



CITY PLANNING COMMISSION

August 9, 2006/Calendar No. 18

N 060433 ZRM

IN THE MATTER OF an application submitted by SJP Residential Properties pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York relating to Article VIII, Chapter 1, Article VIII, Chapter 7 and Article IX Chapter 6, concerning Sections 81-21 (Floor Area Ratio Regulations), 81-71 (General Provisions), 81-741 (General provisions), 81-744 (Transfer of development rights from listed theaters) and 96-101 (Floor area regulations) to clarify theater transfer provisions in Community District 4 and Community District 5, Borough of Manhattan.

The application for an amendment of the Zoning Resolution was filed by SJP Residential Properties on April 12, 2006. The text amendment would allow a portion of the Martin Beck/Al Hirschfeld Theater located outside of the Theater Subdistrict to be considered a granting site for transfers of development rights pursuant to Section 81-744 of the Zoning Resolution and clarify floor area ratio provisions in connection with transfers of development rights from the theater's zoning lot.

RELATED ACTIONS

In addition to the amendment of the Zoning Resolution which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

C 060434 ZSM	Special Permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution for an attended public parking garage with a maximum capacity of 101 spaces.
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BACKGROUND

SJP Residential Properties proposes a zoning text amendment that would allow the portion of the Martin Beck/Al Hirschfeld Theater (Block 1035, Lot 37) located outside of the Theater Subdistrict of the Special Midtown District to be considered a granting site eligible to transfer unused development rights pursuant to Section 81-744 of the Zoning Resolution. The applicant also seeks a special permit for a 101-space public parking garage in the cellar and subcellar levels of a proposed residential building to be constructed on the northeast corner of Eighth Avenue and West 46th Street. The applicant has also filed for an authorization (N 060435 ZAM) to transfer 28,901 square feet of unused development rights from the theater to the Eighth Avenue and West 46th Street site pursuant to the zoning text as proposed for amendment. The application for an authorization is currently pending before the Commission.

The Theater Subdistrict of the Special Midtown District was created to preserve and protect the cultural, theatrical and entertainment character of the area generally bounded by Eighth Avenue, West 57th Street, Sixth Avenue and West 40th Street. In addition to prescribing controls on ground floor uses, signage and bulk, Theater Subdistrict regulations allow unused floor area to be transferred from 46 Broadway theaters listed in the Zoning Resolution to receiving sites within the Subdistrict by Commission certification pursuant to Section 81-744(a). Floor area may also be transferred by authorization pursuant to Section 81-744(b) from “listed theaters” to receiving sites located within the Eighth Avenue Corridor of the Theater Subdistrict, which covers the east side of Eighth Avenue from West 43rd Street to West 56th Street to a depth of 100 feet and the west side of the Avenue between West 42nd and West 45th streets to a depth of 150 feet. In connection with a transfer of development rights pursuant to Section 81-744, the associated listed theater must be

maintained in good condition and preserved for theatrical use throughout the life of the related development.

The 1300-seat Martin Beck Theater, renamed the Al Hirschfeld Theater in 2003, is a New York City Landmark and is located on the south side of West 45th Street, 100 feet west of Eighth Avenue. It is the only listed theater that lies west of Eighth Avenue. The theater's zoning lot is split by two zoning districts. The easternmost 50 feet of the zoning lot lies in a C6-4 (10.0 FAR) district that is within the Theater Subdistrict and the Special Clinton District. All of the unused floor area at this portion of the theater zoning lot was transferred through two certifications (N 060393 ZCM and N 060414 ZCM) pursuant to Section 81-744(a). These certifications were approved by the Commission on May 22, 2006 and June 19, 2006, respectively. One of those certifications (N 060393 ZCM) transferred floor area to the same receiving site that is the subject of the authorization (N 060435 ZAM) currently under the Commission's review.

The westernmost 83 feet of the property is zoned C6-2 and lies within the Preservation Area of the Special Clinton District but outside of the Special Midtown District and the Theater Subdistrict. C6-2 districts generally allow a residential FAR of 6.02, but the FAR of new developments within the Preservation Area is limited to 4.2 FAR. Currently, floor area cannot be transferred through Theater Subdistrict provisions from this portion of the zoning lot. The Martin Beck/Al Hirschfeld zoning lot is the only listed theater property with unused development rights that cannot be transferred through the current Theater Subdistrict regulations.

