

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1794**

Resolution approving the decision of the City Planning Commission on Application No. N 080184 (B) ZRM, the proposed modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 6 (Special Clinton District) (Preconsidered L.U. No. 964), Borough of Manhattan.

By Council Members Katz and Avella

WHEREAS, the City Planning Commission filed with the Council on December 19, 2008 its decision dated December 17, 2008 (the "Decision"), pursuant to Section 201 of the New York City Charter, regarding an application submitted by the Department of City Planning, and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 6 (Special Clinton District), Application No. N 080184 (B) ZRM, Community District 4, Borough of Manhattan (the "Application");

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(1) of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on January 26, 2009;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues for which a Notice of Minor Modification was issued on February 11, 2008 and states the following (CEQR No. 03DCP031M:

A Notice of Minor Modification was issued on February 11, 2008, which determined that the text changes set forth in application N 080184 ZRM would not result in any new or additional significant adverse impact not already set forth in the Final Generic Environmental Impact Statement for the Hudson Yards. A modified Notice of Minor Modifications was issued on June 27, 2008 to reflect Application N 080184(A) ZRM, which does not include proposed amendments to the SCD theater bonus (ZR

Section 96-25). A modified Notice of Minor Modifications was issued on October 27, 2008 to reflect Application N 080184(B) ZRM, which includes the proposed amendments to ZR Section 96-25. The modified Notice of Minor Modifications determined that the text changes set forth in Application N 080184(B) ZRM would not result in any new or additional significant adverse impact not already set forth in the Final Generic Environmental Impact Statement for the Hudson Yards.

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application the Council approves the Decision.

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 .

96-25

Floor Area Bonus for New ~~Legitimate~~ Theater Use

Within Subarea 2 of the 42nd Street Perimeter Area as shown in Appendix A of this Chapter, for #developments# or #enlargements# located within the area bounded by West 42nd Street, Dyer Avenue, West 41st Street and Eleventh Avenue that have fully utilized a #floor area# increase pursuant to Section 23-90 (INCLUSIONARY HOUSING), ~~three additional square feet of #floor area# may be provided for each square foot of new legitimate theater #use#, the #floor area ratio#~~ may be increased from 12.0 to a maximum of 15.0, provided that for every three square feet of bonused #floor area#, one square foot of such bonused #floor area# shall be used for new "performance space", which, for the purposes of this Section 96-25 shall mean space to be used as a legitimate theater or for non-profit performing arts use. Such bonused #floor area# shall be permitted only upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings, after referral for review and receipt of recommendations from the applicable Community Board, that the following conditions shall exist have been met:

- (a) ~~the total #floor area ratio# on the #zoning lot# shall not exceed 15.0;~~
- ~~(b)~~(a) all #floor area# for any performance space for which a bonus is received pursuant to this Section shall be limited to floor space exclusively associated with legitimate theater or non-profit performing arts #use#, including auditorium, orchestra, balconies, stage and theater equipment space, wings, dressing rooms, rehearsal space, lobbies, lounges, ticket offices, rest rooms, and circulation space. Any other use of the bonused performance space shall not comprise more than 25% of the total #floor area# of such performance space;
- ~~(e)~~(b) ~~the theater~~ such performance space shall be designed, arranged and used exclusively for live performances and rehearsals of drama, music or dance and shall have at least ~~99~~ 100 fixed seats and no more than 299 seats. If there is more than one performance space, each shall have at least 100 seats, and adjacent performance spaces may be designed in a manner that allows for their combination into a single performance space provided such combined space has no more than 299 seats. Performance space for which a bonus is received pursuant to this Section shall only be used for non-profit performing arts use provided the #development# or #enlargement# contains at least two performance spaces used exclusively for performances of legitimate theater;
- (c) a letter from the Department of Cultural Affairs shall be submitted certifying that:
- ~~(d)~~(1) a signed lease shall be has been provided from a the prospective theater operator of the performance space, or a written commitment from the owner of the theater performance space if such owner is also the operator, for occupancy of the theater performance space and its operation as a legitimate theater or non-profit performing arts space for a period of not less than five years, pursuant to an operating plan and program therefor;
- (2) the proposed operator of the performance space has the fiscal and managerial capacity to successfully operate such space;
- (3) preliminary design plans have been provided to the Department of Cultural Affairs for the performance space, which include sufficient detail regarding core, shell, structural, and mechanical systems, as necessary to ensure that such performance space will operate efficiently for its intended use, and
- ~~(e)~~(4) a plan and program shall be accompanied by written commitment from such owner of the financial resources available to ensure timely completion of the identified scope of work; a written commitment has been provided ensuring that there are financial resources available for the timely completion of the identified scope of work, and

(5) the proposed operator of the performance space will have a program of regularly scheduled presentations that are open to the public.

