



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE R. BODINE
District Manager

May 21, 2015

Hon. Margery Perlmutter, Chair
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: BSA Cal. 67-15-BZ; Special Permit for the Cell Theatre, 338 West 23rd Street

Dear Ms. Perlmutter:

On the recommendation of its Chelsea Land Use Committee, Manhattan Community Board No. 4 (CB4) at its the regular Board meeting on May 6, 2015, by a vote of 36 in favor, 1 opposed, 0 abstaining and 0 present but not eligible to vote, voted to deny the Board of Standards and Appeals (BSA) special permit to legalize the theatre unless five conditions related to noise are included in the special permit.

The Cell Theatre is located in a C1-6A zoning district which does not permit a theatre (Use Group 8) as per ZR 32-10. The building at 338 West 23rd Street has a certificate of occupancy (C of O) for stores (Use Group 6) for the basement floor, a two story high space with a mezzanine; and residential use for the second and third floors. The Cell Theatre evolved from 2007 as an art gallery to a space for small gatherings such as poetry readings, and then to a performing arts theatre. It has a maximum capacity of 72 persons, well below the 500-person ceiling for the special permit.

Theater uses are not permitted as-of-right in C1 districts, but BSA may permit theatres with a maximum capacity of 500 persons in such districts by special permit as per ZR 73-201. This application seeks such a special permit.

CB4 supports appropriately-located performing arts uses which enrich our neighborhoods. We believe that a small theatre is an appropriate use on the south side of West 23rd Street between Eight and Ninth Avenues as long as it is operated in a manner that does not disturb the community. Addressing one potential concern, the applicant has assured us that people do not form queues on the sidewalk in front of the building.

For a number of years, however, neighbors have complained about noise coming from the Cell Theatre's rear yard and interior spaces: music, singing loud voices and applause during rehearsals, performances, intermissions and gatherings. These complaints have been discussed multiple times at the CB4 Quality of Life Committee. Discussions with neighbors and Cell Theatre representatives have had mixed success. Despite Cell Theatre's apologies and stated good intentions, noise decreases for a while but invariably returns to prior levels.

The rear yard space is a special problem because it is shared by the theater and by the building's owners, who are the founders and principal promoters of the theater. The Board believes that theater use of the rear yard is inappropriate because of its demonstrated ability to disturb neighbors. However, the distinction between theater use and owner use of the rear yard is blurred when the owners have a gathering of friends outside before a performance and then lead them into the theater. Unfortunately, this happened again the evening after the Chelsea Land Use Committee meeting where the application was considered and at which the owners promised to be good neighbors.

In order to address the long-standing noise complaints, CB4 recommends approval of the special permit only if it contains the following conditions:

1. Windows and doors leading to the back yard are closed during all theatre activities, including gatherings, rehearsals, performances, set-ups and clean-ups. Theater staff has said this will not be a problem because the theater is fully air conditioned.
2. The back yard is never used for theatre-related activities during intermissions or for pre-theatre and post-theatre gatherings.
3. Cell Theatre management purchases a cell phone for the use of theatre security staff during theatre activities. The phone number will be given to nearby neighbors to report theatre-related noises. Security staff will be thoroughly briefed on this procedure, and will correct the noise-producing activity by whatever means are necessary, including closing doors and windows and redirecting people indoors from the rear yard.
4. A sign is posted on or near all doors and windows facing the rear yard stating:
 - Please be respectful of our neighbors
 - Rear doors and windows must be closed during all theatre activities
 - Theater activities are prohibited in the rear yard.
5. When the Cell Theatre space is rented to outside users, a written contract clearly states the above phone, door and window conditions and procedures. These rules must be reviewed verbally with such renters to ensure they understand and abide by them.

Theater management has agreed to purchase a phone for security staff and to keep doors and windows closed during all theater events, including rehearsals that generate noise. As described above, however, the owner's use of the rear yard is a more difficult issue. During the meeting at which the application was discussed, the owners pledged to be good neighbors, including their personal use of the rear yard. We hope they will be more considerate in the future.

CB4 recommends that BSA deny the special permit to legalize theater use for the Cell Theatre unless the five conditions above are incorporated into the special permit.

Sincerely,



Christine Berthet
Chair



J. Lee Compton
Co-Chair
Chelsea Land Use Committee



Betty Mackintosh
Co-Chair
Chelsea Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council
Francis R. Angelino, Decampo, Diamond, And Ash