Proposed Actions

Text Amendment (N 060433 ZRM)

The applicant proposes amending Sections 81-21, 81-71 and 81-74 (Special Midtown District provisions) and Section 96-101 (a Special Clinton District provision) of the Zoning Resolution to bring the Martin Beck/Al Hirschfeld Theater in line with the other 45 listed theaters by allowing development rights to be transferred from the theater's entire zoning lot. The text change would allow unused floor area to be transferred from the portion of the theater located outside of the Theater Subdistrict to eligible receiving sites.

Although this portion of the theater is zoned C6-2, Special Clinton District Preservation Area regulations limit the FAR of new development at this portion of the theater zoning lot to 4.2. Under the proposed zoning text amendment, the C6-2 portion of the theater would become a granting site with 6.02 FAR for transfers pursuant to Section 81-744, thereby increasing the amount of unused development rights on this portion of the zoning lot from 22,155 to 37,384 square feet, but only for purposes of development rights transfers.

The text amendment would allow the applicant to apply for an authorization to transfer 28,901 square feet of floor area from the Martin Beck/Al Hirschfeld Theater to the Eighth Avenue and West 46th Street receiving site where the applicant would construct a 43-story residential building with ground floor retail space. In order to grant the authorization, the Commission would have to make two findings that exist in Section 81-744(b) relating to light and air to surrounding buildings and open space, and the relationship of the proposed development to the general purposes of the Theater Subdistrict.

Special Permit (C 060434 ZSM)

SJP Residential Properties also requests a special permit pursuant to Sections 13-562 and 74-52 for a 19,270-square foot, 101-space public parking garage in the ground floor, cellar and subcellar levels of the proposed building at 750 Eighth Avenue located on the northeast corner of Eighth Avenue and West 46th Street (Block 1018, Lots 1, 3 and 57). The garage would be entered via a 23-foot curb cut on eastbound West 46th Street, a 60-foot wide, one-way street. The curb cut would be located at the easternmost portion of the development site, 100 feet east of Eighth Avenue. A two-way ramp, 20 feet in width, would provide access between the street and the cellar level. The garage would be fully attended and would provide 10 reservoir spaces. 32 stackers at the subcellar level would allow the garage to hold a maximum of 101 spaces. In order to approve the special permit, the Commission must make findings relating to compatibility with area uses, traffic congestion, impact on local streets in residential areas, pedestrian flow and reservoir spaces.

ENVIRONMENTAL REVIEW

This application (N 060433 ZRM), in conjunction with the application for the related action (C 060434 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 City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 06DCP093M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Revised Negative Declaration was issued on August 9, 2006.

PUBLIC REVIEW

This application (N 060433 ZRM) was referred to Community Board 4, Community Board 5, the Borough Board and the Borough President on April 24, 2006 for information and review in accordance with the procedure for referring non-ULURP matters.

Community Board Review

Community Board 4 held a public hearing on the application (N 060433 ZRM) on May 10, 2006, and on that day, by a vote of 32 to zero with one abstention, adopted a resolution recommending approval of the application with the following condition:

“...that the zoning text is further amended to exclude ‘receiving sites’ that are simultaneously in the Special Clinton District and the Theater Subdistrict.”

Community Board 5 held a public hearing on the application (N 060433 ZRM) on May 11, 2006, and on that day, by a vote of 27 to ten with one abstention, adopted a resolution recommending approval of the application.

Borough Board Recommendation

The Borough Board did not issue a recommendation concerning the application.

Borough President's Recommendation

This application was considered by the Borough President, who issued a recommendation on June 26, 2006 approving the application with the following conditions:

“To ensure that the goals of the Special Clinton District are not undermined, the text amendment should make it clear that the transferred density cannot be used anywhere in the Special Clinton District, including areas that overlap with the Theater Subdistrict.”

City Planning Commission Public Hearing

On June 21, 2006 (Calendar No. 6), the City Planning Commission scheduled July 12, 2006 for a public hearing on this application (N 060433 ZRM). The hearing was duly held on July 12, 2006 (Calendar No. 30) in conjunction with the public hearing on the related action (C 060434 ZSM). Five speakers spoke in favor of the application and related application, and none spoke in opposition.

