

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

LAND USE SUBCOMMITTEE ON ZONING AND FRANCHISES

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January 26, 2009

Start: 10:03am

Recess: 10:30am

HELD AT: Committee Room
City Hall

B E F O R E:
TONY AVELLA
Chairperson

COUNCIL MEMBERS:
Simcha Felder
Eric N. Gioia
Robert Jackson
Melinda R. Katz
Larry B. Seabrook
Helen Sears
James Sanders, Jr.

A P P E A R A N C E S (CONTINUED)

Dominick Answini
City Planner
Department of City Planning

Anna Levin
Manhattan Community Board 4

Adam Rothkrug
Astoria Boulevard Development, LLC

Marvin Beck
President
Buckwheat and Alfalfa, Inc. DBA Rocking Horse Café

Adrienne Bernard
Counsel
Fried Frank Harris Shriver and Jacobson

Paul Taylor
Architect
Stonehill and Taylor Architects, P.C.

Paul Underhill
Director
Firmdale USA

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2 CHAIRPERSON AVELLA: --doesn't like
3 it, they can complain. I'm going to actually make
4 a note of time when people show up. With that,
5 let's move on to the first item, the Special
6 Clinton District Theatre Bonus Zoning text. We
7 have City Planning here to make the presentation.

8 [Pause]

9 DOMINICK ANSWINI: Yeah, sorry
10 about that. Chair Avella, Chair Katz, Members of
11 the Committee, I'm Dominick Answini, from the
12 Manhattan Office of the Department of City
13 Planning. And today we'll be presenting the
14 proposed amendments to the text of the Special
15 Clinton District that describe the theater bonus.
16 These amendments were first proposed by City
17 Planning with input from the Manhattan Community
18 Board 4 in November of 2007, and were originally
19 part of the Hudson Yards Amendment Package
20 originally passed by Cit Council in September of
21 2008. Due to concerns raised in the public review
22 process however, in June 2008, the Theater Bonus
23 Portion was split from the Hudson Yards Amendment
24 Package for further review. In October of 2008,
25 the Theatre Bonus Amendments were reintroduced

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2 with further changes and passed by the City
3 Planning Commission December 17th, 2008. Both the
4 Community Board and the Manhattan Borough
5 President have issued letters recommending
6 approval subject to their comments, which I will
7 describe. I'd first like to describe for you the
8 original proposed Theater Bonus Amendments, and
9 then the revised October 2008 amendments, and the
10 reasons for and results of these revisions.

11 Looking at the first two maps in your package, you
12 can see that the Theater Bonus is available to
13 sites in a block and a half area between West
14 42nd, West 41st Streets and Dyer Avenue and 11th
15 Avenues. It is in a C6-4 district, which means
16 that the as-of-right FAR is 10 FAR for residential
17 or commercial. This area is bonusable up to 12
18 FAR with an inclusionary housing bonus, and up to
19 15 FAR with this theater bonus. The theater bonus
20 was promulgated in 2005 as part of the amendments
21 creating the special Hudson Yards district, and
22 works as follows: Three square feet of additional
23 floor area, which includes the theater space, can
24 be obtained for each one square foot of new,
25 legitimate theater space provided. The amendments

1 introduced in 2007, and part of this new package,
2 2008 package, include: First clarifying the 3:1
3 ratio; secondly, permitting a bonus to be received
4 for the provision of non-profit performing arts
5 use as well as legitimate theater; including
6 rehearsal space as a theater use that would
7 generate the bonus, but limiting uses not
8 specifically listed in the text to 25% of the
9 space that may generate the bonus; limiting the
10 performance space to at least 100 seats and no
11 more than 299 seats; prohibiting the use of
12 performance space for adult uses; and lastly,
13 creating a role for the Commissioner of the New
14 York City Department of Cultural Affairs to
15 consult with the Chair of City Planning as to the
16 qualifications of the proposed operator of the
17 theater and the sufficiency of the proposed
18 theater design. Now in early 2008, City Planning
19 received an application for the theater bonus from
20 the Related Companies, for a site between Dyer
21 Avenue and 10th Avenues, that is shown on your
22 map. The site is approximately 69,000 square feet
23 and the proposed development would be a mixed-use
24 building of approximately 1.1 million square feet
25

1 with two towers, one residential and one hotel.