~~(f)~~(d) a legal commitment ~~shall be~~ has been provided for inspection and ongoing maintenance of the ~~theater performance space~~ to ensure its continued availability for ~~theater #use#~~ as a legitimate theater or non-profit performing arts space. Such inspection shall be conducted every five years by a licensed engineer or architect, and a report issued to the Chairperson of the City Planning Commission, and the Commissioner of the Department of Cultural Affairs and the applicable Community Board, and ~~notice of such report shall be published in the City Record~~. Such report shall describe the condition of the ~~theater performance space~~ and identify any maintenance or repair work necessary to ensure the physical and operational soundness of the ~~theater performance space~~ and establish a plan and program for such work, including providing that adequate resources be made available to ensure timely completion of such maintenance or repair work; and

~~(g)~~(e) a legal commitment ~~shall be~~ has been provided for continuance of the ~~#use#~~ of all ~~#floor area#~~ in the bonused performance space for which a bonus has been received pursuant to this Section as a legitimate theater or non-profit performing arts space and providing that in the event of a change of operator, as defined by the Commissioner of the Department of Cultural Affairs, the owner or operator shall obtain a new letter certifying that the provisions of subparagraphs (1), (2) and (3) of paragraph (c) of this Section have been met, as to the proposed operator and, where substantial renovation of the performance space, as defined by the Commissioner of the Department of Cultural Affairs, is being proposed in conjunction with the change of operator, that the provisions of subparagraphs (3) and (4) have been met as to such substantial renovation. Any application or submission with respect to a change in operator made pursuant to the provisions of such legal commitment shall be referred to the affected Community Board. The Commissioner of the Department of Cultural Affairs shall not issue a letter with respect to such application prior to forty-five days after such referral. Such legal commitment shall also prohibit #use# as an #adult establishment# for the life of the related #development#.

Such legal commitments shall be in the form of a declaration of restrictions, filed and duly recorded in the Borough Office of the Register of the City of New York, binding upon the owner and any lessee of the theater performance space and their successors and assigns, a certified copy of which shall be submitted to the Chairperson of the City Planning Commission. The filing of such declaration and the posting of any bond or other security required by the Chairperson of the City Planning Commission under the terms of such declaration, and receipt of ~~such~~ a certified copy of such declaration, shall be preconditions to issuance of any building permit, including any foundation or alteration permit, for any ~~#development#~~ or ~~#enlargement#~~.

The owner shall not apply for or accept a temporary certificate of occupancy for that portion of the ~~#development#~~ or ~~#enlargement#~~ identified under the terms of the declaration of restrictions as utilizing the increased ~~#floor area#~~ permitted pursuant to this Section, and the Department of Buildings shall not issue a temporary certificate of occupancy for such portion ~~of the #development#~~ or ~~#enlargement#~~, until the ~~Chairperson~~ Commissioner of the Department of Cultural Affairs has certified that the ~~theater~~ performance space is substantially complete, which shall, for this purpose, mean that such ~~theater~~ performance space is usable by the public.

The owner shall not apply for or accept a permanent certificate of occupancy for ~~such portion of the~~ ~~#development#~~ or ~~#enlargement#~~, nor shall the Department of Buildings issue a permanent certificate of occupancy for ~~such portion~~, the #development# or #enlargement# until the ~~theater~~ performance space has been finally completed in accordance with the approved plans and such final completion has been certified by the ~~Chairperson~~ Commissioner of the Department of Cultural Affairs. The declaration of restrictions shall be noted on any Temporary or Final Certificate of Occupancy for the #building#.

Notwithstanding the foregoing, the Chairperson of the City Planning Commission may accept a declaration of restrictions, or, in the case of a certification issued by the Chairperson of the City Planning Commission prior to [effective date of text amendment], a modified declaration of restrictions, which shall allow the owner to apply for and accept, and the Department of Buildings to issue, temporary and permanent certificates of occupancy for the portion of the #development# or #enlargement# which utilizes the increased #floor area# permitted pursuant to this Section prior to substantial or final completion of the performance space, as the case may be, provided that, under the terms of such declaration of restrictions or modified declaration of restrictions, the owner shall not apply for or accept temporary certificates of occupancy for any such portion of the #development# or #enlargement# unless and until:

(a) the Commissioner of the Department of Cultural Affairs has certified that the core and shell of the performance space has been completed in accordance with a core and shell agreement accepted by the Commissioner; and

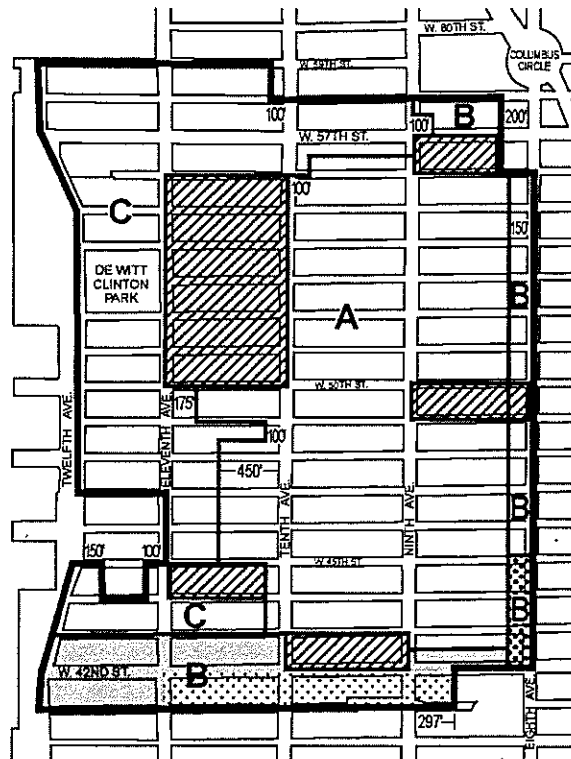
(b) ownership of the performance space has been transferred to the prospective operator. In the event of a transfer of ownership of the performance space, certification pursuant to subparagraph (1) of paragraph (c) of this Section shall not require the provision of the signed lease or written commitment described therein, and the operating plan and program for the performance space shall be provided by the prospective owner.