The Borough President’s Director of Land Use discussed the Borough President’s recommendation. He explained that it was appropriate to bring the Martin Beck/Al Hirschfeld Theater in line with the other listed theaters of the Theater Subdistrict and discussed the Borough President’s request that transfers of the development rights that would be newly available at the theater be restricted to receiving sites outside of the Special Clinton District. In addition, the representative explained that the Borough President recommended approval of the proposal for a special permit for a public parking garage on the condition that 35 of the proposed 101 spaces be operated as accessory spaces.

A representative of Community Board 4 discussed the Board’s approval of the application, but explained that the approval was conditioned on the Board’s request that the development rights that would be newly permitted for transfer from the Martin Beck/Al Hirschfeld Theater only be permitted for transfer to sites within the Theater Subdistrict that lie outside of the Special Clinton District.

The President of Jujamcyn Theaters spoke in favor of the application and discussed the physical condition and zoning issues at the Martin Beck/Al Hirschfeld Theater. The speaker also recommended that, in response to concerns raised by Community Board 4 and the Borough President, the air rights subject to the text amendment not be permitted for transfer to sites within the Special Clinton District.

The applicant's attorney spoke in favor of the application and discussed the applicant's willingness to restrict the transfer of development rights from the Martin Beck/Al Hirschfeld Theater to sites outside of the Special Clinton District. The representative also discussed the applicant's willingness to restrict 35 of the 101 spaces in the proposed public parking garage to accessory use. The project architect also appeared in favor of the application.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this zoning text amendment (N 060433 ZRM) as modified herein, in conjunction with the related action (C 060434 ZSM), is appropriate.

The Broadway Theater District is one of New York's most important attractions. It contains over 45 Broadway theaters, many hotels, restaurants, stores, cinemas and concert halls. It also has a unique place in New York's cultural history and is irreplaceable in terms of the City's creative capacity. Internationally, Broadway is synonymous with the theater, and the Theater District is one of the best known cultural centers world-wide.

In order to protect, preserve and enhance this concentration of theater-related commerce and culture, the regulations of the Theater Subdistrict of the Special Midtown District allow floor area to be transferred from 46 Broadway theaters to receiving sites within the Theater Subdistrict. In connection with a transfer of theater development rights, the theater owner must enter into an agreement to preserve and maintain the theater in good condition for theatrical use throughout the life of the development that received floor area from the theater.

Zoning Text Amendment (C 060433 ZRM)

The Commission recognizes that because the Martin Beck/Al Hirschfeld Theater is bisected by the boundaries of the Theater Subdistrict, it is treated differently than the Subdistrict's remaining 45 listed theaters. While the other listed theaters are permitted to transfer all of their unused development rights to receiving sites within the Theater Subdistrict, the portion of the theater located outside of the Subdistrict was not made eligible for transfers of development rights. The Commission notes that any transfer of development rights from the theater requires conformance with the obligations of Section 81-743, including the preservation of the theater for legitimate theater use throughout the life of the related development. Without the proposed zoning text amendment, these constraints would be instituted without permitting the theater to transfer all of its unused development rights – a condition to which the other 45 listed theaters are not subjected. The Commission believes it is appropriate to bring the Martin Beck/Al Hirschfeld Theater in line with the other listed theaters and designate all unused floor area at the theater available for transfers pursuant to Section 81-744 of the Zoning Resolution. The Commission also notes that transferring this newly available floor area would facilitate the deposit of additional monies into the Theater Subdistrict Fund.

The portion of the Martin Beck/Al Hirschfeld Theater's zoning lot which lies outside of the Theater Subdistrict is zoned C6-2, which normally allows a residential FAR of 6.02. However, this portion of the theater also lies within the boundaries of the Special Clinton District Preservation Area which limits the FAR of developments in the C6-2 district to 4.2. The Commission believes it is appropriate to allow the C6-2 portion of the theater zoning lot an FAR of 6.02 for the sole purpose of transfers of unused development rights. The Commission notes that the Preservation Area regulations were established to appropriately guide new development within the Preservation Area. Restricting the ability of the Martin Beck/Al Hirschfeld Theater to transfer unused development rights was an unintended consequence of the Preservation Area regulations. The Commission notes that any new development that could one day take place at the theater's zoning lot would still be subject to the Preservation Area FAR regulations. The zoning text amendment would allow 37,384 square feet of floor area to be transferred from the theater zoning lot pursuant to Section 81-744.