2 Related proposed to build the theater space for a
3 theater operator to be established for purposes of
4 occupying the space. However, during the early
5 part of 2008, Related, encouraged by Cultural
6 Affairs, began discussions with the Signature
7 Theater Company for Signature to be the occupant
8 of the space. Signature is a theater company that
9 has been located on 42nd Street for the last 20
10 years and is generally well respected. However,
11 this proposal presented some difficulties.
12

13 Signature had a very specific requirement as to
14 the fit out of the theater space and it became
15 apparent to Related and Signature that the theater
16 space would not be usable by the time the building
17 would be ready to obtain its temporary
18 certificates of occupancy. Now this is a problem,
19 because the Theater Bonus states that TCOs for the
20 bonused space cannot be obtained until the theater
21 space is substantially complete, or as defined in
22 the text, usable by the public. The lag between
23 when Related would need their TCOs and the theater
24 spaces' completion was estimated at between four
25 and ten months, a delay that would be unacceptable

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2 to Related's lenders. Eventually City Planning
3 and Cultural Affairs created an alternative method
4 to ensure that the theater space would be complete
5 and usable by the public, while allowing Related
6 to obtain the TCOs in a manner consistent with its
7 construction schedule. In order for a developer
8 to obtain the TCOs under the proposed new text,
9 first the Commissioner of Cultural Affairs would
10 need to certify that the core and shell of the
11 performance space has been completed in accordance
12 with a core and shell agreement between the
13 developer/applicant and the theater operator that
14 has been accepted by the Commissioner of Cultural
15 Affairs; and secondly, the ownership of the
16 performance space must be transferred to the
17 prospective theater operator. Now other
18 amendments were also added to the text at this
19 time, and these are the amendments that were
20 approved by the City Planning Commission in
21 December of this year. Firstly, the non-profit
22 performing arts use could still be used as-- could
23 still generate the theater bonus, however that is
24 only if the development contained at least two
25 legitimate theaters. Also, the map of the Special

Clinton District would be amended to more clearly show where the theater bonus applies, and that's demonstrated on page 3 of your handout. Also, inspection and ongoing maintenance reports on the performance space must be sent every five years from a licensed engineer or architect to not only the Chair of City Planning, but also to the Commissioner of Cultural Affairs and the local Community Board. To help insure the continuing viability of the theater space, when there is a change in the operator of the performance space, the new operator must obtain a new letter from the Commissioner of Cultural Affairs certifying that the relevant standards, that is the existence of a lease; that the operator has the requisite financial and managerial wherewithal; is met for the new operator. And the proposal for a change in an operator must be referred to the Community Board for comment before the Commissioner of Cultural Affairs makes a decision. Lastly the proposed text would require referral to the Community Board and the local Council Member and the Borough President, any application for this bonus. At this point, according to the text, it's

1 a Chair certification. But this amendment would
2 require a referral for 45 days to the Council
3 Member, the Borough President and also the local
4 community. Now, the City Planning Commission
5 received comments from the Community Board and the
6 Borough President, not only on the original
7 Theater Bonus, but also on the revised October
8 2008 package, recently approved by the City
9 Planning Commission. We believe that the proposed
10 text addresses virtually all the Community Board's
11 and the Borough President's concerns. However,
12 the Community Board and the Borough President did
13 make one recommendation that was not adopted.
14 They both recommended that the new text governing
15 the alternative method for obtaining the TCOs
16 specifically itemize the mechanical systems and
17 the other elements that should be included in the
18 core and shell agreement. City Planning
19 Commission, however, determined that the language
20 of the proposed text requiring that core and shell
21 work be performed under a Core and Shell Agreement
22 acceptable to the Commissioner of Cultural Affairs
23 provides assurance that the core and shell work
24 will be substantial and promote final completion
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1
2 of the theater space while allowing for
3 flexibility. Thank you.