Any application for certification of a floor area bonus for theater use pursuant to this Section shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan. The Chairperson shall not grant any such certification prior to forty-five days after such

referral.

* * *

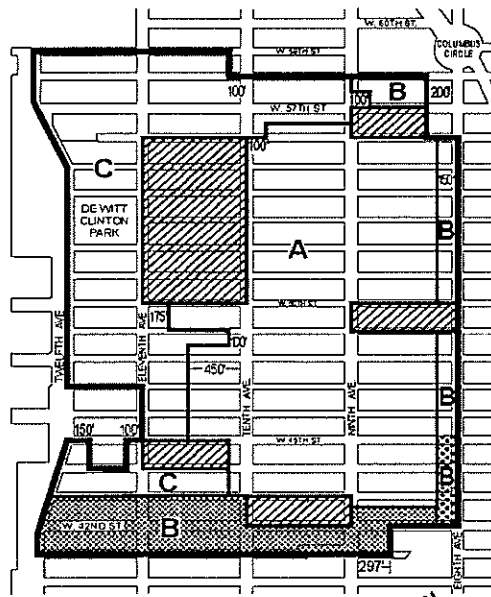
EXISTING MAP
 Special Clinton District



-  Special Clinton District Boundary
-  Area Boundary
-  Preservation Area
-  Perimeter Area
-  Portion of Perimeter Area also subject to Article VIII, Chapter I (Special Midtown District)
-  Subarea 1 of 42nd St. Perimeter Area
-  Subarea 2 of 42nd St. Perimeter Area
-  Other Area
-  Excluded Area

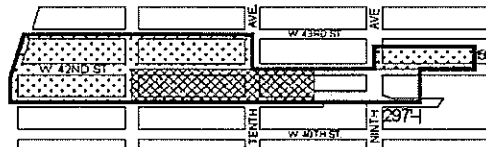
PROPOSED MAP
 Special Clinton District

Special Clinton District



- Special Clinton District Boundary
- Area Boundary
- A** Preservation Area
- B** Perimeter Area
 - Portion of Perimeter Area B also subject to additional 42nd Street Perimeter Area regulations. (See map below)
 - Portion of Perimeter Area B also subject to Article VIII, Chapter I (Special Midtown District)
- C** Other Area
- Excluded Area

42nd Street Perimeter Area



- Subarea 1 of 42nd St. Perimeter Area
- Subarea 2 of 42nd St. Perimeter Area
- Portion of Subarea 2 of 42nd St. Perimeter Area where Theater Bonus applies

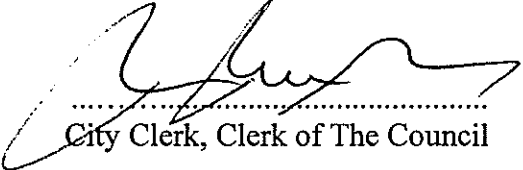
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* * *

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on January 28, 2009, on file in this office.



.....
City Clerk, Clerk of The Council

Michael McSweeney
1st Deputy & Acting City Clerk

THE COUNCIL
JOINT REPORT OF THE LAND USE COMMITTEE
AND THE
SUBCOMMITTEE ON ZONING AND FRANCHISES

Preconsidered L.U. No. 964 (Res. No. 1794)

By Council Members Katz and Avella

SUBJECT

MANHATTAN CB - 4

N 080184 (B) ZRM

City Planning Commission decision approving a revised application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 6 (Special Clinton District).

INTENT

To facilitate the development of theater space within the Special Clinton District.

PUBLIC HEARING

DATE: January 26, 2009

Witnesses in Favor: Two

Witnesses Against: None

SUBCOMMITTEE RECOMMENDATION

DATE: January 26, 2009

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission.

In Favor:	Against:	Abstain:
Avella	None	None
Felder		
Gioia		
Jackson		
Katz		
Seabrook		
Sears		

COMMITTEE ACTION

DATE: January 27, 2009

The Committee recommends that the Council approve the attached resolution.

In Favor:	Against:	Abstain:
Katz	None	None
Rivera		
Avella		
Barron		
Comrie		
Felder		
Gioia		
Jackson		
Liu		
Martinez		
Seabrook		
Sears		
Gonzalez		
Arroyo		

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Cont'd

Dickens

Garodnick

Lappin

Mendez

Ignizio

Oddo