



## Legislation Text

File #: Res 2131-2001, Version: \*

### THE COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 2131

Resolution approving the decision of the City Planning Commission on Application No. N 010459 ZRM, an amendment to the text of the Zoning Resolution regarding Article VIII, Chapter 1 (Special Midtown District), adding findings to Section 81-745 (L.U. No. 1214).

By Council Members Eisland and McCaffrey

WHEREAS, the City Planning Commission filed with the Council on October 12, 2001 its decision dated October 10, 2001 (the "Decision"), on the application submitted by Biltmore 47 Associates, LLC, pursuant to Section 201 of the New York City Charter, for an amendment to the text of the Zoning Resolution (Application No. N 010459 ZRM) (the "Application");

WHEREAS, the Application is related to Applications Number C 010460 ZSM (L.U. No. 1215), a special permit pursuant to Section 81-745 of the Zoning Resolution and C 010585 PPM (L.U. No. 1216), disposition of development rights from city-owned property;

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 November 16, 2001;

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 and the Conditional Negative Declaration, issued on April 23, 2001 (CEQR No. 01CDP035M);

#### RESOLVED:

The Council finds that the action described herein will have no significant effect 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; and

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Note: Matter in Graytone 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.  
Underline and Graytone indicates City Council modification

\* \* \* \* \*

81-211

Maximum floor area ratio for non-residential or mixed buildings

(a) For non-#residential buildings# or #mixed buildings#, the basic maximum #floor area ratios# of the underlying districts shall apply as set forth in this Section.

(b) In the #Special Midtown District#, the basic maximum #floor area ratio# on any #zoning lot# may be increased by bonuses or other #floor area# allowances only in accordance with the provisions of this Chapter, and the maximum #floor area ratio# with such additional #floor area# allowances shall in no event exceed the amount set forth for each underlying district in the following table:

MAXIMUM FLOOR AREA ALLOWANCES FOR SPECIFIED FEATURES  
AND MAXIMUM FLOOR AREA RATIOS BY DISTRICTS

Means for Achieving Permit- ted FAR	Maximum #Floor Area Ratio# (FAR)						
	Outside the Grand Central Subdistrict				Grand Central Subdistrict		
Levels on a #Zoning Lot#	C5-2.5 C6-4	C6-4.5 C6-5	C6-5.5 M1-6	C6-6.5	C5-3 C6-6	C6-7	C5-3 C6-6
	C5P				C6-7T		C5-2.5
(i) Basic Maximum FAR	8.0	10.0	12.0	14.0	15.0	12.0	15.0
(1) Maximum As-of-Right #Floor Area# Allowances:(District-wide Incentives), #Urban plaza# (Section 81-23)	---	1.01,2	1.01	---	1.02	---	---
(b) Maximum Total FAR with As-of-Right Incentives	8.0	11.01,2		13.01	14.0	16.0	12.0 15.0
3. Maximum Special Permit #Floor Area# Allowances:(District-wide Incentives), Subway station improvement (Section 74-634)	---	2.01,6	2.41	---	3.0	2.4	3.0
4. Maximum Total FAR with District-wide and As-of-Right Incentives	8.0	12.0	14.4	14.0	18.0	14.4	18.0
5. Maximum As-of-Right #Floor Area# Allowances in Theater Subdistrict: Development rights (FAR) of a "granting site" (Section 81-744)	---	10.0	12.0	14.0	15.0	---	---
Maximum amount of transferable development rights (FAR) from "granting sites" that may be utilized on a "receiving site" (Section 81-744(a))	---	2.0	2.4	2.8	3.0	---	---
Inclusionary Housing (Sections 23-90 and 81-22)	---	2.03	---	---	---	---	---
G. Maximum Total FAR with As-of-Right #Floor Area# Allowances in Theater Subdistrict	---	12.0	14.4	16.8	18.0	---	---
H. Maximum #Floor Area# Allowances by Authorization in Eighth Avenue Corridor (Section 81-744(b))	---	2.4	---	---	---	---	---
(a) Maximum Total FAR with As-of-Right and Theater Subdistrict Authorizations	---	14.4	14.4	16.8	18.0	---	---
(10) Maximum Special Permit #Floor Area# Allowances in Theater Subdistrict: Rehabilitation of "listed theaters" (Section 81-745)	---	4.4	2.4	2.8	3.0	---	---
Maximum amount of transferable development rights (FAR) from "granting sites" that may be utilized on "receiving sites" (Section 81-744(c))							