4 CHAIRPERSON AVELLA: This
5 application lies within Speaker Quinn's district.
6 She is in favor of the application. Any
7 questions? Seeing none, thank you.

8 DOMINICK ANSWINI: Thank you.

9 CHAIRPERSON AVELLA: I see no one
10 signed up to speak on this public hearing on this
11 item. Do we? Yes, we do. I'm sorry. Anna Levin
12 from Manhattan Community Board 4.

13 [Pause]

14 CHAIRPERSON AVELLA: Okay, very
15 good. Anybody else? Seeing no one else, I'll
16 close the public hearing on this item. And we
17 will move to the next item on the agenda, which is
18 the Astoria Boulevard Rezoning, C 060021 ZMQ.
19 Application submitted by Astoria Boulevard
20 Development for an amendment of the zoning map,
21 establishing within an existing R4 district a C2-2
22 district, bounded by 24th Avenue and other
23 streets.

24 [Pause]

25 ADAM ROTHKRUG: Thank you. Good

1 morning, Chairmen Avella and Katz and Members of
2 the Committee. I am Adam Rothkrug, I'm here this
3 morning on behalf of Astoria Boulevard
4 Development, LLC, in connection with the rezoning
5 application to establish a C2-2 commercial overlay
6 within an existing R4 zoning district, on an
7 irregular-- what is primarily a triangular
8 property, fronting on Astoria Boulevard, 84th
9 Street, 85th Street and 24th Avenue. The property
10 was historically used as an automotive service
11 station dating back to the 1940s. And in 1961,
12 for some reason, was zoned R4 instead of being
13 zoned with one of the commercial districts that is
14 in this area or in the manufacturing district to
15 which this is adjacent to. The commercial use of
16 the property was discontinued about ten years ago,
17 and it's been in disrepair and vacant since that
18 time. The property is not developable or
19 appropriate for residential use due to its
20 location, its size. It's surrounded by streets
21 and it's adjacent to a heavily-used manufacturing
22 district as well as existing commercial uses and
23 commercial districts that include carwash, gas
24 station, an MTA bus garage and a large warehouse
25

1 building. The C2-2 development will permit
2 development of a one-story retail building of
3 approximately 6,400 square feet, with parking for
4 21 cars. And the parking was-- and the plans were
5 redrawn after last year's amendment to the off-
6 street parking regulations, so that we provide
7 landscaping, bicycle racks and appropriate parking
8 layout. The Community Board was unanimously in
9 support of this and we have the support of the
10 Queens Borough President as well. And finally
11 this property as a former gas station, is subject
12 to an environmental declaration and currently
13 undergoing an environmental cleanup under the
14 auspices of both the New York State DEC and the
15 New York City DEP. But it's found that there was
16 no spread of any petroleum products off of our
17 property, and so the property will be completely
18 cleaned up as part of this action. I'd be happy
19 to answer any questions.

21 CHAIRPERSON AVELLA: I notice on
22 the Community Board recommendation there are a
23 number of things about landscaping. I assume
24 you've agreed to follow the recommendations.

25 ADAM ROTHKRUG: Absolutely. The

1
2 only real issue that's a little out of our control
3 at this time is that the property-- adjacent to
4 our property is a-- this is actually a section of
5 a map street, 84th Street. And upon approval, we
6 have agreed with the Community Board that we would
7 apply to Department of Citywide Administrated
8 Services to try to get a lease for this property,
9 just so we could fence it off and landscape it.
10 Right now it's used for illegal parking of trucks
11 and debris. So that would be a follow up action
12 that we would pursue afterwards.

