

96-25

Floor Area Bonus for New Legitimate Theater or Non-Profit Performing Arts Use

Within Subarea 2 of the 42nd Street Perimeter Area as shown in Appendix B 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), the City Planning Commission by special permit¹ may authorize bonus #floor area# at the rate of two additional square feet of #floor area# for each additional square foot of #floor area# provided for legitimate theater or non-profit performing arts #use#, in accordance with the following conditions:

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(a) the #floor area ratio# of the bonus #floor area# shall not exceed 3.0 and the total #floor area ratio# on the #zoning lot# shall not exceed 15.0;

[Add: non-profit performance space shall qualify for the bonus only if the development also includes at least two theaters.]

(b) all #floor area# for which a bonus is received pursuant to this Section shall be limited to floor space ~~exclusively~~ exclusively associated with legitimate theater or non-profit performing arts #use#, including auditorium, orchestra, balconies, stage and theater equipment space, wings, dressing rooms, rehearsal spaces, lobbies, ticket offices, rest rooms, ~~and~~ circulation space, and other #accessory# floor space provided #accessory# floor space does not exceed 20% of the total floor space associated with legitimate theater or non-profit performing arts #use#.;

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(c) each individual theater or performance space, shall be designed, arranged and used exclusively ~~exclusively~~ for live performances and rehearsals of drama, music or dance and shall have at least 100 and no more than 299 seats, when used alone or in combination with adjacent theaters or performance spaces;

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(d)² the Commission shall find that:

(1) 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

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(2) the distribution and location of such bonus #floor area# 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;

¹ Other density bonuses, such as the theater rehabilitation bonus (ZR 81-745) and the subway station improvement bonus (ZR 74-634) require special permits. Same should apply here.

² From ZR 81-745, theater rehabilitation bonus text.

(e) the applicant shall provide a scope of work for the new theater or performance space, which shall include core, shell, and all structural, mechanical, electrical, plumbing and HVAC systems required for completion of the space [definition needs work], together with a written commitment of the financial resources available to ensure timely completion of the identified scope of work [to be discussed];

[Add: Scope of work to be approved by the Department of Cultural Affairs.]

(e) a signed lease shall be provided from a prospective theater or performance space operator, or a written commitment from the owner of the theater or performance space if such owner is also the operator, for occupancy of the theater or 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;

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(f) a legal commitment shall be provided for inspection and ongoing maintenance of the theater or performance space to ensure its continued availability for theater or performance space #use#. 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 notice of such report shall be published in the City Record. Such report shall describe the condition of the theater or performance space and identify any maintenance or repair work necessary to ensure the physical and operational soundness of the theater or 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

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(g) a legal commitment shall be provided for continuance of the #use# of one-third of the #floor area# for which a bonus has been received pursuant to this Section as a legitimate theater or non-profit performing arts space and prohibiting #use# as an #adult establishment# for the life of the related #development#.

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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 or performance space and their successors and assigns, a certified copy of which shall be submitted to 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, until the Chairperson has certified that the theater or performance space is substantially complete, which shall, for this purpose, mean that such theater or 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, until the theater or performance space has been finally completed in accordance with the approved plans and such final completion has been certified by the Chairperson.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.³

³ From 81-745, theater rehabilitation bonus text.