--- --- --- 2.8 3.0 --- ---

Floor Area for New Legitimate Theater (Section 81-748)

--- --- --- 2.0 2.0 --- ---

K. Maximum Total FAR with Theater Subdistrict Incentives, District-wide Incentives and As-of-Right Incentives

8.0 14.4 14.4 21.616.8 21.616.8 14.4 18.0

L. Maximum FAR of Lots Involving Landmarks:

Maximum FAR of a lot containing non-bonusable landmark (Section 74-711 or as-of-right)

8.0 10.0 12.0 14.0 15.0 12.0 15.0

Development rights (FAR) of a landmark lot for transfer purposes (Section 74-79)

8.0 10.0 13.04 14.0 16.0 12.0 15.0

Maximum amount of transferable development rights (FAR) from landmark #zoning lot# that may be utilized on:

(a) an "adjacent lot" (Section 74-79)

1.6 No Limit No Limit No Limit  
2.0 2.4 2.4

(b) a "receiving lot" (Section 81-634)

--- --- --- --- --- 1.0 1.0

(c) a "receiving lot" (Section 81-635)

--- --- --- --- --- 9.6 6.6

M. Maximum Total FAR of a Lot with Transferred Development Rights from Landmark #Zoning Lot#, Theater Subdistrict Incentives, District-wide Incentives and As-of-Right Incentives

No Limit No Limit No5 Limit  
9.6 14.4 14.4 21.6

[100]Not available for #zoning lots# located wholly within Theater Subdistrict Core.

[100]Not available within the Eighth Avenue Corridor.

[100]Applicable only within that portion of the Theater Subdistrict also located within the Special Clinton District.

[100]12.0 in portion of C6-5.5 District within the Theater Subdistrict Core.

[100]Limited to 21.6 FAR on a "receiving lot" pursuant to Section 81-635 in the Grand Central Subdistrict.

6 Not available on west side of Eighth Avenue within the Eighth Avenue Corridor.

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5/13/82

81-70  
SPECIAL REGULATIONS FOR Theater THEATER SUBDISTRICT

8/6/98

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.

The Theater Subdistrict is bounded by West 57th Street, Avenue of the Americas, West 40th Street, Eighth Avenue, West 42nd Street, a line 150 feet west of Eighth Avenue, West 45th Street and Eighth Avenue.

The Theater Subdistrict Core is bounded by West 50th Street, a line 200 feet west of Avenue of the Americas, West 43rd Street and a line 100 feet east of Eighth Avenue.

The Eighth Avenue Corridor is bounded by West 56th Street, a line 100 feet east of Eighth Avenue, West 43rd Street, Eighth Avenue, West 42nd Street, a line 150 feet west of Eighth Avenue, West 45th Street and Eighth Avenue.

The west side of Eighth Avenue between 42nd and 45th Streets is also subject to the provisions of the Special Clinton District to the extent set forth in Article IX, Chapter 6, subject to Section 81-023 (Applicability of Special Clinton District regulations).

These boundaries are shown on Map 1 (Special Midtown District and Subdistricts) in Appendix A. The regulations of Sections 81-72 to 81-75, inclusive, supplement or modify the regulations of this Chapter applying generally to the #Special Midtown District# of which the Subdistrict is a part.

In order to preserve and protect the character of the Theater Subdistrict as a cultural, theatrical and entertainment showcase as well as to help insure a secure basis for the useful cluster of shops, restaurants and related amusement activities, special incentives and controls are provided for the preservation and rehabilitation of existing theaters, and the creation of new legitimate theaters, and special restrictions are placed on ground floor #uses# within the Subdistrict. In order to preserve and protect the special scale and character of the Theater Subdistrict Core, which includes Times Square, special building #street wall# height and setback controls and requirements for the inclusion of #illuminated signs# and entertainment and entertainment-related #uses# apply within the Subdistrict Core. In order to ensure the orderly growth and development of the Eighth Avenue Corridor and its transition to the scale and character of adjoining midblocks, special building street wall, height and setback controls apply within the Corridor. In order to preserve and maintain the character of the western edge of the Theater Subdistrict as both an integral part of the Theater Subdistrict and as a transition to the Clinton neighborhood, the west side of Eighth Avenue between 42nd and 45th Streets is also subject to the provisions of the Special Clinton District.