The Commission notes concerns raised by Community Board 4 and the Borough President regarding the transfer of newly available development rights at the Martin Beck/Al Hirschfeld Theater to sites within the Theater Subdistrict that also lie within the Special Clinton District. A portion of the Theater Subdistrict extends west of Eighth Avenue to a depth of 150 feet between West 42nd and West 45th streets, overlapping the Special Clinton District. The Commission recognizes the special character of the Clinton neighborhood and notes that the Special Clinton District instituted unique FAR regulations to control new development within the Special District in order to preserve this character. The Commission is therefore modifying the proposed zoning text to allow the floor area newly available at the Martin Beck/Al Hirschfeld Theater for transfers to sites

in the Theater Subdistrict, to be transferred only to sites that are not located within the Special Clinton District.

The Commission is pleased to learn that the Theater Subdistrict Council will be established to administer the Theater Subdistrict Fund. The Commission is also pleased that the Council will have the opportunity to consider a proposal to allocate the initial Theater Subdistrict Fund monies to support programs proposed by the Department of Education that would connect public school students to the Broadway community and support the development of a new generation of theater performers and patrons in all five Boroughs. The Commission notes that other programs may benefit from the Theater Subdistrict Fund monies in the future.

Special Permit for Public Parking Garage (C 060434 ZSM)

The Commission believes that the proposed 101-space public parking garage will be compatible with, and supportive of, the character of the surrounding area. The Commission notes the high demand for public parking generated by nearby theaters, the commercial uses focused around Times Square and the increasing number of residential units found along Eighth Avenue. The Commission notes that the applicant proposes a 286,283-square foot residential building above the proposed public parking garage that would generate demand for spaces in the garage, and that the development will replace a 53-space surface public parking lot. The Commission notes that in response to the Borough President's request, the applicant will reserve 35 of the 101 spaces for occupants of the building. As is the case for accessory parking spaces, these spaces may be offered to members of the public if not used by building occupants. The Commission believes that the

proposed public parking garage will help meet the demand for parking created by the existing entertainment and commercial uses and growing number of residences in the area.

The Commission notes that the Environmental Assessment Statement prepared in connection with this application determined that the garage would generate seven, thirteen and eight vehicle trips, net of the No Build project, during the weekday morning, noon and evening peak hours, respectively.

The Commission believes that the increase in traffic would not contribute to serious congestion or unduly inhibit pedestrians and notes that the applicant will install appropriate striping and signage to alert drivers to pedestrians as they exit the garage. The Commission notes that the EAS indicated that nearby streets can accommodate the trips generated by the garage, and that the nearby streets providing access to the garage are not local streets in residential areas, but are wide avenues surrounded mainly by office and commercial uses and smaller, 60-foot wide commercial streets.

The Commission notes that the garage will provide ten reservoir spaces on the ramp and cellar levels of the garage in order to prevent queuing issues and prevent traffic back-ups that could otherwise be caused by vehicles attempting to enter the garage.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action 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;

* * * indicates where unchanged text appears in the Zoning Resolution

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ARTICLE VIII SPECIAL PURPOSE DISTRICTS

Chapter 1

Special Midtown District

* * *

81-213

Special provisions for transfer of development rights from listed theaters within the Special Clinton District

In C6-2 Districts within the #Special Clinton District#, for #zoning lots# or portions thereof comprised of listed theaters designated in Section 81-742, the City Planning Commission shall allow a transfer of development rights pursuant to Section 81-744 (Transfer of development rights from listed theaters). The basic maximum #floor area ratio# for transfer purposes for such #zoning lots# or portions thereof shall be 6.02.

* * *

81-70

SPECIAL REGULATIONS FOR THEATER SUBDISTRICT

81-71

General Provisions

The regulations of Sections 81-72 to 81-75, inclusive, relating to Special Regulations for the Theater Subdistrict, are applicable only in the Theater Subdistrict, of which the Theater Subdistrict Core and the Eighth Avenue Corridor are parts, except that any listed theater designated in Section 81-742, or

portion thereof, located outside of the Theater Subdistrict shall be deemed to be a "granting site" pursuant to Section 81-744 (Transfer of development rights from listed theaters).