13 CHAIRPERSON AVELLA: I'm just
14 asking staff, because this application lies within
15 former Council Member Hiram Monserrate's district.
16 I think it's the applicant's feeling that he was
17 in support of the project before he left; however
18 we never officially heard from him. So I mean,
19 the Community Board is in favor of it, so is the
20 Borough President. Any questions from my
21 colleagues?

22 [Off Mic]

23 CHAIRPERSON AVELLA: Good question.
24 Do we have any record of him?

25 ADAM ROTHKRUG: The Councilman did

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2 not testify at any of the hearings, but as I
3 indicated in my written submission, we did meet
4 with the Councilman to present the application and
5 he seemed to be definitely in favor of it. And
6 now we're in this interim period.

7 CHAIRPERSON AVELLA: And looking at
8 the City Planning record, there were two speakers
9 in favor and none in opposition.

10 COUNCIL MEMBER KATZ: I would
11 safely say that if he had a problem with it, he
12 probably would have testified against it, right?

13 CHAIRPERSON AVELLA: Seeing no
14 questions, thank you.

15 ADAM ROTHKRUG: Thank you very
16 much.

17 CHAIRPERSON AVELLA: Is there
18 anyone-- I don't believe there is anyone signed up
19 to speak on this item. Seeing no one, we'll close
20 the public hearing and move on to the next item,
21 which is the Rocking Horse Mexican Café
22 application, 20085462 TCM. Application by Rocking
23 Horse Mexican Café to continue to maintain and
24 operate an unenclosed sidewalk café located at 182
25 8th Avenue.

2 [Pause]

3 CHAIRPERSON AVELLA: Good morning.

4 MARVIN BECK: Good morning

5 Councilman.

6 CHAIRPERSON AVELLA: Push the
7 button.

8 MARVIN BECK: Good morning, Council
9 people. My name is Marvin Beck. I'm the
10 President of the Buckwheat and Alfalfa,
11 Incorporated, DBA Rocking Horse Café.

12 CHAIRPERSON AVELLA: And the
13 application is for?

14 MARVIN BECK: Renewal of our
15 outdoor café.

16 CHAIRPERSON AVELLA: And how many
17 chairs and tables?

18 MARVIN BECK: We have four tables
19 and eight chairs.

20 [Pause]

21 CHAIRPERSON AVELLA: This
22 application is within Speaker Quinn's district.
23 She is in favor of the application. Any
24 questions? Seeing none, thank you.

25 MARVIN BECK: Thank you very much.

2 CHAIRPERSON AVELLA: See? That was
3 easy.

4 [Laughter]

5 MARVIN BECK: That was quick.

6 CHAIRPERSON AVELLA: Is there
7 anyone? I don't believe there's anyone signed up
8 to speak on this item. Is that correct? Good.
9 Okay. We'll close the public hearing on this
10 matter and we move to the last item on the agenda,
11 which is the Crosby Street Hotel, C 080505 ZSM.
12 Application by Crosby Street Hotel, LLC, for the
13 granting of a special permit.

14 [Pause]

15 ADRIENNE BERNARD: Good morning,
16 Chair Avella, Chair Katz, Members of the Council.
17 My name is Adrienne Bernard from Frank, Harris
18 Shriver and Jacobsen, representing the applicant.
19 The application before you this morning seeks a
20 special permit pursuant to zoning resolution
21 section 74 781, to allow retail and hotel uses
22 below the second floor of a new hotel being
23 constructed at 79 Crosby Street. The site is a
24 through block between Crosby and Lafayette Street,
25 and the north and south boundaries are Spring