\* \* \*

5/13/82

81-74  
Special Incentives and Controls in the Theater Subdistrict

8/6/98

81-741  
General provisions

(a) Certifications

(1) In the Theater Subdistrict, the transfer of development rights from any eligible theater 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, the transfer of development rights from any eligible theater in accordance with the provisions of paragraph (b) of Section 81-744 shall be permitted by authorization by the City Planning Commission

(c) Special Permit by the City Planning Commission

In the Theater Subdistrict, the City Planning Commission may allow, by special permit:

- (1) demolition of a theater where permissible under the provisions of Section 81-742 (Listed theaters);
- (2) transfer of development rights from any eligible theater in accordance with the provisions of Section 81-744;
- (3) a #floor area# bonus for rehabilitation of an existing theater in accordance with the provisions of Section 81-745 (Floor area bonus for rehabilitation of existing theaters); and
- (4)(3) transfer of development rights from a #zoning lot# occupied by a theater that is a designated landmark in accordance with the provisions of Section 81-747 (Transfer of development rights from landmark theaters). ; and
- (5) additional #floor area# and modifications to the special #street wall# and setback regulations set forth in Section 81-751 (Special street wall and setback regulations within the Theater Subdistrict Core) in connection with legitimate theater use within a #development# or #enlargement#, in accordance with the provisions of Section 81-748 (Floor area for new legitimate theaters).

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8/6/98

81-744

Transfer of development rights from listed theaters

For the purposes of the Theater Subdistrict:

A "listed theater" shall mean a theater designated as listed pursuant to Section 81-742 (Listed theaters).

A "granting site" shall mean either a #zoning lot# or that portion of a #zoning lot# occupied by a "listed theater" and comprised of those block and lot numbers specified for such theater pursuant to the table in Section 81-742, as such block and lots existed on January 12, 1998. However, a "granting site" shall not include any #zoning lot# occupied by a "listed theater" located within the geographical area covered by the 42nd Street Development Land Use Improvement Project, adopted by the New York State Urban Development Project in 1984, as such Project has and may be subsequently amended.

A "receiving site" shall mean a #zoning lot# or the portion of a #zoning lot# located within the Theater Subdistrict to which development rights of the "granting site" are transferred. However, no portion of a "receiving site" shall be located within the 42nd Street Development Project Area. In addition, for #zoning lots# containing "listed theaters", that portion of the #zoning lot# occupied by the "listed theater" and comprised of the block and lot numbers specified for such theater pursuant to the table in Section 81-742 shall not be included in the "receiving site."

Any "receiving site" divided by a district boundary or Theater Subdistrict Core boundary may locate bulk in accordance with the provisions of Section 81-746 (Additional provisions for zoning lots divided by district or subdistrict core boundaries).

(a) Transfer of development rights by certification

Within the Theater Subdistrict, the City Planning Commission shall allow, by certification, a transfer of development rights from a "granting site" to a "receiving site," provided that:

- (1) the maximum amount of #floor area# transferred from a "granting site" is the basic maximum #floor area ratio# established pursuant to Section 81-211 (Maximum floor area ratio for non-residential or mixed buildings) 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;
- (4) the provisions of Section 81-743 (Required assurances for continuance of legitimate theater use) are met; and
- (5) appropriate legal documents are executed ensuring that a contribution in an amount equal to ten dollars per square foot of transferred #floor area# be deposited in the Theater Subdistrict Fund established pursuant to paragraph (i) of Section 81-741 (General provisions) at the earlier of either the time of closing on the transfer of development rights pursuant to this Section or the filing for any building permit for any #development# or #enlargement# that anticipates using such development rights.

The City Planning Commission shall review such amount no more than once every three years and no less than once every five years and shall adjust the amount to reflect any change in assessed value of all properties on #zoning lots# wholly within the Theater Subdistrict.

