the project and the planned improvements for the Cort Theater. However, the Board also noted concerns about the applicability of the proposed zoning text amendment. In particular, members were concerned that the text might not be restrictive enough to ensure that another project would not be able to transfer floor area bonus across zoning district boundaries. Members also argued that the removal of the word “interior” in the rehabilitation work clause was not necessary, and that the proposed annex could qualify as a “major interior structural change”.

At the September 30, 2020 hearing, a representative from the Hotel Trades Council testified in opposition to the application, noting that RIU Hotels elected not to hire union labor for the construction or operation of their proposed hotel.

On October 9, 2020, the Community Board submitted a recommendation in support of the application but conditioned its approval on the Applicant satisfying the following requests:

- Modify the proposed zoning text amendment so that the floor area bonus can be applied to a zoning lot that is located in a C6-5.5 *and* a C6-7T district;⁷
- Modify the proposed zoning text amendment so that rehabilitation work, as defined in the zoning provision, *only* include “major interior structural changes”; and
- That the hotel agrees to hire union workers for both the construction and operation of their building.

BOROUGH PRESIDENT’S COMMENTS

This ULURP application is the first one that my office has evaluated since the ULURP pipeline was paused due to the COVID-19 pandemic. Since that time, the economic fallout has resulted in wage losses for nearly half of New York City workers. 1.3-1.4 million city residents receive unemployment benefits, and as of September 2020, employment in the city was still down more than 600,000 jobs from a year before, according to the NYS Labor Department.

New York City had tried to insulate itself from major downturns by shifting from tying its fortunes to the rise and fall of Wall Street. A thriving tech sector, a booming real estate industry, being globally oriented, and waves of tourists had helped Broadway, hotels and restaurants prosper. But now that tourists are staying away and office workers have not returned in great numbers, the effort that made the city prosper has led to a recovery that may be slower than that of the nation.

I believe, however, that this project has the potential to contribute significantly to a continuing revival of the construction industry and the city’s desire to attract tourism through the enhancement of the theater industry.

The renovation of the Cort Theatre will bring much welcomed improvements that will ensure its financial viability. I also believe that the improvements that are proposed as part of this application meet the findings outlined in the Zoning Resolution concerning substantial rehabilitation and continuance of the Cort Theatre as a “legitimate theater”. Furthermore, while I am certain that the applicant will benefit from new, modern interiors, I have recommended that the Shubert Organization honor the history of the Cort by providing a public display of historic photographs of the original interior and exterior, as well as memorabilia of historic performances or artists who graced the stage of the Cort.

⁷ The proposed zoning text amendment only applies to zoning lots located in C6-5.5 districts.

While I have concerns about additional hotel development in an area that already has many others, the developer, RIU, will be serving as its operator, increasing the likelihood that the hotel goes online as soon as construction is completed. I am, however, concerned about the absence of union jobs provided as part of the construction and operation of the building.

The density of the proposed hotel is contextual with the buildings in the area. While some theaters are lower scale, there are many high rise buildings, including a 440-foot office building at 1211 6th Avenue and another office tower at 701 7th Avenue that is 516 feet in height.

The proposed text amendment would apply to 5 other theaters within the Theater Subdistrict. However, they are all either overbuilt or currently under renovation:

- The Palace Theatre, which is currently under renovation;
- Lyceum Theatre, which is substantially overbuilt;
- Hudson Theatre, which is substantially overbuilt;
- Belasco Theatre, which is substantially overbuilt; and
- Stephen Sondheim Theatre which is also substantially overbuilt.

BOROUGH PRESIDENT'S RECOMMENDATION

I therefore recommend **approval of the application with the following conditions:**

- That the applicant agree to the requests made by Manhattan Community Board 5.



Gale A. Brewer
Manhattan Borough President