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2 Street and Prince Street in Manhattan. The hotel
3 is completely as of right above the second floor,
4 as to use, and is completely as of right as to
5 bulk. The only reason that we are here is that
6 M1-5B district in which the building is located
7 prohibits certain uses below the floor level of
8 the second floor. The section of the zoning
9 resolution requires the applicant to show that
10 they've made a good faith effort to market the
11 space below the second floor at a fair market
12 rental, and in our case for at least a year. The
13 applicant has done that. We have listed the space
14 with a broker who is very familiar with the SoHo
15 area. He sent out approximately 2,300
16 notification fliers, periodically. We've
17 advertised in the New York Times, in the Village
18 Voice, and those on a weekly basis, and in
19 alternate weeks in Chinese language newspapers,
20 Shing Tao and the World Journal. We've also
21 notified the City Industrial Space Bank at EDC and
22 various industry groups of the availability of the
23 space. We've been unable to rent the space thus
24 far. The application has been reviewed by various
25 levels of ULURP entities. We got approval from

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2 the Community Board, approval from the Borough
3 President, approval from the City Planning
4 Commission, and we understand that Councilman
5 Gerson is also in favor of the application. We've
6 done extensive community outreach, which I think
7 the community has been very pleased about. The
8 only concerns have been about the operation of the
9 restaurant, which will be addressed by our next
10 speaker. But right now I'd like to introduce the
11 architect for the project, who is Paul Taylor.

12 PAUL TAYLOR: Hello. I'm Paul
13 Taylor, Stonehill and Taylor Architects. I'm
14 going to present a few of the plans, give you an
15 overview of the project.

16 [Pause]

17 PAUL TAYLOR: Okay. This is the
18 first time I've done this. So this plan
19 illustrates the uses on the ground floor within a
20 400-foot radius. If you'll notice, red is the
21 retail use. And we are this gray square here, and
22 we want to be red also, basically, is our
23 application. Okay. This is just a basic section
24 of the building. It's an 11-story building, and I
25 think this will be clearer. This is a front

1
2 elevation on Crosby Street. The typical floors
3 have ten bays, which are either hotel units or
4 combined first suites. As was mentioned, the site
5 goes through back to Lafayette Street, where we
6 have a-- sort of a garden gate entrance. The gate
7 was made, and the fence, low to four feet, in
8 compliance with City Planning's request. And I
9 think at this point I'm going to turn it over to
10 Paul Underhill.

11 PAUL UNDERHILL: Good morning. I'm
12 Paul Underhill, I'm the Director of Firmdale
13 Holdings USA, which is a wholly owned subsidiary
14 of Firmdale Hotels in London.

15 [Off Mic]

16 PAUL UNDERHILL: I'm sorry, yes.
17 Which is owned by Tim and Kit Kemp, who have
18 developed as they say six top boutique hotels in
19 London, and it's intended that this property will
20 emulate the same standards as they have in these
21 other hotels. I'll just give you a brochure, if I
22 may, of the hotels.

23 [Pause]

24 PAUL UNDERHILL: As I was saying,
25 Tim and Kit Kemp have six top boutique hotels in

1
2 London, and they're developing the Crosby Street
3 Hotel in the same format, with 86 keys, and on the
4 lower lobby area, we'd like to recommend having a
5 small restaurant, which is on the ground floor,
6 which has 90 seats, a 12 seat bar and 40 seat
7 patio outside, and the entrance to the hotel lobby
8 and a courtyard between us and the other
9 buildings, which I'll talk about in a minute. On
10 the lower lobby--

11 [Pause]

12 PAUL UNDERHILL: Basically there is
13 a 99-seat screening room, which is used mainly for
14 presentations for guests staying in the hotel and
15 the time it will be used for the public will be
16 the same as in London, where they do on a weekend
17 have a movie in there, which ties in with dining
18 in the restaurant and also staying in the hotel,
19 and two small meeting rooms to support that. On
20 the basement is the services of the hotel, which
21 will be the kitchen, the maids quarters and the
22 laundries, typical type hotel requirements for
23 this type of property. Last January I started a
24 process, along with Mr. Kemp, of reaching out to
25 the community. And over the last year, I'm glad