(b) Transfer of development rights by authorization

Within the Theater Subdistrict, 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, subject to the following conditions:

- (1) the maximum amount of such additional #floor area# transfer to that portion of a "receiving site" located within such Corridor shall not exceed the maximum total FAR with as-of-right #floor area# allowances in the Theater Subdistrict set forth in Section 81-211 by more than 20 percent; and
- (2) such transfer complies with the conditions and limitations set forth for the transfer of development rights in paragraph (a) of this Section.

In order to grant such authorization, the City Planning Commission shall find that such #development#:

- (i) relates harmoniously to all structures and open space in its vicinity in terms of scale, location and access to light and air in the area; and
- (ii) serves to enhance or reinforce the general purposes of the Theater Subdistrict.

Any application pursuant to paragraphs (a) and/or (b) of this Section shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan. The Commission shall not grant any such certification or authorization prior to sixty days after such referral and sixty days after the date any reports required to be submitted to the Landmarks Preservation Commission pursuant to Section 81-743, paragraph (b), or the Theater Subdistrict Council pursuant to Section 81-71 (General Provisions) have been so submitted.

(c) Transfer of development rights by special permit

The City Planning Commission may allow, by special permit, an additional transfer of development rights beyond the amount of #floor area# transfer permitted by certification in accordance with paragraph (a) of this Section from a "granting site" to any portion of a "receiving site" located within C5-3, C6-6, C6-7 and C6-7T Districts, subject to the following conditions:

- (1) no feasible transfer of development rights is possible from landmark theaters pursuant to Section 81-747 (Transfer of development rights from landmark theaters) or other landmarks pursuant to Section 74-79 (Transfer of development rights from landmark sites), to the "receiving site";
- (2) the maximum amount of such additional #floor area# transferred to that portion of a "receiving site" located within such districts shall not exceed the basic maximum #floor area ratio# established pursuant to Section 81-211 for such portion of a "receiving site" by more than 20 percent;
- (3) notwithstanding the maximum amount of #floor area# allowed to be transferred pursuant to paragraph (c)(2) of this Section, such transfer complies with the conditions and limitations set forth for the transfer of development rights by certification in paragraph (a) of this Section; and
- (4) any pedestrian circulation space obligation is satisfied by a pedestrian circulation space other than the theater waiting space required by Section 81-451.

In order to grant a special permit, the City Planning Commission shall find that:

- (i) such additional #floor area# will not unduly increase the bulk of any new #development# or #enlargement# on the "receiving site," density of population, or intensity of #use# on any #block# to the detriment of occupants of #buildings# on the #block# or the surrounding area;
- (ii) the distribution and location of such bulk 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; and
- (iii) the resulting #development# will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding areas.

(d) Requirements for Application

An application filed with the Chairperson of the City Planning Commission for the transfer of development rights by certification pursuant to paragraph (a) of this Section, or with the City Planning Commission for the transfer of development rights by authorization or special permit pursuant to paragraph (b) or (c) of this Section, shall be made jointly by the owners of the "granting site" and the "receiving site" and shall

include:

- (1) a site plan and #floor area# zoning calculations for the #granting site# and the #receiving site# and, for authorization and/or special permit applications, any such other information as may be required by the City Planning Commission;
- (2) a copy of the transfer instrument legally sufficient in both form and content to effect such a transfer, together with a notice of the restrictions limiting further #development# of the "granting site" and the "receiving site." The notice of restrictions shall be filed by the owners of the respective lots in the Borough Office of the Register of the City of New York, indexed against the "granting site" and the "receiving site," a certified copy of which shall be submitted to the Chairperson of the City Planning Commission. Receipt of the certified copy shall be a pre-condition to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the "receiving site."

Both the instrument of transfer and the notice of restrictions shall specify the total amount of #floor area# transferred and shall specify, by lot and block numbers, the lots from which and the lots to which such transfer is made.

- (3) demonstrations of compliance with the requirements of Section 81-743 and paragraph (a)(5) of this Section, including all necessary legal documents. Issuance of any building permit, including any foundation or alteration permit, shall be conditioned upon the filing of such legal documents in the Borough Office of the Register of the City of New York and receipt by the City Planning Commission of certified copies of same as required pursuant to Section 81-743.