* * *

81-741

General provisions

(a) Certifications

- (1) ~~In the Theater Subdistrict, t~~The transfer of development rights from any ~~eligible theater~~ "granting site" in accordance with the provisions of Section 81-744 (Transfer of development rights from listed theaters) shall be permitted upon certification by the City Planning Commission.
- (2) In the Theater Subdistrict, modifications of the provisions of Article VII, Chapter 7 (Special Provisions for Zoning Lots Divided by District Boundaries), in accordance with the provisions of Section 81-746 (Additional provisions for zoning lots divided by district or subdistrict core boundaries) shall be permitted upon certification of the Chairperson of the City Planning Commission.

(b) Authorizations by the City Planning Commission

~~In the Eighth Avenue Corridor, t~~The transfer of development rights from any ~~eligible theater~~ "granting site" in accordance with the provisions of paragraph (b) of Section 81-744 shall be permitted by authorization by the City Planning Commission.

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81-744

Transfer of development rights from listed theaters

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(a) Transfer of development rights by certification

~~Within the Theater Subdistrict, t~~The City Planning Commission shall allow, by certification, a transfer of development rights from a "granting site" to a "receiving site," except that any "granting site," or portion thereof,

located outside the Theater Subdistrict may not transfer development rights to any portion of a "receiving site" within the Special Clinton District, provided that:

- (1) the maximum amount of #floor area# transferred from a "granting site" is the basic maximum #floor area ratio# established pursuant to Sections 81-211 (Maximum floor area ratio for non-residential or mixed buildings) or 81-213 (Special provisions for transfer of development rights from listed theaters within the Special Clinton District), as applicable, for such #granting site# as if it were undeveloped, less the total #floor area# of all existing #buildings# or portions of #buildings# on the #granting site# and #floor area# attributed to the "granting site" that has been previously used or transferred;
- (2) each transfer, once completed, irrevocably reduces the amount of #floor area# that may be #developed# on the #zoning lot# containing the "granting site" by the amount of #floor area# transferred;
- (3) the maximum amount of #floor area# transferred to a "receiving site" shall not exceed the basic maximum #floor area ratio# established pursuant to Section 81-211 for such #receiving site# by more than 20 percent;

* * *

(b) Transfer of development rights by authorization

~~Within the Theater Subdistrict, t~~ The City Planning Commission shall allow, by authorization, an additional transfer of development rights beyond the amount of #floor area# transfer permitted by certification in paragraph (a) of this Section from a "granting site" to any portion of a "receiving site" located within the Eighth Avenue Corridor, except that any "granting site," or portion thereof, located outside the Theater Subdistrict may not transfer development rights to any portion of a "receiving site" within the Special Clinton District, subject to the following conditions:

* * *

ARTICLE IX - SPECIAL PURPOSE DISTRICTS

Chapter 6 Special Clinton District

* * *

96-101 Floor area regulations

For any #development# or #enlargement# within the Preservation Area, the #floor area ratio# for a #residential#, #commercial# or #community facility building#, or portions of a #mixed building# containing such #uses#, shall not exceed the following:

#Uses#	#Floor Area Ratio#
#Residential buildings# or #community facility buildings# or portions of #mixed buildings# containing #residential# or #community facility uses# in the following Districts:	
R8 C1-45 C2-5 C6-2	4.2
#Commercial buildings# or commercial portion of #mixed buildings# in the following Districts:	
C1-5 C2-5	2.0
C6-2*	4.2

The maximum #floor area# in a #mixed building# shall be the maximum #floor area# permitted for either the commercial portion of such #building# or the community facility portion of such #building# or the #residential# portion of such #building#, as set forth in this Section, whichever permits the greatest amount of #floor area#.

* In C6-2 Districts, for #zoning lots# or portions thereof comprised of listed theaters designated in Section 81-742 of the #Special Midtown District#, the City Planning Commission shall allow a transfer of development rights pursuant to Section 81-744 (Transfer of development rights from listed theaters). The basic maximum #floor area ratio# for transfer purposes for such #zoning lots# or portions thereof shall be 6.02.

The above resolution (N 060433 ZRM), duly adopted by the City Planning Commission on August 9, 2006 (Calendar No. 18), 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 G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,

ALFRED C. CERULLO, III, RICHARD W. EADDY, LISA A. GOMEZ,

CHRISTOPHER KUI, JOHN MEROLO, DOLLY WILLIAMS, Commissioners