1
2 to say, that we've had many meetings and an
3 agreement with the majority of the neighbors we've
4 met with, and none against this brokered by the
5 SoHo Alliance. And we have made a number of
6 concessions, which included no public space above
7 the ground floor; restricting any balcony use on
8 the second floor; restricting the courtyard for
9 hotel guests only; closing the restaurant 1:00, no
10 live music in the restaurant; no whistle-blowing
11 for cabs; and down lights on the outside of the
12 building; and closing the outside patio at 11:00
13 at night; and the entrance on Lafayette Street,
14 which had been a concern, at 11:00 at night.

15 We've also had the pleasure of working with the
16 community, with the SoHo Partnership, adding a
17 large amount of landscaping and a commitment to
18 art. We have already commissioned a video art
19 installation by a local artist, Jean Roman,
20 documenting the construction of this project. And
21 we'll, as in the other hotels, be handling a
22 number of pieces of art both locally and also from
23 outside artists. And I request your support in
24 this application, and I can assure you that the
25 commitment to be an added amenity in SoHo, of a

1
2 similar quality to the brochures I've shown you.
3 Thank you.

4 CHAIRPERSON AVELLA: Well thank
5 you. And if the lobby and the restaurant are
6 anything like the pictures, which I'm sure you
7 said they will be, it would be a very nice
8 facility. This project lies within Council Member
9 Gerson's district. He is in support of the
10 application. Council Member Sears has a question.

11 COUNCIL MEMBER SEARS: Thank you
12 and good morning. Just one question, Community
13 Board 2 was raising the issue about noise. The
14 modifications that you just discussed, was that
15 addressing the noise issue for Board 2?

16 PAUL UNDERHILL: Yes, it was.

17 COUNCIL MEMBER SEARS: Okay, thank
18 you.

19 CHAIRPERSON AVELLA: Seeing no
20 other questions, thank you. I don't believe
21 there's anybody signed up to speak on this item.
22 Is that correct? Seeing none, close the public
23 hearing on this item. And I will ask Counsel to
24 call the vote. And if we can go next door and get
25 the Committee Members next door. Chair recommends

approval of all the items.

CHRISTIAN HYLTON: Christian Hylton, Counsel to the Committee. Chairman Avella?

CHAIRPERSON AVELLA: Aye on all.

CHRISTIAN HYLTON: Council Member Felder?

COUNCIL MEMBER FELDER: Yes.

CHRISTIAN HYLTON: Council Member Jackson.

COUNCIL MEMBER JACKSON: Aye on all.

CHRISTIAN HYLTON: Council Member Katz.

COUNCIL MEMBER KATZ: Aye on all.

CHRISTIAN HYLTON: Council Member Sears.

COUNCIL MEMBER SEARS: Aye on all, but just a comment that I think the modification the client has made for the issue raised about noise is the first time I've heard such fine and good concessions, so I applaud you for that. I vote Aye.

CHRISTIAN HYLTON: Council Member

Seabrook.

COUNCIL MEMBER SEABROOK: I vote
Aye.

[Pause]

CHAIRPERSON AVELLA: We're just
holding the vote open for one second. Council
Member Gioia is next door at a hearing.

[Pause]

CHRISTIAN HYLTON: Council Member
Gioia.

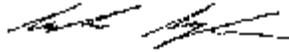
COUNCIL MEMBER GIOIA: Thank you.
I vote yes.

CHRISTIAN HYLTON: By a vote of
seven in the affirmative, none in the negative, no
abstentions, all items are approved and referred
to the full Land Use Committee.

CHAIRPERSON AVELLA: Thank you
everyone. This closes this meeting of the Sub
Committee on Zoning and Franchises.

C E R T I F I C A T E

I, Erika Swyler certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature _____

Date January 29, 2009