A separate application shall be filed for each transfer of development rights to an independent "receiving site."

8/6/98

81-745

Floor area bonus for rehabilitation of existing listed theaters

The City Planning Commission may allow, by special permit, bonus #floor area# for substantial rehabilitation or restoration of any theater designated as a "listed theater" pursuant to Section 81-742 (Listed theaters), provided the following conditions are met:

- (a) the #development# for which a theater rehabilitation bonus is granted is located on the same #zoning lot# as the "listed theater";
- (b) substantial rehabilitation will be performed, consisting of major interior structural changes for the purpose of improving the 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. Substantial rehabilitation may include, without limitation, such work as an expansion of stage wings, re-raking of the orchestra, an increase in the amount of rehearsal, dressing room or lobby space, historic restoration, or reconversion to legitimate theater #use# of an original legitimate theater currently in other #use#, but shall not mean normal theater maintenance, painting or improvements to mechanical systems alone;
- (c) the maximum amount of bonus #floor area# shall not exceed the basic maximum #floor area ratio# established pursuant to Section 81-211 (Maximum floor area ratio for non-residential or mixed buildings) for the #zoning lot# by more than 20 percent or, for #zoning lots# located in C6-4, C6-5 or M1-6 Districts, by more than 44 percent;
- (d) there shall be a contractual commitment or commitments for the construction work involved in the substantial rehabilitation;
- (e) the provisions of Section 81-743 (Required assurances for continuance of legitimate theater use) are met; and
- (f) no rehabilitation bonus shall be granted for a substantial rehabilitation completed before May 13, 1982.

In order to grant the special permit, the Commission shall make the following findings:

- (1) the proposed rehabilitation will improve the theater's suitability for #use# as a legitimate theater;
- (2) the proposed rehabilitation will contribute toward satisfying the needs of the Theater Subdistrict;
- (3) the bonus #floor area# will not unduly increase the bulk of any new #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) 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.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding areas.

For purposes of applying the provisions of Section 11-42 (Lapse of Authorization or Special Permit by the City Planning Commission Pursuant

to the 1961 Zoning Resolution) to a special permit granted pursuant to this Section, "substantial construction" shall mean substantial rehabilitation, as described in paragraph (b) of this Section, of the subject theater for which a #floor area# bonus has been granted to a related #development#.

#### 81-745

##### Floor area bonus for rehabilitation of existing listed theaters

The Commission by special permit may authorize bonus #floor area# for substantial rehabilitation or restoration of any theater listed as a listed theater in Section 81-742 (Listed Theaters), in accordance with the provisions of this Section.

#### (a) Conditions for rehabilitation bonus

As a condition for the issuance of a special permit under the provisions of this Section, the following requirements shall be satisfied:

##### (1) Location of development

The #development# for which a theater rehabilitation bonus is granted shall be 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 which has been designated as an interior landmark.

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;

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

##### (b) Amount of rehabilitation bonus

The amount of bonus #floor area# granted for a qualifying theater rehabilitation shall be at the discretion of the City Planning Commission after consideration of the following findings by the Commission:

(1) how and to what extent the proposed rehabilitation will improve the theater's suitability for #use# as a legitimate theater;

(2) how the proposed rehabilitation will contribute toward satisfying the needs of the Theater Subdistrict.

(3) whether the bonus #floor area# will unduly increase the bulk of any new #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) whether the distribution and location of such #floor area# bonus will adversely affect the surrounding area by restricting light and air or otherwise impair the essential character or future #development# of the surrounding area.

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

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding areas.

For purposes of applying the provisions of Section 11-42 (Lapse of Authorization or Special Permit by the City Planning Commission Pursuant to the 1961 Zoning Resolution) to a special permit granted pursuant to this Section, "substantial construction" shall mean substantial rehabilitation, as described in paragraph (b) of this Section, of the subject theater for which a #floor area# bonus has been granted to a related #development#.

