Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

96-25 - Floor Area Bonus for New Theater Use

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LAST AMENDED
12/5/2024

Within Subarea 2 of the 42nd Street Perimeter Area as shown in Appendix A of this Chapter, for #developments# or #enlargements# with #qualifying affordable housing# or #qualifying senior housing# located within the area bounded by West 42nd Street, Dyer Avenue, West 41st Street and Eleventh Avenue, 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, 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 have been met:

(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, ticket offices, restrooms and circulation space. Any other use of the bonused performance space shall not comprise more than 25 percent of the total #floor area# of such performance space;

(b) such performance space shall be designed, arranged and used for live performances and rehearsals of drama, music or dance and shall have at least 100 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:

(1) a signed lease has been provided from the prospective operator of the performance space, or a written commitment from the owner of the performance space if such owner is also the operator, for occupancy of the 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;

(4) 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.

(d) a legal commitment has been provided for inspection and ongoing maintenance of the performance space to ensure its continued availability for #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,

the Commissioner of the Department of Cultural Affairs and the applicable Community Board. Such report shall describe the condition of the performance space and identify any maintenance or repair work necessary to ensure the physical and operational soundness of the 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

(e) a legal commitment has been provided for continuance of the #use# of all #floor area# in the bonused performance space as 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 paragraphs (c)(1), (c)(2) and (c)(3) 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 paragraphs (c)(3) and (c)(4) of this Section 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 45 days after such referral. Such legal commitment shall also prohibit #use# as an #adult establishment# for the life of the related #development# or #enlargement#.

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 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 under the terms of such declaration, and receipt of 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 Commissioner of the Department of Cultural Affairs has certified that the performance space is substantially complete, which shall, for this purpose, mean that such performance space is usable by the public.

The owner shall not apply for or accept a permanent certificate of occupancy for the #development# or #enlargement#, nor shall the Department of Buildings issue a permanent certificate of occupancy for the #development# or #enlargement#, until the performance space has been finally completed in accordance with the approved plans and such final completion has been certified by the 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 prior to January 28, 2009, 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 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 that 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 paragraph (c)(1) 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 of the City Planning Commission shall not grant any such certification prior to 45 days after such referral.