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8/6/98

81-748

Floor area for new legitimate theaters

Within the Theater Subdistrict in C5-3, C6-6, C6-7 and C6-7T Districts, the City Planning Commission may, by special permit, allow additional #floor area# for new legitimate theater use. Such additional #floor area# shall be up to a maximum #floor area ratio# of 2.0 calculated over that portion of the #zoning lot# located within such districts. However, where more than half of the #lot area# of the #zoning lot# is located within such districts, and the remaining portion is located outside of such districts, such additional #floor area ratio# of 2.0 may be calculated over the entire #zoning lot#. The Commission may also permit the modification of the #street wall# and setback regulations of Section 81-751 (Special street wall and setback regulations within the Theater Subdistrict Core) in connection with such #floor area# for a new theater, subject to the following conditions:

- (a) the total maximum #floor area ratio# inclusive of all bonuses, #floor area# transfers and #floor area# used for new legitimate theater shall not exceed 21.6 on that portion of the #zoning lot# located within such districts; and
- (b) such #floor area# shall be limited to floor space exclusively associated with legitimate theater use, including auditorium, orchestra, balconies, stage and theater equipment space, wings, dressing rooms, lobbies, lounges, ticket offices and rest rooms and circulation space.

No modifications permitted by such special permit shall allow for the modification of signs required pursuant to Section 81-73 (Special Sign and Frontage Regulations).

In granting such special permit, the City Planning Commission shall make the following findings:

- (1) such #floor area# allowance shall not unduly increase the #bulk# of any new #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;
- (2) such modifications to #street wall# and setback regulations are necessary to accommodate the theater configuration and volume, are essential to ensure the proper functioning of the theater and are limited to the minimum necessary to accommodate the theater;
- (3) such modifications to #street wall# and setback regulations do not adversely affect access to light and air at #street# level as compared to that which would result from the application of the regulations set forth in Section 81-75 (Special Street Wall and Height and Setback Regulations); and
- (4) the theater has a strong visual presence and prominent access from the #street# or #streets# adjacent to the #zoning lot#.

The Commission may prescribe appropriate conditions and safeguards to minimize other adverse effects on the character of the surrounding area.

An application filed with the City Planning Commission for a special permit pursuant to this Section shall be made jointly by the owners of the #development# or #enlargement# and the owner and/or operator of the theater and shall include floor plans and zoning calculations, indicating the location and size of the legitimate theater, and shall include a legal commitment made by the theater owner and the developer for continuance of the #use# of such #floor area# as a legitimate theater and prohibition of the #use# of such #floor area# for any #use# other than legitimate theater use for the life of the related #development# or #enlargement#. The 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, any lessee of the theater and their successors and assigns. The certificate of occupancy for the #building# containing the theater shall describe all #floor area# allocated as legitimate theater #use# for which such special permit has been granted.

Proposed text amendment - as certified

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81-745

Floor area bonus for rehabilitation of existing listed theaters

The Commission by special permit may authorize bonus #floor area# for substantial rehabilitation or restoration of any theater listed as a listed theater in Section 81-742 (Restriction on demolition of theaters)(Listed Theaters), in accordance with the provisions of this Section.

- (k) Conditions for rehabilitation bonus

As a condition for the issuance of a special permit under the provisions of this Section, the following requirements shall be satisfied:

- 1. Location of development

The #development# for which a theater rehabilitation bonus is granted shall be 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 which has been designated as an interior landmark.

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

- (a) There shall be a contractual commitment or commitments for the construction work involved in the substantial rehabilitation;
- (b) the requirements of Section 81-743 (Required assurances for continuance of legitimate theater use) shall be satisfied;
- (c) a rehabilitation bonus shall not be granted for a substantial rehabilitation completed before May 13, 1982.

(ii) Amount of rehabilitation bonus

The amount of bonus #floor area# granted for a qualifying theater rehabilitation shall be at the discretion of the City Planning Commission after consideration of the following findings by the Commission:

- (a) how and to what extent the proposed rehabilitation will improve the theater's suitability for #use# as a legitimate theater;
- (b) how the proposed rehabilitation will contribute toward satisfying the needs of the Theater Subdistrict.;
- (c) whether the bonus #floor area# will unduly increase the bulk of any new #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
- (d) whether the distribution and location of such #floor area# bonus will adversely affect the surrounding area by restricting light and air or otherwise impair the essential character or future #development# of the surrounding area.

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

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding areas.

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 November 20, 2001, on file in this office.

.....  
City Clerk, Clerk of Council

